

Legal Aid and Coroners' Courts Bill

[AS INTRODUCED]

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TO

Dissolve the Northern Ireland Legal Services Commission and provide for the exercise of functions of the Commission by the Department of Justice or the Director of Legal Aid Casework; to amend the law on legal aid in criminal proceedings, civil legal services and criminal defence services; to provide for the Lord Chief Justice to be president of the coroners' courts and for the appointment of a Presiding coroner; and for connected purposes.

BE IT ENACTED by being passed by the Northern Ireland Assembly and assented to by Her Majesty as follows:

PART 1

LEGAL AID

Dissolution of Northern Ireland Legal Services Commission

Dissolution of Northern Ireland Legal Services Commission

5 **1.**—(1) On the dissolution date, the Commission is dissolved.

(2) The functions exercisable by the Commission immediately before the dissolution date under or for the purposes of—

(a) Part 3 of the 1981 Order, and

(b) the 2003 Order,

10 are transferred to the Department.

(3) Subsection (2) has effect subject to any amendment or repeal of provisions in Part 3 of the 1981 Order or the 2003 Order made by this Act (and in particular subject to any amendment providing for a particular function to be exercised by the Director).

15 (4) The functions transferred by subsection (2) include functions under provisions not yet in operation at the time mentioned in that subsection.

(5) Schedule 1 makes provision for, and in connection with, the transfer of the assets, liabilities and staff of the Commission to the Department.

(6) In this Act—

5 “the 1981 Order” means the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981;

“the 2003 Order” means the Access to Justice (Northern Ireland) Order 2003;

“the Commission” means the Northern Ireland Legal Services Commission;

“the Department” means the Department of Justice;

10 “the Director” means the Director of Legal Aid Casework designated by the Department under section 2;

“the dissolution date” means the day appointed under section 12 for the coming into operation of this section;

“statutory provision” has the meaning given by section 1(f) of the Interpretation Act (Northern Ireland) 1954.

15 *The Director of Legal Aid Casework*

Designation of Director of Legal Aid Casework

2.—(1) The Department must designate a civil servant in the Department as the Director of Legal Aid Casework (“the Director”).

20 (2) The Director is to carry out the functions of the office on behalf of the Crown.

(3) Service as the Director is service in the Northern Ireland civil service.

(4) The Department must make arrangements for the provision to the Director by civil servants or other persons (or both) of such assistance as the Department considers appropriate.

Exercise of functions by Director

3.—(1) The Director must—

(a) comply with directions given by the Department about the carrying out of the Director’s functions, and

30 (b) have regard to guidance given by the Department about the carrying out of those functions.

(2) But the Department—

(a) must not give a direction or guidance about the carrying out of those functions in relation to an individual case, and

35 (b) must ensure that the Director acts independently of the Department when applying a direction or guidance under this section in relation to an individual case.

(3) The Department must publish any directions and guidance given under this section.

40 (4) Directions and guidance under this section may be revised or withdrawn from time to time.

Delegation of functions of Director

4.—(1) The functions conferred on the Director by any statutory provision may be exercised by, or by employees of, a person authorised by the Director for that purpose.

5 (2) A direction given by the Department under section 3 about the carrying out of the Director's functions may, in particular, require the Director—

(a) to authorise, or not to authorise, a person to carry out a function specified in the direction, or

10 (b) to authorise, or not to authorise, a person specified, or of a description specified, in the direction to carry out such a function.

(3) An authorisation given for the purposes of a function under any statutory provision may provide that the function may be exercised—

(a) wholly or to a limited extent,

(b) generally or in particular cases or areas,

15 (c) unconditionally or subject to conditions,

but that is subject to any provision made by the statutory provision in question.

(4) An authorisation given for the purposes of this section—

(a) may specify its duration,

(b) may specify or describe the authorised person,

20 (c) may be varied or revoked at any time by the Director, and

(d) does not prevent the Director or another person from exercising the function to which the authorisation relates.

25 (5) Anything done or omitted to be done by or in relation to the authorised person (or an employee of such a person) in, or in connection with, the exercise or purported exercise of the function concerned is to be treated for all purposes as done or omitted to be done by or in relation to the Director.

(6) Subsection (5)—

(a) does not affect the rights and liabilities of the authorised person or the Department under any agreement made between them,

30 (b) does not prevent any civil proceedings which could otherwise be brought by or against the authorised person (or an employee of that person) from being brought, and

35 (c) does not apply for the purposes of criminal proceedings brought in respect of anything done or omitted to be done by the authorised person (or an employee of that person).

(7) Where—

(a) an authorisation given for the purposes of this section is revoked, and

40 (b) at the time of the revocation so much of any contract made between the authorised person and the Department as relates to the exercise of the function is subsisting,

the authorised person is entitled to treat the contract as repudiated by the Department (and not as frustrated by reason of the revocation).

(8) In this section “authorised person” means a person authorised for the purposes of this section.

Annual report of Director

5 **5.**—(1) As soon as reasonably practicable after the end of each financial year, the Director must prepare an annual report for the financial year.

(2) The annual report must state how the Director has carried out the functions of the office in the financial year.

(3) The Director must send a copy of the report to the Department.

(4) The Department must—

- 10 (a) lay the copy of the report before the Assembly, and
(b) arrange for it to be published.

(5) In this section “financial year” means—

- (a) the period beginning on the day on which section 2 comes into operation and ending on the following 31 March, and
15 (b) each successive period of 12 months.

Amendment of law relating to legal aid, civil legal services and criminal defence services

Amendment of law relating to legal aid, civil legal services and criminal defence services

20 **6.** Schedule 2 contains amendments which—

- (a) amend Part 3 of the 1981 Order in relation to legal aid in criminal proceedings;
(b) amend the 2003 Order in relation to civil legal services and criminal defence services; or
25 (c) are otherwise incidental to, or consequential on, the preceding provisions of this Part.

PART 2

CORONERS' COURTS

Lord Chief Justice to be president of the coroners' courts

30 **7.** In section 12(1D) of the Justice (Northern Ireland) Act 2002 (which lists the courts of which the Lord Chief Justice is president) at the end add—
“the coroners' courts”.

Presiding coroner

8.—(1) The Coroners Act (Northern Ireland) 1959 is amended as follows.

35 (2) After section 2 insert—

“Appointment of Presiding coroner

2A.—(1) The Lord Chief Justice must appoint one of the coroners to be the Presiding coroner with responsibility for the coroners' courts and the other coroners.

5 (2) The person appointed as Presiding coroner holds that office in accordance with the terms of the appointment.

(3) If the office of Presiding coroner becomes vacant, the Lord Chief Justice may appoint a coroner to act as Presiding coroner, pending a new appointment.

10 (4) The Lord Chief Justice may delegate any functions of the Lord Chief Justice relating to coroners' courts, other than functions under section 36, to the Presiding coroner.”.

(3) The following provisions (which relate to the delegation of certain functions of the Lord Chief Justice in relation to coroners' courts) are repealed—

- 15 (a) section 2(1B);
(b) section 3(3);
(c) section 6(3);
(d) section 36(1H).

PART 3

20 SUPPLEMENTARY

Application to the Crown

9. This Act binds the Crown to the full extent authorised or permitted by the constitutional laws of Northern Ireland.

Supplementary, incidental or consequential provision

25 10.—(1) The Department may by order make such supplementary, incidental or consequential provision as it considers appropriate for the general purposes, or any particular purpose, of this Act, or in consequence of, or for giving full effect to, any provision made by this Act.

30 (2) An order under subsection (1) may amend, repeal, revoke or otherwise modify any statutory provision (including this Act).

(3) No order may be made under this section which amends or repeals a provision of an Act of Parliament or Northern Ireland legislation unless a draft of the order has been laid before, and approved by resolution of, the Assembly.

(4) Any other order under this section is subject to negative resolution.

35 **Repeals**

11. Schedule 3 contains repeals.

Commencement

12.—(1) Except as provided by subsection (2), the provisions of this Act come into operation on such day or days as the Department may by order appoint.

5 (2) The following provisions come into operation on the day after this Act receives Royal Assent—

- (a) sections 9 and 10;
- (b) this section;
- (c) section 13;
- (d) in Schedule 2—
 - 10 (i) paragraph 6(1);
 - (ii) paragraph 6(9) to (22);
 - (iii) paragraph 6(31) and (35);
 - (iv) paragraph 6(37)(c);
 - (v) paragraph 6(38);
 - 15 (vi) paragraph 6(42), in so far as it relates to the omission of paragraph 7 of Schedule 3 to the 2003 Order;
 - (vii) paragraph 6(43);
 - (viii) paragraph 6(44)(a) to (c) and (e);
 - (and section 6 so far as relating to those provisions).
- 20 (3) An order under this section may contain such transitional or transitory provisions (including modifications of this Act) and such savings as appear to the Department to be necessary or expedient in connection with any provision brought into operation by the order.

Short title

25 **13.** This Act may be cited as the Legal Aid and Coroners' Courts Act (Northern Ireland) 2014.

SCHEDULES

SCHEDULE 1

Section 1

TRANSFER OF ASSETS, LIABILITIES AND STAFF OF COMMISSION

5 *Transfer of assets and liabilities*

1.—(1) All assets and liabilities to which the Commission is entitled or subject immediately before the dissolution date shall on that date be transferred to, and by virtue of this paragraph vest in, the Department.

(2) Sub-paragraph (1) has effect in relation to assets or liabilities to which it
10 applies in spite of any provision (of whatever nature) which would prevent or
restrict the transfer of the assets or liabilities otherwise than by that sub-paragraph.

(3) But sub-paragraph (1) does not apply to rights or liabilities under a contract of employment (which are dealt with by paragraph 2).

(4) A certificate issued by the Department that any assets or liabilities have been transferred to the Department under this paragraph shall be conclusive evidence of the transfer.

Transfer of employed staff

20 2.—(1) Persons who immediately before the dissolution date are employed by the Commission are transferred on that date to employment in the Northern Ireland civil service for the purposes of the Department.

(2) The Transfer of Undertakings (Protection of Employment) Regulations 2006 apply to the transfer effected by this paragraph whether or not the transfer would, apart from this paragraph, be a relevant transfer for the purposes of those Regulations.

25 *References to, and acts, etc. done by, or in relation to, the Commission*

3.—(1) 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, in relation to any time after the dissolution date, as a reference to the Department.

30 (2) Sub-paragraph (1) does not apply—

- (a) to any statutory provision specifically amended by or under this Act; or
- (b) if the context otherwise requires.

(3) Nothing in this Act affects the validity of anything done by, or in relation to, the Commission before the dissolution date.

35 (4) Anything done (or having effect as if done) before the dissolution date—
(a) by or in relation to the Commission, and

(b) for the purposes of, or in connection with, anything transferred to the Department by virtue of this Act,
is to have effect, so far as necessary for continuing its effect on and after that date, as if done by or in relation to the Department.

5 (5) Anything which is in the process of being done immediately before the dissolution date—

(a) by or in relation to the Commission, and

(b) for the purposes of, or in connection with, anything transferred to the Department by virtue of this Act,

10 may be continued by or in relation to the Department.

4.—(1) The Department must, as soon as practicable after the dissolution date—

(a) prepare a report on how the Commission has carried out its functions in the final period,

(b) lay a copy of the report before the Assembly, and

15 (c) once it has been laid, publish the report.

(2) The Department must, as soon as practicable after the dissolution date—

(a) prepare a statement of accounts for the Commission for the final period, and

(b) send a copy of the statement to the Comptroller and Auditor General.

20 (3) The Comptroller and Auditor General must—

(a) examine, certify and report on the statement, and

(b) arrange for a copy of the statement and the report to be laid before the Assembly.

(4) In this paragraph “the final period” means the period—

25 (a) beginning with the end of the last financial year for which the Commission produced a report and accounts in accordance with paragraphs 15 and 17 of Schedule 1 to the 2003 Order; and

(b) ending immediately before the dissolution date.

SCHEDULE 2

30

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—

35 “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.”.

40 (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”.

5 (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
10 Assembly.

(6) This paragraph applies to—

(a) the first 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);

15 (b) the first 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) the first rules made under this Article which contain any provision made by virtue of Article 36B (as substituted by Schedule 2 to the
20 Legal Aid and Coroners' Courts Act (Northern Ireland) 2014);

(d) the first 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—

25 **“Assignment of solicitor and counsel**

36A.—(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
30 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.

35 (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.

40 (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,

5 (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
10 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.

15 (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.

20 (8) In this Article “prescribed” means prescribed by rules under Article 36(3)(b).

Register of solicitors and counsel eligible to be assigned

36B.—(1) Rules under Article 36(3)(b) may—

25 (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

30 (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

35 (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—

40 (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—

“Restriction of disclosure of information

38A.—(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 (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.”.

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

10 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.

15 *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. Omit section 46(1)(hb).

20 *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;”.

25

(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

30

Functions of the Department: general

Exercise of functions of the Department under this Part

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

35 (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 (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”;

10 (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

15 (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—

20 (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);

25 (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—

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

40 (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—

5 **“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.”.

10 (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—

15 “(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”;

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

(13) For Article 12A substitute—

“Exceptional funding

25 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

30 (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—

35 (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

40 (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 cohabitants (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”;
- (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”.

5 (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—

- 10 (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,
- 15 (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.”.

20 (17) Omit Article 16.

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

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

25 (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—

30 **“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;
- 5 (b) prescribe qualifications for appointment to a list mentioned in sub-paragraph (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;
- 10 (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;
- 15 (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;
- 20 (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.
- 25 (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;
- 30 (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

- 35 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
- 40 “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
 - 5 (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)”;
 - 10 (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
 - 15 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—
 - 20 (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.”;
 - 25 (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);
 - 30 (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”.
- 35 (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
 - 40 “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
5 “Department”.

(34) In Article 35 for “Commission” (wherever occurring) substitute “Department”.

(35) In Article 36—

(a) for “Commission” (wherever occurring) substitute “Department”;

10 (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);

15 (b) in paragraph (5) for “4(4), 5, 10(2), 11(9)(b), 15(7)” substitute “10(2)”;

(c) after paragraph (5) insert—

“(5A) The first regulations under Article 20A shall not be made unless a draft of the regulations has been laid before, and approved by resolution of, the Assembly.”;

20 (d) 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.

25 (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
30 enactments)—

(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”.

35 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;

40 (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' Courts Act (Northern Ireland) 2014.	In Schedule 2, paragraph 1.
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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”.

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

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

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

- 5 10. 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”.

SCHEDULE 3

10

Section 11

REPEALS

PART 1

LEGAL AID

	Short Title	Extent of Repeal
15	The Freedom of Information Act 2000 (c. 36)	In Part 7 of Schedule 1, the entry relating to the Northern Ireland Legal Services Commission.
	The Justice (Northern Ireland) Act 2002 (c. 26)	Section 46(1)(hb).
20	The Access to Justice (Northern Ireland) Order 2003 (NI 10)	In Article 2(2) the definition of “the Commission”. Articles 4 and 5. Article 6(4) and (5). Article 7(2)(g) and the word “and” immediately before it.
25		Article 7(4) and (5). Article 8. Article 12(1)(a). Article 16. Article 24(3)(b) and the word “and” immediately before it.
30		Article 46(1) to (3). In Article 46(6) the words “or paragraph 2(6) of Schedule 3”. Article 48(2) and (3). Schedule 1.
35		Schedule 3.

		In Schedule 4, paragraphs 10(a) and 15.
5	The Commissioner for Children and Young People (Northern Ireland) Order 2003 (NI 11)	In Schedule 1, paragraph 16.
	The Civil Partnership Act 2004 (c. 33)	In Schedule 29, paragraphs 53 and 54.
10	The Constitutional Reform Act 2005 (c. 4)	In Schedule 11, in paragraph 6(3), the reference to the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981.
	The Legal Aid (Northern Ireland) Order 2005 (NI 19)	The whole Order.
15	The Criminal Justice (Northern Ireland) Order 2008 (NI 1)	Article 85(2).
	The Terrorist Asset-Freezing etc. Act 2010 (c. 38)	In section 23(1)(d) the words “or the Northern Ireland Legal Services Commission”.
20	The Justice Act (Northern Ireland) 2011 (c. 24)	Section 80(4). Section 82. In section 85 the word “Commission”.

PART 2

CORONERS' COURTS

25	Short Title	Extent of Repeal
	The Coroners Act (Northern Ireland) 1959 (c. 15)	Section 2(1B). Section 3(3). Section 6(3). Section 36(1H).

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