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

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**EXPLANATORY MEMORANDUM**

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**Introduction**

The Bill gives effect to key structural reforms included in the *Programme for National Recovery 2011-2016*. In the Programme, the Government has undertaken to establish independent regulation of the legal profession, to improve access and competition, make legal costs more transparent and ensure adequate procedures for addressing consumer complaints.

The Bill also meets a number of the State's key commitments in the *EU/IMF Programme of Financial Support for Ireland* aimed at structural reform building on the recommendations of the Legal Costs Working Group and the Competition Authority.

The Bill makes provision for three key entities—

- A new, independent, Legal Services Regulatory Authority with responsibility for oversight of both of the legal professions,
- an Office of the Legal Costs Adjudicator to assume the role of the existing Office of the Taxing-Master which will be conferred with enhanced transparency in its functions. The legal costs regime will be brought out into the open with better public awareness and entitlement to legal costs information, and
- an independent complaints structure to deal with complaints about professional misconduct — this will be supported by an independent Legal Practitioners Disciplinary Tribunal.

Together, these provisions are intended to promote competition and transparency in the organisation and provision of legal services in the State and in relation to legal costs. They are also intended to create a single and independent point of call for those who wish to make complaints about legal services. The new Bill aims to better balance the respective interests of the public, consumers and legal professionals in their respective provision and consumption of legal services.

The Bill comprises 12 Parts and 123 Sections.

## **PART 1**

### **(Sections 1-5)**

This Part contains general provisions such as the short title and commencement provisions (*section 1*), interpretation (*section 2*), regulation-making powers (*section 3*), provision in relation to expenses (*section 4*) and repeal of current legislation (*section 5*).

## **PART 2**

### **(Sections 6-32)**

This Part comprises 27 sections and makes provision for the establishment of a new regulatory body, the Legal Services Regulatory Authority, for the purposes of regulating the legal profession. It sets out the functions and powers of and governance arrangements for the Authority.

*Sections 6 and 7* make provision for the establishment of a new regulatory body, the Legal Services Regulatory Authority (the “Authority”). The Authority will provide independent regulation of both solicitors and barristers for the first time — at the moment only solicitors have a statutory governance framework. The Authority will have the structures, functions and powers consistent with an effective, independent, regulatory body.

By *section 8*, the Authority will have 11 part-time members including members nominated by the Law Society and the Bar Council but with both a lay majority and a lay Chairperson. To be eligible for appointment to the Authority, the members must satisfy the criteria at *subsection (3)*. The term of office of members is 4 years and this can be renewed.

*Section 9* sets out the functions of the Authority which is independent in the performance of its functions. The Authority will be responsible for the regulation of legal practitioners and the maintenance and improvement of standards in the provision of legal services in the State. Other functions include—

- keeping under review the education and training standards of the legal profession, the codes of conduct of solicitors and barristers and the organisation of the provision of legal services in Ireland;
- specifying the nature and minimum levels of professional indemnity insurance required,
- establishing and administering a system of inspection of legal practitioners,
- dealing with complaints against legal practitioners,
- promoting public awareness and disseminating information to the public in respect of legal services,
- keeping the Minister informed of developments in respect of the provision of legal services by legal practitioners, and
- undertaking, commissioning or assisting in, research projects and other activities in respect of the provision of legal services.

In performing its functions of the regulation of the provision of legal services, the Authority must have regard to the objectives of—

- protecting and promoting the public interest,
- supporting the proper and effective administration of justice,
- protecting and promoting the interests of consumers relating to the provision of legal services,
- promoting competition in the provision of legal services in the State,
- encouraging an independent, strong and effective legal profession, and
- promoting and maintaining adherence to the “professional principles”.

The “professional principles” are—

- that legal practitioners must—
  - act with independence and integrity,
  - act in the best interests of their clients, and
  - maintain proper standards of work,
- that legal practitioners who exercise before any court a right of audience, or conduct litigation in relation to proceedings in any court by virtue of being legal practitioners, must comply with such duties as are rightfully owed to the court, and
- that, subject to any professional obligation of a legal practitioner, including any obligation as an officer of the court, the affairs of clients must be kept confidential.

*Section 10* deals with the meetings of the Authority.

*Section 11* is a standard provision that deals with membership of either House of the Oireachtas, the European Parliament or a local authority. It sets out the circumstances in which a person ceases to be a member of the Authority or a member of a committee of the Authority.

*Section 12* allows the Authority to establish committees to assist and advise it in carrying out its functions.

*Section 13* provides, subject to the approval of the Minister, for the possible appointment by the Authority of consultants and advisors to assist it in the performance of its functions.

*Section 14* makes detailed provision for the disclosure of interests by members of the Authority or an advisory committee, the chief executive, staff of the Authority and others if they have any beneficial interest in relation to any matter which is to be considered by the Authority.

*Section 15* prohibits disclosure of confidential information without the consent of the Authority and creates an offence for breach of the prohibition. There is also a saver in relation to disclosure in the circumstances listed in the subsection.

*Sections 16 and 17* make provision respectively for the preparation and submission of strategic plans, annual reports and other reports to the Minister. These plans will be laid before both Houses of the Oireachtas by the Minister. The Authority must provide the Oireachtas Joint Committee on Justice, Defence and Equality with a copy of the annual report.

*Section 18* deals with the drawing up and publication of a code of practice by the Authority, and approval of such codes drawn up by other bodies, for the purpose of setting standards and providing practical guidance for the provision of legal services. The Authority must engage in appropriate consultation and receive the approval of the Minister before a code of practice is published or approved.

*Section 19* makes provision for the appointment of a chief executive of the Authority and sets out his or her functions.

*Section 20* makes provision for the appointment of staff of the Authority.

*Section 21* allows the Authority, with the consent of the Minister and the Minister for Public Expenditure and Reform, to make superannuation schemes in appropriate circumstances.

*Section 22* provides for financial accounting and audit matters including presentation of audited accounts to the Minister and the Comptroller and Auditor General and the laying of those accounts before both Houses of the Oireachtas.

*Section 23* provides for the appearance of the chief executive before the Committee of Public Accounts in relation to the Authority's accounts and any matters raised in a report by the Comptroller and Auditor General.

*Section 24* provides for the appearance of the chief executive before the Oireachtas Joint Committee on Justice, Defence and Equality when requested to do so.

*Section 25* allows the Authority, with the consent of the Minister, to charge and recover fees in respect of certain of its functions, services and activities.

*Section 26* provides for the Minister to advance to the Authority out of moneys provided by the Oireachtas amounts as the Minister may determine, with the consent of the Minister for Public Expenditure and Reform.

*Section 27* empowers the Authority to appoint members of its staff as inspectors. It also empowers the Authority, with the approval of the Minister and the consent of the Minister for Public Expenditure and Reform, to appoint other persons as inspectors for such period and subject to such terms and conditions as so approved. It outlines the circumstances under which inspectors can carry out inspections.

*Section 28* sets out the powers of the inspectors for the purpose of carrying out an inspection. These powers include the power to attend at the place business of a legal practitioner with or without notice and require the legal practitioner to make available documents, records and bank accounts for inspection. It provides that a person who refuses or fails to provide such assistance without reasonable cause or impedes the work of the inspectors will be guilty of an offence and sets out the sanctions that will apply to such an offence.

*Section 29* requires the Authority to submit to the Minister an annual report specifying the number of persons admitted to practise as solicitors and barristers in the year comprehended by the report. The report must also include an assessment as to whether or not the number of persons so admitted is consistent with the public interest in ensuring the availability of legal services at a reasonable cost. The Minister is required to lay the report before both Houses of the Oireachtas.

*Section 30* requires the Authority, following appropriate public consultation, to furnish reports to the Minister in relation to—

- the education and training of legal practitioners in Ireland — to be provided within 12 months of the establishment of the Authority,
- the unification of the solicitor’s profession with the barrister’s profession — to be provided within 24 months of the establishment of the Authority,
- the creation of a new profession of conveyancer — to be provided within such time as may be specified by the Minister, and
- any other matters requested by the Minister — to be provided within such time as may be specified by the Minister.

The section outlines some of the information to be included in the reports and provides that the Authority can make recommendations to the Minister. Provision is also made for interim reports. The reports must be laid before the Houses of the Oireachtas.

*Section 31* allows the Authority to make an application to the High Court to prohibit a legal practitioner or any other person from contravening any provision of the Act or the Solicitors Acts 1954 to 2011.

*Section 32* provides that the Authority may bring and prosecute summary proceedings for offences under the Act.

### **PART 3**

#### **(Sections 33-41)**

This Part contains 9 sections and sets out the regulatory functions of the Authority in relation to client accounts held by legal practitioners.

*Section 33* is an interpretation section for Part 3.

*Section 34* applies Part 3 to every legal practitioner who may receive and hold the moneys of clients of that legal practitioner.

*Section 35* makes provision for the holding of clients’ moneys by certain legal practitioners. It also provides for the making of regulations by the Minister prescribing a class or classes of legal practitioners that may or may not hold the moneys of their clients.

*Section 36* defines “authorised bank” for the purposes of Part 3.

*Section 37* gives the Authority the responsibility for supervising the accounts of legal practitioners and provides for the establishment and maintenance of a system for the supervision of those accounts

by the Authority. It also provides for the making of regulations by the Authority in relation to the keeping and preservation of client accounts and records. The regulations may deal with such matters as:

- the type or types of accounts at authorised banks which may be opened and kept;
- the rights, duties and responsibilities of a relevant legal practitioner in relation to moneys received, held, controlled or paid by him or her arising from his or her practice;
- the keeping of accounting records; and
- the enforcement by the Authority of compliance with the regulations.

The section creates offences for failure to comply with the provisions.

*Section 38* is a requirement for every relevant legal practitioner to provide the Authority with an accountant's certificate stating that the accounting records of the legal practitioner have been examined and whether or not the legal practitioner has complied with the statutory requirements. The section also makes provision for the making of regulations by the Authority prescribing the qualifications to be held by the accountant, the nature and extent of the examination to be made by the accountant, the form of the accountant's certificate and the evidence that will satisfy the Authority that an accountant's certificate is unnecessary. The section also specifies the accounting period for the purposes of the accountant's certificate and makes provision for accountant's certificates to be furnished to the professional bodies which maintain the rolls of solicitors and barristers. It further provides for sanctions in the event that a legal practitioner fails to deliver an accountant's certificate to the Authority.

*Section 39* provides for the distribution of moneys in a legal practitioner's client account or accounts in cases of bankruptcy or insolvency. Specifically, it provides that if the money in the client account or accounts is less than the total amount owed to the legal practitioner's clients, it will be divided proportionately amongst the clients (including any person who is due a refund of a deposit) based on the amounts owed to them.

*Section 40* contains protections for certain clients' moneys held in banks.

*Section 41* enables the Authority to inspect, free of charge, the file of proceedings in bankruptcy relating to a legal practitioner.

## **PART 4**

### **(Sections 42 and 44)**

This Part contains 3 sections and deals with protections of clients of legal practitioner insofar as they relate to clients' moneys held by legal practitioners and indemnity cover.

*Section 42* requires the Authority to make regulations to require a legal practitioner either—

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

- to pay to such client a sum equivalent to the interest which would have accrued if the money so received had been held on deposit by that legal practitioner.

The section also provides a saver in relation to interest received by the legal practitioner on moneys deposited at a bank, being moneys received or held for or on account of his or her clients generally.

*Section 43* allows the Authority, following consultation with the Law Society and the Bar Council, to make regulations requiring legal practitioners to maintain professional indemnity insurance. The regulations may specify—

- the matters or risks in respect of which cover is to be maintained,
- minimum levels of cover which are to be maintained
- the maximum excess amount which will apply in respect of the cover maintained
- criteria to be met by persons offering such cover as is required to be maintained and as respects the terms and conditions of such cover.
- the circumstances where the cover required to be in place will be considered as meeting that requirement.

The section provides sanctions for non compliance with its requirements.

In making regulations under this section the Authority is required to have due regard to the objectives of ensuring that the interests of clients of legal practitioners are protected, and of encouraging the provision of legal services of a high standard by legal practitioners at a reasonable cost.

*Section 44* makes provision for the enforcement of a contract between a legal practitioner and a client of the legal practitioner that any description of civil liability incurred, either—

- by the legal practitioner arising from his or her practice as a legal practitioner in respect of the provision of legal services to the client be limited to an amount specified or referred to in the contract, or
- by a partner, clerk or servant or former partner, clerk or servant of the legal practitioner arising from that legal practitioner's practice as a legal practitioner in respect of the provision of legal services to the client be limited to an amount specified or referred to in the contract.

There is a saver to protect the operation of section 40 of the Sale of Goods and Supply of Services Act 1980 and Regulation 6 of the European Communities (Unfair Terms in Consumer Contracts) Regulations 1995.

The section also provides that the amount comprehended by the contract concerned must be not less than the minimum level of professional indemnity cover.

## **PART 5**

### **(Sections 45 to 68)**

This Part contains 24 sections divided into 2 chapters. It makes provision for a new complaints process whereby complaints against legal practitioners will be considered and determined within an independent and transparent framework. Chapter 1 sets out the process for receiving and screening complaints. It also provides for the establishment of a Complaints Committee to process complaints received by the Authority. Chapter 2 sets out the framework for investigating and determining complaints where the Complaints Committee considers that the complaint amounts to misconduct. It provides for the establishment of an independent Legal Practitioners Disciplinary Tribunal which will determine the complaint and may refer the matter to the High Court for the imposition of an appropriate sanction on the legal practitioner concerned.

*Section 45* outlines the circumstances in which an act or omission on the part of a legal practitioner may be considered as constituting misconduct.

*Section 46* provides for the making of a complaint to the Authority that a legal practitioner has, by act or omission, been guilty of misconduct.

*Section 47* allows the Authority to initiate an investigation into the practice of a legal practitioner at any time for the purpose of establishing whether or not the legal practitioner concerned is in compliance his or her statutory obligations.

*Section 48* deals with the admissibility of complaints and requires the Authority not to consider frivolous or vexatious complaints. Nor can the Authority consider a complaint that has already been determined under the relevant procedures for considering such complaints before the commencement of this Act. The Authority can make rules regulating the making of complaints, and the procedures to be followed by the Authority and the Complaints Committee in investigating such complaints. Provision is also made to facilitate the resolution of a complaint by mediation or other informal means (including through the intervention of the the relevant professional body) between the complainant and the legal practitioner concerned.

*Section 49* makes provision for the establishment of the Complaints Committee to deal with complaints on behalf of the Authority.

*Section 50* deals with the composition of the Complaints Committee. It will be appointed by the Authority with the approval of the Minister and will consist of not more than 16 members. There will be a lay majority on the Committee and it will also include at least 3 nominees of the Law Society and the Bar Council each of whom have practised in the State for more than 10 years. The Complaints Committee can act in divisions of not less than 3 members and each division (to be known as a “Divisional Committee”) will have of a majority of lay persons. Where a complaint relates to a solicitor the Divisional Committee must include at least one solicitor and, where a complaint relates to a

barrister the Divisional Committee must include at least one barrister.

*Section 51* sets out the manner in which the Divisional Committee is to investigate complaints. Having determined that the complaint is an admissible complaint and that mediation or other informal means have not resolved the matter, the Divisional Committee will give notice to the legal practitioner of the nature of the complaint and invite the legal practitioner to furnish the Divisional Committee with his or her explanation of the matter within a period specified in the notice.

Where the Divisional Committee determines that the act or omission does not constitute misconduct it must so advise the complainant and the legal practitioner, giving reasons for the determination.

Where the Divisional Committee determines that the act or omission the subject of the complaint appears to constitute misconduct and that such conduct is of a kind that it considers that one or more of the measures specified in *subsection (6)* (see below) to be the appropriate manner of determining the complaint it may, where the complainant and the legal practitioner consent in writing, direct the legal practitioner to act accordingly and, where the legal practitioner acts as so directed, the complaint will be considered as determined.

The measures specified in *subsection (6)* are:

- a direction to the legal practitioner to perform or complete the legal service the subject of the complaint or a direction to the legal practitioner to arrange for the performance or completion of the legal service the subject of the complaint by a legal practitioner nominated by the complainant at the expense of the legal practitioner the subject of the complaint;
- the issue of a caution to the legal practitioner in respect of the act or omission the subject of the complaint;
- a direction to the legal practitioner that he or she participate in one or more modules of a professional competence scheme and that he or she furnish evidence to the Authority of such participation within a specified period;
- a direction to the legal practitioner—
  - that he or she waive all or a part of any fee otherwise payable by the complainant to the legal practitioner concerned, or
  - that he or she refund to the client some or all of any fees paid to the legal practitioner concerned in respect of the legal services the subject of the complaint.

Where—

- it appears to the Divisional Committee that the act or omission the subject of the complaint constitutes misconduct and that such misconduct is not of a kind that could properly be dealt with as outlined above, or
- either the complainant or the legal practitioner does not consent to the complaint being disposed of as outlined above,

the Divisional Committee must either—

- bring an application in respect of the matter to the Legal Practitioners Disciplinary Tribunal for the holding of an inquiry as to whether or not the act or omission complained of constitutes misconduct, or
- if the Divisional Committee considers that the complaint requires further consideration it may investigate the matter further which investigation may include requesting an inspector appointed under *section 27* to attend at the practice of the legal practitioner and exercise any of the powers exercisable by such an inspector pursuant to *section 28*.

*Section 52* makes provision for the establishment of the Legal Practitioners Disciplinary Tribunal.

*Section 53* deals with the composition of the Disciplinary Tribunal. It will be appointed by the Government on the nomination of the Minister and will consist of not more than 16 members. There will be a lay majority on the Tribunal and it will also include at least 3 nominees each of the Law Society and the Bar Council who have practised in the State for more than 10 years. The Disciplinary Tribunal can act in divisions of not less than 3 members and each division will have of a majority of lay persons. Where a complaint relates to a solicitor the division must include at least one solicitor and, where a complaint relates to a barrister the division must include at least one barrister.

*Section 54* makes provision for an application for the holding of an inquiry to be brought before the Disciplinary Tribunal by the Authority where—

- the Complaints Committee has determined that an act or omission of a legal practitioner the subject of a complaint appears to constitute misconduct and that such misconduct is not of a kind that could properly be dealt with by the Authority under the provisions of *section 51*, or the complainant or the legal practitioner does not consent to the matter being disposed of by the Authority under those provisions, or
- the Complaints Committee has, following an investigation undertaken by it under *section 51*, formed the view that an act or omission of a legal practitioner appears to constitute misconduct.

*Section 55* provides that the Authority, or a person appointed to do so on its behalf, will present the evidence to the Disciplinary Tribunal grounding the contention that misconduct by the legal practitioner concerned has occurred.

*Section 56* allows the Disciplinary Tribunal to make rules regulating the making of applications to the Disciplinary Tribunal, and the proceedings of the Disciplinary Tribunal. In making the rules, the Disciplinary Tribunal must have as an objective that the manner of making applications and the conduct of proceedings be as informal as is consistent with the principles of fair procedure, and that undue expense is not likely to be incurred by any party who has an interest in the application. In addition, the Disciplinary Tribunal may consider and determine an application to it on the basis of affidavits and supporting documentation and records, rather than by way of an oral hearing, where the legal practitioner the complainant and the Authority consent.

*Section 57* provides that the Disciplinary Tribunal has, for the purposes of any inquiry, all the rights and privileges vested in the High Court or a judge thereof on the hearing of an action, in respect of—

- the enforcement of the attendance of witnesses and their examination on oath or otherwise,
- the compelling of the production of documents, and
- the compelling of the discovery under oath of documents.

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

The section provides for an offence where a person—

- disobeys, without just cause or excuse, a summons to attend as a witness before the Disciplinary Tribunal,
- refuses to take an oath when required by the Disciplinary Tribunal to do so, or to produce or discover under oath any documents in his or her possession or under his or her control or within his or her procurement, or to answer any question to which the Disciplinary Tribunal may legally require an answer,
- wilfully gives false evidence to the Disciplinary Tribunal which is material to its inquiry,
- by act or omission, obstructs or hinders the Disciplinary Tribunal in the performance of its functions,
- fails, neglects or refuses to comply with the provisions of an order made by the Disciplinary Tribunal, or
- does or omits to do any other thing which would, if the Disciplinary Tribunal had been the High Court, have been contempt of that Court.

A witness before the Disciplinary Tribunal will be entitled to the same immunities and privileges as if he or she were a witness before the High Court.

*Section 58* deals with oral hearings. Unless the Disciplinary Tribunal considers that it is not necessary to do so, and the legal practitioner, the complainant and the Authority consent, the inquiry will be conducted by way of oral hearing. Such hearings will be held in private. However, where an inquiry is held otherwise than by way of oral hearing the Disciplinary Tribunal will conduct the inquiry by considering affidavits and supporting documentation and records furnished to it. A person appointed by the Authority to do so on its behalf, will present the case to the Disciplinary Tribunal in support of the contention that misconduct by the respondent legal practitioner concerned has occurred. The respondent legal practitioner and the complainant will have an opportunity to examine every witness. Having conducted the inquiry, the Disciplinary Tribunal will make a determination whether or not, on the basis of the evidence properly before it, the act or omission to which the inquiry relates constitutes misconduct, and in that event

make a determination as to whether the issue of sanction should be dealt with pursuant to *section 59* or *60*.

*Section 59* deals with the sanctions that can be imposed by the Disciplinary Tribunal where it makes a finding that there has been misconduct on the part of a legal practitioner and determines that the issue of sanction should be dealt with pursuant to this section rather than by *section 60*. The sanctions that can be imposed under this section are—

- a reprimand;
- a warning;
- a caution;
- a direction that the legal practitioner participate in one or more modules of a professional competence scheme and to furnish evidence to the Disciplinary Tribunal of such participation within a specified period;
- a direction that the legal practitioner concerned—
  - waive all or a part of any costs otherwise payable by the complainant to the legal practitioner concerned in respect of the matter the subject of the complaint,
  - refund all or any part of any costs paid to the legal practitioner concerned in respect of the matter the subject of the complaint;
- a direction that the legal practitioner arrange for the completion of the legal service to which the inquiry relates or the rectification, at his or her own expense, of any error, omission or other deficiency arising in connection with the provision of the legal services the subject of the inquiry, as the Disciplinary Tribunal may specify;
- a direction that the legal practitioner take, at his or her own expense, such other action in the interests of the client as the Disciplinary Tribunal may specify;
- a direction that the legal practitioner transfer any documents relating to the subject matter of the complaint (but not otherwise) to another legal practitioner nominated by the client or by the Authority with the consent of the client, subject to such terms and conditions as the Authority may deem appropriate, and
- a direction that 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 be paid by the respondent legal practitioner (which costs will be assessed by the Legal Costs Adjudicator in default of agreement).

*Section 60* makes provisions for the sanctions that can be applied where the Disciplinary Tribunal has determined that the sanction should not be dealt with pursuant to *section 59*. In these circumstances, the Disciplinary Tribunal can make a recommendation to the High Court:

- that the legal practitioner be censured and that he or she pay an amount of money to the Authority or the complainant as the Court thinks fit;
- 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 thinks fit and subject to such terms and conditions as the Court thinks fit;
- 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 thinks fit;
- 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 thinks fit;
- in the case of a barrister, that the name of the barrister be struck off the roll of practising barristers;
- in the case of a solicitor, that the name of the solicitor be struck off the roll of solicitors;
- in the case of a legal practitioner to whom a Patent of Precedence has been granted, that the Authority make an application for revocation of that Patent in respect of that grant.

*Section 61* specifies who can appeal to the High Court in respect of different findings by the Disciplinary Tribunal.

*Section 62* deals with appeals to the High Court. Appeals can be brought within 28 days from the date on which the determination was sent to the parties concerned. The High Court has power to either confirm the determination of the Disciplinary Tribunal, allow the appeal or to vary the sanction proposed by the Disciplinary Tribunal.

*Section 63* outlines the possibilities open to the High Court where it is considering a recommendation by the Disciplinary Tribunal pursuant to *section 60*.

*Section 64* provides that the jurisdiction vested in the High Court by *sections 62* and *63* are to be exercised by the President of the High Court or, if and wherever the President of the High Court so directs, by an ordinary judge of the High Court for the time being assigned in that behalf by the President of the High Court.

*Section 65* provides that the Authority or the legal practitioner may appeal to the Supreme Court against an order of the High Court.

*Section 66* makes provision for a copy of every order made by the High Court under *section 62* or *63* and any determination made by the Authority under *sections 58* to *60* to be furnished to the registrar of solicitors in the case of an order relating to a solicitor and to the Bar Council in the case of an order relating to a practising barrister. It also makes provision for publication of such orders.

*Section 67* deals with privilege.

*Section 68* makes provision for enforcement of the orders of the Disciplinary Tribunal. Where, on application by the Authority in circumstances where the matter is not otherwise before the High

Court, it is shown that a legal practitioner or any other person has refused, neglected or otherwise failed, without reasonable cause, to comply in whole or in part with a direction made by the Disciplinary Tribunal, the Court may by order direct the legal practitioner or other person, as the case may be, to comply in whole or in part with the direction of the Disciplinary Tribunal.

## **PART 6**

### **(Sections 69 and 70)**

This Part, comprising 2 sections, deals with the imposition of a levy on the professional bodies to cover the expenses of the Authority and the Disciplinary Tribunal.

*Section 69* sets out the obligation on the Bar Council and the Law Society to pay the levy. It also sets out in detail the formula by which the levy will be calculated and the proportions in which it is to be borne by each professional body.

*Section 70* allows the Minister to make regulations in relation to the levy.

## **PART 7**

### **(Sections 71 to 75)**

This Part contains 5 sections. It makes provision for the establishment in the State of legal partnerships and multi-disciplinary practices. It also provides for a public consultation process as to how these partnerships and practices should operate. In addition, it makes provision for direct access to barristers in relation to non-contentious matters.

*Section 71* is an interpretation section.

*Section 72* allows a legal practitioner to provide legal services as a partner or employee of a legal partnership.

*Section 73* makes provision for direct access to barristers for legal advice.

*Section 74* removes all prohibitions on the provision by legal practitioners of legal services as a partner or employee of a multi-disciplinary practice. The practical effect of this is to allow barristers to be a part of a legal partnership (see definition of “legal partnership” at *section 71*) and for the establishment in the State of multi-disciplinary practices.

A specific requirement of a multi-disciplinary practice is the requirement to appoint at least one legal practitioner (the managing legal practitioner“) to be responsible for the management and supervision of the provision of legal services by the practice and to ensure that the practice is managed so as to ensure the provision of legal services by the practice in accordance with the professional principles specified in *section 9(5)*.

*Section 75* requires the Authority to engage in a public consultation process, to be completed within 18 months of the establishment of the Authority, and to provide a report to the Minister on—

- the manner in which legal partnerships and multi-disciplinary practices should be formed and operated,
- the reforms, whether administrative, legislative or to existing professional codes, that are required in order to facilitate such establishment and operation, and
- the implications of barristers being permitted to receive instructions directly from persons in contentious matters and the reforms, whether administrative, legislative or to existing professional codes, that would be necessary to allow this.

*Sections 72 and 74* will be commenced within 12 months of the completion of the report following the public consultation process — see *section 1(3)*.

## **PART 8**

### **(Sections 76 to 79)**

This Part consists of 4 sections and makes provision for the establishment and operation of a Roll of Practising Barristers.

*Section 76* makes provision for the Bar Council to set up and maintain a Roll of Practising Barristers. Within 6 months of the date on which this provision comes into operation, every person's name who on that date provided legal services as a barrister is to be included.

*Section 77* prevents a person from providing legal services as a practising barrister unless he or she has had his or her name entered on the Roll.

*Section 78* requires that a person who has been called to the Bar of Ireland and who intends to provide legal services as a practising barrister apply to the Bar Council to have his or her name entered on the Roll.

*Section 79* outlines the circumstances under which the Bar Council can remove the name of a person from the Roll.

## **PART 9**

### **(Sections 80 to 106)**

This Part consists of 27 sections divided into 5 chapters. It sets out the framework within which applications for determination of legal costs can be made and how they will be determined. It also provides for a new Office (the Office of the Legal Costs Adjudicator) within the courts system which will replace the current Office of the Taxing Master and will have responsibility for adjudication of legal costs. *Chapter 1* contains the interpretation provisions. *Chapter 2* provides the statutory framework for the new Office and contains governance provisions. *Chapter 3* sets out the duties of legal practitioners in relation to legal costs. *Chapter 4* provides the framework for the determination of legal costs. *Chapter 5* contains miscellaneous provisions.

*Section 80* is an interpretation section.

*Section 81* provides that the Taxing-Master's Office will be known as the Office of the Legal Costs Adjudicator. It also provides for

the appointment, in accordance with the provisions of the Courts (Supplemental Provisions) Act 1961 of—

- the Chief Legal Costs Adjudicator, and
- the number of Legal Costs Adjudicators that the Minister, with the consent of the Minister for Public Expenditure and Reform, determines to be the number necessary to ensure that the work of the Office may be carried out effectively and efficiently.

In addition, the section contains transitional provisions in relation to existing references to the Taxing-Master's Office and the Taxing Master contained in any enactment or any other document.

*Section 82* makes provision for the establishment and maintenance of a register of determinations.

*Section 83* allows the Chief Legal Costs Adjudicator, after consultation with the Minister and any other appropriate person or body, to prepare and publish legal costs guidelines.

*Sections 84* and *85* require the preparation and publication of a strategic plan and annual business plan respectively in relation to the Office.

*Section 86* is a requirement for the Chief Legal Costs Adjudicator to prepare an annual report and submit it to the Chief Executive Officer of the Courts Service.

*Section 87* is an amendment to section 3(3) of the Court Officers Act 1926 to remove any reference to the Taxing-Masters of the High Court.

*Section 88* contains necessary amendments to the Eighth Schedule to the Courts (Supplemental Provisions) Act 1961 for the purposes of the establishment of the Office of the Legal Costs Adjudicator.

*Section 89* prohibits a legal practitioner from charging any amount in respect of legal costs if—

- they are legal costs in connection with contentious business expressed as a specified percentage or proportion of any damages (or other moneys) that may be or become payable to the client, other than in relation to a matter seeking only to recover a debt or liquidated demand, or
- they purport to set the legal costs to be charged to a junior counsel as a specified percentage or proportion of the legal costs paid to a senior counsel.

It also prohibits a legal practitioner from, without the prior written agreement of his or her client, deducting or appropriating any amount in respect of legal costs from the amount of any damages or moneys that become payable to the client in respect of legal services that the legal practitioner provided to the client.

*Section 90* is a requirement on a legal practitioner to provide his or her client with a notice, written in clear language that is likely to be easily understood by the client, as soon as he or she receives instructions from the client. The notice must either disclose the costs, or if this is not reasonably practicable, it must set out the basis on which the costs are to be calculated. If the legal practitioner becomes aware of any factor that would make it likely that there will be a

significant increase in the costs, he or she must bring this to the attention of the client as soon as may be after he or she becomes aware of that factor. He or she must also, when requested by the client, provide any clarification in relation to the notice. The notice must also specify a “cooling off” period, in order to permit the client to consider whether or not to instruct the legal practitioner to continue to provide legal services in connection with the matter concerned. During the “cooling off” period, the legal practitioner must not provide any legal service in relation to the matter, unless —

- in the professional opinion of the legal practitioner, not to provide those legal services would constitute a contravention of a statutory requirement or the rules of court or would prejudice the rights of the client in a manner that could not later be remedied, or
- a court orders the legal practitioner to provide legal services to the client.

*Section 91* allows a legal practitioner and his or her client to make an agreement in writing concerning the amount, and the manner of payment, of all or part of the legal costs that are or may be payable by the client to the legal practitioner for legal services provided in relation to a matter. The agreement may include all the particulars required by *section 90* and, if it does, the legal practitioner need not also provide a notice under that section.

*Section 92* requires a legal practitioner, as soon as is practicable after concluding the provision of legal services in relation to a legal matter for a client, to provide his or her client with a bill of costs. It also sets out the details that should be contained in the bill of costs. There is also a requirement on the legal practitioner to provide to the client, along with the bill of costs, an explanation of the procedure available to the client should the client wish to dispute any aspect of the bill of costs, including that the client may—

- discuss the matter with the legal practitioner,
- have the dispute referred to mediation, and
- apply for adjudication of legal costs, including the contact information for the Office.

*Section 93* requires a legal practitioner, where it appears to him or her that his or her client is disputing any aspect of a bill of costs, to take all appropriate steps (including, where necessary, proposing a referral to mediation) to attempt to resolve the dispute.

*Section 94* outlines the circumstances whereby an application for adjudication of legal costs can be made. Such an application must be made before the expiry of 6 months after the issue of the bill of costs, or 3 months from the date of payment of the bill, whichever is the earlier. A legal practitioner cannot seek adjudication until the expiry of 30 days from the date of issue of the bill of costs. An application for adjudication cannot be made where a bill of costs has been issued and the legal practitioner has agreed to accept a lesser amount in discharge of the bill of costs.

*Section 95* sets out the matters to be ascertained in the course of an adjudication of legal costs. The provisions of *Schedule 1* apply. In determining an application for the adjudication of costs, the Legal Costs Adjudicator must, to the extent which he or she considers it necessary to do so, consider and have regard to the entire case or

matter to which the adjudication relates and the context in which the costs arise. In particular, the Legal Costs Adjudicator must, as respects a matter or item the subject of the application—

- verify that the matter or item represents work that was actually done, or represents disbursements made or which the party concerned is obliged to discharge,
- determine whether or not in the circumstances it was appropriate that a charge be made for the work concerned or the disbursement concerned,
- determine what a fair and reasonable charge for that work or disbursement would be in the circumstances.

The Legal Costs Adjudicator must also, so far as reasonably practicable, ascertain—

- the nature, extent and value of the work concerned,
- who carried out the work concerned, and
- the time taken to carry out the work concerned.

The Legal Costs Adjudicator must have regard to any agreement in writing relating to costs between a legal practitioner and his or her client where the adjudication relates to a bill of costs as between a legal practitioner and his or her client.

*Section 96* sets out the powers of a Legal Costs Adjudicator for the purposes of determining an application for adjudication of legal costs. He or she can—

- inspect documents relating to the matter concerned,
- where there is an oral hearing, summon and examine witnesses and administer oaths, and apply to the High Court for the enforcement of a summons, or
- invite the parties to an adjudication to refer their dispute to mediation or another informal resolution process if he or she considers that to do so would be appropriate in all the circumstances.

*Section 97* makes provision for the determination of applications for adjudication of legal costs. The Legal Costs Adjudicator must confirm the charge in respect of an item of legal costs the subject of the application if he or she considers that—

- charging in respect of the item is fair and reasonable in the circumstances, and
- the amount charged in the bill of costs in respect of that item is fair and reasonable in the circumstances.

He or she can, if he or she determines that it is fair and reasonable to charge an amount in respect of an item but that the amount of the charge in respect of the item is not fair and reasonable, determine a different amount to be charged in respect of that item.

He or she cannot confirm an amount for a disbursement unless—

- there is a valid voucher or receipt in respect of the disbursement, or
- the parties have agreed, and the Legal Costs Adjudicator is satisfied, that such a voucher or receipt is not required.

He or she cannot as between a legal practitioner and his or her client, confirm a charge in respect of a matter or item if the matter or item is not included in a notice referred to in *section 90* or, as the case may be, an agreement referred to in *section 91*, unless the Legal costs Adjudicator is of the opinion that to disallow the matter or item would create an injustice between the parties.

A Legal Costs Adjudicator must prepare a report, and provide it to the parties, as respects the matters or items the subject of the adjudication, setting out a brief outline of the background to the provision of the legal services concerned and the principal issues relating to the context of the provision of those services and must—

- specify the work involved relating to the matters or items the subject of the adjudication which was considered in reaching the determination;
- specify the various stages of the legal services and the stage of the legal process at which such work was carried out by reference to distinct aspects of the course of the work,
- set out a summary of the written or oral submissions made by or on behalf of the parties to the adjudication,
- give reasons for the determination that he or she has made.

*Section 98* provides that, subject to any appeal under *section 100*, the determination of the Legal Costs Adjudicator is final. It also makes provision for the awarding of costs of the adjudication depending on whether the amount in dispute has been determined to be more or less than 15 per cent lower than the amounts set out in the bill of costs.

*Section 99* allows the Legal Costs Adjudicator to refer a question of law arising in the application to the High Court for the opinion of that Court. He or she can also, in the determination of an application, refer a question as to the enforceability of an agreement entered into under *section 91* to the High Court.

*Section 100* makes provision for an appeal to—

- if the adjudication the subject of the appeal is in relation to party and party costs, the court that heard the proceedings to which those costs relate, and
- in any other case, the High Court,

by a party to the adjudication, not later than 21 days after the date on which the determination was provided to the party, against the determination.

*Section 101* makes provision for privilege, and exceptions to that privilege, in relation to proceedings and documents created or furnished to the parties to a legal costs adjudication.

*Section 102* is a power for the Chief Legal Costs Adjudicator to specify the form of documents required for the purposes of this Part.

*Sections 103 to 106* are necessary transitional provisions.

## **PART 10**

### **(Sections 107 and 108)**

This Part, comprising 2 sections sets out some powers and principles in relation to the award of legal costs.

*Section 107* sets out the general principle that a court may, on application by a party to civil proceedings, at any stage in, and from time to time during, those proceedings —

- order that a party to the proceedings pay the costs of one or more other parties to the proceedings that are incidental to the proceedings, or
- where proceedings before the court concern the estate of a deceased individual, or the property of a trust, order that the costs of one or more parties to the proceedings that are incidental to the proceedings be paid out of the property of the estate or trust.

*Section 108* sets out the general principle that costs are to follow the event. In other words, a party who is entirely successful in civil proceedings is entitled to an award of costs against a party who is not successful in those proceedings, unless the court orders otherwise, having regard to the particular nature and circumstances of the case, and the conduct of the proceedings by the parties. Nothing in this Part is to be construed as affecting section 50B of the Planning and Development Act 2000 or Part 2 of the Environment (Miscellaneous Provisions) Act 2011.

## **PART 11**

### **(Sections 109 to 114)**

This Part, comprising 6 sections, makes statutory provision for the awarding and revocation of Patents of Precedence.

*Section 109* is an interpretation section.

*Section 110* allows the Government, on the recommendation of the Committee established under *section 111*, to grant a Patent of Precedence to a legal practitioner.

*Section 111* requires the Authority to establish an Advisory Committee on the Grant of Patents of Precedence to perform the functions assigned to it under this Part. It sets out the membership of the Committee and provides that all proceedings of the Committee and all communications by and to the Committee, including consultations by the Committee under *section 113*, are to be confidential and must not be disclosed except for the purposes of this Act.

*Section 112* requires the Committee to establish the criteria to be met by a legal practitioner in order for it to recommend to the Government that a Patent of Precedence be granted to him or her.

*Section 113* sets out the application process for a legal practitioner who wishes to be granted a Patent of Precedence.

*Section 114* sets out the process for revocation of a Patent of Precedence and the circumstances in which revocation will occur. It also sets out procedures for appeal of a recommendation to revoke.

## **PART 12**

### **(Sections 115 to 123)**

This Part consists of 9 sections and contains miscellaneous provisions.

*Section 115* is an amendment to section 17 of the Courts Act 1971. This operates to allow a client to ultimately determine which of his or her legal practitioners will take the lead in court proceedings on behalf of the client.

*Section 116* prohibits any professional code from preventing a barrister whose name is entered on the roll of practising barristers in accordance with *Part 8*, from taking up paid employment, including part-time employment, and as part of that employment, providing legal services to his or her employer, including by appearing for that employer in court.

*Section 117* amends section 49 of the Court and Courts Officers Act 1995 to allow a legal practitioner, when appearing in any court, not to wear a wig or a robe.

*Section 118* prohibits a legal practitioner who has accepted instructions to appear in court for a client who is in custody from withdrawing from the client's case without obtaining permission from the court before which that client is next scheduled to appear.

*Section 119* makes provision for service of notices.

*Section 120* is a "whistleblower" provision that protects employees from penalisation by employers for making a disclosure or for giving evidence in relation to such disclosure in any proceedings relating to an offence under this Act, or in any complaint, consideration of a complaint or investigation under *Part 5*, or for giving notice of his or her intention to do so. *Schedule 2* sets out the redress that is available for a contravention of the section.

*Section 121* is an offence provision related to *section 120*.

*Section 122* allows the Authority to provide by regulation that a barrister seeking to be admitted as a solicitor, or solicitor seeking to become a barrister, can be exempted from certain admission requirements relating to the profession concerned.

*Section 123* allows the Authority to make regulations relating to the advertising of legal services.

### **Financial Implications**

The proposed new structures under the Bill will incur some additional costs for the Exchequer as they represent a shift to independent regulation of both legal professions with supporting inspection, public information and complaints functions. The existing supervisory framework relies on self and co-regulatory elements which have been overseen and staffed by the professional bodies themselves. Only solicitors have been covered by professional supervisory legislation up to now and barristers will come under such legislation for the first time in the Bill.

It is anticipated that a proportion of the existing levies being borne by the professions should transfer with those functions of the professional bodies that are to be taken over by the new Legal Services Regulatory Authority. The Bill (Part 6) proposes a formula for that purpose. It is expected that this redirection of levies will contribute substantially to the running of the new Legal Services Regulatory Authority and of the new Legal Practitioners Disciplinary Tribunal. The Authority will also have power to charge fees for functions not covered by levy.

The Office of the Legal Costs Adjudicator should generate similar revenue to its predecessor, the Office of the Taxing-Master (which collected a total in fees of €2.8m in 2010 against expenditure of €0.67m), but will need some reconfiguration of resources to deliver its enhanced functions under the Bill.

*Roinn Dlí agus Cirt agus Comhionannais,  
Deireadh Fómhair, 2011.*