



DÁIL ÉIREANN

AN BILLE UM RIALÁIL SEIRBHÍSÍ DLÍ, 2011 LEGAL SERVICES REGULATION BILL 2011

LEASUITHE COISTE COMMITTEE AMENDMENTS

[This amendment list references Part 1 and Part 2 of the Bill (sections 1-32)]

DÁIL ÉIREANN

AN BILLE UM RIALÁIL SEIRBHÍSÍ DLÍ, 2011 —ROGHCHOISTE

LEGAL SERVICES REGULATION BILL 2011 —SELECT COMMITTEE

*Leasuithe
Amendments*

SECTION 2

1. In page 10, subsection (1), line 31, to delete “Statute” and substitute “statute”.
—An tAire Dlí agus Cirt agus Comhionannais.

2. In page 10, subsection (1), to delete lines 37 to 39 and substitute the following:

““lay person” shall be construed in accordance with *subsection (3)**.”

—An tAire Dlí agus Cirt agus Comhionannais.

[*This is a reference to the subsection proposed to be inserted by amendment No. 4.]

3. In page 11, subsection (1), line 2, to delete “of solicitors”.

—An tAire Dlí agus Cirt agus Comhionannais.

4. In page 11, between lines 40 and 41, to insert the following subsection:

“(3) For the purposes of this Act, a person is a lay person on a particular date if, on that date, he or she—

(a) is not a practising solicitor or a practising barrister, and

(b) where he or she has previously been a practising solicitor or a practising barrister, he or she—

(i) has not been such in the period of 5 years immediately preceding that date, and

(ii) did not cease to be such as a result of a sanction imposed on him or her by a body that was authorised to require him or her to cease such practice.”

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 3

5. In page 11, lines 41 to 44, to delete subsection (1) and substitute the following:

“(1) A regulation or order made under this Act may contain such incidental, supplementary and consequential provisions as the Minister or the Authority considers necessary or expedient.”

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—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 7

6. In page 12, subsection (1), line 19, to delete “by this Act” and substitute “by or under this Act”.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 8

7. In page 13, before section 8, to insert the following new section:

“8.—(1) The Authority shall consist of 13 members.

(2) Subject to the provisions of this section, the members of the Authority shall be appointed by the Government and shall consist of the following persons:

- (a) 3 persons nominated by the Law Society of Ireland;
- (b) 2 persons nominated by the Bar Council of Ireland;
- (c) 1 Judge of the Superior Courts nominated by the Chief Justice;
- (d) 1 person nominated by the Irish Business and Employers’ Confederation;
- (e) 1 person nominated by the Irish Congress of Trade Unions;
- (f) 1 person nominated by the National Consumer Council;
- (g) 1 person nominated by the Free Legal Advice Centres (FLAC);
- (h) 1 person selected by the Chief Justice from such persons as are nominated by non-profit legal advocacy groups, as defined in *subsection (6)*, operating in the State. For such purpose each such group shall be entitled to nominate one person for selection;
- (i) 1 legal cost accountant nominated by the Institute of Legal Cost Accountants; and
- (j) 1 persons selected by the Chief Justice from such persons as are nominated by legal education institutions, as defined in *subsection (7)*, operating in the State. For such purposes each such legal education institution shall be entitled to nominate one such person for selection.

(3) The Authority shall, from time to time, elect one of its members, who is not a member of the legal profession, to be Chairperson of the Authority.

(4) The Chairperson shall hold office as Chairperson for such term as may be specified by the Authority at the time of his or her appointment, unless—

- (a) he or she ceases to be or becomes disqualified or is removed from being a member of the Authority,
- (b) he or she resigns as Chairperson and the resignation becomes effective under *subsection (5)*, or

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(c) the Authority by a resolution, for which not less than nine members of the Authority vote, and of the intention to propose which not less than 7 day's notice is given to every member of the Authority, terminates the appointment of the Chairperson.

(5) The Chairperson of the Authority may at any time resign from that office by giving notice in writing to the Authority but the resignation shall not take effect until/before the meeting next held by the Authority after the receipt by the Authority of the notice of resignation.

(6) A "non-profit legal advocacy group" includes, for the purposes of *subsection (2)(h)* the Northside Community Law Centre, the Irish Council of Civil Liberties and any such other non-profit legal advocacy group as is designated by order made by the Minister under *section 3*.

(7) A legal education institution is, for the purposes of *subsection (2)(i)*, including a University as provided for in the Universities Act 1997, the Law Society of Ireland, the Honourable Society of King's Inns and such other institutions of legal education and training as designated by order made by the Minister under this Act.

(8) Without prejudice to the generality of the other provisions of this Act relating to membership of the Authority, the Government may not refuse to appoint as a member of the Authority a person nominated under *subsection (2)*.

(9) Subject to this Act, a member of the Authority shall hold office for a period of 4 years from the date of his or her appointment.

(10) A person may not be appointed to be a member of the Authority for more than 2 consecutive terms but is otherwise eligible for reappointment.

(11) A member of the Authority may at any time resign from office by letter addressed to the Chief Executive of the Authority, and the resignation shall take effect on the date specified in the letter or the date the letter is received by the Chief Executive of the Authority, whichever date is the later.

(12) A member of the Authority shall, unless he or she sooner dies, becomes disqualified, resigns, is removed from office or otherwise ceases to be a member, hold office as such member until the expiry of his or her term of office.

(13) Each member of the Authority—

(a) shall hold office on a part-time basis and on such other terms (other than payment of remuneration and allowances for expenses) as the Public Appointments Commission shall determine, and

(b) shall be paid by the Authority, out of the resources at its disposal, such remuneration (if any) and allowances for expenses (if any) as the Authority may, with the consent of the Minister for Public Expenditure and Reform, determine.

(14) The Oireachtas may, for stated reasons, remove a member of the Authority from office if, in the opinion of the Oireachtas—

(a) the member has become incapable through ill health of effectively performing the functions of his office;

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- (b) the member has committed stated misbehaviour; or
- (c) the member has a conflict of interest of such significance that, in the opinion of the Oireachtas, he or she should cease to hold office.

(15) A person shall be disqualified from holding and shall cease to hold office as a member of the Authority if he or she—

- (a) is adjudged bankrupt,
- (b) is convicted on indictment of an offence, excluding former political prisoners including those who qualified for release under the 1998 Good Friday Agreement,
- (c) is convicted of an offence involving dishonesty,
- (d) is struck off the roll of solicitors or practising barristers or, following a complaint against him or her, is found guilty of misconduct,
- (e) has a declaration under section 150 of the Companies Act 1990 made against him or her or is subject or is deemed to be subject to a disqualification order by virtue of Part VII of that Act, or
- (f) ceases to be ordinarily resident in the State.

(16) Where a member of the Authority dies, becomes disqualified from holding office, resigns, is removed from office or otherwise ceases to be a member, the Government shall appoint a member to fill the resultant vacancy and in filling such vacancy shall appoint a person nominated by the person or body that nominated the person occasioning the vacancy.

(17) A person who is appointed to be a member of the Authority under *subsection (16)* shall hold office for the remainder of the term of office of the member occasioning the casual vacancy.

(18) Subject to the provisions of this Act, the Authority may act notwithstanding one or more vacancies in its membership.

(19) In appointing members of the Authority regard shall be had to the objective to there being no fewer than 4 members who are men and no fewer than 4 members who are women.”.

—Pádraig Mac Lochlainn.

[*Acceptance of this amendment involves the deletion of section 8 of the Bill.*]

8. In page 13, before section 8, to insert the following new section:

“8.—(1) The Authority shall consist of 13 members.

(2) Subject to the provisions of this section, the members of the Authority shall be appointed by the Government and shall consist of the following persons:

- (a) 2 persons nominated by the Bar Council of Ireland;
- (b) 2 persons nominated by the Law Society of Ireland;
- (c) 1 Judge of the Superior Courts nominated by the Chief Justice;

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- (d) 1 person nominated by the Irish Business and Employers Confederation;
 - (e) 1 person nominated by the Irish Congress of Trade Unions;
 - (f) 1 person nominated by the National Consumer Council;
 - (g) 1 person selected by the Chief Justice from such persons as are nominated by non-profit legal advocacy groups, as defined in *subsection (6)*, operating in the State. For such purpose each such group shall be entitled to nominate one person for selection;
 - (h) 1 legal cost accountant nominated by the Institute of Legal Cost Accountants;
 - (i) 2 persons selected by the Chief Justice from such persons as are nominated by legal education institutions, as defined in *subsection (7)*, operating in the State. For such purposes each such legal education institution shall be entitled to nominate one such person for selection; and
 - (j) 1 person nominated by the Minister for Justice and Equality who is not an officer of the Department of Justice and Equality.
- (3) The Authority shall, from time to time, elect one of its members, who is not a member of the legal profession, to be Chairperson of the Authority.
- (4) The Chairperson shall hold office as Chairperson for such term as may be specified by the Authority at the time of his or her appointment, unless—
- (a) he or she ceases to be or becomes disqualified or is removed from being a member of the Authority,
 - (b) he or she resigns as Chairperson and the resignation becomes effective under *subsection (5)*, or
 - (c) the Authority by a resolution, for which not less than nine members of the Authority vote, and of the intention to propose which not less than 7 day's notice is given to every member of the Authority, terminates the appointment of the Chairperson.
- (5) The Chairperson of the Authority may at any time resign from that office by giving notice in writing to the Authority but the resignation shall not take effect (until/before) the meeting next held by the Authority after the receipt by the Authority of the notice of resignation.
- (6) A “non-profit legal advocacy group” includes, for the purposes of *subsection (2)(g)*, a Free Legal Advice Centre, the Northside Community Law Centre, the Irish Council of Civil Liberties and any such other non-profit legal advocacy group as is designated by order made by the Minister under *section 3* of this Act.
- (7) A legal education institution is, for the purposes of *subsection (2)(i)*, including a University as provided for in the Universities Act 1997, the Law Society of Ireland, the Honourable Society of King's Inns and such other institutions of legal education and training as designated by order made by the Minister under this Act.
- (8) Without prejudice to the generality of the other provisions of this Act relating to membership of the Authority, the Government may not refuse to appoint as a member of the Authority a person nominated under *subsection (2)*.

[SECTION 8]

(9) Subject to this Act, a member of the Authority shall hold office for a period of 4 years from the date of his or her appointment.

(10) A person may not be appointed to be a member of the Authority for more than 2 consecutive terms but is otherwise eligible for reappointment.

(11) A member of the Authority may at any time resign from office by letter addressed to the Chief Executive of the Authority, and the resignation shall take effect on the date specified in the letter or the date the letter is received by the Chief Executive of the Authority, whichever date is the later.

(12) A member of the Authority shall, unless he or she sooner dies, becomes disqualified, resigns, is removed from office or otherwise ceases to be a member, hold office as such member until the expiry of his or her term of office.

(13) Each member of the Authority shall—

- (a) hold office on a part-time basis and on such other terms (other than payment of remuneration and allowances for expenses) as the Public Appointments Commission shall determine, and
- (b) be paid by the Authority, out of the resources at its disposal, such remuneration (if any) and allowances for expenses (if any) as the Authority may, with the consent of the Minister for Public Expenditure and Reform, determine.

(14) The Oireachtas may, for stated reasons, remove a member of the Authority from office if, in the opinion of the Oireachtas—

- (a) the member has become incapable through ill health of effectively performing the functions of his office,
- (b) the member has committed stated misbehaviour, or
- (c) the member has a conflict of interest of such significance that, in the opinion of the Oireachtas, he or she should cease to hold office.

(15) A person shall be disqualified from holding and shall cease to hold office as a member of the Authority if he or she—

- (a) is adjudged bankrupt,
- (b) makes a composition or arrangement with his or her creditors,
- (c) is convicted on indictment of an offence,
- (d) is convicted of an offence involving dishonesty,
- (e) is struck off the roll of solicitors or practising barristers or, following a complaint against him or her, is found guilty of misconduct,
- (f) has a declaration under section 150 of the Companies Act 1990 made against him or her or is subject or is deemed to be subject to a disqualification order by virtue of Part VII of that Act, or
- (g) ceases to be ordinarily resident in the State.

[SECTION 8]

(16) Where a member of the Authority dies, becomes disqualified from holding office, resigns, is removed from office or otherwise ceases to be a member, the Government shall appoint a member to fill the resultant vacancy and in filling such vacancy shall appoint a person nominated by the person or body that nominated the person occasioning the vacancy.

(17) A person who is appointed to be a member of the Authority under *subsection (16)* shall hold office for the remainder of the term of office of the member occasioning the casual vacancy.

(18) Subject to the provisions of this Act, the Authority may act notwithstanding one or more vacancies in its membership.

(19) In appointing members of the Authority regard shall be had to the objective to there being no fewer than 4 members who are men and no fewer than 4 members who are women.”

—Niall Collins, Finian McGrath.

[*Acceptance of this amendment involves the deletion of section 8 of the Bill.*]

9. In page 13, lines 6 to 10, to delete subsection (2) and substitute the following:

“(2) (a) The members of the Authority, other than the lay members, shall be appointed by the Government.

(b) The lay members of the Authority shall be appointed by the President of the High Court.”

—Niall Collins.

10. In page 13, subsection (2)(a), lines 6 and 7, to delete “by the Government.” and substitute the following:

“by the Government, a resolution approving such appointment having been passed by Dáil Éireann and by Seanad Éireann.”

—An tAire Dlí agus Cirt agus Comhionannais.

11. In page 13, to delete lines 11 to 14 and substitute the following:

“(3) In appointing a person to be a member of the Authority, the Government shall satisfy themselves that he or she has knowledge of, and expertise in relation to, one or more of the following:”

—An tAire Dlí agus Cirt agus Comhionannais.

12. In page 13, subsection (3), line 12, after “Government” to insert “or, as appropriate, President of the High Court,”

—Niall Collins.

13. In page 13, lines 24 to 39, page 14 and in page 15, lines 1 to 16, to delete subsections (4) to (15) and substitute the following:

“(4) Of the persons appointed to be members of the Authority—

(a) a majority shall be lay persons of whom—

(i) 1 shall be nominated for appointment by the Citizens Information Board,

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- (ii) 1 shall be nominated for appointment by An tÚdarás um Ard-Oideachas,
 - (iii) 1 shall be nominated for appointment by the Competition Authority,
 - (iv) 1 shall be nominated for appointment by the Human Rights Commission,
 - (v) 1 shall be nominated for appointment by the Institute of Legal Costs Accountants, being the body of that name that is engaged in the representation and regulation of legal costs accountants in the State,
 - (vi) 1 shall be nominated for appointment by the Consumers' Association of Ireland, being the association of that name whose purpose is to promote and protect the interests of consumers,
- (b) 1 shall be nominated for appointment by the Bar Council,
 - (c) 1 shall be a solicitor nominated for appointment by the Legal Aid Board,
 - (d) 1 shall be nominated for appointment by the Honorable Society of King's Inns, and
 - (e) 2 shall be nominated for appointment by the Law Society.

(5) In nominating persons for appointment under this section, a nominating body referred to in *subsection (4)*—

- (a) shall—
 - (i) subject to *subparagraph (ii)*, nominate a primary nominee of one sex and a substitute nominee of the other sex, and
 - (ii) in the case of the Law Society, where both members of the Authority to be nominated by it under *subsection (4)(e)* are nominated at the same time, nominate one man and one woman,
- and
- (b) shall satisfy itself that its nominees meet the criteria specified in *subsection (3)*.

(6) In appointing members of the Authority, the Government shall—

- (a) have regard to the objective of there being no fewer than 4 members who are women and no fewer than 4 members who are men, and
- (b) appoint a substitute nominee referred to in *subsection (5)(a)(i)* rather than a primary nominee of the nominating body concerned, but only where necessary in order to achieve that objective.?"

—An tAire Dlí agus Cirt agus Comhionannais.

14. In page 13, subsection (4), line 25, to delete paragraph (a) and substitute the following:

[SECTION 8]

“(a) a majority shall be lay persons recruited and selected by the Commission for Public Service Appointments in accordance with standards established under section 13(1)(a) of the Public Service Management (Recruitment and Appointments) Act 2004, provided that the President of the High Court or his or her nominee shall participate in any selection process,”.

—Niall Collins.

15. In page 13, subsection (7), line 39, after “Authority” to insert the following:

“provided that the provisions of this section governing the appointment of a member of the Authority shall apply in the same manner and to the same extent to any reappointment of a member of the Authority under this section as they applied to his or her appointment”.

—Niall Collins.

16. In page 14, subsection (12), line 25, to delete “The Government may at any time, for stated reasons” and substitute the following:

“Subject to *subsections (13) and (14)*, the Government may by order”.

—Niall Collins.

17. In page 14, between lines 34 and 35, to insert the following subsections:

“(13) The Government may, if of the opinion that the removal of a member of the Authority from office may be necessary for the effective performance of the functions of the Authority, appoint a person to—

(a) conduct an independent review of the substance of any matter giving rise to that opinion, and

(b) submit a report to the Government on the results of the review.

(14) An order under *subsection (12)* removing the member of the Authority from office shall not have effect unless—

(a) a draft of the proposed order, a statement of the reasons for the order and a copy of any report submitted to the the Government under *subsection (13)(b)* has been laid before both Houses of the Oireachtas, and

(b) a resolution approving the draft has been passed by each House.”.

—Niall Collins.

SECTION 9

18. In page 15, before section 9, to insert the following new section:

“Term of appointment of members of Authority.

9.—(1) Subject to *subsection (2)*, a member of the Authority shall hold office for such period, not exceeding 4 years from the date of his or her appointment, as the Government shall determine.

(2) (a) Of the members of the Authority that is first constituted under this Act, 5 (who shall not include the Chairperson), selected in accordance with *paragraph (b)*, shall hold office for a period of 3 years from the date of their appointment as members.

[SECTION 9]

(b) The members of the Authority referred to in *paragraph (a)* shall consist of

(i) one of the two members of the Authority nominated for appointment by the Law Society under *section 8(4)*, and

(ii) 4 other members of the Authority,

who shall be selected by the drawing of lots, conducted in such manner as the Chairperson of the Authority thinks proper, at the first meeting of the Authority referred to in *section 10(3)*.

(c) A member of the Authority may be selected in accordance with *paragraph (b)* notwithstanding the fact that he or she is not present at the first meeting of the Authority.

(d) The quorum for the first meeting of the Authority, in so far as that meeting relates to selecting the members of the Authority referred to in *paragraph (a)*, shall be 7 members of the Authority.

(3) Each member of the Authority—

(a) shall act on a part-time basis and on such other terms and conditions (other than the payment of remuneration and allowances for expenses) as the Government may determine, and

(b) shall be paid by the Authority such remuneration (if any) and allowances for expenses (if any) as the Minister for Public Expenditure and Reform may determine.

(4) Subject to *subsection (5)*, a member of the Authority (including the Chairperson) whose term of office expires by the effluxion of time shall be eligible for reappointment as a member of the Authority.

(5) A person who is reappointed to the Authority in accordance with *subsection (4)* shall not hold office for periods the aggregate of which exceeds 8 years.

(6) A member of the Authority may resign from office by notice in writing addressed to the Minister and the resignation shall take effect on the date the Minister receives the notice or, if a date is specified in the notice and the Minister agrees to that date, on that date.

(7) The Chairperson may resign from office as Chairperson by notice in writing addressed to the Minister, but shall, unless otherwise stated in the notice, continue to hold office as member of the Authority for the remainder of his or her term of office, and the resignation takes effect on the date the Minister receives the notice or, if a date is specified in the notice and the Minister agrees to that date, on that date.

(8) Subject to *section 10(2)*, the Authority may act notwithstanding one or more vacancies in its membership.

[SECTION 9]

(9) Where a member of the Authority dies, becomes disqualified for office, resigns, is removed from office or otherwise ceases to be a member, the Government may appoint a person to be a member of the Authority to fill the resultant casual vacancy, and such person shall hold office for the remainder of the term of office of the member who occasioned the casual vacancy.”.

—An tAire Dlí agus Cirt agus Comhionannais.

19. In page 15, before section 9, to insert the following new section:

“Disqualification for office of member of Authority. 10.—(1) A person shall be disqualified from and shall cease to hold office as a member of the Authority if he or she—

- (a) is convicted on indictment of an offence,
- (b) is convicted of an offence involving fraud or dishonesty,
- (c) in the case of a member who is a legal practitioner, is struck off the roll of solicitors or the roll of practising barristers, as the case may be, or, following the investigation of a complaint under *Part 5*, is the subject of —
 - (i) a finding under *section 59* that there has been misconduct on his or her part, and the member concerned has not brought an appeal under *section 61(2)(a)* against the determination concerned within the period referred to in *section 62(1)*, or
 - (ii) an order of the High Court under *section 62(3)(b)*, *section 62(4)* (other than *paragraph (ii)*) or *section 63* (other than *subsection (2)(b)*),
- (d) has a declaration under section 150 of the Companies Act 1990 made against him or her or is subject or is deemed to be subject to a disqualification order by virtue of Part VII of that Act, or
- (e) ceases to be resident in the State.

(2) A person who is appointed to the Authority as a lay member shall cease to hold office where he or she ceases to be a lay person.”.

—An tAire Dlí agus Cirt agus Comhionannais.

20. In page 15, before section 9, to insert the following new section:

“Removal of member of Authority. 11.—(1) The Government may, subject to this section, remove a member of the Authority from office, but only—

- (a) where one or more of the grounds referred to in *subsection (2)* apply,
- (b) *subsections (3) to (6)* have been complied with, and
- (c) no appeal against the decision of the Government under *subsection (6)* has been made under *subsection (7)* within the period specified in that subsection or, where such an appeal has been made, the High Court has affirmed the decision,

and then, and only then, where a resolution is passed by both Houses of the Oireachtas calling for the member’s removal from office.

[SECTION 9]

(2) The grounds referred to in *subsection (1)* are that, in the opinion of the Government, the member—

- (a) has become incapable through ill health of effectively performing the functions of the office,
- (b) has committed stated misbehaviour,
- (c) has a conflict of interest of such significance that he or she should cease to hold the office, or
- (d) is otherwise unfit to hold the office or unable to discharge its functions.

(3) Where the Government proposes to remove a member pursuant to *subsection (1)*, they shall notify the following in writing of their proposal—

- (a) the member concerned, and
- (b) the body referred to in *section 8(4)* that nominated that member for appointment as a member of the Authority.

(4) A notification under *subsection (3)* shall include—

- (a) a statement of the reasons for the proposal,
- (b) a statement that the member concerned, and the body referred to in *subsection (3)(b)*, may, within 30 working days of the sending of the notification or such other period as the Government, having regard to the requirements of natural justice, may specify, make representations in the prescribed manner to the Government as to why the member should not be removed from office, and
- (c) a statement that, where no representations are received within the period specified under *paragraph (b)*, the Government will, without further notice, proceed with the removal of the member from office in accordance with this section.

(5) In considering whether to remove a member from office, the Government shall take into account—

- (a) any representations made pursuant to *subsection (4)(b)*, and
- (b) any other matter that the Government consider relevant for the purpose of their decision.

(6) Where, having taken into account the matters referred to in *subsection (5)*, the Government decide to remove the member from office, they shall notify the member, and the body referred to in *subsection (3)(b)*, in writing of their decision and of the reasons for it.

(7) The member or, as the case may be, the body referred to in *subsection (3)(b)*, may, within 30 working days of the sending of the notification under that subsection, appeal to the High Court against the decision of the Government.

(8) On hearing an appeal under *subsection (7)*, the High Court may, as it thinks proper, either affirm or overturn the decision concerned.”

—An tAire Dlí agus Cirt agus Comhionannais.

[SECTION 9]

21. In page 15, before section 9, to insert the following new section:

“9.—(1) Subject to this Act, the Authority shall be responsible for overseeing the regulation of the provision of legal services by legal practitioners in the State, in an independent manner and shall ensure the maintenance and improvement of standards in the provision of such services in the State.

(2) The Authority shall at all times have due regard to the overriding public interest in the delivery of legal services in a manner that at all times supports the proper and effective administration of justice.

(3) Subject to this Act, the Authority may do anything it considers necessary or expedient to enable it to perform its functions, including liaising and co-operating with other statutory bodies and with other relevant institutions.

(4) Any function of this Authority may, without prejudice to its general responsibilities under this Act, be performed through or by the Chief Executive of the Authority as established by this Act or any member of its staff duly authorised in that behalf by the Authority.

(5) The Chief Executive or a member of staff of the Authority who performs any of its functions is presumed in any proceedings to have been authorised by it to do so on its behalf unless the contrary is shown.

(6) The Authority shall be independent in the performance of its functions.

(7) The Authority has all powers that are necessary for the performance of the functions of the office.”.

—Niall Collins, Finian McGrath.

[Acceptance of this amendment involves the deletion of section 9 of the Bill.]

22. In page 15, before section 9, to insert the following new section:

“10.—Without prejudice to the generality of *section 9**, the functions of the Authority under this Act shall include—

- (a) overseeing the regulatory bodies for the legal professions of barristers and solicitors so as to promote the regulatory objectives of this Act,
- (b) overseeing the regulation of legal services provided by barristers and solicitors in the State by such regulatory bodies so as to promote the regulatory objectives of this Act,
- (c) promoting awareness among members of the public of matters concerning the rules or codes of conduct of the Bar Council and of the Law Society generally and, in particular, dealing with complaints made to those bodies,
- (d) reviewing the rules or codes of conduct of the Bar Council and of the Law Society generally and, in particular, those provisions of such rules and codes,
- (e) recommending and, if necessary, requiring changes to the rules or codes of conduct of the two branches of the legal profession so as to provide for—

[SECTION 9]

- (i) the removal of unnecessary barriers to switching between the two professions of solicitor and barrister,
 - (ii) the removal of any unnecessary restrictions on switching barrister or solicitor in a case,
 - (iii) the prohibition on a solicitor retaining a client's file pending payment from the client,
 - (iv) the exercise of part-time occupations by barristers that are not inconsistent with the rules or codes of conduct of the Bar Council,
 - (v) the removal of any prohibition on a barrister being led in court by a Senior Counsel who is not a barrister, and
 - (vi) the regulation of the right and entitlement of barristers and solicitors to advertise,
- (f) receiving and investigating complaints in accordance with the provisions of this Act,
- (g) carrying out any other duties and exercise any other powers assigned to the Authority by this Act, and
- (h) promoting public awareness and disseminating information to the public in respect of the provision of legal services, including the cost of such services.”.

—Niall Collins, Finian McGrath.

[*This is a reference to the section proposed to be inserted by amendment No. 21.]

23. In page 15, before section 9, to insert the following new section:

“11.—For the purposes of this Act, the regulatory objectives of the Authority are as follows—

- (a) maintaining and supporting—
 - (i) the constitutional principle of the rule of law,
 - (ii) the proper and effective administration of justice,
- (b) protecting—
 - (i) the interest of consumers,
 - (ii) the public interest generally,
- (c) promoting—
 - (i) access to justice,
 - (ii) competition in the provision of legal services,
- (d) promoting an independent, strong, diverse and effective legal profession,
- (e) encouraging equal opportunities within the legal profession, and

[SECTION 9]

- (f) promoting and maintaining adherence to the professional principles as set out in *section 12**.”

—Niall Collins, Finian McGrath.

[*This is a reference to the section proposed to be inserted by amendment No. 24.]

24. In page 15, before section 9, to insert the following new section:

“12.—For the purposes of this Act, the professional principles are the principles that barristers and solicitors providing legal services should adhere to and include—

- (a) maintaining and protecting the proper and effective administration of justice,
- (b) acting with independence in the interests of justice,
- (c) acting with integrity,
- (d) acting in the best interests of their clients, except where that conflicts with a paramount interest in the proper and effective administration of justice, in which case the latter interest must prevail at all times,
- (e) keeping the affairs of clients confidential unless disclosure is otherwise required in accordance with law,
- (f) maintaining proper standards of work,
- (g) when exercising before any court a right of audience, or conducting litigation in relation to proceedings in any court, by virtue of being barristers or solicitors, complying with their duty to act with independence in the overriding interests of justice at all times,
- (h) meeting their obligations under any of the rules or codes of conduct applying to their profession as regulated by the Authority under this Act, and
- (i) acting in conformity with professional ethics and best practice.”

—Niall Collins, Finian McGrath.

25. In page 15, before section 9, to insert the following new section:

“Review of rules or codes of conduct of the professions.

13.—(1) The Authority shall keep under review the rules or codes of conduct of the Bar Council and of the Law Society in general and, in particular, in relation to the receipt and investigation of complaints in relation to barristers and solicitors.

(2) The Law Society and the Bar Council shall provide the Authority with information about intended new or amended rules or codes of conduct by the respective bodies at least 60 days before the intended adoption of such Rules and the Authority shall review such proposed rules under this section.

(3) In carrying out a review under this section, the Authority shall consider, in accordance with its functions under this Part—

[SECTION 9]

- (a) the rules or codes of conduct of the Bar Council and of the Law Society or the proposed rules or codes of conduct of the Bar Council and of the Law Society, as may be the case,
- (b) the compliance of barristers and solicitors with the relevant rules or codes,
- (c) such complaints made to the relevant professional body regarding breaches of those rules or codes as it considers appropriate,
- (d) the effectiveness of the complaints procedures of the professions, including the length of time taken to complete investigations and make determinations,
- (e) complaints relating to such matters as the Authority considers appropriate,
- (f) statistical information provided by the professional body concerned including statistical information relating to multiple complaints in relation to the same barristers or solicitors, as the case may be,
- (g) the removal of any unnecessary barriers to switching between the two branches of the legal profession, solicitors and barristers,
- (h) the removal of the prohibition on direct access to barristers for legal advice,
- (i) any restrictions on switching barrister or solicitor in a case,
- (j) the exercise of part-time occupations by barristers that are not inconsistent with the rule or code of conduct, and
- (k) any regulation of the right or entitlement of barristers and solicitors to advertise.

(4) The Bar Council and the Law Society must, upon request, provide the Authority with such information as it may reasonably require in order for it to carry out a review of the rules or codes of conduct or proposed rules or codes of conduct in question.

(5) For the purpose of a review under this section, the Authority shall consult with such persons or bodies, including those whose purpose or objective is to protect the rights and interests of consumers, as it considers appropriate.”

—Niall Collins, Finian McGrath.

26. In page 15, before section 9, to insert the following new section:

“Recommendation to Law Society and Bar Council about rules or codes of conduct.

14.—(1) Arising out of a review carried out under *section 10**, the Authority may make such written recommendations to the professional body concerned as the Authority considers appropriate regarding—

- (a) the rules, or codes of conduct of the Bar Council and the Law Society,
- (b) the procedures of the professional body concerned relating to the receipt and investigation and resolution of complaints,
- (c) procedures to deal effectively with persistent patterns of complaints,

[SECTION 9]

- (d) procedures to deal effectively with any delays by the professional body concerned in investigating and determining complaints,
 - (e) procedures to ensure the co-operation of barristers or solicitors, as the case may be, with the procedures of the professional body concerned,
 - (f) removing unnecessary barriers to switching between the branches of solicitor and barrister,
 - (g) the removal of the prohibition on direct access to barristers for legal advice,
 - (h) the regulation on barristers and solicitors ability to advertise,
 - (i) the removal of restrictions on switching barrister or solicitor in a case,
 - (j) the removal of the prohibition on a solicitor retaining a client's file pending payment from the client,
 - (k) the exercise of part-time occupations by barristers that are not inconsistent with the rules or codes of conduct,
 - (l) the removal of the prohibition on a barrister being led in court by a Senior Counsel who is not a barrister, and
 - (m) any proposed rules or codes of conduct being considered for adoption by the Bar Council and the Law Society.
- (2) Not later than 30 days after receiving a recommendation made under *subsection (1)*, the Bar Council or the Law Society concerned shall—
- (a) inform the Authority of the action it proposes to take to implement that recommendation, or
 - (b) if it objects to the recommendation, inform the Authority of the reasons for such objection and any other observations it may have on the recommendation.
- (3) The Authority, after having received a response under *subsection (3)(b)* may, within 45 days, issue an amended or new recommendation to the Bar Council or the Law Society, as the case may be.”.

—Niall Collins, Finian McGrath.

[*This is a reference to the section proposed to be inserted by amendment No. 22.]

27. In page 15, before section 9, to insert the following new section:

“Power to require rule changes by the Bar Council and Law Society.

15.—(1) If the Authority is not satisfied with the response received from the professional body concerned under *section 13(4)**, the Authority may direct the body concerned to implement any recommendation made by it under *section 14(1)*** or such amended recommendation as the Authority may make under *section 14(3)*** having regard to such response as was received from the Bar Council or Law Society.

[SECTION 9]

(2) The direction issued under *subsection (1)* shall specify a time-period, not later than 90 days, within which the direction shall be implemented by the body in question.

(3) On application by the chairman of the Bar Council or by the President of the Law Society within 28 days of the issuance of such a direction, the President of the High Court may revoke or vary a direction given by the Authority under *subsection (1)* where the President of the High Court considers that the direction is oppressive, unreasonable, unnecessary or contrary to the overriding public interest in the proper and effective administration of justice or he or she may confirm the direction.”.

—Niall Collins, Finian McGrath.

[*This is a reference to the section proposed to be inserted by amendment No. 25.]

[**This is a reference to the section proposed to be inserted by amendment No. 26.]

28. In page 15, before section 9, to insert the following new section:

“Reporting function in relation to sections 13, 14 and 15.

16.—The Authority shall include a report on the performance of its functions under sections 13*, 14** and 15*** of this Act in the annual report submitted by it to the Oireachtas under section 17****.”.

—Niall Collins, Finian McGrath.

[*This is a reference to the section proposed to be inserted by amendment No. 25.]

[**This is a reference to the section proposed to be inserted by amendment No. 26.]

[***This is a reference to the section proposed to be inserted by amendment No. 27.]

[****This is a reference to the section proposed to be inserted by amendment No. 55.]

29. In page 15, subsection (2)(a), line 23, to delete “review” and substitute the following:

“review, and make recommendations to the Minister in respect of,”.

—An tAire Dlí agus Cirt agus Comhionannais.

30. In page 15, subsection (2)(a), to delete lines 24 to 26 and substitute the following:

“(i) perform the functions conferred on it by, or by regulations under, any other provisions of this Act including, in particular, *Part 5*,”.

—Niall Collins.

31. In page 15, subsection (2)(a), to delete lines 27 to 37 and substitute the following:

“(ii) the availability and quality of the education and training (including on-going training) for the solicitors’ and barristers’ professions, including

—
(I) the curriculum arrangements for the provision of clinical legal education and the teaching of legal ethics, negotiation skills, alternative dispute resolution and advocacy, and

[SECTION 9]

(II) the methods by which, and the persons by whom, such education and training is provided;”.

—An tAire Dlí agus Cirt agus Comhionannais.

32. In page 15, subsection (2)(a)(iii), line 41, to delete “practice” and substitute “practise”.

—An tAire Dlí agus Cirt agus Comhionannais.

33. In page 16, subsection (2)(g), line 23, after “and” to insert “make recommendations to”.

—An tAire Dlí agus Cirt agus Comhionannais.

34. In page 16, subsection (2)(h), line 30, to delete “them, and” and substitute the following:

“them, and make recommendations to the Minister arising from those projects or activities, and”.

—An tAire Dlí agus Cirt agus Comhionannais.

35. In page 16, lines 33 and 34, to delete subsection (3) and substitute the following:

“(3) The Authority shall be independent in the performance of its functions.”.

—Niall Collins.

SECTION 10

36. In page 17, subsection (1)(a), line 35, to delete “functions.” and substitute the following:

“functions, but in each year shall hold not less than one meeting in each period of three months.”.

—An tAire Dlí agus Cirt agus Comhionannais.

37. In page 17, lines 40 to 43, to delete subsection (2) and substitute the following:

“(2) The quorum for a meeting of the Authority shall be 5, of whom not fewer than 2 shall be lay members, and not fewer than 2 shall be members other than lay members.”.

—An tAire Dlí agus Cirt agus Comhionannais.

38. In page 18, subsection (3), line 1, to delete “The Minister shall, in consultation with the Chairperson,” and substitute “The Chairperson shall”.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 11

39. In page 18, subsection (1)(c), line 28, to delete “to that Parliament to fill a vacancy” and substitute “to be a member of the European Parliament”.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 12

40. In page 19, subsection (2)(a), line 27, to delete “committee,” and substitute “committee, and”.

[SECTION 12]

—An tAire Dlí agus Cirt agus Comhionannais.

41. In page 19, subsection (5), line 39, to delete “the Minister given with the consent of”.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 13

42. In page 20, subsection (1), lines 13 and 14, to delete “the Minister and”.

—An tAire Dlí agus Cirt agus Comhionannais.

43. In page 20, subsection (2), lines 22 and 23, to delete “the Minister given with the consent of”.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 14

Section proposed to be deleted.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 15

44. In page 22, lines 13 to 28, to delete subsection (3).

—Niall Collins.

45. In page 22, between lines 28 and 29, to insert the following subsection:

“(4) Nothing in *subsection (1)* shall prevent the disclosure of information by a person in the circumstances referred to in section 35(2) of the Ethics in Public Office Act 1995.”.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 16

46. In page 22, before section 16, to insert the following new section:

“16.—(1) The Authority shall, as soon as practicable after the establishment day and thereafter within 6 months before each third anniversary of the establishment day, prepare and submit to the Oireachtas Joint Committee on Justice, Defence and Equality, or any Oireachtas Joint Committee that may replace that Committee, for approval by the said Committee with or without amendment, a strategic plan for the ensuing 3 year period.

(2) A strategic plan shall—

- (a) comply with any directions issued from time to time by the aforesaid Committee in respect of the form and manner of the plan’s preparation,
- (b) set out the key objectives, outputs and related strategies of the Authority, including the use of its resources, and
- (c) have regard to the need to ensure the most beneficial and efficient use of the Authority’s resources.

[SECTION 16]

(3) The Committee shall, as soon as practicable after a strategic plan has been so approved, cause a copy of it to be laid before each House of the Oireachtas.”

—Pádraig Mac Lochlainn.

[Acceptance of this amendment involves the deletion of section 16 of the Bill.]

47. In page 22, subsection (1), line 36, to delete “Minister, for approval by the Minister with or without amendment,” and substitute “Minister”.

—An tAire Dlí agus Cirt agus Comhionannais.

48. In page 22, subsection (1), line 36, to delete “Minister, for approval by the Minister” and substitute the following:

“the Oireachtas Joint Committee on Justice, Defence and Equality, or any Oireachtas Joint Committee that may replace that Committee, for approval by the said Committee”.

—Niall Collins, Finian McGrath.

49. In page 22, subsection (2), lines 39 to 41, to delete paragraph (a).

—An tAire Dlí agus Cirt agus Comhionannais.

50. In page 22, subsection (2)(a), line 40, to delete “Minister” and substitute the following:

“Oireachtas Joint Committee on Justice, Defence and Equality, or any Oireachtas Joint Committee that may replace that Committee, for approval by the said Committee”.

—Niall Collins.

51. In page 22, subsection (2)(a), line 40, to delete “Minister” and substitute “Authority”.

—Finian McGrath.

52. In page 23, lines 5 to 7, to delete subsection (3) and substitute the following:

“(3) The Minister shall cause a copy of a strategic plan prepared pursuant to this section to be laid before each House of the Oireachtas as soon as practicable after the plan has been received by him or her.”.

—An tAire Dlí agus Cirt agus Comhionannais.

53. In page 23, subsection (3), line 5, to delete “Minister” and substitute “Committee”.

—Finian McGrath.

SECTION 17

54. In page 23, before section 17, to insert the following new section:

“Reports to Oireachtas.

17.—(1) The Authority shall, not later than 30 of April in each year, make a report (in this section referred to as the “annual report”) to the Minister and to the Oireachtas Joint Committee on Justice, Defence and Equality, or any Oireachtas Joint Committee that may replace that Committee, on the performance of its functions during the preceding year.

[SECTION 17]

(2) The annual report shall be in such form and shall include information in respect of such matters as the Authority considers appropriate.

(3) (a) The authority may make such other reports to the Oireachtas as it thinks fit.

(b) A report under *paragraph (a)* may include recommendations to the Oireachtas in relation to any matter for which the Authority has a regulatory function under this Act including recommendations in relation to the desirability or necessity of amending legislation governing the provision of legal services in the State.

(4) The Authority shall give to the Oireachtas such other information as the Oireachtas may request in respect of—

(a) the performance by the Authority of its functions and its policies in respect of such performance,

(b) any specific document or account prepared by it, or

(c) the annual report or any report referred to in *subsection (2)*.

(5) For the purposes of *subsection (1)*, the period between the establishment day and the following 31 December shall be deemed to be a preceding year.

(6) The Committee shall, as soon as practicable after it has received the annual report, or a report under *subsection (3)*, of the Authority, causes copies of it to be laid before each House of the Oireachtas.”.

—Pádraig Mac Lochlainn.

[*Acceptance of this amendment involves the deletion of section 17 of the Bill.*]

55. In page 23, before section 17, to insert the following new section:

“17.—(1) The Authority shall, not later than 30 April in each year, make a report (in this section referred to as the “annual report”) to the Minister and to the Oireachtas Joint Committee on Justice, Defence and Equality, or any Oireachtas Joint Committee that may replace that Committee, on the performance of its functions during the preceding year.

(2) The annual report shall be in such form and shall include information in respect of such matters as the Authority considers appropriate.

(3) The Authority may make such other reports to the Minister relating to its functions as it considers appropriate.

(4) For the purposes of *subsection (1)*, the period between the establishment day and the following 31 December shall be deemed to be a preceding year.

(5) The Minister shall, as soon as is practicable, cause copies of the annual report or, as the case may be, a report referred to in *subsection (3)*, to be laid before each House of the Oireachtas.

(6) The Authority shall publish its annual report in such form and manner as it considers appropriate.”.

—Niall Collins.

[SECTION 17]

[Acceptance of this amendment involves the deletion of section 17 of the Bill.]

56. In page 23, subsection (2), line 16, to delete “or as the Minister may direct”.

—An tAire Dlí agus Cirt agus Comhionannais, Finian McGrath.

57. In page 23, subsection (3), line 17, to delete “Minister” and substitute “Oireachtas”.

—Niall Collins.

58. In page 23, to delete lines 19 and 20 and substitute the following:

“(4) The Authority shall give to the Oireachtas Joint Committee on Justice, Defence and Equality, or any Oireachtas Joint Committee that may replace that committee such other information it may require in respect of—”.

—An tAire Dlí agus Cirt agus Comhionannais.

59. In page 23, lines 19 to 34, to delete subsections (4) to (7) and substitute the following:

“(4) A report under *subsection (3)* may include recommendations to the Oireachtas in relation to any matter for which the Authority has a regulatory function under this Act including recommendations in relation to the desirability or necessity of amending legislation governing the provision of legal services in the State.

(5) The Authority shall give to the Oireachtas such other information as the Oireachtas may request in respect of—

(a) the performance by the Authority of its functions and its policies in respect of such performance,

(b) any specific document or account prepared by it, or

(c) the annual report or any report referred to in *subsection (2)*.

(6) For the purposes of *subsection (1)*, the period between the establishment day and the following 31 December, shall be deemed to be a preceding year.

(7) The committee shall, as soon as practicable after it has received the annual report, or a report under *subsection (3)*, of the Authority, causes copies of it to be laid before each House of the Oireachtas.”.

—Niall Collins, Finian McGrath.

SECTION 18

Section opposed.

—Pádraig Mac Lochlainn, Niall Collins.

SECTION 19

60. In page 25, lines 5 to 22 to delete subsections (1) and (2) and substitute the following:

[SECTION 19]

“(1) There shall be a chief executive officer of the Authority who shall be appointed by the Authority and who shall be known, and is referred to in this Act, as the “chief executive”.

(2) The chief executive shall hold office under a written contract of service (which contract may, at the discretion of the Authority, be renewed) for such period as is specified in the contract, and subject to such terms and conditions (including terms and conditions relating to remuneration) as are determined by the Authority with the approval of the Minister for Public Expenditure and Reform.”

—An tAire Dlí agus Cirt agus Comhionannais.

- 61.** In page 25, subsection (7), lines 44 and 45, to delete all words from and including “and” in line 44 down to and including “Minister” in line 45.

—An tAire Dlí agus Cirt agus Comhionannais.

- 62.** In page 26, subsection (12), line 21, to delete “, with the consent of the Minister,”.

—An tAire Dlí agus Cirt agus Comhionannais.

- 63.** In page 26, subsection (12)(i), lines 24 and 25, to delete all words from and including “an” in line 24 down to and including “*subsection (2)*” in line 25 and substitute the following:

“a new chief executive is appointed in accordance with this section”.

—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 20

- 64.** In page 26, before section 20, to insert the following new section:

“20.—(1) The Authority may appoint persons to be the staff of the Authority and may determine their duties.

(2) The Authority, with the approval of the Minister for Public Expenditure and Reform, shall determine—

(a) the terms and conditions of employment (including terms and conditions relating to remuneration and allowances) of staff appointed under this section, and

(b) the grades of the staff of the Authority and the numbers of staff in each grade.

(3) The remuneration and allowances of the Authority’s staff are payable by the Authority to the staff out of funds at the Authority’s disposal.”.

—An tAire Dlí agus Cirt agus Comhionannais.

[*Acceptance of this amendment involves the deletion of section 20 of the Bill.*]

- 65.** In page 26, between lines 34 and 35, to insert the following subsection:

“(2) The Minister may permit the Authority to appoint members of the Law Society and Bar Council’s administrative staff, with the requisite qualifications and whose positions will be displaced with the commencement of the Authority.”.

—Pádraig Mac Lochlainn.

[SECTION 21]

SECTION 21

- 66.** In page 27, subsection (1), line 2, to delete “the Minister and the consent of”.
—An tAire Dlí agus Cirt agus Comhionannais.
- 67.** In page 27, subsection (3), lines 11 and 12, to delete “the Minister and the consent of”.
—An tAire Dlí agus Cirt agus Comhionannais.
- 68.** In page 27, subsection (4), lines 15 and 16, to delete “the Minister with the consent of”.
—An tAire Dlí agus Cirt agus Comhionannais.
- 69.** In page 27, subsection (7)(b), line 31, to delete “the Minister and the consent of”.
—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 22

- 70.** In page 28, subsection (1), lines 1 and 2, to delete “Authority” and substitute “Authority,”.
—An tAire Dlí agus Cirt agus Comhionannais.
- 71.** In page 28, subsection (2), line 13, to delete “Authority” and substitute “Authority,”.
—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 24

- 72.** In page 29, subsection (4), line 32, to delete “and unless” and substitute “and, unless”.
—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 25

- 73.** In page 30, subsection (1), lines 10 to 12, to delete all words from and including “the” where it firstly occurs in line 10 down to and including “prescribe” in line 12 and substitute “the Authority may prescribe”.
—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 27

- 74.** In page 31, subsection (1)(b), lines 4 and 5, to delete “the Minister and the consent of”.
—An tAire Dlí agus Cirt agus Comhionannais.

SECTION 29

Section opposed.

—Pádraig Mac Lochlainn, Niall Collins, Finian McGrath.

SECTION 30

- 75.** In page 35, subsection (5)(b), line 23, to delete “such recommendations” and substitute “recommendations as to such matters”.
—An tAire Dlí agus Cirt agus Comhionannais.

[*SECTION 30*]

Section opposed.

—Pádraig Mac Lochlainn, Niall Collins, Finian McGrath.