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DRAFT STATUTORY INSTRUMENTS

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**2003 No.**

**Access to Justice (Northern Ireland) Order 2003**

**PART II**

**NORTHERN IRELAND LEGAL SERVICES COMMISSION**

*Supplementary*

**Restriction of disclosure of information**

**32.**—(1) Information which is furnished—

- (a) to the Commission or 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 an individual seeking or receiving civil legal services or criminal defence services funded by the Commission,

shall not be disclosed except as permitted by regulations.

(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 Commission.

(3) Paragraph (1) does not prevent the disclosure of information for any purpose with the consent of the individual in connection with whose case it was furnished and, where he did not furnish it himself, 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 Attorney General.

(6) Nothing in this Article applies to information furnished to a person providing civil legal services or criminal defence services funded by the Commission by or on behalf of an individual seeking or receiving such services.

**Misrepresentation etc.**

**33.**—(1) Any person who—

- (a) intentionally fails to comply with any requirement imposed by virtue of this Part as to the information to be furnished by him, or
- (b) in furnishing any information required by virtue of this Part makes any statement or representation which he knows or believes to be false,

shall be guilty of an offence.

(2) A person guilty of an offence under paragraph (1) is liable on summary conviction to—

- (a) a fine not exceeding level 4 on the standard scale, or
- (b) imprisonment for a term not exceeding three months,

or to both.

(3) Notwithstanding any statutory provision prescribing the period within which summary proceedings may be commenced, proceedings in respect of an offence under paragraph (1) may be commenced at any time within the period of six months beginning with the date on which evidence, sufficient in the opinion of the Attorney General to justify a prosecution for the offence, comes to his knowledge.

(4) But paragraph (3) does not authorise the commencement of proceedings for an offence at a time more than two years after the date on which the offence was committed.

(5) For the purposes of paragraph (3) a certificate purporting to be signed by the Attorney General as to the date on which evidence such as is mentioned in that paragraph has come to his knowledge, shall be conclusive evidence thereof.

(6) A county court shall, notwithstanding any limitation imposed on the jurisdiction of a county court under any other statutory provision, have jurisdiction to hear and determine any action brought by the Commission to recover loss sustained by reason of—

- (a) the failure of any person to comply with any requirement imposed by virtue of this Part as to the information to be furnished by him, or
- (b) a false statement or false representation made by any person in furnishing any information required by virtue of this Part.

#### **Position of service providers and other parties etc.**

**34.**—(1) Except as expressly provided by regulations, the fact that civil legal services or criminal defence services provided for an individual are or could be funded by the Commission, shall not affect—

- (a) the relationship between that individual and the person by whom they are provided or any privilege arising out of that relationship, or
- (b) any right which that individual may have to be indemnified, in respect of expenses incurred by him, by any other person.

(2) A person who provides civil legal services or criminal defence services funded by the Commission shall not take any payment in respect of the services apart from—

- (a) that made by way of that funding, and
- (b) any authorised by the Commission to be taken.

(3) Where civil legal services funded by the Commission are provided in connection with any proceedings, any expenses incurred in connection with the proceedings, so far as they would ordinarily be paid in the first instance by or on behalf of the person providing the services, shall be so paid except where they are paid by the Commission.

(4) The withdrawal of a right to representation previously granted to an individual shall not affect the right of any person who has provided to him civil legal services or criminal defence services funded by the Commission to remuneration for work done before the date of the withdrawal.

(5) Except as expressly provided by regulations, any rights conferred by or by virtue of this Part on an individual for whom civil legal services or criminal defence services are funded by the Commission in relation to any proceedings shall not affect—

- (a) the rights or liabilities of other parties to the proceedings, or
- (b) the principles on which the discretion of any court or tribunal is normally exercised.

(6) Regulations may make provision about the procedure of any court or tribunal in relation to civil legal services or criminal defence services funded by the Commission.

(7) Regulations made under paragraph (6) may in particular authorise the exercise of the functions of any court or tribunal by any member or officer of that or any other court or tribunal.

### **Solicitors and barristers**

**35.**—(1) The Commission shall not fund any civil legal services or criminal defence services provided by a solicitor who is for the time being prohibited from providing such services by an order under Article 51B(1) or (3) of the Solicitors (Northern Ireland) Order 1976(1).

(2) The Commission shall not fund any civil legal services or criminal defence services provided by a barrister who is for the time being prohibited from providing such services by any 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 barristers.

(3) The Commission—

- (a) may make a complaint to the Law Society about the provision of civil legal services or criminal defence services by a solicitor;
- (b) may refer to the Law Society any complaint which is made to the Commission about the provision of such services by a solicitor;
- (c) may make a complaint to the General Council of the Bar of Northern Ireland about the provision of civil legal services or criminal defence services by a barrister; and
- (d) may refer to the General Council of the Bar of Northern Ireland any complaint which is made to the Commission about the provision of such services by a barrister.

(4) Any right conferred on an individual by virtue of this Part to select a person to provide civil legal services or criminal defence services for him shall not prejudice the law and practice relating to the conduct of proceedings by a solicitor or barrister or the circumstances in which a solicitor or counsel may refuse or give up a case or entrust it to another.

### **Register of persons providing services**

**36.**—(1) Regulations may—

- (a) make provision for the registration by the Commission of persons who are eligible to provide civil legal services or criminal defence services funded by the Commission;
- (b) provide that only those persons who are registered (“registered persons”) may provide such services; and
- (c) require registration of firms or organisations with which registered persons are connected.

(2) Regulations may require the Commission 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 persons, and any firm or organisation which is registered in connection with a registered person, of their functions with regard to civil legal services or criminal defence services funded by the Commission.

(3) Regulations—

- (a) may require registered persons, and any firm or organisation which is registered in connection with a registered person, to comply with any such code of practice;
- (b) require the Commission or persons authorised by the Commission to monitor compliance with any such code of practice; and

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(1) 1976 N.I. 12.

- (c) may make provision about procedures for cases in which—
  - (i) it appears to the Commission or a person authorised by the Commission that a registered person, or any firm or organisation which is registered in connection with a registered person, may not be complying with any such code of practice, or
  - (ii) a person who holds any judicial office asks the Commission to investigate whether a registered person, or any firm or organisation which is registered in connection with a registered person, is complying with any such code of practice,and the sanctions which may be imposed under this sub-paragraph may include provision for a person, firm or organisation to cease to be registered.
- (4) Regulations under this Article—
  - (a) may make provision imposing charges;
  - (b) may make provision with respect to the powers of investigation which may be exercised by the Commission, or by persons authorised by the Commission, for the purpose of monitoring compliance with any code of practice prepared under the regulations;
  - (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 court in relation to contempt of court to be exercisable in relation to such obstruction.
- (5) Before making any regulations under this Article the Lord Chancellor—
  - (a) shall consult the Lord Chief Justice, the Law Society and the General Council of the Bar of Northern Ireland, and
  - (b) may undertake such other consultation as appears to him to be appropriate.