

# DÁIL ÉIREANN

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

### LEGAL SERVICES REGULATION BILL 2011 —REPORT

#### *Leasuithe Breise Additional Amendments*

**56a.** In page 68, line 1, to delete “of solicitors on the roll of solicitors” and substitute “of practising solicitors”.

—An tAire Dlí agus Cirt agus Comhionannais.

**59a.** In page 69, to delete lines 26 to 28 and substitute the following:

“(b) a reference to the number of practising solicitors is a reference to the number of solicitors holding a practising certificate in the financial year to which the expenses concerned relate, less the number of such solicitors to whom *section 81* applies.”.

—An tAire Dlí agus Cirt agus Comhionannais.

**61a.** In page 71, to delete lines 16 to 19 and substitute the following:

““contentious matter” means a matter that arises in, and that relates to the subject matter of, proceedings before any court, tribunal or other body or person before which the respective legal rights and obligations of two or more parties are determined, to which the person instructing the barrister concerned is a party;”.

—An tAire Dlí agus Cirt agus Comhionannais.

**61b.** In page 71, line 24, to delete “persons” and substitute “individuals”.

—An tAire Dlí agus Cirt agus Comhionannais.

**66a.** In page 71, after line 35, to insert the following:

#### **“Notification of Authority of commencement, cessation of provision of legal services by a legal partnership**

**87.** (1) A legal partnership that intends to provide legal services—

- (a) shall notify the Authority, in accordance with *subsection (3)*, of that fact, and
- (b) shall not provide such services until it has complied with *paragraph (a)*.

(2) A legal partnership that ceases providing legal services shall—

- (a) notify the Authority in accordance with *subsection (3)* of that fact, and

- (b) having complied with *paragraph (a)*, shall not provide legal services without providing the Authority with a further notification under *subsection (1)*.
- (3) A notification under *subsection (1)* or *(2)* shall be in writing and in such form as may be prescribed.”.

—An tAire Dlí agus Cirt agus Comhionannais.

**66b.**In page 71, after line 35, to insert the following:

**“Legal partnership to have professional indemnity insurance**

- 88.** (1) A legal partnership shall not provide legal services unless there is in force, at the time of the provision of such services, a policy of professional indemnity insurance which adequately covers the legal partnership in the provision of those legal services.
- (2) This section is without prejudice to any obligation of a legal partnership under *section 37* or any regulations made under it.
- (3) For the purpose of *subsection (1)*, a policy of professional indemnity insurance referred to in that subsection shall not adequately cover a legal partnership in the provision of legal services unless it complies with *section 37* and any applicable regulations made under it.
- (4) In this section, “professional indemnity insurance” means a policy of indemnity insurance against losses arising from claims in respect of any description of civil liability incurred—
- (a) by a legal partnership arising from the provision of legal services, or
  - (b) by a partner, employee or agent or former partner, employee or agent of the legal partnership arising from such provision.”.

—An tAire Dlí agus Cirt agus Comhionannais.

**68a.**In page 72, line 24, to delete “The following” and substitute “Subject to *subsection (5)*, the following”.

—An tAire Dlí agus Cirt agus Comhionannais.

**68b.**In page 72, line 35, to delete “solicitors.” and substitute “solicitors;”.

—An tAire Dlí agus Cirt agus Comhionannais.

**68c.**In page 72, between lines 35 and 36, to insert the following:

- “(d) a person who is an unqualified person;
- (e) a person who, having been a qualified barrister, is disbarred (other than a person who has procured himself to be disbarred with a view to being admitted as a solicitor);
- (f) a person who, being a solicitor in another jurisdiction, is not a solicitor qualified to practice in that jurisdiction by reason of a sanction equivalent to a sanction specified in *subsection (7)* having been imposed on him or her in accordance with the law of that jurisdiction;

- (g) a person who, having been a barrister in another jurisdiction, has been disbarred in accordance with the law of that jurisdiction;
  - (h) a person who 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;
  - (i) a person who is convicted on indictment of an offence;
  - (j) a person who is convicted of an offence involving fraud or dishonesty or breach of trust;
  - (k) a person who is convicted of an offence involving money laundering or terrorist financing (both within the meaning of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010);
  - (l) a person who is an undischarged bankrupt;
  - (m) a person who is insolvent and has entered into a Debt Settlement Arrangement or a Personal Insolvency Arrangement (both within the meaning of section 2 of the Personal Insolvency Act 2012) with his or her creditors;
  - (n) a person who is convicted outside the State for an offence consisting of acts or omissions that, if done or made in the State, would constitute an offence triable on indictment;
  - (o) a person who is disqualified under the law of another state (whether pursuant to an order of a judge or a tribunal or otherwise) from being appointed or acting as a director or secretary of a body corporate or an undertaking.
- (5) The High Court may, on application to it by a person to whom *subsection (4)* (other than *paragraphs (a) to (c)* of that subsection) applies, grant the person an order permitting him or her to be a partner in a multi-disciplinary practice where it is of the opinion that it is reasonable and proportionate to do so, having regard to the circumstances of the person, including the circumstances that gave rise to *subsection (4)* applying to him or her.
- (6) Nothing in this section shall be construed as permitting investment in a multi-disciplinary practice by a person other than an individual.
- (7) In this section, “unqualified person” means a solicitor who is not a solicitor qualified to practise, within the meaning of the Solicitor’s Act 1954, by reason of—
- (a) his or her name having been struck off the roll of solicitors,
  - (b) his or her suspension from practice,
  - (c) his or her having had the issue to him or her of a practising certificate refused under section 49 of that Act,
  - (d) his or her having his or her practising certificate suspended under section 58 of the Solicitors (Amendment) Act 1994, or
  - (e) his or her having given to the High Court an undertaking not to practise as a solicitor.”.

—An tAire Dlí agus Cirt agus Comhionannais.

**69a.** In pages 72, line 38 and in page 73, line 1, to delete “or an employee of”.

—An tAire Dlí agus Cirt agus Comhionannais.

**74a.** In page 75, line 30, after “of” where it secondly occurs to insert “a legal partnership or, as the case may be,”.

—An tAire Dlí agus Cirt agus Comhionannais.

**76a.** In page 77, between lines 30 and 31, to insert the following:

**“Regulations on operation of legal partnerships and multi-disciplinary practices**

**97.** (1) Subject to this section, the Authority may make regulations in relation to the operation and management of—

- (a) legal partnerships, and
- (b) multi-disciplinary practices.

(2) The Authority shall—

- (a) upon the commencement of *section 84* or as soon as practicable thereafter, make regulations under *subsection (1)(a)*, and
- (b) upon the commencement of *section 86* or as soon as practicable thereafter, make regulations under *subsection (1)(b)*.

(3) Without prejudice to the generality of *subsection (1)*, regulations under that subsection may provide for—

- (a) the standards to be observed in the provision by the practice of services to clients, including standards relating to:
  - (i) the professional and ethical conduct of persons providing legal services to clients;
  - (ii) the obligation of such persons to keep the affairs of clients confidential;
  - (iii) the provision of information to a client in relation to the duties owed by the practice to him or her,
- (b) the rights, duties and responsibilities of a practice in respect of moneys received from clients,
- (c) the management and control of the practice so as to ensure that:
  - (i) the standards referred to in *paragraph (a)* are at all times observed;
  - (ii) it has in place appropriate systems of control, including systems for risk management and financial control;
  - (iii) where, in the provision by it of services, a conflict of interest or potential conflict of interest arises, this is dealt with adequately and in accordance with any relevant code of conduct or professional codes;

- (iv) its obligations under this Act and regulations made under it are complied with,
  - (d) the maintenance by the practice of records,
  - (e) the regulation of the names that may be used by a practice,
  - (f) the regulation of the advertising by the practice of its services.
- (4) Without prejudice to the generality of *subsection (1)*, regulations under *subsection (1) (b)* may—
- (a) specify procedures that are to be included in the written procedures referred to in *section 91(1)*, and
  - (b) provide for:
    - (i) the type or types of bank accounts that may be opened and kept by a multi-disciplinary practice, and the opening and keeping of such accounts;
    - (ii) the accounting records to be maintained by a legal practitioner who is a partner in or an employee of a multi-disciplinary practice arising from the provision by him or her of legal services, including the minimum period or periods for which accounting records shall be retained by a legal practitioner during the period of, and following the conclusion of, the provision of legal services;
    - (iii) the keeping by a legal practitioner referred to in *subparagraph (ii)* of accounting records containing particulars of and information as to moneys received, held, controlled or paid by him or her arising from the provision by him or her of legal services, for or on account of a client or any other person or himself.
- (5) In making regulations under this Part, the Authority shall have regard to the objectives specified in *section 12(4)* and to the following:
- (a) the need to ensure that the provision by a practice of legal services to its clients is of a standard that it is reasonable to expect of a legal practitioner in the provision of those services;
  - (b) the need to ensure that a practice is operated or managed in such a way as to ensure that a legal practitioner who is a partner of or an employee in that practice has, in the provision by him or her of legal services, adequate regard to—
    - (i) the codes of practice and professional codes that are applicable to him or her, and
    - (ii) the professional principles specified in *section 12(5)*;
  - (c) the need to ensure that the interests of clients of practices are protected and that the duties owed to them by practices are complied with and, in particular, that the activities of a practice do not expose the interests of a client to risk or pose a risk to monies received by it from a client;
  - (d) the need, in the case of a multi-disciplinary practice, to ensure that the provision

by it of services other than legal services does not have the effect of lowering the standard referred to in *paragraph (a)* or the regard by legal practitioners referred to in *paragraph (b)* to the matters specified in that paragraph;

- (e) the need to ensure that public confidence in practices is maintained.
- (6) In *subsections (3) and (5)*, “practice” means a legal partnership or a multi-disciplinary practice.”.

—An tAire Dlí agus Cirt agus Comhionannais.

**76b.** In page 77, to delete lines 31 to 40, and in page 78, to delete lines 1 to 13 and substitute the following:

**“Authority to maintain register of legal partnerships and multi-disciplinary practices**

- 98.** (1) The Authority shall maintain a register of—
- (a) legal partnerships that have notified it in accordance with *section 87(1)(a)\**, and
  - (b) multi-disciplinary practices that have notified it in accordance with *section 87(1)(a)*.
- (2) Where a legal partnership or a multi-disciplinary practice referred to in *subsection (1)* notifies the Authority in accordance with *section 87(2)(a)\** or *87(2)(a)*, as the case may be, the Authority shall remove the name of that legal partnership or multi-disciplinary practice from the register referred to in that subsection.
- (3) The Authority shall make the register referred to in *subsection (1)* available in an appropriate format to members of the public for inspection free of charge.”.

—An tAire Dlí agus Cirt agus Comhionannais.

[\*This is a reference to the section proposed to be inserted by amendment 66a]

**77a.** In page 78, to delete lines 14 to 26 and substitute the following:

**“Public consultation on operation etc., of legal partnerships**

- 98.** (1) The Authority—
- (a) immediately following its establishment, shall, and
  - (b) periodically thereafter, may,
- engage in a public consultation process in relation to the regulation, monitoring and operation of legal partnerships.
- (2) The Authority shall conduct its initial consultation referred to in *subsection (1)(a)* and report to the Minister within a period of 6 months following its establishment.
- (3) Following any consultation conducted under *subsection (1)*, and having regard to any submissions duly received, the Authority shall prepare a report to the Minister setting out any recommendations in relation to the matters specified in *subsection (1)*.
- (4) The Minister shall cause copies of any such report to be laid before each House of the

Oireachtas within 30 days of its receipt by him or her.”.

—An tAire Dlí agus Cirt agus Comhionannais.

**78a.** In page 78, between lines 26 and 27, to insert the following:

**“Report on operation etc., of multi-disciplinary practices**

**99.** (1) The Authority shall, no later than 6 months following the establishment day, make a report (“initial report”) to the Minister on the establishment, regulation, monitoring, operation and impact of multi-disciplinary practices in the State.

(2) The initial report shall include information on—

(a) the operation of similar practices in other jurisdictions, including the—

(i) length of time in which such practices have been operating,

(ii) legislative and regulatory measures relating to such practice that are in place in the jurisdictions concerned, and the effect of those measures, and

(iii) impact of the operation of the practices on the matters referred to in *paragraph (d)*,

(b) the likely consequences, including the changes to the operation of existing models of legal practice in the State, of the operation in the State of multi-disciplinary practices,

(c) the likely impact of the operation of multi-disciplinary practices in the State on—

(i) legal costs,

(ii) the provision of legal services to consumers, and

(iii) the access of persons to legal practitioners,

and

(d) the likely effect of the operation of multi-disciplinary practices in the State on the achievement of the objectives specified in *section 12(4)*.

(3) The Authority shall engage in a public consultation process in relation to the matters specified in *subsection (1)* and, not later than 6 months after the making to the Minister of the initial report, make a report (“final report”) to the Minister on those matters.

(4) The final report shall—

(a) have regard to the information contained in the initial report, and to any submissions received in the course of the public consultation under *subsection (3)*, and

(b) set out the recommendations of the Authority in relation to the establishment, regulation, monitoring and operation of multi-disciplinary practices in the State.

(5) The Minister shall cause copies of the initial report and the final report to be laid before each House of the Oireachtas within 30 days of its receipt by him or her.”.

—An tAire Dlí agus Cirt agus Comhionannais.

**80a.** In page 79, between lines 27 and 28, to insert the following:

**“Review of operation of this Part**

**100.** (1) The Authority shall—

- (a) not later than 4 years after the commencement of *section 84*, and every 5 years thereafter, commence a review of the operation of this Part, insofar as it relates to legal partnerships, and
- (b) not later than 1 year after the commencement of the review referred to in *paragraph (a)*, make a report to the Minister on its findings and conclusions resulting from that review.

(2) The Authority shall—

- (a) not later than 2 years after the commencement of *section 86*, and every 5 years thereafter, commence a review of the operation of this Part, insofar as it relates to multi-disciplinary practices, and
  - (b) not later than 1 year after the commencement of the review referred to in *paragraph (a)*, make a report to the Minister on its findings and conclusions resulting from that review.
- (3) A report under *subsection (1)(b)* or *(2)(b)* may include such recommendations (including recommendations for the amendment of any provision of this Part that is the subject of the review) as the Authority considers necessary.
- (4) The Minister shall cause copies of any report under *subsection (1)(b)* or *(2)(b)* to be laid before each House of the Oireachtas within 30 days of its receipt by him or her.”.

—An tAire Dlí agus Cirt agus Comhionannais.

**82a.** In page 87, to delete lines 11 to 19 and substitute the following:

**“Review of scales of fees**

**110.** The Superior Courts Rules Committee shall, whenever it considers it appropriate to do so and, in any case, not less than once every 2 years, review the scales of fees for contentious and non-contentious business set out in Appendix W to the Rules of the Superior Courts.”.

—An tAire Dlí agus Cirt agus Comhionannais.

**82b.** In page 88, between lines 37 and 38, to insert the following:

“(6) A Legal Costs Adjudicator shall provide such information on his or her activities as the Chief Legal Costs Adjudicator may, for the purpose of discharging his or her functions under *sections 111* and *112* and this section, require.”.

—An tAire Dlí agus Cirt agus Comhionannais.

**82c.** In page 90, to delete lines 26 and 27 and substitute the following:

“(c) shall, subject to *paragraph (b)*, be eligible for re-appointment or to have the term of appointment extended, but shall not hold office for periods the aggregate of which exceeds 10 years.”.

—An tAire Dlí agus Cirt agus Comhionannais.

**82d.** In page 99, line 7, after “direct,” to insert “including the manner in which notice is to be given.”.

—An tAire Dlí agus Cirt agus Comhionannais.

**82e.** In page 108, line 20, to delete “at the Bar”.

—An tAire Dlí agus Cirt agus Comhionannais.

**82f.** In page 108, line 23, to delete “at the Bar”.

—An tAire Dlí agus Cirt agus Comhionannais.

**82g.** In page 108, line 33, to delete “subsection (1)(b) and section 142,” and substitute “*subsection (1)(b), section 142 and section 143\**”.

—An tAire Dlí agus Cirt agus Comhionannais.

[\*This is a reference to section proposed to be inserted by amendment 82j]

**82h.** In page 109, to delete lines 23 and 24.

—An tAire Dlí agus Cirt agus Comhionannais.

**82i.** In page 110, to delete lines 4 to 6 and substitute the following:

“(ii) either or both of the following—

(I) a capacity for advocacy, or

(II) a capacity for specialist litigation or a specialist knowledge of an area of law.”.

—An tAire Dlí agus Cirt agus Comhionannais.

**82j.** In page 112, between lines 11 and 12, to insert the following:

**“Solicitor granted Patent while barrister**

**143.** A solicitor to whom, before the commencement of this section and while he or she was a barrister, a Patent was granted, shall be entitled to use the title of “Senior Counsel”.”.

—An tAire Dlí agus Cirt agus Comhionannais.

**84.** In page 113, line 6, to delete “in court” and substitute “in a court, tribunal or forum for arbitration”.

—An tAire Dlí agus Cirt agus Comhionannais.

85. In page 113, line 13, to delete “in court” and substitute “in a court, tribunal or forum for arbitration”.

—An tAire Dlí agus Cirt agus Comhionannais.

86. In page 113, lines 17 and 18, to delete “part-time employment, but does not include employment by a solicitor” and substitute “part-time employment”.

—An tAire Dlí agus Cirt agus Comhionannais.

87. In page 117, lines 5 and 6, to delete “the Authority may, with the consent of the Minister, by regulation provide” and substitute “the Authority may by regulation provide”.

—An tAire Dlí agus Cirt agus Comhionannais.

88. In page 118, line 18, to delete “practice” and substitute “practise”.

—An tAire Dlí agus Cirt agus Comhionannais.

89. In page 118, line 22, to delete “as the case may be;” and substitute “as the case may be.”.

—An tAire Dlí agus Cirt agus Comhionannais.

90. In page 118, to delete lines 23 to 25.

—An tAire Dlí agus Cirt agus Comhionannais.