

SCHEDULES

SCHEDULE 4

Article 49(1)

MINOR AND CONSEQUENTIAL AMENDMENTS

Costs in Criminal Cases Act (Northern Ireland) 1968 (c. 10)

- 1.—(1) The Costs in Criminal Cases Act (Northern Ireland) 1968 shall be amended as follows.
- (2) In section 4(1) (costs awarded by Court of Appeal on dismissing appeal or application) for paragraph (b) substitute—
- “(b) to pay to the Northern Ireland Legal Services Commission the whole or any part of the costs of criminal defence services funded by the Commission in respect of the appeal or application under the Access to Justice (Northern Ireland) Order 2003; and”.
- (3) In section 6 (effect of costs of legal aid)—
- (a) for “Part III of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981” substitute “the Access to Justice (Northern Ireland) Order 2003”; and
- (b) in paragraph (b) for the words from “Lord Chancellor” to the end substitute “Northern Ireland Legal Services Commission the whole or any part of the costs of the criminal defence services funded by the Commission for the defendant or (as the case may be) the appellant”.

Solicitors (Northern Ireland) Order 1976 (N.I.12)

- 2.—(1) The Solicitors (Northern Ireland) Order 1976 shall be amended as follows.
- (2) In Article 3(2) (interpretation) after the definition of “client” insert—
- ““the Commission” means the Northern Ireland Legal Services Commission (and references to civil legal services and criminal defence services funded by the Commission shall be construed in accordance with the Access to Justice (Northern Ireland) Order 2003);”.
- (3) In Article 44(1) (applications and complaints to Solicitors Disciplinary Tribunal)—
- (a) in sub-paragraph (d) (application by solicitor excluded from legal aid work)—
- (i) for “excluded from legal aid work” substitute “prohibited from providing civil legal services or criminal defence services funded by the Commission”; and
- (ii) for “terminating his exclusion” substitute “lifting the prohibition on his providing such services”; and
- (b) in sub-paragraph (g) (complaints in connection with legal aid work) for paragraphs (i) and (ii) substitute “the provision of civil legal services or criminal defence services funded by the Commission; or”.
- (4) In Article 51(1) (orders of Solicitors Disciplinary Tribunal on inquiry) for sub-paragraph (i) (order terminating solicitor’s exclusion from legal aid work) substitute—
- “(i) the lifting of a prohibition on the solicitor providing civil legal services or criminal defence services funded by the Commission;”.

(5) In Article 51B(1) (power of Solicitors Disciplinary Tribunal to make order excluding solicitor from legal aid work)—

(a) for sub-paragraphs (a) and (b) substitute—

“(a) make an order prohibiting the solicitor (either permanently or for a specified period) from providing civil legal services or criminal defence services funded by the Commission;

(b) order that any costs otherwise payable in connection with such services provided by the solicitor—

(i) under Article 17(1) of the Access to Justice (Northern Ireland) Order 2003,
or

(ii) in accordance with an order made by a court under Article 31(2) of that Order,

shall be reduced or cancelled.”; and

(b) at the end insert “and the power of the Tribunal under this Article is without prejudice to any powers of the Commission under any regulations made under Article 36 of the Access to Justice (Northern Ireland) Order 2003 (register of persons providing civil legal services and criminal defence services under that Order).”.

(6) In Article 51B(2) (no order to be made unless good reason arising out of conduct of solicitor) for sub-paragraphs (a) and (b) substitute—

“(a) the conduct of the solicitor in connection with the provision for any person of civil legal services or criminal defence services funded by the Commission (including the provision of any such services in the capacity of agent for that person’s solicitor); or”.

(7) In Article 51B(3) (power to order that other members of firm be excluded from legal aid work) for the words from “shall be excluded” to the end substitute “shall be prohibited (either permanently or for a specified period) from providing civil legal services or criminal defence services funded by the Commission”.

(8) In Article 51B(4) (which makes provision about orders under paragraph (3)) for “excluding any person from legal aid work” substitute “prohibiting any person from providing civil legal services or criminal defence services funded by the Commission”.

(9) In Article 51B(5) (certain provisions of Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 to have effect subject to an order under Article 51B(1)(b)) for “any of Articles 7, 8, 13(1) and 36(1) of the Order of 1981” substitute “Article 17 or 31 of the Access to Justice (Northern Ireland) Order 2003”.

(10) In paragraph 23(1) of Schedule 1A (power to make orders with respect to incorporated practices), for the words “excluded (either permanently or for a specified period) from legal aid work” substitute “prohibited from providing (either permanently or for a specified period) civil legal services or criminal defence services funded by the Commission”.

Sex Discrimination (Northern Ireland) Order 1976 (N.I.15)

3. In Article 75 of the Sex Discrimination (Northern Ireland) Order 1976 (charges to recover costs of assistance) in paragraph (4)—

(a) for “under the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981” substitute “imposed by Article 17 of the Access to Justice (Northern Ireland) Order 2003”;

(b) after “any provision in” insert “, or made under”; and

(c) for “into the legal aid fund” substitute “to the Northern Ireland Legal Services Commission”.

European Communities (Services of Lawyers) Order 1978 (S.I.1978/1910)

4. In Part 1 of the Schedule to the European Communities (Services of Lawyers) Order 1978 (enactments relating to the provision of legal advice and assistance and legal aid) for the entry relating to the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 substitute—

“Access to Justice (Northern Ireland) Order 2003”.

Criminal Appeal (Northern Ireland) Act 1980 (c. 47)

5.—(1) The Criminal Appeal (Northern Ireland) Act 1980 shall be amended as follows.

(2) Section 19 (legal aid) shall cease to have effect.

(3) In section 30(1) (interpretation of Part I) in the definition of “sentence” at the end insert “, but does not include any order under Article 31 of the Access to Justice (Northern Ireland) Order 2003”.

(4) Section 37 (legal aid) shall cease to have effect.

(5) Paragraph 1 of Schedule 1 (legal aid provisions applicable on retrial) shall cease to have effect.

Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 (N.I. 8)

6.—(1) The Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 shall be amended as follows.

(2) In Article 15 (solicitors and counsel)—

(a) in paragraph (1) for the words from “there is” to the end substitute “he is for the time being prohibited from doing so by any determination of the General Council of the Bar of Northern Ireland, or by any determination of any such committee as may be established by that Council to determine charges preferred against barristers”, and

(b) omit paragraph (2).

(3) In Article 37 (remuneration of solicitors and counsel assigned to give legal aid under Part III) for the words “to the principle of allowing fair remuneration according to the work reasonably undertaken and properly done” substitute—

“, among the matters which are relevant, to—

(a) the time and skill which work of the description to which the rules relate requires;

(b) the number and general level of competence of persons undertaking work of that description;

(c) the cost to public funds of any provision made by the rules; and

(d) the need to secure value for money,

but nothing in this Article shall require him to have regard to any fees payable to solicitors and counsel otherwise than under this Part.”

(4) In paragraph 6 of Schedule 2 (remuneration of persons giving legal aid under Part II) for the words “to the principle of allowing fair remuneration according to the work reasonably undertaken and properly done” substitute—

“, among the matters which are relevant, to—

(a) the time and skill which work of the description to which the order relates, or the regulations relate, requires;

(b) the number and general level of competence of persons undertaking work of that description;

Draft Legislation: This is a draft item of legislation and has not yet been made as a UK Statutory Instrument. This draft has been replaced by a new draft, No. 435

- (c) the cost to public funds of any provision made by the order or regulations; and
- (d) the need to secure value for money,

but nothing in this paragraph shall require him to have regard to any fees payable to solicitors and counsel otherwise than under this Schedule.”

Telecommunications Act 1984 (c. 12)

7. In section 52(5) of the Telecommunications Act 1984 (charges to recover costs of assistance in legal proceedings subject to legal aid charges) for paragraph (c) substitute—

- “(c) any charge imposed by Article 17(7) of the Access to Justice (Northern Ireland) Order 2003 and any provision in, or made under, Part II of that Order for the payment of any sum to the Northern Ireland Legal Services Commission.”

Child Abduction and Custody Act 1985 (c. 60)

8. In section 11 of the Child Abduction and Custody Act 1985 (cost of applications)—

- (a) after paragraph (a) insert—
 - “(aa) the provision of civil legal services by the Northern Ireland Legal Services Commission, or;” and
- (b) after “the Legal Aid (Scotland) Act 1967” insert “or”.

Criminal Justice (Serious Fraud) (Northern Ireland) Order 1988 (N.I. 16)

9.—(1) The Criminal Justice (Serious Fraud) (Northern Ireland) Order 1988 shall be amended as follows.

(2) In Article 3(1) (notice of transfer of serious fraud cases), for the words “Article 29(2) of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981” substitute “any regulations under Article 26(3) of the Access to Justice (Northern Ireland) Order 2003”.

(3) In Article 10(9) (restrictions on reporting), for sub-paragraph (h) substitute—

- “(h) whether a right to representation funded by the Northern Ireland Legal Services Commission was granted to the accused or any of the accused under the Access to Justice (Northern Ireland) Order 2003.”

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

10. In section 103(7) of the Social Security Administration (Northern Ireland) Act 1992 (enforcement of maintenance orders)—

- (a) for “Incorporated Law Society of Northern Ireland” substitute “Northern Ireland Legal Services Commission”;
- (b) for “legal aid under Part II of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981” substitute “civil legal services funded by the Commission”; and
- (c) for “under Article 12 of that Order” substitute “by virtue of Article 17 of the Access to Justice (Northern Ireland) Order 2003”.

Children (Northern Ireland) Order 1995 (N.I. 2)

11. In Article 44 of the Children (Northern Ireland) Order 1995 (court order for keeping child in secure accommodation), in paragraph (7) (child must be informed of right to apply for legal

aid) for “legal aid” substitute “civil legal services funded by the Northern Ireland Legal Services Commission”.

Children’s Evidence (Northern Ireland) Order 1995 (N.I. 3)

12.—(1) The Children’s Evidence (Northern Ireland) Order 1995 shall be amended as follows.

(2) In Article 4(3) (notice of transfer of certain cases involving children), for “Article 29(2)(e) of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981” substitute “any regulations under Article 26(3) of the Access to Justice (Northern Ireland) Order 2003”.

(3) In Schedule 1 (notice of transfer: procedure in lieu of committal), in paragraph 5(8) (restrictions on reporting), for paragraph (g) substitute—

“(g) whether a right to representation funded by the Northern Ireland Legal Services Commission was granted to the accused or any of the accused under the Access to Justice (Northern Ireland) Order 2003.”

(4) In paragraph 6(1)(b) of that Schedule (avoidance of delay in bringing to trial a case in which notice of transfer has been given), for “Article 29(2)(e) of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981” substitute “any regulations under Article 26(3) of the Access to Justice (Northern Ireland) Order 2003”.

Race Relations (Northern Ireland) Order 1997 (N.I. 6)

13. In Article 64(6) of the Race Relations (Northern Ireland) Order 1997 (charges to recover costs of assistance in legal proceedings subject to legal aid charges)—

- (a) for “under the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981” substitute “imposed by Article 17 of the Access to Justice (Northern Ireland) Order 2003”;
- (b) after “any provision in” insert “, or made under”; and
- (c) for “into the legal aid fund” substitute “to the Northern Ireland Legal Services Commission”.

Northern Ireland Act 1998 (c. 47)

14. In Schedule 10 to the Northern Ireland Act 1998 (devolution issues), in paragraph 39(2) for “Sub-paragraphs (3) and (4) apply” substitute “Sub-paragraph (3) applies”.

Freedom of Information Act 2000 (c. 36)

15. In Part VII of Schedule 1 to the Freedom of Information Act 2000 (public authorities) insert (at the appropriate place in alphabetical order)—

“The Northern Ireland Legal Services Commission.”

Equality (Disability, etc.) (Northern Ireland) Order 2000 (N.I. 2)

16. In Article 10 of the Equality (Disability, etc.) (Northern Ireland) Order 2000 in paragraph (4) (charge created by Article 10 is subject to charge under the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981)—

- (a) for “under the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981” substitute “imposed by Article 17(7) of the Access to Justice (Northern Ireland) Order 2003”, and

Draft Legislation: This is a draft item of legislation and has not yet been made as a UK Statutory Instrument. This draft has been replaced by a new draft, No. 435

- (b) for “in that Order for payment of any sum into the legal aid fund” substitute “in, or made under, Part II of that Order for the payment of any sum to the Northern Ireland Legal Services Commission.”

European Communities (Lawyer’s Practice) Regulations 2000 (S.I. 2000/1119)

17. In Part 1 of Schedule 3 to the European Communities (Lawyer’s Practice) Regulations 2000 (enactments relating to the provision of legal advice and assistance and legal aid) for “Legal Aid, Advice and Assistance (Northern Ireland) Order 1981” substitute—

“Access to Justice (Northern Ireland) Order 2003”.

Anti-Terrorism, Crime and Security Act 2001 (c. 24)

18. In Part 2 of Schedule 4 to the Anti-Terrorism, Crime and Security Act 2001 (Northern Ireland legislation to which section 17 applies), for paragraph 57 substitute—

“Access to Justice (Northern Ireland) Order 2003

57 Article 32(1) of the Access to Justice (Northern Ireland) Order 2003.”