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## STATUTORY INSTRUMENTS

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# 1976 No. 582

## Solicitors (Northern Ireland) Order 1976

### PART III

#### PROFESSIONAL PRACTICE, CONDUCT AND DISCIPLINE

##### *Control of solicitors' property in certain cases*

#### **Powers of Council to deal with property in control of certain solicitors and other persons**

**36.**—(1) Where the Council have reasonable cause to believe and have passed a resolution stating that they have reasonable cause to believe, that—

- (a) a solicitor,<sup>[F1]</sup> or an employee of his], has been guilty of dishonesty in connection with his practice as a solicitor or in connection with any trust of which the solicitor is a trustee; or
- <sup>[F1]</sup>(b) in consequence of the act or default of a solicitor or of any of his employees—
  - (i) there has been undue delay in connection with any matter in which that solicitor or his firm has been instructed on behalf of a client or any matter which relates to the administration of a controlled trust; or
  - (ii) any sum of money due from the solicitor or his firm to, or held by him or his firm on behalf of, his clients or subject to a controlled trust is in jeopardy while in the control or possession of the solicitor or his firm,]

the provisions of Schedule 1 shall apply in relation to that solicitor and the other persons mentioned in that Schedule.

(2) The provisions of Schedule 1 shall apply to every solicitor who practises<sup>[F1]</sup> as a sole solicitor] and—

- (a) who is adjudicated bankrupt <sup>[F2]</sup>or becomes the subject of a bankruptcy restrictions order]<sup>[F3]</sup>or has a debt relief order made in respect of him or becomes the subject of a debt relief restrictions order] or has entered into any voluntary or other arrangement or composition with his creditors; or
- (b) who has had any order of committal or attachment, or judgment or decree of the kind mentioned in Article 13(1)(j) made against him which has not been discharged; or
- <sup>[F4]</sup>(c) in relation to whose property or affairs any power is being exercised under Part VIII of the Mental Health (Northern Ireland) Order 1986 or who is a patient for the time being detained in hospital for treatment or subject to guardianship under Part II of that Order; or]
- (d) who by reason of bodily illness, infirmity or weakness not amounting to mental disorder has become permanently or for a period of more than<sup>[F1]</sup> one month] incapable of carrying on practice as a solicitor and has not in the opinion of the Council made adequate arrangements for professional assistance in or supervision of his practice during such incapacity.

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(3) Where the Council have passed a resolution to the effect that they are satisfied that a solicitor<sup>F1</sup> . . .

[<sup>F1</sup>(a) has failed to comply with—

(i) any provision respecting the keeping of accounts contained in regulations made under Article 33 or with any requirements made in pursuance of any such regulations for the production of books of account or other documents; or

(ii) the provisions of Article 35 or of any regulations made thereunder; and]

(b) has been informed that such failure will have the consequence that the provisions of Schedule 1 shall apply in relation to him and the other persons mentioned in that Schedule,

the provisions of Schedule 1 shall apply in relation to that solicitor or<sup>F1</sup> . . . and the other persons mentioned in that Schedule.

[<sup>F1</sup>(4) Where, at any time, the Council are satisfied that the circumstances mentioned in Article 13(1)(g) or (h) have effect in relation to any solicitor, the Council may direct that the provisions of Schedule 1 shall apply in relation to that solicitor and the other persons mentioned in that Schedule.

(5) Where the Tribunal have made a recommendation to the Council under Article 51C in respect of any solicitor, the Council may direct that the provisions of Schedule 1 shall apply in relation to that solicitor and the other persons mentioned in that Schedule.]

**F1** 1989 NI 14

**F2** Words in art. 36(2)(a) inserted (21.4.2015) by [The Insolvency \(Northern Ireland\) Order 2005 \(Consequential Amendments\) Order \(Northern Ireland\) 2015 \(S.R. 2015/159\)](#), art. 1, **Sch. para. 5(8)**

**F3** Words in art. 36(2)(a) inserted (7.3.2016) by [The Debt Relief Act \(Northern Ireland\) 2010 \(Consequential Amendments\) Order \(Northern Ireland\) 2016 \(S.R. 2016/108\)](#), art. 1, **Sch. para. 7(10)**

**F4** 1986 NI 4

### **Power of Council to deal with property of solicitors removed from or struck off the roll**

**37.—**(1) Where the name of a solicitor is removed from or struck off the roll or a solicitor is suspended from practice, that solicitor shall within three weeks from the material date satisfy the Council that he has made suitable arrangements for making available to his clients or to some other solicitor or solicitors instructed by his clients or with the approval of the Council instructed by himself—

(a) all deeds, wills, documents constituting or evidencing title to any property, papers, books of account, records, vouchers and other documents in his or his firm's possession or control, or relating to any<sup>F5</sup> controlled trust; and]

(b) all sums of money due from him or his firm to, or held by him or his firm on behalf of, his clients or subject to any such trust as aforesaid,

and if he fails so to satisfy the Council, Schedule 1 shall apply in relation to him and the other persons mentioned in that Schedule.

(2) In this Article, the expression “the material date” means whichever is the latest of the following dates, that is to say—

(a) the date when the order<sup>F5</sup> . . . .<sup>F6</sup>, by or in pursuance of which the solicitor's name is removed from or struck off the roll, or the solicitor is suspended from practice, is to take effect;

(b) the last date on which an appeal against that order may be lodged;

(c) the date on which any such appeal is dismissed or abandoned.

F5 1989 NI 14

F6 1978 c.23

### Solicitors guilty of undue delay in certain matters

#### 38. Where—

(a) a complaint is made to the Council that there has been undue delay on the part of a solicitor in connection with any matter in which he or his firm has been instructed on behalf of a client<sup>F7</sup>. . . or any matter which relates to the administration of<sup>F7</sup> a controlled trust or in complying with an order of the Tribunal under Article 51(1)(j), (k) or (l) or (3) or Article 51A; and]

(b) the Council have by notice invited the solicitor to give an explanation in respect of that matter; and

(c) the solicitor has, within a period of not less than fourteen days specified in the said notice or such longer period as the Council may determine, failed to give an explanation in respect of that matter which the Council regard as sufficient and satisfactory; and

(d) the solicitor has been notified in writing by the Society that he has so failed;

the provisions of Schedule 1 shall apply in relation to that solicitor and the other persons mentioned in that Schedule, but as regards the documents specified in paragraph 2, and the sums of money specified in paragraph 10, of Part I of that Schedule, only in so far as they relate to the matter in the complaint.

F7 1989 NI 14

### Control of deceased solicitor's practice in certain circumstances

#### 39.—(1) Where—

(a) the Council have reasonable cause to believe and have passed a resolution stating that they have reasonable cause to believe that—

(i) a solicitor who has died, or his clerk, apprentice or servant, has been guilty of dishonesty or undue delay in connection with his practice as a solicitor or in connection with any trust of which the solicitor was a trustee; or

(ii) the personal representatives of a deceased solicitor who immediately before his death was practising as a<sup>F8</sup> sole solicitor], have been guilty of dishonesty or undue delay in administering the affairs of that solicitor's practice or in connection with any trust of which that solicitor was a trustee; or

(b) a solicitor dies and immediately before his death the provisions of Schedule 1 applied to him;

the provisions of Schedule 1 shall with necessary modifications apply or, in the case of a solicitor referred to in sub-paragraph ( b), continue to apply, to the personal representatives of that solicitor as they apply in relation to a solicitor in respect of whom the Council have passed a resolution under Article 36(1)( a).

[<sup>F8</sup>(1A) Where a solicitor dies and—

(a) immediately before his death—

(i) he was practising as a sole solicitor; and

(ii) the provisions of Schedule 1 did not apply to him; and

(b) no appointment is made under Article 32 within three months from the date of his death,

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the provisions of Schedule 1 shall, if the Council so resolve, apply with the necessary modifications to the personal representatives of that solicitor as they apply in relation to a solicitor in respect of whom the Council have passed a resolution under Article 36(1)(a).]

(2) Where no grant of representation has been issued in the estate of any solicitor to whom paragraph (1)(a)(i) or (b) applies the High Court shall, notwithstanding any enactment or rule of law to the contrary, have power to grant letters of administration (with or without will annexed) to the Society and, where such a grant is issued to them the Society may act accordingly as administrator and shall have the same rights and be subject to the same liabilities and be accountable in like manner as if the Society were the personal representatives of the deceased.

(3) On a grant being made to the Society under paragraph (2) in respect of the estate of a deceased solicitor a person shall not, without a grant being made to him, be or become entitled to administer any estate of which that deceased solicitor was an executor.

**F8** 1989 NI 14

### **On death of solicitor practising on his own account Society may deal with banking accounts of practice**

**40.**—(1) At any time after the death of a solicitor who immediately before his death was practising as a sole solicitor<sup>F9</sup>. . . the Council may, if they think fit, by notice inform the personal representatives of such solicitor and any bank<sup>[F9</sup> or building society] with whom<sup>[F9</sup> an] account in the name of the solicitor or his firm (being an account in the title of which the word “client” is required by regulations made under Article 33, to appear) is kept, that the provisions of this Article shall apply to such<sup>F9</sup>. . . account and on the date of the service of such notices (or if the notices are served on different dates, on the date of the service of the last notice) the right to operate on or otherwise deal with such<sup>F9</sup>. . . account shall, notwithstanding any enactment or rule of law to the contrary, vest in the Society to the exclusion of any personal representatives of such solicitor and shall be exercisable as from such date as aforesaid.

(2) For the purpose of this Article a certificate signed by the secretary and certifying that<sup>[F9</sup> an] account is an account in the title of which the word “client” is required by such regulations as aforesaid to appear shall be evidence of the matter certified.

**F9** 1989 NI 14

PROSPECTIVE

### **[F10]Duty to advise client as to representation in court**

**40A.**—(1) Paragraph (2) applies where—

- (a) it appears to a solicitor that a client requires, or is likely to require, legal representation in any proceedings in the High Court or the Court of Appeal;
  - (b) either—
    - (i) that solicitor is minded to arrange for another solicitor who is an authorised solicitor to provide that representation; or
    - (ii) that solicitor is an authorised solicitor and is minded to provide that representation;
- and

- (c) in representing that client in the High Court or Court of Appeal, a solicitor would need to exercise the right of audience conferred by section 106(3A) of the Judicature (Northern Ireland) Act 1978.
- (2) The solicitor must advise the client in writing—
  - (a) of the advantages and disadvantages of representation by an authorised solicitor and by counsel, respectively; and
  - (b) that the decision as to whether an authorised solicitor or counsel is to represent the client is entirely that of the client.
- (3) The Society shall make regulations with respect to the giving of advice under paragraph (2).
- (4) A solicitor shall—
  - (a) in advising a client under paragraph (2), act in the best interest of the client; and
  - (b) give effect to any decision of the client referred to in paragraph (2)(b).
- (5) For the purposes of this Article compliance with paragraph (2) in relation to any proceedings in a court in any cause or matter is to be taken to be compliance with that paragraph in relation to any other proceedings in that court in the same cause or matter.
- (6) If a solicitor contravenes this Article, any person may make a complaint in respect of the contravention to the Tribunal.
- (7) In this Article and Article 40B “authorised solicitor” means a solicitor who holds an authorisation under Article 9A.

**F10** Arts. 40A, 40B inserted (prosp.) by Justice Act (Northern Ireland) 2011 (c. 24), ss. 89(2), 111(3) (with s. 106(4))

PROSPECTIVE

#### **Duty to inform court as to compliance with Article 40A(2)**

**40B.**—(1) Where—

- (a) a solicitor has complied with Article 40A(2) in relation to the representation of a client in any proceedings in the High Court or Court of Appeal;
- (b) that client is to be represented in those proceedings by an authorised solicitor; and
- (c) in representing that client in those proceedings the authorised solicitor would need to exercise the right of audience conferred by section 106(3A) of the Judicature (Northern Ireland) Act 1978,

the solicitor shall inform the High Court or (as the case may be) the Court of Appeal of the fact mentioned in sub-paragraph (a) in such manner and before such time as rules of court may require.

(2) For the purposes of this Article compliance with paragraph (1) in relation to any proceedings in a court in any cause or matter is to be taken to be compliance with that paragraph in relation to any other proceedings in that court in the same cause or matter.

(3) If a solicitor contravenes paragraph (1), any person may make a complaint in respect of the contravention to the Tribunal.]

**F10** Arts. 40A, 40B inserted (prosp.) by Justice Act (Northern Ireland) 2011 (c. 24), ss. 89(2), 111(3) (with s. 106(4))

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## Extension of Bankruptcy Acts, etc.

*Para. (1) rep. by 1980 NI 4*

*Para. (2) rep. by 1989 NI 19*

(3) Where—

- (a) a solicitor is adjudicated a bankrupt <sup>F11</sup>or is the subject of a bankruptcy restrictions order<sup>F12</sup>or a debt relief order has been made in respect of him or he is the subject of a debt relief restrictions order] or enters<sup>F13</sup>. . . into a deed of arrangement for the benefit of his creditors or dies insolvent, and
- (b) the sum at the credit of the client account kept by the solicitor at a bank<sup>F14</sup> or building society] in accordance with regulations made under Article 33, or, where two or more such accounts are kept by the solicitor, the total of the sums at the credit of those accounts, is less than the total of the sums received by the solicitor in the course of his practice on behalf of his clients and remaining due by him to them,

then, notwithstanding any rule of law to the contrary, the sum at the credit of the client account, or where the solicitor has kept two or more client accounts the total of the sums at the credit of those accounts, shall be divisible proportionately amongst the clients of the solicitor according to the respective sums received by the solicitor in the course of his practice on behalf of his clients and remaining due by him to them.

(4) For the purposes of this Article no account shall be taken—

- (a) of any account at a bank<sup>F14</sup> or building society] kept by the solicitor in his own name for a specified client,
- (b) of sums received by the solicitor in the course of his practice on behalf of that client and remaining due by him to the client so far as represented by the sum in the<sup>F14</sup>. . . account in the name of the solicitor for the client,
- (c) of any account at a bank<sup>F14</sup> or building society] kept by the solicitor in his own name for money of any<sup>F14</sup> controlled trust, or]
- (d) of sums received by the solicitor in the course of his practice on behalf of that trust and remaining due by him to the trust so far as represented by the sum in the<sup>F14</sup>. . . account in the name of the solicitor for the trust.

*Para. (5) rep. by 1989 NI 19*

(6) For the purposes of this Article any reference to an account at a bank shall include a reference to a deposit receipt at a bank.

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|------------|---|
| <b>F11</b> | Words in art. 41(3)(a) inserted (21.4.2015) by <a href="#">The Insolvency (Northern Ireland) Order 2005 (Consequential Amendments) Order (Northern Ireland) 2015 (S.R. 2015/159)</a> , art. 1, <b>Sch. para. 5(9)</b> |
| <b>F12</b> | Words in art. 41(3)(a) inserted (7.3.2016) by <a href="#">The Debt Relief Act (Northern Ireland) 2010 (Consequential Amendments) Order (Northern Ireland) 2016 (S.R. 2016/108)</a> , art. 1, <b>Sch. para. 7(11)</b>  |
| <b>F13</b> | 1989 NI 19  |
| <b>F14</b> | 1989 NI 14  |

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