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STATUTORY INSTRUMENTS

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**1989 No. 1343 (N.I. 14)**

**The Solicitors (Amendment) (Northern Ireland) Order 1989**

- - - - - 2nd August 1989

**Title and commencement**

- 1.—(1) This Order may be cited as the Solicitors (Amendment) (Northern Ireland) Order 1989.
- (2) This Order shall come into operation on the expiration of two months from the day on which it is made.

**Interpretation**

- 2.—(1) The Interpretation Act (Northern Ireland) 1954<sup>F1</sup> shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.
- (2) In this Order “the Solicitors Order” means the Solicitors (Northern Ireland) Order 1976<sup>F2</sup>.

<b>F1</b>	1954 c. 33 (NI)
<b>F2</b>	1976 NI 12

**The roll of solicitors**

3. For Articles 8 and 9 of the Solicitors Order there shall be substituted—

**“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 Society shall have the custody of the roll and of all documents relating thereto.
- (3) The roll shall be kept in accordance with the provisions of this Order and of regulations and may be kept by means of a computer.
- (4) If the roll is kept by means of a computer, the Society shall make any entry available for inspection in legible form during office hours, without payment, by any person who applies to inspect it.
- (5) If the roll is not kept by means of a computer, any person may inspect it during office hours without payment.
- (6) The Society, on the application of a solicitor, may cause his name to be removed from the roll.
- (7) Regulations under paragraph (3) may—

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- (a) provide for the Society, at such intervals as may be specified in the regulations, to enquire of solicitors of any class so specified whether they wish to have their names retained on the roll;
- (b) require solicitors of any such class, at such intervals as aforesaid, to pay to the Society a fee in respect of the retention of their names on the roll of such amount as may be prescribed;
- (c) authorise the Society to remove from the roll the name of any solicitor who—
  - (i) fails to reply to any enquiry made in pursuance of sub#paragraph (a) or to pay any fee payable by virtue of sub#paragraph (b); or
  - (ii) replies to any such enquiry by indicating that he does not wish to have his name retained on the roll; and
- (d) authorise the Society to remove from the roll the name of any solicitor who has died.

### Entry of name on roll

9.—(1) On production—

- (a) of an admission of any person as a solicitor signed by the Lord Chief Justice; or
- (b) of an order for the replacement on the roll of the name of a person whose name has been struck off it,

and on payment to the Society of such fee as may be prescribed, the registrar shall enter the name of that person on the roll.

(2) The Society, on the application of a former solicitor whose name is not on the roll because it has been removed from it, may cause his name to be entered on the roll on payment by him to the Society of such fee as may be prescribed.”

### Keeping of the register

4. In Article 10 of the Solicitors Order (register of practising solicitors)—

- (a) in paragraph (2) the words from “and any person” onwards shall cease to have effect;
- (b) after paragraph (2) there shall be inserted—

“(2A) The register may be kept by means of a computer.

(2B) If the register is kept by means of a computer, the Society shall make any entry available for inspection in legible form during office hours, without payment, by any person who applies to inspect it.

(2C) If the register is not kept by means of a computer, any person may inspect it during office hours without payment.” .

### Refusal of practising certificates

5. In Article 13(1) of the Solicitors Order (discretion of registrar to refuse certificate in special cases)—

- (a) after sub#paragraph (c) there shall be inserted—

“(cc) where he applies for a practising certificate after a finding by the Tribunal on a complaint under Article 10(3) that he made a false statement material to an application for a previous practising certificate; or” ;

- (b) in sub#paragraph (d) for “of his suspension or his re#admission to” there shall be substituted “ or termination of his suspension or the replacement of his name on ”;

- (c) after sub#paragraph (d) there shall be inserted—
  - “(dd) where, having had a practising certificate suspended under Article 15(2), he first applies for a practising certificate after the expiration of the suspended practising certificate; or” ;
- (d) after sub#paragraph (g) there shall be inserted—
  - “(gg) where he has been invited by the Society to satisfy them that he has complied with any regulations made under Article 6 in relation to education or training, and, having failed so to satisfy the Society, has been notified in writing by the Society that he has so failed;” ;
- (e) in sub#paragraph (h) for “affecting” there shall be substituted “ relating to ”; and
- (f) after sub#paragraph (h) there shall be inserted—
  - “(hh) where, having been required by Article 35(1) to deliver an accountant's report to the Society—
    - (a) he has not delivered that report within the period allowed by Article 35(2);  
or
    - (b) he has been invited by the Society to satisfy them that, in relation to any report delivered to the Society, he has complied with regulations made under Article 35, and, having failed so to satisfy the Society, has been notified in writing by the Society that he has so failed;” .

### **Practising certificates—conditions, appeals and suspension**

6. For Articles 14 to 17 of the Solicitors Order there shall be substituted—

#### **“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, apply to the Council to review the refusal; and on such application the Council may in their discretion direct the registrar—

- (a) to grant or refuse the application;
- (b) to issue—
  - (i) the certificate; or
  - (ii) the certificate and any subsequent practising certificate issued to the solicitor,

subject to such terms and conditions as the Council think fit.

(2) A solicitor aggrieved by a decision of the Council under paragraph (1) 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—

- (a) affirm the decision; or
- (b) give to the registrar any direction which could have been given to him by the Council under paragraph (1).

(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, applied to the Council to review the refusal of a practising certificate, shall be deemed to have received notice at the expiration of that period that the certificate has been refused.

### **Imposition of terms and conditions on current and subsequent practising certificates**

**14A.**—(1) Subject to the provisions of this Article, the Council may in the case of any solicitor direct that—

- (a) his practising certificate for the time being in force (his “current certificate”); or
- (b) his current certificate and any subsequent practising certificate issued by the registrar to the solicitor,

shall have effect subject to such terms and conditions as the Council think fit.

(2) The power to give a direction under this Article in the case of any solicitor shall be exercisable by the Society at any time during the period for which his current certificate is in force if—

- (a) in the event of an application for a practising certificate being made by him at that time, Article 13 would have effect in relation to him by reason of any such circumstances as are mentioned in sub#paragraph (e), (g), (h), (hh), (i) or (j) of paragraph (1) of that Article;
- (b) he has entered into a composition with his creditors or a deed of arrangement for their benefit; or
- (c) Schedule 1 applies in relation to him, by virtue of any provision of this Order.

(3) Subject to paragraph (4), the terms and conditions specified in a direction under this Article shall have effect as from the time when the solicitor concerned is notified of the Council's decision to give the direction.

(4) The Council may, if they think fit, provide in a direction under this Article that the terms and conditions specified in the direction shall not have effect pending the hearing and determination of any appeal under paragraph (6).

(5) Where there is pending against any judgment, order or decree an appeal by a solicitor which, if successful, would result in paragraph (2) no longer being applicable to him, the Council shall not give a direction under this Article in his case so long as the appeal is pending, unless in the opinion of the Council the proceedings on that appeal have been unduly protracted by him or are unlikely to be successful.

(6) A solicitor aggrieved by a decision of the Council under paragraph (1) 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—

- (a) affirm or revoke the decision;
- (b) give any direction which could have been given by the Council under paragraph (1).

### **Suspension of practising certificate**

**15.**—(1) The making of an order suspending a solicitor from practice and the adjudication of bankruptcy of a solicitor shall operate to suspend any practising certificate of that solicitor for the time being in force.

(2) Where, under any provision of this Order, Schedule 1 applies in relation to a solicitor, the Council may in their discretion suspend any practising certificate of that solicitor for the time being in force.

(3) For the purposes of this Order a practising certificate shall be deemed not to be in force at any time while it is suspended.

(4) A solicitor aggrieved by a decision of the Council under paragraph (2) suspending his practising certificate 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—

- (a) affirm or revoke the decision;
- (b) direct that—
  - (i) the certificate; or
  - (ii) the certificate and any subsequent certificate issued by the registrar to the solicitor,

shall have effect subject to such terms and conditions as the Lord Chief Justice thinks fit.

(5) 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, the suspension of a practising certificate by virtue of Article 15 shall continue until the certificate expires.

(2) The suspension of a practising certificate by virtue of Article 15(1) by reason of an adjudication in bankruptcy shall terminate if—

- (a) the adjudication is annulled; and
  - (b) an office copy of the order annulling the adjudication has been served on the Society.
- (3) Where a solicitor's practising certificate is suspended—
- (a) by virtue of Article 15(1) by reason of his adjudication in bankruptcy;
  - (b) by virtue of Article 15(1) by reason of his suspension from practice and the period of his suspension from practice expires or is terminated under Article 51(1)(f) before the date of expiry of the certificate; or
  - (c) under Article 15(2),

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.

- (4) On an application under paragraph (3) the Council may in their discretion—
- (a) refuse the application;
  - (b) by order terminate the suspension; or
  - (c) by order terminate the suspension and direct that—
    - (i) the practising certificate of the solicitor; or
    - (ii) the practising certificate of the solicitor and any subsequent practising certificate issued by the registrar to the solicitor,

shall have effect subject to such terms and conditions as the Council think fit.

(5) Subject to paragraph (6), the terms and conditions specified in a direction under paragraph (4)(c) shall have effect as from the time when the solicitor concerned is notified of the Council's decision to give the direction.

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(6) The Council may, if they think fit, provide in a direction under paragraph (4)(c) that the terms and conditions specified in the direction shall not have effect pending the hearing and determination of any appeal under paragraph (7).

(7) A solicitor aggrieved by a decision of the Council under paragraph (4) 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—

- (a) affirm the decision; or
- (b) make any order and give any direction which could have been made or given by the Council under paragraph (4).

(8) For the purposes of paragraph (7) a solicitor who has not received notification of the termination of the suspension of his practising certificate 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.

(9) Where a solicitor's practising certificate is suspended by virtue of Article 15(1) by reason of his suspension from practice and the suspension of his practising certificate is terminated under paragraph (4) or (7) without any direction mentioned in paragraph (4)(c) being made, 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.

#### **Publication of suspension or termination of suspension of practising certificate**

17.—(1) Where a solicitor's practising certificate is suspended the Society shall forthwith cause—

- (a) notice of that suspension to be published in the Belfast Gazette;
- (b) a note thereof to be entered against the name of the solicitor in the roll.

(2) Where the suspension of a practising certificate is terminated the Society shall forthwith—

- (a) cause a note of that termination to be entered against the name of the solicitor in the roll; and
- (b) if so requested in writing by the solicitor, cause notice thereof to be published in the Belfast Gazette.

#### **Application for issue of practising certificate freed from terms and conditions**

17A.—(1) Where, in accordance with a direction given under Article 14, 14A, 15, 16 or this Article, a subsequent practising certificate is issued to a solicitor subject to any terms and conditions, the solicitor may, within one month from the date on which the certificate is issued, apply to the Council for the issue of the certificate free from those terms and conditions; and on such an application the Council may in their discretion—

- (a) grant or refuse the application;
- (b) direct the registrar to issue—
  - (i) the certificate; or
  - (ii) the certificate and any subsequent practising certificate issued to the solicitor,

subject to such other terms and conditions as the Council may think fit.

(2) A solicitor aggrieved by a decision of the Council under paragraph (1) 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—

- (a) affirm the decision; or
- (b) give to the registrar any direction which could have been given to him by the Council under paragraph (1).

(3) For the purposes of this Article a solicitor who has not received a practising certificate free from terms and conditions within three weeks after he applied to the Council for it shall be deemed to have received notice at the expiration of that period that the application has been refused.

### **Terms and conditions in practising certificates**

**17B.**—(1) Any power of the Council or the Lord Chief Justice under Article 14, 14A, 15, 16 or 17A to direct that a practising certificate shall have effect or shall be issued subject to terms and conditions, includes (without prejudice to the generality of that power) power to direct that the certificate shall have effect or shall be issued subject to terms and conditions—

- (a) requiring the solicitor to take any specified steps that will in the opinion of the Council or the Lord Chief Justice (as the case may be) be conducive to his carrying on an efficient practice as a solicitor; and
- (b) notwithstanding that they may result in expenditure being incurred by the solicitor.

(2) If a solicitor contravenes any of the terms and conditions subject to which a practising certificate has effect or is issued in accordance with a direction under Article 14, 14A, 15, 16 or 17A any person may make a complaint in respect of the contravention to the Tribunal.”.

### **Preparation of conveyancing documents by unqualified persons**

7. In Article 23 of the Solicitors Order (unqualified person not to prepare certain instruments, etc.)—

- (a) in paragraph (1) for “paragraph (2)” there shall be substituted “ paragraphs (2) and (2A) ”;
- (b) in paragraph (2)(e)—
  - (i) for “a landlord for whom such agent collects rent” there shall be substituted “ any person ”;
  - (ii) head (i) shall cease to have effect;
- (c) after paragraph (2) there shall be inserted—

“(2A) Paragraph (1) also shall not apply to any act done by a person at the direction and under the supervision of another person if—

- (a) that other person was at the time his employer, a partner of his employer or a fellow employee; and
- (b) the act could have been done by that other person for or in expectation of any fee, gain or reward without committing an offence under this Article.” ;

- (d) in paragraph (3)—
  - (i) after “instrument” there shall be inserted  
“includes a contract for the sale or other disposal of land within the meaning of paragraphs (a) to (f) of section 45(3) of the Interpretation Act (Northern Ireland) 1954<sup>F3</sup>, other than a contract to grant only—
    - (i) a tenancy not exceeding 3 years; or
    - (ii) a right to use land for cropping or grazing;but” ;

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- (ii) at the end of sub#paragraph (b) there shall be inserted “ other than a contract that is included under the preceding provisions of this paragraph ”;
- (e) after paragraph (3) there shall be inserted—
  - “(4) The Department of Economic Development may institute proceedings for an offence under this Article.” .

**F3** 1954 c. 33 (NI)

### **Preparation of papers for probate, etc., by unqualified persons**

- 8.** In Article 24 of the Solicitors Order (preparation of papers for probate, etc.)—
- (a) in paragraph (1) for the words from the beginning to “administration” there shall be substituted “Subject to paragraph (1A), any unqualified person, not being a barrister#at# law or a duly certificated notary public, who, directly or indirectly, draws or prepares any papers on which to found or oppose—
    - (a) a grant of probate, or
    - (b) a grant of letters of administration,” ;
  - (b) after paragraph (1) there shall be inserted—
    - “(1A) Paragraph (1) shall not apply to any act done by a person at the direction and under the supervision of another person if—
      - (a) that other person was at the time his employer, a partner of his employer or a fellow employee; and
      - (b) the act could have been done by that other person for or in expectation of any fee, gain or reward without committing an offence under this Article.” .

### **Regulations**

**9.—(1)** For Article 6 of the Solicitors Order (regulations as to the education, training, etc. of persons seeking admission as solicitors) there shall be substituted—

#### **“Regulations as to the education, training, etc., of persons seeking admission or having been admitted as solicitors**

- 6.—(1)** The Society may make regulations with respect to the education and training of persons seeking admission or who have been admitted as solicitors and (without prejudice to the generality of the foregoing) such regulations may prescribe—
- (a) the education and training, whether by service under apprenticeship or otherwise, to be undergone by persons seeking admission as solicitors;
  - (b) the examinations or other tests to be undergone by persons seeking admission as solicitors;
  - (c) the qualifications, experience, conduct, duties and responsibilities of persons seeking admission as solicitors or solicitors providing apprenticeships (including the remuneration payable under such apprenticeships) under the regulations;
  - (d) the circumstances in which apprenticeships may be transferred or discharged or education or training of persons seeking admission as solicitors may be abridged, extended or terminated;
  - (e) the control and discipline of persons seeking admission as solicitors, including requirements to be imposed in consequence of contraventions of the regulations;



- (f) the circumstances in which a person seeking admission as a solicitor may apply to the Society to waive the application of any provision of the regulations in his case or to review any decision taken by the Society in respect of him for the purposes of the regulations and the procedure for such applications;
- (g) the education, training and examinations or other tests to be undergone by persons who have been admitted as solicitors;
- (h) the charging and application by the Society of fees to be paid by persons undergoing education and training for the purposes of the regulations;
- (i) such transitional and incidental matters as the society think necessary.

(2) Regulations under paragraph (1) 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) Subject to regulations made under paragraph (1)(f), on an application by a person seeking to be admitted as a solicitor, the Society may—

- (a) waive the application of any provision of regulations under paragraph (1) to that person; or
- (b) review any decision taken by the Society with respect to that person under those regulations.

(4) An applicant aggrieved by a decision of the Society under paragraph (3) may, after giving notice to the Society, appeal to the Lord Chief Justice; 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.”.

(2) In Article 26(2)(a) of the Solicitors Order (general power to make regulations as to professional practice, conduct and discipline of solicitors) the words from “not exceeding” to “solicitor” shall cease to have effect.

### **Incorporated practices**

**10.**—(1) After Article 26 of the Solicitors Order there shall be inserted—

“Incorporated practices

### **Incorporated practices**

**26A.**—(1) The Society may make regulations—

- (a) making provision as to the management and control by solicitors of bodies corporate carrying on businesses consisting of the provision of professional services such as are provided by individuals practising as solicitors;
- (b) prescribing the circumstances in which such bodies may be recognised by the Council as being suitable bodies to undertake the provision of any such services;
- (c) prescribing the conditions which (subject to any exceptions provided by the regulations) must at all times be satisfied by bodies corporate so recognised if they are to remain so recognised; and
- (d) regulating the conduct of the affairs of such bodies.

(2) Regulations made by the Society may also make provision—

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- (a) for the manner and form in which applications for recognition under this Article are to be made, and for the payment of fees in connection with such applications;
  - (b) for regulating the names that may be used by recognised bodies;
  - (c) as to the period for which any recognition granted under this Article shall (subject to the provisions of this Part) remain in force;
  - (d) for the revocation of any such recognition on the grounds that it was granted as a result of any error or fraud;
  - (e) for the keeping by the registrar of a list containing the names and places of business of all bodies corporate which are for the time being recognised under this Article, and for the information contained in any such list to be available for inspection;
  - (f) for regulations made under any other provision of this Order to have effect in relation to recognised bodies with such additions, omissions or other modifications as appear to the Society to be necessary or expedient;
  - (g) for empowering the Council to take such steps as they consider necessary or expedient to ascertain whether or not any regulations applicable to recognised bodies by virtue of this Article are being complied with;
  - (h) for the manner of service on recognised bodies of documents authorised or required to be served on such bodies under this Part.
- (3) Articles 19, 23(1) and 24(1) shall not apply to a recognised body.
- (4) Article 23(1) or, as the case may be, Article 24(1) shall not apply to any act done by an officer or employee of a recognised body if—
- (a) it was done by him at the direction and under the supervision of another person who was at the time an officer or employee of the body; and
  - (b) it could have been done by that other person for or in expectation of any fee, gain or reward without committing an offence under Article 23 or, as the case may be, under Article 24.
- (5) References in Articles 25, 27 and 28 to an unqualified person shall not include references to a recognised body.
- (6) A certificate signed by an officer of the Society and stating that any body corporate is or is not, or was or was not at any time, a recognised body shall, unless the contrary is proved, be evidence of the facts stated in the certificate; and a certificate purporting to be so signed shall be taken to have been so signed unless the contrary is proved.
- (7) Schedule 1A (which makes provision with respect to the application of provisions of this Order to recognised bodies and with respect to other matters relating to such bodies) shall have effect.
- (8) Subject to the provisions of Schedule 1A, the Department of Finance and Personnel may by order, made subject to negative resolution, provide for any enactment or instrument passed or made before the coming into operation of Article 10(1) of the Solicitors (Amendment) (Northern Ireland) Order 1989 and having effect in relation to solicitors to have effect in relation to recognised bodies with such additions, omissions or other modifications as appear to that Department to be necessary or expedient.
- (9) In this Article “recognised body” means a body corporate for the time being recognised under this Article.

#### **Penalty for pretending to be a body recognised under Article 26A**

**26B.**—(1) A body corporate shall not describe itself or hold itself out as a body corporate for the time being recognised under Article 26A unless it is so recognised.

(2) Any body corporate which contravenes paragraph (1) shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.”.

*Para. (2)—Amendments*

### **Control of employment by solicitor of certain persons**

**11.** In Article 31(1) of the Solicitors Order (control of employment by solicitor of certain persons) for sub#paragraphs (b) and (c) there shall be substituted—

- “(b) it appears to the Society, in the course or as a result of any proceedings before the Tribunal, that a person who is or was an employee of a solicitor, but is not himself a solicitor, has been a party to any act or default of such solicitor which involved conduct on that person's part of such a nature that in the opinion of the Society it would be undesirable for him to be employed by a solicitor in connection with his practice; or
- (c) a person has had his name struck off a roll of solicitors in Great Britain or the Republic of Ireland or has been suspended from practice in Great Britain or the Republic of Ireland and his name remains so struck off or he remains so suspended,” .

### **Practice of a deceased solicitor**

**12.—**(1) In Article 32 of the Solicitors Order (winding#up practice of a deceased solicitor) for “as the Society may approve” there shall be substituted “ , including terms as to remuneration, as may be fixed or approved by the Society ”.

(2) In Article 39 of the Solicitors Order (control of deceased solicitor's practice) after paragraph (1) there shall be inserted—

- “(1A) Where a solicitor dies and—
  - (a) immediately before his death—
    - (i) he was practising as a sole solicitor; and
    - (ii) the provisions of Schedule 1 did not apply to him; and
  - (b) no appointment is made under Article 32 within three months from the date of his death,

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

### **Accountants' reports**

**13.** In Article 35 of the Solicitors Order (accountants' reports)—

- (a) in paragraph (2) for “specified in” there shall be substituted “ for the purposes of ”;
- (b) after paragraph (5) there shall be inserted—

“(5A) Without prejudice to the generality of paragraph (5)(b), regulations under this Article may make provision requiring a solicitor in advance of delivering an accountant's report to notify the Society of the period which is to be the accounting period for the purposes of that report in accordance with the preceding provisions of this Article.” .

### **Power of Council to deal with property in control of certain solicitors**

**14.** In Article 36 of the Solicitors Order (powers of Council to deal with property in control of certain solicitors and other persons)—

- (a) in paragraph (2)(d) for “three months” there shall be substituted “ one month ”;

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- (b) in paragraph (3) for sub#paragraph (a) there shall be substituted—
- “(a) has failed to comply with—
- (i) 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; or
- (ii) the provisions of Article 35 or of any regulations made thereunder; and” ;
- (c) after paragraph (3) there shall be inserted—
- “(4) Where, at any time, the Council are satisfied that the circumstances mentioned in Article 13(1)(g) or (h) have effect in relation to any solicitor, the Council may direct that the provisions of Schedule 1 shall apply in relation to that solicitor and the other persons mentioned in that Schedule.
- (5) Where the Tribunal have made a recommendation to the Council under Article 51C in respect of any solicitor, the Council may direct that the provisions of Schedule 1 shall apply in relation to that solicitor and the other persons mentioned in that Schedule.” .

#### **Power of Council to deal with cases of delay by solicitors**

**15.** In Article 38 of the Solicitors Order (powers of Council on complaint of undue delay by solicitor) in paragraph (a) for the words from “a trust” to the end there shall be substituted “ a controlled trust or in complying with an order of the Tribunal under Article 51(1)(j), (k) or (l) or (3) or Article 51A; and ”.

#### **Solicitors' discipline**

**16.—(1)** After Article 41 of the Solicitors Order there shall be inserted—

“Imposition by Council of disciplinary sanctions for inadequate professional services

#### **Power of Council to impose sanctions for inadequate professional services**

**41A.—(1)** Where it appears to the Council that the professional services provided by a solicitor in connection with any matter in which he or his firm had been instructed by a client were in any respect not of the quality that could reasonably have been expected of him as a solicitor, then (subject to paragraph (3)), the Council may, if they think fit, do one or more of the following things, namely—

- (a) determine that the costs to which the solicitor shall be entitled in respect of those services shall be limited to such amount as may be specified in their determination and direct the solicitor to comply, or to secure compliance, with such one or more requirements falling within paragraph (2) as appear to them to be necessary in order to give effect to their determination;
- (b) direct the solicitor to take such steps for the completion of the said matter within such reasonable time as they may specify;
- (c) direct the solicitor to secure the rectification, at the expense of the solicitor or his firm, of any such error, omission or other deficiency arising in connection with the said matter as they may specify;
- (d) direct the solicitor to take, at the expense of the solicitor or his firm, such other action in the interests of the client as they may specify.
- (2) The requirements referred to in paragraph (1)(a) are—

- (a) a requirement to refund the whole or part of any amount already paid by or on behalf of the client in respect of the solicitor's costs in respect of his services in connection with the said matter;
  - (b) a requirement to remit the whole or part of those costs;
  - (c) a requirement to waive, whether wholly or to any specified extent, the right to recover those costs.
- (3) The Council shall not exercise any of their powers under paragraph (1) unless they are satisfied that it would in all the circumstances be appropriate to do so; and in determining whether in any case it would be appropriate to exercise any of those powers the Council may have regard—
- (a) to the existence of any remedy that could reasonably be expected to be available to the client in civil proceedings; and
  - (b) where proceedings seeking any such remedy have not been commenced by him, to whether it would be reasonable to expect him to commence such proceedings.
- (4) Where the Council have given a direction under paragraph (1)(a) in order to give effect to a determination by them under that provision as to the costs of a solicitor in respect of any services provided by him, then—
- (a) for the purposes of any taxation of a bill covering those costs the amount charged by the bill in respect of those costs shall be deemed to be limited to the amount specified in the Council's determination; and
  - (b) where a bill covering those costs has not been taxed in accordance with sub# paragraph (a), the client shall, for the purposes of the recovery of those costs (by whatever means) and notwithstanding any enactment or agreement, be deemed to be liable to pay in respect of those costs only the amount specified in the Council's determination.
- (5) Where a bill covering those costs has been taxed in accordance with paragraph (4)(a), the Council's direction under paragraph (1)(a) shall, so far as relating to those costs, cease to have effect.
- (6) A solicitor aggrieved by a determination or direction of the Council under paragraph (1) may, within one month from the date on which notice of that determination or direction is served on him, appeal to the Lord Chief Justice who may—
- (a) affirm or revoke the determination or direction; or
  - (b) make any other determination or direction which could have been made or given by the Council under paragraph (1).
- (7) A direction of the Council under paragraph (1) shall take effect—
- (a) where the solicitor does not appeal against the direction within the period mentioned in paragraph (6), on the expiration of that period; and
  - (b) where the solicitor appeals against the direction within that period, on the dismissal or withdrawal of the appeal;
- and a direction given on any such appeal by the Lord Chief Justice shall take effect immediately.
- (8) If a solicitor fails to comply with a direction given under this Article which has taken effect, any person may make a complaint in respect of that failure to the Tribunal; but no other proceedings whatever shall be brought in respect of it.
- (9) The powers conferred on the Council by paragraph (1)(a) shall be exercisable in relation to a person notwithstanding that his name has been removed from or struck off the roll, and references to a solicitor in—

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- (a) the provisions of this Article so far as they relate to the exercise of those powers; and
  - (b) if a complaint is made to the Tribunal under paragraph (8), in Articles 46 and 51,
- shall be construed accordingly.

(10) In paragraphs (1)(d) and (3)(a) “client”, in relation to any matter in which a solicitor or his firm has been instructed, includes any person on whose behalf the person who gave the instructions was acting.”.

(2) After the Article 41A inserted in the Solicitors Order by paragraph (1) there shall be inserted—

“Examination of files

**Power of Society to examine files in connection with complaints**

**41B.**—(1) Where the Council are satisfied that it is necessary to do so for the purpose of investigating any complaint made to the Society—

- (a) alleging professional misconduct by a solicitor; or
- (b) relating to the quality of any professional services provided by a solicitor,

the Society may give notice to the solicitor or his firm requiring the production or delivery to any person appointed by the Society, at a time and place to be fixed by the Society, of all documents in the possession of the solicitor or his firm in connection with the matters to which the complaint relates (whether or not they relate also to other matters).

(2) Paragraphs 2(2) to 8 and 17 to 21 of Schedule 1 shall apply in relation to the powers conferred by paragraph (1) as they apply in relation to the powers conferred by paragraph 2(1) of that Schedule, and accordingly in those provisions—

- (a) any reference to a person appointed, or to a requirement, under paragraph 2(1) of that Schedule shall be construed as including a reference to a person appointed, or to a requirement, under paragraph (1); and
- (b) any reference to any such documents as are mentioned in paragraph 2(1) of that Schedule shall be construed as including a reference to any such documents as are mentioned in paragraph (1).”.

**Lay observers**

**17.** In Article 42 of the Solicitors Order (lay observers)—

- (a) in paragraph (1)—
  - (i) after “observers”) there shall be inserted “ (a) ”;
  - (ii) at the end there shall be added “and
    - (b) to examine any written allegation made by or on behalf of a member of the public concerning the Society's treatment of a complaint about a solicitor or an employee of a solicitor made to the Society by that member of the public or on his behalf.” ;
- (b) after paragraph (5) there shall be inserted—

“(5A) Where it appears to a lay observer, in examining any such allegation as is mentioned in paragraph (1)(b)—

  - (a) that there arises out of the complaint in respect of which the allegation has been made both—
    - (i) a question as to the professional conduct of a solicitor, and

- (ii) a question as to the quality of any professional services provided by him;  
and
- (b) that it would be appropriate for the latter question to be considered by the Tribunal with a view to determining whether to exercise any of its powers under Article 51A in relation to the solicitor,  
the lay observer may make an application to the Tribunal with respect to the solicitor.” ;
- (c) after paragraph (7) there shall be inserted—
  - “(8) The Head of the Department of Finance and Personnel shall lay a copy of any report made by a lay observer before the Assembly.” .

### **The Solicitors Disciplinary Tribunal**

**18.** For Articles 43 to 47 of the Solicitors Order (Disciplinary Committee) there shall be substituted—

#### **“The Solicitors Disciplinary Tribunal**

**43.—**(1) The Lord Chief Justice, after consultation with the Council, shall appoint a tribunal, to be known as the Solicitors Disciplinary Tribunal and consisting of—

- (a) practising solicitors of not less than 10 years' standing (solicitor members); and
- (b) persons who are neither solicitors nor members of the Bar of Northern Ireland (lay members).

(2) The members of the Tribunal shall elect one of the solicitor members to be the president of the Tribunal.

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

(4) The Lord Chief Justice, after consultation with the Council, may remove a member of, and may fill a vacancy in, the Tribunal.

(5) The Tribunal may, subject to paragraph (6), 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 Tribunal may be dealt with or disposed of notwithstanding any change in the membership of the Tribunal.

(6) For the purpose of hearing and determining applications and complaints the Tribunal shall be properly constituted if—

- (a) at least 3 members are present; and
- (b) at least 1 lay member is present; and
- (c) the number of solicitor members present exceeds the number of lay members present; and
- (d) the president or another solicitor member presides.

(7) Subject to the provisions of this Order and of any rules made under paragraph (8), the Tribunal may regulate their procedure in such manner as they may think fit.

(8) The Tribunal may, with the concurrence of the Lord Chief Justice, make rules regulating applications and complaints to the Tribunal and the hearing, conduct and determination of such applications and complaints and of inquiries held by the Tribunal.

(9) Without prejudice to the powers of the Tribunal under Article 51(1)(j) and (k), rules under paragraph (8) may make provision for the payment by any party to an application or

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complaint made to the Tribunal of the costs, or a contribution towards the costs, incurred by any other party or by the Tribunal in connection with that application or complaint.

(10) The Tribunal may appoint a secretary, who shall be a member of the Society but shall not be a member of the Tribunal.

(11) Except as provided by paragraph (3), the Society shall defray the costs incurred by the Tribunal, 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 Tribunal**

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

- (a) an application by a solicitor who has been suspended from practice for an order terminating the suspension;
- (b) an application by a person whose name has been struck off the roll for an order for the replacement of his name on the roll;
- (c) an application by a solicitor who is restricted from practising on his own account, whether in partnership or otherwise, under an order made under Article 51(1)(c) or (4) for an order removing that restriction;
- (d) an application by a solicitor who is excluded from legal aid work by an order made under Article 51B for an order terminating his exclusion;
- (e) a complaint by the Society or any other person—
  - (i) that a solicitor has been guilty of professional misconduct or of other 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 Tribunal), 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, the Society, the Tribunal or the High Court 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;
- (f) a complaint requiring a solicitor to answer allegations contained in an affidavit;
- (g) a complaint by the Society relating to the conduct of a solicitor in connection with—
  - (i) the giving of advice or assistance under Part II of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981<sup>F4</sup>; or
  - (ii) the provision of services for any person receiving legal aid under Part II or III of that Order (including the provision of any such services in the capacity of agent for that person's solicitor); or
- (h) any other application or complaint which is authorised to be made to the Tribunal 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 Tribunal 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 Tribunal shall take into consideration every such application or complaint together with such affidavit and documents as aforesaid.

(3) Where a judge of the<sup>F5</sup>Court of Judicature], 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 Tribunal under paragraph (1) with respect to the solicitor.

#### **Procedure on application by solicitor or former solicitor**

**45.** Where an application is made under Article 44(1)(a), (b), (c) or (d), the Tribunal—

- (a) shall inform the Society of the application; and
- (b) shall hold an inquiry.

#### **Procedure on application or complaint against solicitor**

**46.—**(1) Where an application or a complaint is made under Article 44(1)(e), (f) or (h) by a person other than the Society or a lay observer, the Tribunal—

- (a) if they decide that a prima facie case has not been shown, shall so notify the applicant or 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 application or complaint;
  - (ii) a copy of the affidavit;
  - (iii) copies or, at the discretion of the Tribunal, a list of the relevant documents; and
  - (iv) a notice requiring the solicitor to send to the Tribunal, within a specified period, an affidavit by him in answer to the application or complaint, together with any documents, or duly authenticated copies thereof, on which he may rely in support of his answer.

(2) Where an application or a complaint is made under Article 44(1)(e), (f), (g) or (h) by the Society or a lay observer, the Tribunal shall serve on the solicitor the documents mentioned in paragraph (1)(b)(i) to (iv).

(3) Where the notice mentioned in paragraph (1)(b)(iv) is served, any party to the application or complaint may inspect the documents furnished by any other party.

(4) After the expiration of the period specified in such notice, the Tribunal 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 applicant or 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.

(5) Where an applicant or complainant or a solicitor against whom an application or complaint is made has been notified under paragraph (1)(a) or paragraph (4)(a), the Tribunal shall, if so required in writing by the complainant or the solicitor, make a formal order embodying their decision.”.

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**F5** Words in [art. 18](#) (amending art. 44(3) of Solicitors (Northern Ireland) Order 1976) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), ss. 59\(5\), 148\(1\), Sch. 11 para. 6; S.I. 2009/1604, art. 2\(d\)](#)

## Powers of the Tribunal

**19.**—(1) For Article 51 of the Solicitors Order there shall be substituted—

### “Orders of Tribunal on inquiry

**51.**—(1) Where the Tribunal 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 £3,000 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;
- (d) the removal of a restriction on the solicitor from practising on his own account, whether in partnership or otherwise;
- (e) the suspension of the solicitor from practice;
- (f) the termination of the solicitor's suspension from practice;
- (g) the striking off the roll of the name of the solicitor;
- (h) the replacement on the roll of the name of a former solicitor whose name has been struck off the roll;
- (i) the termination of the solicitor's exclusion from legal aid work;
- (j) the payment by any party to the inquiry of the costs of any other party to be measured by the Tribunal, or of a stated sum as a contribution towards such costs;
- (k) the payment by any party to the inquiry of a sum to be measured by the Tribunal for the costs incurred by the Tribunal, or of a stated sum as a contribution towards such costs;
- (l) the making by any party of such restitution or satisfaction to any aggrieved party as the Tribunal think fit.

(2) Paragraph (1) does not apply where the Tribunal hold an inquiry into an application under Article 42(5A).

(3) Where the Tribunal hold an inquiry into a complaint under Article 41A(8) relating to a direction given under Article 41A, they may, without prejudice to their powers under paragraph (1) or Article 51A, make an order providing for the direction to be treated for the purposes of this Order as if it were contained in an order of the Tribunal.

(4) An order made by the Tribunal under paragraph (1)(f) or (h) may impose the restriction that the solicitor shall not practise on his own account, whether in partnership or otherwise.

(5) An order made by the Tribunal under paragraph (1)(k) for the payment by any party of the costs of the Tribunal 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(11).

(6) The Tribunal may postpone the making of an order under this Article, Article 51A or Article 51B.

(7) Where the making of an order is postponed under paragraph (6), the Tribunal 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.

(8) The Tribunal may, on the application of the solicitor to whom an order under this Article, Article 51A or Article 51B relates, or of any other party, suspend in whole or in part the operation of the order pending an appeal under Article 53.

(9) Where an order is suspended under paragraph (8)—

- (a) nothing in Article 52(1), (2) or (3) shall apply to the filing, enforcement or lodgment of copies of, or to the publication 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.

(10) 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 Tribunal under paragraph (1)(c) or (4), or by the Lord Chief Justice or the High Court on an appeal under Article 53,

shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(11) If it appears to the Department of Finance and Personnel that there has been a change in the value of money since the relevant date, that Department may by order, subject to negative resolution, substitute for the sum for the time being specified in paragraph (1)(b) such other sum as appears to that Department to be justified by the change.

(12) In paragraph (11) “the relevant date” means—

- (a) in relation to the first order made under that paragraph, the date of the coming into operation of Article 19(1) of the Solicitors (Amendment) (Northern Ireland) Order 1989; and
- (b) in relation to each subsequent order, the last occasion on which the sum specified in paragraph (1)(b) was altered.

### **Power of Tribunal to impose sanctions for inadequate professional services**

**51A.**—(1) The powers conferred on the Tribunal by this Article shall be exercisable on an inquiry into—

- (a) any application or complaint made to the Tribunal under this Order by or on behalf of the Society; or
- (b) any application made to the Tribunal under Article 42(5A) by a lay observer,

and, in the case mentioned in sub#paragraph (a), shall be exercisable whether or not they make any other order on the inquiry.

(2) Where, on an inquiry into any such application or complaint with respect to a solicitor, it appears to the Tribunal that the professional services provided by the solicitor in connection with any matter in which he or his firm had been instructed by a client were in any respect not of the quality that could reasonably have been expected of him as a solicitor, then (subject to paragraph (4)), the Tribunal may, if they think fit, do one or more of the following things, namely—

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- (a) determine that the costs to which the solicitor shall be entitled in respect of those services shall be limited to such amount as may be specified in their determination and by order direct the solicitor to comply, or to secure compliance, with such one or more requirements falling within paragraph (3) as appear to them to be necessary in order to give effect to their determination;
  - (b) by order direct the solicitor to take such steps for the completion of the said matter within such reasonable time as they may specify;
  - (c) by order direct the solicitor to secure the rectification, at the expense of the solicitor or his firm, of any such error, omission or other deficiency arising in connection with the said matter as they may specify;
  - (d) by order direct the solicitor to take, at the expense of the solicitor or his firm, such other action in the interests of the client as they may specify.
- (3) The requirements referred to in paragraph (2)(a) are—
  - (a) a requirement to refund the whole or part of any amount already paid by or on behalf of the client in respect of the solicitor's costs in respect of his services in connection with the said matter;
  - (b) a requirement to remit the whole or part of those costs;
  - (c) a requirement to waive, whether wholly or to any specified extent, the right to recover those costs.
- (4) The Tribunal shall not exercise any of their powers under this Article unless they are satisfied that it would in all the circumstances be appropriate to do so; and in determining whether in any case it would be appropriate to exercise any of those powers the Tribunal may have regard—
  - (a) to the existence of any remedy that could reasonably be expected to be available to the client in civil proceedings;
  - (b) where proceedings seeking any such remedy have not been commenced by him, to whether it would be reasonable to expect him to commence such proceedings.
- (5) Where the Tribunal have given a direction under paragraph (2)(a) in order to give effect to a determination by them under that provision as to the costs of a solicitor in respect of any services provided by him, then—
  - (a) for the purposes of any taxation of a bill covering those costs the amount charged by the bill in respect of those costs shall be deemed to be limited to the amount specified in the Tribunal's determination; and
  - (b) where a bill covering those costs has not been taxed in accordance with sub# paragraph (a), the client shall, for the purposes of the recovery of those costs (by whatever means) and notwithstanding any enactment or agreement, be deemed to be liable to pay in respect of those costs only the amount specified in the Tribunal's determination.
- (6) Where a bill covering those costs has been taxed in accordance with paragraph (5)(a), the Tribunal's direction under paragraph (2)(a) shall, so far as relating to those costs, cease to have effect.
- (7) In paragraphs (2)(d) and (4)(a) “client”, in relation to any matter in which a solicitor or his firm has been instructed, includes any person on whose behalf the person who gave the instructions was acting.

### **Power of Tribunal in relation to legal aid**

**51B.**—(1) On an inquiry into a complaint made to the Tribunal under Article 44(1) against a solicitor the Tribunal may, whether or not they make any other order on the inquiry,—

- (a) make an order providing for the exclusion (either permanently or for a specified period) of the solicitor from legal aid work;
- (b) order that any costs—
  - (i) otherwise payable under or in accordance with Part II or III of the Order of 1981; or
  - (ii) otherwise chargeable as mentioned in Article 8(1) of that Order,in connection with services provided by the solicitor shall be reduced or cancelled.

(2) The Tribunal shall not make an order under paragraph (1) unless they determine that there is good reason for doing so arising out of—

- (a) the conduct of the solicitor in connection with the giving of advice or assistance under Part II of the Order of 1981;
- (b) the conduct of the solicitor in connection with the provision of services for any person receiving legal aid under Part II or III of the Order of 1981 (including the provision of any such services in the capacity of agent for that person's solicitor); or
- (c) the professional conduct generally of the solicitor.

(3) Where the Tribunal make an order under paragraph (1)(a) in the case of a solicitor who is a member of a firm of solicitors, the Tribunal may, if they think fit, order that any other person who is for the time being a member of the firm shall be excluded (either permanently or for a specified period) from legal aid work.

(4) The Tribunal shall not make an order under paragraph (3) excluding any person from legal aid work unless an opportunity is given to him to show cause why the order should not be made.

(5) In so far as any of Articles 7, 8, 13(1) and 36(1) of the Order of 1981 has effect in relation to any costs reduced or cancelled by an order under paragraph (1)(b), it shall so have effect subject to the provisions of that order.

(6) In this Article—

- (a) “the Order of 1981” means the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981<sup>F6</sup>;
- (b) references to a person being excluded from legal aid work are references to his being excluded from both of the following classes of persons, namely—
  - (i) those who may be selected under Article 15(3) of the Order of 1981; and
  - (ii) those who may be assigned to give legal aid under Part III of that Order.

### **Power of Tribunal to make recommendation for application of Schedule 1 to solicitor**

**51C.**—(1) Where the Tribunal hold an inquiry into any application or complaint made under this Order with respect to a solicitor, they may, whether or not they make any order on the inquiry, make a recommendation to the Council that the provisions of Schedule 1 should apply in relation to that solicitor and the other persons mentioned in that Schedule.

(2) A recommendation made by the Tribunal under paragraph (1) shall contain a statement of the findings on which the Tribunal based the recommendation.”.

(2) In Article 52 of the Solicitors Order—

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- (a) in paragraph (1) for the words from the beginning to “Article 51” there shall be substituted “ An order made by the Tribunal on an inquiry ”;
- (b) in paragraph (2) for the words from the beginning to “restitution or satisfaction” there shall be substituted—
  - “Where the Tribunal make an order—
  - (a) under Article 51(1)(b) imposing a fine on a solicitor;
  - (b) under Article 51(1)(j), (k) or (l);
  - (c) under Article 51(3); or
  - (d) under Article 51A(2),” ;
- (c) in paragraph (5) for “Article 51(1)(c) or (d)” there shall be substituted “ Article 51(1)(c) or (e) or (4) ”.

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### Appeals against orders of the Tribunal

**20.** For Article 53 of the Solicitors Order there shall be substituted—

#### “Appeals against orders of the Tribunal

- 53.**—(1) A person aggrieved by—
- (a) an order of the Tribunal dismissing an application made by him under Article 44(1)(a), (b) or (c); or
  - (b) an order of the Tribunal under Article 51(4) restricting him from practising on his own account, whether in partnership or otherwise,
- may appeal to the Lord Chief Justice who may—
- (i) affirm the order of the Tribunal; or
  - (ii) make any order which could have been made by the Tribunal on its inquiry.
- (2) An appeal against any other order made by the Tribunal (except an order under Article 51(3)) shall lie to the High Court—
- (a) at the instance of the solicitor or the Society or any person directed by the order to make any restitution or satisfaction;
  - (b) by leave of the High Court, at the instance of any other person appearing to the High Court to be affected by the order.
- (3) An appeal shall also lie to the High Court against the refusal of the Tribunal to suspend the operation of an order under Article 51(8).
- (4) The Society shall be entitled to appear and to be heard on the hearing of an appeal under this Article.
- (5) A copy of every order made on an appeal under paragraph (2) or (3) shall be sent to the registrar by the Master (Queen's Bench and Appeals).
- (6) An appeal under this Article shall be brought within 21 days from the date of the making of the order or refusal appealed against.”.

## Remuneration of solicitors

21.—(1) For Part V of the Solicitors Order (costs in non-contentious business) there shall be substituted—

### “PART V

### REMUNERATION OF SOLICITORS

#### *Contentious business*

#### **Contentious business agreements**

64.—(1) Subject to paragraph (2), a solicitor may make an agreement in, or evidenced by, writing with his client as to his remuneration in respect of any contentious business done, or to be done, by him providing that he shall be remunerated by a gross sum, or by a salary, or otherwise, and whether at a higher or lower rate than that at which he would otherwise have been entitled to be remunerated.

(2) Nothing in a contentious business agreement shall give validity to—

- (a) any purchase by a solicitor of the interest, or any part of the interest, of his client in any action or other contentious proceeding; or
- (b) any agreement by which a solicitor retained or employed to prosecute any action or other contentious proceeding, stipulates for payment only in the event of success in that action or proceeding; or
- (c) any disposition, contract, settlement, conveyance, delivery, dealing or transfer which under the law relating to bankruptcy is invalid against a trustee or creditor in any bankruptcy or composition.

#### **Effect of contentious business agreements**

65.—(1) Subject to the provisions of this Article and to Articles 66 to 68, the costs of a solicitor in any case where a contentious business agreement has been made shall not be subject to taxation or to the provisions of Article 71E.

(2) Subject to paragraph (3), a contentious business agreement shall not affect the amount of, or any rights or remedies for the recovery of, any costs payable by the client to, or to the client by, any person other than the solicitor, and that person may, unless he has otherwise agreed, require any such costs to be taxed according to the rules for their taxation for the time being in force.

(3) A client shall not be entitled to recover from any other person under an order for the payment of any costs to which a contentious business agreement relates more than the amount payable by him to his solicitor in respect of those costs under the agreement.

(4) A contentious business agreement shall be deemed to exclude any claim by the solicitor in respect of the business to which it relates other than—

- (a) a claim for the agreed costs; or
- (b) a claim for such costs as are expressly excepted from the agreement.

(5) A provision in a contentious business agreement that the solicitor shall not be liable for negligence, or that he shall be relieved from any responsibility to which he would otherwise be subject as a solicitor, shall be void.

### **Enforcement of contentious business agreements**

**66.**—(1) No action shall be brought on any contentious business agreement, but on the application of any person who—

- (a) is a party to the agreement or the representative of such a party; or
- (b) is or is alleged to be liable to pay, or is or claims to be entitled to be paid, the costs due or alleged to be due in respect of the business to which the agreement relates,

the court may enforce or set aside the agreement and determine every question as to its validity or effect.

(2) On any application under paragraph (1), the court—

- (a) if it is of the opinion that the agreement is in all respect fair and reasonable, may enforce it;
- (b) if it is of the opinion that the agreement is in any respect unfair or unreasonable, may set it aside and order the costs covered by it to be taxed as if it had never been made;
- (c) in any case, may make such order as to the costs of the application as it thinks fit.

(3) If the business covered by a contentious business agreement (not being an agreement to which Article 67 applies) is business done, or to be done, in any action, a client who is a party to the agreement may make application to the taxing officer for the agreement to be examined.

(4) The taxing officer to whom an application is made under paragraph (3) shall examine the agreement and may either allow it or, if he is of the opinion that the agreement is unfair or unreasonable, require the opinion of the court to be taken on it, and the court may allow the agreement or reduce the amount payable under it, or set it aside and order the costs covered by it to be taxed as if it had never been made.

(5) Where the amount agreed under any contentious business agreement is paid by or on behalf of the client or by any person entitled to do so, the person making the payment may at any time within 12 months from the date of payment, or within such further time as appears to the court to be reasonable, apply to the court, and, if it appears to the court that the special circumstances of the case require it to be re#opened, the court may, on such terms as may be just, re#open it and order the costs covered by the agreement to be taxed and the whole or any part of the amount received by the solicitor to be repaid by him.

(6) In this Article and in Articles 67 to 69 “the court” means—

- (a) in relation to an agreement under which any business has been done or was to have been done in the High Court, the High Court;
- (b) in relation to an agreement under which any business has been done or was to have been done in the Lands Tribunal, the High Court;
- (c) in relation to any other agreement—
  - (i) under which more than £5,000 is payable, the High Court; or
  - (ii) under which not more than £5,000 is payable, a county court.

(7) In this Article and in Articles 67 to 70 “the taxing officer” means—

- (a) where the court is the High Court, the Master (Taxing Office); and
- (b) where the court is the county court, a circuit registrar.

### **Contentious business agreements by certain representatives**

**67.**—(1) Where the client who makes a contentious business agreement makes it as a representative of a person whose property will be chargeable with the whole or part of the



amount payable under the agreement, the agreement shall be referred to the taxing officer before payment.

(2) The taxing officer to whom an agreement is referred under paragraph (1) shall examine it and may either allow it, or, if he is of the opinion that it is unfair or unreasonable, require the opinion of the court to be taken on it, and the court may allow the agreement or reduce the amount payable under it, or set it aside and order the costs covered by it to be taxed as if it had never been made.

(3) A client who makes a contentious business agreement as mentioned in paragraph (1) and pays the whole or any part of the amount payable under the agreement without it being allowed by the taxing officer or by the court shall be liable at any time to account to the person whose property is charged with the whole or any part of the amount so paid for the sum so charged, and the solicitor who accepts the payment may be ordered by the court to refund the amount received by him.

(4) A client makes a contentious business agreement as the representative of another person if he makes it—

- (a) as his guardian,
- (b) as a trustee for him under a deed or will,
- (c) as controller for his property and affairs under Part VIII of the Mental Health (Northern Ireland) Order 1986<sup>F7</sup>, or
- (d) as a person other than a controller authorised under that Part of that Order to act on his behalf.

#### **Effect on contentious business agreement of death, incapability or change of solicitor**

**68.**—(1) If, after some business has been done under a contentious business agreement but before the solicitor has wholly performed it—

- (a) the solicitor dies, or becomes incapable of acting; or
- (b) the client changes his solicitor (as, notwithstanding the agreement, he shall be entitled to do); or
- (c) the solicitor withdraws from the retainer,

any party to, or the representative of any party to, the agreement may apply to the court, and the court shall have the same jurisdiction as to enforcing the agreement so far as it has been performed, or setting it aside, as the court would have had if the solicitor had not died or become incapable of acting, or the client had not changed his solicitor, or the solicitor had not withdrawn from the retainer.

(2) The court, notwithstanding that it is of the opinion that the agreement is in all respects fair and reasonable, may order the amount due in respect of business under the agreement to be ascertained by taxation, and in that case—

- (a) the taxing officer, in ascertaining that amount, shall have regard so far as may be to the terms of the agreement; and
- (b) payment of the amount found by him to be due shall be paid forthwith by the party liable to pay the same, unless rules of court provide otherwise pending the determination of an appeal under Article 71G(6).

(3) If in such a case as is mentioned in paragraph (1)(b) an order is made for the taxation of the amount due to the solicitor in respect of the business done under the agreement, the court shall direct the taxing officer to have regard to the circumstances under which the change of solicitor has taken place, and the taxing officer, unless he is of the opinion that there has been no default, negligence, improper delay or other conduct on the part of the solicitor affording

the client reasonable ground for changing his solicitor, shall not allow to the solicitor the full amount of the remuneration agreed to be paid to him.

(4) If in such a case as is mentioned in paragraph (1)(c) an order is made for the taxation of the amount due to the solicitor in respect of the business done under the agreement, the court shall direct the taxing officer to have regard to the circumstances under which the withdrawal from the retainer has taken place, and the taxing officer, unless he is of opinion that the withdrawal from the retainer was for good cause, shall not allow to the solicitor the full amount of the remuneration agreed to be paid to him.

### **Security for costs and termination of retainer**

**69.**—(1) A solicitor may take security from his client for his costs, to be ascertained by taxation or otherwise, in respect of any contentious business to be done by him.

(2) 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, the refusal or failure shall be deemed to be a good cause whereby the solicitor may, upon giving reasonable notice to the client, withdraw from the retainer.

(3) 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 (2), 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.

### **Taxations with respect to contentious business**

**70.** Subject to the provisions of any rules of court or county court rules, on every taxation of costs in respect of any contentious business, the taxing officer may—

- (a) allow interest at such rate and from such time as he thinks just on money disbursed by the solicitor for the client, and on money of the client in the hands of, and improperly retained by, the solicitor; and
- (b) in determining the remuneration of the solicitor, have regard to the skill, labour and responsibility involved in the business done by him.

### *Non#contentious business*

### **Orders as to remuneration of solicitors for non#contentious business**

**71.**—(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 High Court or the Court of Appeal 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) for the purpose only of prescribing and regulating the remuneration of solicitors in respect of business under the Land Registration Act (Northern Ireland) 1970<sup>F8</sup>, 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 High Court or the Court of Appeal 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.

(3) The Lord Chief Justice may appoint an officer of the [F9Court of Judicature] 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 Committee shall—

- (a) cause a draft of the order to be sent to the Council; and
- (b) consider any observations in writing submitted to them by the Council within three months of the sending of the draft;

and the Committee 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 71A, be regulated by that order.

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

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(11) In Part I of Schedule 1 to the Statutory Rules (Northern Ireland) Order 1979<sup>F10</sup> for the reference to Article 64 of the Solicitors (Northern Ireland) Order 1976<sup>F11</sup> there shall be substituted a reference to this Article.

### **Non#contentious business agreements**

**71A.**—(1) Subject to the provisions of this Article 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) 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.

(3) If it appears to the High Court upon an application made to the Court in that behalf that any such agreement is in all respects fair and reasonable between the parties, the Court 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 it thinks fit; but if the terms of the agreement do not appear to the Court to be fair and reasonable the Court may order the agreement to be set aside or varied and may direct that all or any costs incurred or chargeable in respect of the matters included in the agreement be taxed under this Part.

(4) Except as provided by paragraph (3), 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 or to the provisions of Article 71E.

(5) Articles 64(2) and 65(2) to (5) shall apply to a non#contentious business agreement as they apply to a contentious business agreement.

### **Certain stipulations and restrictions on purchasers to be void**

**71B.**—(1) Any stipulation made on the sale of any land after 1st September 1976 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 1st September 1976 to the effect that the assurance to, or the registration of 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.

#### *Remuneration—general*

#### **Power of court to order solicitor to deliver bill**

**71C.**—(1) The jurisdiction of the High Court to make orders for the delivery by a solicitor of a bill of costs, and for the delivery up of, or otherwise in relation to, any documents in his possession, custody or power, is hereby declared to extend to cases in which no business has been done by him in the High Court.

(2) A county court shall have the same jurisdiction as the High Court to make orders making such provision as is mentioned in paragraph (1) in cases where the bill of costs or the documents relate wholly or partly to contentious business done by the solicitor in that county court.

(3) In this Article and in Articles 71D to 71G “solicitor” includes the executors, administrators and assignees of a solicitor.

#### **Right to furnish bill in general terms**

**71D.** A solicitor's bill shall be sufficient in form if it contains a reasonable statement or description of the services rendered, with 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 officer.

#### **Action to recover solicitors' costs**

**71E.**—(1) Subject to the provisions of this Order, no action shall be brought to recover any costs due to a solicitor unless a bill of those costs has been delivered in accordance with the requirements set out in paragraph (2).

(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.

#### **Order for taxation**

**71F.**—(1) Where the retainer of a solicitor is disputed, the solicitor or the client may apply to the High Court to have such dispute determined and if the Court then finds that a proper retainer exists the Court may order the bill to be taxed.

- (2) Where the retainer of a solicitor is not disputed an order may be obtained from the Master (Taxing Office)—
- (a) by the client, for the delivery and taxation of the solicitor's bill;
  - (b) by the client, 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—
- (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) An order for the taxation of a bill made on an application under this Article by a client shall be an order—
- (a) for the taxation of all the costs; or
  - (b) for the taxation of such part of the costs as the client requests in his application.
- (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 Master (Taxing Office) or, as the case may be, the High Court, thinks fit.
- (6) No bill previously taxed shall be again referred unless in exceptional circumstances the High Court sees fit so to order.
- (7) Where a person other than the client has paid, or is or was liable to pay, a bill either to the solicitor or to his client, that person or his assignee or personal representative may apply to the Master (Taxing Office) for taxation of the bill as if he were the client, and the same proceedings shall be had thereon as if the application had been made by the client.
- (8) Where the Master (Taxing Office) has no power to make an order by virtue of paragraph (7) except in special circumstances, he may in considering whether there are special circumstances sufficient to justify the making of an order, take into account circumstances which affect the applicant but do not affect the client.
- (9) Without prejudice to the provisions of paragraph (7), where a trustee or personal representative has become liable to pay the bill of a solicitor, the Master (Taxing Office) 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 Master (Taxing Office) shall have regard to the provisions of this Article as to applications by the client for the taxation of a solicitor's bill so far as they are capable of being applied to an application made under this paragraph and to the extent and nature of the interest of the applicant.
- (10) If an applicant under paragraph (9) pays any money to the solicitor, he shall have the same right to be paid that money by the trustee or personal representative liable to pay the bill as the solicitor had.

(11) The Master (Taxing Office) on any application made pursuant to paragraph (7) or (9) may order the solicitor to deliver to the person making the application a copy of the bill upon payment of the costs of the copy.

(12) Where a bill of costs relates wholly to contentious business done in a county court the functions of the High Court and the Master (Taxing Office) under this Article and Article 71G in relation to that bill may be exercised by the county court and a circuit registrar, and the references in Article 71G(5) and (8) to rules of court shall in any such case be construed as references to county court rules.

### **Provisions as to taxation**

**71G.**—(1) Where 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 Master (Taxing Office) may allow.

(2) The bill delivered shall stand referred to the Master (Taxing Office) and he 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 the High Court in any particular case, be in the discretion of the Master (Taxing Office), subject to an appeal under paragraph (6) by any dissatisfied party and shall be taxed by the taxing officer when and as allowed.

(5) The amount certified by the Master (Taxing Office) 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 under paragraph (6).

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

(7) If after due notice of any taxation any party fails, without reasonable explanation given to the Master (Taxing Office) before taxation, to attend or be represented on the taxation, the Master (Taxing Office) 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<sup>F12</sup>, the procedure to be followed on taxation under this Part and on an appeal therefrom shall be regulated by rules of court.

### **Charging orders**

**71H.**—(1) Subject to paragraph (2), any court in which a solicitor has been employed to prosecute or defend any action, 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 relation to that action, 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.

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(3) In section 23 of the Arbitration Act (Northern Ireland) 1937<sup>F13</sup> for the reference to Article 71 of the Solicitors (Northern Ireland) Order 1976<sup>F14</sup> there shall be substituted a reference to this Article.”.

(2) Article 72 of the Solicitors Order (termination of retainer) shall cease to have effect.

<b>F7</b>	1986 NI 4
<b>F8</b>	1970 c. 18 (NI)
<b>F9</b>	Words in art. 21 (amending art. 71(3) of Solicitors (Northern Ireland) Order 1976) substituted (1.10.2009) by <a href="#">Constitutional Reform Act 2005 (c. 4)</a> , ss. 59(5), 148(1), <a href="#">Sch. 11 para. 6</a> ; S.I. 2009/1604, <a href="#">art. 2(d)</a>
<b>F10</b>	1979 NI 12
<b>F11</b>	1976 NI 12
<b>F12</b>	1954 c. 33 (NI)
<b>F13</b>	1937 c. 8 (NI)
<b>F14</b>	1976 NI 12

### Exercise of solicitors' lien on documents by Society

22. In Part VI of the Solicitors Order at the beginning there shall be inserted—

#### “Exercise of solicitors' lien on documents by Society

72A. Where, under any provision of this Order or otherwise, a solicitor has delivered any document to the Society or to a solicitor appointed by the Society, the Society shall be deemed to have a lien on that document of the same nature and to the same extent as the solicitor would have had if the document had remained in his possession.”.

### Committees of the Council

23.—(1) After Article 73 of the Solicitors Order there shall be inserted—

#### “Committees of the Council

73A.—(1) The Council has power to appoint a committee for any such general or special purpose as in the opinion of the Council may be better regulated or managed by means of a committee, and may delegate to any committee so appointed, with or without restrictions or conditions, as they think fit, the exercise of any functions exercisable by the Council.

(2) Subject to paragraph (5), the number and term of office of the members of a committee appointed under this Article, and the number of those members necessary to form a quorum, shall be fixed by the Council.

(3) A committee appointed under this Article may include persons who are not members of the Council, and such persons need be neither members of the Society nor solicitors; but at least half of the members of any such committee (including the chairman) shall be members of the Council.

(4) If more than one-third of the members of any committee appointed under this Article are not members of the Council, no resolution of that committee shall be duly passed unless the majority of the members of the Council present vote in favour of it.

(5) Any committee to which any functions exercisable by the Council under Article 41A or 41B are delegated in pursuance of paragraph (1) shall include—



- (a) such number of persons who are solicitors but not members of the Council as the committee may determine; and
  - (b) such number of persons who are neither solicitors nor members of the Bar of Northern Ireland as the Lord Chief Justice may, after consultation with the Council, determine.
- (6) The persons to be appointed by the Council to any committee pursuant to paragraph (5) shall be nominated by the Lord Chief Justice.
- (7) The validity of any proceedings of a committee to which paragraph (5) applies shall not be affected by any casual vacancy among the persons appointed to it pursuant to that paragraph.”.
- (2) In Article 74 of the Solicitors Order (powers to act on behalf of the Society)—
- (a) in paragraph (1) at the end there shall be added “; and the power to delegate functions to committees conferred on the Council by Article 73A shall include power to delegate functions exercisable by the Council by virtue of this paragraph ”;
  - (b) in paragraph (2)—
    - (i) after “Society” there shall be inserted “ or the Council ”;
    - (ii) for “by the secretary and” there shall be substituted “ or, as the case may be, the Council by the secretary of the Society or ”.

#### **Society acting as attorney of solicitor**

**24.** In Schedule 1 to the Solicitors Order (property in control or possession of certain solicitors and other persons)—

- (a) in paragraph 8(2) for “paragraph 3 or paragraph 13” there shall be substituted “ paragraph 22A ”;
- (b) in paragraph 13, sub#paragraphs (2) to (4) shall cease to have effect; and
- (c) at the beginning of Part II of that Schedule there shall be inserted—

“**22A.**—(1) Without prejudice to paragraph 13(1)(b)(ii), 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.

(2) Where the Society are appointed under paragraph 13(1)(b)(ii) or this paragraph to act as attorney of a solicitor—

- (a) the Society 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 paragraph 23 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); and
- (b) the solicitor shall be precluded from doing any of the acts and things mentioned in head (a) which may be done by the Society as his attorney.

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

- (d) in paragraph 23 for “paragraph 13(3)” there shall be substituted “ paragraph 22A(2) ”.

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## Building society accounts

**25.**—(1) In Article 33(1)(a) of the Solicitors Order (regulations as to keeping of accounts by solicitors) after “banks” there shall be inserted “ or with building societies ”.

(2) In Article 34 of the Solicitors Order (interest on client's money)—

- (a) in paragraph (1)(a)(i) after “bank” there shall be inserted “ or with a building society ”;
- (b) in paragraph (2) after “bank” there shall be inserted “ or with a building society ”.

(3) In Article 40 of the Solicitors Order (dealing with bank account after death of solicitor)—

- (a) in paragraph (1) after “bank” there shall be inserted “ or building society ”;
- (b) in paragraphs (1) and (2) for “a banking” substitute “ an ”;
- (c) in paragraph (1) “banking” in the last two places where it occurs shall cease to have effect.

(4) In Article 41 of the Solicitors Order (provisions about bankruptcy)—

- (a) in paragraphs (3) and (4)(a) and (c) after “bank” there shall be inserted “ or building society ”;
- (b) in paragraph (4)(b) and (d) “bank” shall cease to have effect.

(5) In Article 77 of the Solicitors Order (relief for banks)—

- (a) in paragraph (1)—
  - (i) after “a bank” there shall be inserted “ or a building society ”;
  - (ii) after “other bank” there shall be inserted “ or building society ”;
- (b) in paragraph (2) after “bank” there shall be inserted “ or a building society ”;
- (c) in paragraph (3)—
  - (i) after “a bank” there shall be inserted “ or a building society ”;
  - (ii) after “the bank” there shall be inserted “ or society ”.

(6) In Schedule 1 to the Solicitors Order (property in control or possession of certain solicitors and other persons)—

- (a) in paragraph 9—
  - (i) in sub#paragraph (1)(a) after “bank” there shall be inserted “ or building society ”;
  - (ii) in sub#paragraph (1)(a) “banking” shall cease to have effect;
  - (iii) in sub#paragraph (2)(b) after “banker” there shall be inserted “ or building society officer ” and after “bank” there shall be inserted “ or building society ”;
- (b) in paragraph 10 after “bank” there shall be inserted “ or building society ”;
- (c) in paragraph 11 after “bank” there shall be inserted “ , building society ”;
- (d) in paragraph 12 after “bank” there shall be inserted “ or a building society ”;
- (e) in paragraph 22 after “banking” there shall be inserted “ or building society ”;
- (f) in paragraph 23(1) after “all banking” there shall be inserted “ or building society ” and “ banking ” in the last two places where it occurs shall cease to have effect.

## Consequential amendments relating to legal aid, advice and assistance

<sup>F15</sup>26. ....

**F15** Art. 26 repealed (1.4.2015) by [Access to Justice \(Northern Ireland\) Order 2003 \(S.I. 2003/435\)](#), art. 49(2), [Sch. 5](#); [S.R. 2015/194](#), art. 2, [Sch.](#) (with art. 3)

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## **Amendments, transitional provisions, savings and repeals**

### *Para. (1)—Amendments*

(2) The transitional and saving provisions in Schedule 3 shall have effect for the purposes of this Order.

### *Para. (3)—Repeals*

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## SCHEDULES

*Schedules 1, 2—Amendments*

### SCHEDULE 3

Article 27(2).

#### TRANSITIONAL PROVISIONS AND SAVINGS

##### Practising certificates

1. Article 5 applies to applications for practising certificates made after the date on which that Article comes into operation.
2. Article 14 of the Solicitors Order, as substituted by Article 6, applies in relation to applications for practising certificates made after the date on which Article 6 comes into operation.
3. Article 15 of the Solicitors Order, as substituted by Article 6, applies in relation to practising certificates which are suspended after the date on which Article 6 comes into operation.

##### Restriction on preparation of contracts of sale etc.

4. In Article 7—
  - (a) paragraph (c) applies to acts done before or after the date on which that Article comes into operation; but
  - (b) paragraphs (b) and (d) do not apply to acts done before that date.

##### Restriction on preparation of papers for probate, etc.

5. Where a person has committed an offence under Article 24 of the Solicitors Order before the date on which Article 8 comes into operation, he shall not be liable after that date to be proceeded against in respect of that offence unless the act constituting that offence would have constituted an offence under Article 24 of the Solicitors Order, as amended by Article 8, if it had been in operation at the time when the act was done.

##### Orders modifying provisions so as to apply to incorporated practices

6. Any provision made by an order under paragraph (8) of Article 26A of the Solicitors Order after the date on which Article 10(1) comes into operation may be made with retrospective effect as from that date or any later date.

##### Imposition of disciplinary sanctions by Council of Law Society

7. Article 16(1) applies in relation to services provided by a solicitor whether they were provided before or after the date on which Article 16(1) comes into operation.

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### Examination of solicitors' files in connection with complaints

**8.** Article 16(2) applies in relation to a complaint whether it was made before or after the date on which Article 16(2) comes into operation.

### Powers of lay observers and Tribunal in relation to inadequate professional services

**9.—(1)** Article 17(b) applies in relation to a complaint whether it was made before or after the date on which Article 17(b) comes into operation.

(2) Article 51A of the Solicitors Order, as substituted by Article 19(1), applies in relation to services provided by a solicitor whether they were provided before or after the date on which Article 19(1) comes into operation.

### The Solicitors Disciplinary Tribunal

**10.** Any complaint or application made to the Disciplinary Committee under Article 44(1) of the Solicitors Order before the coming into operation of Articles 18 to 20 shall be heard and determined, and any appeal from an order of the Committee on holding an inquiry into any such complaint or application shall lie, as if those Articles had not come into operation.

### Legal aid complaints

**11.** Article 51B of the Solicitors Order, as substituted by Article 19(1), applies in relation to conduct of a solicitor whether it occurred before or after the coming into operation of Article 19(1).

**12.—(1)** Article 26 does not affect—

- (a) the hearing and determination by any tribunal established under the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981<sup>F16</sup> of any complaint made, or referred, to the tribunal before the coming into operation of Article 26; or
- (b) any appeal against the decision of such a tribunal with respect to any such complaint.

(2) Subject to sub#paragraph (1)(b), a decision under Article 15(1) of that Order to exclude a person from acting for persons receiving legal aid, advice or assistance shall have effect as if it were an order of the Tribunal under Article 51B(1)(a) of the Solicitors Order.

**F16** 1981 NI 8

### Increase in penalty

**13.** The amendment of Article 27(1) of the Solicitors Order in Schedule 2 shall not affect the fine for an act done before the date on which that amendment comes into operation.

### Saving

**14.** The provisions of this Schedule shall have effect without prejudice to section 29 of the Interpretation Act (Northern Ireland) 1954<sup>F17</sup>.

**F17** 1954 c. 33 (NI)

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**Changes and effects yet to be applied to :**

- art. 16(1) repealed by [2016 c. 14 \(N.I.\) Sch. 4 para. 3Sch. 5](#)
- art. 17 repealed by [2016 c. 14 \(N.I.\) Sch. 4 para. 4Sch. 5](#)