

SCHEDULES

SCHEDULE 3

Article 48(2)

TRANSITIONAL PROVISIONS AND SAVINGS

Interpretation

1. In this Schedule—

“the 1981 Order” means the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981(1);

“the first appointed day” means the day appointed by the Lord Chancellor under Article 1(2) for the coming into operation of Article 3(1);

“the Old Fund” has the meaning given by paragraph 3;

“the second appointed day” means the day appointed by the Lord Chancellor under Article 1(2) for the coming into operation of Article 11(1).

Rights, obligations and property

2.—(1) Subject to paragraphs 3 and 9, on the first appointed day all rights, obligations and property of the Law Society which are referable to its functions under the 1981 Order shall become rights, obligations and property of the Commission.

(2) Any payments which are required to be made into or out of the Old Fund in connection with legal aid or advice or assistance under the 1981 Order shall, on and after the first appointed day, be paid to or by the Commission.

(3) Anything which, immediately before the first appointed day, is in the process of being done by or in relation to the Law Society may, if it relates to anything transferred by sub-paragraph (1), be continued by or in relation to the Commission.

(4) Anything done (or having effect as if done) by or in relation to the Law Society before the first appointed day for the purpose of, or in connection with, anything transferred by sub-paragraph (1) shall, so far as is required for continuing its effect after that time, have effect as if done by or in relation to the Commission.

(5) Any reference in any document, including any statutory provision, constituting or relating to anything transferred by sub-paragraph (1)—

(a) to, or to the Council of, the Law Society, or

(b) to the Legal Aid Committee, certifying committee or any other committee or tribunal established by the Law Society under Part II of the 1981 Order, or

(c) to any member or office-holder of such a committee or tribunal,

shall, so far as is required for giving effect to that sub-paragraph, be construed as a reference to the Commission, or in relation to a function exercisable by any individual or committee under

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arrangements made by the Commission under Article 7(4) of this Order, as a reference to that individual or committee.

(6) The Lord Chancellor may by order make any consequential, incidental, supplementary or transitional provisions, and any savings, which appear to him to be appropriate in consequence of or otherwise in connection with the transfers effected by sub-paragraph (1).

(7) An order under sub-paragraph (6) may include provisions in the form of amendments or repeals of this Schedule or any other statutory provision.

The Legal Aid Fund

3.—(1) On the first appointed day the legal aid fund (“the Old Fund”) maintained by the Law Society under Article 19 of the 1981 Order shall be wound up.

(2) If, as at the first appointed day, after taking account of all receipts and expenses of the Law Society attributable to its functions under the 1981 Order, there is in relation to the Old Fund any surplus or deficit—

- (a) such surplus shall be paid by the Law Society to the Lord Chancellor; and
- (b) such deficit shall be made up by payment to the Law Society by the Lord Chancellor of the amount of the deficit.

(3) The Law Society shall, as soon as possible after the first appointed day, prepare a report in accordance with Article 18(8) of the 1981 Order—

- (a) in relation to the last financial year ending before the first appointed day (if it has not done so before then), and
- (b) in relation to the period between the end of that financial year and the first appointed day (as if that period were a financial year).

(4) The Law Society shall, as soon as possible after the first appointed day, prepare a statement of accounts in accordance with Article 20 of the 1981 Order—

- (a) in relation to the last financial year ending before the first appointed day (if it has not done so before then), and
- (b) in relation to the period between the end of that financial year and the first appointed day (as if that period were a financial year).

(5) Paragraphs (2) to (5) of Article 20 of the 1981 Order shall, on and after the first appointed day, apply in relation to—

- (a) the preparation of a statement under sub-paragraph (4)(a) or (b), and
- (b) the auditing of accounts kept under that Article for the periods mentioned in sub-paragraphs (4)(a) and (b).

(6) Notwithstanding its repeal by this Order, Article 19(5) of the 1981 Order shall continue to have effect for the purposes of any determination as to the expenses or receipts of the Law Society.

(7) The Lord Chancellor shall meet the costs of remunerating auditors and any other costs incurred by the Law Society in connection with the exercise of any of its functions under this paragraph.

Part II of the 1981 Order

4.—(1) The provisions of this paragraph shall have effect if the first appointed day falls before the second appointed day.

(2) With effect from the first appointed day until the second appointed day it shall be the responsibility of the Commission—

- (a) to establish and maintain a fund, which shall be deemed for all purposes of the 1981 Order to be the legal aid fund,
 - (b) subject to the provisions of Part II of the 1981 Order and this Schedule, to make arrangements with the approval of the Lord Chancellor and the concurrence of the Treasury for securing that legal aid, advice and assistance are available as required by Part II of the 1981 Order,
 - (c) to monitor the conduct of solicitors and barristers advising or assisting or acting for persons entitled to receive advice or assistance or legal aid under the 1981 Order and, where it considers it appropriate to do so—
 - (i) to make a complaint about the conduct of a person so advising or assisting or acting to the Law Society (in the case of a solicitor) or to the General Council of the Bar of Northern Ireland (in the case of a barrister), or
 - (ii) to refer any complaint which is made to the Commission about the conduct of a person so advising or assisting or acting to the Law Society (in the case of a solicitor) or to the General Council of the Bar of Northern Ireland (in the case of a barrister), and
 - (d) generally to administer Part II of the 1981 Order.
- (3) In relation to any time from the first appointed day to the second appointed day, any reference in Part II of the 1981 Order or in any statutory provision made, or treated as made, under that Part—
- (a) to, or to the Council of, the Law Society, or
 - (b) to the Legal Aid Committee, certifying committee or any other committee or tribunal established by the Law Society under that Part, or
 - (c) to any member or office-holder of such a committee or tribunal,
- shall, so far as is required to enable the Commission to exercise its functions under sub-paragraph (2), and subject to sub-paragraph (4), be construed as a reference to the Commission, or in relation to a function exercisable by any individual or committee under arrangements made by the Commission under Article 7(4) of this Order, as a reference to that individual or committee.
- (4) Sub-paragraph (3) shall not apply to Article 23 or 24 of the 1981 Order; but instead in Article 24—
- (a) any reference to the Law Society shall, in relation to any time from the first appointed day to the second appointed day, be deemed to include a reference to the Commission; and
 - (b) paragraph (1) shall have effect as if there were inserted after sub-paragraph (c)—
- “or
- (d) for the purpose of facilitating the proper performance by the Law Society or the General Council of the Bar of Northern Ireland of their functions in relation to complaints made or referred to them by the Commission.”
- (5) The Commission shall pay into the fund established under sub-paragraph (2)(a)—
- (a) sums received from the Lord Chancellor under sub-paragraph (7),
 - (b) any receipts of the Commission attributable to Part II of the 1981 Order, and
 - (c) such other receipts of the Commission as the Lord Chancellor may, with the concurrence of the Treasury, determine.
- (6) All expenses of the Commission attributable to Part II of the 1981 Order shall be paid out of the fund established under sub-paragraph (2)(a).
- (7) The Lord Chancellor shall pay to the Commission out of money provided by Parliament such sums as are required (after allowing for sums received apart from this sub-paragraph) to meet

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the payments which, under sub-paragraph (6), are to be paid by the Commission out of the fund established under sub-paragraph (2)(a).

(8) The Lord Chancellor may, with the approval of the Treasury—

- (a) determine the manner in which and times at which the sums referred to in sub-paragraph (7) shall be paid to the Commission; and
- (b) impose conditions on the payment of the sums referred to in sub-paragraph (7).

(9) Estimates of the sums required as mentioned in sub-paragraph (7) shall from time to time be submitted to the Lord Chancellor by the Commission.

(10) An estimate shall be submitted under sub-paragraph (9)—

- (a) at least once in the period beginning with the first appointed day and ending with the next 31st March, and
- (b) at least once in each subsequent period of twelve months ending with 31st March,

at such time as the Lord Chancellor may, with the approval of the Treasury, direct.

(11) An estimate under sub-paragraph (9) shall be in such form and shall give such particulars as may be so directed.

(12) Any provision of Part II of the 1981 Order requiring anything to be paid into or out of the fund established under sub-paragraph (2)(a) is not to be taken as requiring the making of an actual payment, so as to prevent the obligation to make it being satisfied in whole or in part by an allowance on account or in any other way; and in that Part references to payments, to sums paid or payable or to receipts and similar references shall be construed accordingly.

(13) Where a fund is established under sub-paragraph (2)(a), that fund shall, with effect from the second appointed day, be treated as if it were established under Article 11(1).

Part III of the 1981 Order

5.—(1) The provisions of this paragraph shall have effect if the first appointed day falls before the day appointed by the Lord Chancellor under Article 1(2) for the coming into operation of Article 21.

(2) With effect from the first appointed day until the day appointed by the Lord Chancellor under Article 1(2) for the coming into operation of Article 21, in any case where a criminal aid certificate is granted under Part III of the 1981 Order in respect of any person, the expenses properly incurred in pursuance of the certificate, including the fees of a solicitor and, where counsel has been assigned, of counsel, shall be paid—

- (a) by the Lord Chancellor, or
- (b) by the Commission,

as the Lord Chancellor may direct.

(3) Sub-paragraph (2) is subject to any rules made under Article 36 of the 1981 Order and to any directions given under that Article.

(4) The Commission shall establish and maintain a fund from which it shall make any payments which, under sub-paragraph (2), are to be paid by the Commission.

(5) The Commission shall pay into the fund established under sub-paragraph (4)—

- (a) sums received from the Lord Chancellor under sub-paragraph (6), and
- (b) such other receipts of the Commission as the Lord Chancellor may, with the concurrence of the Treasury, determine.

(6) The Lord Chancellor shall pay to the Commission out of money provided by Parliament such sums as are required (after allowing for sums received apart from this sub-paragraph) to meet the payments which, under sub-paragraph (2), are to be paid by the Commission.

(7) The Lord Chancellor may, with the approval of the Treasury—

(a) determine the manner in which and times at which the sums referred to in sub-paragraph (6) are to be paid to the Commission; and

(b) impose conditions on the payment of the sums referred to in sub-paragraph (6).

(8) Estimates of the sums required as mentioned in sub-paragraph (6) shall from time to time be submitted to the Lord Chancellor by the Commission.

(9) An estimate shall be submitted under sub-paragraph (8)—

(a) at least once in the period beginning with the first appointed day and ending with the next 31st March, and

(b) at least once in each subsequent period of twelve months ending with 31st March,

at such time as the Lord Chancellor may, with the approval of the Treasury, direct.

(10) An estimate under sub-paragraph (8) shall be in such form and shall give such particulars as may be so directed.

(11) Where a fund is established under sub-paragraph (4), that fund shall, with effect from the day appointed by the Lord Chancellor under Article 1(2) for the coming into operation of Article 21, be treated as if it were established under Article 21(1).

Commission's annual plan and annual report

6.—(1) Where the Commission exercises any functions by virtue of paragraph 4(2) or 5(2) during any financial year, it shall deal with how it has exercised those functions during that year in the report which it is required to provide to the Lord Chancellor in relation to that year under paragraph 15 of Schedule 1.

(2) Where the Commission proposes to exercise any functions by virtue of paragraph 4(2) or 5(2) during any financial year, it shall deal with how it intends to exercise those functions during that year in the plan which it is required to prepare in relation to that year under paragraph 16 of Schedule 1.

(3) In this paragraph “financial year” has the meaning given by paragraph 15 of Schedule 1, but does not, in relation to any plan prepared under paragraph 16 of that Schedule, include the year specified in paragraph 15(4)(a) of that Schedule.

Grants and approvals under the 1981 Order

7.—(1) Any grant of legal aid under Part II of the 1981 Order which is in force immediately before the second appointed day shall, on and after that day, have effect as a decision of the Commission to fund representation as a civil legal service.

(2) Any approval given in connection with the grant of legal aid under Part II of the 1981 Order which is in force immediately before the second appointed day shall, on and after that day, have effect as a decision of the Commission to fund representation as a civil legal service.

(3) Any approval given in connection with the grant of assistance by way of representation under Part II of the 1981 Order which is in force immediately before the second appointed day shall, on and after that day, have effect as a decision of the Commission to fund representation as a civil legal service.

(4) Any approval given in connection with the grant of advice or assistance under Part II of the 1981 Order which is in force immediately before the second appointed day shall, on and after

that day, have effect as an approval by the Commission in connection with the funding of advice or assistance as a civil legal service.

Chief Executive of the Commission

8.—(1) Notwithstanding anything in paragraph 10 of Schedule 1, the first appointment of a chief executive of the Commission shall be made by the Lord Chancellor.

(2) Any appointment under this paragraph shall be made on such terms and conditions as the Lord Chancellor may determine.

The Commission: transfers of employment

9.—(1) The Commission shall make, not later than such date as the Lord Chancellor may determine, an offer of employment by the Commission to such of the persons employed immediately before that date by the Law Society for the purpose of its functions under the 1981 Order as fall within such descriptions as the Lord Chancellor designates for the purposes of this paragraph or are persons whom the Commission wishes to employ.

(2) The terms of the offer shall be such that they are, taken as a whole, not less favourable to the person to whom the offer is made than the terms on which he is employed on the date on which the offer is made.

(3) An offer made in pursuance of this paragraph shall not be revocable during the period of 3 months commencing with the date on which it is made.

10.—(1) Where a person becomes an employee of the Commission on acceptance of an offer made under paragraph 9, then, for the purposes of the Employment Rights (Northern Ireland) Order 1996⁽²⁾, his period of employment with the Law Society shall count as a period of employment by the Commission, and the change of employment shall not break the continuity of the period of employment.

(2) Where an offer is made under paragraph 9 to any person, none of the agreed redundancy procedures applicable to employees of the Law Society shall apply to him.

(3) Where a person employed by the Law Society ceases to be so employed—

(a) on becoming a member of the staff of the Commission on accepting an offer under paragraph 9, or

(b) having unreasonably refused such an offer,

Part XII of the Employment Rights (Northern Ireland) Order 1996 shall not apply to him and he shall not be treated for the purposes of any scheme in force under Article 21 of the 1981 Order as having been retired on redundancy.

(4) Where a person to whom an offer under paragraph 9 has been made continues in employment in the Law Society after having not unreasonably refused that offer he shall be treated for all purposes as if no offer under paragraph 9 had been made to him.

11.—(1) Any dispute as to whether an offer purporting to be made under paragraph 9 complies with that paragraph shall be referred to and be determined by an industrial tribunal.

(2) An industrial tribunal shall not consider a complaint referred to it under sub-paragraph (1) unless the complaint is presented to the tribunal before the end of the period of 3 months beginning with the date of the offer of employment or within such further period as the tribunal considers

(2) 1996 N.I. 16.

reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of the period of 3 months.

(3) Except as provided by Article 22 of the Industrial Tribunals (Northern Ireland) Order 1996⁽³⁾, no appeal shall lie from the decision of an industrial tribunal under this paragraph.

Pensions

12. Any arrangements made by the Law Society under Article 21 of the 1981 Order in respect of any pension shall be treated on and after the first appointed day (so far as may be necessary to preserve their effect) as having been made under paragraph 11(1) of Schedule 1 to this Order, and any pension scheme administered by the Law Society immediately before the first appointed day shall be deemed to be a pension scheme established and administered by the Commission under that paragraph and shall continue to be administered accordingly.

Assistance with functions

13.—(1) The Law Society shall give to the Commission all the information, prepare all the documents and do all other things which appear to the Commission appropriate for the purpose of facilitating—

(a) the carrying into effect of the transfers effected by paragraph 2(1), and

(b) the exercise of any functions conferred or imposed on the Commission by this Order;

and the Law Society may do anything else which appears to it appropriate for that purpose.

(2) From the first appointed day, the Commission shall make available to the Law Society such facilities as it may reasonably require for exercising its functions under this paragraph or paragraph 3.

(3) 1996 N.I. 18.