

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

EXPLANATORY NOTES

SCHEDULES

Schedule 1: Transfer of Assets, Liabilities and Staff of Commission

Schedule 1 to the Act makes provision for the transfer of the assets, liabilities and staff of the Commission to the Department.

Subsection 1 provides that all assets and liabilities to which the Commission is entitled or subject before the dissolution date shall be transferred on that date to the Department.

Subsection 2 provides that employees of the Commission, at the dissolution date, will be transferred to the Northern Ireland civil service. The Transfer of Undertakings (Protection of Employment) Regulations 2006 will apply.

Subsection 3 provides that a reference to the Commission in any statutory provision or document relating to anything transferred to the Department by virtue of this Act is to have effect, after the dissolution date, as a reference to the Department.

Subsection 4 provides that the Department must, as soon as practicable after the dissolution date prepare a report on how the Commission carried out its functions in the final period (together with a statement of accounts for that period). The report and the statement of accounts for the final period are both to be published and laid before the Assembly by the Department.

Schedule 2: Amendments

Schedule 2 sets out a large number of amendments to the 1981 Order and a number of other pieces of legislation. The great majority of these amendments are purely technical in nature; and they are necessary to reflect the transfer of functions regarding the administration of legal aid from the Commission to the Department.

There are five areas of substantive amendment.

As an interim measure, pending the commencement of *criminal defence services* under the 2003 Order, criminal representation will continue to be funded under

Part 3 of the 1981 Order. Paragraph 1(4) to (6) of Schedule 2 effectively reproduces the provisions contained in the 2003 Order regarding the assignment of solicitor and counsel, a register of solicitors and counsel eligible to be assigned under criminal legal aid, and the restriction of disclosure of information for criminal legal aid. The new provisions being inserted into the 1981 Order each contain rule-making powers. Any rules made under those provisions will be the subject of separate consultation, including with the Assembly. The rules made under each of the provisions will be subject to the Assembly's draft affirmative resolution procedure.

Furthermore, as an interim measure, pending the commencement of *criminal defence services* under the 2003 Order, advice and assistance in criminal matters will be provided under *civil legal services*. For this purpose, paragraph 6(9) of Schedule 2 inserts a new definition for the term *civil legal services*.

Paragraph 6(13) substitutes a new provision regarding the provision of legal aid funding in 'exceptional cases'. One recommendation of the Access to Justice Review was that the Department should no longer have any decision-making role in the grant of exceptional funding. Under the current provision, the Department can either direct that legal aid be provided by the Commission in specified categories of case which fall outside the scope of ordinary legal aid funding; or the Department can authorise funding generically or in respect of individual cases, if the Commission request it to do so. Under the new substituted provision, the Director of Legal Aid Casework will have full statutory responsibility for the grant of exceptional funding.

Paragraph 6(16) and (17) remove the current provision for a statutory funding code, setting out the criteria according to which any decision is to be taken whether to fund (or continue to fund) *civil legal services* for an individual and, if so, what services are to be funded for that individual. As originally provided for under the 2003 order, the funding code was also to specify procedures for making decisions about the funding of *civil legal services* by the Commission. The preparation of the funding code, together with any revision of it, was to be subject to prescribed legislative procedures. The provisions made in paragraph 6(16) and (17) remove the requirement to have a statutory funding code. Instead, decision-making on the funding of *civil legal services* in respect of any individual case will on the basis of a uniform prescribed merits test – as provided for by the amendment under paragraph 6(15)(c) of Schedule 2.

Paragraph 6(22) provides that the Department must make regulations to provide for appeal panels which will hear appeals against prescribed decisions taken on the provision of *civil legal services* under Article 12A to 20 of the 2003 Order. The regulations made regarding appeal panels will be subject to the Assembly's draft affirmative resolution procedure.

Schedule 3: Repeals

This schedule is self-explanatory and reflects the amendments made under Schedule 2 to the Act.