

DÁIL ÉIREANN

AN BILLE UM RIALÁIL SEIRBHÍSÍ DLÍ, 2011
[BILLE DÁIL ARNA LEASÚ AG AN SEANAD]

LEGAL SERVICES REGULATION BILL 2011
[DÁIL BILL AMENDED BY THE SEANAD]

Leasuithe Ionadacha
Substitute Amendments

[The page and line references in this list of amendments
are to the text of the Bill as passed by Dáil Éireann]

SECTION 40

61. In page 41, between lines 22 and 23, to insert the following:

“Complaints under *Part 5**

42. (1) A client of a legal practitioner, or person acting on behalf of such a client, may make a complaint to the Authority in respect of a legal practitioner where the client considers that—
- (a) the legal services provided to the client by the legal practitioner were or are of an inadequate standard, or
 - (b) an amount of costs sought by the legal practitioner in respect of legal services provided to the client by the legal practitioner was or is excessive.
- (2) A person may make a complaint to the Authority in respect of a legal practitioner where the person considers that an act or omission of the legal practitioner constitutes misconduct.
- (3) Subject to *section 43***, on or after the coming into operation of this Part, a complaint applies may be made to the Authority only.
- (4) An officer of the Authority, having considered an interim report or a report of an inspector under *Part 3*, may make a complaint under *subsection (2)* in respect of the legal practitioner concerned.
- (5) Subject to *subsection (7)*, where the Law Society, in the performance by it of its functions under the *Solicitors Acts 1954 to 2015*, forms the opinion that an act or omission of a solicitor constitutes misconduct, it shall, in such manner as may be prescribed, notify the Authority of its opinion, and such notification shall be deemed to be a complaint made by the Law Society under *subsection (2)*.
- (6) *Subsection (6)* shall not apply where—
- (a) the opinion of the Law Society is that the act or omission concerned constitutes a breach of the Solicitors Accounts Regulations, or

[SECTION 40]

- (b) the Law Society is investigating, or proposes to investigate, a suspected breach of the Solicitors Accounts Regulations and is of the opinion that the circumstances of the act or omission means that it should be investigated by it as part of the investigation of the suspected breach.
- (7) The Authority, on receipt of a complaint that is made in respect of a solicitor (other than a complaint made by the Law Society), shall notify the Law Society of the complaint, which notification shall be accompanied by any documents relating to the complaint that are submitted by the complainant.
- (8) Nothing in this section shall be construed as affecting the power of the Authority to investigate an act or omission of a legal practitioner where no complaint has been received by it in relation to that legal practitioner.
- (9) This section and *section 43*** shall not operate to prevent the Authority or a person who is aggrieved by an act or omission of a legal practitioner seeking assistance from another person with a view to resolving the matter to which a complaint relates.
- (10) A complaint shall be made in writing and in accordance with this Part and regulations under *section 46****.
- (11) This section is subject to *section 49*****.”.

[*This is a reference to the new Part proposed to be inserted by amendment 59.]

**This is a reference to the section proposed to be inserted by amendment 62.]

***This is a reference to the section proposed to be inserted by amendment 65.]

****This is a reference to the section proposed to be inserted by amendment 68.]

Amendments to Amendment No. 61

1. In subsection (5) of section 42 proposed to be inserted by Seanad Amendment no. 61 to delete “subsection (7)” and substitute “subsection (6)”.
2. In subsection (6) of section 42 proposed to be inserted by Seanad Amendment no. 61 to delete “subsection (6)” and substitute “subsection (5)”.

An tAire Dlí agus Cirt agus Comhionannais.

[This amendment is in substitution for amendment 61 on the principal list of amendments dated 4 December 2015.]

76. In page 41, between lines 22 and 23, to insert the following:

“56. An agreement by a legal practitioner who is the subject of a complaint to attempt to resolve the complaint in the manner referred to in *section 51**, *52*** or *54**** shall not be taken as an admission of any allegation of an act or omission by the legal practitioner to which *paragraph (a) or (b) of section 42(1)*****, or of misconduct insofar as such misconduct consists of an act or omission of the legal practitioner that the legal services provided by the practitioner were, to a substantial degree, of an inadequate standard.”.

[*This is a reference to the section proposed to be inserted by amendment 70.]

**This is a reference to the section proposed to be inserted by amendment 72.]

[SECTION 40]

[***This is a reference to the section proposed to be inserted by amendment 74.]

[****This is a reference to the section proposed to be inserted by amendment 61.]

Amendment to Amendment No. 76

- I. To delete the section 56 proposed to be inserted by Seanad amendment number 76 and substitute the following:

“56. An agreement by a legal practitioner, who is the subject of a complaint, to attempt to resolve the complaint in the manner referred to in *section 51**, *52*** or *54**** shall not be taken as an admission—

(a) of any allegation contained in a complaint made under *paragraph (a) or (b) of section 42(1)***** regarding the legal practitioner, or

(b) of any allegation of misconduct referred to in *section 42(2)*****.”

[*This is a reference to the section proposed to be inserted by amendment 70.]

**This is a reference to the section proposed to be inserted by amendment 72.]

***This is a reference to the section proposed to be inserted by amendment 74.]

****This is a reference to the section proposed to be inserted by amendment 61.]

[This amendment is in substitution for amendment 76 on the principal list of amendments dated 4 December 2015.]

89. In page 41, between lines 22 and 23, to insert the following:

“Regulations relating to Disciplinary Tribunal

69. (1) The Disciplinary Tribunal may make Regulations, consistent with this Act, regulating—

(a) the making of applications to the Disciplinary Tribunal under this Act, and

(b) the proceedings of the Disciplinary Tribunal under this Act.

(2) Regulations made under *subsection (1)* may make provision for the parties, other than the Authority, and the legal practitioner concerned, who may make submissions to the Disciplinary Tribunal.

(3) The Disciplinary Tribunal, in making regulations under *subsection (1)*, shall have as objectives that the manner of making applications, and the conduct of proceedings, be as informal as is consistent with the principles of fair procedures, and that undue expense is not likely to be incurred by any party who has an interest in the application.

(4) The Disciplinary Tribunal may consider and determine an application to it under this Part on the basis of affidavits and supporting documentation and records where the legal practitioner, and the Authority consent.”

Amendment to Amendment No. 89

[SECTION 40]

- I. To delete subsection (2) of the section 69 proposed to be inserted by Seanad amendment number 89 and substitute the following:

- “(2) Regulations made under *subsection (1)* may make provision for—
- (a) the procedures to be followed in relation to the matters referred to in *subsection (1)*, and
 - (b) the parties, other than the Authority, the complainant and the legal practitioner concerned, who may make submissions to the Disciplinary Tribunal.”.

An tAire Dlí agus Cirt agus Comhionannais.

[*This amendment is in substitution for amendment 89 on the principal list of amendments dated 4 December 2015.*]

90. In page 41, between lines 22 and 23, to insert the following:

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

70. (1) The Disciplinary Tribunal shall, for the purposes of any inquiry under this Part, have the powers, rights and privileges vested in the High Court or a judge thereof on the hearing of an action, in respect of—
- (a) the enforcement of the attendance of witnesses and their examination on oath or on affirmation,
 - (b) the compelling of the production of documents, and
 - (c) the compelling of the discovery under oath or under affirmation of documents, and a summons signed by a member of the Disciplinary Tribunal may be substituted for and shall be equivalent to any formal procedure capable of being issued in an action for enforcing the attendance of witnesses and compelling the production and the discovery under oath or under affirmation of documents.
- (2) The Disciplinary Tribunal may require the Authority and the legal practitioner concerned to submit in writing an outline of the evidence expected to be given by each of the witnesses whom they propose to have summoned to attend the hearing.
- (3) The Disciplinary Tribunal may, if of opinion that the evidence expected to be given by any witness whom it is proposed to have summoned to attend the hearing is irrelevant or does not add materially to that proposed to be given by other witnesses and that accordingly the attendance of the witness at the inquiry is likely to give rise to unnecessary delay or expense, so inform the Authority or the legal practitioner concerned, as the case may be, and bring to the attention of the Authority or legal practitioner the provisions of *subsection (4)*.
- (4) On the completion of the inquiry the Disciplinary Tribunal, whether or not it has acted in accordance with *subsection (3)*, may, if of opinion that the attendance of any witness summoned at the request of the Authority was unnecessary and thereby involved the witness in avoidable expense, by order direct that the Authority or the legal practitioner concerned, as the case may be, shall pay a specified amount or

[SECTION 40]

amounts not exceeding €1,000 to the witness in respect of the expense incurred, and the witness may recover the sum or sums from the Authority or legal practitioner, as the case may be, as a simple contract debt.

- (5) Before making an order under *subsection (4)*, the Disciplinary Tribunal shall notify in writing the Authority or the legal practitioner concerned that it proposes to do so and shall consider any representations that may be made to it in writing by the person concerned within 14 days after the notification.
- (6) The Authority or the legal practitioner concerned in respect of whom an order has been made under *subsection (4)* may appeal to the High Court against the order within 21 days of the receipt by him or her of notification of the making of the order, and the Court may make such order on the appeal as it thinks fit.
- (7) If a person—
 - (a) on being duly summoned as a witness before the Disciplinary Tribunal, without just cause or excuse disobeys the summons,
 - (b) being in attendance as a witness before the Disciplinary Tribunal, refuses to take an oath or make an affirmation when required by the Disciplinary Tribunal to do so, or to produce or discover under oath or under affirmation any documents in his or her possession or under his or her control or within his or her procurement required by the Disciplinary Tribunal to be produced or discovered under oath or under affirmation by him or her, or to answer any question to which the Disciplinary Tribunal may require an answer,
 - (c) wilfully gives evidence to the Disciplinary Tribunal which is material to its inquiry which he or she knows to be false or does not believe to be true,
 - (d) by act or omission, obstructs or hinders the Disciplinary Tribunal in the performance of its functions, or
 - (e) fails, neglects or refuses to comply with the provisions of an order made by the Disciplinary Tribunal,the person shall be guilty of an offence.
- (8) A witness before the Disciplinary Tribunal shall be entitled to the same immunities and privileges as if he or she were a witness before the High Court.
- (9) A person guilty of an offence under this section shall be liable—
 - (a) on summary conviction, to a class B fine or to imprisonment for a term not exceeding 6 months or to both, or
 - (b) on conviction on indictment, to a fine not exceeding €30,000 or to imprisonment for a term not exceeding 2 years or to both.
- (10) Section 13 of the Criminal Procedure Act 1967 shall apply in relation to an offence under this section as if, in lieu of the penalties specified in subsection (3) of that section, there were specified therein the penalties provided for by *subsection (9)*, and the reference in subsection (2)(a) of that section to the penalties provided for in subsection (3) of that section shall be construed accordingly.

[SECTION 40]

- (11) A reference in this section and *section 71** to the Authority shall be deemed, in the case of an inquiry the application for which was made by the Law Society under *section 67(d)***, to include a reference to the Law Society.”.

[*This is a reference to the section proposed to be inserted by amendment 91 on the principal list of amendments dated 4 December 2015.]

[**This is a reference to the section proposed to be inserted by amendment 87 on the principal list of amendments dated 4 December 2015.]

Amendment to Amendment No. 90

- I. In subsection (4) of the section 70 proposed to be inserted by Seanad amendment number 90, in the third line of that subsection, after “Authority” to insert “or the legal practitioner concerned”.

An tAire Dlí agus Cirt agus Comhionannais.

[This amendment is in substitution for amendment 90 on the principal list of amendments dated 4 December 2015.]

95. In page 41, between lines 22 and 23, to insert the following:

“Consideration of matter by High Court where referred by Disciplinary Tribunal

75. (1) Where the Disciplinary Tribunal makes a recommendation to the High Court under *section 72(2)** and the legal practitioner concerned appeals in accordance with *section 73(3)*** against the determination of misconduct, the Court shall first determine the appeal.

- (2) In an appeal under *section 73(3)***, the High Court may—

- (a) confirm the determination of the Disciplinary Tribunal, or
(b) determine that the act or omission the subject of the inquiry does not constitute misconduct.

- (3) Where—

- (a) the legal practitioner concerned does not appeal under *section 73(3)*** the determination of the Disciplinary Tribunal,
(b) the High Court confirms under *subsection (2)* the determination of the Disciplinary Tribunal, or
(c) the High Court makes a decision referred to in *subsection (3)(b)(ii)* or *(5)(c)* of *section 74****,

the Court shall, having considered (where applicable) the recommendation of the Disciplinary Tribunal under *section 72(2)** and given each party who was a party participating in the inquiry of the Disciplinary Tribunal an opportunity to appear to make submissions in connection with the matter, decide upon the sanction to be imposed on the legal practitioner.

- (4) The sanction referred to in *subsection (3)* may be—

[SECTION 40]

- (a) one or more of the sanctions which the Disciplinary Tribunal could impose under *section 72(1)**, or
 - (b) the making of an order under *subsection (6)*.
- (5) Before imposing a sanction under *subsection (3)*, the High Court may, if it thinks fit, remit the case to the Disciplinary Tribunal to take further evidence for submission to it and to make a supplementary report, and the Court may adjourn the hearing of the matter pending the submission to it of such further evidence and the making of such supplementary report.
- (6) In imposing a sanction under *subsection (3)*, the High Court shall take account of any finding of misconduct on the part of the legal practitioner concerned previously made by the Disciplinary Tribunal and not rescinded by the Court and of any order made by the Court under this Act or under the *Solicitors Acts 1954 to 2015*.
- (7) The Court, under this subsection, may by order direct one or more than one of the following:
- (a) that the legal practitioner be censured or that he or she be censured and required to pay an amount of money to the Authority or, in the case of a legal practitioner who is a solicitor, to the Compensation Fund, as the Court considers appropriate;
 - (b) that the legal practitioner be restricted as to the type of work which he or she may engage in, for such period as the Court considers appropriate and subject to such terms and conditions as the Court considers appropriate;
 - (c) that the legal practitioner be prohibited from practising as a legal practitioner otherwise than as an employee, and subject to such terms and conditions as the Court considers appropriate;
 - (d) that the legal practitioner be suspended from practice as a legal practitioner for a specified period and subject to such terms and conditions as the Court considers appropriate;
 - (e) where the legal practitioner is a barrister, that the Authority, in accordance with *Part 9*, strike the name of the person off the roll of practising barristers and inform the Chief Justice and the Honorable Society of King's Inns of the fact;
 - (f) where the legal practitioner is a solicitor, that the name of the solicitor be struck off the roll of solicitors;
 - (g) in the case of a legal practitioner to whom a Patent has been granted, that the Authority make an application referred to in *section 148(2)* in respect of that grant;
 - (h) that the legal practitioner do one or more than one of the following:
 - (i) take, at his or her own expense, such other action in the interests of the complainant as the Court may specify;
 - (ii) pay a sum as restitution or part restitution to any aggrieved party, without prejudice to any legal right of such party;

[SECTION 40]

- (iii) pay the whole or a part of the costs of the Disciplinary Tribunal or of any person making submissions to it or appearing before it, in respect of the inquiry concerned (which costs shall be assessed by a Legal Costs Adjudicator in default of agreement);
- (i) where the legal practitioner is a solicitor:
 - (i) that a specified bank shall furnish any information in its possession that the Law Society may require relating to any aspect of the financial affairs of the practice of the solicitor;
 - (ii) that the solicitor shall swear an affidavit disclosing all information relating to or contained in accounts, held in his or her own name or in the name of his or her firm or jointly with third parties with any bank within a specified duration of time, to be fixed by the Court;
 - (iii) that the solicitor make restitution to any aggrieved party the Court thinks fit;
 - (iv) on the application of the Law Society or the Authority, that the solicitor swear an affidavit (within a specified duration of time to be fixed by the Court) disclosing all information as to his or her assets either then in his or her possession or control or within his or her procurement and, if no longer in his or her possession or control or within his or her procurement, his or her belief as to the present whereabouts of those assets;
 - (v) that the solicitor make himself or herself available before the Court on a specified day and at a specified time for oral examination under oath or under affirmation in relation to the contents of any affidavit of assets sworn by him or her pursuant to *subparagraph (iv)*;
 - (vi) on the application of the Law Society or the Authority and where it is shown that the conduct of the solicitor or of any clerk or servant of that solicitor arising from that solicitor's practice as a solicitor has given or is likely to give rise to the making by the Law Society of a grant or grants out of the Compensation Fund, direct that the solicitor shall not reduce his assets below a certain specified amount or value unless the Court otherwise directs;
 - (vii) on the application of the Law Society or the Authority, the delivery to any person appointed by the Law Society or Authority of all or any documents in the possession or control or within the procurement of the solicitor arising from his practice as a solicitor;
 - (viii) either—
 - (I) that no bank shall, without leave of the Court, make any payment out of an account in the name of the solicitor or his firm, or
 - (II) that a specified bank shall not without leave of the Court, make any payment out of any account in the name of the solicitor or his or her firm;
 - (ix) that the solicitor shall not attend at the place of business of his or her practice as a solicitor unless otherwise permitted by the Court;

[SECTION 40]

- (x) that the solicitor shall not represent himself or herself as having, or hold himself or herself out as having, any connection with his or her former practice as a solicitor, or permit any other person to so represent that solicitor, unless otherwise permitted by the Court.
- (8) In making an order under *subsection (6)*, the Court may, in addition—
 - (a) make such order as to costs incurred in the proceedings before it and the Legal Practitioners Disciplinary Tribunal as the Court thinks fit;
 - (b) make an ancillary order in relation to the matter which the Court thinks fit.
- (9) In this section, “Patent” has the same meaning as it has in *Part 12*, and includes a Patent granted in the State before the coming into operation of this section.”.

[*This is a reference to the section proposed to be inserted by amendment 92.]

**This is a reference to the section proposed to be inserted by amendment 93.]

***This is a reference to the section proposed to be inserted by amendment 94.]

Amendment to Amendment No. 95

1. In subsection (4)(b) of section 75 proposed to be inserted by Seanad Amendment no. 95 to delete “subsection (6)” and substitute “subsection (7)”.

An tAire Dlí agus Cirt agus Comhionannais.

[This amendment is in substitution for amendment 95 on the principal list of amendments dated 4 December 2015.]

98. In page 41, between lines 22 and 23, to insert the following:

“Orders made by High Court or determinations made by Authority

78. (1) A copy of every decision or order made by the High Court under *section 74** or *75*** and any determination made by the Disciplinary Tribunal under *sections 71**** and *72***** shall be furnished to the registrar of solicitors in the case of an order relating to a practising solicitor or and to the Honorable Society of King’s Inns in the case of an order relating to a practising barrister.
- (2) Where an order—
 - (a) striking the name of a legal practitioner who is a solicitor off the roll of solicitors,
 - (b) striking the name of a legal practitioner who is a barrister off the roll of practising barristers, or
 - (c) suspending a legal practitioner from practice,is made by the High Court under *section 74** or *75***, the Authority shall as soon as practicable thereafter cause a notice stating the effect of the operative part of the order to be published in *Iris Oifigiúil* and shall also cause the notice to be published in such other manner as the Authority may consider appropriate.
- (3) Where a matter is determined by the Disciplinary Tribunal in accordance with *section 72(1)***** and the time for lodging an appeal has expired the Authority shall arrange

[SECTION 40]

for the publication of—

- (a) the determination,
- (b) the nature of the misconduct,
- (c) the sanction imposed, and
- (d) the name of the legal practitioner concerned.

(4) Where the High Court makes a decision under—

- (a) *section 74(3)(b)**,
- (b) *section 74(4)** (other than *section 74(4)(b)**),
- (c) *section 75*** (other than *section 75(2)(b)***),

the Authority shall arrange for the publication of—

- (i) the decision,
- (ii) the nature of the misconduct,
- (iii) the sanction imposed, and
- (iv) the name of the legal practitioner concerned.”.

[*This is a reference to the section proposed to be inserted by amendment 94.]

**This is a reference to the section proposed to be inserted by amendment 95.]

***This is a reference to the section proposed to be inserted by amendment 91.]

****This is a reference to the section proposed to be inserted by amendment 92.]

Amendment to Amendment No. 98

- I. In subsection (1) of section 78 proposed to be inserted by Seanad Amendment no. 98, in the second last line to delete “and”.

An tAire Dlí agus Cirt agus Comhionannais

[This amendment is in substitution for amendment 98 on the principal list of amendments dated 4 December 2015.]

SECTION 100

193. In page 83, line 19, to delete “maintained by a legal practitioner” and substitute “maintained (or cause to be maintained) by a legal practitioner”.

Amendment to Amendment No. 193

- I. In the text proposed to be inserted by Seanad Amendment no. 193 to delete “cause” and substitute “caused”.

An tAire Dlí agus Cirt agus Comhionannais

[This amendment is in substitution for amendment 193 on the principal list of amendments dated 4 December 2015.]

[SECTION 148]

SECTION 148

257. In page 120, between lines 3 and 4, to insert the following:

“Amendment of section 38 of Act of 1994

177. Section 38 of the Act of 1994 is amended in subsection (1)—

- (a) by the substitution of “the *Solicitors Acts 1954 to 2015* or the *Legal Services Regulation Act 2015*,” for “the Solicitors Acts, 1954 to 1994,”, and
- (b) by the insertion of “or the Authority” after “Society”.

Amendment to Amendment No. 257

- I. To delete the section 177 proposed to be inserted by Seanad amendment number 257 and substitute the following:

“Amendment of section 38 of Act of 1994

177. Section 38 of the Act of 1994 is amended—

- (a) in subsection (1)—
 - (i) by the substitution of “the *Solicitors Acts 1954 to 2015* or the *Legal Services Regulation Act 2015*,” for “the Solicitors Acts, 1954 to 1994,”, and
 - (ii) by the insertion of “or the Authority” after “Society”,
- and
- (b) in subsection (2) by the substitution of “the *Solicitors Acts 1954 to 2015* or the *Legal Services Regulation Act 2015*,” for “the Solicitors Acts, 1954 to 1994,”.

An tAire Dlí agus Cirt agus Comhionannais.

[This amendment is in substitution for amendment 257 on the principal list of amendments dated 4 December 2015.]