SCHEDULES

SCHEDULE 2

AMENDMENTS

The Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 (NI 8)

1.—(1) In Article 2 after paragraph (3) insert—

"(4) In this Order—

"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) Notwithstanding the repeal by this Act of the Legal Aid (Northern Ireland) Order 2005, Article 33(1) continues to have effect with the substitution (originally made by paragraph 5 of Schedule 1 to that Order) for "Department of Health and Social Services" of "Department for Social Development".

(3) In Article 33A(2)(f) for "Northern Ireland Legal Services Commission" substitute "Director".

(4) In Article 36 for paragraph (4) substitute—

"(4) Except as provided by paragraph (5), rules under this Article are subject to negative resolution.

(5) The rules to which paragraph (6) applies shall not be made unless a draft of the rules has been laid before, and approved by resolution of, the Assembly.

(6) This paragraph applies to—

(a) rules made under this Article which contain any provision made by virtue of Article 31 (as substituted by section 80 of the Justice Act (Northern Ireland) 2011);

(b) rules made under this Article which contain any provision made by virtue of Article 36A (as substituted by Schedule 2 to the Legal Aid and Coroners' Courts Act (Northern Ireland) 2014);

(c) rules made under this Article which contain any provision made by virtue of Article 36B (as substituted by Schedule 2 to the Legal Aid and Coroners' Courts Act (Northern Ireland) 2014);

(d) rules made under this Article which contain any provision made by virtue of Article 38A (as inserted by Schedule 2 to the Legal Aid and Coroners' Courts Act (Northern Ireland) 2014).".

(5) For Article 36A substitute—

"**36A Assignment of solicitor and counsel**

(1) Rules under Article 36(3)(b) must provide that, subject to paragraphs (2) and (3) and to any provision made by virtue of paragraph (4), a person in respect of whom a criminal aid certificate has been granted may select any solicitor or counsel willing to act for that person to be assigned so to act.

(2) A solicitor shall not be assigned in pursuance of a criminal aid certificate if the solicitor is for the time being prohibited from being so assigned by an order under Article 51B(1) or (3) of the Solicitors (Northern Ireland) Order 1976.

(3) A counsel shall not be assigned in pursuance of a criminal aid certificate if the counsel is for the time being prohibited from being so assigned by a determination of the General Council of the Bar of Northern Ireland, or by any determination of any such committee as may be established by that Council to determine charges preferred against counsel.

(4) Rules under Article 36(3)(b) may—

(a) provide that in prescribed circumstances the right referred to in paragraph (1)—

(i) does not apply in cases of a prescribed description,

(ii) is not to include a right to select a solicitor or counsel of a prescribed description,

(iii) is to select only a solicitor or counsel registered under Article 36B, or only a solicitor or counsel of a prescribed description,

(b) restrict the right to select a solicitor or counsel in place of a solicitor or counsel previously selected.

(5) Rules under Article 36(3)(b) may provide that, in prescribed circumstances, Article 36(1) does not require the Department to defray, or to continue to defray, the expenses incurred by a particular solicitor or counsel (but such provision shall not prejudice any right of a person to select another solicitor or counsel).

(6) The circumstances which may be prescribed by rules under paragraph (4) or (5) include that a determination has been made by a prescribed body or person.

(7) A solicitor or counsel who has been selected to act for a person may select another person to act for that person, as the agent of the solicitor or counsel, if that other person is of such a description that nothing in this Article

or Article 36B would prohibit the person selecting that solicitor or counsel to act for that person.

(8) In this Article "prescribed" means prescribed by rules under Article 36(3)(b).

36B Register of solicitors and counsel eligible to be assigned

(1) Rules under Article 36(3)(b) may—

(a) make provision for the registration by the Department of counsel and solicitors who are eligible to be assigned in pursuance of criminal aid certificates;

(b) provide that only those counsel or solicitors who are registered may be so assigned; and

(c) require registration of firms with which registered solicitors are connected.

(2) Those rules may require the Department to prepare a code of practice in relation to—

(a) the conditions to be complied with in order to qualify for registration, and

(b) the carrying out by registered counsel and registered solicitors, and any firm which is registered in connection with a registered solicitor, of their functions with regard to the provision of free legal aid.

(3) Those rules may—

(a) require registered counsel and registered solicitors, and any firm which is registered in connection with a registered solicitor, to comply with any such code of practice;

(b) require the Department or persons authorised by the Department to monitor compliance with any such code of practice; and

(c) make provision about procedures for cases in which—

(i) it appears to the Department or a person authorised by the Department that a registered counsel or solicitor, or any firm which is registered in connection with a registered solicitor, may not be complying with any such code of practice, or

(ii) a person who holds any judicial office asks the Department to investigate whether a registered counsel or solicitor, or any firm which is registered in connection with a registered solicitor, is complying with any such code of practice,

and the sanctions which may be imposed by virtue of this sub-paragraph may include provision for a counsel, solicitor or firm to cease to be registered.

(4) Those rules—

(a) may make provision imposing charges;

(b) may make provision with respect to the powers of investigation which may be exercised by the Department, or by persons authorised by the Department, for the purpose of monitoring compliance with any code of practice prepared under the rules;

(c) may make provision for obstruction of the exercise of powers conferred by virtue of sub-paragraph (b) to be certified to the High Court in prescribed circumstances, and for any power of the High Court in relation to contempt of court to be exercisable in relation to such obstruction.”.

(6) After Article 38 insert—

“**38A Restriction of disclosure of information**

(1) Information which is furnished—

(a) to the Department or to any court, tribunal or other person or body on whom functions are imposed or conferred by or under this Part, and

(b) in connection with the case of a person seeking free legal aid under this Part,

shall not be disclosed except as permitted by rules under Article 36.

(2) Paragraph (1) does not limit the disclosure of—

(a) information in the form of a summary or collection of information so framed as not to enable information relating to any individual to be ascertained from it, or

(b) information about the amount of any grant, loan or other payment made to any person or body by the Department.

(3) Paragraph (1) does not prevent the disclosure of information for any purpose with the consent of the person in connection with whose case it was furnished and, where the person did not furnish it himself or herself, with that of the person or body who did.

(4) A person who discloses any information in contravention of this Article shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(5) Proceedings for an offence under this Article shall not be brought except by, or with the consent of, the Director of Public Prosecutions.

(6) Nothing in this Article applies to information furnished to a personassigned to provide free legal aid under this Part by or on behalf of a person receiving such legal aid.”.