

SCHEDULES

SCHEDULE 2

AMENDMENTS

The Access to Justice (Northern Ireland) Order 2003 (NI 10)

- 6.—(1) In Article 2(2) at the appropriate place in alphabetical order insert—
- ““the Department” means the Department of Justice;
 - “the Director” means the Director of Legal Aid Casework designated under section 2 of the Legal Aid and Coroners’ Courts Act (Northern Ireland) 2014;”.
- (2) In Article 2(2) omit the definition of “the Commission”.
- (3) For Article 3 and the heading to Part 2 immediately before it substitute—

“PART 2

CIVIL LEGAL SERVICES AND CRIMINAL DEFENCE SERVICES

Functions of the Department: general

3 Exercise of functions of the Department under this Part

3. The Department shall exercise its functions under this Part for the purpose of—
- (a) securing (within the resources made available, and priorities set, in accordance with this Part) that individuals have access to civil legal services that effectively meet their needs, and promoting the availability to individuals of such services; and
 - (b) securing that individuals involved in criminal investigations or relevant proceedings have access to such criminal defence services as the interests of justice require.”.
- (4) Omit Articles 4 and 5.
- (5) In Article 6—
- (a) in paragraph (1) for “Commission” substitute “Department”;

- (b) in paragraph (2) for “The Commission” substitute “The Department” and for “the Commission of its functions” substitute “the Department and the Director of their relevant functions”;
 - (c) in paragraph (3) for “Commission” substitute “Department”;
 - (d) after paragraph (3) insert—
 - “(3A) In this Article and Article 7 “relevant functions” means—
 - (a) in relation to any time after the coming into operation of Article 21, functions under this Order; and
 - (b) in relation to any time before the coming into operation of Article 21, functions under this Order and under Part 3 of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981.”.
 - (e) omit paragraphs (4) and (5).
- (6) In Article 7—
- (a) in paragraph (1) for “Commission” substitute “Department”, in sub-paragraph (a) for “functions” substitute “relevant functions” and in sub-paragraph (b) for “its” substitute “those”;
 - (b) in paragraph (2) for “Commission shall have power” substitute “Department shall have power under paragraph (1)”, in sub-paragraphs (e) and (f) for “its functions” substitute “relevant functions” and omit sub-paragraph (g);
 - (c) in paragraph (3) for “Commission” substitute “Department”;
 - (d) omit paragraphs (4) and (5);
 - (e) in paragraph (6) for “Commission” substitute “Department or the Director”;
 - (f) in paragraph (7) for “Commission” substitute “Department”.
- (7) Omit Article 8.
- (8) In Article 9(1) and (2) for “Commission” substitute “Department”.
- (9) In Article 10 for paragraph (1) substitute—
- “(1) For the purposes of this Order “civil legal services” means—
 - (a) in relation to any time after the coming into operation of Article 21, advice, assistance and representation, other than advice, assistance or representation which the Department is required to fund as criminal defence services; and
 - (b) in relation to any time before the coming into operation of Article 21, advice, assistance and representation other than representation in proceedings for the purposes of which free legal aid may be given under Part 3 of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981.”.

- (10) In Article 10(2) for “Commission” substitute “Department”.
- (11) For Article 11 substitute—

“Funding of civil legal services by Department

11.—(1) Civil legal services shall be funded by the Department out of moneys appropriated for that purpose by Act of the Assembly.

(2) In funding civil legal services the Department shall aim to obtain the best possible value for money.”.

- (12) In Article 12—

- (a) in paragraph (1) for “Commission” substitute “Department” and omit subparagraph (a);
- (b) in paragraph (2) for “Commission” substitute “Department”;
- (c) for paragraph (3) substitute—

“(3) The Department may by order make provision about the payment of remuneration by the Department to persons who provide civil legal services.”;

- (d) in paragraph (4) for “Commission” substitute “Department”;
- (e) in paragraph (5) for “The Commission” substitute “Except as provided by Article 12A, the Department”.

- (13) For Article 12A substitute—

“Exceptional funding

12A.—(1) The Department is to fund the provision of any of the services specified in Schedule 2 to an individual if paragraph (2) or (4) is satisfied.

- (2) This paragraph is satisfied if the Director—

- (a) has determined that the individual satisfies the requirements of regulations under Article 13 in relation to the services, and
- (b) has made an exceptional case determination in relation to the individual and the services,

(and has not withdrawn either determination).

- (3) An exceptional case determination is a determination—

- (a) that it is necessary to make the services available to the individual under this Order because failure to do so would be a breach of—
- (i) the individual’s Convention rights (within the meaning of the Human Rights Act 1998), or
- (ii) any rights of the individual to the provision of legal services that are enforceable EU rights, or

(b) that it is appropriate to do so, in the particular circumstances of the case, having regard to any risk that failure to do so would be such a breach.

(4) This paragraph is satisfied if—

(a) the services consist of representation in proceedings at an inquest under the Coroners Act (Northern Ireland) 1959 into the death of a member of the individual's family,

(b) the Director has made a wider public interest determination in relation to the individual and the inquest, and

(c) the Director has determined that the individual satisfies the requirements of regulations under Article 13 in relation to the services,

(and neither determination has been withdrawn).

(5) A wider public interest determination is a determination that, in the particular circumstances of the case, the provision of representation for the individual for the purposes of the inquest is likely to produce significant benefits for a class of person, other than the individual and the members of the individual's family.

(6) For the purposes of this Article an individual is a member of another individual's family if—

(a) they are relatives (whether of the full blood or half blood or by marriage or civil partnership),

(b) they are cohabitees (as defined in Article 3(1) of the Family Homes and Domestic Violence (Northern Ireland) Order 1998), or

(c) one has parental responsibility for the other.

(7) Articles 14 to 20 do not apply to civil legal services funded under this Article unless they are applied (with or without modification) by an exceptional case determination or a wider public interest determination.”.

(14) In Article 13(1) and (2) for “Commission” (wherever occurring) substitute “Department”.

(15) In Article 14—

(a) in paragraph (1) for “Commission” (in both places) substitute “Department”;

(b) in paragraph (2)(a)(i) for “Commission” substitute “Director”;

(c) after paragraph (2) insert—

“(2A) A grant of representation for an individual for the purposes of proceedings—

Status: This is the original version (as it was originally enacted).

- (a) shall not be made unless the individual shows there are reasonable grounds for taking, defending or being a party to the proceedings; and
- (b) may be refused if, in the particular circumstances of the case, it appears unreasonable that representation should be granted.

(2B) Guidance given to the Director under section 3 of the Legal Aid and Coroners' Courts Act (Northern Ireland) 2014 may, in particular, include guidance as to the criteria according to which any decision is to be taken by the Director under paragraph (2A).";

- (d) in paragraph (3)(a) for "Commission" substitute "Director";
- (e) in paragraphs (4) and (5) for "Commission" substitute "Department";
- (f) in paragraph (6)(a) for "Commission" substitute "Director";
- (g) in paragraph (6)(b) for "Commission" (in both places) substitute "Department".

(16) For Article 15 substitute—

"Regulations as to procedures for funding decisions

15. The Department may make regulations as to the procedures for the making of decisions about the funding by the Department of civil legal services, including—

- (a) provision about the form and content of applications for funding,
- (b) provision imposing conditions which must be satisfied by an individual applying for funding,
- (c) provision requiring applicants to be informed of the reasons for any decision to refuse an application,
- (d) provision for the giving of information to individuals whose applications are refused about alternative ways of obtaining or funding services, and
- (e) provision establishing procedures for reviews of decisions about funding and for the giving of information about those procedures."

(17) Omit Article 16.

(18) In Article 17 for "Commission" (wherever occurring) substitute "Department".

(19) In Article 18 for "Commission" (wherever occurring) substitute "Department".

(20) In Article 19 for "Commission" (wherever occurring) substitute "Department".

(21) In Article 20 for “Commission” (wherever occurring) substitute “Department”.

(22) After Article 20 insert—

“Appeal panels

20A.—(1) The Department must by regulations make provision for—

- (a) the constitution and procedure of appeal panels; and
- (b) appeals to such a panel against prescribed decisions taken in the exercise of functions conferred or imposed on the Director by or under Articles 12A to 20.

(2) The regulations may in particular—

- (a) provide for an appeal panel to consist of—
 - (i) a presiding member, selected in the prescribed manner from a list of persons appointed by the Department to act as presiding members of appeal panels; and
 - (ii) a prescribed number of other members, selected in the prescribed manner from a list of persons appointed by the Department to act as other members of appeal panels;
- (b) prescribe qualifications for appointment to a list mentioned in subparagraph (a);
- (c) provide for disqualifying prescribed persons or persons of prescribed descriptions for membership of an appeal panel;
- (d) provide for two or more appeal panels to sit at the same time;
- (e) provide for appeal panels to sit in private, except in such circumstances as may be specified in, or determined in accordance with, the regulations;
- (f) provide for the decision on an appeal to be taken without hearing any oral representations, except in such cases as may be prescribed;
- (g) provide for the powers of an appeal panel on determining an appeal;
- (h) require an appeal panel to give reasons in writing for its decision on an appeal;
- (i) provide for a decision of the appeal panel on an appeal to be final;
- (j) provide that all matters relating to the procedure of an appeal panel on an appeal which are not specifically regulated by the regulations are to be determined by the presiding member;
- (k) contain such other provision as appears to the Department necessary or expedient for the efficient and effective working of the appeal panels.

Status: This is the original version (as it was originally enacted).

(3) The Department—

- (a) may make payments to the members of an appeal panel of amounts or at rates not exceeding such amounts or rates, and on such conditions, as the Department may determine;
- (b) shall arrange for the provision to appeal panels of such facilities, staff and assistance as the Department considers appropriate;
- (c) shall meet any other costs properly incurred by such panels.”.

(23) For Article 21 substitute—

“Funding of criminal defence services by Department

21.—(1) The Department shall, out of moneys appropriated for that purpose by Act of the Assembly, fund—

- (a) advice and assistance in accordance with Article 23, and
- (b) representation in accordance with Articles 24 and 30,

and in this Order services which can be so funded are referred to as “criminal defence services”.

(2) In funding criminal defence services the Department shall aim to obtain the best possible value for money.”.

(24) In Article 22—

(a) for paragraph (1) substitute—

“(1) The Department shall prepare a code of conduct to be observed by—

- (a) the Department and the Director, and
- (b) the employees of any body established and maintained by the Department,

in the provision of criminal defence services.”;

(b) in paragraph (2) for “Commission” substitute “Department” and after “employees” insert “mentioned in paragraph (1)(b)”;

(c) in paragraphs (3) and (4) for “Commission” substitute “Department”;

(d) for paragraphs (5) to (8) substitute—

“(5) The Department shall—

- (a) publish the code and any revised version of the code;
- (b) lay the code and any revised version of the code before the Assembly.

(6) The code as first published by the Department, and any revised version of the code, shall not come into operation until it has been approved by resolution of the Assembly.”.

- (25) In Article 23—
- (a) in paragraphs (1) and (2) for “Commission” substitute “Department”;
 - (b) for paragraph (3) substitute—

“(3) The Department may by order make provision about the payment of remuneration by the Department to persons who provide advice and assistance in accordance with this Article.”;
 - (c) in paragraph (4) for “Commission” substitute “Department”.
- (26) In Article 24—
- (a) in paragraphs (1), (2) and (3)(a) for “Commission” substitute “Department”;
 - (b) omit paragraph (3)(b);
 - (c) in paragraphs (4) and (6) for “Commission” (wherever occurring) substitute “Department”.
- (27) In Article 27—
- (a) for “Commission” (wherever occurring) substitute “Director”;
 - (b) in paragraph (1) for “by it” substitute “by the Director”.
- (28) In Article 27A(1) and (2) for “Commission” substitute “Director”.
- (29) In Article 30—
- (a) for “Commission” (wherever occurring) substitute “Department”;
 - (b) in paragraph (4) for “employed by” substitute “employed in”.
- (30) In Article 31 for “Commission” (wherever occurring) substitute “Department”.
- (31) In Article 32 for “Commission” (wherever occurring) substitute “Department”.
- (32) In Article 33(6) for “Commission” substitute “Department”.
- (33) In Article 34 for “Commission” (wherever occurring) substitute “Department”.
- (34) In Article 35 for “Commission” (wherever occurring) substitute “Department”.
- (35) In Article 36—
- (a) for “Commission” (wherever occurring) substitute “Department”;
 - (b) at the beginning of paragraph (3)(b) insert “may”.
- (36) In Article 41 for “Commission” (wherever occurring) substitute “Department”.
- (37) In Article 46—
- (a) omit paragraphs (1) to (3);

Status: This is the original version (as it was originally enacted).

- (b) in paragraph (5) for “4(4), 5, 10(2), 11(9)(b), 15(7)” substitute “10(2)” and after “20(2)(b) or (d),” insert “20A,”;
- (c) in paragraph (6) after “regulations” insert “made by the Department” and omit “or paragraph 2(6) of Schedule 3”.
- (38) In Article 47(4) for “Commission” substitute “Department”.
- (39) In Article 48 omit paragraphs (2) and (3).
- (40) Omit Schedule 1.
- (41) In Schedule 2—
 - (a) in paragraphs 1 and 2 for “The Commission” substitute “The Department”;
 - (b) in paragraph 4 for “Commission” substitute “Department”.
- (42) Omit Schedule 3.
- (43) In Schedule 4 in the following provisions (which amend other enactments)
 - (a) for “Northern Ireland Legal Services Commission” (wherever occurring) substitute “Department of Justice”; and
 - (b) for “the Commission” (wherever occurring) substitute “the Department of Justice”.

The provisions are—

- (i) paragraph 1(2) and (3)(b);
- (ii) paragraph 2(3) to (8) and (10);
- (iii) paragraph 3(c);
- (iv) paragraph 7;
- (v) paragraph 8;
- (vi) paragraph 9(3);
- (vii) paragraph 10(b);
- (viii) paragraph 11;
- (ix) paragraph 12(3);
- (x) paragraph 13(c);
- (xi) paragraph 16(b).
- (44) In Schedule 4—
 - (a) in paragraph 2 for sub-paragraph (2) substitute—
 - “(2) In Article 3 (interpretation) after paragraph (2) insert—
 - “(2A) In this Order—
 - (a) references to civil legal services funded by the Department of Justice shall be construed in accordance with Article 10 of the Access to Justice (Northern Ireland) Order 2003;

- (b) references to criminal defence services funded by the Department of Justice shall be construed—
 - (i) in relation to any time after the coming into operation of Article 21 of the Access to Justice (Northern Ireland) Order 2003, in accordance with that Article; and
 - (ii) in relation to any time before the coming into operation of that Article, as references to free legal aid under Part 3 of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981”.”;
- (b) in paragraph 2(5) after “Article 31(2) of that Order” insert “or under Part 3 of the Order of 1981” and for the words from “(register” to the end substitute “or Article 36B of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981”;
- (c) in paragraph 4 for “for” substitute “after” and for “substitute” substitute “insert”;
- (d) omit paragraphs 10(a) and 15;
- (e) in paragraph 18 for “for” substitute “after” and for “substitute” substitute “insert”.
- (45) In Schedule 5 at the end insert—

“2014 c.

The Legal Aid and Coroners’ In Schedule 2, paragraph ”.
 Courts Act (Northern
 Ireland) 2014.
