



# **DÁIL ÉIREANN**

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

**LEASUITHE TUARASCÁLA  
REPORT AMENDMENTS**

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# DÁIL ÉIREANN

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## AN BILLE UM RIALÁIL SEIRBHÍSÍ DLÍ, 2011 —AN TUARASCÁIL

### LEGAL SERVICES REGULATION BILL 2011 —REPORT

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#### *Leasuithe Amendments*

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1. In page 10, to delete lines 9 and 10 and substitute the following:

“ “code of practice” means a code of practice issued under *section 20\**, and includes part of such a code;”.

—An tAire Dlí agus Cirt agus Comhionannais.

[\**This is a reference to the section proposed to be inserted by amendment 36.*]

2. In page 10, between lines 25 and 26, to insert the following:

“ “legal advice” means any oral or written advice—

- (a) on the application of the law (whether the law of the State, another state or the European Union, international law, or a combination of these) to any particular circumstances that have arisen or may arise in relation to a person, and
- (b) as to any actions that might appropriately be taken by or on behalf of a person (whether the person referred to in *paragraph (a)* or another person) having regard to the application of the law to those circumstances,

but does not include an opinion on the application of the law provided by a person to another person in the course of—

- (i) lecturing in or teaching an area of the law, as part of a course of education or training,
- (ii) writing or editing a book, report or article, or
- (iii) carrying out research in an area of the law, for the purpose of enhancing the other person’s knowledge of the area concerned;”.

—An tAire Dlí agus Cirt agus Comhionannais.

3. In page 10, to delete lines 34 to 36 and substitute the following:

“ “legal services” means legal services provided by a person, whether as a solicitor or as a barrister;”.

—An tAire Dlí agus Cirt agus Comhionannais.

4. In page 11, to delete lines 1 to 3 and substitute the following:

“ “practising barrister” means a person who—

- (a) is a qualified barrister, and
- (b) provides, or holds himself or herself out as providing, legal services as a barrister—
  - (i) whether or not for a fee,
  - (ii) whether or not under a contract of service or a contract for services, and
  - (iii) whether or not, in so doing, he or she describes himself or herself as a, or otherwise uses the title of, “barrister”, “barrister-at-law” or “counsel”;

—An tAire Dlí agus Cirt agus Comhionannais.

5. In page 11, to delete lines 13 to 15 and substitute the following:

“ “professional code” means any code of conduct, code of practice, rule, regulation, practice note, guideline or other code, including any part thereof, relating to the provision of legal services by its members—

- (a) that has been adopted by or on behalf of a professional body, or
- (b) to which members of a professional body, as a condition of their membership of that body, are otherwise subject;

“qualified barrister” means a person who—

- (a) has been admitted by the Honorable Society of King’s Inns to the degree of Barrister-at-Law or has been called to the Bar of Ireland, other than where, subsequent to his or her being admitted to that degree or being so called—
  - (i) he or she has been admitted as a solicitor,
  - (ii) he or she has been disbarred by the Benchers of the Honorable Society of King’s Inns, where that disbarment remains in effect, or
  - (iii) his or her name has been struck off the roll of practising barristers or the roll of solicitors by the High Court, which order remains in effect,

or

- (b) is a registered lawyer, having the same right of audience as a practising barrister or a solicitor qualified to practise by virtue of Regulation 10 of the European Communities (Lawyers’ Establishment) Regulations 2003 (S.I. No. 732 of 2003);”.

—An tAire Dlí agus Cirt agus Comhionannais.

6. In page 11, between lines 30 and 31, to insert the following:

“(4) For the purposes of this Act—

- (a) a person provides legal services as a solicitor where he or she acts as a solicitor, as that term is construed under the Solicitors Acts 1954 to 2011,

and

- (b) a person provides legal services as a barrister where he or she does one or more than one of the following:
  - (i) in relation to proceedings before a court, tribunal or forum for arbitration, whether in the State or in another jurisdiction, or the Personal Injuries Assessment Board—
    - (I) represents another person before that court, tribunal, forum or Board in those proceedings,
    - (II) prosecutes or defends such proceedings on behalf of another person,
    - (III) advises another person in relation to the conduct of the proceedings,
    - (IV) represents and advises another person for the purposes of arriving at or giving effect to any settlement in the proceedings, or
    - (V) draws or drafts documents for another person in contemplation of, ancillary to or in connection with, those proceedings,
  - (ii) provides legal advice to another person;
  - (iii) draws or drafts legal documents for another person that have the purpose of securing or transferring for a person a legal right or entitlement;
  - (iv) represents or acts for another person in a situation where legal rights or obligations of a person are being, or are likely to be, created or such rights or obligations are, or are likely to be, in dispute.”.

—An tAire Dlí agus Cirt agus Comhionannais.

7. In page 13, to delete lines 5 to 37, and in page 14, to delete lines 1 to 18 and substitute the following:

- “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;
  - (j) 1 person 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 the following subsection, 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 days 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* 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)*.
  - (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) 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.

8. In page 13, to delete lines 5 to 37, and in page 14, to delete lines 1 to 18 and substitute the following:

- “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;
  - (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)*.
- (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.
- (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.

**9.** In page 13, to delete lines 7 to 11 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, line 12, after “Government” to insert “or, as appropriate, President of the High Court,”.

—Niall Collins.

11. In page 13, to delete lines 24 to 34 and substitute the following:

“(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.

12. In page 15, line 31, to delete “he or she”.

—An tAire Dlí agus Cirt agus Comhionannais.

13. In page 15, line 32, to delete “is convicted” and substitute “he or she is convicted”.

—An tAire Dlí agus Cirt agus Comhionannais.

14. In page 15, line 33, to delete “is convicted” and substitute “he or she is convicted”.

—An tAire Dlí agus Cirt agus Comhionannais.

15. In page 15, line 34, after “practitioner,” to insert “his or her name”.

—An tAire Dlí agus Cirt agus Comhionannais.

16. In page 15, line 36, to delete “Part 6,” and substitute “Part 6, he or she”.

—An tAire Dlí agus Cirt agus Comhionannais.

17. In page 16, line 2, to delete “has a declaration” and substitute “he or she has a declaration”.

—An tAire Dlí agus Cirt agus Comhionannais.

18. In page 16, line 5, to delete “ceases” and substitute “he or she ceases”.

—An tAire Dlí agus Cirt agus Comhionannais.

19. In page 17, to delete lines 18 to 40, to delete page 18, and in page 19, to delete lines 1 to 22 and substitute the following:

“12. (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.

**20.** In page 17, between lines 17 and 18, to insert the following:

“**13.** Without prejudice to the generality of *section 12\**, 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—
  - (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.

[\*This is a reference to the section proposed to be inserted by amendment 19.]

**21.** In page 17, between lines 17 and 18, to insert the following:

“**14.** 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
- (f) promoting and maintaining adherence to the professional principles as set out in *section 15\**.”

—Niall Collins.

[\*This is a reference to the section proposed to be inserted by amendment 22.]

**22.** In page 17, between lines 17 and 18, to insert the following:

“**15.** 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.

23. In page 17, between lines 17 and 18, to insert the following:

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

16. (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—
- (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.

24. In page 17, between lines 17 and 18, to insert the following:

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

17. (1) Arising out of a review carried out under *section 13\**, 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,
  - (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.

[\*This is a reference to the section proposed to be inserted by amendment 20.]

25. In page 17, between lines 17 and 18, to insert the following:

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

18. (1) If the Authority is not satisfied with the response received from the professional body concerned under *section 16(4)\**, the Authority may direct the body concerned to implement any recommendation made by it under *section 17(1)\*\** or such amended recommendation as the Authority may make under *section 17(3)\*\** having regard to such response as was received from the Bar Council or Law Society.
- (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.

[\*This is a reference to the section proposed to be inserted by amendment 23.]

[\*\*This is a reference to the section proposed to be inserted by amendment 24.]

26. In page 17, between lines 17 and 18, to insert the following:

**“Reporting function in relation to sections 16, 17 and 18**

19. The Authority shall include a report on the performance of its functions under *sections 16\**, *17\*\** and *18\*\*\** of this Act in the annual report submitted by it to the Oireachtas under *section 19\*\*\*\**.”.

—Niall Collins.



[\*This is a reference to the section proposed to be inserted by amendment 23.]

[\*\*This is a reference to the section proposed to be inserted by amendment 24.]

[\*\*\*This is a reference to the section proposed to be inserted by amendment 25.]

[\*\*\*\*This is a reference to the section proposed to be inserted by amendment 33.]

27. In page 17, to delete lines 26 and 27 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 6*.”

—Niall Collins.

28. In page 17, line 27, after “Council” to insert “and the Honorable Society of King’s Inns”.

—An tAire Dlí agus Cirt agus Comhionannais.

29. In page 17, line 36, after “Council” to insert “and the Honorable Society of King’s Inns”.

—An tAire Dlí agus Cirt agus Comhionannais.

30. In page 18, to delete lines 28 and 29 and substitute the following:

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

—Niall Collins.

31. In page 22, to delete lines 23 to 35.

—Niall Collins.

32. In page 23, line 7, to delete “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.

33. In page 23, to delete lines 16 to 39, and in page 24, to delete line 1 and substitute the following:

“19. (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.

34. In page 23, line 24, to delete “Minister” and substitute “Oireachtas”.

—Niall Collins.

35. In page 23, to delete lines 26 to 39, and in page 24, to delete line 1 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.

36. In page 24, to delete lines 2 to 39, and in page 25, to delete lines 1 to 10 and substitute the following:

**“Powers of Authority in relation to codes of practice**

20. (1) The Authority may, having regard to the objectives specified in *section 12(1)* and (4) and in accordance with this section, issue a code of practice where it considers it necessary to do so for the purpose of setting and improving standards for the provision of a legal service in the State.
- (2) A code of practice issued under *subsection (1)* may relate to the provision of legal services by—
- (a) legal practitioners generally, or
  - (b) legal practitioners of such class or classes as may be specified in the code.
- (3) Before exercising its power under *subsection (1)*, the Authority shall consult, in such

manner as it considers appropriate, with—

- (a) a professional body, the members of which will be subject to the proposed code of practice, and
  - (b) such other interested parties, including legal practitioners who are not members of a body referred to in *paragraph (a)* who will be subject to the proposed code of practice, as the Authority considers appropriate.
- (4) Where the Authority consults under *subsection (3)*, it shall, before issuing the code of practice concerned, consider representations (if any) made by the bodies or parties so consulted.
- (5) Where a professional code conflicts with a code of practice, the code of practice shall, for the purposes of this Act, prevail.
- (6) The High Court, on application to it by a legal practitioner who is affected by a code of practice, made within 28 days of the issuing by the Authority of that code, may, where it considers that the code of conduct is oppressive, unreasonable or unnecessary, revoke or vary the code.
- (7) Where the Authority, under this section, issues, amends or revokes a code of practice, it shall without delay cause a notice to that effect to be published in *Iris Oifigiúil*, which notice shall—
- (a) specify the code concerned,
  - (b) specify the legal service to which the code relates or the class of legal practitioner to which the code relates, and
  - (c) specify the date from which the code, or the amendment to or the revocation of the code, as the case may be, shall have effect.
- (8) (a) The Authority shall make available for inspection free of charge to members of the public in an appropriate format a copy of every code of practice issued by it under *subsection (1)*.
- (b) A copy of a code of practice made available under *paragraph (a)* shall state the date on which the code has effect and, where applicable, the date on which the revocation of the code has effect.
- (c) Where a code of practice referred to in *paragraph (a)* has been amended in accordance with this section, a reference in that paragraph to a code of practice is to that code as amended.”.

—An tAire Dlí agus Cirt agus Comhionannais.

37. In page 24, to delete lines 2 to 39, and in page 25, to delete lines 1 to 10 and substitute the following:

“20. (1) The Authority shall, after consultation with the professional bodies—

- (a) develop policies, and
- (b) prepare and publish codes of practice for the purpose of establishing and

maintaining standards for the provision of legal services in the State.

- (2) The Law Society shall—
  - (a) develop policies, and
  - (b) prepare and publish professional codes of practice in relation to the provision of legal services by practising solicitors in the State.
- (3) The Bar Council shall—
  - (a) develop policies, and
  - (b) prepare and publish professional codes of practice in relation to the provision of legal services by practising barristers in the State.
- (4) Before publishing a code of practice under this section the Authority shall publish, in such manner as it considers appropriate, a draft of the code of practice and shall allow persons 60 days from the date of that publication within which to make representations in writing to the Authority in relation to the draft code or such further period, not exceeding 30 days, as the Authority thinks fit.
- (5) Before publishing a professional code of practice under this section the Law Society or, as appropriate, the Bar Council shall publish, in such manner as it considers appropriate, a draft of the relevant professional code of practice and shall allow 60 days from the date of that publication within which to make representations in writing to the Law Society or as appropriate, the Bar Council in relation to the draft code or such further period, not exceeding 30 days, as the Law Society or, as appropriate, the Bar Council thinks fit.
- (6) Where the Authority publishes a code of practice under this section the Minister shall cause a notice to that effect to be published in *Iris Oifigiúil*—
  - (a) identifying or specifying the code,
  - (b) specifying the legal services in respect of which the code is so published, and
  - (c) specifying the date from which the code of practice shall have effect.
- (7) The Authority may amend or revoke a code of practice under this section.
- (8) *Subsections (4) and (6)* shall, with all necessary modifications, apply to any amendments to a code of practice that the Authority proposes to make under *subsection (7)*.
- (9) Where a professional code is published under this section the Law Society or, as appropriate, the Bar Council shall inform the Authority of any amendments made to that code.
- (10) The Authority, the Law Society and the Bar Council shall make available for inspection free of charge to members of the public at their principal office during normal working hours a copy of any code of practice or professional code published by them under this section.”.

—Pádraig Mac Lochlainn, Niall Collins.

38. In page 25, between lines 10 and 11, to insert the following:

**“Powers of Authority in relation to professional codes**

21. (1) The Authority, having reviewed a professional code, may issue a notice under *subsection (2)* to the relevant professional body where it is of the opinion that—
- (a) the professional code operates or is likely to operate to hinder a legal practitioner in complying with his or her obligations under this Act,
  - (b) the professional code is frustrating or is likely to frustrate an objective specified in *subsection (1)* or *(4)* of *section 12*, or
  - (c) the amendment of the professional code is otherwise necessary in order to maintain or improve standards in the provision of a legal service.
- (2) A notice under this subsection may direct the relevant professional body concerned to amend, in the manner specified in the notice, the professional code concerned.
- (3) Where the Authority proposes to issue a notice under *subsection (2)* it shall—
- (a) notify the relevant professional body, and such other professional body it considers appropriate, of its proposal and the reasons for it,
  - (b) invite the professional bodies referred to in *paragraph (a)* to make representations in writing to the Authority in relation to the proposal, and
  - (c) before deciding whether to issue the notice, consider any representations received under *paragraph (b)*.
- (4) Where a relevant professional body has not, within 28 days of the sending to it of a notice under *subsection (2)*, complied with that notice, the Authority may apply to the High Court for an order directing the professional body concerned to comply with the notice.
- (5) The High Court, on application to it by the professional body concerned made within 28 days of the sending to that body of a notice under *subsection (2)*, may, where it considers that the notice is oppressive, unreasonable or unnecessary, revoke or vary the notice.
- (6) A professional body shall—
- (a) within one month of the establishment day, furnish to the Authority a copy of all professional codes in relation to which it is a relevant professional body,
  - (b) within 28 days of it becoming a relevant professional body in relation to a professional code, furnish to the Authority a copy of that professional code, and
  - (c) within 28 days of the amendment or revocation concerned—
    - (i) notify the Authority of the amendment of a relevant professional code and furnish it with a copy of the code as amended, and
    - (ii) notify the Authority of the revocation of a relevant professional code.
- (7) (a) The Authority shall make available for inspection free of charge to members of

the public in an appropriate format a copy of every professional code furnished to it under *subsection (6)*, other than a code which the Authority has been informed, under *subsection (6)(c)(ii)*, has been revoked.

(b) A copy of a professional code made available under *paragraph (a)* shall state the date on which the code has effect and, where applicable, the date on which the revocation of the code has effect.

(c) Where the Authority has been informed under *subsection (6)(c)(i)* of the amendment of a professional code, a reference in *paragraph (a)* to a professional code is a reference to that code as amended.

(8) This section is without prejudice to any other power of the Authority under this Act.

(9) In this section, “relevant professional body”, in relation to a professional code, means a professional body—

(a) that has adopted that code,

(b) on whose behalf the code has been adopted, or

(c) whose members are, as a condition of their membership of that body, otherwise subject to the code.”.

—An tAire Dlí agus Cirt agus Comhionannais.

**39.** In page 26, line 21, after “may” where it firstly occurs to insert “, after consultation with the professional bodies,”.

—Pádraig Mac Lochlainn.

**40.** In page 26, between lines 22 and 23, to insert the following:

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

—Pádraig Mac Lochlainn.

**41.** In page 26, line 23, after “Authority,” to insert “after consultation with the professional bodies, and”.

—Pádraig Mac Lochlainn.

**42.** In page 28, to delete lines 34 to 36.

—An tAire Dlí agus Cirt agus Comhionannais, Pádraig Mac Lochlainn, Niall Collins.

**43.** In page 29, to delete lines 1 to 3.

—An tAire Dlí agus Cirt agus Comhionannais, Pádraig Mac Lochlainn, Niall Collins.

**44.** In page 29, to delete lines 4 to 8.

—Pádraig Mac Lochlainn.

45. In page 32, to delete lines 3 to 31.

—Niall Collins.

46. In page 32, to delete lines 32 to 38, to delete pages 33 and 34, and in page 35, to delete lines 1 to 6.

—Niall Collins.

47. In page 33, line 10, to delete “1 year” and substitute “2 years”.

—An tAire Dlí agus Cirt agus Comhionannais.

48. In page 34, line 7, to delete “2 years” and substitute “4 years”.

—An tAire Dlí agus Cirt agus Comhionannais.

49. In page 35, lines 25 to 27, to delete all words from and including “Subject” in line 25 down to and including “the” in line 27 and substitute the following:

“The”.

—Niall Collins.

50. In page 45, between lines 7 and 8, to insert the following:

“(i) the act or omission, in the case of a legal practitioner who is a legal executive, is likely to bring the legal executives’ profession into disrepute.”.

—Niall Collins.

51. In page 64, between lines 13 and 14, to insert the following:

“(viii) in the case of a legal executive that the name of the legal executive be struck off the roll of legal executives.”.

—Niall Collins.

52. In page 64, between lines 34 and 35, to insert the following:

“(d) striking the name of a legal practitioner who is a legal executive off the roll of practising legal executives.”.

—Niall Collins.

53. In page 66, to delete lines 4 to 37, to delete pages 67 and 68, and in page 69, to delete lines 1 to 36 and substitute the following:

“79. (1) The Bar Council and the Law Society shall pay to the Authority, in each financial year beginning on 1 January, a levy in the amount determined in accordance with this section and with regulations made by the Authority in accordance with this Act as representing the expenses incurred in the regulation of legal practitioners in the State.

(2) The Authority shall, in the public interest, take all reasonable steps to minimise the costs incurred by it in the exercise of its regulatory powers and functions under this Act. The Authority shall be required to consult on a regular basis with the Minister for Public Expenditure and Reform to achieve that objective.

(3) The Authority may, having consulted with the Bar Council and the Law Society, and

with the consent of the Minister for Public Expenditure and Reform, determine for the purposes of this section the amount of the operating costs and administrative expenses of the Authority that are properly incurred by it under this Act in a financial year (in this section referred to as “approved expenses”).

- (4) The Authority shall endeavour to agree the approved expenses for the relevant financial year with the Bar Council and the Law Society.
- (5) Approved expenses may include—
  - (a) the remuneration (including allowances for expenses, benefits in kind and superannuation benefits) of the Authority and its staff as provided for under this Act,
  - (b) any superannuation contributions paid in respect of the Authority or members of the Authority’s staff out of monies provided by the Oireachtas,
  - (c) fees due to advisers and consultants engaged by the Authority under this Act, and
  - (d) the cost of office premises.
- (6) Approved expenses shall not include (for example: costs of establishing the Authority and the preparation of policy documents for the Government which, the Bar Council agrees with the Law Society, should be paid for by the State and not by the professions).
- (7) The amount of the levy payable in each financial year shall be the amount expended by the Authority in the preceding financial year in respect of approved expenses, and the liability for payment of that amount shall be as follows:
  - (a) 10 per cent of that amount shall be paid by the Bar Council;
  - (b) 10 per cent of that amount shall be paid by the Law Society; and
  - (c) the remaining 80 per cent of that amount shall be paid pro rata by the Bar Council and the Law Society according to the time spent by the Authority dealing with the oversight regulation of, and complaints made in relation to, barristers in the preceding financial year and the time spent dealing with oversight regulation of and complaints made in relation to solicitors in the preceding financial year.
- (8) As soon as practicable after the beginning of each financial year, subject to compliance with the requirements of the preceding subsections of this section, the Authority shall provide the Bar Council and the Law Society with a notice (in this Act referred to as a “levy assessment notice”) specifying—
  - (a) the amount of money expended by the Authority in the preceding financial year in respect of approved expenses,
  - (b) subject to the Schedule of this Act, the number (determined in accordance with regulations (if any) made under the Schedule) of complaints made in relation to barristers in the preceding financial year and the number and complexity of complaints and their financial implications made in relation to solicitors in the preceding financial year, the time spent dealing with such complaints as against barristers and solicitors, respectively, and the time spent dealing with the



oversight regulation of solicitors and barristers provided for under this Act,

- (c) the amount of levy payable by the professional body concerned, and
- (d) the date, determined in accordance with regulations made under this Act, on which the levy becomes payable.

(9) If all or part of the amount specified in a levy assessment notice is not paid on or before the date specified in that notice, interest on the unpaid amount accrues, from that date to the date of payment, calculated at the rate provided for in regulations under this Act.

(10) Subject to *subsection (8)*, the Authority may recover, as a simple contract debt in any court of competent jurisdiction, from the professional body concerned, any amount due and owing by it in respect of the levy imposed by this section.”.

—Pádraig Mac Lochlainn.

**54.** In page 67, between lines 4 and 5, to insert the following:

“(iv) complaints in respect of legal executives.”.

—Niall Collins.

**55.** In page 67, between lines 11 and 12, to insert the following:

“(d) complaints in respect of legal executives.”.

—Niall Collins.

**56.** In page 67, between lines 36 and 37, to insert the following:

“(IV) complaints in respect of legal executives;”.

—Niall Collins.

**57.** In page 68, between lines 21 and 22, to insert the following:

“(IV) complaints in respect of legal executives.”.

—Niall Collins.

**58.** In page 69, between lines 3 and 4, to insert the following:

“(iv) complaints in respect of legal executives,”.

—Niall Collins.

**59.** In page 69, between lines 11 and 12, to insert the following:

“(iv) complaints in respect of legal executives,”.

—Niall Collins.

**60.** In page 70, to delete lines 20 to 26.

—Niall Collins.

61. In page 71, to delete lines 12 to 25.

—Pádraig Mac Lochlainn.

62. In page 71, to delete lines 26 to 28.

—Pádraig Mac Lochlainn.

63. In page 71, line 28, after “partnership.” to insert the following:

“Nothing in this Act shall affect the right of a professional body to regulate the conduct of the members of that body and to make rules of membership for that purpose.”.

—Niall Collins.

64. In page 71, between lines 28 and 29, to insert the following:

**“Professional code not to require barrister to be a member of the Law Library**

85. No professional code shall operate to prevent a practising barrister from sharing any facility, premises or cost of practice, including any capital or operating cost, or to require a practising barrister to be a member of the Law Library or to share in the capital or operating cost of the Law Library or any facility, premises or cost of practice, including any capital or operating cost, with one or more other practising barristers.”.

—Michael McNamara.

65. In page 71, to delete lines 29 to 32.

—Pádraig Mac Lochlainn.

66. In page 71, to delete lines 33 to 35.

—Pádraig Mac Lochlainn.

67. In page 72, to delete lines 1 to 11.

—Pádraig Mac Lochlainn.

68. In page 72, to delete lines 12 to 35.

—Pádraig Mac Lochlainn.

69. In page 72, to delete lines 36 to 38, and in page 73, to delete lines 1 to 19.

—Pádraig Mac Lochlainn.

70. In page 73, to delete lines 20 to 27.

—Pádraig Mac Lochlainn.

71. In page 73, to delete lines 28 to 38, and in page 74, to delete lines 1 to 35.

—Pádraig Mac Lochlainn.

72. In page 74, to delete lines 36 to 40, and in page 75, to delete lines 1 to 8.

—Pádraig Mac Lochlainn.

73. In page 75, to delete lines 9 to 25.  
—Pádraig Mac Lochlainn.
74. In page 75, to delete lines 26 to 33.  
—Pádraig Mac Lochlainn.
75. In page 75, to delete lines 34 to 39, and in page 76, to delete lines 1 to 36.  
—Pádraig Mac Lochlainn.
76. In page 76, to delete lines 37 to 41, and in page 77, to delete lines 1 to 30.  
—Pádraig Mac Lochlainn.
77. In page 77, to delete lines 31 to 40, and in page 78, to delete lines 1 to 13.  
—Pádraig Mac Lochlainn.
78. In page 78, to delete lines 14 to 26.  
—Pádraig Mac Lochlainn.
79. In page 78, to delete lines 27 to 39, and in page 79, to delete lines 1 to 27.  
—Pádraig Mac Lochlainn.
80. In page 79, line 27, after “her.” to insert the following:  
“This report shall be subject to a full debate in both Houses of the Oireachtas following its consideration by the Government.”.  
—Niall Collins.
81. In page 80, line 6, to delete “and” and substitute the following:  
(d) specify any employer to whom he or she provides legal services as part of his or her employment,  
(e) specify any legal or natural person against whom he or she has undertaken not to provide legal services as a barrister,  
(f) specify whether he or she is available to be instructed by a person who is not a solicitor,  
(g) specify whether he or she is available to be instructed in contentious matters.”.  
—Michael McNamara.
82. In page 80, line 15, to delete “date on which this section comes into operation” and substitute “establishment day appointed under *section 6*”.  
—Michael McNamara.

83. In page 112, between lines 11 and 12, to insert the following:

**“Barristers may institute legal proceedings to recover professional fees owed**

143. Any rule of law prohibiting barristers from instituting legal proceedings to recover professional fees due and owing to them is hereby abolished.”.

—Michael McNamara.