

Ms Christine Darrah
Clerk to the Committee for Justice
Room 242
Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX

24 April 2014

Dear Ms Darrah

The Legal Aid and Coroners' Courts Bill introduced into the Northern Ireland Assembly on 31 March 2014 ('the Bill')

The Information Commissioner regulates, inter alia, the Data Protection Act 1998 (the DPA) and the Freedom of Information Act 2000. On his behalf, I am pleased to provide a written submission to the Justice Committee in relation to the above Bill and also a response to the proposal highlighted from the Attorney General in Northern Ireland. The comments below are limited to aspects of the Bill which relate to information rights in general and to our regulatory responsibilities in particular.

The Bill

The Bill provides for the dissolution of the NI Legal Services Commission and for its functions to be transferred to the Department of Justice and to a Director of Legal Aid Casework designated by the Department. The transparency afforded by the statutory requirement for the Department of Justice to publish directions and guidance given to the Director of Legal Aid Casework in respect of his functions as laid out in s3(3) is welcomed. The requirement under s4(1) for the Director to produce an Annual Report to be laid before the Assembly is also welcomed.

The Schedules to the Bill cover matters relating to the transfer of assets, liabilities and staff of the Commission to the Department (Schedule 1), various amendments to the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 (NI 8) (Schedule 2) and a number of repeals (Schedule 3).

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

I have no comment to make on the proposals contained in Schedule 1 other than to welcome the requirement under Section 4 for the Department to lay before the Assembly, and thereafter publish, a report on how the Commission carried out its functions in the final period.

There are practical matters related to the transfer of records from the Commission to the Department which need to be considered in advance of the dissolution date. The ICO will contact both the Commission and the Department regarding this and will provide advice as necessary.

Schedule 2 -Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 (NI 8)

The statutory bar on the disclosure of information contained within draft Article 38A of the Order is noted. The bar will not apply where the consent of the person who provided the information has been obtained or unless permitted by rules made under Article 36. Information which is contained in an anonymised form and information relating to grants, loans and payments made to any person or body is also exempted from this bar.

It is recommended that unless otherwise contained in legislation, the Bill is amended to require that the rules made under Article 36 be published.

Amendment proposed by the Attorney General

It is noted that the Attorney General for Northern Ireland has proposed that the Bill should be amended to extend his powers under the Coroner's Act (Northern Ireland) 1959 to allow him to obtain papers relevant to exercising his existing power to direct an inquest where he considers it advisable to do so. The Attorney General has indicated that his principle focus would be in relation to deaths which occur in hospital or where medical error may have occurred.

Although a substantial amount of the information sought by the Attorney General will relate to deceased persons and be of no relevance under the DPA, other information may be personal data relating to family and friends of the deceased as well as to medical staff. Given the public interest involved and the difficulties which the Attorney General has found in obtaining the papers or other information, it would appear appropriate to invest an explicit power on him and provide a statutory basis for disclosure. However, consideration should be given to limiting such power solely to cases involving deaths which have occurred in hospital or where medical error is thought to have led to a death.

I trust you find this submission helpful and please do not hesitate to contact me should you wish to discuss it in any more detail.

Yours sincerely



Dr Ken Macdonald
Assistant Commissioner for Scotland & Northern Ireland