Draft of proposed Order laid before Parliament under section 85(4) of the Northern Ireland Act 1998

DRAFT STATUTORY INSTRUMENTS

2002 No.

NORTHERN IRELAND

Access to Justice (Northern Ireland) Order 2002

Made - - - -

Coming into operation in accordance with Article 1(2)

At the Court at Buckingham Palace, the ** day of ** 2002

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order has been laid before, and approved by a resolution of, each House of Parliament in accordance with section 85(3) of the Northern Ireland Act 1998(1):

Now therefore, Her Majesty, in exercise of the powers conferred by section 85 of the Northern Ireland Act 1998 hand of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

PART I

CITATION, COMMENCEMENT AND INTERPRETATION

Citation and commencement

1.—(1) This Order may be cited as the Access to Justice (Northern Ireland) Order 2002.

(2) This Order shall come into operation on such day or days as the Lord Chancellor may by order appoint.

Interpretation

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

(**1**) 1998 c. 47
(**2**) 1954 c. 33 (N.I.)

(2) In this Order—

"advice" means any oral or written advice—

(a) on the application of the law to any particular circumstances that have arisen in relation to the individual seeking the advice; and

(b) as to any steps which that person might appropriately take, having regard to the application of the law to those circumstances;

"assistance" means any assistance (other than advocacy) to any individual in taking any of the steps which an individual might take, including steps with respect to proceedings, having regard to the application of the law to any particular circumstances that have arisen in relation to him, whether the assistance is given by taking such steps on his behalf or by assisting him in taking them on his own behalf;

"civil legal services" has the meaning given by Article 10(1);

"the Commission" means the Northern Ireland Legal Services Commission;

"criminal defence services" has the meaning given by Article 21(1);

"the Law Society" means the Law Society of Northern Ireland;

"magistrates' court" has the meaning assigned to that expression by Article 2(2)(b) of the Magistrates' Courts (Northern Ireland) Order 1981(**3**);

"prescribed" means prescribed by regulations;

"regulations" means regulations made by the Lord Chancellor;

"relevant proceedings" has the meaning given by Article 25;

"representation" means representation for the purposes of proceedings and it includes—

(a) all such assistance as is usually given by a solicitor or counsel in the steps preliminary or incidental to any proceedings;

(b) in the case of civil proceedings, all such assistance as is usually so given in arriving at or giving effect to a compromise to avoid or bring to an end any proceedings;

"solicitor" means a solicitor of the Supreme Court;

"statutory provision" has the meaning assigned to it by section 1(f) of the Interpretation Act (Northern Ireland) 1954(**4**);

"tribunal" includes an inquiry or proceedings before an arbitrator or umpire, however appointed, whether such inquiry or proceedings take place under a reference by consent or otherwise.

(3) References to counsel and solicitors shall be construed in accordance with Article 10 of the European Communities (Services of Lawyers) Order 1978(**5**) and regulation 14 of the European Communities (Lawyer's Practice) Regulations 2000(**6**).

(4) In this Order "criminal proceedings" means—

(a) proceedings before any court for dealing with an individual accused of an offence,

(b) proceedings before any court, or the Life Sentence Review Commissioners, for dealing with an individual convicted of an offence (including proceedings in respect of a sentence or order),

(**3**) 1981 N.I. 26
(**4**) 1954 c. 33 (N.I.)
(**5**) S.I. 1978/1910
(**6**) S.I. 2000/1119

(c) proceedings for dealing with an individual under section 9 of, or paragraph 6 of Schedule 1 to, the Extradition Act 1989(**7**),

(d) proceedings for binding an individual over to keep the peace or to be of good behaviour under Article 127 of the Magistrates' Courts (Northern Ireland) Order 1981(**8**), and for dealing with an individual who fails to comply with an order under that Article,

(e) proceedings on an appeal brought by an individual under section 47A of the Criminal Appeal (Northern Ireland) Act 1980(**9**),

(f) proceedings for contempt committed, or alleged to have been committed, by an individual in the face of a court,

(g) such other proceedings concerning an individual, before any such court or other body, as may be prescribed,

but does not include any proceedings for a writ of habeas corpus or other prerogative remedy.

(5) In this Order "detention proceedings" means proceedings for dealing with an individual in respect of whom an application has been made under—

(a) article 44 or 45 of the Police and Criminal Evidence (Northern Ireland) Order 1989(**10**), or

(b) paragraph 29 or 36 of Schedule 8 to the Terrorism Act 2000(**11**).

PART II

NORTHERN IRELAND LEGAL SERVICES COMMISSION

Northern Ireland Legal Services Commission

3.—(1) There shall be a body known as the Northern Ireland Legal Services Commission (in this Order referred to as "the Commission").

(2) The Commission shall have such functions as are conferred or imposed on it by the provisions of this Order or any other statutory provision.

(3) The Commission shall exercise its functions for the purpose of—

(a) securing (within the resources made available, and priorities set, in accordance with this Part) that individuals have access to civil legal services that effectively meet their needs, and of promoting the availability to individuals of such services, and

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

(4) Schedule 1 (which makes further provision about the Commission) has effect.

Membership of the Commission

4.—(1) The Commission shall consist of—

(a) a member who is to chair it, and

(b) not fewer than six, nor more than ten, other members,

but the Lord Chancellor may by order substitute for either or both of the numbers for the time being specified in sub-paragraph (b) such other number or numbers as he thinks appropriate.

(**7**) 1989 c. 33
(**8**) 1981 N.I. 26
(**9**) 1980 c. 47
(**10**) 1989 N.I. 12
(**11**) 2000 c. 11

(2) Both the member who is to chair the Commission, and the other members, shall be appointed by the Lord Chancellor.

(3) In appointing persons to be members of the Commission the Lord Chancellor shall have regard to the desirability of securing that the Commission includes members who (between them) have experience in or knowledge of—

(a) the provision of services which the Commission can fund as civil legal services or criminal defence services,

(b) the work of the courts,

(c) consumer affairs,

(d) social conditions, and

(e) management.

(4) The Lord Chancellor may by order amend paragraph (3) by adding, omitting or substituting areas of experience or knowledge.

(5) In making appointments under this Article, the Lord Chancellor shall as far as practicable secure that the members of the Commission, as a group, are representative of the Community in Northern Ireland.

Power to replace Commission with two bodies

5.—(1) The Lord Chancellor may by order establish in place of the Commission two bodies—

(a) one to have functions relating to civil legal services, and

(b) the other to have functions relating to criminal defence services.

(2) An order under paragraph (1) shall include amendments of—

(a) any provisions of, or amended by, this Order which refer to the Commission, and

(b) any other statutory provisions which so refer,

to replace references to the Commission with references to either or both of the bodies established by the order.

Planning

6.—(1) The Commission shall inform itself about—

(a) the need for, and the provision of, civil legal services and criminal defence services, and

(b) the quality of the services provided.

(2) The Commission shall plan what can be done towards meeting that need by the performance by the Commission of its functions.

(3) The Commission may co-operate with such authorities and other bodies and persons as it considers appropriate in facilitating the planning of what can be done by them to meet that need by the use of any resources available to them.

(4) The Commission shall notify the Lord Chancellor of what it has done under this Article.

(5) The Lord Chancellor may by order require the Commission to discharge the functions in paragraphs (1) to (4) in accordance with the order.

Powers of Commission

7.—(1) Subject to the provisions of this Part, the Commission may do anything which it considers —

(a) is necessary or appropriate for, or for facilitating, the discharge of its functions, or

(b) is incidental or conducive to the discharge of its functions.

(2) In particular, the Commission shall have power—

(a) to enter into any contract,

(b) to make grants (with or without conditions),

(c) to make loans,

(d) to invest money,

(e) to promote or assist in the promotion of publicity relating to its functions,

(f) to undertake any inquiry or investigation which it may consider appropriate in relation to the discharge of any of its functions, and

(g) to give to the Lord Chancellor any advice which it may consider appropriate in relation to matters concerning any of its functions.

(3) Paragraphs (1) and (2) do not confer on the Commission power to borrow money.

(4) The Commission may make such arrangements as it considers appropriate for the discharge of its functions, including the delegation of any of its functions.

(5) The Lord Chancellor may by order require the Commission—

(a) to delegate any function specified in the order or to delegate any function so specified to a person (or person of a description) so specified,

(b) not to delegate any function so specified or not to delegate any function so specified to a person (or person of a description) so specified, or

(c) to make arrangements such as are specified in the order in relation to the delegation of any function so specified.

(6) In considering any question as to the remuneration of persons or bodies providing civil legal services or criminal defence services (whether in individual cases, or by reference to the provision of such services in specified numbers of cases), the Commission shall have regard, among the matters which are relevant, to—

(a) the time and skill which the provision of services of the description to which the question relates requires;

(b) the number and general level of competence of persons providing those services;

(c) the cost to public funds of the remuneration of persons or bodies providing those services; and

(d) the need to secure value for money.

(7) Where the Commission sets fees which are to be paid to persons or bodies in respect of the provision of services by them, nothing in paragraph (6) requires it to have regard to fee payable, otherwise in accordance with this order, in respect of the provision of such services.

Guidance

8.—(1) The Lord Chancellor may give guidance to the Commission as to the manner in which he considers it should discharge its functions.

(2) The Commission shall take into account any such guidance when considering the manner in which it is to discharge its functions.

(3) Guidance may not be given under this Article in relation to individual cases.

(4) The Lord Chancellor shall either—

(a) publish, or