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Legal Aid and Coroners' Courts Bill

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This paper outlines the main provisions of the Bill and considers what the Bill means for the delivery of legal aid and the Coroners' Court.

Key Points

- The Legal Aid and Coroners' Court Bill was introduced in the Northern Ireland Assembly on 31 March 2014 by the Minister of Justice;
- The Bill dissolves the Northern Ireland Legal Services Commission (NILSC) and transfers its functions to the Department of Justice (DoJ). An Executive Agency will be created within DoJ to deliver the services currently delivered by the NILSC;
- According to the Explanatory Memorandum to the Bill, changing the delivery arrangements from a Non Departmental Public Body (NDPB) to an Executive Agency will help to increase transparency, accountability and reduce the cost of administration; and improve financial modelling, monitoring and forecasting;
- According to DoJ officials, the Bill will not impact on the parameters of those eligible for legal aid;
- The Bill enables DoJ to designate a civil servant in the Department as Director of Legal Aid Casework. The Bill prohibits DoJ from giving a direction or guidance about the carrying out of those functions in relation to an individual case;
- The Bill also imposes a duty on DoJ to ensure that the Director acts independently of the Department when applying a direction or guidance in relation to an individual case;
- The Bill provides the DoJ with a number of rule making powers. It is considered to be helpful for Parliament to have sight of regulations which are central to a Bill's effect when it considers a Bill;
- However provisions have been included to ensure that a number of the statutory rules which will be subject to the negative resolution procedure are, in the first instance approved using the draft affirmative procedure, allowing the Assembly to exercise a greater scrutiny role;
- Examples include rules relating to appeals panels, assignment of solicitors and counsel, register of solicitor and counsel to be assigned, restriction on disclosure of information;
- Procedures for decisions in the funding of civil legal services and remuneration orders in criminal defence services are subject to the negative resolution procedure;
- DoJ are required to approve a Code of Conduct. The Code and any revised version of the Code is subject to the affirmative resolution procedure;

- The Coroners' Court provisions seek to make the Lord Chief Justice the President of the Coroners' Court and enable him to appoint a Presiding Coroner. This would bring the Coroners' Court into line with other courts as set out in the Justice (NI) Act 2002;
- In England and Wales, the Lord Chief Justice is Head of the Judiciary and President of the Courts in England and Wales. However the legislation does not include the Coroners' Court. Legislation introduced in 2009 created an Office of the Chief Coroner for England and Wales.

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1 Introduction

The Legal Aid and Coroners' Courts Bill was introduced by the Minister of Justice, David Ford in the Northern Ireland Assembly on 31 March 2014. The Bill has 13 clauses and 3 Schedules and is divided into three parts:

- Part 1 deals with Legal Aid;
- Part 2 deals with the Coroners' Court;
- Part 3 contains supplementary provisions.

This paper provides background information on the Bill. The paper considers what the Bill means for the delivery of legal aid and includes information on the new functions and duties of the Department of Justice. The paper also provides information on the functions of the Director of Legal Aid Casework and safeguards contained within the Bill to protect his or her independence and on the appeal mechanism when applications are refused. The paper finally considers what the Bill means for the Coroners' Court.

The second stage debate which focuses on the principles of the Bill took place on 8 April 2014. Whilst there was general support for the principles some specific issues were raised. These issues included:

- A potential amendment to the Bill to allow the Attorney General to obtain papers and secure statutory basis for disclosure,
- The constitution of the appeals panel and whether this would be dealt with via regulations;
- The register of solicitors and counsel assigned;
- Whether the Minister could give a direction in relation to a class of cases;
- The possibility of coroners' officers to assist coroners.

2 Background to the Bill

2.1 Purpose

The main purpose of the Bill is to dissolve the Northern Ireland Legal Services Commission and transfer its staff and functions to the Department of Justice. It will also safeguard the independence of the Director of Legal Aid Casework in making decisions in individual cases on the granting of legal aid. The Explanatory Memorandum to the Bill indicated that changing the delivery arrangements from a Non Departmental Public Body (NDPB) to an Executive Agency would help to increase transparency,

accountability and efficiency in line with government policy, reduce the cost of administration; and improve financial modelling, monitoring and forecasting.¹

The Bill would also make the Lord Chief Justice the President of the Coroners' Court in Northern Ireland. The reason for this provision is explained in the Explanatory Memorandum to the Bill. The provisions follow a recommendation in the 'Review of the Criminal Justice System in Northern Ireland' in 2000 that the Lord Chief Justice should be clearly identified as head of the judiciary, and that each tier of the judiciary should have a representative to facilitate the co-ordination and management of court business and to provide a figurehead.²

2.2 Consultations

The legal aid aspects of the Bill have been subject to extensive consultation. The Access to Justice Review in 2011 recommended that the legal aid delivery arm should become an executive agency of the Department of Justice and that the Chief Executive should be a statutory appointment responsible for decisions on legal aid applications without any involvement on the part of the Minister, any political institution or staff in the core Department.³ This review was subject to consultation after publication and is available on the Department's website:

<http://www.dojni.gov.uk/index/publications/publication-categories/pubs-criminal-justice/access-to-justice-review-final-report.pdf>

The Department consulted on safeguards to protect the individual decisions on the granting of civil legal aid in February 2013. The proposed safeguards were as follows:

- Decisions on individual cases to be taken by a statutory office holder;
- Ministers to provide general guidance and direction on legal aid policy;
- A requirement for guidance and direction to be published;
- Ministers will be specifically prevented from issuing guidance or directions about the discharge of the Statutory Office Holder's functions in relation to individual cases; and
- A robust and independent appeals mechanism will be established to consider appeals against individual decisions.

The Department published its summary of responses to the consultation in June 2013. Both documents are available at the Department's website at

¹ Explanatory and Financial Memorandum to the Legal Aid and Coroners' Courts Bill 2014, para 5.

² Explanatory Memorandum to the Legal Aid and Coroners' Court Bill 2014, para 9, <http://www.niassembly.gov.uk/Assembly-Business/Legislation/Primary-Legislation-Current-Bills/Legal-Aid-and-Coroners-Courts-Bill/>. See also the Review of the Criminal Justice System in Northern Ireland, pg 147, 30 March 2000 <http://cain.ulst.ac.uk/issues/law/cjr/chap6.pdf>

³ The Access to Justice Review Northern Ireland The Report, August 2011, pg 153 <http://www.dojni.gov.uk/index/publications/publication-categories/pubs-criminal-justice/access-to-justice-review-final-report.pdf>

<http://www.dojni.gov.uk/index/public-consultations/archive-consultations/safeguards-to-protect-individual-decisions-on-the-granting-of-civil-legal-aid.htm> .

The legal aid aspects of the Bill mainly focus on changes to the structures for the delivery of legal aid in Northern Ireland. Departmental officials emphasised that the Bill does not have an impact on the parameters of those who are eligible for legal aid.⁴

The proposals in relation to the Coroners' Court have not been subject to public consultation. The Explanatory Memorandum to the Bill explained that it was considered unnecessary to consult publicly on changes to the Lord Chief Justice's role due to the specialist and technical nature of the changes.⁵

3 What does the Bill mean for the delivery of legal aid?

This section of the paper considers the main provisions of the Bill that relate to legal aid and considers the impact on the delivery of legal aid.

3.1 Dissolution of the Northern Ireland Legal Services Commission and transfer of functions and staff

Clause 1(1) of the Bill abolishes the Northern Ireland Legal Services Commission (NILSC) and subsection 2 transfers its functions to the Department of Justice (DoJ). The An Executive Agency will be created in the Department to administer the delivery of legal aid services in Northern Ireland.⁶

Clause 1(5) introduces Schedule 1 of the Bill which makes provision for the transfer of assets, liabilities and staff of the NILSC to DoJ. Assets and liabilities to which the NILSC is entitled will be transferred to DoJ.⁷ Staff employed by the Commission will be transferred on the dissolution date to employment in the Northern Ireland Civil Service and the Transfer of Undertakings (Protection of Employment) Regulations 2006 will apply.⁸

Schedule 1, paragraph 4 requires the Department as soon as is practicable after the date of dissolution to prepare a report on how the Commission carried out its functions in the final period including a statement of accounts. The report must be laid before the Assembly. The Comptroller and Auditor General must examine, certify and report on the statement and arrange for a copy of the statement and report to be laid before the Assembly.

⁴ Committee for Justice Official Report on the Legal Aid and Coroners' Court Bill, 13 March 2014.

⁵ Explanatory and Financial Memorandum to the Legal Aid and Coroners' Courts Bill, para 14

⁶ Explanatory and Financial Memorandum to the Legal Aid and Coroners' Courts Bill

⁷ Schedule 1, para to the Legal Aid and Coroners Court Bill

⁸ See Schedule 1, paragraph 2

The transfer of existing staff from the Commission was discussed at a meeting of the Justice Committee on 13 March 2014. Mr Jim Wells, MLA asked departmental officials whether there would be a transfer of staff from the existing body or if a new team would be recruited. In response, departmental officials indicated that there would be a transfer over of existing staff into the new organisation and there would be an opportunity to look at the management structure and how it operates as an agency within the new department.⁹ The departmental officials were asked about issues relating to staff pensions by, Ms Rosie McCorley MLA. The departmental officials informed the Committee that NILSC staff are part of the NILGOSC local government pension scheme and when they become part of the Northern Ireland Civil Service, they will come under the same pension scheme as civil servants. The staff will be given the choice about whether to retain their existing service in the NILGOSC scheme or transfer it across to the civil service pension scheme.¹⁰

3.2 Functions and Duties of the Department of Justice

3.2.1 Administration of legal aid

There are a number of provisions in the Bill that effectively reproduce provisions in the Access to Justice (Northern Ireland) Order 2003 and insert them into the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981. The effect of these provisions is to reflect the transfer of functions from the Northern Ireland Legal Services Commission to the Department of Justice. Paragraph 1(5) of Schedule 2 of the Bill inserts a new Article 36A (assignment of solicitor and counsel) and a new Article 36B (Register of solicitors and counsel to be assigned) after Article 36 in the 1981 Order. Paragraph 1(6) also inserts a new Article 38A after Article 38 of the 1981 Order. New Article 38A of the 1981 Order deals with the restriction on disclosure of information.

Paragraph 6(3) of Schedule 2 of the Bill amends the Access to Justice (Northern Ireland) Order 2003 by substituting for Article 3 a new Article 3 and heading Part 2. This provision sets out the exercise of the general functions of the Department in respect of civil legal services and criminal defence services. New Article 3 of the 2003 Order provides that the Department will exercise its functions for the purpose of :

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

⁹ Committee for Justice Official Record "Legal Aid and Coroner's Court Bill" 13 March 2014

¹⁰ Committee for Justice Official Record "Legal Aid and Coroner's Court Bill" 13 March 2014

- securing that individuals involved in criminal investigations or relevant proceedings have access to such criminal defence services as the interests of justice require.

Paragraph 6(11) of Schedule 2 amends Article 11 of the Access to Justice (Northern Ireland) Order 2003 by substituting a new Article 11. Currently Article 11 of the 2003 Order requires the NILSC to establish and maintain a fund from which it shall fund civil legal services. The new Article 11 requires the Department of Justice to fund civil legal services out of moneys appropriated for that purpose by an Act of the Assembly. Paragraph 6(23) amends article 21 of the 2003 Order by substituting a new article 21 to make similar provision in respect of the funding of criminal defence services.

The Bill requires the department to provide funding in exceptional cases. Paragraph 6 (13) in Schedule 2 amends Article 12A of the 2003 Order by substituting a new Article 12A. Currently under Article 12A, the Department can direct that legal aid is provided by the Commission in specified categories of cases. The new provision requires the department to provide exceptional funding, however it is for the Director of Legal Aid Casework to decide if an individual satisfies those requirements in Article 13 in relation to the services and to make an exceptional case determination in relation to the individual and the services. This removes the role of the department in making decisions on the grant of exceptional funding.

The Bill allows the Department to give directions to the Director about the delegation of the Director's functions. Clause 4(2) provides that a direction given by the Department may require the director to authorise or not authorise a person to carry out specific functions.

3.2.2 Regulation and Rule Making Powers

There are a number of powers in the Bill that allow the Department to make statutory rules. A number of the powers in the Bill are subject to negative resolution, however in some instances the first set of rules would be made by the draft affirmative procedure. Some are subject to negative resolution. One is subject to draft affirmative resolution and another is subject to the affirmative resolution.

Rules subject to Negative Resolution but in first instance first rules subject to draft affirmative resolution procedure.

There are a number of rule-making powers in the Bill. The Department would be able to make rules relating to decisions as to eligibility for free legal aid in criminal cases, assignment of solicitor and counsel, register of solicitor and counsel assigned and

restriction of disclosure of information.¹¹ The Department would also be able to make regulations providing for the constitution and membership of appeals panels.¹² Whilst these rules and regulations will be subject to the negative resolution procedure; the first set of these rules and regulations will have to be laid in draft and approved by resolution of the Assembly.¹³ This would allow the Assembly to exercise a greater scrutiny role in considering the rules.

Negative Resolution Procedure

Some of the powers in the Bill are subject to the negative resolution procedure. Paragraph 6 (16) of Schedule 2 of the Bill substitutes Article 15 of the Access to Justice (Northern Ireland) Order 2003 with a new Article 15. The new Article 15 enables the Department to make regulations regarding the procedures for decisions in the funding of civil legal services. This replaces the current provision that the Commission shall prepare a funding code setting out the criteria according to which any decision is to be taken as to whether to fund civil legal services for an individual and what services are to be funded. The Department has signalled its intention not to proceed with the funding code to the Justice Committee stating:

“Following extensive work and research, and taking on board experience elsewhere, we have concluded that the funding code is an overcomplicated approach that would not best serve the needs of individual legal aid clients. Consequently, the existing arrangements for the merit test remain.”¹⁴

The Bill does not make clear the procedure for approving these regulations. However given that this provision amends Article 15 of the 2003 Order, Article 46 of the 2003 Order appears to suggest that regulations made under Article 15 are subject to negative procedure.

The Bill amends Article 23(3) of the 2003 Order which relates to remuneration orders in criminal defence services. Schedule 2, paragraph 6 (25) (b), substitutes a new paragraph 3 which provides that “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.” Currently orders made under Article 23 are made by negative resolution and it appears that orders made by the Department under the new provision will also be subject to the negative resolution procedure.¹⁵

¹¹ Paragraph 1 (4) to Schedule 2 of the Bill amends Article 36 of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 by substituting paragraph 4 for new paragraph 4 to 6.

¹² Paragraph 6(22) in Schedule 2 of the Bill inserts a new Article 20A after Article 20 of the Access to Justice (Northern Ireland) Order 2003.

¹³ See new article 36(4) of the 1981 Order and Paragraph 6(37) of schedule 2 of the Bill inserts a new paragraph 5A after Article 46 (5) of the Access to Justice (Northern Ireland) Order 2003.

¹⁴ Committee for Justice Official Report, “Legal Aid and Coroners’ Courts Bill, 13 March 2014

¹⁵ See Article 46 of the Access to Justice (Northern Ireland) Order 2003

Draft Affirmative Procedure

Clause 10(1) of the Bill provides Department may by order make supplementary, incidental or consequential provision as it considers appropriate for the purposes of or to give effect to the Act. Clause 10 (3) provides that orders under this section which amend or repeals a provision of an Act of Parliament or Northern Ireland legislation have to be laid in draft and approved by resolution of the Assembly. Any other order under this section is subject to negative resolution.

Affirmative Resolution Procedure

Paragraph 6(24) of Schedule 2 to the Bill amends Article 22(1) of the Access to Justice (Northern Ireland) Order 2003 providing that the Department shall prepare a Code of Conduct to be observed by the Department and the Director and the employees of any body established and maintained by the Department in the provision of criminal defence services. The Bill provides that the Department shall publish the Code and any revised version of the Code and to lay the Code or revised Code before the Assembly. The Code as first published or any revised Code will not come into operation until it has been approved by a resolution of the Assembly.

3.3 Director of Legal Aid Casework

3.3.1 Functions and Duties

Clause 2 of the Bill requires the Department to designate a civil servant in the Department as the Director of Legal Aid Casework. Clause 2(2) requires the Director to carry out the functions of the office on behalf of the Crown. Clause 2 (4) also requires the Department to make arrangements for the provision of civil servants or other persons to assist the Director.

Clause 4 of the Bill deals with the delegation of the functions of the Director and allows the Director to delegate his or her functions. The Explanatory Memorandum explains that this enables the Director to delegate decision making in relation to a merits of a legal aid application, the application of a relevant means test for a particular area of work in relation to a legal aid application and the ongoing monitoring of decisions. Clause 4(4) gives the Director the power to specify the duration of the delegation, specify or describe the authorised person or vary or revoke the delegation.

The Bill places a number of duties on the Director. Clause 3(1) requires the Director to comply with directions given by the Department in the carrying out of the Director's functions and to have regard to guidance issued by the Department. Clause 5(1) of the Bill requires the Director to produce an annual report for the financial year which must

state how the Director has carried out the functions of the office in the financial year. The Director must send a copy of the annual report to the Department. It should be noted that the Department also has duties in respect of the Director's Annual report. Clause 5(4) requires the Department to lay a copy of the report before the Assembly and arrange for it to be published.

3.3.2 Safeguards to Protect the Independence of the Director

The Bill places requirements on DoJ in respect of directions and guidance to the Director of Legal Aid Casework.

Clause 3 (2) contains safeguards to protect the independence of the Director in decision making in individual cases. It provides that the Department must not give a direction or guidance about the carrying out of those functions in relation to an individual case. The Department also has a duty to ensure that the Director acts independently of the department when applying a direction or guidance under this section in relation to an individual case. The Department consulted on the policy underpinning these proposals in 2013. In its response to the consultation on this safeguard, the Bar Council said that the proposal is a starting point but are not convinced this is sufficient to manage inherent risks and conflicts of interest. In response, the Department said that the office holder would be required to make an assessment based on the merits of each individual case. The legislation would prevent any interference by the Minister. Where an application was refused, reasons would be given for refusal. The applicant would have recourse to an entirely independent appeals process in the event of a refusal.¹⁶

Clause 3(3) requires the Department to publish any guidance. The policy underpinning this clause was included in the Department's consultation paper in 2013 which explained that the Minister will set the overarching guidance, procedures and criteria for the award of legal aid which the statutory office holder will apply in taking individual funding decisions.¹⁷ The Bar Council agreed to the publication of guidance and directions in its response to the Department's policy consultation and said it would welcome the opportunity to discuss how the Department intends to engage with the representative bodies of the legal professions who could be of assistance. The Bar Council also strongly suggested that the input of practitioners is sought and recognised as important in delivering the effective administration of legal aid. The Department's

¹⁶ Department of Justice "Safeguards to Protect the Individual Decisions on the Granting of Legal Aid Consultation: A Summary of Responses" June 2013, para 18 and 19.

¹⁷ Department of Justice "Safeguards to Protect the Individual Decisions on the Granting of Legal Aid: A Department of Justice Consultation Document". 27 February 2013, pg 6

response emphasised its commitment to stakeholder consultation and said it would consider how further input could be obtained.¹⁸

3.4 Appeals Panel

Paragraph 6(22) in Schedule 2 of the Bill inserts a new Article 20A after Article 20 of the Access to Justice (Northern Ireland) Order 2003. The provision requires the Department of Justice to make regulations providing for the constitution and procedure of appeals panels. The regulations may provide for the appeals panel to consist of a presiding member, a prescribed number of other members, provide for qualifications for appointment and disqualification of prescribed persons for membership of an appeals panel. Regulations may provide for the decision on an appeal to be taken without hearing any oral representations, except in cases that may be prescribed. The regulations may also provide for two or more panels to sit at the same time and for the appeals panel to sit in private except in particular circumstances specified or determined in accordance with the regulation. The Department may by regulations require the appeals panel to give its reasons in writing and provide for a decision of the appeals panel on appeal to be final. Article 20A will allow the department to make payments to members of the appeals panel and arrange for the provision of facilities, staff and assistance.

Paragraph 6(37) of schedule 2 of the Bill inserts a new paragraph 5A after Article 46 (5) of the Access to Justice (Northern Ireland) Order 2003. The effect of this new paragraph is to ensure that the first set of regulations made under Article 20A are subject to the Assembly's affirmative resolution procedure.

It should be noted that the DoJ shifted away from its initial thinking in its policy consultation on membership of the appeals panel in response to concerns raised by consultees. DoJ proposed that the appeal panels would be paper based without a hearing, by one member of a panel who has the recognised competence in the area of appeal.¹⁹ There were a number of views highlighted by consultees on the issue of the appeals panel which DoJ summarised in its summary of responses.²⁰ The Association of Personal Injury Lawyers indicated that appeals should not be considered by one member of the panel; they suggested three members with relevant competence should consider the appeal so as to eliminate any bias in decision making. The Law Society

¹⁸ Department of Justice "Safeguards to Protect the Individual Decisions on the Granting of Legal Aid Consultation: A Summary of Responses" June 2013, para 13 and 14.

¹⁹ Department of Justice "Safeguards to Protect Individual Decisions on the Granting of Legal Aid: A Department of Justice Consultation Document", 27 February 2013, pg 7.

²⁰ Department of Justice "Safeguards to Protect Individual Decisions on the Granting of Legal Aid: Summary of Responses, a Way Forward", June 2013, paras 20-25

expressed concerns over appeals being heard by one person pointing out potential for accusations of bias in specific cases. One member alone could be open to challenge. The Bar Council suggested there was a serious risk that dilution of expertise would result in erroneous results. Sinn Fein highlighted that this would remove the safeguard of a multi-disciplined panel along with the objectivity that comes in dealing with more than one person. They endorsed the present approach where a panel hears the appeal. The Bar Council suggested that whilst recognising the value in the contribution of lay persons, they recommend that panels consist of legally qualified individuals. The Attorney General commented that the quality and consistency of decision making at appeal level and at initial stage would be best served by the appointment of a highly qualified and independent lawyer. He suggested that a few additional lawyers could be recruited to deputise when necessary.

However, the department reflected the responses to the consultation and proposed to strengthen the appeals mechanism by introducing a requirement that all appeals would be heard by a panel of three members and the appeal panel would be drawn from a wider pool of suitably qualified people reflecting a range of professional backgrounds.²¹ The department also indicated that there would be an explicit requirement for one of the members to be a lawyer.²²

Issues were raised during the consultation period regarding paper based appeals. The Bar Council disagreed that appeal hearings should automatically be on the papers as this provides no opportunity to interrogate the reasons for refusal. They said it is in the public interest that an appellant should be able to request an oral hearing, if the appellant considers it necessary. The Association of Personal Injury Lawyers were supportive of paper based appeals but were concerned they may not be robust enough. They were also dissatisfied with oral representation only being required in exceptional cases. Instead they suggested the system should be paper based, but there should be a right to an oral hearing if the case is complex or borderline. The Law Society raised concerns about the proposals to make appeals on paper in blanket fashion and were concerned that vulnerable clients who cannot afford to pay for the services of a solicitor may not have the literacy skills to make strong representation on their own behalf in writing.

Sinn Fein asked for clarification on 'exceptional circumstances'. They suggested many legal aid appeals have been overturned only after robust oral submissions by legal representatives.²³ In response to these concerns, the departmental response suggested there would be robust arrangements to consider applications for legal aid. If

²¹ Department of Justice "Safeguards to Protect Individual Decisions on the Granting of Legal Aid: Summary of Responses, a Way Forward", June 2013, para 23.

²² Department of Justice "Safeguards to Protect Individual Decisions on the Granting of Legal Aid: Summary of Responses, a Way Forward", June 2013, para 26

²³ Department of Justice "Safeguards to Protect Individual Decisions on the Granting of Legal Aid: Summary of Responses, a Way Forward", June 2013, para 27-30

the decision is appealed it will include a review process and when applications are refused, clear reasons will be given. If the decision is appealed it will be subject to further consideration to see if approval can be granted before going to the Appeal Panel. DoJ said it anticipated that the quality of applications would improve and the number of appeals will reduce. Furthermore the provision of reasons means that in most instances it will be appropriate to have paper based appeals. The Department said that provision would be made for oral representation in exceptional cases and the criteria for exceptional cases would be set out in detail when the panel is appointed.²⁴

In England and Wales, the Civil Legal Aid (Procedure) Regulations 2012 make provision for the review of and appeals against determinations in relation to the granting of legal aid. An individual may apply to the Director for a review of a legal aid determination. Where an individual remains dissatisfied following a review, the individual may apply to an adjudicator. An adjudicator for the purposes of the regulations is defined as an independent funding adjudicator appointed by the Lord Chancellor.²⁵ Where the Director or adjudicator considers that the appeal is of exceptional complexity, the Director or adjudicator may refer the appeal to a panel of two or more adjudicators.²⁶

It would appear that DoJ's proposals are more robust than the existing mechanisms in England and Wales. However, UK Government Cabinet Office guidance on making legislation suggested that it is helpful for Parliament to have sight of draft regulations which are central to a Bill's effect when it considers the Bill.²⁷ This would be useful in the context of this Bill given the concerns raised during the consultation period regarding appeals panels.

4 What does the Bill mean for the Coroners' Court?

The provisions in the Bill relate to the leadership of the Coroners' Court in Northern Ireland. Departmental officials informed the Committee for Justice that these provisions would formalise the Lord Chief Justices' responsibilities in relation to coroners and the Coroners' Court in line with the existing arrangements for the other judiciary and courts in Northern Ireland.²⁸ Section 12 of the Justice (NI) Act 2002 provides that the Lord Chief Justice is President of the Courts of Northern Ireland and is Head of the Judiciary of Northern Ireland. The courts currently include: the Court of Appeal, the High Court, the Crown Court, the county courts and the magistrates' courts.²⁹ Sections 13, 14 and 15 of the 2002 Act make provision for the Lord Chief Justice to appoint a Presiding county court judge, Presiding resident magistrate and Presiding lay magistrate.

²⁴ Department of Justice "Safeguards to Protect Individual Decisions on the Granting of Legal Aid: Summary of Responses, a Way Forward", June 2013, para 31

²⁵ Civil Legal Aid (Procedure) Regulations 2012, Article

²⁶ Civil Legal Aid (Procedure) Regulations 2012, Article 45

²⁷ Cabinet Office 'Guide to Making Legislation', July 2013, pg 55 <https://www.gov.uk/government/publications/guide-to-making-legislation>

²⁸ Committee for Justice Official Report "Legal Aid and Coroners' Courts Bill" 13 March 2014.

²⁹ See section 12 (1D) of the Justice (NI) Act 2002

Clause 7 of the bill amends Section 12 (2) of the Justice (Northern Ireland) Act 2002 to include the Coroners' Court as one of the courts of which the Lord Chief Justice is president. Clause 8 (2) inserts a new section 2A of the Coroners' Act (NI) 1959 on the appointment of the Presiding coroner. The provision enables the Lord Chief Justice to appoint one of the coroners to be Presiding coroner. New section 2A (2) provides that the appointed person holds office in accordance with the terms of appointment. New section 2A (3) provides that if the office becomes vacant, the Lord Chief Justice may appoint a person to act as presiding coroner until a new appointment is made. New section 2A(4) provides that the Lord Chief Justice's functions relating to coroners can be delegated to the Presiding coroner, other than functions under section 36 of the Coroners' Act (NI) 1959 (rules and fees).

In England and Wales, the Lord Chief Justice is Head of the Judiciary and President of the Courts in England and Wales.³⁰ The Courts are set out in section 7 of the Constitutional Reform Act 2005 and include the Court of Appeal, the High Court, the Crown Court, the family court,³¹ the county courts and the magistrates' courts. There is no reference to the Coroners' Court in the list of courts.

There were relatively recent legislative changes in England and Wales in 2009 in relation to leadership of the Coroners' system. Sections 35 and Schedule 8 of the Coroners and Justice Act 2009 created the Office of the Chief Coroner and Deputy Chief Coroner. The first Chief Coroner of England and Wales, His Honour Judge Peter Thornton Q.C was appointed in May 2012 and he took up post in September 2012.³² The appointment is made by the Lord Chief Justice in consultation with the Lord Chancellor.³³ The main functions of the Chief Coroner are to:³⁴

- Provide support, leadership and guidance for coroners in England and Wales;
- Set national standards for all coroners, including new inquest rules;
- Oversee the implementation of the new provisions of the Coroners and Justice Act 2009;
- Put in place suitable training arrangements for coroners and their staff;
- Approve coroner appointments;
- Keep a register of coroner investigations lasting more than 12 months and take steps to reduce unnecessary delays;
- Monitor investigations into the deaths of service personnel;
- Oversee transfers of cases between coroners and direct coroners to conduct investigations;

³⁰ Section 7 of the Constitutional Reform Act 2005

³¹ Section 7(4) of the Constitutional Reform Act 2005 as amended by the Crime and Courts Act 2013

³² http://www.coronersociety.org.uk/chief_coroner

³³ <http://www.judiciary.gov.uk/about-the-judiciary/office-chief-coroner>

³⁴ <http://www.judiciary.gov.uk/about-the-judiciary/office-chief-coroner>

- Provide an annual report on the coroner system to the Lord Chancellor, to be laid before Parliament;
- Monitor the system where recommendations from inquests are reported to the appropriate authorities in order to prevent further deaths.

5 Financial, Equality and Human Rights

The Explanatory and Financial Memorandum (EFM) to the Bill makes reference to the financial effects, human rights issues, and equality impact assessment, however little detail is provided.

The EFM indicated that there are costs associated with the change in status of the Commission to become an Executive Agency within the Department. The largest costs are expected to arise from changes in the pension provider and terms and conditions of staff. The EFM refers to the approved business case which sets out how these costs will be met.

In terms of human rights issues, the EFM indicated that all proposals have been screened and are considered to be Convention compliant. Specific reforms which will make use of any new powers have been or will be subject of fresh scrutiny by officials to ensure compliance.

The EFM highlighted that the Bill has been screened out as not having an adverse impact on any of the Section 75 categories in the Northern Ireland Act 1998. DoJ conducted a screening exercise in relation to the safeguards to protect individual decisions in the granting of civil legal aid. DoJ concluded that the safeguards in the consultation do not make any changes in respect of the eligibility for civil legal aid and that the Agency would continue to provide access to justice including civil legal aid, for all those eligible to ensure their rights are protected. DoJ also concluded there was no need for mitigation or an alternative policy as the policy will not have an impact on the award of civil legal aid³⁵

³⁵ <http://www.dojni.gov.uk/index/public-consultations/archive-consultations/section-75-equality-screening-form.pdf>