

*These notes refer to the Legal Aid and Coroners' Courts Act (Northern Ireland) 2014 (c.11) which received Royal Assent on 17 November 2014*

# Legal Aid and Coroners' Courts Act (Northern Ireland) 2014

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### ***Section 1: Dissolution of Northern Ireland Legal Services Commission***

This section will dissolve the Commission and transfer its functions and staff to the Department. On transfer it is intended that an Executive Agency will be created within the Department to administer the delivery of legal aid services in Northern Ireland.

Subsection (5) refers to Schedule 1 to the Act which makes provision for the transfer of the assets, liabilities and staff from the Commission to the Department.

#### ***Section 2: Designation of Director of Legal Aid Casework***

This section makes provision for the appointment of a Director of Legal Aid Casework ("the Director"). The purpose behind the creation of this statutory position is to ensure that there will be no Ministerial involvement in individual decisions on civil legal aid funding. The Department will be required to designate a civil servant in the Department as the Director. The selection of the person to be so designated must be on the basis of merit through fair and open competition. The Director's function will be to make decisions on the grant of civil legal aid in individual cases.

Subsection (2) requires the Director to carry out the functions of the office on behalf of the Crown.

Subsection (3) provides that service as the Director is service in the Northern Ireland civil service.

Subsection (4) requires the Department to provide civil servants or other persons (or both) to give appropriate assistance to the Director.

#### ***Section 3: Exercise of functions by Director***

This section includes a number of safeguards to guarantee and protect the independence of the Director and his decisions on the grant of civil legal aid in individual cases.

Subsection (1) requires the Director to comply with directions given by the Department and to have regard to guidance issued by the Department.

Subsection (2)(a) provides that the Department must not give a direction or guidance about the granting of civil legal aid in individual cases. Subsection 2(b) places a duty on the Department to ensure that the Director acts independently of the Department when applying a direction or guidance under this section in relation to an individual case.

Subsection 3(3) requires the Department to publish any such directions or guidance.

Subsection 3(4) provides for directions and guidance under this section to be revised or withdrawn from time to time.

#### ***Section 4: Delegation of functions of Director***

This section makes provision about the delegation of the Director's functions.

Subsection (1) allows the Director to delegate the Director's functions. This enables the Director to delegate, for example, decision-making in relation to the merits of a legal aid application, the application of any relevant means test for a particular area of work in relation to a legal aid application and the on-going monitoring of decisions.

Subsection (2) provides that under section 3 the Department may give directions to the Director about the delegation of the Director's functions. The Department will be able to require the Director to delegate, or not to delegate, particular functions and to give directions about the persons to whom the Director may or may not delegate those functions.

Subsection (3) ensures that a function of the Director may be delegated entirely or subject to limitations or conditions. For example, decision-making in relation to the merits and financial eligibility might be delegated to providers (whether solicitors in private practice or the voluntary/Not-for-Profit sector) in relation to particular matters, or subject to particular financial limits as to the amount of work that can be carried out before the case must be referred to the Director for a decision on further legal aid funding.

Subsections (4) to (8) make provision about the effect of the delegation of functions under subsections (1) to (3).

Subsection (4) gives the Director the power to limit the duration of a delegation as well as to vary or revoke the delegation at any time. It also reserves the right of the Director (or another person) to continue to exercise a function that has been delegated.

Subsection (5) provides that any act or omission by a person ("authorised person") in exercising a function of the Director delegated to them under section 4(1) to (3) is to be treated as being done or omitted to be done by the Director.

However, the liability of the Director for acts or omissions of an authorised person is not absolute. Subsection (6) provides that subsection (5) does not affect the rights and liabilities of the Department and the authorised person between themselves (for example, contractual disputes), does not prevent civil proceedings from being brought against the authorised person and does not apply to criminal offences alleged to have been committed by the authorised person.

### ***Section 5: Annual report of Director***

This section concerns the production of an annual report by the Director of Legal Aid Casework.

Subsection (1) requires the Director to produce an annual report for each financial year as soon as practical following the end of that financial year.

Subsection (2) requires that the report will set out how the Director has carried out the functions of the office in the financial year.

Subsections (3) and (4) respectively require that the Director send a copy to the Department, and that the Department lay the report before the Assembly and arrange for its publication.

### ***Section 6: Amendment of law relating to legal aid, civil legal services and criminal defence services***

This section introduces Schedule 2 which contains a large number of amendments. The amendments to Part 3 of the 1981 Order in relation to representation in criminal proceedings and to the 2003 Order in relation to civil legal services and criminal defence services.

### ***Section 7: Lord Chief Justice to be president of coroners' courts***

This section makes provision for the Lord Chief Justice to be the President of the coroners' courts by amending section 12(1D) of the Justice (Northern Ireland) Act 2002.

### ***Section 8: Presiding coroner***

This section requires the Lord Chief Justice to appoint a Presiding coroner with responsibility for the coroners' courts and the other coroners and deputy coroners. The person appointed as Presiding coroner will hold that office in accordance with the terms of his or her appointment. If the office of Presiding coroner becomes vacant, the Lord Chief Justice may appoint another coroner to act until a new appointment can be made. Any of the Lord Chief Justice's functions relating to coroners' courts, other than functions under section 36 of the Coroners Act (Northern Ireland) 1959, may be delegated to the Presiding coroner. A number of existing powers of delegation are consequentially repealed.

***Section 9: Application to the Crown***

This section is self-explanatory.

***Section 10: Supplementary, incidental or consequential provision***

This section is self-explanatory.

***Section 11: Repeals***

This section is self-explanatory.

***Section 12: Commencement***

It is intended that *civil legal services* will be implemented on the same date that the Commission is dissolved (and the new Agency is set up within the Department). For this reason, various provisions and consequential amendments will be coming into operation on the day after Royal Assent. This will enable the Department to bring forward the necessary secondary legislation to implement *civil legal services* and have them commence on the dissolution date.

***Section 13: Short title***

This section is self-explanatory