

SCHEDULES

SCHEDULE 2

Section 6

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this Act of the Legal Aid (Northern Ireland) Order 2005, Article 33(1) continues to have effect with the substitution (originally made by paragraph 5 of Schedule 1 to that Order) for “Department of Health and Social Services” of “Department for Social Development”.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 person assigned to provide free legal aid under this Part by or on behalf of a person receiving such legal aid.”.

Status: This is the original version (as it was originally enacted).

The Social Security Administration (Northern Ireland) Act 1992 (c. 8)

2. In section 103(7) for “the Northern Ireland Legal Services Commission” substitute “the Department of Justice”.

The Freedom of Information Act 2000 (c. 36)

3. In Part 7 of Schedule 1 omit the entry relating to the Northern Ireland Legal Services Commission.

The Proceeds of Crime Act 2002 (c. 29)

4. In sections 245C(6)(b) and 252(4A)(b) for “the Northern Ireland Legal Services Commission” substitute “the Department of Justice”.

The Justice (Northern Ireland) Act 2002 (c. 26)

5. In section 46(1) for paragraph (hb) substitute—
“(hb) the Legal Services Agency Northern Ireland,”.

The Access to Justice (Northern Ireland) Order 2003 (NI 10)

- 6.—(1) In Article 2(2) at the appropriate place in alphabetical order insert—
““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) In Article 2(2) omit the definition of “the Commission”.
- (3) For Article 3 and the heading to Part 2 immediately before it substitute—

“PART 2

CIVIL LEGAL SERVICES AND CRIMINAL DEFENCE SERVICES

Functions of the Department: general

3 Exercise of functions of the Department under this Part

3. The Department shall exercise its functions under this Part for the purpose of—

- (a) securing (within the resources made available, and priorities set, in accordance with this Part) that individuals have access to civil legal services that effectively meet their needs, and promoting the availability to individuals of such services; and

- (b) securing that individuals involved in criminal investigations or relevant proceedings have access to such criminal defence services as the interests of justice require.”.
- (4) Omit Articles 4 and 5.
- (5) In Article 6—
 - (a) in paragraph (1) for “Commission” substitute “Department”;
 - (b) in paragraph (2) for “The Commission” substitute “The Department” and for “the Commission of its functions” substitute “the Department and the Director of their relevant functions”;
 - (c) in paragraph (3) for “Commission” substitute “Department”;
 - (d) after paragraph (3) insert—
 - “(3A) In this Article and Article 7 “relevant functions” means—
 - (a) in relation to any time after the coming into operation of Article 21, functions under this Order; and
 - (b) in relation to any time before the coming into operation of Article 21, functions under this Order and under Part 3 of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981.”.
 - (e) omit paragraphs (4) and (5).
- (6) In Article 7—
 - (a) in paragraph (1) for “Commission” substitute “Department”, in sub-paragraph (a) for “functions” substitute “relevant functions” and in sub-paragraph (b) for “its” substitute “those”;
 - (b) in paragraph (2) for “Commission shall have power” substitute “Department shall have power under paragraph (1)”, in sub-paragraphs (e) and (f) for “its functions” substitute “relevant functions” and omit sub-paragraph (g);
 - (c) in paragraph (3) for “Commission” substitute “Department”;
 - (d) omit paragraphs (4) and (5);
 - (e) in paragraph (6) for “Commission” substitute “Department or the Director”;
 - (f) in paragraph (7) for “Commission” substitute “Department”.
- (7) Omit Article 8.
- (8) In Article 9(1) and (2) for “Commission” substitute “Department”.
- (9) In Article 10 for paragraph (1) substitute—
 - “(1) For the purposes of this Order “civil legal services” means—
 - (a) in relation to any time after the coming into operation of Article 21, advice, assistance and representation, other than advice, assistance

Status: This is the original version (as it was originally enacted).

or representation which the Department is required to fund as criminal defence services; and

- (b) in relation to any time before the coming into operation of Article 21, advice, assistance and representation other than representation in proceedings for the purposes of which free legal aid may be given under Part 3 of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981.”.

(10) In Article 10(2) for “Commission” substitute “Department”.

(11) For Article 11 substitute—

“Funding of civil legal services by Department

11.—(1) Civil legal services shall be funded by the Department out of moneys appropriated for that purpose by Act of the Assembly.

(2) In funding civil legal services the Department shall aim to obtain the best possible value for money.”.

(12) In Article 12—

- (a) in paragraph (1) for “Commission” substitute “Department” and omit subparagraph (a);

- (b) in paragraph (2) for “Commission” substitute “Department”;

- (c) for paragraph (3) substitute—

“(3) The Department may by order make provision about the payment of remuneration by the Department to persons who provide civil legal services.”;

- (d) in paragraph (4) for “Commission” substitute “Department”;

- (e) in paragraph (5) for “The Commission” substitute “Except as provided by Article 12A, the Department”.

(13) For Article 12A substitute—

“Exceptional funding

12A.—(1) The Department is to fund the provision of any of the services specified in Schedule 2 to an individual if paragraph (2) or (4) is satisfied.

(2) This paragraph is satisfied if the Director—

- (a) has determined that the individual satisfies the requirements of regulations under Article 13 in relation to the services, and

- (b) has made an exceptional case determination in relation to the individual and the services,

(and has not withdrawn either determination).

(3) An exceptional case determination is a determination—

- (a) that it is necessary to make the services available to the individual under this Order because failure to do so would be a breach of—
 - (i) the individual’s Convention rights (within the meaning of the Human Rights Act 1998), or
 - (ii) any rights of the individual to the provision of legal services that are enforceable EU rights, or
- (b) that it is appropriate to do so, in the particular circumstances of the case, having regard to any risk that failure to do so would be such a breach.

(4) This paragraph is satisfied if—

- (a) the services consist of representation in proceedings at an inquest under the Coroners Act (Northern Ireland) 1959 into the death of a member of the individual’s family,
- (b) the Director has made a wider public interest determination in relation to the individual and the inquest, and
- (c) the Director has determined that the individual satisfies the requirements of regulations under Article 13 in relation to the services,

(and neither determination has been withdrawn).

(5) A wider public interest determination is a determination that, in the particular circumstances of the case, the provision of representation for the individual for the purposes of the inquest is likely to produce significant benefits for a class of person, other than the individual and the members of the individual’s family.

(6) For the purposes of this Article an individual is a member of another individual’s family if—

- (a) they are relatives (whether of the full blood or half blood or by marriage or civil partnership),
- (b) they are cohabitees (as defined in Article 3(1) of the Family Homes and Domestic Violence (Northern Ireland) Order 1998), or
- (c) one has parental responsibility for the other.

(7) Articles 14 to 20 do not apply to civil legal services funded under this Article unless they are applied (with or without modification) by an exceptional case determination or a wider public interest determination.”.

(14) In Article 13(1) and (2) for “Commission” (wherever occurring) substitute “Department”.

(15) In Article 14—

- (a) in paragraph (1) for “Commission” (in both places) substitute “Department”;

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- (b) in paragraph (2)(a)(i) for “Commission” substitute “Director”;
- (c) after paragraph (2) insert—
 - “(2A) A grant of representation for an individual for the purposes of proceedings—
 - (a) shall not be made unless the individual shows there are reasonable grounds for taking, defending or being a party to the proceedings; and
 - (b) may be refused if, in the particular circumstances of the case, it appears unreasonable that representation should be granted.
 - (2B) Guidance given to the Director under section 3 of the Legal Aid and Coroners’ Courts Act (Northern Ireland) 2014 may, in particular, include guidance as to the criteria according to which any decision is to be taken by the Director under paragraph (2A).”;
- (d) in paragraph (3)(a) for “Commission” substitute “Director”;
- (e) in paragraphs (4) and (5) for “Commission” substitute “Department”;
- (f) in paragraph (6)(a) for “Commission” substitute “Director”;
- (g) in paragraph (6)(b) for “Commission” (in both places) substitute “Department”.

(16) For Article 15 substitute—

“Regulations as to procedures for funding decisions

15. The Department may make regulations as to the procedures for the making of decisions about the funding by the Department of civil legal services, including—

- (a) provision about the form and content of applications for funding,
- (b) provision imposing conditions which must be satisfied by an individual applying for funding,
- (c) provision requiring applicants to be informed of the reasons for any decision to refuse an application,
- (d) provision for the giving of information to individuals whose applications are refused about alternative ways of obtaining or funding services, and
- (e) provision establishing procedures for reviews of decisions about funding and for the giving of information about those procedures.”.

(17) Omit Article 16.

(18) In Article 17 for “Commission” (wherever occurring) substitute “Department”.

(19) In Article 18 for “Commission” (wherever occurring) substitute “Department”.

(20) In Article 19 for “Commission” (wherever occurring) substitute “Department”.

(21) In Article 20 for “Commission” (wherever occurring) substitute “Department”.

(22) After Article 20 insert—

“Appeal panels

20A.—(1) The Department must by regulations make provision for—

- (a) the constitution and procedure of appeal panels; and
- (b) appeals to such a panel against prescribed decisions taken in the exercise of functions conferred or imposed on the Director by or under Articles 12A to 20.

(2) The regulations may in particular—

- (a) provide for an appeal panel to consist of—
 - (i) a presiding member, selected in the prescribed manner from a list of persons appointed by the Department to act as presiding members of appeal panels; and
 - (ii) a prescribed number of other members, selected in the prescribed manner from a list of persons appointed by the Department to act as other members of appeal panels;
- (b) prescribe qualifications for appointment to a list mentioned in subparagraph (a);
- (c) provide for disqualifying prescribed persons or persons of prescribed descriptions for membership of an appeal panel;
- (d) provide for two or more appeal panels to sit at the same time;
- (e) provide for appeal panels to sit in private, except in such circumstances as may be specified in, or determined in accordance with, the regulations;
- (f) provide for the decision on an appeal to be taken without hearing any oral representations, except in such cases as may be prescribed;
- (g) provide for the powers of an appeal panel on determining an appeal;
- (h) require an appeal panel to give reasons in writing for its decision on an appeal;
- (i) provide for a decision of the appeal panel on an appeal to be final;

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- (j) provide that all matters relating to the procedure of an appeal panel on an appeal which are not specifically regulated by the regulations are to be determined by the presiding member;
 - (k) contain such other provision as appears to the Department necessary or expedient for the efficient and effective working of the appeal panels.
- (3) The Department—
- (a) may make payments to the members of an appeal panel of amounts or at rates not exceeding such amounts or rates, and on such conditions, as the Department may determine;
 - (b) shall arrange for the provision to appeal panels of such facilities, staff and assistance as the Department considers appropriate;
 - (c) shall meet any other costs properly incurred by such panels.”.
- (23) For Article 21 substitute—

“Funding of criminal defence services by Department

21.—(1) The Department shall, out of moneys appropriated for that purpose by Act of the Assembly, fund—

- (a) advice and assistance in accordance with Article 23, and
- (b) representation in accordance with Articles 24 and 30,

and in this Order services which can be so funded are referred to as “criminal defence services”.

(2) In funding criminal defence services the Department shall aim to obtain the best possible value for money.”.

(24) In Article 22—

(a) for paragraph (1) substitute—

“(1) The Department shall prepare a code of conduct to be observed by—

- (a) the Department and the Director, and
- (b) the employees of any body established and maintained by the Department,

in the provision of criminal defence services.”;

(b) in paragraph (2) for “Commission” substitute “Department” and after “employees” insert “mentioned in paragraph (1)(b)”;

(c) in paragraphs (3) and (4) for “Commission” substitute “Department”;

(d) for paragraphs (5) to (8) substitute—

“(5) The Department shall—

- (a) publish the code and any revised version of the code;
 - (b) lay the code and any revised version of the code before the Assembly.
- (6) The code as first published by the Department, and any revised version of the code, shall not come into operation until it has been approved by resolution of the Assembly.”.
- (25) In Article 23—
 - (a) in paragraphs (1) and (2) for “Commission” substitute “Department”;
 - (b) for paragraph (3) substitute—
 - “(3) The Department may by order make provision about the payment of remuneration by the Department to persons who provide advice and assistance in accordance with this Article.”;
 - (c) in paragraph (4) for “Commission” substitute “Department”.
- (26) In Article 24—
 - (a) in paragraphs (1), (2) and (3)(a) for “Commission” substitute “Department”;
 - (b) omit paragraph (3)(b);
 - (c) in paragraphs (4) and (6) for “Commission” (wherever occurring) substitute “Department”.
- (27) In Article 27—
 - (a) for “Commission” (wherever occurring) substitute “Director”;
 - (b) in paragraph (1) for “by it” substitute “by the Director”.
- (28) In Article 27A(1) and (2) for “Commission” substitute “Director”.
- (29) In Article 30—
 - (a) for “Commission” (wherever occurring) substitute “Department”;
 - (b) in paragraph (4) for “employed by” substitute “employed in”.
- (30) In Article 31 for “Commission” (wherever occurring) substitute “Department”.
- (31) In Article 32 for “Commission” (wherever occurring) substitute “Department”.
- (32) In Article 33(6) for “Commission” substitute “Department”.
- (33) In Article 34 for “Commission” (wherever occurring) substitute “Department”.
- (34) In Article 35 for “Commission” (wherever occurring) substitute “Department”.
- (35) In Article 36—

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- (a) for “Commission” (wherever occurring) substitute “Department”;
 - (b) at the beginning of paragraph (3)(b) insert “may”.
- (36) In Article 41 for “Commission” (wherever occurring) substitute “Department”.
- (37) In Article 46—
- (a) omit paragraphs (1) to (3);
 - (b) in paragraph (5) for “4(4), 5, 10(2), 11(9)(b), 15(7)” substitute “10(2)” and after “20(2)(b) or (d),” insert “20A,”;
 - (c) in paragraph (6) after “regulations” insert “made by the Department” and omit “or paragraph 2(6) of Schedule 3”.
- (38) In Article 47(4) for “Commission” substitute “Department”.
- (39) In Article 48 omit paragraphs (2) and (3).
- (40) Omit Schedule 1.
- (41) In Schedule 2—
- (a) in paragraphs 1 and 2 for “The Commission” substitute “The Department”;
 - (b) in paragraph 4 for “Commission” substitute “Department”.
- (42) Omit Schedule 3.
- (43) In Schedule 4 in the following provisions (which amend other enactments)
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- (a) for “Northern Ireland Legal Services Commission” (wherever occurring) substitute “Department of Justice”; and
 - (b) for “the Commission” (wherever occurring) substitute “the Department of Justice”.

The provisions are—

- (i) paragraph 1(2) and (3)(b);
 - (ii) paragraph 2(3) to (8) and (10);
 - (iii) paragraph 3(c);
 - (iv) paragraph 7;
 - (v) paragraph 8;
 - (vi) paragraph 9(3);
 - (vii) paragraph 10(b);
 - (viii) paragraph 11;
 - (ix) paragraph 12(3);
 - (x) paragraph 13(c);
 - (xi) paragraph 16(b).
- (44) In Schedule 4—

- (a) in paragraph 2 for sub-paragraph (2) substitute—
 “(2) In Article 3 (interpretation) after paragraph (2) insert—
 “(2A) In this Order—
 (a) references to civil legal services funded by the Department of Justice shall be construed in accordance with Article 10 of the Access to Justice (Northern Ireland) Order 2003;
 (b) references to criminal defence services funded by the Department of Justice shall be construed—
 (i) in relation to any time after the coming into operation of Article 21 of the Access to Justice (Northern Ireland) Order 2003, in accordance with that Article; and
 (ii) in relation to any time before the coming into operation of that Article, as references to free legal aid under Part 3 of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981”.”;
- (b) in paragraph 2(5) after “Article 31(2) of that Order” insert “or under Part 3 of the Order of 1981” and for the words from “(register” to the end substitute “or Article 36B of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981”;
- (c) in paragraph 4 for “for” substitute “after” and for “substitute” substitute “insert”;
- (d) omit paragraphs 10(a) and 15;
- (e) in paragraph 18 for “for” substitute “after” and for “substitute” substitute “insert”.
- (45) In Schedule 5 at the end insert—

“2014 c.	The Legal Aid and Coroners’ In Schedule 2, paragraph ”. Courts Act (Northern Ireland) 2014.
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*The Commissioner for Children and Young
People (Northern Ireland) Order 2003 (NI 11)*

7. In Schedule 1 omit paragraph 16.

The Criminal Justice (Northern Ireland) Order 2004 (NI 9)

8. In Article 30(8)(g) for “the Northern Ireland Legal Services Commission” substitute “the Department of Justice” and for “the Commission” substitute “that Department”.

Status: This is the original version (as it was originally enacted).

The Terrorist Asset-Freezing etc. Act 2010 (c. 38)

9. In section 23(1)(d) omit “or the Northern Ireland Legal Services Commission”.

The Justice Act (Northern Ireland) 2011 (c. 24)

10. In section 84 for subsection (4) substitute—

“(4) In Article 46(5) after “20A,” insert “27A,”.

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10)

11. In Schedule 6, in paragraph 1(8), in the definition of “relevant authority” for “the chief executive of the Northern Ireland Legal Services Commission” substitute “the Director of Legal Aid Casework designated under section 2 of the Legal Aid and Coroners’ Courts Act (Northern Ireland) 2014”.