



AN BILLE ATURNAETHE, 1954.  
SOLICITORS BILL, 1954.

EXPLANATORY MEMORANDUM.

1. The main objects of the Bill, which was initiated by the Incorporated Law Society some years ago and has since been extensively revised, are:—

- (a) to repeal and re-enact, with modifications, the existing law as to solicitors (except the law concerning solicitors' remuneration);
- (b) to enforce stricter discipline within the profession;
- (c) to regulate professional practice and conduct;
- (d) to make the profession more self-governing than it is at present;
- (e) to require solicitors to keep proper accounts and to keep clients' moneys and trust moneys separate from their own;
- (f) to establish a Compensation Fund out of which grants may be made to relieve or mitigate losses arising from the dishonesty of solicitors or their employees;
- (g) to remit the stamp duty payable on the admission of solicitors and on their annual practising certificates, and to reduce the stamp duty payable by persons becoming apprenticed to solicitors.

2. *Part I* of the Bill deals with preliminary and general matters and only *sections 5* and *7* call for comment. The effect of *section 5* is that the Society will have unfettered power to make regulations in all matters of domestic concern and for the general purposes of the Act but that in matters where the general public are likely to be affected the regulations will require the concurrence of an independent authority (i.e. the Chief Justice in the case of regulations as to solicitors' accounts, the administration of the Compensation Fund and the fees to be paid to the Society by apprentices; the Minister for Justice in the case of any regulations reducing below £5 the amount of the annual contribution to the Compensation Fund). *Section 7* provides for the repeal of various enactments including the main statute regulating the solicitors' profession, i.e. the Solicitors (Ireland) Act, 1898.

3. *Part II*, which contains the provisions relating to the registrar of solicitors and the roll of solicitors, is largely a restatement of the existing law.

4. *Part III* of the Bill provides for the establishment of a Disciplinary Committee, which is to be appointed annually by the Society, with the approval of the Chief Justice, from members of the Council of the Society or such former members of the Council as are practising solicitors. The Committee is being empowered to take disciplinary action against a solicitor, subject to a right of appeal to the Chief Justice. There is at present a Disciplinary Committee but it is merely a fact-finding body, the

report of whose findings on allegations against a solicitor is brought before the Chief Justice. The Disciplinary Committee will also have power, again subject to a right of appeal to the Chief Justice, to deal with an application for the restoration of a solicitor's name to the roll.

5. *Part IV* sets out the statutory requirements governing admission to the profession and re-enacts, with modifications, the existing law. The main modifications proposed are:—

- (a) an intending apprentice must furnish the Society with evidence of his good character (*section 27*);
- (b) a solicitor who has not at some time been in continuous practice for seven years may not, without special leave of the Society, take any apprentice (*section 29 (2)*);
- (c) the Society may restrict by regulations the taking of apprentices by solicitors who are employed whole-time by bodies corporate (*section 29 (3)*);
- (d) the Society may, subject to a right of appeal to the Chief Justice, prohibit a solicitor from taking an apprentice in a case where they have refused, or have power to refuse, an annual practising certificate to that solicitor (*section 31 (1)*);
- (e) the number of apprentices which a solicitor may ordinarily have at any one time is being reduced from two to one (*section 36*) but a solicitor who at the commencement of the Act has two apprentices may retain them until their apprenticeship expires (*section 88 (2)*);
- (f) the power of discharging or assigning indentures, granting relief against irregularities in service under indentures and granting exemption, in particular cases, from the preliminary examination is being transferred from the Chief Justice or certain of the Judges to the Society, subject to a right of appeal to the Chief Justice (*section 45* and the sections mentioned therein);
- (g) the second Irish examination may be taken within two years (instead of within one year) before the expiration of the term of apprenticeship or admission as a solicitor (*section 40 (3) (d)*);
- (h) apart from the preliminary and final examinations, the Society may hold other examinations to ascertain the progress of apprentices (*section 40 (5) (a)*) and the final examination may be divided into two or more parts (*section 40 (4) (b)*);
- (i) the Society may make regulations restricting the taking of apprentices to solicitors whose fitness and capacity to teach apprentices is satisfactory (*section 40 (5) (b)*);
- (j) the right of appeal to the Chief Justice in case of failure to pass an intermediate or final examination is not being re-enacted;
- (k) Six-County solicitors who have been not less than three years in practice and who pass an examination to ascertain whether they have an adequate knowledge of the legislation in force in the State and the second Irish examination may be admitted and enrolled. These provisions will come into operation by order of the Government on their being satisfied that reciprocal facilities will be provided by Six-County legislation (*section 44*).

6. *Part V* of the Bill continues the existing provisions under which the Society issue annually to each practising solicitor a

certificate (called a "practising certificate") entitling him to practise as a solicitor. It is proposed, however, to give the Society (subject to a right of appeal to the Chief Justice) a wide discretion to refuse, or to grant subject to conditions, a practising certificate in cases where a solicitor is *prima facie* not a worthy member of the profession (*section 49*). Adjudication in bankruptcy of a solicitor will operate immediately to suspend his practising certificate (*section 50*) but the Society may terminate the suspension unconditionally or subject to conditions (*section 51 (1)*). Where a solicitor does not take out a practising certificate within the prescribed time, the Chief Justice may, on payment by the solicitor to the Society of a fee, direct that the certificate shall be in force from an earlier date than that borne by it (*section 48 (3)*).

7. *Part VI* provides for heavy penalties on unqualified persons (including solicitors who have not a practising certificate in force) acting as solicitors (*section 55*). *Section 57 (2)* proposes that a successful litigant is not to be penalised in the matter of costs, as at present, merely because his solicitor has failed or neglected to renew his practising certificate. *Section 58* extends the restrictions imposed by *section 44* of the Stamp Act, 1891, on the drawing of legal documents by unqualified persons for reward. *Section 44* of the 1891 Act is being repealed (*section 7* and *First Schedule*). *Section 60* provides that a solicitor may not, without the Society's written permission, employ a person who has been struck off the roll or suspended from practice.

8. *Part VII* provides that solicitors are to be required to keep proper accounts and to keep clients' moneys and trust moneys separate from their own.

9. *Part VIII* and the *Fifth Schedule* provide for the establishment of a Compensation Fund, financed by annual contributions from solicitors, out of which the Society may make grants to relieve or mitigate losses arising from the dishonesty of solicitors. The annual contribution will be £5 for each solicitor or such lesser sum as the Society may fix with the concurrence of the Minister for Justice. During the first three years of practice a solicitor will have to pay only half of the amount of the annual contribution.

10. Only losses which arise on or after the establishment of the Fund will qualify for grants. For the first five years the Society will have absolute discretion as to the making of grants and the amounts of such grants. Thereafter the Society will have absolute discretion only where they consider that there has been negligence by the client, or by some person for whom he is responsible, which has contributed to the loss. In all other cases the Society will be obliged to make a grant of an amount which in their opinion represents full indemnity for the loss. As a corollary, power is being given to the Society, after the provisions for full indemnity come into operation, to impose a special contribution on each solicitor not exceeding £5 in any one year if at any time they consider that this is necessary to secure the financial stability of the Fund.

11. *Part IX* empowers the Society to make regulations regarding the professional practice, conduct and discipline of solicitors.

12. The most important provision of *Part X* is that providing for the abolition of the stamp duty payable by solicitors (*a*) on admission (at present £25) and (*b*) on their annual practising certificates (at present £9 for Dublin solicitors and £6 for other solicitors; the duty is charged at half these rates in respect of solicitors of less than three years' standing). The duty of £80 paid by apprentices on their being articulated is being reduced to £14 which will continue to be paid over by the Revenue Commissioners to the Society of King's Inns under *section 28* of the Stamp Act, 1891. This concession is subject to a condition (which the Incorporated

Law Society have accepted) that the Society will use their powers under the Bill to prescribe such fees as will enable them to—

- (a) discharge without financial assistance from the State the duties imposed on them by the Bill;
- (b) relieve the State of any financial responsibility to assist in the production of students' text books; and
- (c) contribute an additional sum of £500 per annum to the Incorporated Council of Law Reporting towards the cost of printing and publishing the Irish Law Reports.

*An Roinn Dlí agus Cirt.  
Samhain, 1954.*