SCHEDULES

SCHEDULE 1

PART I

PROPERTY IN THE CONTROL OR POSSESSION OF CERTAIN SOLICITORS AND OTHER PERSONS

Interpretation

1. In this Schedule—

Definition rep. by 1989 NI 14

"documents" means deeds, wills, documents constituting or evidencing the title to any property, papers, books of account, records, vouchers and other documents.

Production, delivery and taking possession of documents

2.—(1) The Society may require the production or delivery to any person appointed by the Society at a time and place to be fixed by the Society, and may take possession of all documents in the possession or control of the solicitor or his firm (including documents which are the property of the solicitor or his firm and not of his or their clients), or relating to any controlled trust.

(2) If the Society have reason to suspect that any documents which relate wholly or in part to the solicitor's or his firm's practice or former practice (whether or not the documents are the property of the solicitor or his firm) or to any controlled trust are in the possession or control of some person other than the solicitor or his firm or any of his or his firm's clients or any other solicitor instructed by any such client, the Society may require that person to produce or deliver such documents to any person appointed by the Society at a time and place to be fixed by the Society and may take possession of such documents.

3.—(1) If any person having possession or control of any such documents fails to comply forthwith with any requirement made under paragraph 2—

(a) he shall be guilty of an offence and be liable on summary conviction to a fine not exceeding**[**[F1] level 3 on the standard scale**]**; and

(b) [F2]. . . the High Court may, on the application of the Society, order that person to comply with the requirement within such time as may be specified in the order, and may at the same time or later order that on that person's failure to comply with such requirement one or more officers of the Society, or one or more persons appointed by the Society for the purpose, may forthwith enter upon any premises (using such force as is reasonably necessary) to search for, and take possession of, the documents.

(2) On an application under this paragraph, the court shall have regard to the interests of the persons to whom the documents which are the subject of the application belong or to whose business they relate or, where they relate to a controlled trust, to the interests of the beneficiaries under that trust.

F1 1984 NI 3
F2 1989 NI 14

4. Upon taking possession of any such documents, the Society shall serve upon the solicitor and every person from whom those documents were received, or from whose premises they were taken by virtue of an order made under paragraph 2, a notice giving particulars and the date of taking possession thereof.

5. Within fourteen days after the service of a notice under paragraph 4, the solicitor or other person upon whom the notice was served may, on serving not less than forty-eight hours' notice upon the Society and (if the notice served under paragraph 4 gives the name of the solicitor instructed by the Society) upon that solicitor, apply to a judge of the High Court in chambers for an order directing the Society to return those documents to the person from whom they were received, or from whose premises they were taken, as the case may be, by the Society, or to such other person as the applicant may require; and on the hearing of any such application the judge may make such order with respect to the matter as he thinks fit.

6. If no application is made under paragraph 5 or if the judge to whom any such application is made directs that the documents shall remain in the custody or control of the Society, the Society may make inquiries to ascertain the person to whom those documents belong or to whose business they relate and may deliver those documents to either of such persons or deal with them in accordance with the directions of either of those persons; so however that—

(a) before delivering such documents the Society may take copies of, or extracts from, any such documents, and may if requested by the solicitor, supply copies to him at his expense; and

(b) the Society may, if they consider that such documents include documents which are the property of the solicitor, require the person to whom the documents are delivered, as a condition precedent to such delivery to undertake to permit the solicitor to inspect such documents and take copies of, or extracts from, them.

7. At any time after a period of six years from the date on which the Society have taken possession of a document under the powers of this Schedule, if no person claims it, the Society may dispose of or destroy the document.

8.—(1) The provisions of this Schedule shall have effect in relation to documents notwithstanding any lien on, or right of retention of, those documents which may be vested in the solicitor or any other person**[**[F3],but the Society may, before appointing any person under paragraph 2(1), require from that person such undertakings (including undertakings as to the payment of money) as will, in the opinion of the Society, ensure that a solicitor or other person who is deprived of any such lien or right in consequence of anything done under this Schedule does not suffer any financial loss as a result of being so deprived**]**.

(2) In any case in which this Schedule applies to a solicitor[F3]. . . or the personal representatives of a solicitor by virtue of any provision of this Order or of any other enactment, the Society shall before exercising any of their functions under this Schedule (other than making an application to[F3]. . . the High Court under**[**[F3] paragraph 22A**]**) in relation to him or them, notify him or them in writing that this Schedule so applies:

Provided that the Society may, if they think fit, include a notification to a solicitor[F3]. . . under this paragraph in any notification given to him under Article 38.

F3 1989 NI 14

Control of moneys

9.—(1) [F4]. . . the High Court may, on the application of the Society, order that no payment shall be made without the leave of[F4]. . . the High Court—

(a) by any bank**[**[F4] or building society**]** (whether or not named in the order) out of any[F4]. . . account in which any money (whether received before, on or after the date of the order) of the solicitor or his firm is held or which the solicitor or his firm has the right to operate on or otherwise deal with; or

(b) by any other person (whether or not named in the order) of any money placed with him by the solicitor or his firm (whether before, on or after the date of the order) or held by him (in whatever manner and whether received before, on or after that date) on behalf of the solicitor or his firm.

(2) No order under this paragraph shall take effect in relation to any person to whom it applies unless—

(a) the Society have served a copy of the order on that person (whether or not he is named in the order) and he either knows that he holds money on behalf of the solicitor or his firm or has failed to exercise due diligence to ascertain whether any money is so held by him; and

(b) if that person is a banker**[**[F4] or building society officer**]**, the Society have informed him of the branch of the bank**[**[F4] or building society**]** at which the money to which the order relates is believed by them to be held.

F4 1989 NI 14

10. The Society may, on a resolution in that behalf made by the Council, take control of all sums of money due from the solicitor or his firm to, or held by him or his firm (in whatever manner or in whatever account and whether received before, on or after the date of the resolution) on behalf of, his or his firm's clients or subject to any controlled trust, and for that purpose the Society shall serve upon the solicitor or his firm, and, except where the provisions of Article 40 apply, upon any bank**[**[F5] or building society**]** and upon any other person having possession or control of any such sums of money a notice, together with a certified copy of such resolution, prohibiting the payment out of such sums of money otherwise than pursuant to paragraph 12 or 13.

F5 1989 NI 14

11. Within fourteen days of the service of a notice under paragraph 10 the solicitor or his firm, or the bank**[**[F6], building society**]** or other person upon whom the notice was served may, on serving not less than fourty-eight hours' notice upon the Society and (if the notice served under paragraph 10 gives the name of the solicitor instructed by the Society) upon that solicitor, apply to a judge of the High Court in chambers for an order directing the Society to withdraw the notice, and on the hearing of any such application the judge may make such order with respect to the matter as he thinks fit.

F6 1989 NI 14

12. Subject to the service of any notice under paragraph 10, and to any application that may be made under paragraph 11 the Society or any person in that behalf appointed by the Society may withdraw the money, or any part of the money, which is in any account in the name of the solicitor or his firm, or which is in the possession or control of any person on whom a notice was duly served under paragraph 10, and any money in the office of the solicitor or his firm due to or held on behalf of his clients, and pay them into a special account or special accounts in the name of the Society

or such person appointed as aforesaid and may operate on, and otherwise deal with, such special account or accounts as the solicitor or his firm might have operated on, or otherwise dealt with, the said account; so however that a bank**[**[F7] or a building society**]** with whom such special account or accounts is or are kept shall be under no obligation to ascertain whether that account or those accounts is or are being so operated on or otherwise dealt with.

F7 1989 NI 14

13.—(1) If any person fails to comply with the requirements of any notice given under paragraph 10—

(a) he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding**[**[F8] level 4 on the standard scale**]**; and

(b) [F9]. . . the High Court may, on the application of the Society—

(i) order him to comply with the requirements of the notice within such time as may be specified in the order; or

(ii) appoint the Society to act as the attorney of the solicitor named in that paragraph.

Sub-paras. (2)-(4) rep. by 1989 NI 14

F8 1984 NI 3
F9 1989 NI 14

14.—(1) If the Society have reason to suspect that any person holds any money on behalf of the solicitor or his firm, the Society may for the purpose of enabling them to perform any of their functions under this Schedule require that person to give to the Society such information as to such money or the accounts in which the money is held as may be reasonably required.

(2) If any person who holds any money on behalf of the solicitor or his firm fails to give to the Society such information as he is required to give under sub-paragraph (1) or knowingly makes any misstatement in respect thereof he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding**[**[F10] level 3 on the standard scale**]**.

F10 1984 NI 3

Re-direction of postal packets

15.—(1) [F11]. . . the High Court, on the application of the Society, may order that for such time not exceeding eighteen months as the judge thinks fit, postal packets (as defined by**[**[F12] section 125(1) of the Postal Services Act 2000**]**) addressed to the solicitor or his firm at any place or places mentioned in the order for re-direction shall be directed to any other address there mentioned.

(2) Where such an order is made the Society shall pay to the**[**[F12] postal operator (as defined by **[**[F13]section 27 of the Postal Services Act 2011**]**) concerned**]** the like charges (if any) as would have been payable for the re-direction of such packets[F12]. . . , if the addressee had permanently ceased to occupy the premises to which they were addressed and had applied to the**[**[F12] postal operator**]** to re-direct them to him at the address mentioned in the order.

F11 1989 NI 14
F12 SI 2001/1149

F13 Words in Sch. 1 para. 15(2) substituted (1.10.2011) by Postal Services Act 2011 (Consequential Modifications and Amendments) Order 2011 (S.I. 2011/2085), art. 5(1), **Sch. 1 para. 12**

Removal of solicitor-trustee from trust

16.—(1) If the solicitor is a trustee of a controlled trust, the Society may apply to[F14]. . . the High Court for an order for the appointment of a new trustee in substitution for him.

(2) The Trustee Act (Northern Ireland) 1958 shall have effect in relation to an appointment of a new trustee under this paragraph as it has effect in relation to an appointment under section 40 of that Act.

F14 1989 NI 14

General

17. Subject to any order for the payment of costs that may be made on an application under paragraph 3, 5, 9, 11, 13, 15, 16 or 19 any costs incurred by the Society for the purposes of this Schedule shall be paid by the solicitor and shall be recoverable from him as a debt owing to the Society.

18. The Society may do all things which in their opinion are necessary for the purpose of facilitating the exercise of their functions under this Schedule and in particular may for that purpose employ and pay agents.

19. The Society may apply to[F15]. . . the High Court for an order making provision for the disposal and destruction of any documents which may be in their possession by virtue of this Schedule or for the transfer or payment by or to any person of any moneys to which this Schedule relates.

F15 1989 NI 14

20. If any claim or charge is made or any proceeding is taken against the Society or their servants or agents for any act or omission by the Society or their servants or agents done or made in good faith and in the execution or purported execution of the functions conferred under this Schedule the Society or their servants or agents, as the case may be, shall be reimbursed out of the Compensation Fund established under Article 55 for all or any costs or damages which they may have incurred in relation to such claim, charge or proceeding.

21. The Society may make regulations for the purposes of carrying the provisions of this Schedule into effect and such regulations may include incidental, ancillary or supplemental provisions.

22. References in this Schedule to a banking**[**[F16] or building society**]** account include references to any deposit or other such account as well as to a current or drawing account.

F16 1989 NI 14

Status:
Point in time view as at 01/10/2011.

Changes to legislation:
There are outstanding changes not yet made by the legislation.gov.uk editorial team to Solicitors (Northern Ireland) Order 1976. Any changes that have already been made by the team appear in the content and are referenced with annotations.