

SCHEDULES

SCHEDULE 3

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

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

Rights, obligations and property

2.—(1) Subject to paragraphs 3, 4 and 6, on the 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 appointed day, be paid to or by the Commission.

(3) Anything which, immediately before the 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 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 to the Law Society in any document, including any statutory provision, constituting or relating to anything transferred by sub-paragraph (1) shall, so far as is required for giving effect to that sub-paragraph, be construed as a reference to the Commission.

(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.

(1) 1981 N.I. 8

The Legal Aid Fund

3.—(1) On the 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 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 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 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 appointed day (as if that period were a financial year).

(4) The Law Society shall, as soon as possible after the 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 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 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 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, section 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.

(8) If the appointed day falls on or after the day appointed by the Lord Chancellor under Article 1(2) for the coming into operation of Article 11(1), any payments received by him under sub-paragraph (2)(a) of this paragraph shall be paid by him into the fund established by the Commission under Article 11(1).

(9) If the appointed day falls before the day appointed by the Lord Chancellor under Article 1(2) for the coming into operation of Article 11(1), the Commission shall establish and maintain a fund which shall be deemed for all purposes of the 1981 Order to be the legal aid fund.

(10) Where a fund is established under sub-paragraph (9), that fund shall, with effect from the day appointed for the coming into operation of Article 11(1), be treated as if it were established under Article 11(1).

Grants and approvals under the 1981 Order

4.—(1) Any grant of legal aid under Part II of the 1981 Order which is in force immediately before the day appointed by the Lord Chancellor under Article 1(2) for the coming into operation of

Article 11(1) of this Order 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 day appointed by the Lord Chancellor under Article 1(2) for the coming into operation of Article 11(1) of this Order 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 day appointed by the Lord Chancellor under Article 1(2) for the coming into operation of Article 11(1) of this Order 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 day appointed by the Lord Chancellor under Article 1(2) for the coming into operation of Article 11(1) of this Order 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

5.—(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

6.—(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.

7.—(1) Where a person becomes an employee of the Commission on acceptance of an offer made under paragraph 6, 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 6 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 6, or

(2) 1996 N.I. 16

(b) having unreasonably refused such an offer,

Part XII of the Employment Rights (Northern Ireland) Order 1996⁽³⁾, 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 6 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 6 had been made to him.

8.—(1) Any dispute as to whether an offer purporting to be made under paragraph 6 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 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⁽⁴⁾, no appeal shall lie from the decision of an industrial tribunal under this paragraph.

Pensions

9. —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 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 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

10.—(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 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. 16

(4) 1996 N.I. 18