
STATUTORY INSTRUMENTS

1976 No. 582 (N.I. 12)

NORTHERN IRELAND

The Solicitors (Northern Ireland) Order 1976

Laid before Parliament in draft

Made

12th April 1976

Coming into operation in accordance with Article 2 (1)

ARRANGEMENT OF ORDER

PART I

INTRODUCTORY

Article

1. Title.
2. Commencement.
3. Interpretation.

PART II

QUALIFICATION, ADMISSION, PRACTISING CERTIFICATES, ETC.

Qualifications and admission

4. Qualifications for practising as solicitor.
5. Admission of solicitors.
6. Regulations as to the education, training, etc., of persons seeking admission as solicitors.
7. Registrar.
8. Keeping and custody of the roll.
9. Entry of name on roll on admission.

Practising certificates

10. Application for practising certificate and register of practising solicitors.
11. Issue, date and expiry of practising certificate.
12. Absence of solicitor from Northern Ireland.
13. Discretion of registrar to refuse certificate in special cases.

14. Appeals in connection with issue of practising certificates.
15. Suspension of practising certificate in certain circumstances.
16. Duration of suspension of practising certificate.
17. Publication of suspension or termination of suspension of practising certificate.
18. Evidence of holding or not holding practising certificate.

*Provisions with respect to unqualified persons
acting as solicitors*

19. Unqualified person not to act as solicitor.
20. Practising without certificate.
21. Solicitor practising while bankrupt.
22. Penalty for pretending to be a solicitor.
23. Unqualified person not to prepare certain instruments, etc.
24. Preparation of papers for probate, etc.
25. Costs not recoverable where unqualified person acts as solicitor.

PART III

PROFESSIONAL PRACTICE, CONDUCT AND DISCIPLINE

General power to make regulations

26. General power to make regulations as to professional practice, conduct and discipline of solicitors.

Restrictions on conduct of practice

27. Acting as agent for unqualified person.
28. Sharing of profits or fees with unqualified persons.
29. Employment by solicitor of persons whose names have been struck off the roll, etc.
30. Failure to disclose fact of name having been struck off the roll, etc.
31. Provisions as to clerk or apprentice found guilty of offences or party to misconduct of solicitor.
32. Winding-up practice of a deceased solicitor.

Accounts, etc.

33. Regulations as to keeping of accounts by solicitors.
34. Interest on clients' money.
35. Accountants' reports.

Control of solicitors' property in certain cases

36. Powers of Council to deal with property in control of certain solicitors and other persons.
37. Power of Council to deal with property of solicitors removed from or struck off the roll.
38. Solicitors guilty of undue delay in certain matters.
39. Control of deceased solicitor's practice in certain circumstances.
40. On death of solicitor practising on his own account Society may deal with banking accounts of practice.
41. Extension of Bankruptcy Acts, etc.

Lay observers

42. Lay observers.
Disciplinary proceedings before the Disciplinary Committee
43. The Disciplinary Committee.
44. Applications and complaints to Disciplinary Committee.
45. Procedure on application for removal of name from roll.
46. Applications for replacement of name on roll.
47. Procedure on complaint against solicitor.
48. Powers of Disciplinary Committee on inquiry being held.
49. Representation before Disciplinary Committee.
50. Application of Bankers' Books Evidence Act 1879.
51. Orders of Disciplinary Committee on inquiry.
52. Effect, notice and recording of orders of Disciplinary Committee.
53. Appeal against orders of Disciplinary Committee.
54. Publication, etc., of orders.

PART IV

THE COMPENSATION FUND AND PROFESSIONAL INDEMNITY

55. The Compensation Fund.
56. Grants in case of loss.
57. Grants in case of hardship.
58. Provisions as to grants in case of loss or hardship.
59. Subvention grants.
60. Provisions as to subvention grants.
61. Power to make regulations as to procedure.
62. Grants may be made whether or not solicitor had practising certificate.
63. Professional indemnity.

PART V

COSTS IN NON-CONTENTIOUS BUSINESS

64. Orders as to remuneration of solicitors for non-contentious business.
65. Right to furnish bill in general terms.
66. Order for taxation.
67. Action to recover solicitors' costs.
68. Provisions as to taxation.
69. Agreements between solicitors and clients as to remuneration.
70. Certain stipulations and restrictions on purchasers to be void.
71. Charging orders.

PART VI

MISCELLANEOUS AND GENERAL

72. Termination of retainer.
73. Cessation and suspension of membership of Society, etc.
74. Powers to act on behalf of the Society and proof of resolutions.
75. Regulations and rules.
76. Time limit for commencement of certain proceedings.
77. Relief to banks.
78. Administration of oaths and taking of affidavits.

79. Qualification for holding office of solicitors who have been barristers.
80. Exercise of functions of the Lord Chief Justice.
81. Savings.
82. Repeals and transitional provisions.

SCHEDULES:

SCHEDULE 1—PART I—Property in the control or possession of certain solicitors and other persons.

PART II—Powers exercisable by the Society as attorney.

SCHEDULE 2—The Compensation Fund.

SCHEDULE 3—Repeals.

At the Court at Windsor Castle, the 12th day of April 1976

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order has been approved by a resolution of each House of Parliament:

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1 of Schedule 1 to the Northern Ireland Act 1974 (a), and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

PART I

INTRODUCTORY

Title

1. This Order may be cited as the Solicitors (Northern Ireland) Order 1976.

Commencement

2.—(1) This Order shall come into operation on such day or days as the Head of the Department of Finance may by order appoint.

(2) An order under paragraph (1) may make such transitional provision as appears to the Head of the Department of Finance to be necessary or expedient in connection with the provisions thereby brought into force.

Interpretation

3.—(1) The Interpretation Act (Northern Ireland) 1954 (b) shall apply to Article 2 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

“client”, in relation to non-contentious business, includes any person who, as a principal or on behalf of another or as a trustee or executor or in any other capacity, has power, express or implied, to retain or employ, and retains or employs or is about to retain or employ, a solicitor, and any person liable to pay to a solicitor any costs for his services;

“contentious business” means business done, whether as solicitor or advocate, in or for the purposes of proceedings begun before a court (including the Lands Tribunal) or before an arbitrator appointed under the Arbitration Act (Northern Ireland) 1937 (c), not being business which falls within the definition of common form business contained in

(a) 1974 c. 28. (b) 1954 c. 33 (N.I.). (c) 1937 c. 8 (N.I.).

- section 2 of the Probates and Letters of Administration Act (Ireland) 1857 (a);
- “the Council” means the Council of the Society;
- “the Disciplinary Committee” means the Committee appointed under Article 43;
- “enactment” includes any statutory provision within the meaning of section 1 (f) of the Interpretation Act (Northern Ireland) 1954;
- “indemnity regulations” means regulations under Article 63;
- “instrument” includes anything which is a statutory instrument or a statutory document within the meaning of paragraph (d) or paragraph (e) respectively of section 1 of the Interpretation Act (Northern Ireland) 1954;
- “local authority” means a district council, a joint committee appointed by two or more such councils, an Education and Library Board established under the Education and Libraries (Northern Ireland) Order 1972 (b) or a Health and Social Services Board established under the Health and Personal Social Services (Northern Ireland) Order 1972 (c) or the Northern Ireland Housing Executive established under section 1 of the Housing Executive Act (Northern Ireland) 1971 (d);
- “non-contentious business” means any business done as a solicitor which is not contentious business as defined by this paragraph;
- “notice” means notice in writing;
- “practising certificate” has the meaning assigned to it by Article 4;
- “prescribed” means prescribed by regulations;
- “public officer” means an officer whose remuneration is appropriated by Measure or is defrayed out of money provided by Parliament;
- “the register” means the register of practising solicitors kept by the registrar under Article 10 (2);
- “the registrar” means the person appointed under Article 7 to act as registrar of solicitors;
- “regulations”, except in Article 61, means regulations made by the Society;
- “reward” includes consideration of any kind whether monetary or not;
- “the roll” means the roll of solicitors kept by the Society under Article 8;
- “secretary” means the secretary of the Society;
- “securities” includes documents constituting or evidencing the title to any property;
- “the Society” means the Incorporated Law Society of Northern Ireland;
- “solicitor” means solicitor of the Supreme Court;
- “solicitor-trustee” means a solicitor who is a sole trustee or who is co-trustee only with one or more of his partners, apprentices, clerks or servants;
- “statutory undertakers” means any person authorised by or under an enactment to construct, work or carry on any railway, airport, canal, inland navigation, dock, harbour, gas, electricity, water or other public undertaking;
- “trust” and “trustee” extend to implied and constructive trusts and to cases where a trustee has a beneficial interest in the trust property and to the duties incident to the office of a personal representative, and “trustee” includes a personal representative;

(a) 1857 c. 79 (Ir.).

(b) S.I. 1972/1263 (N.I. 12).

(c) S.I. 1972/1265 (N.I. 14).

(d) 1971 c. 5 (N.I.).

“trustee securities” means securities in which trustees are authorised by law to invest trust funds;

“unqualified person” means a person not qualified under Article 4 to act as a solicitor.

(3) A reference in this Order to a clerk, employee or servant of a solicitor or of a partner of his is a reference to a clerk, employee or servant employed by that solicitor or partner (wholly or mainly) for the purposes of his practice as such solicitor or partner and references in Parts III and IV to an apprentice of a solicitor include references to any person who is the apprentice of a partner of that solicitor.

(4) References in any enactment which came into force before 1st January 1899 to an attorney shall be construed as references to a solicitor.

PART II

QUALIFICATION, ADMISSION, PRACTISING CERTIFICATES, ETC.

Qualifications and admission

Qualifications for practising as solicitor

4. A person shall not be qualified to act as a solicitor unless—

(a) he has been admitted as a solicitor; and

(b) his name is on the roll; and

(c) he has in force a certificate issued by the registrar in accordance with the provisions of this Part authorising him to practise as a solicitor (in this Order referred to as a “practising certificate”);

and for the purposes of this Order a practising certificate shall be deemed not to be in force at any time while it is suspended by virtue of Article 15 (1).

Admission of solicitors

5.—(1) Subject to paragraph (5), a person shall not, after the commencement of this Article, be admitted as a solicitor unless he has obtained a certificate from the Society that they are satisfied—

(a) that he has complied with the requirements applicable to him by virtue of regulations made under Article 6, and

(b) as to his character and his fitness to be a solicitor.

(2) A person who has been refused a certificate under paragraph (1) may, within one month from the date on which notice of such refusal is served on him, appeal, upon notice to the Society, to the Lord Chief Justice against such refusal; and for the purposes of this paragraph a person who has not received a certificate within three weeks after applying for it shall be deemed to have received notice at the expiration of that period that the certificate has been refused.

(3) On such appeal—

(a) the Society may appear and be heard; and

(b) the Lord Chief Justice may make such order as he thinks proper, including an order directing the Society to issue the certificate and an order for the payment of costs.

(4) On production of a certificate required by paragraph (1), the Lord Chief Justice shall, unless cause to the contrary is shown to his satisfaction, by writing under his hand and in such form as he thinks fit, admit the person to whom the

certificate relates to be a solicitor, and may do so at any time whether or not during a term or sittings of the High Court.

(5) Nothing in this Article shall—

- (a) apply to an admission which is authorised by virtue of the Colonial Solicitors Act 1900 (a) and any Order in Council under that Act having effect in relation to the admission of persons as solicitors in Northern Ireland; or
- (b) apply to any person whose name has been ordered to be replaced on the roll under Article 46.

Regulations as to the education, training, etc., of persons seeking admission as solicitors

6.—(1) The Society may, with the concurrence of the Lord Chief Justice, make such regulations as they think proper with respect to the education, training, qualifications, conduct, experience and control of persons seeking admission as solicitors, and (without prejudice to the generality of the foregoing) such regulations may make provision with respect to all or any of the following matters—

- (a) where the Society so think fit, service by such persons under indentures of apprenticeship, including the requirements for admission to apprenticeship, the imposition of restrictions or conditions as to entering into such indentures by either party thereto, the conditions and duration of apprenticeship, the registration of indentures of apprenticeship, the reckoning of service thereunder, the conduct, duties and responsibilities of the respective parties thereto and the transfer or discharge of indentures of apprenticeship;
- (b) the courses of study or other training (whether provided by the Society or otherwise) to be followed by such persons, including the requirements for admission thereto and for attendance at lectures, classes, debates or other teaching or instruction;
- (c) the examinations (whether held by the Society or otherwise) to be passed by such persons, including the eligibility of candidates for such examinations, the subjects for, and the mode of conducting such examinations, the standards of proficiency to be obtained thereat, the times, places and notices thereof and the conditions upon which any exemption may be granted from any such examination or any part thereof and the issue of certificates or other confirmation of having passed or been exempted from any such examination or part thereof;
- (d) the control and discipline of such persons, including requirements to be imposed in consequence of contraventions of the regulations;
- (e) the charging and application by the Society of fees to be paid by such persons;
- (f) such transitional and incidental matters as the Society think necessary.

(2) The regulations may make the opinion, consent or approval of the Lord Chief Justice, or of any examining or other body or authority named in the regulations, or of the Society or the Council or any committee of the Council material for the purposes of any provision of the regulations.

(3) Where it appears to the Society proper to do so, the Society, or if the Society refuse to do so, the Lord Chief Justice on appeal from the Society, may

(a) 1900 c. 14.

grant relief to any person seeking to be admitted as a solicitor against any contravention of regulations under paragraph (1), to such extent as the Society, or (as the case may be) the Lord Chief Justice, thinks proper.

(4) An appeal under paragraph (3) shall be brought upon notice to the Society, and on such appeal—

(a) the Society may appear and be heard; and

(b) the Lord Chief Justice may make such order (including an order for the payment of costs) as he thinks proper.

Registrar

7. The Society shall appoint a person to act as registrar of solicitors and section 18 (2) of the Interpretation Act (Northern Ireland) 1954 shall apply to such appointment.

Keeping and custody of the roll

8.—(1) The registrar shall continue to keep the roll in the form of an alphabetical list of all solicitors.

(2) The roll shall be kept in accordance with the provisions of this Order and of regulations.

(3) The Society shall have the custody of the roll and of all documents relating thereto and shall allow any person to inspect the roll during office hours without payment.

Entry of name on roll on admission

9. On production of an admission of any person as a solicitor signed by the Lord Chief Justice and on payment of such fee as may be prescribed it shall be the duty of the registrar to cause the name of the person admitted to be entered on the roll.

Practising certificates

Application for practising certificate and register of practising solicitors

10.—(1) Application by a solicitor for a practising certificate shall be made to the registrar in such form and in accordance with such requirements and shall be accompanied by a fee of such amount as may be prescribed.

(2) Where, on an application duly made to him under paragraph (1), the registrar is satisfied as to the matters specified in Article 11 (1) (a), (b) and (c) and that no grounds exist under any other provision of this Order for refusing to issue a practising certificate, he shall cause to be entered in a register kept for that purpose the applicant's full name, his place or places of business and the date of his admission, and any person may inspect that register during office hours without payment.

(3) If in, or in relation to, an application under this Article any person makes any false statement material to the application, a complaint in respect of that statement may be made by or on behalf of the Society to the Disciplinary Committee.

(4) Nothing in this Part shall affect the operation of any restriction in force under or by virtue of this Order whereby a solicitor is restricted from engaging in practice on his own account, whether in partnership or otherwise, for a specified period.

(5) While such a restriction as is mentioned in paragraph (4) is in force, the entry in the register relating to the solicitor who is subject to that restriction and every practising certificate issued under Article 11 to that solicitor shall bear a stamp marked "Restricted from practice on his own account until (being the date on which the relevant restriction ends)."

Issue, date and expiry of practising certificate

11.—(1) Subject to the provisions of Articles 12 and 13, the registrar on being satisfied that—

- (a) the name of the applicant is on the roll;
- (b) he is not for the time being suspended from practice; and
- (c) the application referred to in Article 10 complies with the provisions of that Article and of regulations;

shall within three weeks of the receipt of such application, issue to the applicant a practising certificate in accordance with regulations, and in such form as may be prescribed.

(2) Every practising certificate issued after 5th January in any year and before 6th February next following shall bear the date of 6th January in that year, and every other practising certificate shall bear the date of the day on which it is issued.

(3) Every practising certificate shall have effect from the beginning of the day of which it bears the date, and that date shall be entered by the Society on the register.

(4) Every practising certificate shall expire at the end of 5th January next after it is issued except that, where the name of a solicitor is removed from or struck off the roll, the practising certificate (if any) of that solicitor shall expire forthwith and the date of such expiration shall be entered on the register.

Absence of solicitor from Northern Ireland

12.—(1) If a solicitor—

- (a) has been absent from Northern Ireland for a period of, or periods exceeding in the aggregate, six months in any period of twelve consecutive months; and
- (b) without reasonable excuse, has been so absent without the consent of the Society or without complying with such terms and conditions as may be fixed by the Society in relation to such absence;

the Society may direct the registrar to refuse to issue a practising certificate to the solicitor, or, where such a certificate has been issued to the solicitor, the Society may apply to the Lord Chief Justice to recall that certificate.

(2) Where a direction is given, or an application is made, under this Article then in the former case the registrar shall refuse to issue the practising certificate and in the latter case the Lord Chief Justice may recall a practising certificate which has been issued.

(3) Where the registrar, by direction of the Society under the provisions of this Article, refuses to issue to a solicitor a practising certificate, the solicitor may on serving ten day's notice on the Society, apply for a certificate to the Lord Chief Justice who may make such order in the matter as he thinks fit.

(4) This Article shall not apply in the case of a solicitor who has been absent from Northern Ireland for any such period or periods as are specified in paragraph (1), if that solicitor during the said period or periods was resident in the Republic of Ireland.

Discretion of registrar to refuse certificate in special cases

13.—(1) This Article shall have effect in relation to a solicitor's application for a practising certificate in any of the following circumstances:—

- (a) where he applies for a first practising certificate after the expiration of five years from the passing of his final examination; or
- (b) where he applies for a practising certificate, having neglected so to do for twelve months after the expiration of the last practising certificate issued to him; or
- (c) where he applies for a practising certificate while he is an undischarged bankrupt; or
- (d) where, having been suspended from practice or having had his name struck off the roll, he first applies for a practising certificate after the expiration of his suspension or his re-admission to the roll, as the case may be; or
- (e) where he applies for a practising certificate while any fine, penalty or costs imposed upon or ordered to be paid by him under this Order remain unpaid; or
- (f) where he applies for a practising certificate while—
 - (i) any power is being exercised with respect to his person or property under the provisions of any enactment or rule of law relating to persons of unsound mind who are incapable of managing their affairs; or
 - (ii) he is a patient for the time being detained in a hospital under Part II of the Mental Health Act (Northern Ireland) 1961 (a) in pursuance of an application for admission under section 12 of that Act or is subject to guardianship in pursuance of a guardianship application under section 21 of that Act; or
- (g) where, having more than one office or place of business at any one time (disregarding, where he has a Belfast agent, the office or place of business of such agent), he has been invited by the Society to satisfy them that he exercises adequate personal supervision over each such office or place of business and, having failed so to satisfy the Society, has been notified in writing by the Society that he has so failed; or
- (h) where, having been invited by the Society to give an explanation in respect of any matter affecting his conduct and having failed to give the Society such an explanation as appears to them to be satisfactory, he has been notified in writing by the Society that he has so failed; or
- (i) where he has had an order of attachment made against him which has not been discharged; or
- (j) where he has had a judgment or decree made against him which—
 - (i) involves the payment by him of a sum of money other than costs; and
 - (ii) is not a judgment or decree in relation to which he is entitled, as respects the whole effect of the judgment or decree upon him, to indemnity or relief from any other person;and has not produced to the registrar evidence of the satisfaction of such judgment or decree or of his intention to appeal against such judgment or decree; or
- (k) where he has been adjudicated a bankrupt and obtained his discharge or has entered into a composition with his creditors or a deed of arrangement for their benefit.

(a) 1961 c. 15 (N.I.).

(2) The solicitor shall, unless the registrar or the Lord Chief Justice otherwise orders, give to the registrar, at least three weeks before the application for a practising certificate is made, notice of his intention to make the application.

(3) Subject to paragraph (4), the registrar may in his discretion refuse the application.

(4) Where a solicitor applies for a practising certificate in a case in which paragraph (1) has effect by virtue only of an order, judgment or decree such as is mentioned in sub-paragraph (i) or (j) of that paragraph and an appeal has been made to the appropriate court against that order, judgment or decree, the registrar shall not refuse the application before the determination of that appeal unless he is of the opinion that the proceedings on that appeal have been unduly protracted by the appellant or are unlikely to be successful.

Appeals in connection with issue of practising certificates

14.—(1) A solicitor who has been refused a practising certificate under Article 13 (3) may, within one month from the date on which notice of such refusal is served on him, appeal to the Council against such refusal; and on such appeal the Council may in their discretion direct the registrar—

(a) to grant or refuse the application;

(b) to issue the certificate subject to such terms and conditions as the Council may direct.

(2) A solicitor aggrieved by a decision of the Council under paragraph (1) refusing a practising certificate or as to any terms and conditions subject to which such a certificate is issued may, within one month from the date on which notice of that decision is served on him, appeal to the Lord Chief Justice who may affirm the decision or may direct the registrar to issue a certificate to the solicitor subject to such terms and conditions (if any) as the Lord Chief Justice thinks fit.

(3) For the purposes of this Article a solicitor who has not received a practising certificate within three weeks after he applied to the registrar for it or, as the case may be, appealed to the Council against its refusal, shall be deemed to have received notice at the expiration of that period that the certificate has been refused.

(4) If a solicitor contravenes any of the terms and conditions subject to which a practising certificate has been issued under this Article, any person may make a complaint in respect of the contravention to the Disciplinary Committee.

Suspension of practising certificate in certain circumstances

15.—(1) The making by the Disciplinary Committee, or by the Supreme Court or any court, division or judge thereof, of an order suspending a solicitor from practice and the adjudication of bankruptcy of a solicitor shall operate to suspend the practising certificate (if any) of that solicitor.

(2) The registrar shall be entitled without payment of any fee to inspect the file of proceedings in bankruptcy relating to any solicitor against whom proceedings in bankruptcy have been taken and to be supplied with office copies of those proceedings on payment of the usual charges for the copies.

Duration of suspension of practising certificate

16.—(1) Subject to the provisions of this Article, where a practising certificate has become suspended by virtue of Article 15, that suspension shall continue until the certificate expires.

(2) The suspension of a practising certificate by virtue of Article 15 by reason of an adjudication in bankruptcy shall terminate if the adjudication is annulled and an office copy of the order annulling the adjudication has been served upon the Society.

(3) Where a solicitor's practising certificate has become suspended—

(a) by virtue of Article 15 by reason of his adjudication in bankruptcy; or

(b) by virtue of Article 15 by reason of his suspension from practice and the period of his suspension from practice expires before the date of expiry of the certificate,

the solicitor may at any time before the certificate expires (and, in the case of adjudication in bankruptcy, while the adjudication remains unannulled) apply to the Council to terminate the suspension, and the Council may in their discretion—

(i) by order terminate the suspension either unconditionally or subject to such terms and conditions as the Council think fit; or

(ii) refuse the application.

(4) A solicitor aggrieved by a decision of the Council under paragraph (3) not to terminate his suspension or as to any terms and conditions subject to which his suspension is terminated may, within one month from the date on which notice of that decision is served on him, appeal to the Lord Chief Justice who may affirm the decision or may terminate the suspension either unconditionally or subject to such terms and conditions as the Lord Chief Justice thinks fit.

(5) For the purposes of paragraph (4) a solicitor, who has not received notice of the termination of his suspension within three weeks after he made application for such termination, shall be deemed to have received notice at the expiration of that period that the application has been refused.

(6) Where a solicitor's practising certificate has become suspended by virtue of Article 15 by reason of his suspension from practice and the suspension of his practising certificate is terminated unconditionally under paragraph (3) or (4), then, notwithstanding Article 13 (1) (d), that Article shall not thereafter have effect in relation to that solicitor by virtue of that suspension from practice.

(7) If a solicitor contravenes any of the terms and conditions subject to which his suspension has been terminated under paragraph (3) or (4), any person may make a complaint in respect of the contravention to the Disciplinary Committee.

Publication of suspension or termination of suspension of practising certificate

17. Where a solicitor's practising certificate has become suspended the Society shall forthwith cause notice of that suspension to be published in the Belfast Gazette and a note thereof to be entered against the name of the solicitor in the roll; and where the suspension is terminated the Society shall forthwith cause a note of that termination to be entered against the name of the solicitor in the roll, and, if so requested in writing by the solicitor, a notice thereof to be published in the Belfast Gazette.

Evidence of holding or not holding practising certificate

18.—(1) Any list purporting to be published by the authority of the Society and to contain the names of solicitors who have obtained practising certificates for the year referred to in the list shall, unless the contrary is proved, be evidence that the persons named in that list are solicitors holding those certificates.

(2) The absence from such list of the name of any person shall, unless the contrary is proved, be evidence that that person is not qualified to practise as a solicitor during the year referred to in the list, and, as respects any such person, an extract from the roll, certified as correct by the registrar, shall be evidence of the facts appearing in the extract.

Provisions with respect to unqualified persons acting as solicitors

Unqualified person not to act as solicitor

19.—(1) Subject to Article 81(b), an unqualified person shall not act as a solicitor, or as such sue out any writ or process, or commence, carry on or defend any action, suit or other proceeding, in the name of any other person or in his own name, in any court of civil or criminal jurisdiction, or act as a solicitor in any cause or matter, civil or criminal, to be heard or determined before any court or tribunal.

- (2) If any person contravenes paragraph (1) he shall—
- (a) be guilty of contempt of the court in which the action, suit, cause, matter or proceeding in relation to which he so acts is brought or taken, and may be punished accordingly;
 - (b) be incapable of maintaining any action for any costs in respect of anything done by him in the course of so acting; and
 - (c) in addition to any other penalty, liability or disability to which he may be subject, be guilty of an offence and be liable on summary conviction to a fine not exceeding £200.

Practising without certificate

20.—(1) Where—

- (a) complaint is made to the Lord Chief Justice that a solicitor who has not in force a practising certificate entitling him to practise as a solicitor has wilfully and knowingly appeared, acted, or practised in any respect as a solicitor in any action, suit, matter or transaction; and
- (b) the matter of the complaint is proved to the satisfaction of the Lord Chief Justice;

the Lord Chief Justice may impose upon the solicitor a fine not exceeding £100 and, in addition to or instead of imposing a fine, may suspend the solicitor from practising as such during such period as to the Lord Chief Justice may seem fit, or may order the name of the solicitor to be struck off the roll.

(2) Any penalties which may be imposed under paragraph (1) shall be in addition to and not in substitution for any penalty, liability or disability incurred under any other provision of this Order or any other enactment by a solicitor acting or practising as such while he is an unqualified person.

Solicitor practising while bankrupt

21. If a solicitor who has been adjudicated bankrupt continues to practise as a solicitor—

- (a) while undischarged from bankruptcy; and
- (b) without having had the suspension of his practising certificate terminated under Article 16 (3) or (4) or, if the suspension was terminated subject to terms and conditions, without complying with those terms or conditions,

he shall be guilty of an offence and shall be liable, on conviction on indictment, to imprisonment for a term not exceeding two years.

Penalty for pretending to be a solicitor

22. Any unqualified person who wilfully pretends to be, or takes or uses any name, title, addition or description implying that he is, qualified or recognised by law as qualified to act as a solicitor shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £200.

Unqualified person not to prepare certain instruments, etc.

23.—(1) Subject to paragraph (2), any unqualified person who either directly or indirectly—

- (a) draws or prepares any instrument of transfer or charge or any other document for the purposes of the Land Registration Act (Northern Ireland) 1970 (a) or any enactment repealed or proposed to be repealed by that Act;
- (b) draws or prepares any instrument relating to real or personal estate, or any legal proceeding; or
- (c) lodges any instrument or other document or causes it to be lodged for registration in the Land Registry or the Registry of Deeds, or makes any application (other than an application to search in, or to receive copies of or extracts from, a register) to the Registrar of Titles,

shall, unless he proves that the act was not done for or in expectation of any fee, gain or reward, be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £200.

(2) Paragraph (1) shall not apply to—

- (a) a barrister-at-law or duly certificated notary public;
- (b) any public or local authority officer drawing or preparing instruments or applications in the course of his duty;
- (c) any person employed merely to engross any instrument, application or proceeding;
- (d) a patent agent within the meaning of the Patent Act 1949 (b), preparing, for use in proceedings under that Act before the Comptroller-General of Patents, Designs and Trade Marks, or for the purpose of any appeal on such proceedings, any document other than a deed;
- (e) an agent on behalf of a landlord for whom such agent collects rent, or an employee of such agent, who draws or prepares—
 - (i) a contract of tenancy for any period not exceeding three years;
 - (ii) a notice to quit or deliver up possession of property;
 - (iii) an advertisement relating to the sale or letting of property; or
 - (iv) any notice served under or for the purposes of any enactment for the time being in force with respect to the extension or enlargement of leasehold interests in land.

(3) For the purposes of paragraphs (1) and (2), the expression “instrument” does not include—

- (a) a will or other testamentary instrument;
- (b) an agreement under hand only;
- (c) a letter or power of attorney; or
- (d) a transfer of stock containing no trust or limitation thereof.

(a), 1970 c. 18 (N.I.).

(b) 1949 c. 87.

Preparation of papers for probate, etc.

24.—(1) Any unqualified person, not being a barrister-at-law or a duly certificated notary public, who either directly or as an agent of any other person, whether or not that other person is a qualified person, barrister-at-law or duly certificated notary public, takes instructions for or draws or prepares any papers on which to found or oppose a grant of probate or of letters of administration shall, unless he proves that the act was not done for or in expectation of any fee, gain or reward, be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £200.

(2) Any penalty which may be imposed under paragraph (1) shall be in addition to and not in substitution for any penalty, liability or disability to which the unqualified person may be subject under any other provision of this Order or any other enactment.

Costs not recoverable where unqualified person acts as solicitor

25.—(1) Costs in respect of anything done by a person who acts or purports to act as a solicitor while he is not qualified so to act shall not be recoverable in any action, suit or matter by that person or any person claiming through or under him.

(2) Nothing in paragraph (1) shall affect any indemnity which a client of such a person as is referred to in that paragraph has under an order of any court in respect of costs awarded under the order, to the extent (if any) to which the client may have paid such costs to that person at the date of the order.

(3) Nothing in paragraph (1) or in Article 19 (2) (b) shall prevent the recovery of money paid or to be paid by a solicitor on behalf of a client in respect of anything done by the solicitor while acting for the client without holding a practising certificate in force, where the money would have been recoverable if the solicitor had held such a certificate in force when so acting.

PART III

PROFESSIONAL PRACTICE, CONDUCT AND DISCIPLINE

General power to make regulations

General power to make regulations as to professional practice, conduct and discipline of solicitors

26.—(1) Without prejudice to any other provision of this Part, the Society may make regulations as to the professional practice, conduct and discipline of solicitors.

(2) Without prejudice to the generality of paragraph (1), regulations may provide for restricting a solicitor from—

- (a) engaging in practice on his own account whether in partnership or otherwise for such period, not exceeding three years from the date on which he is first admitted as a solicitor, as may be specified in the regulations;
- (b) acting in any transaction for more than one party.

(3) If a solicitor contravenes any regulation made under this Article, any person may make a complaint in respect of the contravention to the Disciplinary Committee.

Restrictions on conduct of practice

Acting as agent for unqualified person

27.—(1) Where—

- (a) a complaint is made to the Lord Chief Justice that a solicitor has wilfully and knowingly—
- (i) acted as agent in any action, suit, matter or transaction for any unqualified person; or
 - (ii) permitted his name to be in any way made use of in any action, suit, matter or transaction upon the account, or for the profit, of any unqualified person; or
 - (iii) sent any process to an unqualified person; or
 - (iv) done any other act so as to enable an unqualified person to appear, act or practise in any respect, as a solicitor in any action, suit, matter or transaction; and
- (b) the matter of the complaint is proved to the satisfaction of the Lord Chief Justice;

then the Lord Chief Justice may impose upon the solicitor a fine not exceeding £100 and, in addition to or instead of imposing a fine, may suspend the solicitor from practising as such during such time as to the Lord Chief Justice may seem fit, or may order the name of the solicitor to be struck off the roll.

(2) Upon complaint and proof being made under paragraph (1), the Lord Chief Justice may commit an unqualified person so appearing, acting or practising as aforesaid to prison, for any term not exceeding one year.

(3) This Article shall not apply where the solicitor is acting by virtue of an appointment made pursuant to Article 32.

Sharing of profits or fees with unqualified persons

28.—(1) Subject to paragraph (2), any solicitor who shares any of his professional profits or fees with an unqualified person shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £250.

- (2) Paragraph (1) shall not apply in any of the following cases, namely—
- (a) where a person who has ceased to practise as a solicitor receives from any solicitor a share of the profits or fees of the latter as a price or value of the practice which he has transferred to the latter, or receives a share of such profits as a voluntary or other allowance out of the profits or fees of a practice in which he has been a partner; or
 - (b) where the widow, children or personal representatives of any deceased solicitor receive from any solicitor who has purchased or succeeded to the practice of the deceased solicitor, or from any firm of solicitors of which the deceased solicitor was a partner at his death, or from any solicitor acting by virtue of an appointment made pursuant to Article 32, any share of the profits of the practice of the deceased solicitor or such firm; or
 - (c) where professional profits or fees are received by a solicitor employed by a government department (including a department of the government of the United Kingdom), local authority, bank or trade union or statutory undertakers in respect of work done in the course of his duty, if the solicitor is in the whole time or exclusive employment of the government department, local authority, bank or trade union or statutory undertakers and does not engage in private practice as a solicitor; or

- (d) where an agreement for sharing fees is made between a solicitor in Northern Ireland and a person carrying on the practice or profession of the law in some other part of the United Kingdom or the Commonwealth or in the Republic of Ireland or in a foreign country; or
- (e) where, for the purposes of making legal aid and advice more readily available to persons in need, the Council have directed in writing that paragraph (1) shall not apply in relation to a non-profit making organisation specified in the direction.

Employment by solicitor of persons whose names have been struck off the roll, etc.

29.—(1) A solicitor shall not, in connection with his practice as a solicitor, without the written consent of the Council, which may be given for such period and subject to such terms and conditions (if any) as the Council think fit, employ or remunerate any person who to his knowledge is disqualified from practising as a solicitor by reason of the fact that his name has been struck off the roll, or that he is suspended from practising as a solicitor or that he has been refused a practising certificate or that his practising certificate is suspended while he is an undischarged bankrupt.

(2) A solicitor aggrieved by a decision of the Council under paragraph (1) refusing to grant any such consent as aforesaid, or as to any terms and conditions attached by the Council to the consent may, within one month from the date on which notice of that decision is served on him, appeal to the Lord Chief Justice who may affirm the decision or may direct the Council to grant the consent for such period and subject to such terms and conditions (if any) as the Lord Chief Justice thinks fit.

(3) For the purposes of paragraph (2) a solicitor who has not received the Council's consent within three weeks after he applied for it, shall be deemed to have received notice at the expiration of that period that the consent has been refused.

(4) If a solicitor contravenes any of the terms and conditions subject to which any consent has been given under this Article, any person may make a complaint in respect of the contravention to the Disciplinary Committee.

Failure to disclose fact of name having been struck off the roll, etc.

30. Any person who, while he is disqualified from practising as a solicitor by reason of the fact that his name has been struck off the roll or that he is suspended from practising as a solicitor or that he has been refused a practising certificate or that his practising certificate is suspended while he is an undischarged bankrupt, seeks or accepts employment by a solicitor in connection with that solicitor's practice, without previously informing that solicitor that he is so disqualified as aforesaid, shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £100.

Provisions as to clerk or apprentice found guilty of offences or party to misconduct of solicitor

31.—(1) Where—

- (a) a person has been convicted of any offence under the Theft Act (Northern Ireland) 1969(a) or has been convicted, in Northern Ireland or elsewhere, of any offence involving dishonesty; or
- (b) it appears to the Society, in the course or as a result of any proceedings before the Disciplinary Committee that a person who is or was a clerk or an apprentice to a solicitor, but is not himself a solicitor, has been a

(a) 1969 c. 16 (N.I.).

party to any act or default of such solicitor, in respect of which an application or complaint has been or might be made against such solicitor to the Disciplinary Committee under any enactment; or

- (c) a person has had his name removed from or struck off a roll of solicitors (otherwise than at his own request) or has been suspended from practising as a solicitor;

an application may be made by or on behalf of the Society to the Disciplinary Committee that an order be made directing that, as from a date to be specified therein, no solicitor shall, in connection with his practice as a solicitor, take or retain the said person into or in his employment or remunerate the said person without the written consent of the Society, which may be given for such period and subject to such terms and conditions (if any) as the Society think fit.

(2) Such application shall be made to and heard by the Disciplinary Committee in accordance with rules made by them with the approval of the Lord Chief Justice under this Order and, on the hearing of the application, the Disciplinary Committee shall have power to make such an order as is mentioned in paragraph (1) and an order as to the payment of costs by any party.

(3) The provisions of Articles 48 to 54 shall have effect for the purposes of this Article, so however that, in the application of Article 52 for the purposes of this Article, references to an order directing that a solicitor is to be suspended from practice shall be construed as including references to an order made as mentioned in paragraph (1) with respect to any person.

(4) Any person who, while an order under this Article is in force in respect of him, seeks or accepts employment by or remuneration from a solicitor in connection with his practice as a solicitor without previously informing him of such order, shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £100.

(5) If a solicitor contravenes any of the terms and conditions subject to which any consent has been given under this Article, any person may make a complaint in respect of the contravention to the Disciplinary Committee.

(6) In this Article the expression "a clerk or an apprentice" shall include a clerk, articled clerk or apprentice who was employed as such by any solicitor in Northern Ireland, Great Britain or the Republic of Ireland and paragraph (1) (c) applies to any person whose name has been removed from or struck off a roll or who has been suspended from practice in either Great Britain or the Republic of Ireland so long as he remains so removed or struck off or suspended from practice.

Winding-up practice of a deceased solicitor

32. On the death of a solicitor his personal representatives may, notwithstanding anything to the contrary in any enactment, appoint a duly qualified solicitor to carry on the practice of the deceased solicitor for the purpose of the beneficial winding-up thereof for such reasonable period and on such terms as the Society may approve.

Accounts, etc.

Regulations as to keeping of accounts by solicitors

33.—(1) The Society shall as soon as practicable make regulations—

- (a) as to the opening and keeping by solicitors of accounts at banks—
 - (i) for clients' money;

- (ii) for money of any trust of which the sole trustee is a solicitor or the trustees are a solicitor with a partner, clerk, apprentice or servant of his or with more than one of such persons;
 - (b) as to the keeping by solicitors of accounts containing particulars and information as to money received, held or paid by them—
 - (i) for or on account of their clients;
 - (ii) for or on account of any such trust as is mentioned in sub-paragraph (a);
 - (c) as to the investment in trustee securities of the money of any such trust as is mentioned in sub-paragraph (a);
 - (d) empowering the Society to take such action and collect such evidence as may be necessary to enable them to ascertain whether or not the regulations are being complied with.
- (2) If a solicitor contravenes any regulation made under this Article any person may make a complaint in respect of that contravention to the Disciplinary Committee.
- (3) Regulations made under paragraph (1) (a) to (c) shall not apply to—
- (a) a solicitor acting in the course of his employment as a public officer; or
 - (b) a solicitor who holds an office under any local authority or statutory undertakers and who does not engage in private practice as a solicitor;
- and such regulations shall not apply to a solicitor who holds an office to which sub-paragraph (b) applies and who is engaged in private practice as a solicitor, except so far as regards money received, held or paid by him in the course of that private practice.

Interest on clients' money

34.—(1) Regulations may make provision—

- (a) for requiring a solicitor, in such cases as the regulations may prescribe, either—
 - (i) to keep on deposit in a separate account at a bank for the benefit of the client money received for or on account of a client; or
 - (ii) to make good to the client out of the solicitor's own money a sum equivalent to the interest which would have accrued if the money so received had been so kept on deposit;
 - (b) for defining the cases in which a solicitor may be required to act in accordance with the regulations by reference to the amount of any sum received or to the period for which it is or is likely to be retained or both; and
 - (c) for enabling a client (without prejudice to any other remedy) to require that any question arising under the regulations in relation to the client's money shall be referred to and determined by the Society.
- (2) Except as provided by regulations, a solicitor shall not be liable by virtue of the relation between solicitor and client to account to any client for interest received by the solicitor on money deposited at a bank, being money received or held for or on account of his clients generally.
- (3) Nothing in this Article or in regulations made thereunder shall—
- (a) affect any arrangement in writing, whenever made, between a solicitor and his client as to the application of the client's money or interest thereon; or
 - (b) apply to money received by a solicitor being money subject to a trust of which the solicitor is a trustee.

Accountants' reports

35.—(1) Every solicitor shall once in each period of twelve months ending on 5th January, unless he satisfies the Council that owing to the circumstances of his case it is unnecessary so to do, deliver to the Society a report signed by an accountant (in this Article referred to as “an accountant’s report”) and containing such information as may be prescribed.

(2) An accountant’s report shall be delivered to the Society not more than six months (or such other period as may be prescribed) after the end of the accounting period specified in that report.

(3) Subject to regulations, the accounting period for the purposes of an accountant’s report shall—

- (a) begin at the expiry of the last preceding accounting period for which an accountant’s report has been delivered;
- (b) cover not less than twelve months; and
- (c) where possible, consistently with sub-paragraphs (a) and (b), correspond to a period or consecutive periods for which the accounts of the solicitor or his firm are ordinarily made up.

(4) The Society shall make regulations to give effect to the provisions of this Article, and those regulations shall prescribe—

- (a) what qualification shall be held by an accountant by whom an accountant’s report may be given;
- (b) the information to be contained in an accountant’s report in accordance with paragraph (1);
- (c) the nature and extent of the examination to be made by the accountant of the books and accounts of a solicitor or his firm and of any other relevant documents with a view to the signing of a report to be delivered by the solicitor under this Article;
- (d) the form of the accountant’s report; and
- (e) the evidence (if any) which shall satisfy the Council that the delivery of an accountant’s report is unnecessary and the cases in which such evidence is or is not required.

(5) Regulations may include provision—

- (a) permitting in such special circumstances as may be defined in the regulations a different accounting period from that specified in paragraph (3); and
- (b) regulating any matters of procedure or matters incidental, ancillary or supplemental to the provisions of this Article.

(6) If any solicitor fails to comply with the provisions of this Article or of any regulations made thereunder, a complaint in respect of that failure may be made by or on behalf of the Society to the Disciplinary Committee.

(7) A certificate under the hand of the secretary shall, until the contrary is proved, be evidence that a solicitor has or, as the case may be, has not delivered to the Society an accountant’s report or supplied any evidence required under this Article or regulations.

(8) This Article shall not apply to any solicitor to whom regulations under Article 33 (1) (a) to (c) do not apply by virtue of paragraph (3) of that Article; and in relation to a solicitor to whom those regulations apply by virtue of that paragraph only as regards money received, held or paid in the course of a private practice, this Article shall have effect only in relation to such money.

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, or his clerk, apprentice or servant, 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
- (b) in consequence of the act or default of any solicitor or of any clerk, apprentice or servant of his—
 - (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 himself or any matter which relates to the administration of a trust of which that solicitor is the sole trustee or co-trustee only with one or more of his partners, clerks, apprentices or servants; 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 any trust of which he is such sole trustee or co-trustee as aforesaid 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 either in his own name or as the sole solicitor practising in the name of a firm and—

- (a) who is adjudicated bankrupt 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
- (c) in respect of whose person or property any power is being exercised under the provision of any enactment or rule of law relating to persons of unsound mind who are incapable of managing their affairs or who is a patient for the time being detained in a hospital under Part II of the Mental Health Act (Northern Ireland) 1961 in pursuance of an application for admission under section 12 of that Act or is subject to guardianship in pursuance of a guardianship application under section 21 of that Act; 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 three months 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.

(3) Where the Council have passed a resolution to the effect that they are satisfied that a solicitor or solicitor-trustee—

- (a) has failed to comply with any provision respecting the keeping of accounts contained in regulations made under Article 33 or with any requirement made in pursuance of any such regulations for the production of books of account or other documents; 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 solicitor-trustee and the other persons mentioned in that Schedule.

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 trust of which he is the sole trustee or co-trustee only with one or more of his partners, clerks, apprentices or servants; 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 of the Disciplinary Committee, or of the Supreme Court or any court, division or judge thereof, 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.

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 or himself or any matter which relates to the administration of a trust of which that solicitor is the sole trustee or co-trustee only with one or more of his partners, clerks, apprentices or servants; 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.

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 solicitor in his own name, or as sole solicitor under a firm name, 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).

(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.

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 whether in his own name or in a firm name the Council may, if they think fit, by notice inform the personal representatives of such solicitor and any bank with whom a banking 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 banking 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 banking 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 a banking 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.

Extension of Bankruptcy Acts, etc.

41.—(1) In section 21 of the Bankruptcy (Ireland) Amendment Act 1872 (a), after subsection (8), there shall be inserted the following subsection—

“(9) That the debtor is a solicitor in respect of whom the Incorporated Law Society of Northern Ireland have been appointed attorney by virtue of Part III of the Solicitors (Northern Ireland) Order 1976;”

(2) The Society as attorney for any solicitor under this Part may present a petition for adjudication in bankruptcy against that solicitor, who may be adjudicated bankrupt on such a petition notwithstanding that the Society do not allege or prove that any debt is owing by him to the Society.

(3) Where—

(a) a solicitor is adjudicated a bankrupt or enters or being an arranging debtor vests his estate in the official assignee for realisation and distribution amongst his creditors or enters 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 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 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 bank account in the name of the solicitor for the client,

(c) of any account at a bank kept by the solicitor in his own name for money of any trust of which the sole trustee is the solicitor or the trustees are the solicitor with a partner, clerk or servant of his or with more than one of such persons, 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 bank account in the name of the solicitor for the trust.

(5) Where the Official Assignee in Bankruptcy is appointed a trustee by the High Court under section 40 of the Trustee Act (Northern Ireland) 1958(b) in respect of any account or accounts kept by a solicitor at a bank in accordance with regulations made under Article 33, there shall be payable such court fees as are payable on a realisation account of the Official Assignee in a bankruptcy matter.

(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.

(a) 1872 c. 58.

(b) 1958 c. 23 (N.I.).

Lay observers

Lay observers

42.—(1) The Head of the Department of Finance may, after consultation with the Lord Chief Justice, appoint one or more persons (in this Article referred to as “lay observers”) to report to the Lord Chief Justice, the Head of that Department and the Council on the nature of complaints being made to the Society about the conduct of solicitors and the manner in which the complaints are being dealt with by the Society.

(2) No solicitor or member of the Bar of Northern Ireland shall be appointed a lay observer.

(3) A lay observer shall hold and vacate office in accordance with the terms of his appointment.

(4) The Head of the Department of Finance may, after consultation with the Lord Chief Justice and the Council, give general directions to lay observers about the scope and discharge of their functions.

(5) The Council shall consider any report which they receive from a lay observer and shall notify him of any action which has been taken in consequence.

(6) The Department of Finance shall pay to lay observers such remuneration and other allowances (if any) as that Department may determine.

(7) In Part III of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (a) (offices the holders of which are disqualified for membership of the Northern Ireland Assembly) at the appropriate place in alphabetical order insert—

“Lay observers appointed under Article 42 of the Solicitors (Northern Ireland) Order 1976”.

Disciplinary proceedings before the Disciplinary Committee

The Disciplinary Committee

43.—(1) The Lord Chief Justice, after consultation with the Council, shall appoint from among practising solicitors of not less than ten years standing a Disciplinary Committee consisting of not less than five nor more than twelve persons.

(2) The Lord Chief Justice, after consultation with the Council, may remove a member of the Disciplinary Committee, may fill a vacancy therein and, subject to the provisions of paragraph (1), may increase or reduce the number of members thereof.

(3) The Disciplinary Committee may, subject to paragraph (4), act notwithstanding one or more than one vacancy in their membership and any application or complaint made to, or other matter dealt with by or before, the Disciplinary Committee may be dealt with or disposed of notwithstanding any change in the membership of the Committee.

(4) The quorum of the Disciplinary Committee shall be three or such other number as the Committee by rules provide.

(5) Subject to the provisions of this Order and of any rules made under paragraph (6), the Disciplinary Committee may regulate their procedure in such manner as they may think fit.

(a) 1975 c. 25.

(6) The Disciplinary Committee may make rules regulating applications to the Committee and the hearing, conduct and determination of such applications and of inquiries held by the Committee.

(7) The Disciplinary Committee may appoint a secretary, who shall be a member of the Society but shall not be a member of the Committee.

(8) The Society shall defray the costs incurred by the Disciplinary Committee, which shall include the amount of any remuneration which the Society may agree to pay to the person appointed as secretary.

Applications and complaints to Disciplinary Committee

44.—(1) The following applications and complaints shall be made to and heard by the Disciplinary Committee—

(a) an application by a solicitor to procure the removal of his name from the roll;

(b) an application for an order recommending the replacement on the roll of a name which has been struck off the roll;

(c) a complaint by the Society or any other person—

(i) that a solicitor has been guilty of misconduct, including conduct tending to bring the solicitors' profession into disrepute; or

(ii) that a solicitor has contravened a provision of this Order or of any regulation or order made thereunder (including an order made by or on appeal from the Disciplinary Committee), or any term or condition subject to which any certificate has been issued, or any consent has been given, to him, or his suspension has been terminated, by the Lord Chief Justice, the Council or the Society under any provision of this Order; or

(iii) that a solicitor has been convicted in Northern Ireland of a criminal offence tending to bring the solicitors' profession into disrepute, or has been convicted outside Northern Ireland of an offence of like character which if committed in Northern Ireland would be a criminal offence;

(d) a complaint requiring a solicitor to answer allegations contained in an affidavit; or

(e) any other complaint which is authorised to be made to the Committee under any other provision of this Order or under any other enactment.

(2) An application or complaint under paragraph (1) shall be in writing, shall be signed by the person making it and shall be sent to the Disciplinary Committee together with—

(a) an affidavit by that person setting forth the facts giving rise to the application or complaint; and

(b) the documents relied on in support of the application or complaint, or duly authenticated copies of those documents;

and the Disciplinary Committee shall take into consideration every such application or complaint together with such affidavit and documents as aforesaid.

(3) Where a judge of the Supreme Court, a county court judge or a resident magistrate reports to the Society any case where it appears to him that a solicitor is *prima facie* guilty of professional misconduct, the Society shall make a complaint to the Disciplinary Committee under paragraph (1) with respect to the solicitor.

Procedure on application for removal of name from roll

45. Where an application is made under Article 44 (1) (a) the Disciplinary Committee shall inform the Society thereof and shall take into consideration

any representations which may be made to them by the Society respecting the application and—

- (a) if they decide that the name of the applicant may properly be removed from the roll without further inquiry, shall order accordingly; or
- (b) if they decide that there is cause for inquiry, shall hold an inquiry.

Applications for replacement of name on roll

46.—(1) The name of a solicitor whose name has been removed from or struck off the roll shall not be replaced on the roll unless an application is first made under Article 44 (1) (b) to the Disciplinary Committee for an order recommending such replacement and on such application the Disciplinary Committee shall inform the Society thereof and shall take into consideration any representations which may be made to them by the Society respecting the application, and shall by order either refuse the application or recommend such replacement.

(2) The Lord Chief Justice may, on an application made to him in chambers upon notice to the Society and after taking into consideration any order made by the Disciplinary Committee under paragraph (1) and any representations made to him by the Society, order the registrar to replace on the roll the name of a solicitor whose name has been removed from or struck off the roll.

(3) An order made by the Disciplinary Committee under paragraph (1) or by the Lord Chief Justice under paragraph (2) for the replacement on the roll of the name of a solicitor may impose the condition that the solicitor shall not practise as a solicitor on his own account, whether in partnership or otherwise, until authorised by the Disciplinary Committee to do so.

(4) If a former solicitor whose name has been removed from the roll on an application made by him under Article 44 (1) (a) makes application to the Society for the restoration of his name on the roll the Society may restore it to the roll on payment by him to the Society of such fee not exceeding £15 as the Council may determine.

Procedure on complaint against solicitor

47.—(1) Where a complaint is made under sub-paragraph (c), (d) or (e) of Article 44 (1) the Disciplinary Committee—

- (a) if they decide that a prima facie case has not been shown, shall so notify the complainant and the solicitor and take no further action; or
- (b) if they decide that a prima facie case has been shown shall serve on the solicitor—
 - (i) a copy of the complaint;
 - (ii) a copy of the affidavit;
 - (iii) copies or, at the discretion of the Disciplinary Committee, a list of the relevant documents; and
 - (iv) a notice requiring the solicitor to send to the Disciplinary Committee, within a specified period, an affidavit by him in answer to the complaint, together with any documents, or duly authenticated copies thereof, on which he may rely in support of his answer.

(2) Where a notice is served under paragraph (1) (b) (iv), any party to the complaint may inspect the documents furnished by any other party.

(3) After the expiration of the period specified in a notice served under paragraph (1) (b) (iv), the Disciplinary Committee shall consider such (if any) affidavit and documents as have been furnished by the solicitor and—

- (a) if they decide that there is no cause for further inquiry shall so notify the complainant and the solicitor and shall take no further action; or
- (b) if they decide that there is cause for inquiry, shall hold an inquiry.

(4) Where a complainant or a solicitor against whom a complaint is made has been notified under paragraph (1) (a) or paragraph (3) (a), the Disciplinary Committee shall, if so required in writing by the complainant or the solicitor, make a formal order embodying their decision.

Powers of Disciplinary Committee on inquiry being held

48.—(1) Subject to the provisions of paragraph (2) with respect to the exercise of certain of the powers conferred by this paragraph, the Disciplinary Committee shall, on an inquiry being held by them, have the like powers, rights and privileges as are vested in the High Court in respect of—

- (a) the summoning of witnesses and their examination on oath;
- (b) the requiring of the production of documents; and
- (c) the issuing, subject to rules of court, of a commission or request to examine witnesses out of Northern Ireland;

and a summons signed by a member of the Disciplinary Committee may be issued and served on any person for the purposes of securing his attendance as a witness at, or the production by him of any document necessary for the purposes of, any such inquiry.

(2) Where any person—

- (a) on being duly summoned as a witness before the Disciplinary Committee makes default in attending;
- (b) being in attendance as a witness before the Disciplinary Committee refuses to take an oath lawfully required by the Disciplinary Committee to be taken, or to produce any document in his power or control lawfully required by the Disciplinary Committee to be produced by him, or to answer any question to which the Disciplinary Committee may lawfully require an answer; or
- (c) does any other act which, if the Disciplinary Committee were a court of law having power to commit for contempt, would be contempt of court;

the Disciplinary Committee may, by certificate signed by any two members thereof, certify such default, refusal or act (as the case may be) to the High Court, and the High Court may thereupon inquire into the matter so certified and, after hearing any witness who may be produced against or on behalf of the person aforesaid and any statement that may be offered in his defence, may punish or take steps for the punishment of that person in like manner as if he had been guilty of contempt of the High Court.

(3) A witness at an inquiry held by the Disciplinary Committee shall be entitled to the same immunities and privileges as if he were a witness before the High Court.

Representation before Disciplinary Committee

49.—(1) A party to any proceedings before the Disciplinary Committee shall be entitled to appear and be heard by that Committee either in person or by counsel or solicitor.

(2) The Society may appear and be heard upon any application or complaint made to the Disciplinary Committee.

(3) Any counsel or solicitor appearing in proceedings before the Disciplinary Committee shall have the same rights, privileges, immunities and duties as if he were appearing in an action in the High Court.

Application of Bankers' Books Evidence Act 1879

50. An application to or an inquiry or other proceeding before the Disciplinary Committee shall be a legal proceeding within the meaning of section 10 of the Bankers' Books Evidence Act 1879 (a).

Orders of Disciplinary Committee on inquiry

51.—(1) Where the Disciplinary Committee hold an inquiry, they may make an order providing for one or more than one of the following—

- (a) the dismissal of the application or complaint;
- (b) the admonishing of the solicitor and, if they think fit, the imposing on him of a fine not exceeding £500 to be paid to and applied for the purposes of the Society;
- (c) the restricting of the solicitor from practising on his own account, whether in partnership or otherwise, until authorised by the Disciplinary Committee to do so;
- (d) the suspension of the solicitor from practice;
- (e) the removal from, or striking off, the roll of the name of the solicitor;
- (f) the payment by any party to the inquiry of costs of any other party to be measured by the Disciplinary Committee, or of a stated sum as a contribution towards such costs;
- (g) the payment by any party to the inquiry of a sum to be measured by the Disciplinary Committee for the costs incurred by the Committee, or of a stated sum as a contribution towards such costs;
- (h) the making by any party of such restitution or satisfaction to any aggrieved party as the Disciplinary Committee think fit.

(2) An order made by the Disciplinary Committee under paragraph (1) (g) for the payment by any party of the costs of the Disciplinary Committee or of a sum towards those costs shall direct such payment to be made by that party to the Society; and any money so paid shall be appropriated by the Society towards the defrayal of the costs referred to in Article 43 (8).

(3) The Disciplinary Committee may postpone the making of an order under this Article.

(4) Where the making of an order under this Article is postponed under paragraph (3), the Disciplinary Committee may, on request made to them in that behalf when the matter is considered after such postponement, allow the application or complaint to be withdrawn without any order being made.

(5) The Disciplinary Committee may, on the application of the solicitor to whom an order under this Article relates, or of any other party, suspend in whole or in part the operation of the order pending an appeal under Article 53 (1).

(6) Where an order under this Article is suspended—

(a) nothing in Article 52 (1), (2) or (3) shall apply to the filing, enforcement or lodgment of copies of, or to the publications of, that order while it remains suspended; and

(b) neither Article 15 (1) nor Article 54 (1) shall have effect in relation to that order while it remains suspended.

(7) Any person who practises as a solicitor on his own account, whether in partnership or otherwise, in contravention of—

(a) any regulation for the time being in force under Article 26 (2) (a); or

(b) any order made by the Disciplinary Committee under Article 46 (1) or by the Lord Chief Justice under Article 46 (2); or

(c) any order made by the Disciplinary Committee under Article 51 (1) (c);

shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £250.

Effect, notice and recording of orders of Disciplinary Committee

52.—(1) An order made by the Disciplinary Committee under Article 51 shall contain a statement of their findings and shall be signed by at least two of their members and filed with the registrar but the Committee may in any case in which it appears to them to be desirable so to do, make an order not prefaced by a statement of the findings relative to the facts of the case, and in such case a statement of their findings shall be signed by the chairman or secretary of the Committee and shall, if the order is one required to be lodged with the Registrar of the Supreme Court under paragraph (2) or paragraph (3) be lodged with such Registrar together with the order.

(2) Where the Disciplinary Committee make an order under Article 51 (1) for the payment by a solicitor of a fine, or for the payment by any party of costs or a contribution towards costs, or for the making by any party of any restitution or satisfaction, the registrar, if so required in writing by the Society or by any other party in whose favour the order was so made, shall lodge a duly authenticated copy of the order with the Registrar of the Supreme Court, who shall forthwith cause such copy to be filed; and thereupon the order shall be of the like effect as a judgment of the High Court and enforceable accordingly.

(3) Where the Disciplinary Committee make an order suspending a solicitor from practice or removing from or striking off the roll the name of a solicitor, the registrar shall forthwith—

(a) lodge a duly authenticated copy of the order with the Registrar of the Supreme Court; and

(b) cause to be published in the Belfast Gazette, and in such other manner as the Disciplinary Committee may direct, a notice stating the effect of the order, which notice in relation to an order made under Article 44 (1) (a) shall state that the order was so made.

(4) The registrar shall maintain separate files on which all orders made by the Disciplinary Committee shall be entered in the following manner—

(a) on a file to be termed File A, there shall be entered, in alphabetical order against the names of the solicitors concerned, each order directing that the name of a solicitor is to be removed from or struck off the roll, or that a solicitor is to be suspended from practice;

(b) on a file to be termed File B, there shall be entered, in chronological order, all other orders.

(5) Where an order of the Disciplinary Committee includes provision for any of the matters mentioned in Article 51 (1) (c) or (d), the registrar shall enter a note of the effect of that order on the roll against the name of the solicitor with respect to whom the application or complaint was made.

(6) On receipt under Article 53 (4) of a copy of an order the registrar shall enter the order as if it were an order of the Disciplinary Committee.

(7) The registrar shall, on payment of such fee (if any) as may be prescribed, furnish a copy of an entry on File A or File B to a person who applies in writing for such a copy.

(8) Notwithstanding the provisions contained in paragraph (7), where—

(a) application is made for a copy of an entry on File B, being an entry under a date which is earlier than two years before the date of such application; or

(b) application is made for a copy of an entry on File A or File B as respects which the Disciplinary Committee have directed the insertion of a note that the furnishing of a copy thereof might cause injustice;

a copy of the entry shall be furnished only—

(i) by permission in writing of the Society; or

(ii) in compliance with an order of a court.

Appeal against orders of Disciplinary Committee

53.—(1) An appeal against an order made by the Disciplinary Committee shall lie to a judge of the High Court, at the instance of the solicitor or the Society, or any person directed by the order to make any restitution or satisfaction or, by leave of such a Court, at the instance of any other person appearing to the judge to be affected by the order.

(2) An appeal shall also lie to a judge of the High Court against the refusal of the Disciplinary Committee to suspend the operation of an order under Article 51 (5).

(3) The Society shall be entitled to appear and to be heard upon the hearing of an appeal under this Article.

(4) A copy of every order made on an appeal under this Article shall be sent to the registrar by the Registrar of the Supreme Court.

(5) An appeal under this Article shall be brought within six weeks from the date of the making of the order or refusal appealed against.

Publication, etc., of orders

54.—(1) A copy of every order made by a judge of the High Court under Article 53 or by the Disciplinary Committee shall be filed with the secretary of the Society, and the Society shall be entitled to publish any such order wholly or partly, or a synopsis thereof, in any publication of the Society and by sending a copy of any such order or any part or synopsis thereof to every solicitor in Northern Ireland, or otherwise to publish the order in any other manner approved of by the Society.

(2) The making of any order or the publishing under this Article of any order (whether wholly or partly) or of any synopsis thereof shall be deemed to be absolutely privileged.

(3) Any document purporting to be certified by the registrar as a copy of an order made by the Disciplinary Committee or of an entry made pursuant to Article 52 shall in any proceedings be received as evidence of the existence and content of that order or entry as the case may be.

PART IV

THE COMPENSATION FUND AND PROFESSIONAL INDEMNITY

The Compensation Fund

55. The Society shall establish a fund to be known as the Compensation Fund which shall be maintained and administered in accordance with Schedule 2.

Grants in case of loss

56. Where the Council, on an application for a grant being made to the Society, are satisfied that a person has suffered loss in consequence of dishonesty on the part of a solicitor, or of an apprentice, or of a clerk or servant of a solicitor, in connection with that solicitor's practice or purported practice as a solicitor or in connection with any trust of which that solicitor is or was a trustee then, subject to the provisions of Article 58, the Society may, if the Council think fit, make to that person a grant out of the Compensation Fund for the purpose of making good or mitigating that loss.

Grants in case of hardship

57. Where the Council, on an application for a grant being made to the Society, are satisfied that a person has suffered or is likely to suffer hardship in consequence of the failure on the part of a solicitor to account for money which has come to his hands in connection with his practice or purported practice as a solicitor or in connection with any trust of which he is or was a trustee then, subject to the provisions of Article 58, the Society may, if the Council think fit, make to that person a grant out of the Compensation Fund for the purpose of relieving such hardship.

Provisions as to grants in case of loss or hardship

58.—(1) The following provisions of this Article shall have effect in relation to grants under Article 56 or 57—

- (a) the Society shall not make a grant unless the Council are satisfied that the solicitor in respect of whose act or default or in respect of whose apprentice's, clerk's or servant's act or default the application is made (unless he is dead or it is impracticable to give notice to him) has been given sufficient notice of the substance of the application and has not given, either to the applicant or to the Society, such explanation as satisfies the Council that no grant should be made;
- (b) the fact that the applicant is himself a solicitor or the apprentice or the clerk or servant of a solicitor shall not disqualify him from receiving a grant;
- (c) the Society shall, to the extent of the amount of the grant, be subrogated to any rights and remedies of the person to whom it is made in relation to the act or default in respect of which it is made and such person shall not be entitled, whether by way of bankruptcy or other legal proceedings or otherwise, to receive any sum out of the assets of the solicitor, apprentice, clerk or servant in respect of that act or default until the Society have been reimbursed the full amount of the grant;

(d) the fact that a person has received or may be likely to receive a grant from the Society shall not constitute any defence to an action brought by such person in respect of the act or default in relation to which such grant has been or may be made and the Society shall be entitled (whether before or after payment of the grant) upon giving to such person a sufficient indemnity against costs to require him to sue in his own name but on behalf of the Society for the purpose of giving effect to any rights conferred on the Society by sub-paragraph (c) and to permit the Society to have the conduct of the proceedings.

(2) In this Article references to the person to whom a grant has been made, or to any solicitor, apprentice, clerk or servant in respect of whose act or default a grant has been made, shall include in the event of his death, bankruptcy or other disability, references to his personal representative or to any other person having authority to administer his estate.

Subvention grants

59. Where the Council, on an application being made to the Society, are satisfied that a solicitor has suffered or is likely to suffer loss or hardship by reason of his liability to any of his or his firm's clients in consequence of some act or default of any partner of that solicitor, or of any apprentice, or of any clerk or servant of that solicitor, in circumstances where but for the liability of that solicitor a grant might have been made out of the Compensation Fund to some other person, then, subject to the provisions of Article 60, the Society may, if the Council think fit, make to such solicitor a grant (in this Part referred to as a "subvention grant") out of the Compensation Fund for the purpose of relieving that loss or hardship.

Provisions as to subvention grants

60. The following provisions shall have effect in relation to subvention grants—

- (a) the Society shall not make a grant to a solicitor in respect of any act or default of his partner unless the Council are satisfied that the partner (unless he is dead or it is impracticable to give notice to him) has been given sufficient notice of the substance of the application and has not given, either to the applicant or to the Society, such explanation as satisfies the Council that no grant should be made;
- (b) a grant may (if the Council think fit) take the form of a loan upon such terms and conditions (including conditions as to the time and manner of repayment, as to the payment of interest and as to security for repayment) as the Council may determine;
- (c) in relation to a grant made by way of loan, the Society may, upon such terms or conditions (if any) as the Council may think fit, at any time or times waive or refrain from enforcing the repayment of the whole or any part of the loan or any instalment of the loan or the payment of any interest or any of the other terms or conditions upon which the loan was granted;
- (d) a grant may be made to a solicitor whether or not he had a practising certificate in force at the date of any relevant act or default;
- (e) where a grant has been made otherwise than by way of loan, the provisions of sub-paragraphs (c) and (d) of paragraph (1), and paragraph (2), of Article 58 shall apply in relation to such grant as they apply in relation to grants under Article 56 or 57;

- (f) where a grant has been made by way of loan and thereafter—
- (i) the repayment of any amount (being either the whole or some part of the loan) has been waived; or
 - (ii) the borrower fails to repay any amount (being either the whole or some part of the loan) the repayment of which has not been waived;
- then to the extent of any such amount the provisions of sub-paragraphs (c) and (d) of paragraph (1), and paragraph (2), of Article 58 shall apply to such grant as they apply in relation to grants under Article 56 or 57.

Power to make regulations as to procedure

61. The Council may make regulations with respect to the procedure to be followed in giving effect to the provisions of this Part and Schedule 2 and with respect to any matters incidental, ancillary or supplemental to those provisions or concerning the administration or protection of the Compensation Fund.

Grants may be made whether or not solicitor had practising certificate

62. A grant may be made under this Part whether or not the solicitor in respect of whose act or default or in respect of whose apprentice's, clerk's or servant's act or default an application is made had a practising certificate in force at the time of the act or default and notwithstanding the fact that he has since such time died or ceased to practise or has been suspended from practice or had his name removed from or struck off the roll.

Professional indemnity

63.—(1) The Council may by regulations (in this Order referred to as "indemnity regulations") make provision for indemnity against claims in respect of any description of civil liability incurred—

- (a) by a solicitor or former solicitor in connection with his practice or with any trust of which he is or was a trustee;
- (b) by an apprentice, clerk or servant or former apprentice, clerk or servant of a solicitor or former solicitor in connection with that solicitor's practice or with any trust of which that solicitor or the apprentice, clerk or servant is or was a trustee.

(2) Indemnity regulations may—

- (a) authorise or require the Society to establish and maintain an indemnity fund or funds;
- (b) authorise or require the Society to take out and maintain indemnity insurance with authorised insurers;
- (c) require solicitors to take out and maintain indemnity insurance with authorised insurers.

(3) Without prejudice to the generality of paragraphs (1) and (2), indemnity regulations may—

- (a) specify the terms and conditions on which indemnity is to be available, and any circumstances in which the right to it is to be excluded or modified;
- (b) provide for the management, administration and protection of any fund maintained under paragraph (2) (a) and require solicitors to make payments to any such fund;

- (c) require solicitors to make payments by way of premium on any insurance policy maintained by the Society under paragraph (2) (b);
 - (d) prescribe the conditions which an insurance policy must satisfy for the purposes of paragraph (2) (c);
 - (e) authorise the Society to determine the amount of any payments required by the regulations subject to such limits, or in accordance with such provisions, as may be prescribed by the regulations;
 - (f) specify circumstances in which, where a solicitor for whom indemnity is provided has failed to comply with the regulations, the Society or insurers may take proceedings against him in respect of sums paid by way of indemnity in connection with a matter in relation to which he has failed to comply;
 - (g) specify circumstances in which solicitors are exempt from the regulations;
 - (h) empower the Council to take such steps as they consider necessary or expedient to ascertain whether or not the regulations are being complied with; and
 - (i) contain incidental, procedural or supplementary provisions.
- (4) If any solicitor fails to comply with indemnity regulations, any person may make a complaint in respect of that failure to the Disciplinary Committee.
- (5) The Society may, without prejudice to any of their other powers, carry into effect any arrangements which they consider necessary or expedient for the purpose of providing indemnity under this Article.

PART V

COSTS IN NON-CONTENTIOUS BUSINESS

Orders as to remuneration of solicitors for non-contentious business

64.—(1) For the purposes of this Article there shall be a committee to be known as the “Non-contentious Costs Committee” (in this Part referred to as “the Committee”) and consisting of the following persons—

- (a) two judges of the Supreme Court of whom the Lord Chief Justice may be one, appointed by the Lord Chief Justice;
- (b) the President of the Lands Tribunal;
- (c) two solicitors appointed by the Council; and
- (d) subject to the proviso to paragraph (2), the Registrar of Titles.

(2) The Committee acting by any three or more of the members thereof (the Lord Chief Justice or another judge of the Supreme Court being one) may make orders prescribing and regulating in such manner as they think fit the remuneration of solicitors in respect of non-contentious business:

Provided that the Registrar of Titles shall be deemed to be a member of the Committee for the purpose only of prescribing and regulating the remuneration of solicitors in respect of business under the Land Registration Act (Northern Ireland) 1970 or any enactment repealed or proposed to be repealed by that Act.

(3) The Lord Chief Justice may appoint an officer of the Supreme Court to act as Clerk to the Committee.

(4) The Committee may refer any question arising in the exercise of their functions to any person appearing to them to be likely to assist them in reaching a conclusion thereon for advice, investigation or report and the Committee or any such person may receive evidence from any source appearing to the Committee or, as the case may be, to such person to be relevant.

(5) The costs of any reference made by the Committee under paragraph (4) shall be defrayed by the Society.

(6) Before any order is made under this Article, the Clerk to the Committee shall cause a draft thereof to be sent to the Council, and the Committee shall, before making the order, consider any observations in writing submitted to them by the Council within one month of the sending to them of the draft and may then make the order either in the form of the draft or with such alterations or additions as they may think fit.

(7) An order under this Article may, as regards the mode of remuneration, prescribe that it shall be according to a scale of rates of commission or percentage, varying or not in different classes of business, or by a gross sum, or by a fixed sum for each document prepared or perused, without regard to length, or in any other mode, or partly in one mode and partly in another, and may regulate the amount of remuneration with reference to all or any of the following, among other, considerations, that is to say—

- (a) the position of the party for whom the solicitor is concerned in the business, that is, whether as vendor or purchaser, lessor or lessee, mortgagor or mortgagee, and the like;
- (b) the place where, and the circumstances in which, the business or any part thereof is transacted;
- (c) the amount of the capital money or rent to which the business relates;
- (d) the skill, labour, specialised knowledge and responsibility involved therein on the part of the solicitor;
- (e) the complexity, importance, difficulty, rarity or urgency of the questions raised;
- (f) the number and importance of the documents prepared or perused; and
- (g) the time expended by the solicitor.

(8) An order under this Article may authorise and regulate—

- (a) the taking by a solicitor from his client of security for payment of any remuneration, to be ascertained by taxation or otherwise, which may become due to him under any such order; and
- (b) the allowance of interest.

(9) So long as an order made under this Article is in operation, taxation of bills of costs of solicitors in respect of non-contentious business shall, subject to the provisions of Article 69, be regulated by that order.

(10) The Committee shall be a rule-making authority for the purposes of the Statutory Rules Act (Northern Ireland) 1958 (a), and accordingly in section 1 (2) of that Act after paragraph (k) there shall be inserted the following paragraph—

“(kk) the Non-contentious Costs Committee established under Article 64 of the Solicitors (Northern Ireland) Order 1976;”.

(11) All orders made by the Committee shall be laid before the Assembly by the Head of the Department of Finance and shall be subject to negative resolution.

Right to furnish bill in general terms

65. A solicitor's bill for non-contentious business shall be sufficient in form if it contains a reasonable statement or description of the services rendered, with

(a) 1958 c. 18 (N.I.).

a lump sum charged therefor, together with a detailed statement of disbursements, but in any action upon or taxation of such a bill further details of the services rendered may, if it is deemed proper, be ordered by the court or, as the case may be, by the Taxing Master.

Order for taxation

66.—(1) Where the retainer of a solicitor is disputed, the solicitor or the client or other person liable to pay the bill may apply to a judge of the High Court to have such dispute determined and if the judge then finds that a proper retainer exists he may order the bill to be taxed.

(2) Where the retainer of a solicitor is not disputed an order may be obtained from the Taxing Master—

(a) by the client or other person liable to pay the bill, for the delivery and taxation of the solicitor's bill;

(b) by the client or other person liable to pay the bill, for the taxation of a bill already delivered;

(c) by the solicitor, for the taxation of a bill already delivered, at any time after the expiration of one month from its delivery, where no other order for its taxation has previously been made.

(3) An application for an order under paragraph (2) shall not be made by a client or other person liable to pay the bill—

(a) save in exceptional circumstances—

(i) after the expiration of three months from the date of the delivery of the bill;

(ii) in any case where judgment has been obtained in an action for the recovery of the amount of a bill of costs; or

(iii) where the bill has been paid;

(b) in any event, after the expiration of six months from the date of the delivery of the bill.

(4) Where an application by a client or other person liable to pay the bill is expressed to relate to so much of the bill as does not include costs paid or payable in respect of counsel's fees or in the discharge of a liability incurred by the solicitor on behalf of the party chargeable, the provisions of this Article shall have effect in relation to that bill as if there were excluded therefrom such costs paid or payable as aforesaid.

(5) An order under this Article may be made upon such terms as to the costs of the application therefor and of the taxation as the Taxing Master or, as the case may be, a judge of the High Court, thinks fit.

(6) No bill previously taxed shall be again referred unless in exceptional circumstances a judge of the High Court sees fit so to order.

(7) Where any person, not being chargeable as a principal party, is liable to pay any bill either to the solicitor, his assignee or personal representative, or to the principal party entitled thereto, the person so liable or his assignee or personal representative may apply to the Taxing Master for taxation in the same manner as the party chargeable therewith might himself have done, and the same proceedings shall be had thereon as if the application had been made by that party.

(8) Without prejudice to the provisions of paragraph (7), where a trustee or personal representative has become liable to pay the bill of a solicitor in respect of non-contentious business, the Taxing Master may, upon the application of any person interested in any property out of which the trustee or personal representative has paid, or has power to pay, the bill, and upon such terms (if any) as he thinks fit, make an order for the taxation of the bill; and in considering any such application, the Taxing Master shall have regard to the provisions of paragraphs (2), (3), (4) and (5) so far as they may apply to an application made under this paragraph and to the extent and nature of the interest of the applicant.

(9) The Taxing Master on any application made pursuant to paragraphs (7) and (8) may order the solicitor or his assignee or personal representative to deliver to the party making the application a copy of the bill upon payment of the costs of the copy.

Action to recover solicitors' costs

67.—(1) Subject to the provisions of this Order, no action shall be brought to recover any costs due to a solicitor until one month after a bill thereof has been delivered in accordance with the requirements set out in paragraph (2):

Provided that, if there is reasonable cause for believing that the party chargeable with the costs is about to quit Northern Ireland or to become a bankrupt, or to compound with his creditors, or to do any other act which would tend to prevent or delay the solicitor obtaining payment, a judge of the High Court may, notwithstanding that one month has not expired from the delivery of the bill, order that the solicitor be at liberty to commence an action to recover his costs and may order those costs to be taxed under this Part.

(2) The requirements referred to in paragraph (1) are that the bill must—

(a) be signed by the solicitor, or if the costs are due to a firm, by one of the partners of that firm, either in his own name or in the name of the firm, or be enclosed in, or accompanied by, a letter which is so signed and refers to the bill; and

(b) be delivered to the party to be charged therewith, either personally or by being sent to him by ordinary post to, or left for him at, his place of business, dwelling-house, or last known place of abode;

and, where a bill is proved to have been delivered in compliance with those requirements, it shall not be necessary in the first instance for the solicitor to prove the contents of the bill and it shall be presumed, until the contrary is shown, to be a bill duly complying with this Order.

(3) In this Article any reference to a solicitor includes a reference to his assignee or personal representative.

Provisions as to taxation

68.—(1) When a client or other person obtains an order for the delivery and taxation of a solicitor's bill, a copy of the bill shall be delivered within two months from the service of the order or such extended time as the Taxing Master may allow.

(2) The bill delivered shall stand referred to the Taxing Master and the Taxing Master shall tax the bill on such date as he may direct.

(3) On such taxation the solicitor shall give credit for, and an account shall be taken of, all sums of money received by him from or on account of the client

and the solicitor shall be entitled to credit for all disbursements, expenses or other sums properly paid by him for or on account of the client.

(4) The costs of the taxation shall, unless otherwise directed by a judge of the High Court or the Court of Appeal in any particular case, be in the discretion of the Taxing Master, subject to an appeal to a judge of the High Court by any dissatisfied party and shall be taxed by the Taxing Master when and as allowed.

(5) The amount certified by the Taxing Master to be due on such taxation (including, where allowed, the costs of the taxation) shall be paid forthwith by the party liable to pay the same, unless rules of court provide otherwise pending the determination of an appeal against the Taxing Master's certificate under paragraph (6).

(6) An appeal shall lie at the instance of any dissatisfied party to a judge of the High Court against any allowance or disallowance made by the Taxing Master under this Part.

(7) If after due notice of any taxation any party fails, without reasonable explanation given to the Taxing Master before taxation, to attend or be represented on the taxation, the Taxing Master may proceed with the taxation in the absence of such party.

(8) Without prejudice to the provisions of section 21 of the Interpretation Act (Northern Ireland) 1954, the procedure to be followed on taxation under this Part and on an appeal therefrom shall be regulated by rules of court.

(9) In this Article any reference to a solicitor includes a reference to his assignee or personal representative.

Agreements between solicitors and clients as to remuneration

69.—(1) Subject to the provisions of this Part and to regulations, a solicitor may make an agreement in, or evidenced by, writing with his client respecting the amount and manner of payment for the whole or a part of any past or future services in respect of non-contentious business done or to be done by the solicitor, either by a gross sum or by commission or percentage, or by salary or otherwise, and either at the same rate as, or, subject to the provisions of regulations, at a rate different from, that at which he would otherwise be entitled to be remunerated.

(2) Such an agreement shall not affect the amount, or any right or remedy for the recovery, of any costs recoverable from the client by any other person, or payable to the client by any other person, and any such other person may require any costs payable by him to or recoverable by him from the client to be taxed in accordance with the provisions of this Part, unless such person has otherwise agreed.

(3) Any such agreement shall be limited to the conduct and completion of the non-contentious business in respect of which it is made and shall not extend to any other non-contentious business unless subsequently agreed upon in writing between the client and the solicitor.

(4) A provision in any such agreement that a solicitor is not to be liable for negligence, or that he is to be relieved from any responsibility to which he would otherwise be subject as an officer of the Supreme Court, shall be wholly void.

(5) If it appears to a judge of the High Court upon an application made to such a Court in that behalf that any such agreement is in all respects fair and

reasonable between the parties, the judge may order the agreement to be enforced in such manner and subject to such conditions as to the costs of the application or otherwise as he thinks fit; but if the terms of the agreement do not appear to him to be fair and reasonable the judge may declare the agreement to be void and may order the cancellation or variation of the agreement and direct that all or any costs incurred or chargeable in respect of the matters included in the agreement be taxed under this Part.

(6) Except as otherwise provided in the foregoing provisions of this Article, the bill of a solicitor for the amount due under any such agreement as is referred to in this Article shall not be subject to taxation.

(7) Nothing in this Article shall make valid the purchase by a solicitor of any interest or part of an interest of his client in any action or other contentious proceeding, or make valid any agreement by which a solicitor stipulates for payment only in the event of success in an action or proceeding or stipulates that the amount to be paid to him shall be a percentage of the amount or value of the property recovered or preserved or otherwise made dependent upon the result of an action or proceeding.

Certain stipulations and restrictions on purchasers to be void

70.—(1) Any stipulation made on the sale of any land after the commencement of this Article to the effect that any purchaser shall be liable for any costs of the vendor's solicitor shall be void.

(2) A grantor or lessor who grants or leases any property for ever or for any term of years may as a condition of the grant or lease lawfully require that it be prepared by his solicitor but may not require the grantee or lessee to pay any costs of such solicitor in connection therewith.

(3) Any stipulation made on the sale of any land after the commencement of this Article to the effect that the assurance to, or the registration of the title of, the purchaser shall be prepared or carried out by a solicitor appointed by or acting for the vendor, and any stipulation which might restrict a purchaser in the selection of a solicitor to act on his behalf in relation to any land agreed to be purchased, shall, except as provided in paragraph (2), be void, but a stipulation requiring the purchaser to furnish to the vendor at the purchaser's expense, a duplicate or counterpart of the assurance shall be valid.

(4) For the purposes of this Article—

“sale” includes a transaction effected by a grant or sub-grant in fee farm and a demise or sub-demise, but does not include the compulsory acquisition of land by virtue of any enactment or the acquisition of land by agreement by a person or body authorised or capable of being authorised under an enactment in force at the date of the agreement to acquire that land compulsorily;

“assurance” includes a conveyance or transfer, a grant or sub-grant in fee farm, a lease or sub-lease, or a tenancy agreement;

“vendor” includes a vendor who is a transferor, grantor or sub-grantor in fee farm, a lessor or sub-lessor; and “purchaser” shall be construed accordingly.

(5) Without prejudice to the operation of paragraph (2), the Costs of Leases Act 1958 (a) shall cease to have effect.

Charging orders

71.—(1) Subject to paragraph (2), any court in which a solicitor has been employed to prosecute or defend any suit, matter or proceeding may at any time declare the solicitor entitled to a charge on the property recovered or preserved through his instrumentality for his taxed costs in reference to that suit, matter or proceeding, and may make such orders for the taxation of those costs and for raising money to pay, or for paying, those costs out of that property as the court thinks fit, and all conveyances and acts done to defeat, or operating to defeat, that charge shall, except in the case of a conveyance to a bona fide purchaser for value without notice, be void as against the solicitor.

(2) No order shall be made under paragraph (1) if the right to recover the costs is barred by any statute of limitations.

(3) In section 23 (4) of the Arbitration Act (Northern Ireland) 1937, for the reference to section 3 of the Legal Practitioners (Ireland) Act 1876 (a) there shall be substituted a reference to this Article.

PART VI

MISCELLANEOUS AND GENERAL

Termination of retainer

72.—(1) If a solicitor who has been retained by a client to conduct contentious business requests the client to make a payment of a sum of money being a reasonable sum on account of the costs incurred or to be incurred in the conduct of that business and the client refuses or fails within a reasonable time to make that payment, such refusal or failure shall, notwithstanding any rule of law to the contrary, be deemed to be a good cause whereby the solicitor may, upon giving reasonable notice to the client, withdraw from the retainer.

(2) On any application for an order declaring that the solicitor has ceased to be the solicitor acting for the party in the cause or matter which is the subject of the contentious business referred to in paragraph (1), the court may determine whether the sum requested by the solicitor was reasonable and whether the client has failed to make the payment within a reasonable time.

Cessation and suspension of membership of Society, etc.

73.—(1) If the name of a solicitor who is a member of the Society is removed from or struck off the roll that solicitor shall thereupon cease to be a member of the Society.

(2) A member of the Society who is suspended from practising as a solicitor shall not be entitled during the period of his suspension to any of the rights or privileges of membership of the Society.

(3) A solicitor shall not be entitled to exercise any of the rights or privileges of membership of the Society during any year or part of a year for which his subscription to the Society has not been paid.

Powers to act on behalf of the Society and proof of resolutions

74.—(1) Anything authorised or required to be done by the Society under or in pursuance of this Order or any other enactment or of any instrument made thereunder may be done on behalf of the Society by the Council.

(2) Any document issued by the Society for any purpose whatsoever may be signed on behalf of the Society by the secretary and by such other person or persons (if any) as the Council may direct.

(a) 1876 c. 44.

(3) Where the Society are entitled to appear and be heard on or with reference to any matter, the Society may do so either by counsel or solicitor.

(4) In any proceedings a document purporting to be certified by the secretary as a copy of a resolution passed by the Council or a committee thereof on a specified date shall be evidence that that resolution was duly passed by the Council or committee on that date.

Regulations and rules

75.—(1) Subject to the provisions of this Order, the Society may make regulations—

(a) for the purpose of the due execution of those provisions;

(b) with respect to any matter which under this Order may or is to be prescribed or is to be provided for by regulations;

and regulations may contain such provisions as the Society may think proper for facilitating the due enforcement thereof.

(2) All regulations shall be made with the concurrence of the Lord Chief Justice.

(3) The powers conferred by section 7 of the Northern Ireland Act 1962 (a) on the Northern Ireland Supreme Court Rules Committee to make rules of court shall be exercisable in relation to any function conferred on the Lord Chief Justice by this Order.

Time limit for commencement of certain proceedings

76. Notwithstanding anything in section 34 of the Magistrates' Courts Act (Northern Ireland) 1964 (b), proceedings for an offence under Article 22, 23, 24, 28, 30 or 31 (4) may be brought at any time within two years next after the commission of the offence, or within six months next after the first discovery thereof by the prosecutor, whichever period is the shorter.

Relief to banks

77.—(1) Subject to the provisions of this Article, a bank shall not, in connection with any transaction on any account of any solicitor kept with it or with any other bank (other than an account kept by a solicitor as trustee for a specified beneficiary) incur any liability or be under any obligation to make any inquiry or be deemed to have any knowledge of any right of any person to any money paid or credited to any such account which it would not incur or be under or be deemed to have in the case of an account kept by a person entitled absolutely to all the money paid or credited to such account.

(2) Nothing in paragraph (1) shall relieve a bank from any liability or obligation under which it would be apart from this Order.

(3) Notwithstanding anything in paragraph (1), a bank at which a solicitor keeps an account for clients' money shall not, in respect of any liability of the solicitor to the bank, not being a liability in connection with that account, have or obtain any recourse or right, whether by way of set-off, counterclaim, charge or otherwise, against money standing to the credit of that account.

(4) Nothing in paragraph (3) shall deprive a bank of any right existing on the day when the first regulations made under Article 33 (1) (a) come into operation.

(a) 1962 c. 30. (b) 1964 c. 21 (N.I.).

Administration of oaths and taking of affidavits

78.—(1) Subject to the provisions of this Article, every solicitor who holds a practising certificate which is in force shall have all the powers conferred by any enactment on a commissioner for oaths including section 24 of the Stamp Duties Management Act 1891 (a); and any reference to such a commissioner in an enactment or instrument (including an enactment passed or instrument made after the commencement of this Article) shall include a reference to such a solicitor unless the context otherwise requires.

(2) A solicitor shall not exercise the powers conferred by this Article in a proceeding in which he is solicitor to any of the parties, or in which he is interested.

(3) A solicitor before whom any oath or affidavit is taken or made shall state in the jurat or attestation at which place and on what date the oath or affidavit is taken or made.

(4) A document containing such a statement and purporting to be sealed or signed by a solicitor shall be admitted in evidence without proof of the seal or signature, and without proof that he is a solicitor or that he holds a practising certificate which is in force.

(5) Nothing in this Article shall affect the power to appoint commissioners under section 73 of the Supreme Court of Judicature Act (Ireland) 1877 (b).

Qualification for holding office of solicitors who have been barristers

79. For the purpose of any enactment or custom whereby the qualification of a solicitor for holding any office depends upon his having been admitted and enrolled for a prescribed period, the period of enrolment of a solicitor who before admission was a barrister-at-law shall be deemed to include any period after his call to the bar in Northern Ireland during which he is, for the purpose of this Article, recognised by the Society as having been, or certified by the Attorney-General as having in his opinion been, in practice or in employment as a barrister-at-law.

Exercise of functions of the Lord Chief Justice

80. Any function exercisable by the Lord Chief Justice under this Order may, if the office of Lord Chief Justice is vacant, or if for any reason the Lord Chief Justice is unable to exercise it, be exercised by the senior Lord Justice of Appeal in Northern Ireland.

Savings

81. Nothing in this Order shall operate to prejudice or affect—

(a) any inherent or other jurisdiction exercisable by any court, division or judge of the High Court or by the Court of Appeal or the Court of Criminal Appeal or any judge of either of those Courts or of any other Court in relation to a solicitor whether by reason of his being deemed to be an officer of the Supreme Court or otherwise; or

(b) any enactment empowering an unqualified person to conduct, defend or otherwise act in relation to any legal proceedings; or

(c) any rights or privileges of the solicitor to any government department (including a department of the Government of the United Kingdom);

and nothing in this Order shall operate to require any solicitor such as is mentioned in paragraph (c) or any clerk or officer appointed to act for him

(a) 1891 c. 38. (b) 1877 c. 57.

to be admitted or enrolled or to hold a practising certificate in any case where it would not have been necessary for him to be admitted or enrolled or to hold such a certificate if this Order had not been made.

Repeals and transitional provisions

82.—(1) Subject to paragraph (2), the enactments set out in Schedule 3 (which include certain provisions already spent or otherwise unnecessary) are hereby repealed to the extent mentioned in column 3 of that Schedule.

(2) Notwithstanding the repeal of section 9 of the Solicitors Remuneration Act 1881 (a) by paragraph (1), the Attorneys' and Solicitors' Act 1870 (b) shall not apply to non-contentious business.

(3) Any admission, appointment, approval, fee, notice, certificate, instrument, order, rule, regulation, direction, appeal or proceeding under or for the purposes of an enactment repealed by this Order shall be treated as being under or for the purposes of the corresponding enactment of this Order, and—

(a) any such order, rule or regulation shall remain in force until corresponding provision is made under this Order, and may be varied or revoked by an order, rule or regulation, as the case may require, made under the corresponding enactment of this Order; and

(b) any such proceeding which was brought before the committee established under section 18 of the Solicitors Act (Northern Ireland) 1938 (c), and which stood not completed immediately before the commencement of this Article shall be completed in like manner as if this Order had not been made.

(4) From the commencement of this Article until the first appointment under Article 43 (1), the Disciplinary Committee shall consist of the persons who immediately before the commencement of this Article were the members of the committee established under section 18 of the said Act of 1938.

N. E. Leigh

(a) 1881 c. 44. (b) 1870 c. 28. (c) 1938 c. 14 (N.I.).

SCHEDULES

SCHEDULE 1

Articles
36 (1), 37 (1),
38, 39.

PART I

PROPERTY IN THE CONTROL OR POSSESSION OF CERTAIN SOLICITORS AND OTHER PERSONS

Interpretation

1. In this Schedule—

“controlled trust” in relation to a solicitor means a trust of which the solicitor is a sole trustee or is co-trustee only with one or more of his partners, apprentices, clerks or servants;

“documents” means deeds, wills, documents constituting or evidencing the title to any property, papers, books of account, records, vouchers and other documents.

Production, delivery and taking possession of documents

2.—(1) The Society may require the production or delivery to any person appointed by the Society at a time and place to be fixed by the Society, and may take possession of all documents in the possession or control of the solicitor or his firm (including documents which are the property of the solicitor or his firm and not of his or their clients), or relating to any controlled trust.

(2) If the Society have reason to suspect that any documents which relate wholly or in part to the solicitor’s or his firm’s practice or former practice (whether or not the documents are the property of the solicitor or his firm) or to any controlled trust are in the possession or control of some person other than the solicitor or his firm or any of his or his firm’s clients or any other solicitor instructed by any such client, the Society may require that person to produce or deliver such documents to any person appointed by the Society at a time and place to be fixed by the Society and may take possession of such documents.

3.—(1) If any person having possession or control of any such documents fails to comply forthwith with any requirement made under paragraph 2—

(a) he shall be guilty of an offence and be liable on summary conviction to a fine not exceeding £100; and

(b) a judge of the High Court may, on the application of the Society, order that person to comply with the requirement within such time as may be specified in the order, and may at the same time or later further order that on that person’s failure to comply with such requirement one or more officers of the Society, or one or more persons appointed by the Society for the purpose, may forthwith enter upon any premises (using such force as is reasonably necessary) to search for, and take possession of, the documents.

(2) On an application under this paragraph, the court shall have regard to the interests of the persons to whom the documents which are the subject of the application belong or to whose business they relate or, where they relate to a controlled trust, to the interests of the beneficiaries under that trust.

4. Upon taking possession of any such documents, the Society shall serve upon the solicitor and every person from whom those documents were received, or from whose premises they were taken by virtue of an order made under paragraph 2, a notice giving particulars and the date of taking possession thereof.

5. Within fourteen days after the service of a notice under paragraph 4, the solicitor or other person upon whom the notice was served may, on serving not less than forty-eight hours’ notice upon the Society and (if the notice served under paragraph 4 gives the name of the solicitor instructed by the Society) upon that solicitor, apply to a judge of the High Court in chambers for an order directing the Society to return those

documents to the person from whom they were received, or from whose premises they were taken, as the case may be, by the Society, or to such other person as the applicant may require; and on the hearing of any such application the judge may make such order with respect to the matter as he thinks fit.

6. If no application is made under paragraph 5 or if the judge to whom any such application is made directs that the documents shall remain in the custody or control of the Society, the Society may make inquiries to ascertain the person to whom those documents belong or to whose business they relate and may deliver those documents to either of such persons or deal with them in accordance with the directions of either of those persons; so however that—

- (a) before delivering such documents the Society may take copies of, or extracts from, any such documents, and may if requested by the solicitor, supply copies to him at his expense; and
- (b) the Society may, if they consider that such documents include documents which are the property of the solicitor, require the person to whom the documents are delivered, as a condition precedent to such delivery to undertake to permit the solicitor to inspect such documents and take copies of, or extracts from, them.

7. At any time after a period of six years from the date on which the Society have taken possession of a document under the powers of this Schedule, if no person claims it, the Society may dispose of or destroy the document.

8.—(1) The provisions of this Schedule shall have effect in relation to documents notwithstanding any lien on, or right of retention of, those documents which may be vested in the solicitor or any other person.

(2) In any case in which this Schedule applies to a solicitor or solicitor-trustee or the personal representatives of a solicitor by virtue of any provision of this Order or of any other enactment, the Society shall before exercising any of their functions under this Schedule (other than making an application to a judge of the High Court under paragraph 3 or paragraph 13) in relation to him or them, notify him or them in writing that this Schedule so applies:

Provided that the Society may, if they think fit, include a notification to a solicitor or a solicitor-trustee under this paragraph in any notification given to him under Article 38.

Control of moneys

9.—(1) A judge of the High Court may, on the application of the Society, order that no payment shall be made without the leave of a judge of the High Court—

- (a) by any bank (whether or not named in the order) out of any banking account in which any money (whether received before, on or after the date of the order) of the solicitor or his firm is held or which the solicitor or his firm has the right to operate on or otherwise deal with; or
- (b) by any other person (whether or not named in the order) of any money placed with him by the solicitor or his firm (whether before, on or after the date of the order) or held by him (in whatever manner and whether received before, on or after that date) on behalf of the solicitor or his firm.

(2) No order under this paragraph shall take effect in relation to any person to whom it applies unless—

- (a) the Society have served a copy of the order on that person (whether or not he is named in the order) and he either knows that he holds money on behalf of the solicitor or his firm or has failed to exercise due diligence to ascertain whether any money is so held by him; and
- (b) if that person is a banker, the Society have informed him of the branch of the bank at which the money to which the order relates is believed by them to be held.

10. The Society may, on a resolution in that behalf made by the Council, take control of all sums of money due from the solicitor or his firm to, or held by him or his firm (in whatever manner or in whatever account and whether received before, on or after the date of the resolution) on behalf of, his or his firm's clients or subject to any controlled trust, and for that purpose the Society shall serve upon the solicitor or his firm, and, except where the provisions of Article 40 apply, upon any bank and upon any other person having possession or control of any such sums of money a notice, together with a certified copy of such resolution, prohibiting the payment out of such sums of money otherwise than pursuant to paragraph 12 or 13.

11. Within fourteen days of the service of a notice under paragraph 10 the solicitor or his firm, or the bank or other person upon whom the notice was served may, on serving not less than forty-eight hours' notice upon the Society and (if the notice served under paragraph 10 gives the name of the solicitor instructed by the Society) upon that solicitor, apply to a judge of the High Court in chambers for an order directing the Society to withdraw the notice, and on the hearing of any such application the judge may make such order with respect to the matter as he thinks fit.

12. Subject to the service of any notice under paragraph 10, and to any application that may be made under paragraph 11 the Society or any person in that behalf appointed by the Society may withdraw the money, or any part of the money, which is in any account in the name of the solicitor or his firm, or which is in the possession or control of any person on whom a notice was duly served under paragraph 10, and any money in the office of the solicitor or his firm due to or held on behalf of his clients, and pay them into a special account or special accounts in the name of the Society or such person appointed as aforesaid and may operate on, and otherwise deal with, such special account or accounts as the solicitor or his firm might have operated on, or otherwise dealt with, the said account; so however that a bank with whom such special account or accounts is or are kept shall be under no obligation to ascertain whether that account or those accounts is or are being so operated on or otherwise dealt with.

13.—(1) If any person fails to comply with the requirements of any notice given under paragraph 10—

(a) he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £200; and

(b) a judge of the High Court may, on the application of the Society—

(i) order him to comply with the requirements of the notice within such time as may be specified in the order; or

(ii) appoint the Society to act as the attorney of the solicitor named in that paragraph.

(2) Without prejudice to sub-paragraph (1) (b) (ii), a judge of the High Court may at any time, on the application of the Society, by order appoint the Society as the attorney of any solicitor named in a resolution passed by the Council under Article 36.

(3) Where the Society are appointed under this paragraph to act as attorney of a solicitor they shall have power, either in their name or in the name of the solicitor, to do all or any of the acts and things mentioned in Part II of this Schedule and all such other acts and things in relation to the solicitor's practice or property or assets as appear to the Society to be necessary for any of the purposes of this Order, as fully and effectively in all respects as if they were done by the solicitor present in person (irrespective of where he then may be).

(4) The Society shall have a claim on the property of the solicitor for all costs (if any) incurred by the Society as his attorney.

14.—(1) If the Society have reason to suspect that any person holds any money on behalf of the solicitor or his firm, the Society may for the purpose of enabling them to perform any of their functions under this Schedule require that person to give to the Society such information as to such money or the accounts in which the money is held as may be reasonably required.

(2) If any person who holds any money on behalf of the solicitor or his firm fails to give to the Society such information as he is required to give under sub-paragraph (1) or knowingly makes any misstatement in respect thereof he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £50.

Re-direction of postal packets

15.—(1) A judge of the High Court, on the application of the Society, may order that for such time not exceeding eighteen months as the judge thinks fit, postal packets (as defined by section 87 (1) of the Post Office Act 1953 (a)) addressed to the solicitor or his firm at any place or places mentioned in the order for re-direction shall be directed to any other address there mentioned.

(2) Where such an order is made the Society shall pay to the Post Office the like charges (if any) as would have been payable for the re-direction of such packets by virtue of any scheme made under section 28 of the Post Office Act 1969 (b), if the addressee had permanently ceased to occupy the premises to which they were addressed and had applied to the Post Office to re-direct them to him at the address mentioned in the order.

Removal of solicitor-trustee from trust

16.—(1) If the solicitor is a trustee of a controlled trust, the Society may apply to a judge of the High Court for an order for the appointment of a new trustee in substitution for him.

(2) The Trustee Act (Northern Ireland) 1958 shall have effect in relation to an appointment of a new trustee under this paragraph as it has effect in relation to an appointment under section 40 of that Act.

General

17. Subject to any order for the payment of costs that may be made on an application under paragraph 3, 5, 9, 11, 13, 15, 16 or 19 any costs incurred by the Society for the purposes of this Schedule shall be paid by the solicitor and shall be recoverable from him as a debt owing to the Society.

18. The Society may do all things which in their opinion are necessary for the purpose of facilitating the exercise of their functions under this Schedule and in particular may for that purpose employ and pay agents.

19. The Society may apply to a judge of the High Court for an order making provision for the disposal and destruction of any documents which may be in their possession by virtue of this Schedule or for the transfer or payment by or to any person of any moneys to which this Schedule relates.

20. If any claim or charge is made or any proceeding is taken against the Society or their servants or agents for any act or omission by the Society or their servants or agents done or made in good faith and in the execution or purported execution of the functions conferred under this Schedule the Society or their servants or agents, as the case may be, shall be reimbursed out of the Compensation Fund established under Article 55 for all or any costs or damages which they may have incurred in relation to such claim, charge or proceeding.

21. The Society may make regulations for the purposes of carrying the provisions of this Schedule into effect and such regulations may include incidental, ancillary or supplemental provisions.

22. References in this Schedule to a banking account include references to any deposit or other such account as well as to a current or drawing account.

(a) 1953 c. 36.

(b) 1969 c. 48.

PART II

POWERS EXERCISABLE BY THE SOCIETY AS ATTORNEY

23. The powers exercisable pursuant to paragraph 13 (3) are as follows—

(1) To operate all banking accounts in the name or under the control of the solicitor, and to open and operate any new banking account and to sign, endorse and negotiate cheques, dividend and interest warrants, bills of exchange and negotiable instruments payable to the solicitor and to close all or any of such banking accounts.

(2) To demand, sue for, recover, enforce and give good and sufficient receipts, discharges, releases and indemnities for and in respect of all property, money, securities, costs, legacies, gifts, rights and debts belonging to the solicitor or in which he has any interest and to effect a compromise or release of, or to abandon, any claim in respect thereof and to pay, satisfy or compromise any such debts, liabilities or claims.

(3) To carry on, wind-up, transfer, sell or otherwise dispose of the practice of the solicitor and the office furniture, fittings, papers, documents, books, machines and apparatus connected therewith.

(4) To take possession of all or any property whatsoever belonging to the solicitor or in which he has any estate, title, right or interest including all property, title deeds, documents, papers and books in the possession, custody or control of the solicitor.

(5) To manage, let, sell, mortgage, charge or otherwise dispose of and convey, assign, transfer, surrender, sub-lease or grant in fee any property whatsoever of the solicitor or in which he has any estate, title, right or interest or any part thereof on such terms and conditions as the Society think fit.

(6) To furnish bills of costs in respect of any action, cause, suit, proceeding, sale, transaction or matter in which the solicitor is or has been engaged or retained, to institute proceedings for recovery of such costs, to compromise any claim in respect of such costs and to give good and sufficient receipts for such costs.

(7) To engage an accountant for the purpose of preparing such balance sheet and statement in connection with the practice of the solicitor as will show all money held by the solicitor on his own behalf and for or on account of clients and other persons and where and how at the date of such balance sheet and statement the solicitor holds such money.

(8) To give, vary and revoke instructions as to the manner in which any money payable to or by the solicitor (whether periodically or otherwise) is to be paid or dealt with and as to the custody and disposal of any personal property, including securities and documents of title.

(9) To apply and subscribe for (whether absolutely or conditionally), pay calls on, buy, accept or otherwise acquire, and to sell, assign, exchange or otherwise dispose of, stocks, funds, shares, debentures, debenture stock, securities and investments of every description, however constituted and wherever issued, and whether now existing or hereafter to be created belonging to the solicitor or in which he has any interest, and any options or rights in respect thereof; and generally to manage and vary investments.

(10) To effect and maintain insurance against loss, damage, and liability in connection with the property or assets of the solicitor or his practice and to recover under such insurance.

(11) In respect of any will, intestacy, settlement or trust or any agreement or other instrument or matter, to approve apportionments and accounts, and to sanction investments or the exercise of any power or the doing of any act for which the approval or sanction of the solicitor is required, otherwise than as trustee.

(12) In connection with any stocks, funds, shares, debentures, debenture stock, securities, or investments belonging to the solicitor or in which he has any interest, to attend and vote or appoint any person to attend and vote as proxy for the solicitor at meetings of holders thereof, and to effect, sanction or oppose any exercise or modification of rights.

(13) In regard to any property whatsoever belonging to the solicitor or in which he has any interest, to institute, carry on, defend, compromise or discontinue any action or other proceeding, and in any such proceeding to give security or indemnities for costs, to pay money into court and to obtain payment of money lodged in court; and to settle, compromise or submit to arbitration any dispute arising in relation to any such property or interest.

(14) To present, support or oppose any petition for winding-up or bankruptcy; to join in, sanction or oppose any composition or arrangement; to attend and vote or appoint any person to attend and vote as proxy for the solicitor at any meetings of creditors; to make and file proofs of claim; and generally to represent the solicitor in any liquidation, bankruptcy or insolvency.

(15) To engage, remunerate, dismiss, and fix and vary the duties and terms of service of persons employed to carry on or to assist in carrying on the practice of the solicitor including any employees of the solicitor.

(16) To settle or pay any account, debt or reckoning whatsoever wherein the solicitor is or will be in anywise interested or concerned with any person whomsoever and to pay or receive the balance thereof as the case may require.

(17) To deliver to clients of the solicitor or to other persons any documents of title, papers, books, securities, money or other property on such terms as the attorney thinks fit.

(18) To pay all rent, rates, taxes, assessments and outgoings (including repairs and insurance against fire and other contingencies) in connection with any property of the solicitor or in which he has any estate, title, right or interest and in connection with the practice of the solicitor to pay all expenses of carrying on the same including any insurance against negligence or otherwise.

(19) Subject to the rights of the clients of the solicitor, to act upon any retainer given, to prosecute or defend any action, cause, suit or proceeding which the solicitor has commenced or for which he has been retained, to complete any sale or purchase of registered or unregistered land in which the solicitor has been engaged or for which he has been retained, to carry out and complete any other sale, purchase, transaction or matter in which the solicitor is engaged or for which he has been retained and to receive and give good and sufficient receipts for any damages, compensation, deposit, purchase money or other money payable in respect of any such action, cause, suit, proceeding, sale, transaction or matter, and to pay over any money and do all things necessary to complete any such action, suit, proceeding, sale, transaction or matter.

(20) For all or any of the foregoing purposes to enter into and sign, seal, execute, perfect and deliver any contract, instrument, deed, surrender, assurance or other instrument whatsoever, and to take all steps necessary to procure the registration of any such instrument in the books of any company or other body or in any register kept in pursuance of any enactment.

(21) Generally to act in relation to the solicitor's practice and estate as fully and effectively as the solicitor could do.

Articles 55, 56, 57, 59, 61,
Schedule 1.

SCHEDULE 2

THE COMPENSATION FUND

1. The fund shall be maintained and administered by the Society and shall be held by the Society on trust for the purposes provided for in Part IV and this Schedule.

2. Every solicitor shall on each occasion on which a practising certificate is issued to him pay to the Society with the fee payable in respect of that certificate under Article 10 a contribution (in this Schedule referred to as "the annual contribution") of such sum as may be prescribed, and the Society shall pay that contribution into the fund:

Provided that—

- (a) a solicitor shall not be required to pay the annual contribution on the issue of the first three practising certificates issued to him after his admission; and
- (b) on the issue of the fourth, fifth and sixth practising certificates issued to him after his admission a solicitor shall be liable to pay only one half of the amount of the annual contribution; and
- (c) an annual contribution shall not be required to be paid by a solicitor who is employed as a full-time public officer or in the full-time service of a local or public authority and who does not engage in any form of private practice as a solicitor.

3. The Society may invest in trustee securities any money which forms part of the fund and is not immediately required for any of the purposes provided for by Part IV or this Schedule.

4. Subject to the provisions of section 2 of the Loans Guarantee and Borrowing Regulation Act (Northern Ireland) 1946(a), and of any order for the time being in force thereunder, the Society may borrow for the purposes of the fund from any lender and may charge any investments of the fund by way of security for any such loan:

Provided that the aggregate sum owing at any one time in respect of such loans shall not exceed £100,000.

5. The Society may insure with any person authorised by law to carry on insurance business within the United Kingdom for such purposes and on such terms as the Society may deem expedient in relation to the fund.

6. There shall be carried to the credit of the fund—

- (a) all moneys and all investments forming part of the Compensation Fund established under Article 55;
- (b) all annual contributions paid to the Society in pursuance of paragraph 2;
- (c) all interest, dividends and other income and accretions of capital arising from the investment of the fund or any part thereof;
- (d) the proceeds of any realisation of any investments of the fund;
- (e) all money borrowed for the purposes of the fund;
- (f) all sums received by the Society under any insurance effected by the Society under paragraph 5;
- (g) all sums received by the Society under Article 58(c) or 60(e);
- (h) any other money which may belong or accrue to the fund or be received by the Society in respect thereof.

7. All money from time to time forming part of the fund and all investments of the fund shall be applicable—

- (a) for payment of any costs, charges and expenses of establishing, maintaining, administering and applying the fund;
- (b) for payment of any premiums on insurances effected by the Society under paragraph 5;
- (c) for repayment of any money borrowed by the Society for the purposes of the fund and for payment of interest on any money so borrowed;
- (d) for payment of any grants which the Society may make under Part IV;
- (e) for payment of costs, charges and expenses incurred by the Society in exercise of any power conferred by Article 36, 37 or 39 or Schedule 1;
- (f) for payment of any other sums properly payable out of the fund by virtue of Part IV or this Schedule.

8. Notwithstanding anything in Part IV or in this Schedule, the Society shall not make any grant out of the Compensation Fund in respect of any loss arising in connection with the employment of a solicitor as a full-time public officer or in the full-time service of a local or public authority or by reason of any breach of a fiduciary duty to which any such employment gave rise.

(a) 1946 c. 18 (N.I.).

Chapter or Number	Short Title	Extent of Repeal
12 & 13 Vict. c. 53	The Solicitors (Ireland) Act 1849.	So much of the Act as relates to costs incurred in respect of non-contentious business.
14 & 15 Vict. c. 88	The Solicitors Act 1851.	The whole Act.
20 & 21 Vict. c. 60	The Irish Bankrupt and Insolvent Act 1857.	In section 372 the words from "and in case any person" onwards.
20 & 21 Vict. c. 79	The Probates and Letters of Administration Act (Ireland) 1857.	In section 25 the words "advocate", "proctor" and "or attorney-at-law". In section 26 the words "advocate", "proctor" and "or attorney".
22 & 23 Vict. c. 31	The Court of Probate Act (Ireland) 1859.	In section 9, the words "proctors" and "and attorneys".
30 & 31 Vict. c. 114	The Court of Admiralty (Ireland) Act 1867.	In section 10, the word "advocate". In section 13, the words "an advocate". In section 51, the word "attorney".
33 & 34 Vict. c. 28	The Attorneys' and Solicitors' Act 1870.	In section 3— in the definition of "attorney or solicitor" the words "attorney", "or proctor", "attorneys" and "or proctors"; in the definition of "client" the words "attorney or". In section 4, the words "attorney or" wherever they occur. In section 5, the words "attorney or". In section 6, the words "attorney or". In section 7, the words "attorney or" where they twice occur. In section 10, the words "attorney or" where they twice occur. In section 11, the words "attorney or" where they twice occur. In section 13, the words "attorney or" wherever they occur. In section 14, the words "attorney or" wherever they occur.

Chapter or Number	Short Title	Extent of Repeal
33 & 34 Vict. c. 28— <i>cont.</i>	The Attorneys' and Solicitors' Act 1870— <i>cont.</i>	In section 15, the words "attorney or". In section 16, the words "attorney or". In section 17, the words "attorney or" where they twice occur. In section 18, the words "attorney or". Section 20.
39 & 40 Vict. c. 44	The Legal Practitioners (Ireland) Act 1876.	The whole Act.
40 & 41 Vict. c. 57	The Supreme Court of Judicature Act (Ireland) 1877.	In section 78 the words from "attorneys," where it first occurs to "Court of Appeal" where they first occur; the words from "and all persons" to "Act had not passed" in the third place where they occur; the word "Any" in the third place where it occurs; the words "attorneys, or proctors to whom this section applies"; the word "such" in the third place where it occurs and the words "or attorneys".
44 & 45 Vict. c. 44	The Solicitors Remuneration Act 1881.	The whole Act.
54 & 55 Vict. c. 39	The Stamp Act 1891.	Section 44.
61 & 62 Vict. c. 17	The Solicitors (Ireland) Act 1898.	The whole Act.
8 Edw. 7 c. 38	The Irish Universities Act 1908.	Section 12.
11 & 12 Geo. 5 c. 32	The Finance Act 1921.	Section 60.
S.R. & O. 1922 No. 80	The Government of Ireland (Adaptation of the Taxing Acts) Order 1922.	Article 18 (<i>d</i>).
12 & 13 Geo. 5 c. 19	The Solicitors Act (Northern Ireland) 1922.	The whole Act.
20 Geo. 5 c. 2	The Finance Act (Northern Ireland) 1929.	The whole Act.
2 Geo. 6 c. 14	The Solicitors Act (Northern Ireland) 1938.	The whole Act.

Chapter or Number	Short Title	Extent of Repeal
1943 c. 4	The Solicitors Act (Northern Ireland) 1943.	The whole Act.
1948 c. 27	The Solicitors Act (Northern Ireland) 1948.	The whole Act.
6 & 7 Eliz. 2 c. 52	The Costs of Leases Act 1958.	The whole Act.
1969 c. 48	The Post Office Act 1969.	In Schedule 4, paragraph 35.
1970 c. 18	The Land Registration Act (Northern Ireland) 1970.	So much of section 85 (3) (<i>l</i>) and (<i>m</i>) as relates to costs incurred in respect of non-contentious business.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order—

- (a) provides for the more strict regulation of the admission, professional practice, conduct and discipline of solicitors;
- (b) requires the establishment of a compensation fund for the relief of those suffering loss through the dishonesty of solicitors or their employees;
- (c) makes fresh provision with respect to costs for non-contentious business; and
- (d) otherwise amends and consolidates the enactments for the regulation of the profession of solicitors.

STATUTORY INSTRUMENTS

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