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**AN BILLE ATURNAETHA (LEASÚ), 1994**  
**SOLICITORS (AMENDMENT) BILL, 1994**

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*Mar a ritheadh ag Dáil Éireann*  
*As passed by Dáil Éireann*

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## ACTS REFERRED TO

Arbitration Acts, 1954 and 1980	1954, No. 26 and 1980, No. 7
Attorneys and Solicitors Act, 1870	1870, c.28
Attorneys and Solicitors (Ireland) Act, 1849	1849, c.53
Central Bank Acts, 1942 to 1989	
Credit Union Act, 1966	1966, No. 19
Criminal Procedure Act, 1967	1967, No. 12
Legal Practitioners (Qualification) Act, 1929	1929, No. 16
Lunacy Regulation (Ireland) Act, 1871	1871, c.22
Registration of Title Act, 1891	1891, c.29
Solicitors Acts, 1954 and 1960	1954, No. 36 and 1960, No. 37
Stamp Duties Management Act, 1891	1891, c. 38
Statutory Instruments Act, 1947	1947, No. 44
Succession Act, 1965	1965, No. 22
Supreme Court of Judicature Act (Ireland), 1877	1877, c. 57





AN BILLE ATURNAETHA (LEASÚ), 1994  
SOLICITORS (AMENDMENT) BILL, 1994

BILL

entitled

AN ACT TO AMEND AND EXTEND THE SOLICITORS ACTS, 5  
1954 AND 1960, AND TO PROVIDE FOR RELATED MAT-  
TERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART I  
PRELIMINARY AND GENERAL

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Short title,  
collective citation,  
construction and  
commencement.

1.—(1) This Act may be cited as the Solicitors (Amendment) Act,  
1994.

(2) The Solicitors Acts, 1954 and 1960, and this Act may be cited  
together as the Solicitors Acts, 1954 to 1994, and shall be construed  
together as one Act. 15

(3) *Section 68* of this Act shall come into operation 3 months after  
the date of its passing.

(4) *Sections 16, 17, 18, 22, 23, 25 and 58 (3)* of this Act shall come  
into operation on such day as may be fixed by order of the Minister.

Interpretation.

2.—In this Act, unless the context otherwise requires— 20

“the Principal Act” means the Solicitors Act, 1954;

“the Act of 1960” means the Solicitors (Amendment) Act, 1960;

“apprentice” includes a person who has completed the term of his  
indentures of apprenticeship but who has not yet been admitted as a  
solicitor; 25

“authorised person” means a person authorised in writing by the  
Society for the purpose of exercising any of the Society’s functions  
pursuant to *section 14* of this Act or pursuant to or as prescribed  
pursuant to *section 66* (as substituted by this Act) of the Principal  
Act; 30

“bank” and cognate words shall be construed in accordance with  
*section 75* of this Act;



"bill of costs" includes any statement of account sent, or demand made, by a solicitor to a client for fees, charges, outlays, disbursements or expenses;

5 "clerk or servant" includes an apprentice and a person employed whole-time or part-time by a solicitor and a person providing services under a contract for services;

"client" includes the personal representative of a client and any person on whose behalf the person who gave instructions was acting in relation to any matter in which a solicitor or his firm had been  
10 instructed; and includes a beneficiary to an estate under a will, intestacy or trust;

"client account" means an account opened and kept by a solicitor arising from his practice as a solicitor at a bank for clients' moneys, in accordance with regulations made pursuant to subsection (1) of  
15 section 66 (as substituted by this Act) of the Principal Act;

"clients' moneys" means moneys received, held or controlled by a solicitor arising from his practice as a solicitor for or on account of a client or clients, whether the moneys are received, held or controlled by him as agent, bailee, stakeholder, trustee or in any other capacity;

20 "Compensation Fund" means the fund maintained by the Society pursuant to sections 21 and 22 (as substituted by this Act) of the Act of 1960;

"contentious business" means business done by a solicitor in or for the purposes of or in contemplation of proceedings before a court or  
25 tribunal or before an arbitrator appointed under the Arbitration Acts, 1954 and 1980;

"Disciplinary Tribunal" means the Disciplinary Tribunal established by section 6 (as substituted by this Act) of the Act of 1960, and, as and from the coming into operation of *section 16* of this Act, any  
30 reference to the Disciplinary Committee in the Act of 1960 shall, subject to *section 16 (2)* of this Act, be construed as a reference to the Disciplinary Tribunal;

"indentures" means indentures of apprenticeship;

35 "indentures of apprenticeship" includes any form of agreement as may be prescribed whereunder solicitors in the course of their practice as solicitors provide training for persons seeking to be admitted as solicitors;

"legal services" means services of a legal or financial nature provided by a solicitor arising from that solicitor's practice as a solicitor, and  
40 includes any part of such services;

"the Minister" means the Minister for Justice;

45 "moneys" includes moneys in a currency other than that of the State, cheques, bank notes, postal orders, money orders or any form of negotiable or non-negotiable instrument, moneys deposited or otherwise credited to a bank account or moneys deposited or otherwise credited to a bank or other financial institution outside the State;

"persons seeking to be admitted as solicitors" includes persons seeking to be bound by indentures of apprenticeship;



"the register" has the meaning assigned to it in section 47 (as substituted by this Act) of the Principal Act;

"sole practitioner" means a solicitor who is practising as a sole principal in a solicitor's practice.

Amendment of section 3 of Principal Act and amendment of sections 3 and 4 of Act of 1960.

3.—(1) Section 3 of the Principal Act is hereby amended by— 5

(a) the deletion of the definition of "solicitor" and the substitution of the following definition:

" 'solicitor' means a person who has been admitted as a solicitor and whose name is on the roll; and a reference to a solicitor includes a reference to a firm of solicitors unless the context otherwise requires and includes a former solicitor or a deceased solicitor unless the context otherwise requires; ", and 10

(b) with effect from the 1st day of January, 1996, the substitution of the following definition for the definition of "practice year": 15

" 'practice year' means any year ending on the 31st day of December; ".

(2) Section 4 of the Act of 1960 is hereby repealed.

(3) Section 3 of the Act of 1960 is hereby amended by the deletion of the definition of "documents" and the substitution of the following definition: 20

" 'documents' includes deeds, wills, papers, books of account, records, vouchers, correspondence and files and shall be construed to include any documents stored in an electronic or other non-written form or on film or otherwise; ". 25

## PART II

### NAME AND MEMBERSHIP OF LAW SOCIETY OF IRELAND

Change of name of Society.

4.—(1) The body heretofore known as the "Incorporated Law Society of Ireland" shall be known as the "Law Society of Ireland" and may provide itself with a seal. 30

(2) Where, before the coming into operation of this section, any legal proceedings are pending to which the Incorporated Law Society of Ireland is a party, the name Law Society of Ireland shall be substituted in the proceedings for the name Incorporated Law Society of Ireland and the proceedings shall not abate because of such substitution. 35

(3) References to the Incorporated Law Society of Ireland contained immediately before the coming into operation of this section in any statute or statutory instrument (within the meaning of the Statutory Instruments Act, 1947) or in the memorandum or articles of association of any company or in any will, trust, deed, agreement or other document shall be construed on and after the coming into operation of this section as references to the Law Society of Ireland. 40



5.—The Principal Act is hereby amended by the substitution of the following section for section 78:

Amendment of bye-laws so as to conform with the *Solicitors Acts, 1954 to 1994*, and regulations thereunder (section 78 of Principal Act).

“Amendment of bye-laws so as to conform with the *Solicitors Acts, 1954 to 1994*, and regulations thereunder.

78.—(1) Notwithstanding the provisions of their Charters, the Society shall make any amendments to the bye-laws of the Society that are necessary to bring them into conformity with the *Solicitors Acts, 1954 to 1994*, and any regulations made thereunder.

(2) Notwithstanding anything contained in their Charters, the Society may in their bye-laws make provision for all or any of the following, namely—

(i) the membership of the Council,

(ii) the election or appointment of persons to membership of the Council,

(iii) the admission of persons as honorary or associate members of the Society.

(3) In this section ‘their Charters’ means, respectively, the Charter and the Supplemental Charter of the Society referred to in section 33(1) of the Act of 1960.”

6.—(1) The Society may—

Honorary and associate membership of Society.

(a) admit as an honorary member of the Society any person whom the Society wish so to admit, and

(b) admit as an associate member of the Society any person or class of persons who is or are a member or members of a corresponding professional body in another jurisdiction.

(2) In this section “corresponding professional body” means a body established outside the State with objectives and functions similar to those of the Society.

7.—(1) Section 73 (as amended by the Act of 1960) of the Principal Act is hereby amended by the substitution of the following subsections for subsections (3) and (4):

Amendment of section 73 of Principal Act.

“(3) A committee under this section may include solicitors who are not members of the Council and persons who are not solicitors, but where functions of the Society which are performable by the Council are delegated to a committee, at least two-thirds of the members of the committee and of any quorum of the committee shall be members of the Council.

(4) Where functions of the Society which are performable by the Council are delegated to a committee under this section, that committee, in the performance of all or any of its delegated functions, may sit in one or more divisions, provided that—

(a) the quorum of such committee or any division of such committee shall be three, and



(b) where there are one or more members of such committee who are not solicitors, the quorum of such committee or any division of such committee shall include at least one of such members.”.

(2) Section 73 (as amended by the Act of 1960) of the Principal Act is hereby amended by the substitution of the following subsections for subsection (9):

“(9) A member of a committee under the section, who was a member of the Council at the date of his appointment, may act on the committee notwithstanding the fact that he has ceased to be a member of the Council and, for the purposes of subsection (3) of this section, he shall be regarded as a member of the Council.

(10) Where the Council has delegated functions to a committee under subsection (1) of this section, that committee may, subject to the prior approval of the Council, delegate any of such functions to a designated senior officer or senior officers for the time being appointed by the Society for that purpose, with or without restrictions, for such period as the committee may specify with the approval of the Council, and the committee or the Council may revoke such delegation with or without notice.”.

### PART III

#### INVESTIGATION OF COMPLAINTS

Power of Society to impose sanctions for inadequate services.

8.—(1) Where the Society receive a complaint from a client of a solicitor, or from any person on behalf of such client, alleging that the legal services provided or purported to have been provided by that solicitor in connection with any matter in which he or his firm had been instructed by the client were inadequate in any material respect and were not of the quality that could reasonably be expected of him as a solicitor or a firm of solicitors, then the Society, unless they are satisfied that the complaint is frivolous or vexatious, shall investigate the complaint and shall take all appropriate steps to resolve the matter by agreement between the parties concerned and may, if they think fit, following investigation of the complaint, do one or more of the following things, namely—

(a) determine whether the solicitor is entitled to any costs in respect of such legal services or purported services, and if he is so entitled, direct that such costs in respect of such services shall be limited to such amount as may be specified in their determination;

(b) direct the solicitor to comply, or to secure compliance, with such of the requirements set out in subsection (2) of this section as appear to them to be necessary as a result of their investigation;

(c) direct the solicitor to secure the rectification, at his own expense or at the expense of his firm, of any error, omission or other deficiency arising in connection with the said legal services as the Society may specify;

(d) direct the solicitor to take, at his own expense or at the expense of his firm, such other action in the interests of the client as the Society may specify;



5 (e) direct the solicitor to transfer any documents relating to the subject matter of the complaint (but not otherwise) to another solicitor nominated by the client or by the Society with the consent of the client, subject to such terms and conditions as the Society may deem appropriate having regard to the circumstances, including the existence of any right to possession or retention of such documents or any of them vested in the first-mentioned solicitor or in any other person.

10 (2) The requirements referred to in *subsection (1)* of this section are—

15 (a) a requirement to refund, whether wholly or to any specified extent, any amount already paid by or on behalf of the client in respect of the solicitor's costs in connection with the services he had provided or purported to provide, and

(b) a requirement to waive, whether wholly or to any specified extent, the right to recover the costs of the solicitor to the extent that they have not already been paid by or on behalf of the client.

20 (3) (a) The Society shall not make a determination or give a direction under *subsection (1)* of this section unless they are of opinion that it would in the circumstances be appropriate to do so.

25 (b) In determining whether it would be appropriate to make a determination or give a direction, the Society may have regard to such matters as they think fit including—

(i) the existence of any remedy that could reasonably be expected to be available to the client in civil proceedings;

30 (ii) whether proceedings seeking any such remedy have not been commenced by the client and whether it would be reasonable to expect the client to commence such proceedings;

35 (iii) whether *section 13* of this Act applies to the subject matter of the complaint.

(4) Where the Society have made a determination or given a direction under *subsection (1)* of this section as to the costs of a solicitor in respect of any legal services provided or purported to have been provided by him, then—

40 (a) for the purposes of any subsequent taxation of a bill of costs covering those costs, the amount charged by the bill of costs in respect of those costs shall be deemed to be limited to the amount specified in the Society's determination and a copy of the written confirmation of either or both the  
45 Society's determination or direction given under *subsection (1)* of this section shall be included with the bill of costs submitted for taxation, and

50 (b) where a bill of costs covering those costs has not been taxed, the client shall, for the purposes of the recovery of those costs (by whatever means) and notwithstanding any statutory provision or agreement to the contrary, be deemed



to be liable to pay in respect of those costs only the amount specified in the determination of the Society.

(5) Where a bill of costs covering costs of a solicitor has been taxed in accordance with *subsection (4) (a)* of this section, the determination of the Society under *subsection (1)* of this section shall, so far as relating to those costs, cease to have effect. 5

(6) The fact that a person who was a party before any court, tribunal or arbitrator appointed under the Arbitration Acts, 1954 and 1980, was not satisfied with the outcome of such proceedings, shall not, of itself, be grounds for a complaint to the Society under this section. 10

(7) The Society shall not enter upon, or proceed with, the investigation of a complaint under this section, or otherwise apply the provisions of this section, where the Society are of the opinion that such complaint relates to the alleged inadequacy in any material respect of legal services provided by a solicitor more than five years before the date on which the complaint was made. 15

(8) The Society, with the concurrence of the President of the High Court, may make rules of procedure in relation to complaints received by the Society under this section. 20

Power of Society to impose sanctions for charging excessive fees.

9.—(1) Where the Society receive a complaint from a client of a solicitor, or from any person on behalf of such client, that a solicitor has issued a bill of costs that is excessive, in respect of legal services provided or purported to have been provided by that solicitor, the Society, unless they are satisfied that the complaint is frivolous or vexatious, shall investigate the complaint and shall take all appropriate steps to resolve the matter by agreement between the parties concerned and may, if they are satisfied that the bill of costs is excessive, direct the solicitor to comply or to secure compliance with one or both of the following requirements, namely— 25 30

(a) a requirement to refund without delay, whether wholly or to any specified extent, any amount already paid by or on behalf of the client in respect of the solicitor's costs in connection with the said legal services;

(b) a requirement to waive, whether wholly or to any specified extent, the right to recover those costs. 35

(2) Nothing in *subsection (1)* of this section shall prevent any person from exercising any existing right in law to require a solicitor to submit a bill of costs to a Taxing Master of the High Court for taxation on a solicitor and own client basis. 40

(3) Where the Society have received a complaint under *subsection (1)* of this section and the client concerned (before or after the receipt of the complaint) has duly requested the solicitor concerned to submit his bill of costs to a Taxing Master of the High Court for taxation on a solicitor and own client basis, the Society shall not make a direction under *subsection (1)* of this section unless, after due notice to that solicitor, they are of the opinion that the solicitor or his agent in that regard is unreasonably delaying in submitting such bill of costs to a Taxing Master of the High Court for such taxation. 45

(4) Where a bill of costs, which has been the subject of a complaint under *subsection (1)* of this section has been subsequently taxed, then— 50



- (a) if the Society have given a direction under *subsection (1)* of this section, such direction shall cease to have effect, or
- (b) if the Society have not given a direction under *subsection (1)* of this section, the Society shall not enter upon or proceed with the investigation of such complaint or otherwise apply the provisions of this section.

(5) Where the Society have notified a solicitor of the making of a complaint under *subsection (1)* of this section in relation to a bill of costs issued by that solicitor, the solicitor shall not—

- (a) issue or cause to be issued civil proceedings (whether on his own behalf or on behalf of any other person or persons), or

- (b) if already issued, proceed further with civil proceedings, in relation to the amount (or any part thereof) of such bill of costs without the written consent of the Society before the Society has completed any investigation of the complaint pursuant to *subsection (1)* of this section, unless on application by that solicitor, on notice to the Society, a court otherwise orders.

- (6) The Society shall not enter upon or proceed with the investigation of a complaint under this section or otherwise apply the provisions of this section, where the Society are of the opinion that the bill of costs, the subject of such complaint, was issued prior to a date that is five years before the date on which the complaint was made.

- (7) The Society, with the concurrence of the President of the High Court, may make rules of procedure in relation to complaints received by the Society under this section.

10.—(1) Where it appears to the Society that it is necessary to do so for the purpose of investigating any complaint made to the Society—

Production of documents.

- (a) alleging misconduct by a solicitor, or
- (b) alleging that the provision of legal services by a solicitor was inadequate in any material respect and was not of the quality that could reasonably be expected of him as a solicitor, or
- (c) alleging that a solicitor has issued a bill of costs that is excessive,

the Society may give notice in writing 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 or under the control or within the procurement 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) The Society shall return any documents delivered to them under *subsection (1)* of this section to the solicitor or to his firm when their investigations are completed unless the Society exercise their power under *section 8 (1) (e)* of this Act in relation to such documents.



Appeals to the High Court against determinations, directions or requirements of the Society.

11.—(1) A solicitor in respect of whom a determination or direction has been made or given by the Society under *section 8 (1), 9 (1) or 12 (1)* of this Act or who has received a notice for production or delivery of documents from the Society under *section 10 (1)* of this Act may, within a period of 21 days of the notification of such determination or direction to him, or the receipt of such notice by him, apply to the High Court for an order directing the Society to rescind or to vary such determination or direction, or to vary or withdraw such notice, and on hearing such application the Court may make such order as it thinks fit.

(2) Where a solicitor in respect of whom a determination or direction has been made or given by the Society under the provisions of *section 8 (1), 9 (1) or 12 (1)* of this Act has not applied within the period provided to the High Court under *subsection (1)* of this section, such determination or direction shall become absolutely binding on the solicitor immediately upon the expiration of such period.

(3) Where the Society have given notice in writing to a solicitor or his firm under the provisions of *section 10 (1)* of this Act and where an application has not been made by the solicitor within the period provided under *subsection (1)* of this section, the Society may apply to the High Court for an order directing the solicitor to produce or deliver to any person authorised by the Society all documents in respect of which such notice was given.

(4) Where an application has been made by a solicitor under *subsection (1)* of this section, the Society may apply to the High Court and the Court may dismiss the application of the solicitor if it is satisfied that such application has no merits and has been made purely for the purposes of delay, and, where applicable and if the Court thinks fit, shall order the solicitor to produce or deliver to any person appointed by the Society all documents in respect of which a notice has been given to the solicitor or his firm under *section 10 (1)* of this Act.

(5) If a solicitor, in respect of whom a determination or a direction has been made or given by the Society under the provisions of *section 8 (1) or 9 (1)* of this Act or who has received a notice for production or delivery of documents from the Society under the provisions of *section 10 (1)* of this Act (to the extent that it has not been rescinded or varied by the High Court pursuant to an application under *subsection (1)* of this section), refuses, neglects or otherwise fails to comply with such determination or direction or notice without reasonable excuse, he shall be guilty of an offence and be liable on summary conviction thereof to a fine not exceeding £1,500.

Contribution by solicitor.

12.—(1) Where, following an investigation of a complaint under *section 8 (1) or 9 (1)* of this Act against a solicitor, the Society have made a determination or given a direction under the provisions of *section 8 (1) or 9 (1)* of this Act, the Society may require payment from the solicitor of a sum not exceeding £1,000 to the Society by way of contribution towards the costs incurred by the Society in investigating the complaint and the solicitor shall comply with any such requirement.

(2) Subject to any order made under *section 11 (1)* of this Act, the Society may recover any sum the payment of which has been required by the Society by way of contribution under *subsection (1)* of this section as a liquidated debt payable to the Society.



13.—(1) Where civil proceedings or criminal proceedings are instituted in connection with a matter that is the subject of a complaint under *section 8* or *9* of this Act and have not been finally determined, and the Society consider that in those proceedings it is likely that the court will determine an issue relevant to or concerning such complaint, the Society may adjourn their investigation under *section 8* or *9* of this Act of such complaint until the civil proceedings or criminal proceedings, as the case may be, have been finally determined.

Adjournment of investigations under sections 8 and 9 of this Act.

(2) If the Society consider that the subject matter of a complaint under *section 8* or *9* of this Act has been investigated by a court in civil proceedings or criminal proceedings and that a final determination of the issues which are, in substance, the issues involved in the complaint has been made by the court in those proceedings in favour of the solicitor concerned (whether or not the solicitor was a party to those proceedings), the Society may decide to take no action or no further action in relation to the complaint.

(3) Proceedings shall not be regarded as finally determined for the purposes of *subsection (1)* or *(2)* of this section until any appeal (including an appeal by way of case stated), rehearing or retrial in relation to those proceedings has been determined.

14.—(1) Where it appears to the Society, whether as a result of a complaint or otherwise, that it is necessary, for the purpose of investigating alleged misconduct by a solicitor, for an authorised person to attend with or without prior notice at the place or places of business of that solicitor, an authorised person may so attend at such place or places.

Power to inspect documents.

(2) Where an authorised person attends under this section at the place or places of business of a solicitor, he shall inform such solicitor or any clerk or servant of the solicitor of the purpose of his attendance as specified in *subsection (1)* of this section and may in pursuance of that purpose require the solicitor or any clerk or servant of the solicitor to make available to him for inspection such specified documents or categories of documents in the possession or under the control or within the procurement of the solicitor as the authorised person deems necessary to fulfil that purpose (whether or not such documents or any of them relate also to other matters).

(3) If a solicitor or clerk or servant of a solicitor who is required to make available specified documents or categories of documents to an authorised person for inspection under *subsection (1)* of this section refuses, neglects or otherwise fails without reasonable cause to duly comply with such requirement, the Society may, on notice to the solicitor, apply to the High Court for an order (which said order the Court is hereby empowered to make) requiring the solicitor to make available for inspection at his place or places of business such specified documents or categories of documents as the Society deem necessary for the purpose specified in *subsection (1)* of this section or as the Court thinks fit.

15.—(1) The Minister may, by regulations, require the Society to establish, maintain and fund a scheme for the examination and investigation by an independent adjudicator of any written complaint made to the adjudicator by or on behalf of a member of the public against the Society, concerning the handling by the Society of a complaint about a solicitor made to the Society by any person.

Investigation of complaints.



(2) Without prejudice to the generality of *subsection (1)* of this section, regulations under this section may make provision in relation to any one or more of the following—

- (a) the establishment and administration of a scheme for the examination and investigation of complaints to the adjudicator, 5
  - (b) the manner of appointment by the Society of an adjudicator and the terms and conditions of his appointment,
  - (c) the appointment of staff to assist the adjudicator and the terms and conditions of their appointment, 10
  - (d) the matters to be subject to examination or investigation under the scheme, including the reinvestigation of complaints handled by the Society,
  - (e) the procedures to be followed in the conduct of an investigation by the adjudicator, 15
  - (f) the procedures for making complaints to the adjudicator,
  - (g) the attendance of the adjudicator at meetings of the Society, or of any committee of the Society, concerned with complaints made to the Society by members of the public about solicitors, 20
  - (h) the reporting to the Society of conclusions or recommendations of the adjudicator in relation to cases investigated by him, and the consideration of such conclusions or recommendations by the Society,
  - (i) the powers of the adjudicator to direct the Society with regard to the making of applications to the Disciplinary Tribunal under section 7 (as substituted by this Act) of the Act of 1960, 25
  - (j) the provision by the Society of any information that may be required by the adjudicator in relation to any case with which he is involved, 30
  - (k) the powers of the adjudicator to recommend changes in the procedures of the Society in relation to complaints to the Society by members of the public about solicitors,
  - (l) the submission of reports, including annual reports, by the adjudicator to the Minister in relation to the discharge of his duties, and the publication of such reports and the laying of such reports before both Houses of the Oireachtas. 35
- (3) (a) The consent of the Minister shall be obtained by the Society for the appointment of any independent adjudicator under this section. 40
- (b) A person appointed as an adjudicator shall not be a practising solicitor, a member of the Society, or a practising barrister and shall be independent in the exercise of his functions. 45
- (4) An adjudicator appointed under this section—



- (a) shall not examine or investigate any issue which is being or has been determined by—
- (i) a court,
  - (ii) the Disciplinary Committee appointed under Part II of the Act of 1960, or
  - (iii) the Disciplinary Tribunal appointed under Part II (as amended by this Act) of the Act of 1960,
- (b) may, subject to *paragraph (f)* of this subsection, examine or investigate a complaint made to him under this section relating to a matter which arose before this section comes into operation,
- (c) may examine or investigate a complaint made to him under this section even though the person making the complaint may be entitled to bring proceedings in any court with respect to the matter complained of,
- (d) may make more than one recommendation in a report to the Society,
- (e) shall give reasons for his conclusions or recommendations in every report to the Society,
- (f) may not examine or investigate a complaint made to him under this section after the expiration of three years following the determination by the Society of a complaint made to the Society.

(5) An adjudicator appointed under this section shall have power to require the production of documents in the possession of the Society in connection with his examination or investigation of a complaint.

(6) Subject to *paragraph (f)* of *subsection (4)* of this section, an adjudicator may direct the Society to re-examine or reinvestigate a complaint made to the Society about a solicitor, if the adjudicator is not satisfied that the Society have investigated the complaint adequately.

(7) Subject to *paragraph (f)* of *subsection (4)* of this section and notwithstanding the provisions of *subsection (6)* of this section, an adjudicator appointed under this section may re-examine or reinvestigate a complaint made to the Society about a solicitor, if the adjudicator is not satisfied that the Society has investigated the complaint adequately, and no provision in this section or in any regulations made pursuant to *subsection (2)* of this section shall prevent, or shall be construed as preventing, an adjudicator from re-examining or reinvestigating any complaint under this subsection.

(8) Where an adjudicator re-examines or reinvestigates a complaint made to the Society under *subsection (7)* of this section, he shall have power, following that re-examination or reinvestigation, to direct the Society to make an application to the Disciplinary Tribunal under section 7 (as substituted by this Act) of the Act of 1960, or to recommend that the Society should take any other action, which he may specify, in relation to the solicitor pursuant to the Society's powers under the *Solicitors Acts, 1954 to 1994*.



(9) Where an adjudicator re-examines or reinvestigates a complaint made to the Society under *subsection (7)* of this section, he may require any person who, in his opinion, is in possession of information, or has a document or thing in his power or control, that is relevant to the re-examination or reinvestigation, to furnish that information, document or thing to him and, where appropriate, may require the person to attend before him for that purpose, and the person concerned shall comply with each such requirement. 5

(10) A person to whom a requirement is addressed under *subsection (9)* of this section may, within a period of 21 days of the notification of such requirement, apply to the High Court for an order to rescind or vary the requirement and, where the Court is satisfied that the information, documents or things, or any of them, are not relevant or are not reasonably required for the purposes of the re-examination or reinvestigation or are confidential to the interests of that person, it may rescind or vary the requirement or make such other order as it thinks fit. 10 15

(11) An adjudicator may not require a solicitor to furnish any information, document or thing that is held in the possession or control of the solicitor on behalf of a client of that solicitor, without receiving the prior written authority of that client to such a requirement. 20

(12) A person to whom a requirement is addressed under *subsection (9)* of this section shall be entitled to the same immunities and privileges as if he were a witness before the High Court. 25

(13) A person shall not by act or omission obstruct or hinder an adjudicator in the performance of his functions or do any other thing which would, if the adjudicator were a court having power to commit for contempt of court, be contempt of such court.

(14) A person who contravenes *subsection (9)* or *(13)* of this section shall be guilty of an offence and shall be liable on summary conviction thereof to a fine not exceeding £1,500. 30

(15) Any information, document or thing obtained by an adjudicator in the course of or for the purpose of the examination or investigation or the re-examination or reinvestigation of a complaint shall not be disclosed except for the purposes of that examination or investigation or re-examination or reinvestigation and the adjudicator shall not be called upon to give evidence in any proceedings of matters coming to his knowledge in the course of an examination or investigation or a re-examination or reinvestigation. 35 40

(16) An adjudicator appointed under this section may decide not to examine or investigate a complaint made to the adjudicator under this section, or may discontinue an examination or investigation of such complaint, if he becomes of opinion that—

(a) the complaint is trivial or vexatious, or 45

(b) the person making the complaint has an insufficient interest in the matter, or

(c) the person making the complaint has not taken reasonable steps to seek redress in respect of the subject matter of the complaint, or if he has, has not been refused redress. 50

(17) Every regulation made under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and,



if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.

16.—(1) The Act of 1960 is hereby amended by the substitution of the following section for section 6:

Disciplinary  
Tribunal (section 6  
of Act of 1960).

"Disciplinary  
Tribunal.

6.—(1) The President of the High Court shall, from time to time as the occasion requires, appoint a tribunal (to be known and in this Act referred to as 'the Disciplinary Tribunal') consisting of —

(a) not more than ten persons from among practising solicitors of not less than 10 years standing (to be known and referred to in this section as 'solicitor members'), one of whom shall be appointed by the President of the High Court to be chairperson of the Disciplinary Tribunal and each of whom shall be appointed after consultation with the Society, and

(b) not more than five persons, who are not solicitors or barristers (to be known and referred to in this section as 'lay members'), who shall be nominated by the Minister to represent the interests of the general public,

for such a period, not exceeding five years, as the President of the High Court may determine, and any such person so appointed shall be eligible for reappointment to the Disciplinary Tribunal.

(2) A member of the Disciplinary Tribunal may resign his membership by letter sent by registered post to the President of the High Court and his resignation shall take effect on the date on which the letter is delivered.

(3) (a) The President of the High Court may remove a member of the Disciplinary Tribunal, may fill a vacancy therein and, subject to the limits stated in subsection (1) of this section, may increase or reduce the number of persons thereon.

(b) The President of the High Court may not remove a lay member of the Disciplinary Tribunal, without prior consultation with the Minister.

(4) The Society shall defray any reasonable costs and expenses incurred by the Disciplinary Tribunal.

(5) For the purpose of hearing and determining



any application under section 7 (as substituted by the *Solicitors (Amendment) Act, 1994*) of this Act, the Disciplinary Tribunal shall sit in divisions, each of which shall comprise three members of whom one shall be a lay member and two shall be solicitor members. 5

(6) There shall be paid to the members of the Disciplinary Tribunal, out of funds at the disposal of the Society, reasonable travelling and subsistence expenses incurred by them in connection with their attendance at meetings of the Disciplinary Tribunal. 10

(7) Any information, document or thing obtained by any member of the Disciplinary Tribunal as a result of any application to the Disciplinary Tribunal, or in the course of any inquiry by that Tribunal, shall not be disclosed except for the purposes of the *Solicitors Acts, 1954 to 1994*.”. 15

(2) *Subsection (1)* of this section shall not apply to any application under section 7 of the Act of 1960 made before the coming into operation of this section to the Disciplinary Committee appointed under section 6 of the Act of 1960. 20

Inquiry by the Disciplinary Tribunal into the conduct of a solicitor on the ground of alleged misconduct (section 7 of Act of 1960).

17.—(1) The Act of 1960 is hereby amended by the substitution of the following section for section 7:

“Inquiry by the Disciplinary Tribunal into the conduct of a solicitor on the ground of alleged misconduct.

7.—(1) An application by a person (not being a person who has made a complaint to an independent adjudicator under *section 15* of the *Solicitors (Amendment) Act, 1994*, about the conduct of a solicitor referred to in the application) or by the Society for an inquiry into the conduct of a solicitor on the ground of alleged misconduct shall, subject to the provisions of this Act, be made to and heard by the Disciplinary Tribunal in accordance with rules made under section 16 of this Act. 25 30

(2) Where an application in relation to a solicitor is duly made under this section and the Disciplinary Tribunal, after consideration of the application, are of opinion that there is no *prima facie* case for inquiry, they shall so inform the applicant in writing and shall take no further action in relation to the application. 35 40

(3) Where an application in relation to a solicitor is duly made under this section and the Disciplinary Tribunal, after consideration of the application, are of opinion that there is a *prima facie* case for inquiry, the following provisions shall have effect: 45

(a) they shall proceed to hold an inquiry;

(b) on the completion of the inquiry, the Disciplinary Tribunal shall— 50

(i) embody their findings in a report to the High Court, specifying therein



the nature of the application and the evidence laid before them and any other matters in relation to the solicitor (hereinafter referred to in this section as the 'respondent solicitor') which they may think fit to report;

(ii) in a case where the Disciplinary Tribunal find that there has been misconduct on the part of the respondent solicitor and they have not made, and do not intend to make, an order under subsection (9) of this section, the Disciplinary Tribunal shall include in their report their opinion as to the fitness or otherwise of the respondent solicitor to be a member of the solicitor's profession having regard to the contents of the report and their recommendations as to the sanction which in their opinion should be imposed, and the Society shall bring the report before the High Court.

(4) Where, on completion of an inquiry under subsection (3) of this section, the Disciplinary Tribunal find that there has been misconduct on the part of the respondent solicitor but they have made or are of the opinion that it is appropriate that they should make an order under subsection (9) of this section, the Disciplinary Tribunal shall include in their report the reasons for their opinion that it is appropriate to make an order under subsection (9) of this section.

(5) The Disciplinary Tribunal shall, as soon as possible after it has been prepared, make available to the respondent solicitor a copy of their report prepared pursuant to subsections (3) and (4) of this section, as the case may be.

(6) Where, on completion of an inquiry under subsection (3) of this section, the Disciplinary Tribunal have found that there has been no misconduct on the part of the respondent solicitor, they shall take no further action in relation to the matter and they shall so inform the respondent solicitor and the Society or other person who made the application as the case may be.

(7) Where an application is made under this section, the Disciplinary Tribunal may, at any stage of the proceedings in relation to the application and before the completion of any inquiry under subsection (3) of this section, postpone the taking of any steps or further steps in the matter for a specified period and, if they do so, then, if before the expiration of that period the applicant applies to the Disciplinary Tribunal for leave to



withdraw the application, the Disciplinary Tribunal may, if they think fit, allow the application to be withdrawn and, if they do so, no further action shall be taken by them in relation to the application.

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(8) The Society shall be entitled to make an application to the Disciplinary Tribunal in accordance with the provisions of this section, notwithstanding that any other person may be entitled to make such an application.

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(9) Where, on completion of an inquiry under subsection (3) of this section, the Disciplinary Tribunal find that there has been misconduct on the part of the respondent solicitor, they shall have power, by order, to do one or more of the following things, namely—

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(a) to advise and admonish or censure the respondent solicitor;

(b) to direct payment of a sum, not exceeding £5,000, to be paid by the respondent solicitor to the Compensation Fund;

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(c) to direct that the respondent solicitor shall pay a sum, not exceeding £5,000, as restitution or part restitution to any aggrieved party, without prejudice to any legal right of such party;

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(d) to direct that the whole or part of the costs of the Society or of any person appearing before them, as taxed by a Taxing Master of the High Court, in default of agreement, shall be paid by the respondent solicitor.

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(10) On the making of an order under subsection (9) of this section, the Disciplinary Tribunal shall, as soon as possible, serve a copy of such order on the respondent solicitor, either personally or by sending same by prepaid registered post to his address as stated in the register (or, if never on the register, the roll).

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(11) A respondent solicitor in respect of whom an order has been made by the Disciplinary Tribunal under subsection (9) of this section may, within the period of 21 days beginning on the date of the due service of the order, appeal to the High Court to rescind or vary the order in whole or in part, and the Court on hearing such an appeal may—

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(i) rescind or vary the order, or

(ii) confirm that it was proper for the Disciplinary Tribunal to make the order.

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(12) The Society, or any person who has made an application under subsection (1) of this section,



may, within the period provided under subsection (11) of this section, appeal to the High Court against an order made by the Disciplinary Tribunal under subsection (9) of this section on the ground that the sanction imposed by the Disciplinary Tribunal is inadequate, or that the Disciplinary Tribunal, in lieu of making such an order, ought to have exercised their powers under subsection (3) (b) (ii) of this section, and the Court, on hearing such an appeal, may—

(i) confirm the sanction imposed by the Disciplinary Tribunal on the respondent solicitor, or

(ii) in relation to the respondent solicitor, do one or more of the things specified in section 8 (1) (a) (as substituted by the *Solicitors (Amendment) Act, 1994*) of this Act.

(13) A respondent solicitor may appeal to the High Court against a finding of misconduct on his part by the Disciplinary Tribunal pursuant to subsection (3) of this section, and the Court shall determine such appeal when it considers the report of the Disciplinary Tribunal in accordance with the provisions of section 8 (as substituted by the *Solicitors (Amendment) Act, 1994*) of this Act, or as part of its determination of any appeal under subsection (11) of this section, as the case may be.

(14) Where a respondent solicitor refuses, neglects or otherwise fails to comply with an order made under subsection (9) (b) or (c) of this section (to an extent that it has not been rescinded or varied by the High Court consequent on an appeal to the High Court under subsection (11) of this section), the Society or any aggrieved party to whom a sum by way of restitution or part restitution has been ordered, may recover that sum as a liquidated debt.

(15) An application brought under subsection (1) of this section may relate to one or more complaints against a respondent solicitor.

(16) An application by the Society under subsection (1) of this section shall include an application made by the Society pursuant to a direction by an adjudicator appointed under section 15 of the *Solicitors (Amendment) Act, 1994*.

(17) The Society may authorise any person on their behalf to do all such things and acts as may be necessary for the purposes of any application made or inquiry held under this section."

(2) Subsection (1) of this section shall not apply to any application under section 7 of the Act of 1960 made before the coming into operation of this section.



18.—(1) The Act of 1960 is hereby amended by the substitution of the following section for section 8:

“Proceedings before  
High Court.

8.—(1) Where the Disciplinary Tribunal, after holding an inquiry into the conduct of a solicitor, make a report to the High Court under section 7 (as substituted by the *Solicitors (Amendment) Act, 1994*) of this Act which is brought before the Court by the Society under the said section 7, the following provisions shall have effect:

(a) the High Court, after consideration of the report—

(i) may by order do one or more of the following things, namely—

(I) strike the name of the solicitor off the roll;

(II) suspend the solicitor from practice for such specified period and on such terms as the Court thinks fit;

(III) prohibit the solicitor from practising on his own account as a sole practitioner or in partnership for such period, and subject to such further limitation as to the nature of his employment, as the Court may provide;

(IV) restrict the solicitor practising in a particular area of work for such period as the Court may provide;

(V) censure the solicitor or censure him and require him to pay a money penalty;

(ii) may by order direct that a specified bank shall furnish any information in its possession that the Society may require relating to any aspect of the financial affairs of the practice of the solicitor;

(iii) may by order direct that the solicitor shall swear an affidavit disclosing all information relating to or contained in any accounts, held in his own name or in the name of his firm or jointly with third parties, with any bank within a specified duration of time, to be fixed by the Court;

(iv) may make such order as to the costs incurred in the proceedings



before it and the Disciplinary Tribunal as the Court thinks fit;

(v) may make any ancillary order in relation to the matter which the Court thinks fit;

(b) the High Court may, if it thinks fit, remit the case to the Disciplinary Tribunal to take further evidence for submission to it and to make to it a supplementary report, and the Court may adjourn the hearing of the matter pending the submission to it of such further evidence and the making of such supplementary report;

(c) in addition to doing any of the things specified in the foregoing paragraphs of this subsection, the Court may also by order do any one or more of the following things, namely —

(i) direct the solicitor to make such restitution to any aggrieved party as the Court thinks fit;

(ii) on the application of the Society, direct that the solicitor swear an affidavit (within a specified duration of time to be fixed by the Court) disclosing all information as to his assets either then in his possession or control or within his procurement or which had been but no longer are in his possession or control or within his procurement and, if no longer in his possession or control or within his procurement, his belief as to the present whereabouts of those assets;

(iii) direct that the solicitor make himself available before the Court on a specified date and at a specified time for oral examination under oath in relation to the contents of any affidavit of assets sworn by him pursuant to subparagraph (ii) of this paragraph;

(iv) on the application of the Society and where it is shown that the conduct of the solicitor or of any clerk or servant of that solicitor arising from that solicitor's practice as a solicitor has given or is likely to give rise to the making by the Society of a grant or grants out of the Compensation Fund



under section 21 (as substituted by the *Solicitors (Amendment) Act, 1994*) of this Act, direct that the solicitor shall not reduce his assets below a certain specified amount or value unless the Court otherwise directs; 5

(v) on the application of the Society, direct the delivery to any person appointed by the Society of all or any documents in the possession or control or within the procurement of the solicitor arising from his practice as a solicitor; 10

(vi) direct either— 15

(I) that no bank shall, without leave of the Court, make any payment out of an account in the name of the solicitor or his firm, or 20

(II) that a specified bank shall not, without leave of the Court, make any payment out of an account in the name of the solicitor or his firm; 25

(vii) direct that the solicitor shall not attend at the place of business of his practice as a solicitor unless otherwise permitted by the Court;

(viii) direct that the solicitor shall not represent himself as having, or hold himself out as having, any connection with his former practice as a solicitor, or permit any other person to so represent that solicitor, unless otherwise permitted by the Court. 30 35

(2) (a) Where an order in respect of documents is made by the High Court under subparagraph (v) of paragraph (c) of subsection (1) of this section, the Society may make such enquiries as may be reasonably necessary to ascertain the person or persons entitled to the possession or custody of such documents and may thereafter deal with such documents, or any of them, in accordance with the directions of such person or persons so entitled. 40 45

(b) For the purposes of paragraph (a) of this subsection, the Second Schedule (as amended by the *Solicitors (Amendment) Act, 1994*) to this Act shall have effect. 50



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(3) Where the High Court by an order under subsection (1) of this section requires a solicitor to pay a money penalty, the order shall operate as a judgment against the solicitor in favour of the Society, and the money penalty, when recovered, shall be paid into the Compensation Fund.

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(4) Where any person acts as agent or nominee of a solicitor or his firm so as to render nugatory an order made by the High Court under subparagraph (vi) of paragraph (c) of subsection (1) of this section, such person shall be guilty of an offence under this subsection and shall be liable on summary conviction thereof to a fine not exceeding £1,500."

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(2) Subsection (1) of this section shall not apply to any report to the High Court made under section 7 of the Act of 1960 before the coming into operation of this section.

19.—Section 10 of the Act of 1960 is hereby amended by the insertion of the following subsection:

Amendment of section 10 of Act of 1960.

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"(4) Where, on the hearing of an application under this section, it is shown that the circumstances which gave rise to the striking off the roll of the applicant's name involved an act or acts of dishonesty on the part of the applicant arising from his former practice as a solicitor or that the applicant was convicted of a criminal offence, the High Court shall not restore the applicant's name to the roll, either conditionally or unconditionally, unless it is satisfied that, having regard to all the evidence, the applicant is a fit and proper person to practise as a solicitor and that the restoration of the applicant to the roll would not adversely affect public confidence in the solicitors' profession as a whole or in the administration of justice."

20.—The Principal Act is hereby amended by the substitution of the following section for section 60:

Restriction on employment of person struck off roll or suspended (section 60 of Principal Act).

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"Restriction on employment of person struck off roll or suspended.

60.—(1) No person shall knowingly, save under and in accordance with a written permission under this section, employ or remunerate in any capacity involving or in connection with the provision of legal services a solicitor who is an unqualified person by reason of—

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(a) his name having been struck off the roll, or

45

(b) his suspension from practice, or

(c) his having had the issue to him of a practising certificate refused under section 49 (as substituted by the *Solicitors (Amendment) Act, 1994*) of this Act, or

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(d) his having his practising certificate suspended under section 58 of the *Solicitors (Amendment) Act, 1994*, or



(e) his having given to the High Court an undertaking not to practise as a solicitor.

(2) The Society may grant a permission for the purposes of subsection (1) of this section for such period and subject to such conditions as they think fit, or may refuse to grant such a permission. 5

(3) A person aggrieved by the refusal of the Society to grant a permission under subsection (2) of this section, or by any conditions attached by the Society to the grant thereof, may appeal to the High Court and the Court may confirm the refusal or the conditions, as the case may be, or may grant the permission for such period and subject to such conditions as the Court thinks fit. 10 15

(4) Where a person continues to employ an unqualified person in contravention of subsection (1) of this section notwithstanding his having been requested by the Society to discontinue such employment, the Society may apply to the High Court, and the Court may by order restrain that person from continuing the employment of that unqualified person. 20

(5) Where a solicitor has been issued with a practising certificate that is subject to a condition or conditions under section 59 of the *Solicitors (Amendment) Act, 1994*, that solicitor shall be deemed to be an unqualified person for the purposes of subsection (1) of this section to the extent that such condition or conditions prohibit him from engaging in the provision of a certain category or categories of legal services.”. 25 30

Disclosure of having been struck off roll, etc. (section 63 of Principal Act).

21.—The Principal Act is hereby amended by the substitution of the following section for section 63:

“Disclosure of having been struck off roll, etc.

63.—(1) A person who is an unqualified person by reason of — 35

(a) his name having been struck off the roll, or

(b) his suspension from practice, or 40

(c) his having had the issue to him of a practising certificate refused under section 49 (as substituted by the *Solicitors (Amendment) Act, 1994*) of this Act, or 45

(d) his having his practising certificate suspended under section 58 of the *Solicitors (Amendment) Act, 1994*, or

(e) his having given to the High Court an undertaking not to practise as a solicitor, 50



shall not seek or accept employment from any person in any capacity involving or in connection with the provision of legal services without previously informing that person that he is such an unqualified person.

(2) Save under and in accordance with a written permission under this section, a solicitor—

(a) whose name has been struck off the roll, or

(b) who is suspended from practice, or

(c) to whom a practising certificate has been refused under section 49 (as substituted by the *Solicitors (Amendment) Act, 1994*) of this Act, or

(d) whose practising certificate has been suspended under section 58 of the *Solicitors (Amendment) Act, 1994*, or

(e) who has given an undertaking to the High Court not to practise as a solicitor,

shall not engage in any work in any capacity involving, or in connection with, the provision of legal services, whether in relation to his former practice as a solicitor or otherwise, until —

(i) the High Court has made an order restoring his name to the roll, or

(ii) the High Court has lifted the said order of suspension from practice, or

(iii) the High Court has made an order directing the granting of a practising certificate to him, or

(iv) the High Court has discharged any order of suspension of his practising certificate, or

(v) the High Court has released him from any undertaking by him not to practise as a solicitor,

as the case may be.

(3) A solicitor who contravenes subsection (1) or (2) of this section shall be guilty of an offence under this section and shall be liable on summary conviction thereof to a fine not exceeding £1,500.

(4) The Society may grant a permission for the purposes of subsection (2) of this section for such period and subject to such conditions as they think fit.



(5) Where a solicitor has been issued with a practising certificate that is subject to a condition or conditions under section 59 of the *Solicitors (Amendment) Act, 1994*, that solicitor shall be deemed to be an unqualified person for the purposes of subsection (1) of this section to the extent that such condition or conditions prohibit him from engaging in the provision of a certain category or categories of legal services.”. 5

Publication of information on complaints.

22.—The Society shall publish annually, in the Gazette of the Society and in any other manner as the Society may direct, information on— 10

- (a) the number of complaints together with a description of the general nature of those complaints received by the Society about solicitors; 15
- (b) the number of complaints together with a description of the general nature of those complaints referred to the Disciplinary Tribunal; and
- (c) the outcome of the investigation of those complaints by the Disciplinary Tribunal. 20

Publication of orders.

23.—(1) Where, on the completion of an inquiry by the Disciplinary Tribunal held under section 7(3) (as substituted by this Act) of the Act of 1960, the Disciplinary Tribunal have made an order under section 7(9) (as substituted by this Act) of the Act of 1960, the Disciplinary Tribunal shall notify the Society in writing of the making of such order and the Society may arrange to publish the order of the Disciplinary Tribunal, or notice of the making of the order and its effect, in such a manner as the Society think fit. 25

(2) Where, on the completion of an inquiry by the Disciplinary Tribunal held under section 7(3) (as substituted by this Act) of the Act of 1960, the Disciplinary Tribunal have made an order under section 7(9) (as substituted by this Act) of the Act of 1960, the order of the Disciplinary Tribunal, or notice of the making of the order and its effect, shall not be published by the Society until a period of at least 21 days shall have elapsed after the making of the order, or until any application made under section 7(11) (as substituted by this Act) of the Act of 1960 has been determined by the High Court, and thereafter the notice of the making of the order shall not be published if the Court rescinds the order of the Disciplinary Tribunal. 30 35

(3) Where, following the consideration by the High Court of a report of the Disciplinary Tribunal brought before it under section 7(3) (as substituted by this Act) of the Act of 1960, the Court has made an order under the provisions of section 8 (as substituted by this Act) of the Act of 1960, the Society shall arrange to publish the order of the Court, or notice of the making of the order and its effect, in the Gazette of the Society and in any other manner as the Society may decide, save that where the Court has ordered that the name of a solicitor be struck off the roll or that a solicitor be suspended from practice for a specified period of time, the Society shall as soon as possible arrange to publish the order of the Court or notice of the making of the order and its effect in the *Iris Oifigiúil* and in the Gazette of the Society, and, in addition, in any other manner as the Society may think fit. 40 45 50



24.—Section 3 of the Act of 1960 is hereby amended by the substitution of the following paragraph for paragraph (c) in the definition of “misconduct”:

Amendment of  
section 3 of Act of  
1960.

5 “(c) the contravention of a provision of the Principal Act or this Act or the *Solicitors (Amendment) Act, 1994*, or any order or regulation made thereunder,”

and the said definition as so amended is set out in the Table to this section.

#### TABLE

10 “misconduct” includes —

- (a) the commission of treason or a felony or a misdemeanour,
- (b) the commission, outside the State, of a crime or an offence which would be a felony or a misdemeanour if committed in the State,
- 15 (c) the contravention of a provision of the Principal Act or this Act or the *Solicitors (Amendment) Act, 1994*, or any order or regulation made thereunder,
- (d) conduct tending to bring the solicitors’ profession into disrepute;

25.—The Act of 1960 is hereby amended by the substitution of the following section for section 15:

Powers of  
Disciplinary  
Tribunal as to  
taking evidence,  
etc. (section 15 of  
Act of 1960).

20 “Powers of  
Disciplinary  
Tribunal as to  
taking evidence,  
etc.

15.—(1) The Disciplinary Tribunal shall, for the purposes of any inquiry held by them under section 7 (as substituted by the *Solicitors (Amendment) Act, 1994*) of this Act or the consideration by them of an application under section 9 of this Act, or the taking by them of further evidence under paragraph (b) of subsection (1) of section 8 (as substituted by the *Solicitors (Amendment) Act, 1994*) of this Act, have the powers, rights and privileges vested in the High Court or a judge thereof on the hearing of an action, in respect of—

- (a) the enforcement of the attendance of witnesses and their examination on oath or otherwise,
- 25 (b) the compelling of the production of documents, and
- 30 (c) the compelling of the discovery under oath of documents,

and a summons signed by a member of the Disciplinary Tribunal may be substituted for and shall be equivalent to any formal procedure capable of being issued in an action for enforcing the attendance of witnesses and compelling the production and the discovery under oath of documents.

45 (2) If a person—

- (a) on being duly summoned as a witness before the Disciplinary Tribunal, without just cause or excuse disobeys the summons, or



(b) being in attendance as a witness before the Disciplinary Tribunal, refuses to take an oath or to make an affirmation when legally required by the Disciplinary Tribunal to do so, or to produce or discover under oath any documents (which said word shall be construed in this subsection and in subsection (1) of this section as including things) in his possession or under his control or within his procurement legally required by the Disciplinary Tribunal to be produced or discovered under oath by him, or to answer any question to which the Disciplinary Tribunal may legally require an answer, or

(c) wilfully gives evidence to the Disciplinary Tribunal which is material to their inquiry which he knows to be false or does not believe to be true, or

(d) by act or omission, obstructs or hinders the Disciplinary Tribunal in the performance of their functions, or

(e) fails, neglects or refuses to comply with the provisions of an order made by the Disciplinary Tribunal, or

(f) does or omits to do any other thing which would, if the Disciplinary Tribunal had been the High Court, have been contempt of that Court,

the person shall be guilty of an offence.

(3) A witness before the Disciplinary Tribunal shall be entitled to the same immunities and privileges as if he were a witness before the High Court.

(4) (a) A person guilty of an offence under this section shall be liable—

(i) on conviction on indictment thereof to a fine not exceeding £10,000 or to imprisonment for a term not exceeding two years or to both such fine and such imprisonment, and

(ii) on summary conviction thereof to a fine not exceeding £1,500 or to imprisonment for a term not exceeding 12 months or to both such fine and such imprisonment.

(b) Section 13 of the Criminal Procedure Act, 1967, shall apply in relation to an offence under this section as if, in lieu



of the penalties specified in subsection (3) of that section, there were specified therein the penalties provided for by paragraph (a) (ii) of this subsection, and the reference in subsection (2) (a) of that section to the penalties provided for in subsection (3) of that section shall be construed accordingly.”.

## PART IV

### PROTECTION OF CLIENTS

26.—(1) The Society may make regulations (in this section referred to as “indemnity regulations”) making provision for indemnity against losses arising from claims in respect of any description of civil liability incurred—

Provision of professional indemnity cover.

(a) by a solicitor arising from his practice as a solicitor, or

(b) by a partner, clerk or servant or former partner, clerk or servant of a solicitor arising from that solicitor’s practice as a solicitor.

(2) For the purposes of providing such indemnity, indemnity regulations may do any one or more of the following, namely—

(a) authorise the Society to establish and maintain any indemnity fund or funds, including a mutual fund;

(b) authorise the Society to effect and maintain a general policy of indemnity insurance making provision for indemnity against losses arising from claims in respect of any description of civil liability, in which solicitors would be required to participate;

(c) require solicitors or any specified category of solicitors to effect and maintain a policy of indemnity insurance with insurers approved of by the Society or to participate or to continue to participate in a fund or funds established or maintained pursuant to paragraph (a) of this subsection or in any other fund approved of by the Society, including the mutual fund known as the “Solicitors Mutual Defence Fund Limited”.

(3) The Society may, without prejudice to any of their other powers, carry into effect any arrangements which they consider necessary or expedient for the purpose of ensuring that there is indemnity against losses pursuant to this section.

(4) Without prejudice to the generality of subsections (1), (2) or (3) of this section, indemnity regulations may—

(a) specify terms and conditions on which indemnity against losses is to be available to solicitors from any indemnity fund or funds or under any general policy of indemnity insurance or under any policy of indemnity insurance with insurers approved of by the Society and any circumstances in which the right to such indemnity is to be excluded or modified;



- (b) specify minimum levels of cover for indemnity against losses arising from claims or different classes of claims;
  - (c) provide for the management, administration and protection of any fund maintained under *subsection (2)* of this section and require solicitors or any specified category of solicitors to make payments to any such fund; 5
  - (d) require that solicitors or any specified category of solicitors make payments by way of premium in respect of any general policy of indemnity insurance maintained by the Society by virtue of *subsection (2)* of this section; 10
  - (e) specify conditions which indemnity cover shall satisfy for the purposes of *subsection (2)* of this section;
  - (f) provide for the determination by the management of any fund maintained by the Society under *subsection (2)* of this section of the contribution payable by solicitors or any specified category of solicitors in respect of each description of civil liability for which cover is provided by such fund; 15
  - (g) specify the circumstances in which, where a solicitor for whom indemnity cover is provided has failed to comply with the indemnity regulations or with the terms and conditions of such indemnity cover, proceedings for the recovery of sums paid by way of indemnity against losses in respect of that solicitor may be taken against him by the providers of such indemnity cover or by the Society, as may be appropriate; 20 25
  - (h) specify circumstances in which any solicitor or specified category of solicitor may be exempted from the indemnity regulations;
  - (i) enable the Society to take such steps as they think necessary or expedient to ascertain whether or not the indemnity regulations are being complied with; 30
  - (j) include arrangements for the submission to arbitration of any dispute arising between a solicitor and his client in relation to any claim or claims by the client against the solicitor in respect of civil liability to which the indemnity regulations apply by reason of the provisions of this section, where both the solicitor and the client have agreed in writing to submit the dispute to arbitration; 35
  - (k) specify the manner in which solicitors or any specified category of solicitors shall bring their compliance with, or exemption from, the indemnity regulations to the notice of their clients or the Society; and 40
  - (l) include incidental, procedural or supplementary provisions in relation to any of the matters set out in *paragraphs (a) to (k)* of this subsection. 45
- (5) Notwithstanding the foregoing provisions of this section, the Minister may direct the Society to make or amend indemnity regulations.
- (6) It shall be misconduct for a solicitor to whom indemnity regulations apply knowingly to make a false or misleading declaration of 50



a material nature for the purpose of obtaining indemnity against losses arising from claims in respect of any description of civil liability incurred by him.

5 27.—The Act of 1960 is hereby amended by the substitution of the following section for section 19:

“Power of Society to deal with documents of certain solicitors.

19.—(1) Where the Society are of the opinion that—

Power of Society to deal with documents of certain solicitors (section 19 of Act of 1960).

10 (a) a solicitor or a clerk or servant of a solicitor has been guilty of dishonesty arising from that solicitor's practice as a solicitor, or

15 (b) a solicitor who is a sole practitioner has abandoned his practice or has ceased to carry on his practice other than for one or more of the reasons set forth in section 60 (1) (as substituted by the *Solicitors (Amendment) Act, 1994*) of the Principal Act,

20 and that adequate arrangements have not been made for the making available to the clients of such solicitor of all or any documents held in the possession or in the control or within the procurement of that solicitor on behalf of those clients, the Society may give notice in writing to that solicitor or to any other person or persons in possession or control of such documents, or any of them, requiring the production and delivery to any person appointed by the Society, at a time and place to be fixed by the Society, of such documents or any of them.

25 (2) Where a solicitor or other person to whom subsection (1) of this section applies refuses, neglects or otherwise fails without reasonable excuse to produce or deliver documents in his possession or control or within his procurement within 14 days after receipt by him of a notice under subsection (1) of this section from the Society—

30 (a) he shall be guilty of an offence under this section and shall be liable on summary conviction thereof to a fine not exceeding £1,500, and

35 (b) the Society may apply to the High Court and the Court may by order require such solicitor or other person to produce or deliver such documents or any of them within such time as the Court thinks fit.

40 (3) Where the Society take possession of documents produced or delivered under a requirement under this section—



(a) they shall serve on the solicitor and on every other person from whom the documents were received a notice giving particulars of the documents and the date of taking possession thereof, and 5

(b) if any of the documents are grouped together as relating to a particular matter, the notice may give particulars of those documents by referring to the group and the matter to which it relates. 10

(4) Within 14 days after service of a notice under subsection (3) of this section on a solicitor or other person, the solicitor or other person may apply to the High Court for an order directing the Society to return the documents received by the Society to him or to such other person or persons as the applicant may require and the Court may make the order applied for or such other order as the Court thinks fit. 15 20

(5) (a) Where an application is not made in accordance with subsection (4) of this section or the High Court on such application directs that the documents shall remain in the possession of the Society, the Society may make such enquiries as may be reasonably necessary to ascertain the person or persons entitled to the possession or custody of such documents, or any of them, and may thereafter deal with such documents, or any of them, in accordance with the directions of such person or persons so entitled. 25 30 35

(b) For the purposes of paragraph (a) of this subsection, the provisions set out in the Second Schedule (as amended by the *Solicitors (Amendment) Act, 1994*) to this Act shall have effect. 40

(6) Where it appears to the Society, in relation to a solicitor who is a sole practitioner who has, to the knowledge of or in the opinion of the Society, abandoned his practice or has otherwise ceased to carry on his practice, that any premises occupied or formerly occupied by that solicitor which contain or might contain documents relating to that solicitor's practice are not sufficiently secured, a person authorised in writing by the Society shall have power to enter upon such premises for the purpose of securing such documents either there or elsewhere in the interests of clients of that solicitor." 45 50

Control of banking accounts or assets of solicitors (section 20 of Act of 1960).

28.—The Act of 1960 is hereby amended by the substitution of the following section for section 20: 55



“Control of banking  
accounts or assets of  
solicitors.

20.—(1) Where the Society are of opinion that a solicitor or a clerk or servant of a solicitor has been guilty of dishonesty arising from that solicitor's practice as a solicitor, or where any of the circumstances of paragraph (b) of section 19 (1) (as substituted by the *Solicitors (Amendment) Act, 1994*) of this Act apply, the Society may apply to the High Court and the Court may make an order directing one or more of the following things, namely—

(a) that no bank shall, without leave of the Court, make any payment out of an account in the name of the solicitor or his firm;

(b) that a specified bank shall not, without leave of the Court, make any payment out of an account kept at such bank in the name of the solicitor or his firm;

(c) that the solicitor shall not, without leave of the Court, dispose of or direct or facilitate the disposal of any assets in his possession or control or within his procurement;

(d) that the solicitor shall not, without leave of the Court, reduce his assets below a certain specified amount or value.

(2) The High Court shall have power to hear *in camera* an application for an order under subsection (1) of this section.

(3) Where the High Court makes in relation to a solicitor an order under subsection (1) of this section, the Court may at the same time order that any practising certificate issued to him be suspended.

(4) Where any person acts as agent or nominee of a solicitor or his firm so as to render nugatory an order made by the High Court under subsection (1) of this section, such person shall be guilty of an offence under this section and shall be liable on summary conviction thereof to a fine not exceeding £1,500.

(5) Where the High Court makes in relation to a solicitor an order under subsection (1) of this section, the Court may make one or more of the following further orders, namely, an order or orders—

(i) directing a specified bank to furnish any information in its possession that the Society require relating to any aspect of the financial affairs of the practice of the solicitor;

(ii) directing the solicitor to swear an affidavit disclosing all information



relating to or contained in any account with any bank held in his own name, or in the name of his firm, or jointly with third parties, within a specified duration of time to be fixed by the Court; 5

(iii) directing the solicitor to swear an affidavit disclosing all information as to his assets, either then in his possession or control or within his procurement or which had been but are no longer in his possession or control or within his procurement, within a specified duration of time to be fixed by the Court, and, if no longer in his possession or control or within his procurement, his belief as to the present whereabouts of those assets; 10 15 20

(iv) directing the solicitor to make himself available before the Court on a specified date and at a specified time for oral examination under oath in relation to the contents of any affidavit of assets sworn by him pursuant to paragraph (iii) of this subsection. 25

(6) Where the High Court makes in relation to a solicitor an order under subsection (1) of this section, the solicitor shall forthwith lodge (or cause to be lodged) in the manner prescribed under section 66 (1) (as substituted by the *Solicitors (Amendment) Act, 1994*) of the Principal Act any clients' moneys subsequently received by him to the appropriate client account or client accounts, unless otherwise ordered by the Court. 30 35

(7) A solicitor who refuses, neglects or otherwise fails without reasonable excuse to comply with subsection (6) of this section shall be guilty of an offence and shall be liable on summary conviction thereof to a fine not exceeding £1,500. 40

(8) Where the High Court is satisfied, on an application being made to it by the Society, that there is reason to believe that any person holds or has held moneys or assets on behalf of a solicitor or his firm to whom subsection (1) of this section applies, the Court may order that person to disclose to the Society all information as to such moneys or assets, either then in his possession or control or within his procurement or which had been but are no longer in his possession or control or within his procurement, and, if no longer within his possession or control or within his procurement, his belief as to the present whereabouts of those moneys or assets." 45 50 55



29.—The Act of 1960 is hereby amended by the substitution of the following section for section 21:

“Compensation for loss due to dishonesty of solicitor or clerk or servant of solicitor.

21.—(1) In this section and in section 22 of this Act—

Compensation for loss due to dishonesty of solicitor or clerk or servant of solicitor (section 21 of Act of 1960).

‘the Fund’ means the Compensation Fund;

‘grant’ means a grant under subsection (4) of this section.

(2) The Society shall continue to maintain the Fund.

(3) The Fund shall be maintained and administered in accordance with the provisions of the Third Schedule to this Act.

(4) (a) Where it is proved to the satisfaction of the Society that any client of a solicitor has sustained loss in consequence of dishonesty on the part of that solicitor or any clerk or servant of that solicitor arising from that solicitor’s practice as a solicitor within the jurisdiction of the State, then, subject to the provisions of this section, the Society shall make a grant to that client out of the Fund.

(b) Subject to the provisions of this section, the amount of the grant referred to in paragraph (a) of this subsection shall be such as represents in the opinion of the Society reimbursement of the amount or value of the loss sustained with, where appropriate in the opinion of the Society, interest (at the rate per annum standing specified for the time being in section 26 of the Debtors (Ireland) Act, 1840, as varied from time to time pursuant to section 20 of the Courts Act, 1981) on the whole or any part of the amount or value of such loss in respect of the whole or any part of the period between the date when such loss was sustained and the date of the making of a grant, but excluding damages or any other form of loss consequent on the client of a solicitor being deprived of the amount or value of the loss sustained.

(5) Notwithstanding the foregoing provisions of this section, if it is shown to the satisfaction of the Society that a client of a solicitor has entrusted moneys to that solicitor, with express instructions to apply or to invest those moneys in a specified manner which would (if so applied or invested) have yielded a return higher than that which would have accrued had the moneys been applied or invested at the rate of interest standing specified for the time being in section 26 of the Debtors



(Ireland) Act, 1840, as varied from time to time pursuant to section 20 of the Courts Act, 1981, and the solicitor has dishonestly misappropriated such moneys, the amount granted under subsection (4) of this section shall, in lieu of interest at the rate mentioned in that subsection, include an amount representing such higher return in respect of the whole or any part of the period, as appropriate, between the date when such moneys were so entrusted to that solicitor and the date of the making of a grant. 5 10

(6) The amount of a grant made to any client of a solicitor (including any body or bodies corporate beneficially owned or controlled by that client) under subsection (4) of this section shall not exceed £350,000 in respect of matters arising from the relationship between such client and that solicitor. 15

(7) The Minister may, from time to time, vary by regulations the amount specified in subsection (6) of this section having regard to changes in the value of money generally in the State since the said amount was first specified. 20

(8) Notwithstanding the amount specified in subsection (6) of this section (as may from time to time be varied pursuant to subsection (7) of this section), a grant of a larger amount may, at the discretion of the Society, be made to a client of a solicitor, where the Society are of opinion that the particular circumstances giving rise to the making of a grant under subsection (4) of this section are such that none of the provisions of subsection (9) of this section apply and that grave hardship would be caused if such grant of a larger amount was not made (whether in one sum or in such instalments as the Society, in their discretion, determine). 25 30 35

(9) Notwithstanding the provisions of subsection (4) of this section, the Society shall have a discretion to make or refuse to make a grant—

(a) in a case in which the solicitor did not have a practising certificate in force at the time when, in the opinion of the Society, the loss was sustained, 40

(b) in a case in which the Society are of opinion that there has been dishonesty or negligence on the part of the client of the solicitor or of any person for whom that client is responsible which has contributed to the loss in question, 45

(c) in a case in which the Society are of opinion that the client of the solicitor has assisted (whether by act or omission) in the commission of misconduct by the solicitor, 50



5 (d) in a case in which the Society are of  
opinion that the loss sustained has  
arisen otherwise than as a result of the  
dishonest misappropriation or dis-  
honest conversion of moneys, securi-  
ties or other property of a client of a  
solicitor entrusted by the client, or by  
any other person for or on behalf of  
the client, to that solicitor or to any  
clerk or servant of that solicitor,

10 (e) in a case in which the Society are of  
opinion that, having regard to all the  
circumstances, the loss sustained by  
the client of the solicitor did not arise  
from, or was not directly related to,  
the provision of services of a legal  
nature to the client by the solicitor,

15 and, where the Society decide to make a grant in  
any such case, they shall have a discretion to make  
it only to a limited extent.

20 (10) A grant may be made notwithstanding that  
the solicitor has, after the act of dishonesty, died,  
had his name removed from or struck off the roll,  
ceased to practise, been suspended from practice,  
25 or had his practising certificate suspended.

(11) No grant may be made in respect of a loss  
made good otherwise.

30 (12) (a) On the making of any grant to any  
client of a solicitor in respect of any  
loss—

(i) the Society shall, to the amount of  
the grant, be subrogated—

35 (I) to any rights or remedies to  
which that client was entitled  
on account of the loss against  
the solicitor or any other  
person or against the estate  
of such solicitor or other  
person,

40 (II) to any rights or remedies to  
which the solicitor or his  
clerk or servant was entitled  
on account of the loss against  
any other person or against  
the estate of such other  
person, and

45 (III) to all other rights and remedies  
(if any) of that client or such  
solicitor, clerk or servant in  
respect of the loss; and

50 (ii) the client of the solicitor shall have  
no right under bankruptcy or



other legal proceedings or otherwise to receive any sum out of the assets of the solicitor, clerk or servant in respect of the loss until the Society has been reimbursed the full amount of the grant. 5

(b) In paragraph (a) of this subsection, references to the client of a solicitor or to the solicitor, clerk or servant include, in the event of his or their death, insolvency or other disability, references to his or their personal representative or any other person having authority to administer his or their estate or estates. 10 15

(13) No grant shall be made unless notice of the loss is received by the Society—

(a) in the prescribed manner, and

(b) within the prescribed period after the loss comes to the knowledge of the client of the solicitor concerned. 20

(14) The Society, for the purposes of inquiry into any matters which may affect the making or refusal of a grant, may take evidence on oath, and the administration of such oath is hereby authorised. 25

(15) (a) A grant may, at the discretion of the Society, be paid either in one sum or in such instalments as the Society may determine. 30

(b) The Society, if they are of opinion that the financial stability of the Fund so requires, may postpone payment of any grant or any instalment of any grant. 35

(16) Where the Society are of opinion that—

(i) there has been no dishonesty or negligence on the part of a solicitor, and

(ii) that solicitor is vicariously liable to any one or more of his or his firm's clients who has or have sustained loss in consequence of dishonesty on the part of any partner of that solicitor in circumstances where, but for such vicarious liability of that solicitor, a grant would have been made under subsection (4) of this section to such client or clients, 40 45 50

a grant may, nonetheless, at the discretion of the Society, be made under subsection (4) of this



section to any such client or clients of an amount determined by the Society, subject to the provisions of this section.

(17) For the purposes of this section, a solicitor or a body corporate beneficially owned or controlled by that solicitor shall not be a client of a solicitor's practice in which he is the sole practitioner or in which he is a partner.

(18) The Society may apply, by regulations, to the extent provided in such regulations, the provisions of this section to a solicitor's practice outside the jurisdiction of the State."

30.—The Act of 1960 is hereby amended by the substitution of the following section for section 22:

Contributions to the Compensation Fund by solicitors (section 22 of Act of 1960).

"Contributions to the Compensation Fund by solicitors.

22.—(1) Before a practising certificate is issued to a solicitor in respect of the practice year following the coming into operation of this section or any subsequent practice year, he shall pay to the Society an annual contribution to the Fund of such amount as may be prescribed from time to time, and the registrar may withhold the issue of such practising certificate to that solicitor until the payment is made.

(2) In exercising the powers conferred on them under this section, the Society shall have regard to the principle that the total amount standing to the credit of the Fund (including the value of all investments forming part of the Fund) should be not less than £1,000,000, or such greater sum as may be prescribed from time to time, on the date that is three months after the commencement date of each practice year.

(3) No annual contribution to the Fund shall be payable by a solicitor in the full-time service of the State within the meaning of section 54(3) (as substituted by the *Solicitors (Amendment) Act, 1994*) of the Principal Act.

(4) The Society may, by regulations, provide that no contribution to the Fund shall be payable by a solicitor who resides outside the State and is engaged in the provision of legal services outside the State.

(5) Notwithstanding the provisions of section 21 of this Act (as substituted by the *Solicitors (Amendment) Act, 1994*), no grant shall be made out of the Fund in consequence of dishonesty on the part of a solicitor in the full-time service of the State or any clerk or servant of that solicitor."



Intervention in practice of sole practitioner in cases of death, incapacity, bankruptcy, or abandonment (section 61 of Principal Act).

31.—The Principal Act is hereby amended by the substitution of the following section for section 61:

“Intervention in practice of sole practitioner in cases of death, incapacity, bankruptcy, or abandonment.

61.—(1) Where a solicitor who was a sole practitioner has died, his personal representative may appoint another solicitor to carry on his practice for such period and on such terms as the Society may think fit. 5

(2) Where a solicitor who is a sole practitioner becomes of unsound mind or becomes otherwise incapacitated by illness or accident to such an extent that he is, in the opinion of the Society, incapable (whether permanently or temporarily) of managing his own affairs or the affairs of his practice, the High Court may, on the application of the Society (or, if applicable, on the application of the committee of his estate on notice to the Society), appoint another solicitor to carry on the practice (including the operation by that appointed solicitor, either solely or jointly with another person nominated by the Society and approved of by the Court, of any client account) of that incapacitated solicitor for such period and on such terms as the Court thinks fit, and may require the production and delivery to the appointed solicitor of all documents of such practice in the possession or control or within the procurement of that incapacitated solicitor or any clerk or servant or former clerk or servant of that incapacitated solicitor. 10 15 20 25 30

(3) Where a solicitor who is a sole practitioner is adjudicated a bankrupt, then, as the case may be —

(a) the court by whom he is adjudicated a bankrupt, after due notice to the Society, or 35

(b) the High Court, on the application of the Society or of the Official Assignee,

may appoint another solicitor to carry on the practice of that solicitor for such period and on such terms as that court or the High Court thinks fit. 40

(4) Where, in relation to a solicitor who is a sole practitioner, any of the circumstances of paragraph (b) of section 19(1) (as substituted by the *Solicitors (Amendment) Act, 1994*) of the Act of 1960 apply, the High Court may, on the application of the Society, appoint another solicitor to carry on the practice (including the operation by that appointed solicitor, either solely or jointly with another person nominated by the Society and approved of by the Court, of any client account) of the solicitor for such period and on such terms as the Court thinks fit, and may require the production and delivery to the appointed solicitor of all documents of such practice in the possession or control or within the procurement of that solicitor or any clerk or servant or former clerk or servant of that solicitor. 45 50 55



(5) Any reference to a 'personal representative' in this section or in section 32 or 34 of the *Solicitors (Amendment) Act, 1994*, shall be construed as a reference to any person or persons entitled to apply for a grant of probate or for letters of administration in relation to the estate of a deceased solicitor."

32.—(1) Where a solicitor who was a sole practitioner has died, and another solicitor has not been appointed within four weeks of his death to carry on his practice under section 61(1) (as substituted by this Act) of the Principal Act, then, without prejudice to the rights of any personal representative under that section, the right to operate or otherwise deal with any client account in the name of the deceased solicitor or his firm shall vest in the Society and shall be exercisable as and from the death of that solicitor by a solicitor appointed in writing by the Society in that behalf for such period and on such terms as the Society may determine and the Society shall be empowered to take any further measures in relation to the practice as they deem necessary in the interests of the clients of the deceased solicitor.

Intervention in practice of solicitor who has died.

(2) Where the Society have operated or otherwise dealt with a client account under subsection (1) of this section, the Society shall be entitled to recover from the estate of the deceased solicitor such reasonable expenses as the Society have thereby incurred.

(3) The Society may apply to the High Court for an order in relation to the disposal of any moneys that are in any client account of any sole practitioner who died before or after the provisions of this section come into effect, or in relation to the disposal of any documents in his practice and the Court may make such order as it thinks fit.

(4) Where a solicitor who was a sole practitioner has died and where the Society are of opinion that that solicitor or any clerk or servant of that solicitor has been guilty of dishonesty arising from that solicitor's practice as a solicitor and that, notwithstanding his death, it is appropriate for the Society to issue proceedings with a view to applying to the High Court for an order or orders under section 20 (as substituted by this Act) of the Act of 1960 in relation to that deceased solicitor, the Society may issue proceedings naming as defendant or defendants a clerk or servant or other person closely connected with the practice of, or spouse or relative of, or personal representative of, that deceased solicitor, and may apply to the Court, with or without prior notice to such defendant or defendants, for such orders as the Society deem appropriate.

(5) The High Court, on the hearing of any application under subsection (4) of this section, may make such order or orders under section 20 (as substituted by this Act) of the Act of 1960 on such terms and conditions (if any) as the Court thinks fit, including an order joining any other person or persons as defendant or defendants or an order requiring that notice be given to any person or persons of such application.

(6) Where an order is made by the High Court under subsection (5) of this section, the Court, with or without prior notice to any person or persons, may make such further order or orders on such terms and conditions (if any) as the Court thinks fit to enable the Society to have access to the former place or places of business of the deceased solicitor concerned and to examine and take into their possession all documents found there to be retained by the Society in



their possession until such time as their investigations in relation to the practice of that deceased solicitor are completed, whereupon the Society shall deliver such documents or any part of them to such person or persons whom the Society deem entitled to receive them or as may be directed by the Court.

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(7) (a) Where an order in respect of documents is made by the High Court under *subsection (6)* of this section, the Society may make such enquiries as may be reasonably necessary to ascertain the person or persons entitled to the possession or custody of such documents, or any of them, and may thereafter deal with such documents, or any of them, in accordance with the directions of such person or persons so entitled.

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(b) For the purposes of *paragraph (a)* of this subsection, the provisions set out in the Second Schedule (as amended by this Act) to the Act of 1960 shall have effect.

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(8) Notwithstanding the making of an order by the High Court under *subsection (6)* of this section, any person or persons may apply to the Court for an order directing the Society to deliver to such person or persons the documents, or any of them, so taken by the Society into their possession and the Court may make such order on such terms and conditions (if any) as the Court thinks fit.

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Sale of solicitor's  
practice in certain  
circumstances.

33.—(1) Where, in relation to any solicitor or deceased solicitor to whom section 61 (as substituted by this Act) of the Principal Act or section 32 of this Act applies, the Society are of the opinion that the conduct of such solicitor or deceased solicitor, arising from his practice as a solicitor, has given, or is likely to give, rise to the Society making a grant or grants out of the Compensation Fund, the High Court may, on the application of the Society and after due notice to and after hearing such person or persons as the Court may think fit, authorise the Society to sell the practice of that solicitor (including, where appropriate, premises, furniture, fittings and equipment and goodwill of such practice), upon such terms, including such terms as to the temporary investment of the proceeds of sale of the practice pending the hearing of an application under *subsection (3)* of this section as the Court thinks fit.

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(2) (a) Where the Society have sold the practice of a solicitor or deceased solicitor pursuant to *subsection (1)* of this section, the Society shall, within a period of four weeks following the date of completion of the sale, make application to the High Court for directions as to the manner in which the proceeds of such sale are to be applied.

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(b) Notice of such application shall be given by the Society in at least one daily newspaper circulating in the area in which the solicitor or deceased solicitor carried on practice not less than 10 days prior to the hearing of the application, and the notice shall state that persons having claims against the solicitor or deceased solicitor may attend the hearing.

45

(3) On an application made to the High Court pursuant to *subsection (2) (a)* of this section, the Court may, after hearing such person or persons as the Court may think fit, by order direct that the proceeds of sale, or such part thereof as the Court thinks fit, of the practice of the solicitor—

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(a) be paid to the Compensation Fund, or



(b) be held in trust by the Society for such period and on such terms as to the investment of such proceeds as the Court may specify, and the Court may make one or more orders in exercising its powers under this subsection.

5 (4) (a) Where the High Court orders that any proceeds of the sale of a practice be kept in trust for a specified period under subsection (3) (b) of this section, the Society shall cause notice of the making of that order to be given in at least one daily newspaper circulating in the area in which the  
10 solicitor or deceased solicitor carried on practice.

(b) Notice of the making of an order under subsection (3) (b) of this section shall, in addition, indicate that persons having claims against the solicitor or deceased solicitor should furnish details of their claims to the Society within  
15 21 days of the date of publication of such notice or such longer period as the High Court may order, and the Society shall keep a record of all such claims received.

(5) (a) The Society shall, prior to the expiry of the period specified by the High Court pursuant to subsection (3) (b) of this section and after the expiry of the time limit for the furnishing of claims pursuant to subsection (4) (b) of this section, apply to the Court for directions as to the disposal of any proceeds of sale of a practice held in trust by the Society pursuant to subsection (3) (b) of this section.

25 (b) On an application under this subsection, the Society shall furnish to the High Court a list of all claims against the solicitor or deceased solicitor received by the Society, and the Court may direct that notice of the application for directions be given to such person or persons as the Court  
30 thinks fit.

(6) The High Court may, on the application of the Society and after due notice to and after hearing such person or persons as the Court thinks fit, make such order or orders as the Court thinks fit to facilitate the completion of the sale of the practice of a solicitor or  
35 deceased solicitor sold or to be sold pursuant to subsection (1) of this section, including orders as to the transfer of property, the discharge of encumbrances and the indemnifying by the Society of any purchaser of such practice.

40 34.—(1) The Second Schedule to the Act of 1960 shall have effect in relation to all or any documents taken into the possession of the Society under any provision of the *Solicitors Acts, 1954 to 1994*.

Ancillary provisions in relation to certain applications or orders (Second Schedule to the Act of 1960).

(2) The Second Schedule to the Act of 1960 is hereby amended by—

45 (a) the substitution for the heading thereof and the introductory four line paragraph of the following:

*“Provisions Having Effect in Relation to any Documents of a Solicitor's Practice taken into the Possession of the Society*

50 The following provisions shall have effect in relation to any documents of a solicitor's practice taken into the possession of the Society:”,



(b) the insertion of the following paragraph:

“(h) The foregoing provisions of this Schedule shall have effect in relation to documents notwithstanding the existence or alleged existence of any right to possession or retention of such documents or any of them vested in any solicitor or in any other person.”. 5

(3) The High Court, on the application of the Society and after due notice to and after hearing such person or persons as the Court thinks fit, may order that vouched expenditure incurred by the Society under section 19 (as substituted by this Act) of the Act of 1960 or section 61 (as substituted by this Act) of the Principal Act or section 32 of this Act, including the costs of any person exercising powers and functions under those provisions on behalf of the Society, shall be recouped to the Society by the solicitor concerned or his personal representative and shall be recoverable as a debt owing to the Society. 15

Notice of court applications to be given to Society.

35.—Without prejudice to any specific provision as to notice contained in any section of the Principal Act or the Act of 1960 or this Act, notice of any application brought by any person to any court pursuant to or in connection with the *Solicitors Acts, 1954 to 1994*, shall be given to the Society, unless a court otherwise orders. 20

Defences in actions against Society.

36.—(1) Without prejudice to any other defence, it shall be a defence to an action for damages against the Society in relation to exercising or in relation to not exercising any power conferred on the Society by the *Solicitors Acts, 1954 to 1994*, for the Society to prove that— 25

(a) the Society, in relation to exercising or not exercising their powers, have acted in good faith, and

(b) the Society, in relation to exercising their powers, have acted reasonably having regard to all the circumstances.

(2) In this section “the Society” includes any person acting for or appointed by the Society. 30

Restriction following admission as solicitor on practising as a sole practitioner.

37.—(1) A solicitor shall not, without the written consent of the Society, commence to carry on practice—

(a) as a sole practitioner, or

(b) as a partner with another solicitor or other solicitors, except where such other solicitor or one of them has been continuously engaged full-time in the provision of legal services for a period of not less than three years at the time of such commencement, 35

unless, following the date of his admission as a solicitor, he has been employed full-time as a solicitor in the provision of legal services for such period not exceeding three years as may be prescribed, and lesser periods of such employment may be aggregated in reckoning the period so prescribed. 40

(2) A solicitor who may not practise as a sole practitioner, or as a partner with another solicitor or other solicitors, by virtue of the provisions of subsection (1) of this section, shall attend such course 45



or courses of further education or training (or both) as may be prescribed.

(3) In considering an application for their consent under *subsection (1)* of this section, the Society may have regard to any professional experience gained by a solicitor in another jurisdiction.

(4) Where the Society refuse to grant their consent to a solicitor under *subsection (1)* of this section, that solicitor may appeal against their refusal to the President of the High Court who may make such order as he thinks fit.

(5) The Society shall be entitled to be heard in connection with the hearing of an appeal under *subsection (4)* of this section.

38.—(1) On any application coming before it under the *Solicitors Acts, 1954 to 1994*, the High Court may make such order as it thinks fit in relation to a solicitor, including any order in relation to the production, delivery, inspection, disposal or destruction of any document or documents in the possession or control or within the procurement of that solicitor or any clerk or servant or any former clerk or servant of that solicitor or his firm, to protect or secure the rights of a client or clients of that solicitor or the public interest or the interests of the solicitors' profession as a whole, or to enable the Society to discharge their functions under those Acts, without prejudice to the determination of any issue that may be, or may later come, before the Court as to the conduct of the solicitor named in such order.

General powers of the High Court.

(2) The High Court, on the hearing of any application or appeal coming before it under the *Solicitors Acts, 1954 to 1994*, may make such order as to costs as the Court thinks fit.

39.—The Act of 1960 is hereby amended by the substitution of the following section for section 12:

Finality of orders of the High Court (section 12 of Act of 1960).

30 "Finality of orders of the High Court.

12.—The Society or the solicitor concerned may appeal to the Supreme Court against an order of the High Court made under section 8 (1) (as substituted by the *Solicitors (Amendment) Act, 1994*) or section 9 or 10 (as amended by the *Solicitors (Amendment) Act, 1994*) of this Act within a period of 21 days beginning on the date of the order, and unless the High Court or the Supreme Court otherwise orders, the order of the High Court shall have effect pending the determination of such appeal."

## PART V

### QUALIFYING FOR ADMISSION AS A SOLICITOR

40.—The Principal Act is hereby amended by the substitution of the following section for section 24:

Requirements for admission as solicitor (section 24 of Principal Act).

45 "Requirements for admission as solicitor.

24.—(1) Subject to this Part of this Act, a person shall not be admitted as a solicitor unless—

(a) he has attained the age of 21 years,



(b) he has been bound by indentures of apprenticeship for the appropriate term and has satisfied the Society that he has duly served under such indentures of apprenticeship, or has been exempted, as may be prescribed, from being bound by or from service under such indentures of apprenticeship, 5

(c) he has duly attended such course or courses of education or training (or both) and passed such examination or examinations as may be prescribed, or has been exempted as may be prescribed from attending such course or courses or passing such examinations, or any of them, except those examinations that are obligatory for him, 10 15

(d) he has complied with the prescribed requirements (if any) as to service under indentures of apprenticeship and admission of persons to be solicitors or compliance therewith has been waived in the prescribed manner by the Society, and 20

(e) he has satisfied the Society that he is a fit and proper person to be admitted as a solicitor. 25

(2) (a) Where the Society decide that a person has not satisfied them that he is a fit and proper person to be admitted as a solicitor, the Society shall, as soon as practicable, send a notice in writing to that person stating that decision, the date thereof and the reasons therefor. 30

(b) A person to whom a decision under paragraph (a) of this subsection relates may, within a period of two months from the date of receipt from the Society of notice in writing stating that decision, apply to the President of the High Court to rescind that decision and the President of the High Court, on hearing such application, and on directing such further enquiries as he may think fit, may by order— 35 40 45

(i) confirm that it was proper for the Society to make the decision, or

(ii) rescind the decision and declare that person to be a fit and proper person to be admitted as a solicitor.”. 50



41.—The Principal Act is hereby amended by the substitution of the following section for section 25:

Requirements for admission to apprenticeship (section 25 of Principal Act).

“Requirements for admission to apprenticeship.”

25.—Subject to this Part of this Act, a person shall not be capable of being bound by indentures of apprenticeship unless—

(a) he has attained the age of 17 years,

(b) he has duly attended such course or courses of education or training (or both) as may be prescribed pursuant to section 40 (as amended by the *Solicitors (Amendment) Act, 1994*) of this Act,

(c) he has passed such examination or examinations as may be prescribed pursuant to section 40 (as amended by the *Solicitors (Amendment) Act, 1994*) of this Act,

(d) he has obtained the written consent of the Society under section 27(2) (as substituted by the *Solicitors (Amendment) Act, 1994*) of this Act, and

(e) he has complied with any requirements as may be prescribed as to admission to apprenticeship, or compliance therewith has been waived as may be prescribed.”.

42.—The Principal Act is hereby amended by the substitution of the following section for section 26:

Term of indentures (section 26 of Principal Act).

“Term of indentures.”

26.—(1) The Society may by regulations provide for the term or terms (not to exceed two years) of service under indentures of apprenticeship of persons (including law clerks) or specified categories of persons seeking to be admitted as solicitors and any such regulations shall apply to indentures of apprenticeship existing at the date on which such regulations come into effect.

(2) On the date which is six months after the coming into operation of this section, or the coming into effect of regulations made under subsection (1) of this section, whichever is the sooner, the provisions of the Second Schedule to this Act shall cease to have effect.

(3) In this section ‘law clerk’ means a person who has satisfied the Society—

(a) that he has for a continuous period of at least five years been a *bona fide* clerk to a practising solicitor or solicitors,

(b) that he has, during such period, been *bona fide* engaged in the transaction



and performance under the direction and supervision of a practising solicitor or solicitors of such legal business as the Society are satisfied was of a sufficiently responsible nature, and

(c) that he has diligently served as such clerk.”.

Evidence of education, employment and character. (section 27 of Principal Act).

43.—The Principal Act is hereby amended by the substitution of the following section for section 27:

“Evidence of education, employment and character.

27.—(1) Before a person becomes bound by indentures of apprenticeship, he shall give notice to the Society of his intention so to do and shall furnish the Society with such evidence as may be prescribed of his previous education and employment record and of his character.

(2) Where the Society are satisfied with the evidence furnished under subsection (1) of this section by a person seeking to become bound by indentures of apprenticeship and with any information obtained from any enquiries they deem it proper to make and are satisfied that that person has complied with the provisions of paragraphs (a), (b), (c) and (e) of subsection (1) of section 25 (as substituted by the *Solicitors (Amendment) Act, 1994*) of this Act, the Society shall issue their written consent to such person becoming bound by indentures of apprenticeship.

(3) Where the Society are not satisfied with the evidence furnished under subsection (1) of this section by a person seeking to become bound by indentures of apprenticeship, the Society may decide to refuse to issue their written consent under subsection (2) of this section to such person becoming bound by indentures of apprenticeship, and where the Society so decide they shall, as soon as practicable, send a notice in writing to that person stating the decision, the date thereof and the reasons therefor.

(4) A person to whom a decision made under subsection (3) of this section relates may, within a period of two months from the date of receipt by him of notice in writing stating that decision, apply to the President of the High Court to rescind that decision, and the President of the High Court, on hearing such application and on directing such further enquiries as he may think fit, may by order—

(i) confirm that it was proper for the Society to make that decision, or

(ii) rescind that decision and direct the Society to issue their written consent under subsection (2) of this section to such person becoming



bound by indentures of apprenticeship.

(5) The registrar shall refuse to register indentures of apprenticeship produced to him under section 28 of this Act unless the indentures are accompanied by a consent issued under this section and dated not earlier than six months before the date of the indentures.

(6) Service of an apprentice under indentures of apprenticeship of which registration has been refused under this section shall be deemed not to be good service by the apprentice under his indentures.”.

44.—The Principal Act is hereby amended by the substitution of the following section for section 29:

Restriction on solicitor taking or retaining apprentice (section 29 of Principal Act).

“Restriction on solicitor taking or retaining apprentice.

29.—(1) Only a practising solicitor may take an apprentice under indentures of apprenticeship.

(2) A practising solicitor who has not at some time been in continuous practice as a solicitor for a period of at least five years shall not, without the written consent of the Society, take an apprentice.

(3) Where a solicitor, who has taken an apprentice under indentures of apprenticeship the term of which is unexpired, ceases to practise or to be a solicitor qualified to practise or becomes employed as an assistant or clerk by another solicitor, he shall not, without the written consent of the Society, retain that apprentice for longer than six months thereafter.

(4) Where a solicitor has taken or retains an apprentice under indentures of apprenticeship in contravention of the foregoing provisions of this section, service or continued service by that apprentice under such indentures of apprenticeship shall be deemed not to be good service, unless the Society direct otherwise.

(5) In this section and in sections 26, 32, 36, 40, 43 and 44 (as substituted by the *Solicitors (Amendment) Act, 1994*) of this Act ‘practising solicitor’ means a solicitor engaged full-time in the provision of legal services as—

(a) a sole practitioner, or

(b) a partner in a firm of solicitors, or

(c) a solicitor in the whole time employment of a body corporate, or

(d) a solicitor in the full-time service of the State within the meaning of section 54 (3) (as substituted by the *Solicitors (Amendment) Act, 1994*) of this Act.”.



Assignment of indentures on death of solicitor, etc. (section 32 of Principal Act).

45.—The Principal Act is hereby amended by the substitution of the following section for section 32:

"Assignment of indentures on death of solicitor, etc.

32.—Where, before the expiration of the term for which an apprentice is bound by indentures of apprenticeship— 5

- (a) the solicitor concerned dies or ceases to practise as a solicitor, or
- (b) the indentures of apprenticeship are cancelled by mutual consent, or
- (c) the indentures of apprenticeship are discharged by virtue of an order of the Society or of any court or otherwise, 10

the apprentice may, with the written consent of the Society, be bound by an assignment of the indentures of apprenticeship or by fresh indentures of apprenticeship to another practising solicitor for the residue of the said term." 15

General power to discharge indentures (section 33 of Principal Act).

46.—The Principal Act is hereby amended by the substitution of the following section for section 33:

"General power to discharge indentures.

33.—(1) Where the Society are of opinion that indentures of apprenticeship ought to be discharged, the Society may, after due notice to, and after due consideration of any submissions from, each party to the indentures of apprenticeship, by order discharge the indentures of apprenticeship on such terms (if any) as they think fit, and determine what period (if any) of service by the apprentice under the indentures of apprenticeship should be deemed good service. 20 25

(2) Where the Society make an order pursuant to subsection (1) of this section, the Society shall, as soon as practicable, send a notice in writing to each party to the indentures of apprenticeship stating the terms of the order, the date thereof and the reasons therefor. 30 35

(3) A party to indentures of apprenticeship, the subject of an order of the Society made pursuant to subsection (1) of this section, may, within a period of two months from the date of receipt by him of notice in writing pursuant to subsection (2) of this section, apply to the President of the High Court to rescind that decision, and the President of the High Court, on hearing such application and on directing such further enquiries as he may think fit, may, by order— 40 45

(a) confirm that it was proper for the Society to make such an order, or

(b) rescind or vary the order of the Society, and give such consequential directions (if any) as he thinks fit, including a direction as to what 50



period (if any) of service by the apprentice under the indentures of apprenticeship should be deemed good service.”.

5 47.—The Principal Act is hereby amended by the substitution of the following section for section 36: Number of apprentices (section 36 of Principal Act).

“Number of apprentices.

36.—(1) Subject to subsection (2) of this section, a practising solicitor shall not have more than two apprentices at the same time under indentures of apprenticeship.

10 (2) A practising solicitor may, with the written consent of the Society, have under indentures of apprenticeship one apprentice for every two assistant solicitors in his employment or in the employment of his firm at the date of the registration under section 28 of this Act of each such indentures of apprenticeship.

15 (3) Where a practising solicitor has, under subsection (2) of this section, an apprentice or apprentices under indentures of apprenticeship the terms of which are unexpired, that solicitor shall notify the Society in the event of the number of assistant solicitors employed being reduced below the ratio provided for in that subsection and the notification shall be made within three months of the reduction of the number of assistant solicitors below the said ratio.

20 (4) Where the Society have been notified under subsection (3) of this section or otherwise become aware of a reduction in the number of assistant solicitors employed below the ratio provided for in that subsection, service or continued service under his indentures of apprenticeship by each apprentice concerned shall be deemed not to be good service, unless the Society direct otherwise.”.

48.—The Principal Act is hereby amended by the substitution of the following section for section 37:

40 “Obligation to serve *bona fide* apprenticeship.

37.—An apprentice shall, during the whole term of his indentures of apprenticeship serve, in the prescribed manner, a *bona fide* apprenticeship.”.

Obligation to serve *bona fide* apprenticeship (section 37 of Principal Act).

49.—Section 40 of the Principal Act is hereby amended by—

(a) the substitution of the following subsection for subsection (1):

45 “(1) The Society may—  
(a) either on their own or by arrangement with or in association with any other body or institution, provide or procure the provision of courses and the holding of examinations for the education or training (or both) of—

Amendment of section 40 of Principal Act.



(i) persons seeking to be admitted as solicitors,  
or

(ii) solicitors or other persons;

(b) authorise any other body or institution, either on  
its own or by arrangement with or in association  
with the Society, to provide or procure the pro- 5  
vision of courses and the holding of examinations  
for the education or training (or both) of—

(i) persons seeking to be admitted as solicitors,  
or 10

(ii) solicitors or other persons;

(c) join or associate with any other body or institution  
providing education or training (or both) in pro-  
viding or procuring the provision of courses and  
the holding of examinations leading, in appro- 15  
priate cases, to a joint or common qualification;

(d) provide for aptitude or other testing of persons  
seeking to be admitted as solicitors;

(e) appoint professors, lecturers, tutors and exam-  
iners; 20

(f) award diplomas, certificates and other awards of  
merit.”;

(b) the substitution of the following subsection for subsection  
(4):

“(4) Regulations for the purposes of this section shall 25  
provide for the holding by the Society, either on their own  
or by arrangement with or in association with any other  
body or institution, at least once in every 12 month period,  
of—

(a) a preliminary examination (of such content and 30  
form and standard as may be prescribed) to be  
passed by a person seeking to be bound under  
indentures of apprenticeship who is not other-  
wise exempted therefrom pursuant to section 41  
(as substituted by the *Solicitors (Amendment)* 35  
*Act, 1994*) and section 42 of this Act;

(b) such other examination or examinations as are  
required by the Society to be passed by a person  
seeking to be admitted as a solicitor.”;

(c) the substitution for paragraphs (a), (b) and (c) of subsection 40  
(5) of the following paragraphs:

“(a) restricting the taking of apprentices to practising sol-  
icitors whose fitness and capacity to train apprentices  
is deemed satisfactory by the Society,

(b) the attendance of apprentices, intending apprentices 45  
or other persons seeking to be admitted as solicitors  
at education or training courses (or both) and the  
content of such education or training courses,



5 (c) the passing by apprentices, intending apprentices, or other persons seeking to be admitted as solicitors of such examination or examinations as are required by the Society to be passed by a person before being admitted as a solicitor,";

(d) the substitution for paragraphs (i) and (j) of subsection (5) of the following paragraphs:

10 "(i) the control and discipline of apprentices, intending apprentices or other persons seeking to be admitted as solicitors,

15 (j) the exemption, subject to this Act, from courses or examinations (or both), in whole or in part, of persons who produce satisfactory evidence that they have acquired degrees or professional qualifications of a standard and content deemed satisfactory by the Society and awarded by a university or body or institution recognised by the Society as being appropriate, or who have such other special qualifications as the Society deem appropriate,

20 (k) the holding of courses of further education or training (or both) and the required attendance by solicitors or any specified category of solicitors at one or more of such courses,

25 (l) the designation of an age below which persons may not sit for the preliminary examination,

(m) the awarding of diplomas, certificates or other awards of merit to solicitors or other persons who have duly completed prescribed courses or passed prescribed examinations (or both)."; and

30 (e) the insertion of the following subsections:

"(7) Regulations made pursuant to this section shall be made only with the concurrence of the Minister.

35 (8) Every regulation made under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder."

50.—The Principal Act is hereby amended by the substitution of the following section for section 41:

"General exemption from preliminary examination.

41.—The preliminary examination of the Society shall not be required to be passed—

45 (a) by a person who holds a degree from any of the universities of Ireland, England, Scotland or Wales, or a degree conferred or recognised by the National Council for Educational Awards under section 3 of the National Council for Educational Awards Act, 1979,

General exemption from preliminary examination (section 41 of Principal Act).



(b) by a person who has passed an examination prescribed as being equivalent thereto, or

(c) by a person who holds the degree of barrister-at-law from the Honorable Society of King's Inns, Dublin, or other professional qualification prescribed as being equivalent thereto.”. 5

Exemptions for practising barristers (section 43 of Principal Act).

51.—The Principal Act is hereby amended by the substitution of the following section for section 43: 10

“Exemptions for practising barristers.

43.—(1) This section applies to a person—

(a) who seeks to be admitted as a solicitor,

(b) who has been called to the bar of Ireland and has practised as a barrister in the State for such period (not exceeding three years) and at such time or times as may be prescribed, 15

(c) who has procured himself to be disbarred with a view to being admitted as a solicitor, 20

(d) who has obtained from two of the Benchers of the Honorable Society of the King's Inns, Dublin, a certificate of his being in good standing while he was practising as a barrister in the State, 25 and

(e) who has satisfied the Society that he is a fit and proper person to be admitted as a solicitor.

(2) Subject to subsection (8) of this section, the following provisions shall have effect in relation to a person to whom this section applies: 30

(a) he shall not be required to obtain a certificate of his having passed any examination of the Society other than the final examination (being the examination or an examination in like form referred to in section 40 of this Act before the coming into operation of section 49 of the *Solicitors (Amendment) Act, 1994*, as ‘a final examination’ and in this section referred to as the final examination) and (if obligatory on him) the second examination in the Irish language which is referred to in the said section 40, but he shall not be re-examined in any subject of substantive law which he has passed or is deemed to have passed as part of a qualifying examination for the degree of barrister-at-law, 35 40 45 50



(b) he shall be entitled, without being bound under indentures of apprenticeship to a practising solicitor, to apply to present himself for the final examination.

(c) on passing the final examination (except so much of that examination as relates to indentures of apprenticeship and service thereunder) and (if obligatory on him) the second examination in the Irish language, he shall be entitled to apply to be admitted and enrolled as a solicitor.

(3) A person to whom this section applies shall not be required to become bound under indentures of apprenticeship to a practising solicitor but shall attend such courses (if any) and complete such training (if any) and pass such examinations (if any) as may be prescribed but he shall not be re-examined in any subject of substantive law which he has passed or is deemed to have passed as part of a qualifying examination for the degree of barrister-at-law.

(4) A person to whom this section applies shall not be required to pass any examination in the Irish language held by the Society under section 40 (3) of this Act if he has passed or was exempted from an examination in the Irish language prescribed by the Chief Justice under section 3 of the Legal Practitioners (Qualification) Act, 1929.

(5) Subject to the provisions of subsection (1) of this section, a person who has attended such courses (if any) completed such training (if any) and passed such examinations (if any) as he shall have been required to undertake pursuant to regulations (if any) made under this section, shall be entitled to apply to be admitted and enrolled as a solicitor.

(6) For the purposes of this section, service by a person as a member of the judiciary in the State, or as a barrister in the full-time service of the State or as a barrister in employment shall be deemed to be practice as a barrister.

(7) In this section—

‘barrister in employment’ means a barrister who satisfies the Society in the prescribed manner that he has been engaged, under a contract of employment with an employer, full-time in the provision of services of a legal nature for a prescribed period (not exceeding three years) at such time or times as may be prescribed;

‘barrister in the full-time service of the State’ means a barrister who is required to devote the whole of his time to the service of the State in the provision of services of a legal nature and is



remunerated for such service wholly out of moneys provided by the Oireachtas.

(8) Subsection (2) of this section shall stand repealed on the coming into operation of regulations made under subsection (3) of this section.”. 5

Exemptions  
(reciprocal  
provisions) (section  
44 of Principal Act).

52.—The Principal Act is hereby amended by the substitution of the following section for section 44:

“Exemptions  
(reciprocal  
provisions).

44.—(1) In this section ‘corresponding profession’ means a profession in another jurisdiction, other than the jurisdiction of a Member State of the European Communities, which in the opinion of the Society corresponds substantially to the profession of solicitor. 10

(2) This section applies to a person who—

(a) is qualified to practise in a corresponding profession, 15

(b) has applied to the Society to be admitted as a solicitor or who has been admitted as a solicitor under subsection (5) of this section having so applied, and 20

(c) has satisfied the Society that he is a fit and proper person to be admitted as a solicitor.

(3) Subject to subsections (4) and (6) of this section, the following provisions shall have effect in relation to a person to whom this section applies: 25

(a) he shall not be required to become bound under indentures of apprenticeship;

(b) he shall not be required to comply with the provisions of section 40(3) of this Act; 30

(c) he shall be required to have practised his profession in the jurisdiction in which he is qualified to practise for such minimum period as may be prescribed; 35

(d) he shall attend such course or courses of education or training (or both) and pass such examination or examinations as may be prescribed; 40

(e) he shall not, for such period as may be prescribed (not to exceed three years) following the date of his admission as a solicitor (during which period he shall have worked full-time in the provision of legal services) commence to carry on practice— 45

(i) as a sole practitioner, or



5 (ii) as a partner with another practising solicitor or other practising solicitors unless that other practising solicitor or one of such other practising solicitors has been engaged full-time in the provision of legal services for a period of not less than three years at the time of such commencement;

10 (f) he shall, during the period referred to in paragraph (e) of this subsection, be required to attend such courses of further education or training (or both) as may be prescribed.

15 (4) The Society may waive in the prescribed manner, in whole or in part, any one or more of the provisions of paragraphs (c), (d), (e) or (f) of subsection (3) of this section in relation to any prescribed category of person to whom this section applies.

20 (5) A person to whom this section applies who has complied with the provisions of paragraphs (c) and (d) of subsection (3) of this section (insofar as they have not been waived in whole or in part under subsection (4) of this section) shall be entitled to be admitted as a solicitor.

25 (6) The Minister may by order appoint a day or days for the coming into operation of this section in relation to a corresponding profession in any jurisdiction being a day or days on which he is satisfied that reciprocal provisions will be in operation in that jurisdiction in respect of solicitors whose names are on the roll and he may revoke an order so made if such reciprocal provisions cease to apply.”.

53.—For the purposes of Part IV (as amended by this Act) of the Principal Act, the Society may prescribe by regulations the circumstances in and the conditions under which a person may become bound by indentures of apprenticeship to a person who holds a certificate issued by the Law Society of Northern Ireland or, in relation to England and Wales, the Law Society, corresponding to a practising certificate issued by the Society.

Exemption for certain apprentices.

## PART VI

### PRACTISING CERTIFICATES AND PRACTICE

45 54.—The Principal Act is hereby amended by the substitution of the following section for section 47:

Application for practising certificate (section 47 of Principal Act).

“Application for practising certificate.

47.—(1) Subject to the provisions of this Act, the Society may make regulations with regard to—

50 (a) applications for practising certificates, and



(b) the issue of practising certificates (including the form of such certificates).

(2) The Society may make regulations pursuant to subsection (1) of this section requiring that every solicitor who applies to the Society for a practising certificate in respect of a practice year commencing after a date specified in the regulations shall not be issued with such practising certificate unless such solicitor has furnished to the Society written evidence of there being in force the prescribed minimum level of cover for indemnity against losses arising from claims against him as required by indemnity regulations in force under section 26 of the *Solicitors (Amendment) Act, 1994*, for the duration of the practice year in respect of which such practising certificate so applied for relates.

(3) The registrar shall maintain a register of practising solicitors (in this Act known as 'the register') and the register shall include the following particulars relating to each solicitor issued with a practising certificate—

- (a) the full name of the solicitor,
- (b) his place or places of business,
- (c) the date of his admission as a solicitor, and
- (d) particulars of his cover for indemnity against losses for claims against him required by indemnity regulations in force under section 26 of the *Solicitors (Amendment) Act, 1994*.

(4) (a) The register, which may be kept in an electronic or such other non-written form as is considered appropriate by the Society, shall be available for inspection during office hours without payment by any person who applies to inspect it,

(b) if the register is kept in an electronic or other non-written form, the Society may comply with its obligation to have the register available for inspection under paragraph (a) of this subsection by making any relevant entry in the register available in written form for inspection in accordance with the said paragraph (a), and

(c) the Society may publish at any time in whatever manner they deem appropriate the names and the place or places of business of solicitors entered on the register.



(5) Subject to the provisions of this Part of this Act and of the *Solicitors (Amendment) Act, 1994*, the registrar shall issue a practising certificate to a solicitor on application being duly made by him in that behalf, as may be prescribed.

(6) Where a solicitor alleges that the registrar has wrongly refused to issue him with a practising certificate, he may apply to the President of the High Court who may make such order in the matter as he thinks fit.

(7) On the coming into effect of regulations made under subsection (1) of this section, the provisions of the Third Schedule and the Fourth Schedule to this Act shall cease to have effect.

(8) The Minister may direct the Society to make regulations (or to amend regulations made) under subsection (1) of this section providing for the requirement set forth in subsection (2) of this section.”.

55.—(1) Notwithstanding the coming into effect of regulations made by the Society under section 47 (1) (as substituted by this Act) of the Principal Act, a practising certificate which is in force at the time of the passing of this Act shall, unless subsequently suspended pursuant to section 20(3) (as substituted by this Act) of the Act of 1960 or section 58 of this Act, continue in force until the end of the practice year during which it was issued and shall then expire.

Saving for regulations made under section 47 of Principal Act and amendment of section 48 of Principal Act.

(2) Section 48 of the Principal Act shall be amended with effect from the 1st day of January, 1996—

(a) by the substitution of the following subsection for subsection (1):

“(1) A practising certificate issued during the period beginning on the 1st day of January in any year and ending on the next following 1st day of February shall bear the date of the said 1st day of January and a practising certificate not so issued shall bear the date of the day on which it is issued.”.

(b) by the substitution in subsection (3) of:

“the 1st day of February” for “the 5th day of February” where it occurs.

56.—(1) No solicitor shall practise as a solicitor unless a practising certificate in respect of him is in force.

Prohibition on practising as solicitor without practising certificate.

(2) Without prejudice to section 29 (5) (as substituted by this Act) of the Principal Act, a solicitor shall be deemed to practise as a solicitor if he engages in the provision of legal services whether as a sole practitioner or as a partner in a solicitor's practice or as an employee of any solicitor or of any other person or body, or as a solicitor in the full-time service of the State within the meaning of section 54 (3) (as substituted by this Act) of the Principal Act.

(3) Subsection (1) of this section shall not apply to—



(a) a solicitor in the full-time service of the State within the meaning of section 54 (3) (as substituted by this Act) of the Principal Act, or

(b) a solicitor whose name is on the roll and who does not stand suspended from practice and who is employed full-time in the State to provide conveyancing services for his employer, provided that such employer is not a solicitor. 5

(4) In *paragraph (b) of subsection (3)* of this section "conveyancing services" means services in connection with the preparation of transfers, conveyances, contracts, leases or other assurances in connection with the disposition or acquisition of estates or interests in land. 10

Acting as a solicitor without a practising certificate.

57.—Without prejudice to the generality of section 3 (as amended by this Act) of the Act of 1960, and without prejudice to any provision of or proceedings under section 55 (as amended by this Act) of the Principal Act a solicitor who acts as a solicitor when not a solicitor qualified to practise under section 54 (as substituted by this Act) of the Principal Act by reason of a practising certificate in respect of him not being in force when such a practising certificate is required by the *Solicitors Acts, 1954 to 1994*, shall be guilty of misconduct. 15

Suspension of practising certificates.

58.—(1) Where a solicitor fails to comply with any provision of the *Solicitors Acts, 1954 to 1994*, or with any regulations made thereunder or with any conditions specified in a direction relating to a practising certificate under *section 59* of this Act, and the Society are of the opinion that such failure to comply is serious and warrants the making of an application under this section, the Society may, on notice to that solicitor, apply to the President of the High Court and the President of the High Court may (after hearing such evidence and receiving such submissions from the Society, the solicitor concerned and such other person or persons as the President of the High Court thinks fit) by order do one or more of the following things, namely— 20 25 30

(a) suspend the current practising certificate of the solicitor for such period as the President of the High Court thinks fit up to and including the end of the current practice year;

(b) direct the Society not to issue to the solicitor a practising certificate during any subsequent practice year until such time as the President of the High Court thinks fit; 35

(c) direct the solicitor to take such action as the President of the High Court thinks fit to remedy any consequences of his failure to comply with such Acts, regulations or conditions; 40

(d) direct the solicitor to take such action as the President of the High Court thinks fit to ensure that the solicitor does not in the future so fail to comply with such Acts, regulations or conditions;

(e) adjourn the application and direct that further enquiries be made by the Society in regard to the matter, or require the Society to furnish further information to the Court; 45

(f) adjourn the application for such period as the President of the High Court thinks fit, to enable the solicitor to comply with any direction or directions of the President of the 50



High Court under *paragraph (c) or (d) (or both) of this subsection;*

(g) dismiss the Society's application.

5 (2) The Society shall, unless otherwise directed by the President of the High Court, arrange to publish, as soon as possible after it is made, the terms of any order made by the President of the High Court under *subsection (1)(a) or (1)(b) of this section in the Iris Oifigiúil and in the Gazette of the Society and in any other manner as the Society may think fit.*

10 (3) Any application made by the Society pursuant to *subsection (1) of this section shall be without prejudice to the right of the Society under section 7 (as substituted by this Act) of the Act of 1960 to apply to the Disciplinary Tribunal for an inquiry into the conduct of the solicitor concerned on the ground of alleged misconduct.*

15 59.—(1) Subject to and in accordance with the provisions of this section, the Society may give a direction that the practising certificate issued to a solicitor and for the time being in force shall have effect subject to such specified conditions as the Society may think fit and a reference in this section to such a direction shall be deemed to include  
20 a reference to such specified conditions.

Imposition of conditions while practising certificates are in force.

(2) The Society may give a direction under *subsection (1) of this section where, had an application for a practising certificate been made by the solicitor concerned at the time the direction is given, one or more of the circumstances set out in section 49 (1) (c) to (p) (as*  
25 *substituted by this Act) of the Principal Act would have applied to that solicitor.*

(3) Subject to *subsection (4) of this section, a direction given under subsection (1) of this section shall have effect from the date that is 21 days after the date of receipt by the solicitor concerned of notification*  
30 *in writing of the giving of such direction, whereupon that solicitor shall, within that period of 21 days, surrender his current practising certificate to the Society and the Society shall, as soon as possible, re-issue it with the specified conditions endorsed thereon to that solicitor.*

(4) A solicitor in relation to whom the Society give a direction  
35 under *subsection (1) of this section may, within 21 days of the receipt by him of notification in writing of the giving of such direction, appeal to the President of the High Court against the giving of that direction.*

(5) Notwithstanding that the solicitor concerned appeals to the President of the High Court under *subsection (4) of this section, the*  
40 *direction given by the Society under subsection (1) of this section shall have effect from the date specified in subsection (3) of this section up to the date of the determination of such appeal, unless the President of the High Court, on application by that solicitor, otherwise orders.*

(6) Where an appeal has been brought by a solicitor under *sub-*  
45 *section (4) of this section and the President of the High Court has made an order under subsection (5) of this section staying the coming into effect of the direction given by the Society, the Society may, on notice to that solicitor, make application to the President of the High Court at any time thereafter, and the President of the High Court*  
50 *may (on the hearing of that application) dismiss such appeal and confirm the direction given by the Society if the President of the High Court is satisfied that that solicitor has delayed unduly in proceeding*



with such appeal and may for that purpose revoke any order which he has made under *subsection (5)* of this section.

(7) On hearing an appeal under *subsection (4)* of this section, the President of the High Court may, by order, do one or more of the following things, namely—

5

- (a) confirm the direction given by the Society;
- (b) direct that the current practising certificate of that solicitor shall have effect subject to such conditions as the President of the High Court thinks fit;
- (c) direct that any subsequent practising certificate issued to that solicitor shall have effect subject to such conditions as the President of the High Court thinks fit; 10
- (d) revoke the direction given by the Society;
- (e) direct as the President of the High Court otherwise thinks fit; 15
- (f) revoke or vary any order which he has made under *subsection (5)* of this section.

Proof of practice by an unqualified solicitor.

60.—(1) Where the registrar has reasonable grounds to believe that an unqualified person was at a particular time acting as a solicitor, he may issue a certificate in writing to that effect.

20

(2) Upon production in court by or on behalf of the Society or the registrar of a document purporting to be a certificate referred to in *subsection (1)* of this section, it shall be presumed until the contrary is proved that the said certificate was properly issued by the registrar and the contents of the certificate shall be admitted as *prima facie* evidence of the facts therein stated. 25

Direction to grant or refuse practising certificate (section 49 of Principal Act).

61.— The Principal Act is hereby amended by the substitution of the following section for section 49:

“Direction to grant or refuse practising certificate.

49.—(1) This section applies where a solicitor makes application for a practising certificate in any one or more of the following circumstances: 30

- (a) he has, for 12 months or more, ceased to hold a practising certificate in force (exclusive of cases in which the applicant has practised as a solicitor in the full-time service of the State within 12 months before his application); 35
- (b) he has not held a practising certificate in force within 12 months following the date of his admission as a solicitor; 40
- (c) he is a person in respect of whose person or property any of the powers and provisions of the Lunacy Regulation (Ireland) Act, 1871, or any Act amending or extending that Act, relating to management and administration of property apply; 45



- 5 (d) he has an office or place of business in more than one place at any one time (disregarding, where he has a Dublin agent, the office or place of business of such agent) and having been invited by the Society to satisfy them that he exercises adequate personal supervision over each office or place of business, he has failed to satisfy the Society as aforesaid and has been notified in writing by the Society that he has so failed;
- 10
- 15 (e) he has been invited by the Society to give an explanation in respect of any matter affecting his conduct (including conduct in another jurisdiction), and he has failed to give the Society an explanation in respect of that matter which the Society regard as sufficient and satisfactory, and has been notified in writing by the Society that he has so failed;
- 20
- (f) he has had an order of attachment or committal made against him;
- 25 (g) he has had a judgment or decree given against him —
- (i) which involves the payment of moneys, and
- 30 (ii) which is not a judgment or decree in relation to which he is entitled, as respects the whole effect of the judgment or decree upon him, to indemnity or relief from any other person,
- 35 and he has not produced to the registrar evidence of the satisfaction of such judgment or decree;
- (h) he has been adjudicated a bankrupt;
- 40 (i) he has entered into a composition with his creditors or a deed of arrangement for the benefit of his creditors;
- (j) he has failed to comply with an order of the High Court;
- 45 (k) he has failed to comply with regulations made under section 66 (as substituted by the *Solicitors (Amendment) Act, 1994*) or 71 (as amended by the *Solicitors (Amendment) Act, 1994*) of this Act or section 73 of the *Solicitors (Amendment) Act, 1994*;
- 50 (l) he has failed to comply with a determination, requirement or direction of



the Society under *section 8, 9 or 10 of the Solicitors (Amendment) Act, 1994;*

(m) he has been sentenced to a term of imprisonment;

(n) he has failed to comply with the terms of any regulations in force by virtue of the power vested in the Society by *section 26 of the Solicitors (Amendment) Act, 1994;* 5

(o) he has failed to attend a course or courses of further education or training (or both), where his attendance at such course or courses was required in the prescribed manner by the Society; 10

(p) he has failed to satisfy the Society that he is fit to carry on the practice of a solicitor, having regard to the state of his physical or mental health; 15

(q) he has failed to satisfy the Society that, having regard to all the circumstances, including the financial state of his practice, he should be issued with a practising certificate or a practising certificate not subject to specified conditions. 20 25

(2) (a) Where this section applies, the Society shall as soon as practicable consider the application (including such submissions as may be made by or on behalf of the applicant) and shall thereafter direct the registrar to do any one of the following things: 30

(i) issue a practising certificate unconditionally;

(ii) issue a practising certificate subject to such specified conditions as the Society think fit, including conditions requiring the solicitor concerned to take any specified steps that the Society consider necessary for his carrying on an efficient practice as a solicitor and notwithstanding that any such specified steps may result in expenditure being incurred by the solicitor concerned; or 35 40 45

(iii) refuse to issue a practising certificate.

(b) If the Society direct the registrar either to refuse to issue a practising certificate or to issue a practising certificate subject to specified conditions, the solicitor concerned shall, as soon as 50



possible, be notified in writing by the Society of the direction and the grounds on which it was given.

(3) A solicitor in relation to whom the Society have directed the registrar under subsection (2) (a) of this section either to refuse to issue a practising certificate or to issue a practising certificate subject to specified conditions may, within 21 days of the receipt by him of the notification in writing of such direction, appeal to the President of the High Court against such direction to refuse or against the specified conditions, or any of them, as the case may be.

(4) Notwithstanding that the solicitor concerned appeals to the President of the High Court under subsection (3) of this section, the direction of the Society to the registrar under subsection (2) (a) of this section shall have effect up to the determination of such appeal, unless the President of the High Court, on application by that solicitor, otherwise orders pending the determination by him of such appeal.

(5) Where an appeal has been brought by a solicitor under subsection (3) of this section and the President of the High Court has made an order under subsection (4) of this section directing the registrar to issue a practising certificate (whether unconditionally or subject to specified conditions) to that solicitor pending the hearing of such appeal, the Society may, on notice to that solicitor, make application to the President of the High Court at any time thereafter, and the President of the High Court (on the hearing of that application) may dismiss such appeal and confirm the direction of the Society to the registrar under subsection (2) (a) of this section, if the President of the High Court is satisfied that the solicitor concerned has delayed unduly in proceeding with such appeal and may for that purpose revoke any order which he has made under subsection (4) of this section.

(6) On hearing an appeal under subsection (3) of this section, the President of the High Court may—

(a) in relation to an appeal against a direction by the Society to the registrar to refuse to issue a practising certificate to the solicitor concerned, by order—

(i) confirm the direction to refuse and revoke any practising certificate already issued pursuant to an order under subsection (4) of this section,

(ii) rescind the direction to refuse and direct that any practising certificate already issued pursuant to an order under subsection (4) of



this section or any practising certificate to be issued by the registrar be issued unconditionally, or

- (iii) rescind the direction to refuse and direct that any practising certificate already issued pursuant to an order under subsection (4) of this section or any practising certificate to be issued by the registrar be issued subject to such specified conditions as the President of the High Court thinks fit;

- (b) in relation to an appeal against a direction by the Society to the registrar to issue a practising certificate subject to specified conditions, by order—

- (i) confirm the direction,

- (ii) rescind the direction, or

- (iii) vary the specified conditions, or any of them.

(7) The registrar shall cause particulars of a direction by the Society under subsection (2) (a) (ii) or (iii) of this section or an order of the President of the High Court under subsection (6) of this section to be entered in the register in relation to the solicitor concerned.”.

Qualifications for acting as solicitor (section 54 of Principal Act).

62.—The Principal Act is hereby amended by the substitution of the following section for section 54:

“Qualifications for acting as solicitor.

54.—(1) A solicitor who has the qualifications specified in subsection (2) of this section may act as a solicitor and is referred to in this Act as a solicitor qualified to practise.

(2) The qualifications referred to in subsection (1) of this section are—

- (a) that the name of the solicitor is on the roll;

- (b) that he does not stand suspended from practice;

- (c) that either he is a solicitor in the full-time service of the State or a practising certificate in respect of him is in force; and

- (d) that the solicitor concerned has not given an undertaking to the High Court that he will not act as a solicitor or if he has given such an undertaking, that it has been discharged by the Court.



5 (3) A solicitor shall be regarded as a solicitor in the full-time service of the State if and while he is required to devote the whole of his time to the service of the State as solicitor and is remunerated in respect of such service wholly out of moneys provided by the Oireachtas."

63.—Section 55 of the Principal Act is hereby amended by the substitution in subsection (2) of "£10,000" for "two hundred pounds" and "£1,500" for "fifty pounds" and the subsection as so amended is set out in the Table to this section.

Amendment of section 55 of Principal Act.

#### TABLE

(2) A person who contravenes subsection (1) of this section shall, without prejudice to any other liability or disability to which he may be subject, be guilty of an offence under this section and shall be liable—

15 (a) on conviction thereof on indictment, to imprisonment for a term not exceeding two years or, at the discretion of the Court, to a fine not exceeding £10,000 or to both such fine and such imprisonment, or

20 (b) on summary conviction thereof, to imprisonment for a term not exceeding six months or, at the discretion of the Court, to a fine not exceeding £1,500 or to both such fine and such imprisonment.

64.—Section 56 of the Principal Act is hereby amended by the substitution in subsection (2) of "£1,500" for "fifty pounds" and the subsection as so amended is set out in the Table to this section.

Amendment of section 56 of Principal Act.

#### 25 TABLE

(2) A person who contravenes subsection (1) of this section shall be guilty of an offence under this section and shall be liable on summary conviction to a fine not exceeding £1,500.

### PART VII

#### 30 MISCELLANEOUS PROVISIONS

65.—The Principal Act is hereby amended by the substitution of the following section for section 9:

Roll of solicitors (section 9 of Principal Act).

"Roll of solicitors.

9.—(1) The registrar shall maintain a roll of solicitors (in this Act referred to as 'the roll').

35 (2) The roll, which may be kept in an electronic or such other non-written form as is considered appropriate by the Society, shall be available for inspection during office hours without payment by any person who applies to inspect it.

40 (3) If the roll is kept in an electronic or other non-written form, the Society may comply with its obligation to have the roll available for inspection under subsection (2) of this section by making any relevant entry available in written form for inspection in accordance with the said subsection (2)."

45 66.—The Sixth Schedule to the Principal Act may be amended from time to time by the inclusion of such additional applications as may be prescribed with the concurrence of the President of the High Court.

Fees for applications to Society.



Register of  
solicitors prepared  
to act in certain  
cases.

67.—(1) The Society shall establish and maintain a register of solicitors who have indicated to the Society that they are willing to provide legal services to any person who is unable to obtain the services of a solicitor to act for him in civil proceedings against another solicitor, arising from the conduct of that other solicitor while acting for that person. 5

(2) The Society shall make available information included in any register maintained under *subsection (1)* of this section to any person requesting such information, and shall take all reasonable measures to assist any person to obtain the services of a solicitor for the purposes of *subsection (1)* of this section. 10

Charges to clients.

68.—(1) On the taking of instructions to provide legal services to a client, or as soon as is practicable thereafter, a solicitor shall provide the client with particulars in writing of—

(a) the actual charges, or 15

(b) where the provision of particulars of the actual charges is not in the circumstances possible or practicable, an estimate (as near as may be) of the charges, or

(c) where the provision of particulars of the actual charges or an estimate of such charges is not in the circumstances possible or practicable, the basis on which the charges are to be made, 20

by that solicitor or his firm for the provision of such legal services and, where those legal services involve contentious business, with particulars in writing of the circumstances in which the client may be required to pay costs to any other party or parties and the circumstances, if any, in which the client's liability to meet the charges which will be made by the solicitor of that client for those services will not be fully discharged by the amount, if any, of the costs recovered in the contentious business from any other party or parties (or any insurers of such party or parties). 25 30

(2) A solicitor shall not act for a client in connection with any contentious business (not being in connection with proceedings seeking only to recover a debt or liquidated demand) on the basis that all or any part of the charges to the client are to be calculated as a specified percentage or proportion of any damages or other moneys that may be or may become payable to the client, and any charges made in contravention of this subsection shall be unenforceable in any action taken against that client to recover such charges. 35

(3) A solicitor shall not deduct or appropriate any amount in respect of all or any part of his charges from the amount of any damages or other moneys that become payable to a client of that solicitor arising out of any contentious business carried out on behalf of that client by that solicitor. 40

(4) *Subsection (3)* of this section shall not operate to prevent a solicitor from agreeing with a client at any time that an amount on account of charges shall be paid to him out of any damages or other moneys that may be or may become payable to that client arising out of any contentious business carried out on behalf of that client by that solicitor or his firm. 45 50

(5) Any agreement under *subsection (4)* of this section shall not be enforceable against a client of a solicitor unless such agreement is in



5 writing and includes an estimate (as near as may be) of what the solicitor reasonably believes might be recoverable from any other party or parties (or any insurers of such party or parties) in respect of that solicitor's charges in the event of that client recovering any damages or other moneys arising out of such contentious business.

(6) Notwithstanding any other legal provision to that effect a solicitor shall show on a bill of costs to be furnished to the client, as soon as practicable after the conclusion of any contentious business carried out by him on behalf of that client—

10 (a) a summary of the legal services provided to the client in connection with such contentious business,

(b) the total amount of damages or other moneys recovered by the client arising out of such contentious business, and

15 (c) details of all or any part of the charges which have been recovered by that solicitor on behalf of that client from any other party or parties (or any insurers of such party or parties),

20 and that bill of costs shall show separately the amounts in respect of fees, outlays, disbursements and expenses incurred or arising in connection with the provision of such legal services.

(7) Nothing in this section shall prevent any person from exercising any existing right in law to require a solicitor to submit a bill of costs for taxation, whether on a party and party basis or on a solicitor and own client basis, or shall limit the rights of any person or the Society under *section 9* of this Act.

(8) Where a solicitor has issued a bill of costs to a client in respect of the provision of legal services and the client disputes the amount (or any part thereof) of that bill of costs, the solicitor shall—

30 (a) take all appropriate steps to resolve the matter by agreement with the client, and

(b) inform the client in writing of—

35 (i) the client's right to require the solicitor to submit the bill of costs or any part thereof to a Taxing Master of the High Court for taxation on a solicitor and own client basis, and

(ii) the client's right to make a complaint to the Society under *section 9* of this Act that he has been issued with a bill of costs that he claims to be excessive.

40 (9) In this section "charges" includes fees, outlays, disbursements and expenses.

(10) The provisions of this section shall apply notwithstanding the provisions of the Attorneys and Solicitors (Ireland) Act, 1849 and the Attorneys and Solicitors Act, 1870.

45 69.—Section 71 of the Principal Act is hereby amended by the insertion of the following subsections:

Amendment of  
section 71 of  
Principal Act.

"(2) Without prejudice to the generality of subsection (1) of this section, the Society shall not prohibit a solicitor from charging



less for a legal service than any charge or fee or remuneration specified for that legal service by way of any statutory scale or scales for the time being in force.

(3) The Society shall not prohibit advertising by solicitors.

(4) Nothing in subsection (3) of this section shall prevent the Society prohibiting advertising which— 5

- (a) is likely to bring the solicitors' profession into disrepute, or
- (b) is in bad taste, or
- (c) reflects unfavourably on other solicitors, or 10
- (d) contains an express or implied assertion by a solicitor that he has specialist knowledge in any area of law or practice superior to other solicitors, or
- (e) is false or misleading in any respect, or
- (f) comprises or includes unsolicited approaches to any person with a view to obtaining instructions in any legal matter, or 15
- (g) is contrary to public policy.

(5) Subject to subsection (6) of this section, nothing in subsection (4) of this section shall entitle the Society to prohibit the advertising of any charge or fee by a solicitor for the provision of any specified legal service. 20

(6) Where the Society consider it appropriate, they may make regulations, after the expiration of 2 years following the coming into operation of *section 69 of the Solicitors (Amendment) Act, 1994*, prohibiting the advertising of any charge or fee by a solicitor for the provision of any specified legal service, provided that such regulations may be made only with the consent of the Minister and where the Minister is satisfied that such regulations are in the public interest. 25 30

(7) Notwithstanding the provisions of paragraph (d) of subsection (4) of this section, the Society may by regulations provide that a solicitor who in the prescribed manner satisfies the Society of his specialist knowledge in a prescribed area of law or practice be permitted by the Society to designate himself as having specialist knowledge in that area of law or practice." 35

Incorporated practices.

70.—(1) Notwithstanding section 64 of the Principal Act, the Society, with the concurrence of the Minister given after consultation with the Minister for Enterprise and Employment, may make regulations providing for any one or more of the following matters, namely— 40

- (a) the management and control by solicitors of bodies corporate (in this section referred to as "incorporated practices") carrying on business consisting of the provision of legal services such as are provided by individuals practising as solicitors; 45



- 5 (b) the circumstances in which incorporated practices may be recognised by the Society as suitable to undertake the provision of any such legal services, and the revocation of such recognition on the grounds that it was granted improperly as a result of any error or fraud;
- (c) the conditions which (subject to any exceptions provided by the regulations) shall be satisfied at all times by incorporated practices so recognised if they are to remain so recognised;
- 10 (d) the manner and form in which applications for recognition under this section are to be made, and for the payment of fees in connection with such applications;
- (e) the regulating of the names that may be used by incorporated practices;
- 15 (f) the period for which any recognition of incorporated practices remains in force;
- 20 (g) the keeping by the Society of a list containing the names and places of business of all incorporated practices and for the information contained in any such list to be available for inspection;
- (h) the empowering of the Society to take such steps as they consider necessary or expedient to ascertain whether or not any regulations applicable to incorporated practices are being complied with;
- 25 (i) regulating the conduct of the affairs of incorporated practices.
- (2) Regulations made by the Society under the *Solicitors Acts, 1954 to 1994*, shall apply and have effect in relation to incorporated practices recognised by the Society pursuant to regulations made under *subsection (1)* of this section with such additions, omissions or  
30 other modifications as appear to the Society to be necessary or expedient.
- (3) The Minister may by order provide that any enactment or statutory instrument (within the meaning of the Statutory Instruments Act, 1947), passed or made before the commencement of this section  
35 and having effect in relation to solicitors shall have effect in relation to incorporated practices recognised by the Society pursuant to regulations made under *subsection (1)* of this section, with such additions, omissions or other modifications as appear to the Minister to be necessary for the purposes of enabling such provisions to have effect.
- 40 (4) Any order made by the Minister under *subsection (3)* of this section may make provision for the application, subject to any necessary adaptations, of any of the provisions of the *Solicitors Acts, 1954 to 1994*, to incorporated practices recognised by the Society pursuant to regulations made under *subsection (1)* of this section.
- 45 (5) (a) Every regulation made under *subsection (1)* of this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the  
50 next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.



- (b) A draft of every order proposed to be made under *subsection (3)* of this section shall be laid before each House of the Oireachtas and the order shall not be made until a resolution approving of the draft has been passed by each such House.

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Fee-sharing by  
solicitors.

71.—(1) Notwithstanding the provisions of section 59 of the Principal Act, the Society, with the concurrence of the Minister and, in the case of regulations made under *paragraph (a)* of this subsection, after consultation with the Minister for Enterprise and Employment, may make regulations in respect of—

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- (a) the sharing of fees between a solicitor and a person who is not qualified to practise as a solicitor arising either from a partnership between them or from an agency arrangement concluded between them, or

- (b) the sharing of fees between a solicitor and a person who is not qualified to practise as a solicitor but who is a member, and entitled to practise as such, of a legal profession in another jurisdiction, arising either from a partnership between them or from an agency arrangement concluded between them.

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(2) Every regulation made under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.

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Administration of  
oaths and taking of  
affidavits.

72.—(1) Subject to the provisions of this section, every solicitor who holds a practising certificate which is in force shall, subject to any condition to which that practising certificate is subject under the *Solicitors Acts, 1954 to 1994* (in this section referred to as a "relevant condition"), have all the powers conferred by any enactment or statutory instrument (within the meaning of the Statutory Instruments Act, 1947) on a commissioner for oaths (including section 24 of the Stamp Duties Management Act, 1891) and any reference to such a commissioner in any such enactment or statutory instrument, whether passed or made before or after the commencement of this section, shall include a reference to such a solicitor, unless the context otherwise requires.

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(2) A solicitor shall not exercise the powers conferred by this section in any proceedings in which he is solicitor to any of the parties or in which he has an interest, or in contravention of any relevant condition.

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

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(4) A document containing the statement in the jurat or attestation mentioned in *subsection (3)* of this section and purporting to be sealed or signed by a solicitor pursuant to his powers as a commissioner for oaths or pursuant to this section shall be admitted in evidence without proof of the said seal or signature, and without proof that he is a solicitor or that he holds a practising certificate which is in force or

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that such document has not been so sealed or signed in contravention of a relevant condition.

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

73.—(1) Without prejudice to section 66 (as substituted by this Act) of the Principal Act the Society shall make regulations within six months of the coming into operation of this section, with the consent of the President of the High Court, to—

Interest on clients' moneys.

(a) require a solicitor, in prescribed cases, either—

(i) to open and maintain a separate deposit account at a bank for the benefit of the client for the holding of money received for or on account of the client, or

(ii) to pay to such client a sum equivalent to the interest which would have accrued if the money so received had been held on deposit by that solicitor,

(b) define the obligations of a solicitor under *paragraph (a)* of this section by reference to the amount of any sum received or to the period for which it is or is likely to be held or both, and

(c) enable a client (without prejudice to any other remedy) to require that any question arising under *paragraph (a)* or *(b)* (or both) of this subsection in relation to the client's money be referred to and determined by the Society.

(2) Except as provided for by regulations made under *subsection (1)* of this section, a solicitor shall not be liable by virtue of the relationship between solicitor and client to account to any client for interest received by the solicitor on money deposited at a bank, being money received or held for or on account of his clients generally.

(3) Nothing in this section or in regulations made under this section shall—

(a) affect any arrangement in writing, whenever made, between a solicitor and his client as to the application of the client's money or interest thereon, or

(b) apply to money received by a solicitor, being money subject to a trust of which the solicitor is a trustee.

(4) For the purposes of regulations made under *subsection (1)* of this section and subject to *subsection (3)* of this section, "client's money" and "money received for or on account of the client" shall mean money held or received by a solicitor on account of a person for whom he is acting in relation to the holding or receipt of such money either as a solicitor or, arising from his practice as a solicitor, as agent, bailee, stakeholder or in any other capacity.

74.—(1) A solicitor who has accepted instructions to appear in court for a client who is in custody may not withdraw from the client's case without obtaining permission from the court before which that client is next scheduled to appear.

Restriction on the withdrawal of a solicitor from a case.



(2) The court shall, in deciding whether to grant a solicitor permission to withdraw from a case under *subsection (1)* of this section, have regard to—

- (a) the likely consequences of such action for the client notwithstanding that the client may have concurred in the solicitor's withdrawal from the case, and 5
- (b) any delay or other adverse consequences which may arise for the proceedings in question as a result of the solicitor's withdrawal,

and the court shall have regard to any matter which is the subject of privilege between the solicitor and the client. 10

(3) The court may hear an application for permission under *subsection (1)* of this section *in camera* if it considers it necessary to do so in the interests of justice.

(4) A withdrawal by a solicitor from a case in contravention of *subsection (1)* of this section shall be notified to the Society by the court whose permission is required under that subsection to withdraw from the case and the Society, on being so notified, shall investigate the matter and take any necessary action under the provisions of Part II (as amended by this Act) of the Act of 1960. 15 20

Extension of list of approved institutions.

75.—(1) For the purposes of Part VII (as amended by this Act) of the Principal Act and *section 73* of this Act and regulations made thereunder, "bank" means—

- (a) a bank which is the holder of a licence under *section 9 (1)* of the Central Bank Act, 1971, 25
- (b) any financial institution referred to in *subsection (4) (a) (ii) and (iii)* of *section 7* (as inserted by the Central Bank Act, 1989) of the Central Bank Act, 1971, and
- (c) a bank or financial institution standing designated by order of the Minister under *subsection (2)* of this section, 30

and cognate words shall be construed accordingly:

Provided that such bank or financial institution, or the relevant branch thereof, is situate in the State.

(2) The Minister, after consultation with the Minister for Finance, may by order designate banks or financial institutions under *subsection (1) (c)* of this section. 35

(3) A solicitor may open and keep a client account only at a bank within the meaning of *subsection (1)* of this section.

(4) For the purposes of *sections 7, 8 and 20* (as respectively substituted by the *Solicitors (Amendment) Act, 1994*) of the Act of 1960, relating to the powers of the Society or the High Court in matters concerning the protection of clients or the disciplining of solicitors, "bank" shall include a bank within the meaning of *subsection (1)* of this section and shall also include any person or body corporate carrying on business as a bank or other financial institution, whether in the State or outside the State, and cognate words shall be construed accordingly. 40 45



(5) The Minister may by order amend or revoke an order made under subsection (2) of this section.

5 (6) Every order made under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order is passed by either such House within the next 21 days on which that House has sat after the order is laid before it, the order shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.

10 76.—The Principal Act is hereby amended by the substitution of the following section for section 66: Regulations for accounts (section 66 of Principal Act).

“Regulations for accounts.

66.—(1) The Society may make regulations, with the concurrence of the President of the High Court, providing for all or any of the following matters:

- 15 (a) the category or categories of solicitor to whom such regulations apply;
- 20 (b) the type or types of accounts at banks which may be opened and kept by a solicitor arising from his practice as a solicitor;
- (c) the opening and keeping of accounts at banks by a solicitor arising from his practice as a solicitor;
- 25 (d) the rights, duties and responsibilities of a solicitor in relation to moneys received, held, controlled or paid by him arising from his practice as a solicitor, including the lodgment to and withdrawal from a client account of clients' moneys;
- 30 (e) the accounting records to be maintained by a solicitor arising from his practice as a solicitor, including the minimum period or periods for which accounting records shall be retained by a solicitor during the period of, and following the conclusion of, the provision of legal services;
- 35 (f) the keeping by a solicitor of accounting records containing particulars of and information as to moneys received, held, controlled or paid by him arising from his practice as a solicitor, for or on account of a client or any other person or himself;
- 40 (g) the enforcement by the Society of compliance with the regulations;
- 45 (h) imposing fees on solicitors in cases of non-compliance where the Society has to conduct further enquiries (being fees not exceeding the cost of making such enquiries);
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- (i) the appointment by the Society of persons to carry out, on behalf of the Society, functions relating to securing compliance with and enforcing such regulations; 5
  - (j) the circumstances and manner in which a solicitor engaged in practice as a solicitor (or a duly qualified accountant on his behalf) verifies compliance with such regulations, including the frequency of doing so; 10
  - (k) the examination, by or on behalf of the Society, of the financial circumstances of a solicitor engaged in practice as a solicitor insofar as such circumstances could affect his capacity to carry on such practice. 15
- (2) Regulations made pursuant to subsection (1) of this section shall not apply to—
- (a) a solicitor in the full-time service of the State within the meaning of section 54 (3) (as substituted by the *Solicitors (Amendment) Act, 1994*) of the Principal Act, or 20
  - (b) a solicitor who is in the part-time service of the State, in respect of moneys received, held, controlled or paid by him in the course of such service. 25
- (3) A solicitor who knowingly lodges clients' moneys (or who knowingly causes clients' moneys to be lodged) to a client account at a bank other than a bank within the meaning of section 75 (1) of the *Solicitors (Amendment) Act, 1994*, shall be guilty of an offence. 30
- (4) A solicitor who, having received any clients' moneys, fails, without reasonable cause, to lodge (or to cause to be lodged) in the prescribed manner such clients' moneys to the appropriate client account (or client accounts) shall be guilty of an offence. 35 40
- (5) A solicitor who fails, without reasonable cause, to maintain and keep (or to cause to be maintained and kept) accounting records in the prescribed manner shall be guilty of an offence.
- (6) A solicitor who, having received clients' moneys, fails, without reasonable cause, to record (or to cause to be recorded) in the prescribed manner such receipt in accounting records shall be guilty of an offence. 45
- (7) A solicitor who, having received any clients' moneys and having duly lodged (or caused to be lodged) in the prescribed manner such clients' moneys to the appropriate client account (or client 50



accounts) fails, without reasonable cause, to record (or to cause to be recorded) in the prescribed manner such lodgment in accounting records, shall be guilty of an offence.

5 (8) A solicitor who makes knowingly (or causes so to be made) a false or misleading entry or record in accounting records shall be guilty of an offence.

10 (9) It shall not be a defence to a charge under subsection (6) or (7) of this section to show that an entry or record of a receipt or lodgment of clients' moneys was recorded in accounting records, if it is established that such entry or record is false or misleading.

15 (10) Where it appears to the Society that it is necessary for the purpose of exercising any of the Society's functions prescribed under subsection (1) of this section for an authorised person to attend, with or without prior notice, at a place of business of a solicitor, an authorised person may so attend at such place for that purpose.

20 (11) Where an authorised person attends pursuant to subsection (10) of this section at a place of business of a solicitor, he shall inform the solicitor or any clerk or servant of the solicitor of the purpose of his attendance as specified in subsection (10) of this section and may thereupon or thereafter, in pursuance of that purpose, require the solicitor or any clerk or servant of the solicitor to do any one or more of the following things:

(a) to make available to him for inspection all or any part of the solicitor's accounting records;

35 (b) to furnish to him such copies of the solicitor's accounting records as the authorised person deems necessary to fulfil the purpose specified in subsection (10) of this section;

40 (c) to give such written authority addressed to such bank or banks as the authorised person requires to enable the authorised person to inspect any account or accounts opened, or caused to be opened, by the solicitor at such bank or banks (or any documents relating thereto) and to obtain from such bank or banks copies of such documents relating to such account or accounts for such period or periods as the authorised person deems necessary to fulfil the purpose specified in subsection (10) of this section.

50 (12) If a solicitor or clerk or servant of a solicitor who is required by an authorised person to do any one or more of the things specified in

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subsection (11) of this section, refuses, neglects or otherwise fails, without reasonable cause, to comply with such requirement or requirements, the Society may, on notice to the solicitor, apply to the High Court for an order (which said order the Court is hereby empowered to make) requiring the solicitor to comply with such requirement or requirements (or any one or more of them) as the Society deem necessary in pursuance of the purpose specified in subsection (10) of this section or as the Court thinks fit.

(13) It shall be an offence for a solicitor—

(a) to refuse, neglect or otherwise fail, without reasonable cause, to duly comply with any requirement of an authorised person under subsection (11) of this section;

(b) to remove from his place or places of business, or to destroy, deface or mutilate, all or any part of his accounting records, with intent to prevent or interfere with an authorised person acting in pursuance of the purpose specified in subsection (10) of this section;

(c) to provide knowingly false or misleading information to an authorised person acting in pursuance of the purpose specified in subsection (10) of this section.

(14) A summary offence under any of the provisions of this section may be prosecuted by the Society.

(15) Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act, 1851, summary proceedings for an offence under any of the provisions of this section may be instituted within twelve months from the date the offence came to the knowledge of the Society.

(16) A person guilty of an offence under this section shall be liable—

(a) on summary conviction thereof to a fine not exceeding £1,500,

(b) on conviction thereof on indictment to a fine not exceeding £10,000.

(17) Without prejudice to the generality of this section and any regulations made thereunder, a solicitor shall not, arising from his practice as a solicitor, lodge (or cause to be lodged) for collection through any bank account kept by him, or otherwise collect, an unendorsed cheque or other negotiable or non-negotiable instrument drawn in favour of a person other than himself, his firm, or a partner.



(18) In this section—

‘accounting records’ means the books of account and all other documents required to be maintained and kept by a solicitor arising from his practice as a solicitor in accordance with regulations made pursuant to subsection (1) of this section.”.

77.—Section 58 of the Principal Act is hereby amended—

Amendment of  
section 58 of  
Principal Act.

(a) by the insertion of the following subsection for subsection (2):

“(2) An unqualified person who does any act to which this section applies shall, subject to subsection (3) of this section and without prejudice to any other liability or disability to which he may be subject, be guilty of an offence under this section and shall be liable—

(a) on summary conviction thereof, to a fine not exceeding £1,500, or

(b) on conviction thereof on indictment, to a fine not exceeding £10,000.”.

(b) by the insertion of the following paragraph in subsection (3):

“(h) an act done by a lawyer to whom Council Directive No. 77/249/EEC of 22 March, 1977<sup>(1)</sup> (as adapted by the Acts concerning the Conditions of Accession of Greece, Spain and Portugal, to the Treaties establishing the European Communities) and any instrument which may amend or replace that Directive applies by way of provision of legal services within the limits and under the conditions laid down in that Directive (or such instrument), other than the preparation of a formal document for obtaining title to administer the estate of a deceased person and the drafting of a formal document creating or transferring an interest in land.”.

(c) by the substitution of the following paragraph for paragraph (b) of subsection (3):

“(b) (i) an act done by a barrister practising in the State,

(ii) an act done by a barrister employed full-time in the State, in the provision of conveyancing services within the meaning of section 56 (4) of the *Solicitors (Amendment) Act, 1994*, for his employer, provided that such employer is not a solicitor.”.

78.—(1) Notwithstanding anything to the contrary in the Principal Act, the Minister may, after consultation with the Minister for Enterprise and Employment, make regulations authorising credit unions to provide services as follows—

Will making and  
probate services  
provided by credit  
unions.

(a) to draw up or prepare a will or other testamentary instrument, or

<sup>(1)</sup> O.J. No. L78, 26.3.1977



(b) to take instructions for a grant of probate or administration, or

(c) to draw or prepare any papers on which to found or oppose any such grants.

(2) The services referred to in *subsection (1)* of this section may be provided by credit unions in accordance with the provisions of regulations made under this section and in compliance with the requirements of this section. 5

(3) Regulations under this section may include provision for all or any of the following, namely— 10

(a) the protection of persons for whom services are provided under this section by credit unions from conflicts of interest that might otherwise arise in connection with the provision of the services,

(b) securing that adequate compensation is available to such persons in respect of negligence, fraud or other dishonesty on the part of officers or employees of credit unions in connection with the provision of the services, 15

(c) (i) the extent to which and the manner in which services provided under this section would require the involvement of persons qualified to practise as solicitors within the meaning of the Principal Act, and 20

(ii) the qualifications and experience of personnel generally engaged in the provision of the services,

(d) the class or classes of persons to whom the services may be provided, 25

(e) requirements relating to the approval by the Registrar of Friendly Societies of a credit union proposing to provide services,

(f) the restriction of the power to provide the services to credit unions of a specified class or classes, 30

(g) maximum rates or scales of fees, costs or expenses which may be charged by credit unions for the provision of the services,

(h) taxation by a Taxing Master of the High Court of fees, costs or expenses charged by credit unions for the services, 35

(i) such further conditions in relation to the provision of the services as the Minister may prescribe in accordance with this section.

(4) In this section "probate" and "administration" have the meanings assigned to them by section 3 of the Succession Act, 1965. 40

(5) Any communication made to or by a credit union (including a communication made to or by an officer or employee of a credit union) in the course of its acting as such for a person in connection with providing services under *subsection (1)* of this section shall in any legal proceedings be privileged from disclosure in like manner as if the credit union had at all material times been acting as that person's solicitor. 45



(6) (a) A credit union providing services under *subsection (1)* of this section shall not in relation to the provision of such services be an unqualified person within the meaning of the Principal Act.

5 (b) A credit union which provides any of the services mentioned in *subsection (1)* of this section otherwise than in accordance with the provisions of this section or of any regulations made under this section shall be guilty of an offence under section 58 (2) (as amended by this Act) of the  
10 Principal Act.

(7) Section 58 (as amended by this Act) of the Principal Act shall not apply to—

(a) a credit union,

15 (b) any officer or employee of a credit union by reason of any act done by him in the course of his office or employment on behalf of the credit union, where the credit union is providing services in accordance with *subsection (1)* of this section.

20 (8) Section 59 of the Principal Act shall not apply to any solicitor by reason of any act done by him as an officer or employee of a credit union where that credit union is providing services in accordance with *subsection (1)* of this section.

25 (9) Where a credit union provides services under *subsection (1)* of this section, it shall include in any document or advertisement issued to the public, which contains a reference to the provision of the services, a statement of the charges or the basis for the charges in respect of the services and a client shall be entitled to ask for and to be furnished with an itemised statement of that credit union's charges in respect of services provided by the credit union under *subsection*  
30 *(1)* of this section.

(10) On the taking of instructions to provide services under this section to a person, or as soon as is practicable thereafter, a credit union shall provide the person with particulars in writing of—

(a) the actual charges, or

35 (b) where the provision of particulars of the actual charges is not in the circumstances possible or practicable, an estimate (as near as may be) of the charges, or

40 (c) where the provision of particulars of the actual charges or an estimate of such charges is not in the circumstances possible or practicable, the basis on which the charges are to be made, by that credit union for the provision of such services.

45 (11) Any information which comes into the possession of an officer or employee of a credit union by virtue of his involvement in the provision of services under *subsection (1)* of this section by a credit union shall not be used by him or by the credit union to promote the business of the credit union.

50 (12) (a) A credit union providing services under *subsection (1)* of this section shall maintain separate accounting records and prepare accounts in respect of each year showing—



- (i) the cost to the credit union of providing the services, and
- (ii) the income accruing to the credit union from the charges made for the services,

and, subject to *subsection (3) (g)* of this section, shall so provide and charge for the services that the income from the provision of the services is not less than sufficient to meet all costs properly attributable to the provision of the services taking one year with another.

- (b) A statement attesting the correctness of the accounts prepared in accordance with *paragraph (a)* of this subsection and confirming that such accounts have not been distorted as a result of any arrangement which would affect the apportionment of costs and income associated with the provision of the services and that such apportionments as have been made have been properly made shall be signed by the chairperson and treasurer of the credit union and attached to the annual accounts of the credit union.

(13) A credit union shall not provide services under the provisions of this section unless at least one of the following conditions is satisfied:

- (a) regulations have been made under *section 79* of this Act, or
- (b) the credit union is a member of a scheme (other than a scheme established under *section 79* of this Act) which has been established for the investigation of complaints against the credit union in relation to the provision of services under this section and which has been approved of by the Minister.

(14) If a person exercising any right under this section or a person acting on behalf of such a person applies for any grant of probate or letters of administration and—

- (a) makes a statement in the application, or supports the application with a document, which he knows to be false or misleading in a material particular, or
- (b) recklessly makes a statement in the application, or supports the application with a document, which is false or misleading in a material particular,

he shall be guilty of an offence.

(15) Any person guilty of an offence under *subsection (14)* of this section shall be liable—

- (a) on conviction on indictment thereof, to a fine not exceeding £10,000,
- (b) on summary conviction thereof, to a fine not exceeding £1,500.

(16) Every regulation made under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly but



without prejudice to the validity of anything previously done thereunder.

5 (17) In this section "credit union" means an industrial and provident society registered as a credit union under the Credit Union Act, 1966.

10 79.—(1) The Minister may, by regulations made after consultation with the Minister for Enterprise and Employment, require a credit union to establish, or join in establishing, and to maintain and fund a scheme or schemes for the investigation of complaints against a credit union in relation to any services provided or any act done by such a credit union under the provisions of *section 78* of this Act.

Investigation of complaints about credit unions.

(2) Without prejudice to the generality of *subsection (1)* of this section, regulations under this section may make provision in relation to any one or more of the following—

- 15 (a) the establishment and administration of a scheme,
- (b) the manner of appointment of an independent adjudicator to conduct investigations,
- (c) the matters to be subject to investigation under the scheme,
- (d) the grounds on which a complaint must be based,
- 20 (e) the powers of, and procedure to be followed in the conduct of investigations by, the adjudicator,
- (f) the circumstances in and the extent to which determinations are binding,
- (g) the procedures for the making of complaints,
- 25 (h) the publication of the adjudicator's findings.

(3) Subject to *subsection (4)* of this section, the reference of a complaint under a scheme established under this section shall not affect the rights of any person to have a dispute determined in any other manner provided by law.

30 (4) Where, in relation to a complaint under a scheme established under this section the parties concerned agree that a determination in accordance with the scheme shall be binding on them and the scheme provides for such an agreement, then the determination shall be binding on the parties.

35 (5) Every regulation made by the Minister under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be  
40 annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

45 80.—Section 24 (as substituted by this Act) of the Principal Act and regulations under section 40 (as amended by this Act) of that Act shall not apply to an applicant to whom paragraph (a) or (b) of regulation 4 of the European Communities (General System for the

Non-application to applicants under European Communities regulations.



Recognition of Higher Education Diplomas) Regulations, 1991, or any provision which may amend or replace that regulation, applies.

Amendment of  
section 53 of  
Principal Act.

81.—With effect from the 1st day of January, 1996, section 53 of the Principal Act is amended by the substitution of the following subsection for subsection (1):

5

“(1) A list purporting to be published by the authority of the Society and to contain the names of the solicitors who have obtained practising certificates for the current practice year before the 2nd day of February in that year shall, until the contrary is proved, be evidence that the persons named on the list are solicitors holding those certificates.”.

10

Laying of  
regulations.

82.—Save as otherwise provided by this Act, every regulation made by the Society under this Act shall be laid by the Society before each House of the Oireachtas as soon as may be after it is made.



BILL

Amended

Act to amend the law relating to the... and to provide for the... and to provide for the...

BILL

Amended

Act to amend the law relating to the... and to provide for the... and to provide for the...

Amended by Bill 1954  
June 1954

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June 1954

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Aturnaetha, 1954 agus 1960, agus do dhéan-  
amh socrú le haghaidh nithe gaolmhara.

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*An tAire Dlí agus Cirt a thólaic*

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*Ritheadh ag Dáil Éireann,  
30 Meitheamh, 1994*

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## BILL

*entitled*

An Act to amend and extend the Solicitors Acts,  
1954 and 1960, and to provide for related  
matters.

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*Presented by the Minister for Justice*

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*Passed by Dáil Éireann,  
30th June, 1994*

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