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**An Bille um Rialáil Seirbhísí Dlí, 2011**  
**Legal Services Regulation Bill 2011**

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*Mar a leasaíodh sa Roghchoiste um Dhlí agus Ceart, Cosaint agus Comhionannas*

*As amended in the Select Committee on Justice, Defence and Equality*

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Public Service Management (Recruitment and Appointments) Act 2004 (No. 33)  
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AN BILLE UM RIALÁIL SEIRBHÍSÍ DLÍ, 2011  
LEGAL SERVICES REGULATION BILL 2011

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# Bill

*entitled*

An Act to provide for the regulation of the provision of legal services, to provide for the establishment of the legal services regulatory authority, to provide for the establishment of the legal practitioners disciplinary tribunal to make determinations as to misconduct by legal practitioners, to provide for new structures in which legal practitioners may provide services together or with others, to provide for the establishment of a roll of practising barristers, to provide for reform of the law relating to the charging of costs by legal practitioners and the system of the assessment of costs relating to the provision of legal services, to provide for the manner of appointment of persons to be senior counsel, and to provide for related matters. 5 10

**Be it enacted by the Oireachtas as follows:**

## PART 1

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### PRELIMINARY AND GENERAL

#### **Short title and commencement**

1. (1) This Act may be cited as the Legal Services Regulation Act 2014.
- (2) This Act, other than *sections 84* and *86*, shall come into operation on such day or days as may be fixed by order or orders made by the Minister, either generally or by reference to any particular purpose or provision, and different days may be so fixed for different purposes or different provisions. 20
- (3) *Sections 84* and *86* shall come into operation on such day or days, within one year of the completion and submission to the Minister of the report referred to in *section 87(2)(c)*, as may be fixed by order or orders made by the Minister, either generally or by reference to any particular purpose or provision, and different days may be so fixed for different purposes or different provisions. 25

#### **Interpretation and construction**

2. (1) In this Act—  
“admissible complaint” means a complaint which— 30

- (a) is received by the Authority not later than 3 years after the occurrence of the act or omission which it is alleged constitutes misconduct (unless the complaint relates to fraud or dishonesty by a legal practitioner), or
- (b) is not a complaint to which *subsection (2), (3) or (4) of section 49* applies;
- “Authority” means the Legal Services Regulatory Authority established by *section 7*; 5
- “Bar Council” means the General Council of the Bar of Ireland;
- “chief executive”, in relation to the Authority, has the meaning assigned to it by *section 21*;
- “code of conduct” means a code of conduct published under *section 20*, and includes part of such a code; 10
- “committee” in relation to the Authority, means a committee of the Authority established under *section 15*;
- “complainant” means a person who has made a complaint in accordance with *Part 6*;
- “complaint”, other than a complaint under *Schedule 2*, shall be construed in accordance with *section 47*; 15
- “Complaints Committee” means the Committee established pursuant to *section 50* and includes a division of that Committee (referred to as a Divisional Committee);
- “Disciplinary Tribunal” means the Legal Practitioners Disciplinary Tribunal established under *section 61*;
- “enactment” means a statute or an instrument under a power conferred by statute; 20
- “establishment day” means the day appointed under *section 6*;
- “inspector” means a person appointed under *section 29* to be an inspector;
- “Law Society” means the Law Society of Ireland;
- “lay member” means a lay person who is a member of the Authority;
- “lay person” shall be construed in accordance with *subsection (3)*; 25
- “legal costs accountant” means a person who has regularly participated in the preparation and presentation of bills of costs for taxation or, as the case may be, adjudication of legal costs and has regularly attended before a Taxing-Master on the taxation or, as the case may be, a Legal Costs Adjudicator on an adjudication, of such bills of costs; 30
- “legal practitioner”, subject to *subsection (2)*, means a person who is a practising solicitor or a practising barrister and a reference to a solicitor includes a reference to a firm of solicitors;
- “legal services” means services of a legal nature provided by a legal practitioner and includes any part of such services, and includes financial services to the extent that the practitioner is authorised to provide such services; 35
- “local authority” has the meaning assigned to it by the Local Government Act 2001;
- “Minister” means the Minister for Justice and Equality;

- “practising barrister” means a person who has been called to the Bar of Ireland or is otherwise entitled to practise as a barrister in the State, and whose name is on the roll of practising barristers;
- “practising solicitor” means a person who has been admitted as a solicitor, whose name is on the roll of solicitors, who provides legal services and who— 5
- (a) is, by reason of section 56 of the Solicitors (Amendment) Act 1994, required to hold a practising certificate, or
- (b) is, by reason of that section, exempted from the requirement to hold a practising certificate;
- “prescribed” means prescribed by regulations under *section 3*; 10
- “professional body” means the Bar Council, the Law Society or such other body of legal practitioners as the Minister may prescribe;
- “professional code” means any code of conduct, code of practice or other code relating to the provision of legal services by its members adopted by a professional body, and includes part of such a code; 15
- “roll of practising barristers” means the roll of practising barristers maintained under *section 100*;
- “roll of solicitors” has the meaning assigned to it by section 9 (as amended by section 65 of the Solicitors (Amendment) Act 1994) of the Solicitors Act 1954.
- (2) In this Act a reference to a legal practitioner shall be construed as including references 20 to a person who formerly practised as a solicitor or as a barrister.
- (3) For the purposes of this Act, a person is a lay person on a particular date if, on that date, he or she—
- (a) is not a practising solicitor or a practising barrister, and
- (b) where he or she has previously been a practising solicitor or a practising barrister, 25 he or she—
- (i) has not been such in the period of 5 years immediately preceding that date, and
- (ii) did not cease to be such as a result of a sanction imposed on him or her by a body that was authorised to require him or her to cease such practice. 30

### **Regulations and orders**

3. (1) A regulation or order made under this Act may contain such incidental, supplementary and consequential provisions as the Minister or the Authority considers necessary or expedient.
- (2) Every regulation made under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which the House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder. 35 40

## Expenses

4. The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Public Expenditure and Reform, be paid out of moneys provided by the Oireachtas.

## Repeals

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5. The enactments specified in *Schedule 3* are repealed to the extent specified in the third column of that schedule.

## PART 2

### LEGAL SERVICES REGULATORY AUTHORITY

## Establishment day

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6. The Minister shall, by order, appoint a day to be the establishment day for the purposes of this Act.

## Establishment of Legal Services Regulatory Authority

7. (1) On the establishment day there shall stand established a body to be known, in the English language, as the Legal Services Regulatory Authority or, in the Irish language, as An tÚdarás Rialála Seirbhísí Dlí, to perform the functions conferred on it by or under this Act. 15
- (2) The Authority—
- (a) is a body corporate with perpetual succession and a seal, and
- (b) may sue, and be sued, in its corporate name. 20
- (3) The Authority may, with the approval of the Minister given with the consent of the Minister for Public Expenditure and Reform, acquire, hold and dispose of land or an interest in land, and may acquire, hold and dispose of any other property.
- (4) The seal of the Authority shall be authenticated by—
- (a) the signature of the chief executive or another member of the Authority authorised by the Authority to act in that behalf, and 25
- (b) the signature of a member of the staff of the Authority authorised by the Authority to act in that behalf.
- (5) Judicial notice shall be taken of the seal of the Authority and, accordingly, every instrument— 30
- (a) purporting to be an instrument made by the Authority, and
- (b) purporting to be sealed with the seal of the Authority authenticated in accordance with *subsection (4)*,
- shall be received in evidence and be deemed to be such instrument without further proof, until the contrary is proved. 35

- (6) Any contract or instrument which, if entered into or executed by an individual, would not require to be under seal, may be entered into or executed on behalf of the Authority by any person generally or specially authorised by the Authority to act in that behalf.

## **Membership of Authority and terms of membership**

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8. (1) The Authority shall consist of 11 members.

(2) (a) The members of the Authority shall be appointed by the Government, a resolution approving such appointment having been passed by Dáil Éireann and by Seanad Éireann.

(b) The Government shall appoint one of the lay members of the Authority to be chairperson of the Authority (in this Part referred to as the “Chairperson”). 10

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

(a) the provision of legal services; 15

(b) legal education and legal training;

(c) competition law and policy;

(d) the maintenance of standards in professions regulated by a statutory body;

(e) dealing with complaints against members of professions regulated by a statutory body; 20

(f) business and commercial matters;

(g) the needs of consumers of legal services.

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

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

(i) 1 shall be nominated for appointment by the Citizens Information Board, 25

(ii) 1 shall be nominated for appointment by An tÚdarás um Ard-Oideachas,

(iii) 1 shall be nominated for appointment by the Competition Authority,

(iv) 1 shall be nominated for appointment by the Human Rights Commission,

(v) 1 shall be nominated for appointment by the Institute of Legal Costs Accountants, being the body of that name that is engaged in the representation and regulation of legal costs accountants in the State, 30

(vi) 1 shall be nominated for appointment by the Consumers’ Association of Ireland, being the association of that name whose purpose is to promote and protect the interests of consumers,

(b) 1 shall be nominated for appointment by the Bar Council, 35

(c) 1 shall be a solicitor nominated for appointment by the Legal Aid Board,

(d) 1 shall be nominated for appointment by the Honorable Society of King’s Inns,

and

(e) 2 shall be nominated for appointment by the Law Society.

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

(a) shall—

5

(i) subject to *subparagraph (ii)*, nominate a primary nominee of one sex and a substitute nominee of the other sex, and

(ii) in the case of the Law Society, where both members of the Authority to be nominated by it under *subsection (4)(e)* are nominated at the same time, nominate one man and one woman,

10

and

(b) shall satisfy itself that its nominees meet the criteria specified in *subsection (3)*.

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

(a) have regard to the objective of there being no fewer than 4 members who are women and no fewer than 4 members who are men, and

15

(b) appoint a substitute nominee referred to in *subsection (5)(a)(i)* rather than a primary nominee of the nominating body concerned, but only where necessary in order to achieve that objective.

#### **Term of appointment of members of Authority**

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

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

25

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

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

(ii) 4 other members of the Authority,

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who shall be selected by the drawing of lots, conducted in such manner as the Chairperson of the Authority thinks proper, at the first meeting of the Authority referred to in *section 13(3)*.

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

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



- (3) Each member of the Authority—
- (a) shall act on a part-time basis and on such other terms and conditions (other than the payment of remuneration and allowances for expenses) as the Government may determine, and
  - (b) shall be paid by the Authority such remuneration (if any) and allowances for expenses (if any) as the Minister for Public Expenditure and Reform may determine. 5
- (4) Subject to *subsection (5)*, a member of the Authority (including the Chairperson) whose term of office expires by the effluxion of time shall be eligible for reappointment as a member of the Authority. 10
- (5) A person who is reappointed to the Authority in accordance with *subsection (4)* shall not hold office for periods the aggregate of which exceeds 8 years.
- (6) A member of the Authority may resign from office by notice in writing addressed to the Minister and the resignation shall take effect on the date the Minister receives the notice or, if a date is specified in the notice and the Minister agrees to that date, on that date. 15
- (7) The Chairperson may resign from office as Chairperson by notice in writing addressed to the Minister, but shall, unless otherwise stated in the notice, continue to hold office as member of the Authority for the remainder of his or her term of office, and the resignation takes effect on the date the Minister receives the notice or, if a date is specified in the notice and the Minister agrees to that date, on that date. 20
- (8) Subject to *section 13(2)*, the Authority may act notwithstanding one or more vacancies in its membership.
- (9) Where a member of the Authority dies, becomes disqualified for office, resigns, is removed from office or otherwise ceases to be a member, the Government may appoint a person to be a member of the Authority to fill the resultant casual vacancy, and such person shall hold office for the remainder of the term of office of the member who occasioned the casual vacancy. 25

### **Disqualification for office of member of Authority**

- 10.** (1) A person shall be disqualified from and shall cease to hold office as a member of the Authority if he or she— 30
- (a) is convicted on indictment of an offence,
  - (b) is convicted of an offence involving fraud or dishonesty,
  - (c) in the case of a member who is a legal practitioner, is struck off the roll of solicitors or the roll of practising barristers, as the case may be, or, following the investigation of a complaint under *Part 6*, is the subject of— 35
    - (i) a finding under *section 69* that there has been misconduct on his or her part, and the member concerned has not brought an appeal under *section 71(2)(a)* against the determination concerned within the period referred to in *section 72(1)*, or 40
    - (ii) an order of the High Court under *section 72(3)(b)*, *section 72(4)* (other than

*paragraph (ii)* or *section 73* (other than *subsection (2)(b)*),

(d) has a declaration under section 150 of the Companies Act 1990 made against him or her or is subject or is deemed to be subject to a disqualification order by virtue of Part VII of that Act, or

(e) ceases to be resident in the State. 5

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

### **Removal of member of Authority**

**11.** (1) The Government may, subject to this section, remove a member of the Authority from office, but only— 10

(a) where one or more of the grounds referred to in *subsection (2)* apply,

(b) *subsections (3) to (6)* have been complied with, and

(c) no appeal against the decision of the Government under *subsection (6)* has been made under *subsection (7)* within the period specified in that subsection or, where such an appeal has been made, the High Court has affirmed the decision, 15

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

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

(a) has become incapable through ill health of effectively performing the functions of the office, 20

(b) has committed stated misbehaviour,

(c) has a conflict of interest of such significance that he or she should cease to hold the office, or

(d) is otherwise unfit to hold the office or unable to discharge its functions. 25

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

(a) the member concerned, and

(b) the body referred to in *section 8(4)* that nominated that member for appointment as a member of the Authority. 30

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

(a) a statement of the reasons for the proposal,

(b) a statement that the member concerned, and the body referred to in *subsection (3)(b)*, may, within 30 working days of the sending of the notification or such other period as the Government, having regard to the requirements of natural justice, may specify, make representations in the prescribed manner to the Government as to why the member should not be removed from office, and 35

(c) a statement that, where no representations are received within the period

specified under *paragraph (b)*, the Government will, without further notice, proceed with the removal of the member from office in accordance with this section.

- (5) In considering whether to remove a member from office, the Government shall take into account— 5
- (a) any representations made pursuant to *subsection (4)(b)*, and
  - (b) any other matter that the Government consider relevant for the purpose of their decision.
- (6) Where, having taken into account the matters referred to in *subsection (5)*, the Government decide to remove the member from office, they shall notify the member, and the body referred to in *subsection (3)(b)*, in writing of their decision and of the reasons for it. 10
- (7) The member or, as the case may be, the body referred to in *subsection (3)(b)*, may, within 30 working days of the sending of the notification under that subsection, appeal to the High Court against the decision of the Government. 15
- (8) On hearing an appeal under *subsection (7)*, the High Court may, as it thinks proper, either affirm or overturn the decision concerned.

### **Functions of Authority**

12. (1) Subject to this Act, the Authority shall regulate the provision of legal services by legal practitioners and shall ensure the maintenance and improvement of standards in the provision of such services in the State. 20
- (2) Without prejudice to the generality of *subsection (1)*, the Authority may, and where required by this Act, shall—
- (a) keep under review, and make recommendations to the Minister in respect of, the following: 25
    - (i) the admission requirements of the Law Society relating to the solicitors' profession and of the Bar Council relating to the barristers' profession;
    - (ii) the availability and quality of the education and training (including on-going training) for the solicitors' and barristers' professions, including—
      - (I) the curriculum arrangements for the provision of clinical legal education and the teaching of legal ethics, negotiation skills, alternative dispute resolution and advocacy, and 30
      - (II) the methods by which, and the persons by whom, such education and training is provided;
    - (iii) the policies of the Law Society in relation to the admission of persons as solicitors in the State, and of the Bar Council in relation to persons becoming entitled to practise as barristers in the State, including the arrangements for— 35
      - (I) accreditation of foreign legal practitioners, and
      - (II) movement by legal practitioners between the professions of solicitor and 40

- barrister;
- (iv) professional codes;
  - (v) the organisation of the provision of legal services in the State,
- (b) disseminate information in respect of the education and accreditation requirements and other matters referred to in *paragraph (a)* to such extent and in such manner as it thinks fit, 5
- (c) specify the nature and minimum levels of professional indemnity insurance referred to in *section 37*,
- (d) establish and administer a system—
- (i) for the supervision of the accounts of legal practitioners who by virtue of *section 35* may hold the moneys of clients, 10
  - (ii) of inspection of legal practitioners for such purposes as are provided for in this Act,
- (e) impose measures specified in *section 52(6)* on legal practitioners pursuant to a determination referred to in *section 52(5)*, 15
- (f) promote public awareness and disseminate information to the public in respect of legal services, including the cost of such services,
- (g) keep the Minister informed of developments in respect of the provision of legal services by legal practitioners and make recommendations to assist the Minister in co-ordinating and developing policy in that regard, 20
- (h) undertake, commission or assist in research projects and other activities in respect of the provision of legal services, which in the opinion of the Authority may promote an improvement in standards for the provision of those services and public awareness of them, and make recommendations to the Minister arising from those projects or activities, and 25
- (i) perform any other functions conferred on it by this Act or by regulations made under it.
- (3) Subject to this Act, the Authority shall be independent in the performance of its functions.
- (4) The Authority shall, in performing its functions of the regulation of the provision of legal services under this Act, have regard to the objectives of— 30
- (a) protecting and promoting the public interest,
  - (b) supporting the proper and effective administration of justice,
  - (c) protecting and promoting the interests of consumers relating to the provision of legal services, 35
  - (d) promoting competition in the provision of legal services in the State,
  - (e) encouraging an independent, strong and effective legal profession, and
  - (f) promoting and maintaining adherence to the professional principles specified in *subsection (5)*.

- (5) The professional principles referred to in *subsection (4)(f)* are—
- (a) that legal practitioners shall—
    - (i) act with independence and integrity,
    - (ii) act in the best interests of their clients, and
    - (iii) maintain proper standards of work, 5
  - (b) 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, shall comply with such duties as are rightfully owed to the court, and
  - (c) that, subject to any professional obligation of a legal practitioner, including any obligation as an officer of the court, the affairs of clients shall be kept confidential. 10
- (6) Subject to this Act, the Authority may do anything which it considers necessary or expedient to enable it to perform its functions, including liaising and co-operating with other statutory bodies and with other relevant professional and consumer bodies. 15
- (7) Any function of the Authority may be performed through or by the chief executive or any member of its staff duly authorised in that behalf by the Authority.
- (8) The chief executive or member of staff of the Authority who performs any of its functions is presumed in any proceedings to have been authorised by it to do so on its behalf, until the contrary is proved. 20
- (9) The Authority may provide for the performance, under the general direction of the Authority, of one or more of its functions by a committee.

### **Meetings and business**

- 13.** (1) (a) The Authority shall hold such and so many meetings as may be necessary for the due performance of its functions, but in each year shall hold not less than one meeting in each period of three months. 25
- (b) In addition to a meeting with all participants physically present, the Authority may hold or continue a meeting by the use of any means of communication by which all the participants can hear and be heard at the same time.
- (2) The quorum for a meeting of the Authority shall be 5, of whom not fewer than 2 shall be lay members, and not fewer than 2 shall be members other than lay members. 30
- (3) The Chairperson shall fix the date, time and place of the first meeting of the Authority.
- (4) At a meeting of the Authority—
- (a) the Chairperson shall, if present, be the chairperson of the meeting, and 35
  - (b) if and so long as the Chairperson is not present or if the office of Chairperson is vacant, the members of the Authority who are present shall choose one of their number who is a lay member to act as the chairperson of the meeting.
- (5) Each member of the Authority (including the Chairperson) present at a meeting of the

Authority shall have a vote.

- (6) At a meeting of the Authority, a question on which a vote is required shall be determined by a majority of the votes of the members of the Authority present and voting on the question and, in the case of an equal division of votes, the Chairperson of the meeting shall have a second or casting vote. 5
- (7) Subject to this Act, the Authority may determine its own procedures.

**Membership of either House of the Oireachtas, European Parliament, etc.**

14. (1) Where a member of the Authority, a member of a committee, the chief executive or a member of the staff of the Authority is—
- (a) nominated as a member of Seanad Éireann, 10
  - (b) elected as a member of either House of the Oireachtas or to be a member of the European Parliament,
  - (c) regarded pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act 1997 as having been elected to be a member of the European Parliament, 15
  - (d) elected or co-opted as a member of a local authority,
  - (e) appointed to be a judge, or
  - (f) appointed to be the Attorney General,
- he or she shall thereupon—
- (i) in the case of a member of the Authority, a member of a committee established under *section 15* or the chief executive cease to be a member of the Authority or the committee, or the chief executive, as the case may be, and 20
  - (ii) in the case of a member of the staff of the Authority, stand seconded from employment by the Authority and shall not be paid by, or be entitled to receive from, the Authority any remuneration or allowances for expenses in respect of the period commencing on such nomination or election or appointment, or when he or she is regarded as having been so elected or on such election or co-option, as the case may be, and ending when he or she ceases to be a member of either such House, a member of such Parliament or a member of the local authority or ceases to be a judge or the Attorney General, as the case may be. 25 30
- (2) Without prejudice to the generality of *subsection (1)*, that subsection shall be construed as prohibiting the reckoning of a period mentioned in *subparagraph (ii)* of that subsection as service with the Authority for the purposes of any superannuation benefits payable under *section 23*.
- (3) A person who is for the time being— 35
- (a) entitled under the Standing Orders of either House of the Oireachtas to sit therein,
  - (b) a member of the European Parliament, or
  - (c) entitled under the standing orders of a local authority to sit as a member thereof,

shall, while he or she is so entitled under *paragraph (a)* or *(c)* or is such a member under *paragraph (b)*, be disqualified for holding and shall cease to hold office as a member of the Authority, a member of a committee, the chief executive or a member of the staff of the Authority.

### **Committees of Authority**

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**15.** (1) The Authority may establish committees to—

(a) assist and advise it in relation to the performance of all or any of its functions, and

(b) perform such functions of the Authority as may stand delegated to them under *section 12*.

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(2) In appointing members of a committee, the Authority shall—

(a) have regard to the range of qualifications and experience necessary for the proper and effective discharge of the functions of the committee, and

(b) have regard to the desirability of there being such balance between men and women on the committee as is appropriate.

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(3) A committee shall consist of such number of members as the Authority may determine, provided that a majority of the members shall be lay persons.

(4) A committee may include persons who are not members of the Authority or its staff.

(5) There may be paid by the Authority, out of the resources at its disposal, to members of a committee such fees (if any) or allowances for expenses (if any) incurred by them as the Authority, with the approval of the Minister for Public Expenditure and Reform, may determine.

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(6) A member of a committee may at any time be removed from office by the Authority for stated reasons.

(7) The acts of a committee shall be subject to confirmation by the Authority, unless the Authority otherwise determines.

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(8) The Authority may determine the terms of reference and regulate the procedures of a committee but, subject to any such regulation, the committee may regulate its own procedures and business.

(9) The Authority may appoint a person to be chairperson of a committee.

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(10) A committee shall provide the Authority with such information as the Authority may from time to time require, in respect of its activities and operations, for the purposes of the performance of the functions of the Authority.

(11) The Authority may at any time dissolve a committee.

(12) A committee may act notwithstanding one or more vacancies in its membership.

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### **Power to appoint consultants and advisers and to enter into contracts**

**16.** (1) The Authority may, with the approval of the Minister for Public Expenditure and Reform, from time to time and as it may consider necessary to assist it in the

performance of its functions—

- (a) enter into contracts with persons or bodies, and
  - (b) appoint consultants or advisers.
- (2) There may be paid by the Authority, out of the resources at its disposal, to persons, bodies, consultants or advisers referred to in *subsection (1)*, such fees (if any) or allowances for expenses (if any) incurred by them as the Authority, with the approval of the Minister for Public Expenditure and Reform, may determine. 5
- (3) The appointment of a person as a consultant or adviser shall be for such period and subject to such terms and conditions as the Authority considers appropriate.

**Non-disclosure of confidential information** 10

17. (1) Save as otherwise provided by law, and subject to *subsection (3)*, a person shall not, without the consent in writing of the Authority, disclose confidential information obtained by that person while performing, or as a result of having performed, functions as—
- (a) a member of the Authority or a committee, 15
  - (b) the chief executive,
  - (c) a member of the staff of the Authority,
  - (d) a consultant or adviser or an employee of a consultant or adviser appointed by the Authority under *section 16*, or
  - (e) an inspector appointed under *section 29*. 20
- (2) A person who contravenes *subsection (1)* is guilty of an offence and liable on summary conviction to a class A fine.
- (3) Nothing in *subsection (1)* shall prevent the disclosure of information—
- (a) to the Authority,
  - (b) by or on behalf of the Authority to the Minister, or 25
  - (c) which, in the opinion of a person referred to in that subsection, may relate to the commission of an indictable offence to—
    - (i) the Director of Corporate Enforcement,
    - (ii) the Competition Authority,
    - (iii) a member of the Garda Síochána, 30
    - (iv) an officer of the Revenue Commissioners,
    - (v) the Central Bank of Ireland, or
    - (vi) such other person as may be prescribed after consultation by the Minister with any other Minister of the Government appearing to the Minister to be concerned. 35
- (4) Nothing in *subsection (1)* shall prevent the disclosure of information by a person in the circumstances referred to in section 35(2) of the Ethics in Public Office Act 1995.



- (5) In this section, “confidential information” includes information that is expressed by the Authority or a committee to be confidential either as regards particular information or as regards information of a particular class or description.

### Strategic plans

18. (1) The Authority shall, as soon as practicable after the establishment day and thereafter within 6 months before each third anniversary of the establishment day, prepare and submit to the Minister a strategic plan for the ensuing 3 year period. 5
- (2) A strategic plan shall—
- (a) set out the key objectives, outputs and related strategies of the Authority, including the use of its resources, and 10
- (b) have regard to the need to ensure the most beneficial and efficient use of the Authority’s resources.
- (3) The Minister shall cause a copy of a strategic plan prepared pursuant to this section to be laid before each House of the Oireachtas as soon as practicable after the plan has been received by him or her. 15

### Reports to Minister

19. (1) The Authority shall, not later than 30 April in each year, make a report (in this section referred to as the “annual report”) to the Minister and to the Oireachtas Joint Committee on Justice, Defence and Equality, or any Oireachtas Joint Committee that may replace that Committee, on the performance of its functions during the preceding year. 20
- (2) The annual report shall be in such form and shall include information in respect of such matters as the Authority considers appropriate.
- (3) The Authority may make such other reports to the Minister relating to its functions as it considers appropriate. 25
- (4) The Authority shall give to the Oireachtas Joint Committee on Justice, Defence and Equality, or any Oireachtas Joint Committee that may replace that committee such other information it may require in respect of—
- (a) the performance by the Authority of its functions and its policies in respect of such performance, 30
- (b) any specific document or account prepared by it, or
- (c) the annual report or any report referred to in *subsection (3)*.
- (5) For the purposes of *subsection (1)*, the period between the establishment day and the following 31 December shall be deemed to be a preceding year.
- (6) The Minister shall, as soon as is practicable, cause copies of the annual report or, as the case may be, a report referred to in *subsection (3)*, to be laid before each House of the Oireachtas. 35
- (7) The Authority shall publish its annual report in such form and manner as it considers appropriate as soon as is practicable after *subsection (4)* has been complied with in

respect of the report.

### Codes of practice

20. (1) Subject to *subsection (2)*, the Authority may and, at the request of the Minister, shall—
- (a) prepare and publish a code of practice for the purpose of setting standards for the provision of a legal service that is the subject of a provision of an Act or regulation made under it, or 5
  - (b) on application to it by the body concerned, approve a professional code prepared by a professional body in relation to the provision of legal services.
- (2) Before publishing or approving of a code of practice or approving a professional code under this section, the Authority— 10
- (a) may publish in such manner as the Authority considers appropriate a draft of the code of practice, or a copy of the professional code, as the case may be, and shall allow persons 60 days from the date of that publication within which to make representations in writing to the Authority in relation to the draft code or professional code concerned or such further period, not exceeding 30 days, as the Authority thinks fit, and 15
  - (b) following consultation and, where relevant, having considered the representations (if any) made, shall submit the draft code of practice or professional code to the Minister for his or her consent to its publication or approval under this section, with or without modifications. 20
- (3) Where the Authority publishes a code of practice or approves a professional code under this section, the Minister shall cause a notice to that effect to be published in *Iris Oifigiúil*—
- (a) identifying or specifying the code, 25
  - (b) specifying the legal services in respect of which the code is so published or approved, as the case may be, and
  - (c) specifying the date from which the code of practice shall have effect, or the professional code has been approved, as the case may be.
- (4) The Authority may, with the consent of the Minister but subject to *subsection (5)*— 30
- (a) amend or revoke a code of practice published under this section, or
  - (b) withdraw its approval of any professional code approved under this section.
- (5) *Subsection (2)* shall, with all necessary modifications, apply to any amendments to a code of practice that the Authority proposes to make under *subsection (4)(a)*.
- (6) Where a professional code is approved under this section, the body that adopted that code shall inform the Authority of any amendments subsequently made to that code. 35
- (7) Where the Authority amends or revokes a code of practice, or withdraws its approval in respect of a professional code under *subsection (4)*, the Minister shall cause a notice to that effect to be published in *Iris Oifigiúil*—

- (a) identifying or specifying the code to which the amendment, revocation, or withdrawal, as the case may be, relates and, if applicable, particulars of the amendment,
  - (b) specifying the legal service in respect of which the code is so amended, revoked or withdrawn, as the case may be, and 5
  - (c) specifying the date from which the amendment, revocation, or withdrawal, as the case may be, shall have effect.
- (8) The Authority shall make available for inspection free of charge to members of the public at its principal office during normal working hours a copy of each code of practice published and each professional code approved under this section. 10

**Chief executive**

21. (1) There shall be a chief executive officer of the Authority who shall be appointed by the Authority and who shall be known, and is referred to in this Act, as the “chief executive”.
- (2) The chief executive shall hold office under a written contract of service (which contract may, at the discretion of the Authority, be renewed) for such period as is specified in the contract, and subject to such terms and conditions (including terms and conditions relating to remuneration) as are determined by the Authority with the approval of the Minister for Public Expenditure and Reform. 15
- (3) The chief executive shall— 20
- (a) implement the policies and decisions of the Authority,
  - (b) manage and control generally the Authority’s staff, administration and business,
  - (c) be responsible to the Authority for the performance of his or her functions, and
  - (d) perform such other functions (if any) as may be required by the Authority or as may be authorised under this Act. 25
- (4) The chief executive may be removed or suspended from office by the Authority for stated reasons.
- (5) The chief executive shall not be a member of the Authority or a committee but may, in accordance with procedures established by the Authority or such a committee, as the case may be, attend meetings of the Authority or the committee, as the case may be, and shall be entitled to speak at and give advice at such meetings. 30
- (6) The chief executive shall provide the Authority with such information, including financial information, in respect of the performance of the chief executive’s functions as the Authority may require.
- (7) The chief executive shall not hold any other office or position in respect of which remuneration is payable, or carry on any business, trade or profession without the consent of the Authority. 35
- (8) Such of the functions of the chief executive as the chief executive may specify may, with the consent of the Authority, be performed by such member or members of the staff of the Authority as the chief executive may authorise for that purpose, and that 40

member or those members of staff shall be accountable to the chief executive for the performance of the functions so delegated.

- (9) The chief executive shall be accountable to the Authority for the performance of functions delegated by him or her in accordance with *subsection (8)*.
- (10) The chief executive may, with the consent of the Authority in writing, revoke a delegation made in accordance with this section. 5
- (11) The functions referred to in *subsection (8)* do not include a function delegated by the Authority to the chief executive subject to a condition that the function shall not be delegated by the chief executive to anyone else.
- (12) If the chief executive— 10
- (a) dies, resigns, becomes disqualified for or is removed from office, or
  - (b) is for any reason temporarily unable to continue to perform his or her functions, the Authority may designate such member or members of the staff of the Authority as it considers appropriate to perform the functions of the chief executive until—
- (i) in the circumstances mentioned in *paragraph (a)*, a new chief executive is appointed in accordance with this section, 15
  - (ii) in the circumstances mentioned in *paragraph (b)*, the chief executive is able to resume the performance of his or her functions, or
  - (iii) the Authority decides to revoke or alter a designation made under this subsection.

**Staff of Authority** 20

22. (1) The Authority may appoint persons to be the staff of the Authority and may determine their duties.
- (2) The Authority, with the approval of the Minister for Public Expenditure and Reform, shall determine—
- (a) the terms and conditions of employment (including terms and conditions relating to remuneration and allowances) of staff appointed under this section, and 25
  - (b) the grades of the staff of the Authority and the numbers of staff in each grade.
- (3) The remuneration and allowances of the Authority's staff are payable by the Authority to the staff out of funds at the Authority's disposal.

**Superannuation** 30

23. (1) The Authority shall, as soon as may be after the establishment day, with the approval of the Minister for Public Expenditure and Reform, make a scheme or schemes for the granting of superannuation benefits to or in respect of the chief executive and such of its staff as the Authority thinks fit.
- (2) A scheme under this section shall fix the time and conditions of retirement of all persons to or in respect of whom superannuation benefits are payable under the scheme or schemes and different times and conditions may be fixed in respect of different classes of persons. 35

- (3) The Authority may, with the approval of the Minister for Public Expenditure and Reform, make a scheme amending a scheme under this section including a scheme under this subsection.
- (4) A scheme under this section shall, if approved by the Minister for Public Expenditure and Reform, be carried out by the Authority in accordance with its terms. 5
- (5) A scheme under this section shall include a provision for appeals from a decision relating to a superannuation benefit under the scheme.
- (6) If any dispute arises as to the claim of any person to, or the amount of, any superannuation benefit payable pursuant to a scheme or schemes under this section, such dispute shall be submitted to the Minister who shall refer it to the Minister for Public Expenditure and Reform, whose decision shall be final. 10
- (7) No superannuation benefits shall be granted by the Authority to or in respect of a person on ceasing to be the chief executive or a member of the staff of the Authority otherwise than—
- (a) in accordance with a scheme or schemes under this section, or 15
- (b) with the approval of the Minister for Public Expenditure and Reform.
- (8) A scheme under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the scheme is passed by either such House within the next 21 days on which that House has sat after the scheme is laid before it, the scheme shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder. 20
- (9) *Subsection (8)* shall, with all necessary modifications, apply to an amendment to a scheme under this section as it applies to a scheme under this section.
- (10) In this section—
- “amending”, in relation to a scheme under this section, includes revoking the scheme; 25
- “superannuation benefit” means any pension, gratuity or other allowance payable to or in respect of a person ceasing to be the chief executive or a member of the staff of the Authority.

#### **Accounts and audit**

24. (1) The chief executive, with the agreement of the Authority, shall— 30
- (a) submit estimates of income and expenditure to the Minister in such form, in respect of such periods and at such times as may be specified by the Minister, and
- (b) provide to the Minister any information which the Minister may require regarding those estimates and also regarding the proposals and plans of the Authority in respect of a period specified by the Minister, 35
- and the Minister shall, as soon as practicable, cause copies of the information so submitted by the Authority to be laid before each House of the Oireachtas.
- (2) The chief executive, under the direction of the Authority, shall keep in such form and in respect of such accounting periods as may be approved of by the Minister, with the consent of the Minister for Public Expenditure and Reform, all proper and usual 40

accounts of moneys received and spent by the Authority, including an income and expenditure account and a balance sheet.

- (3) (a) The accounts of the Authority shall be approved by it as soon as is practicable (but not later than 3 months after the end of the accounting period to which they relate) and submitted by it to the Comptroller and Auditor General for audit. 5
- (b) A copy of the accounts and the report of the Comptroller and Auditor General on them shall be presented to the members of the Authority and the Minister as soon as is practicable, and the Minister shall cause a copy of the accounts and report to be laid before each House of the Oireachtas.
- (4) (a) The Authority, the chief executive and any relevant member of the staff shall, whenever so required by the Minister, permit any person appointed by the Minister to examine the accounts of the Authority in respect of any financial year or other period and shall facilitate any such examination, and the Authority shall pay to the Minister such fee for the examination as may be fixed by the Minister. 10
- (b) In this subsection, “relevant member of the staff” means a member of the staff of the Authority to whom duties relating to those accounts have been duly assigned. 15

**Accountability of chief executive to Oireachtas Committee established to examine, etc., appropriation accounts, etc.**

25. (1) The chief executive shall, whenever required in writing by a Committee of Dáil Éireann established under the Standing Orders of Dáil Éireann to examine and report to Dáil Éireann on the appropriation accounts and reports of the Comptroller and Auditor General (in this section referred to as the “Committee”), give evidence to that Committee on— 20
- (a) the regularity and propriety of the transactions recorded or required to be recorded in any account kept under *section 24(2)*, 25
- (b) the economy and efficiency of the Authority in the use of its resources,
- (c) the systems, procedures and practices employed by the Authority for the purpose of evaluating the effectiveness of its operations, and
- (d) any matter affecting the Authority referred to in a special report of the Comptroller and Auditor General under *section 11(2)* of the Comptroller and Auditor General (Amendment) Act 1993 or in any other report of the Comptroller and Auditor General (in so far as it relates to a matter specified in *paragraph (a), (b) or (c)*) that is laid before Dáil Éireann. 30
- (2) In giving evidence to the Committee under this section, the chief executive shall not question or express an opinion on the merits of any policy of the Government or a Minister of the Government or on the merits of the objectives of such a policy. 35

**Accountability of chief executive to Oireachtas Committees**

26. (1) Subject to *subsection (3)*, the chief executive shall, at the request in writing of the Committee attend before it to give account for the general administration of the Authority as is required by the Committee. 40

- (2) In giving evidence to the Committee the chief executive shall not question or express an opinion on the merits of any policy of the Government or a Minister of the Government or on the merits of the objectives of such a policy.
- (3) The chief executive shall not be required to give account before the Committee for any matter which is or has been or may at a future time be the subject of— 5
- (a) proceedings before a court or tribunal in the State, or
- (b) a decision or determination by the Authority in respect of a particular legal practitioner.
- (4) Where the chief executive is of the opinion that a matter, the subject of a request under *subsection (1)*, is a matter to which *subsection (3)* applies, he or she shall inform the Committee concerned of that opinion and the reasons for that opinion and, unless the information is conveyed to the Committee at a time when the chief executive is before it, the information shall be so conveyed in writing. 10
- (5) Where the chief executive has informed the Committee of his or her opinion in accordance with *subsection (4)* and the Committee does not withdraw the request referred to in *subsection (1)* in so far as it relates to a matter the subject of that opinion— 15
- (a) the chief executive may, not later than 21 days after being informed by the Committee of its decision not to withdraw the request, apply to the High Court in a summary manner for determination of the question whether the matter is one to which *subsection (3)* applies, or 20
- (b) the chairperson of the Committee may, on behalf of the Committee, make such an application,
- and the High Court shall determine the matter.
- (6) Pending the determination of an application under *subsection (5)*, the chief executive shall not attend before the Committee to give account for the matter the subject of the application. 25
- (7) If the High Court determines that the matter concerned is one to which *subsection (3)* applies, the Committee shall withdraw the request referred to in *subsection (1)*, but if the High Court determines that *subsection (3)* does not apply, the chief executive shall attend before the Committee to give account for the matter. 30
- (8) In this section “Committee” means the Committee established jointly by Dáil Éireann and Seanad Éireann known as the Committee on Justice, Defence and Equality, or any Committee established to replace that Committee.
- Power to charge and recover fees** 35
27. (1) Subject to *subsection (5)*, the Authority may prescribe by regulations the fees to be paid to it and when they fall due in respect of—
- (a) the performance of functions,
- (b) the provision of services, and
- (c) the carrying on of activities, 40

by the Authority under this Act.

- (2) Without prejudice to the generality of *subsection (1)*, the Authority's power under that subsection to prescribe fees includes the power to provide for exemptions from the payment of fees, or waiving, remitting or refunding fees (in whole or in part), in different circumstances or classes of circumstances or in different cases or classes of cases. 5
- (3) Fees received under this Act shall be paid into or disposed of for the benefit of the Exchequer in such manner as the Minister for Public Expenditure and Reform directs.
- (4) The Authority may recover as a simple contract debt in any court of competent jurisdiction, from a person by whom the fee is payable, any amount due and owing to the Authority in respect of a fee charged under this section. 10
- (5) *Subsection (1)* shall not apply in respect of a function, service or activity referred to in that subsection where the cost to the authority of performing that function, providing that service or carrying out that activity is included in the approved expenses of the Authority referred to in *section 79*. 15

#### **Advances by Minister to Authority**

28. The Minister shall advance to the Authority out of moneys provided by the Oireachtas such amount or amounts as the Minister may, with the consent of the Minister for Public Expenditure and Reform, determine for the purposes of expenditure by the Authority in the performance of its functions. 20

#### **Inspectors**

29. (1) For the purposes of this Act the Authority may appoint—
  - (a) such members of its staff as it thinks fit to be inspectors for such period and subject to such terms as the Authority may determine,
  - (b) such other persons as it thinks fit to be inspectors for such period and subject to such terms (including terms as to remuneration and allowances for expenses) as the Authority, with the approval of the Minister for Public Expenditure and Reform, may determine. 25
- (2) An inspector appointed under *subsection (1)* shall, upon the direction of the Authority, have power to carry out an inspection of a legal practitioner in the following circumstances: 30
  - (a) where the Authority has determined that a complaint is admissible and that there is a *prima facie* case for investigation of the complaint, or
  - (b) as required from time to time by the Authority for the purposes of—
    - (i) performing a function of the Authority under this Act or any regulations made pursuant to or under this Act, and 35
    - (ii) ensuring compliance with the provisions of this Act or any regulations made pursuant to or under this Act.
- (3) Each inspector shall be given a warrant of appointment and, when performing any



function imposed under this Act, shall, on request by any person affected, produce the warrant or a copy thereof, together with a form of personal identification.

### **Powers of inspectors**

30. (1) For the purposes of an inspection referred to in *section 29(2)*, an inspector may attend with or without prior notice at the place or places of business of the legal practitioner concerned. 5
- (2) An inspector who attends pursuant to *subsection (1)* at a place or places of business of a legal practitioner shall inform the legal practitioner or any employee of the legal practitioner of the purpose of the attendance, except where the Authority reasonably considers that to do so could prejudice the inspection, and may in pursuance of that purpose require the legal practitioner or any such employee to do one or more than one of the following: 10
- (a) to make available to the inspector for inspection such specified documents or categories of documents in the possession or under the control or within the procurement of the legal practitioner as the inspector deems necessary to fulfil that purpose (whether or not such documents or any of them relate also to other matters); 15
- (b) to furnish such copies of those records as the inspector considers necessary to fulfil the said purpose;
- (c) to give such written authority addressed to such bank or banks as the inspector requires to enable the inspector to inspect any account or accounts opened, or caused to be opened, by the legal practitioner at such bank or banks (or any documents relating thereto) and to obtain from such bank or banks copies of such documents relating to such account or accounts for such period or periods as the inspector considers necessary to fulfil the said purpose. 20 25
- (3) If the legal practitioner or employee of a legal practitioner referred to in *subsection (2)*, refuses, neglects or otherwise fails, without reasonable cause, to comply with such requirement or requirements, the Authority may, on notice to the legal practitioner, apply to the High Court for an order (which said order the Court is hereby empowered to make) requiring the legal practitioner to comply with such requirement or requirements as the Authority considers necessary for the purposes of the inspection referred to in *subsection (1)* or as the Court thinks fit. 30
- (4) It shall be an offence for a legal practitioner—
- (a) to refuse, neglect or otherwise fail, without reasonable cause, to duly comply with any requirement of an inspector under *subsection (2)*; 35
- (b) to remove from his or her place or places of business, or to destroy, deface or mutilate, all or any part of his or her accounting records, with intent to prevent or interfere with an inspector acting in pursuance of the purpose specified in *subsection (2)*;
- (c) to provide knowingly false or misleading information to an inspector acting in pursuance of the purpose specified in *subsection (2)*. 40
- (5) A person guilty of an offence under this section shall be liable—

- (a) on summary conviction, to a class B fine, or
- (b) on conviction on indictment, to a fine not exceeding €30,000.

**Annual report on admission policies of legal professions**

- 31.** (1) Not later than 4 months after the end of each financial year, the Authority shall prepare and submit to the Minister a report— 5
- (a) specifying the number of persons admitted to practise as solicitors during that year,
  - (b) specifying the number of persons admitted to practise as barristers during that year, and
  - (c) containing an assessment as to whether or not, having regard to the demand for the services of practising barristers and solicitors and the need to ensure an adequate standard of education and training for persons admitted to practise, the number of persons admitted to practise as barristers and solicitors in that year is consistent with the public interest in ensuring the availability of such services at a reasonable cost. 10 15
- (2) The Authority shall consult—
- (a) the Law Society,
  - (b) the Bar Council,
  - (c) the Honorable Society of King’s Inns, and
  - (d) such persons as the Authority considers appropriate, 20
- for the purpose of preparing the report referred to in *subsection (1)*.
- (3) The Law Society, the Bar Council and the Honorable Society of King’s Inns shall provide the Authority with such information in their possession as is reasonably requested of them by the Authority for the purpose of preparing the report referred to in *subsection (1)*. 25
- (4) As soon as practicable after receiving a report under this section, the Minister shall cause a copy of the report to be laid before each House of the Oireachtas.
- (5) Following compliance with *subsection (4)*, the Authority shall arrange for the publication of the report in such form and manner as it considers appropriate and for it to be sent to the Law Society, the Bar Council and the Honorable Society of King’s Inns. 30

**Reports on specified matters to Minister**

- 32.** (1) Without prejudice to the functions of the Authority referred to in *section 12(2)(g)* and *(h)*, the Authority shall, following appropriate public consultation processes, prepare and furnish reports to the Minister in relation to the following: 35
- (a) the education and training (including on-going training) arrangements in the State for legal practitioners, including the manner in which such education and training is provided;

- (b) unification of the solicitors' profession and the barristers' profession;
  - (c) the creation of a new profession of conveyancer;
  - (d) such other matters as the Minister may, from time to time, request the Authority to report on to him or her.
- (2) The fact that the Authority has provided a report under *subsection (1)* in respect of a matter referred to in that subsection shall not, of itself, preclude the Minister from requiring another report in respect of that matter or the Authority from providing that report. 5
- (3) A report in respect of a matter referred to in *subsection (1)(a)*—
- (a) shall be provided to the Minister within 1 year of the establishment day, 10
  - (b) shall contain a review of the existing arrangements relating to the education and training of legal practitioners and make such recommendations as it considers appropriate in relation to the arrangements that in the opinion of the Authority should be in place for the provision of the education and training referred to in that subsection, including the accreditation of bodies to provide such education and training, and the reforms or amendments, whether administrative or legislative, that are required to facilitate those arrangements, 15
  - (c) without prejudice to the generality of *paragraph (b)*, shall include recommendations in relation to—
    - (i) appropriate standards of education and training for legal professional qualifications, 20
    - (ii) arrangements necessary to monitor adherence to the standards referred to in *subparagraph (i)*,
    - (iii) the scope and content of the curriculum forming part of courses of legal professional education and training, including the teaching methodology of legal education, legal ethics, negotiation, alternative dispute resolution and advocacy, 25
    - (iv) arrangements that would facilitate the minimisation of duplication, and consequent expense incurred, in the taking of examinations in legal subjects on the part of a person— 30
      - (I) who wishes to undertake a course of legal professional education and who has obtained a third level law degree that includes one or more of the subjects that form part of that course,
      - (II) who, being a solicitor, wishes to become a barrister, or who, being a barrister, wishes to be admitted as a solicitor, 35
    - (v) standards required for the award of legal professional qualifications pursuant to courses of legal professional education and training,
    - (vi) the need for, and, if such need is identified, the manner of and requirements relating to the accreditation of bodies or institutions to—
      - (I) provide, or procure the provision of, courses of legal professional education and training, 40

- (II) hold or procure the holding of examinations, and
  - (III) award, or procure the awarding of, diplomas, certificates or other awards of merit,
  - and
  - (vii) any other matters that the Authority considers relevant and appropriate. 5
- (4) A report in respect of the matter referred to in *subsection (1)(b)*—
- (a) shall be provided to the Minister within 2 years of the establishment day,
  - (b) shall contain details of arrangements in operation in other jurisdictions in which the professions have been unified,
  - (c) shall contain recommendations as to— 10
    - (i) whether the solicitors' profession and the barristers' profession in the State should be unified having regard to, among other things—
      - (I) the public interest,
      - (II) the need for competition in the provision of legal services in the State,
      - (III) the proper administration of justice, 15
      - (IV) the interest of consumers of legal services including access by such consumers to experienced legal practitioners, and
      - (V) any other matters that the Authority considers appropriate or necessary,
    - (ii) if the recommendation in *subparagraph (i)* is in favour of unification of the solicitors' profession and the barristers' profession— 20
      - (I) how the professions can be unified, and
      - (II) the reforms or amendments, whether administrative, legislative, or to existing professional codes, that are required to facilitate such unification,
  - and 25
  - (iii) any other matters that the Authority considers appropriate or necessary.
- (5) A report in respect of the matters referred to in *subsection (1)(c)* and *(d)* shall—
- (a) be provided to the Minister within a period specified by the Minister in a written notice to the Authority requesting the report,
  - (b) contain such details and make recommendations as to such matters as may be specified by the Minister in the notice referred to in *paragraph (a)*. 30
- (6) (a) The Authority shall, either at the request by the Minister or on its own initiative, prepare an interim report for the Minister in relation to any of the matters in respect of a report being prepared under this section.
- (b) An interim report referred to in *paragraph (a)* may refer generally to the progress of the public consultation process concerned or it may refer to— 35
    - (i) where the Minister has requested the interim report, to such matters as the

Minister requests, or

- (ii) where the interim report is prepared on the initiative of the Authority, to such matters as the Authority considers appropriate,

and may contain recommendations in respect of such matters.

- (7) The Minister shall cause copies of any report referred to in this section to be laid before each House of the Oireachtas within 30 days of having received it. 5

### **Order to prohibit contravention of Act**

- 33. (1) Where, on the application of the Authority, it is shown to the satisfaction of the High Court—

- (a) that a legal practitioner or any other person has contravened, is contravening or is likely to contravene any provision of this Act or regulations made under it, or 10

- (b) that a legal practitioner who is a solicitor, or any other person has contravened, is contravening or is likely to contravene any provision of the Solicitors Acts 1954 to 2011 or regulations made under those Acts,

the Court may by order prohibit the legal practitioner or other person concerned from contravening that provision, notwithstanding that any such contravention may constitute an offence. 15

- (2) An order under *subsection (1)* may contain such provisions of a consequential nature as the Court considers appropriate.

### **Prosecution of offences**

20

- 34. An offence under this Act may be prosecuted summarily by the Authority.

## **PART 3**

### **HOLDING OF CLIENTS' MONEYS BY LEGAL PRACTITIONERS**

#### **Legal practitioners authorised to hold moneys of clients**

- 35. (1) Subject to *subsection (2)*, a legal practitioner shall not hold moneys of clients unless that legal practitioner is a solicitor. 25

- (2) Notwithstanding *subsection (1)* the Minister may by regulations prescribe a class or classes of solicitors who may not hold the moneys of clients, or who may hold such moneys subject to such conditions as may be provided for in such regulations.

- (3) *Subsection (1)* shall not be construed as permitting a solicitor to hold the moneys of clients where a condition or restriction is placed on a solicitor's practising certificate pursuant to the Solicitors Acts 1954 to 2013 or this Act. 30

PART 4

MATTERS RELATING TO PROTECTION OF CLIENTS OF LEGAL PRACTITIONERS

**Interest on client's moneys**

36. (1) The Authority may make regulations to—
- (a) require a legal practitioner, in circumstances specified in the regulations, either— 5
    - (i) 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
    - (ii) 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, 10
  - (b) specify the obligations of a legal practitioner under *paragraph (a)* by reference to one or more of the following:
    - (i) the amount of any sum of money received,
    - (ii) the amount of interest which is received or would have been received if the moneys had been placed on deposit by the practitioner concerned, or 15
    - (iii) the period for which the moneys are held or are likely to be held,and
  - (c) authorise a client of a relevant legal practitioner (without prejudice to any other remedy) to require that any question arising under *paragraph (a)* or *(b)* (or both) 20 in relation to the client's money be referred to and determined by the Authority.
- (2) Except as provided for by regulations made under *subsection (1)*, a legal practitioner shall not be liable by virtue of the relationship between the legal practitioner and client to account to any client for 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. 25
- (3) Nothing in this section or in regulations made under *subsection (1)* shall—
- (a) affect any arrangement in writing, whenever made, between a legal practitioner and his or her client as to the application of the client's moneys or interest thereon, or 30
  - (b) apply to moneys received by a legal practitioner, being moneys subject to a trust of which the legal practitioner is a trustee.
- (4) Regulations made under *subsection (1)* shall specify the category or categories of legal practitioner to whom such regulations apply.
- (5) For the purposes of regulations made under *subsection (1)* and subject to *subsection (3)*, "client's moneys" and "moneys received for or on account of the client" mean moneys held or received by a legal practitioner on account of a person for whom he or she is acting in relation to the holding or receipt of such moneys either as a legal practitioner or, arising from his or her practice as a legal practitioner, as agent, bailee, 35

stakeholder or in any other capacity.

### **Professional indemnity insurance**

37. (1) The Authority may make regulations requiring legal practitioners to maintain professional indemnity insurance.
- (2) Regulations made under this section shall, subject to the provisions of this section, specify a class or classes of legal practitioner to whom the regulations shall apply. 5
- (3) Regulations made under this section may specify the matters or risks in respect of which insurance is to be maintained by legal practitioners to whom the regulations apply, and the Authority may specify different matters or risks in respect of which insurance is to be maintained in respect of different classes of legal practitioners. 10
- (4) Regulations made under this section may, by reference to a monetary amount, specify minimum levels of insurance which are to be maintained by a legal practitioner to whom the regulations apply and such amount may be specified by reference to—
- (a) a type or category of claim, or
- (b) a class or classes of legal practitioner. 15
- (5) Regulations made under this section may, by reference to a monetary amount, specify the maximum excess amount which shall apply in respect of the insurance maintained by a legal practitioner, and such amount may be specified by reference to—
- (a) a type or category of claim, or
- (b) a class or classes of legal practitioner. 20
- (6) Regulations made under this section may specify criteria to be met by persons offering such insurance as is required to be maintained and as respects the terms and conditions of such cover.
- (7) Regulations made under this section may provide that the insurance required to be in place shall be considered as meeting the requirement if— 25
- (a) the insurance is provided by an insurer or mutual fund approved by the Authority,
- (b) the terms of the policy or other documentation effecting the insurance meet criteria specified in the regulations, and
- (c) the wording of terms and conditions of the policy or insurance documentation is in a specified form. 30
- (8) In the case of a solicitor who is required to have insurance in place in respect of specified risks by virtue of regulations made under this section, the registrar of solicitors shall refuse an application for a practising certificate by that solicitor where the solicitor does not satisfy the registrar of solicitors that he or she will be in compliance with the obligation to maintain insurance which meets the standards specified in the regulations made under this section in respect of the period to which the practising certificate the subject of the application relates. 35
- (9) In the case of a barrister who is required to have insurance in place in respect of specified risks by virtue of regulations made under this section, the Bar Council shall remove the name of that barrister where the barrister does not satisfy the Bar Council 40

that he or she is in compliance with the obligation to maintain insurance which meets the standards specified in the regulations made under this section.

- (10) Regulations made under this section may include such incidental, procedural or supplementary provisions relating to any of the matters referred to in *subsections (1) to (6)* as appears to the Authority to be necessary. 5
- (11) Before making regulations under this section the Authority shall consult with the Law Society and the Bar Council.
- (12) In making regulations under this section the Authority shall have due regard to—
- (a) the objective of ensuring that the interests of clients of legal practitioners are protected, and 10
  - (b) the objective of encouraging the provision of legal services of a high standard by legal practitioners at a reasonable cost.

### **Limitation of legal practitioner's liability by contract**

- 38.** (1) Subject to *subsections (2) and (3)*, a contract between a legal practitioner and a client of the legal practitioner that any description of civil liability incurred— 15
- (a) 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
  - (b) by a partner, employee, former partner or former employee 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, 20
- shall be binding on and enforceable by—
- (i) if *paragraph (a)* is applicable, the legal practitioner and the client, and
  - (ii) if *paragraph (b)* is applicable, the partner, employee, former partner or former employee of the legal practitioner and the client. 25
- (2) Nothing in *subsection (1)* shall affect the operation of—
- (a) section 40 of the Sale of Goods and Supply of Services Act 1980, or
  - (b) Regulation 6 of the European Communities (Unfair Terms in Consumer Contracts) Regulations 1995 (S.I. No. 27 of 1995). 30
- (3) The amount referred to in *subsection (1)* in respect of a description of civil liability the subject of the contract concerned shall be not less than the minimum level of cover, as specified from time to time in regulations made under *section 37*, for indemnity against losses arising from those classes of claims which come within that description of civil liability and which relate to the legal practitioner concerned and the class of legal service concerned, and accordingly any such amount which is less than such minimum level of cover shall, by virtue of this subsection, be deemed to be increased to such minimum level of cover, and such contract shall be binding and enforceable accordingly. 35



## PART 5

### INFORMAL RESOLUTION OF COMPLAINTS RELATING TO INADEQUATE LEGAL SERVICES AND CHARGING OF EXCESSIVE FEES

#### **Construction (*Part 5*)**

39. (1) For the purposes of this Part a legal practitioner shall be considered as having provided inadequate legal services where by act or omission the legal services actually provided by the legal practitioner were not of a standard that it is reasonable to expect of a legal practitioner, having regard to whether the legal practitioner concerned is a solicitor or a barrister. 5
- (2) For the purposes of this Part a reference to an amount of costs sought by a legal practitioner in respect of legal services means an amount of costs specified in a bill of costs issued by the legal practitioner concerned. 10

#### **Admissibility of complaints**

40. (1) A complaint shall not be considered by the Authority under this Part if in the opinion of the Authority— 15
- (a) it is frivolous or vexatious, or
  - (b) it is without substance or foundation.
- (2) The Authority shall not consider a complaint in respect of a legal practitioner under this Part where it is satisfied that the act or omission to which the complaint relates is the same or substantially the same act or omission as that which was the subject matter of a complaint in respect of that legal practitioner which was previously determined under this Act. 20
- (3) The Authority shall not consider a complaint in respect of a solicitor where it is satisfied that the act or omission to which the complaint relates is— 25
- (a) the same or substantially the same act or omission as that which was the subject matter of a complaint in respect of that solicitor which was previously determined under the Solicitors Acts 1954 to 2013—
    - (i) by the High Court,
    - (ii) by the Solicitors Disciplinary Tribunal,
    - (iii) by the Solicitors Disciplinary Committee, or 30
    - (iv) by the Law Society,
  - or
  - (b) the same or substantially the same act or omission as that which was the subject of civil proceedings or criminal proceedings in respect of which a final determination of the issues has been made by the court in those proceedings in favour of the solicitor concerned. 35
- (4) The Authority shall not consider a complaint in respect of a barrister where it is satisfied that the act or omission to which the complaint relates is—

- (a) the same or substantially the same act or omission as that which was the subject matter of a complaint in respect of that barrister which was previously determined by the Barristers' Professional Conduct Tribunal, or
  - (b) the same or substantially the same act or omission as that which was the subject of civil proceedings or criminal proceedings in respect of which a final determination of the issues has been made by the court in those proceedings in favour of the barrister concerned. 5
- (5) (a) Where the Authority is satisfied that the act or omission to which a complaint relates is the subject of civil proceedings or criminal proceedings in respect of which a final determination of the issues has not been made by the court in those proceedings, the Authority may defer consideration of the complaint until the proceedings have been finally determined. 10
- (b) Where the Authority is satisfied that the act or omission to which a complaint relates has been investigated by a court in civil proceedings or criminal proceedings and that a final determination of the issues which are, in substance, the issues involved in the complaint has been made by the court in those proceedings in favour of the legal practitioner concerned, the Authority may decide to take no action or no further action in relation to the complaint. 15
- (c) Proceedings shall not be regarded as finally determined for the purposes of *paragraph (a) or (b)* until any appeal, rehearing or retrial in relation to those proceedings has been determined. 20
- (6) Where the Authority determines under this section that it will not consider a complaint, the Authority shall, where appropriate—
- (a) notify the complainant in writing of its determination,
  - (b) state the reason(s) for the determination, 25
  - (c) notify the legal practitioner, if appropriate,
  - (d) take no further action in relation to the complaint,
  - (e) refer the person to a more appropriate body.

### **Complaints under this Part**

41. A client of a legal practitioner may make a complaint to the Authority where the client considers that— 30
- (a) the legal services provided to him or her are or were of an inadequate standard, or
  - (b) the bill of costs issued by the legal practitioner was excessive.

### **Preliminary review of complaints**

42. (1) Where the Authority receives a complaint under this Part it shall conduct a preliminary review of the complaint to determine— 35
- (a) whether or not the complaint is admissible, and
  - (b) whether or not the complaint is an appropriate complaint to be dealt with under

this Part or whether the act or omission concerned should be considered under *Part 6*, having regard to the extent that the standard of the legal services provided to the client fell short of the standard reasonably expected of a legal practitioner in the provision of those services.

- (2) Where the Authority, having carried out the preliminary review referred to in *subsection (1)*, considers that the complaint appears to be admissible and that it is appropriate to be dealt with under this Part it shall notify the legal practitioner concerned setting out an outline of the complaint and requesting the legal practitioner to respond to the Authority within such reasonable period as is specified in the notification. 5 10
- (3) Where the Authority receives a response to the notification given under *subsection (2)* it shall consider the response and having considered the response shall—
- (a) admit the complaint and enter into further consideration of the complaint in accordance with this Part,
  - (b) determine that the complaint appears to be unfounded, or 15
  - (c) request further information regarding the matter from the complainant or the legal practitioner,
- and where the Authority admits the complaint under *paragraph (a)* or determines pursuant to *paragraph (b)* that the complaint is unfounded, it shall notify the complainant and the legal practitioner. 20
- (4) Where, having carried out the preliminary review referred to in *subsection (1)* and having considered any responses received under *subsection (3)* the Authority is of the opinion that the complaint if it were substantiated could constitute misconduct and should be dealt with under *Part 6* it shall proceed to deal with the matter as if the complaint had been made under *Part 6* and notify the complainant to that effect. 25

**Authority to facilitate resolution of complaints made under this Part relating to inadequate services**

43. (1) Where the Authority admits the complaint pursuant to *section 42* and the main substance of the complaint is that the standard of the legal services provided by the legal practitioner concerned to the client has fallen short of the standard reasonably expected of a legal practitioner in the provision of those services, but the Authority is of the opinion that the matter the subject of the complaint is capable of being resolved, the Authority may invite the client and the legal practitioner concerned to make efforts to resolve the matter the subject of the complaint. 30
- (2) Where the client and the legal practitioner agree to make efforts to resolve the matter the subject of the complaint the Authority shall facilitate the resolution of the matters the subject of the complaint— 35
- (a) by offering its assistance in resolving the matter, or
  - (b) by identifying other persons to the legal practitioner and the client who are willing to assist in resolving the matter, 40
- in an informal manner, (which may include the referral of the dispute to mediation or other appropriate form of dispute resolution).

- (3) Having facilitated the resolution of the complaint pursuant to *subsection (2)* and having allowed the client and the legal practitioner a reasonable period to resolve the matter the subject of the complaint, the Authority, where it considers that an agreement or resolution between the parties in relation to the complaint is unlikely to be reached, may give notice in writing to the client and the legal practitioner (and where appropriate any other person involved in attempting to resolve the dispute) that it proposes to conclude the dispute resolution process in accordance with this section. 5
- (4) The Authority shall not conclude the dispute resolution process under this section earlier than 30 days after the giving of notice under *subsection (3)*.
- (5) Where the Authority exercises its power to conclude the dispute resolution process under this section it shall thereafter invite the client and the legal practitioner to furnish to it, within such reasonable period as is specified by the Authority, a statement setting out their respective positions in relation to the matter the subject of the complaint. 10
- (6) The Authority shall consider any statement furnished to it pursuant to *subsection (5)* and, where it considers that the legal services provided by the legal practitioner have fallen short of the standard reasonably expected of a legal practitioner in the provision of those services, and that it is, having regard to all the circumstances concerned, appropriate to do so, the Authority may direct the legal practitioner to do one or more of the following: 15  
20
- (a) secure the rectification, at his or her own expense or at the expense of his or her firm, of any error, omission or other deficiency arising in connection with the legal services concerned;
  - (b) take, at his or her own expense or at the expense of his or her firm, such other action as the Authority may specify; 25
  - (c) transfer any documents relating to the subject matter of the complaint to another legal practitioner nominated by the client, subject to such terms and conditions as the Authority may consider appropriate having regard to the existence of any right to possession or retention of any of the documents concerned vested in the legal practitioner to whom the direction is issued; 30
  - (d) pay to the client a sum not exceeding €3,000 as compensation for any financial or other loss suffered by the client in consequence of the legal services provided by the legal practitioner having fallen short of the standard reasonably expected of a legal practitioner in the provision of those services.
- (7) Where the client or the legal practitioner is aggrieved by a direction made by the Authority under *subsection (6)* or its failure to make such a direction the person aggrieved may seek a review by a committee established for the purpose of considering reviews of decisions of the Authority under this section by notice in writing given not more than 30 days after the Authority has notified the parties to the complaint of its decision under *subsection (6)*. 35  
40
- (8) Any payment made by a legal practitioner pursuant to a direction referred to in *subsection (6)(d)* shall be without prejudice to any legal right of the client.

## Review Committee

44. (1) The Authority shall establish a committee to consider reviews requested by complainants or legal practitioners in relation to determinations of the Authority under *section 43*.
- (2) The committee shall be composed of 3 persons, 2 of whom shall be lay persons and one of whom shall be a legal practitioner. 5
- (3) The member of the review committee who is a legal practitioner shall—
- (a) in a case where the complaint relates to a solicitor, be a solicitor, and
  - (b) in a case where the complaint relates to a barrister, be a barrister.
- (4) A person shall be eligible to serve as a member of a review committee established under this section if he or she is eligible to serve as a member of the Complaints Committee established under *Part 6*. 10
- (5) The review committee shall consider reviews requested and, having given both the client and the legal practitioner an opportunity to make a statement in writing to it as to why the decision of the Authority was incorrect or unjust, determine the review by— 15
- (a) confirming the decision of the Authority,
  - (b) finding that the complaint is not well founded, or
  - (c) issuing one or more than one of the directions to the legal practitioner which the Authority is authorised to issue under *section 43(6)*. 20
- (6) Any payment made by a legal practitioner pursuant to a direction referred to in *subsection (5)* shall be without prejudice to any legal right of the client.

## Authority to facilitate resolution of complaints made under this Part relating to excessive costs

45. (1) Where the Authority admits a complaint pursuant to *section 42* and the main substance of the complaint is that the amount (or any part of the amount) of costs claimed by a legal practitioner in a bill of costs is excessive in a material respect and the Authority is of the opinion that the matter the subject of the complaint is capable of being resolved, the Authority may invite the complainant and the legal practitioner concerned to make efforts to resolve the matter the subject of the complaint. 25 30
- (2) Where the complainant and the legal practitioner agree to make efforts to resolve the matter the subject of the complaint the Authority shall facilitate the resolution of the matters the subject of the complaint—
- (a) by offering its assistance in resolving the matter, or
  - (b) by identifying other persons to the legal practitioner and the client who are willing to assist in resolving the matter, 35
- in an informal manner (which may include the referral of the dispute to mediation or other appropriate form of dispute resolution).
- (3) In reckoning any period of time for the purposes of any limitation period in relation to

the making of an application for adjudication of a bill of costs under *Part 10* which bill of costs is or has been the subject of a complaint under this Part, the period beginning on the making of a complaint to the Authority and ending 2 months after the complaint is determined under this Part shall be disregarded.

- (4) Where pursuant to this section a dispute regarding a bill of costs between the client and the legal practitioner is resolved the client shall not thereafter be entitled to seek adjudication of the bill of costs under *Part 10* unless such adjudication forms part of the resolution. 5
- (5) Having facilitated the resolution of the complaint pursuant to *subsection (2)* and having allowed the client and the legal practitioner a reasonable period to resolve the matter the subject of the complaint, the Authority, where it considers that an agreement or resolution between the parties in relation to the complaint is unlikely to be reached, may give notice in writing to the client and the legal practitioner (and where appropriate any other person involved in attempting to resolve the dispute) that it proposes to conclude the dispute resolution process. 10 15
- (6) The Authority shall not conclude the dispute resolution process under this section earlier than 30 days after the giving of notice under *subsection (5)*.
- (7) Where the Authority concludes the dispute resolution process under *subsection (5)* the complaint shall be deemed to be determined.
- (8) Where a complaint under this section is deemed pursuant to *subsection (7)* to be determined such determination shall be without prejudice to any legal right of the client. 20

## PART 6

### COMPLAINTS AND DISCIPLINARY HEARINGS IN RESPECT OF LEGAL PRACTITIONERS

#### CHAPTER 1

25

#### *Preliminary*

#### **Misconduct by legal practitioners**

- 46.** (1) An act or omission of a legal practitioner may be considered as constituting misconduct where—
- (a) the act or omission involves fraud or dishonesty, 30
- (b) the act or omission is connected with the provision of legal services, where the legal practitioner has fallen short, to a substantial degree, of the standards reasonably expected of a legal practitioner,
- (c) the act or omission, where occurring otherwise than in connection with the practice of law, would justify a finding that the legal practitioner concerned is not a fit and proper person to engage in legal practice, 35
- (d) the act or omission consists of an offence under this Act,
- (e) the act or omission, in the case of a solicitor, consists of an offence under the

Solicitors Acts 1954 to 2013,

- (f) the act or omission, in the case of a legal practitioner who is a barrister, is likely to bring the barristers' profession into disrepute,
  - (g) the act or omission, in the case of a solicitor, constitutes a material breach of the Solicitors' Accounts Regulations, 5
  - (h) the act or omission, in the case of a legal practitioner who is a solicitor, is likely to bring the solicitors' profession into disrepute,
  - (i) the act or omission in the case of a legal practitioner who is a managing legal practitioner of a multi-disciplinary practice (within the meaning of those terms under *Part 8*) consists of a failure by him or her to comply with his or her obligations under this Act as a managing legal practitioner, 10
  - (j) the act or omission consists of the commission of an arrestable offence,
  - (k) the act or omission consists of the commission of a crime or offence outside the State which, if committed within the State, would be an arrestable offence,
  - (l) the act consists of issuing a bill of costs which is grossly excessive, 15
  - (m) the act consists of a contravention of *section 146(1)*.
- (2) In determining whether the act or omission referred to in *paragraph (l)* of *subsection (1)* should be considered as constituting misconduct, the Authority, the Divisional Committee, the Disciplinary Tribunal or, as the case may be, the High Court, may have regard to: 20
- (a) the amount by which or the extent to which the amount claimed in the bill of costs was found to be excessive;
  - (b) whether in the particular circumstances of the legal services performed the amount of the bill of costs appears to be unconscionable; and
  - (c) whether or not a Legal Costs Adjudicator has found the costs charged to be grossly excessive. 25
- (3) In this section "arrestable offence" has the same meaning as it has in the Criminal Law Act 1997.

### **Complaints in respect of legal practitioners**

47. (1) Subject to the provisions of this Part, on or after the coming into operation of this Part, where a person wishes to make a complaint that a legal practitioner has, by act or omission, been guilty of misconduct, the complaint shall be made to the Authority. 30
- (2) *Subsection (1)* shall not act to prevent the Authority or a person who is aggrieved by the act or omission of a legal practitioner seeking assistance from a person with a view to resolving the matter to which a complaint relates. 35
- (3) In reckoning any period of time for the purposes of any limitation period in relation to the making of an application for adjudication of a bill of costs under *Part 10* which bill of costs is or has been the subject of a complaint under this Part, the period beginning on the making of a complaint to the Authority and ending 2 months after the complaint is determined under this Part shall be disregarded. 40

### **Regulations regarding complaints**

- 48.** (1) The Authority may make regulations regarding—
- (a) the making of complaints to the Authority under this Act, and
  - (b) the procedures to be followed by the Authority and the Complaints Committee in investigating complaints under this Act. 5
- (2) Without prejudice to the generality of *subsection (1)* regulations made under this section may provide in particular for the extension or abridgement by the Authority or the Complaints Committee of any period specified in the regulations for the doing of any thing, where the Authority or the Complaints Committee are satisfied that it is appropriate to do so and granting the extension or abridgement would not cause an injustice to the other parties to the complaint. 10
- (3) The Authority shall, in making regulations under this section, have as an objective that the manner in which complaints may be made, and the procedures to be followed by the complainant, the legal practitioner concerned and the Authority are as informal as is consistent with the principles of fair procedures and that undue expense is not incurred by the complainant or the legal practitioner concerned in relation to the complaint. 15

### **Fees in respect of complaints**

- 49.** The Authority may, with the consent of the Minister for Public Expenditure and Reform, make regulations prescribing the fee (if any) payable in respect of making a complaint made under this Act and the regulations may specify the circumstances in which the fee shall be refunded. 20

### **Admissibility of complaints**

- 50.** (1) A complaint shall not be considered by the Authority if in the opinion of the Authority— 25
- (a) it is frivolous or vexatious, or
  - (b) it is without substance or foundation.
- (2) The Authority shall not consider a complaint in respect of a legal practitioner under this Part where it is satisfied that the act or omission to which the complaint relates is the same or substantially the same act or omission as that which was the subject matter of a complaint in respect of that legal practitioner which was previously determined under this Act. 30
- (3) The Authority shall not consider a complaint in respect of a solicitor where it is satisfied that the act or omission to which the complaint relates is—
- (a) the same or substantially the same act or omission as that which was the subject matter of a complaint in respect of that solicitor which was previously determined under the Solicitors Acts 1954 to 2013— 35
    - (i) by the High Court,
    - (ii) by the Solicitors Disciplinary Tribunal,



- (iii) by the Solicitors Disciplinary Committee, or
- (iv) by the Law Society,
- or
- (b) the same or substantially the same act or omission as that which was the subject of civil proceedings or criminal proceedings in respect of which a final determination of the issues has been made by the court in those proceedings in favour of the solicitor concerned. 5
- (4) The Authority shall not consider a complaint in respect of a barrister where it is satisfied that the act or omission to which the complaint relates is—
  - (a) the same or substantially the same act or omission as that which was the subject matter of a complaint in respect of that barrister which was previously determined by the Barristers’ Professional Conduct Tribunal, or 10
  - (b) the same or substantially the same act or omission as that which was the subject of civil proceedings or criminal proceedings in respect of which a final determination of the issues has been made by the court in those proceedings in favour of the barrister concerned. 15
- (5) (a) Where the Authority is satisfied that the act or omission to which a complaint relates is the subject of civil proceedings or criminal proceedings in respect of which a final determination of the issues has not been made by the court in those proceedings, the Authority may defer consideration of the complaint until the proceedings have been finally determined. 20
- (b) Where the Authority is satisfied that the act or omission to which a complaint relates has been investigated by a court in civil proceedings or criminal proceedings and that a final determination of the issues which are, in substance, the issues involved in the complaint has been made by the court in those proceedings in favour of the legal practitioner concerned, the Authority may decide to take no action or no further action in relation to the complaint. 25
- (c) Proceedings shall not be regarded as finally determined for the purposes of *paragraph (a) or (b)* until any appeal, rehearing or retrial in relation to those proceedings has been determined. 30
- (6) Where the Authority determines under this section that it will not consider a complaint, the Authority shall, where appropriate—
  - (a) notify the complainant in writing of its determination,
  - (b) state the reason(s) for the determination,
  - (c) notify the legal practitioner, if appropriate, 35
  - (d) take no further action in relation to the complaint,
  - (e) refer the person to a more appropriate body.
- (7) On determining under this section that it will consider a complaint, the Authority shall, subject to the resolution and complaints provisions, proceed to investigate the complaint. 40

### **Preliminary review of complaints**

- 51.** (1) Where the Authority receives a complaint it shall conduct a preliminary review of the complaint to determine—
- (a) whether or not the complaint is admissible, and
  - (b) whether the complaint is an appropriate complaint to be dealt with under *section 52*, or *Chapter 2*. 5
- (2) The review referred to in *subsection (1)* shall be conducted by a member of the staff of the Authority authorised in writing to conduct such reviews (the reviewer).
- (3) In conducting the review under this section, the Authority may notify the legal practitioner concerned of the making of the complaint and invite the legal practitioner to respond to the Authority in relation to the complaint. 10

### **Authority to offer assistance in resolving matter in dispute where it appears that conduct could constitute misconduct**

- 52.** (1) Where the member of the staff of the Authority who conducted a review of a complaint under *section 51* is of the opinion that— 15
- (a) the main substance of the complaint is that the standard of the legal services provided by the legal practitioner concerned to the complainant, has fallen short, to a substantial degree, of the standard reasonably expected of a legal practitioner in the provision of those services and that the act or omission of the legal practitioner, if the complaint were substantiated, is such that the act or omission concerned could constitute misconduct within the meaning of *section 46(1)(b)*, 20
  - (b) the act or omission on the part of the legal practitioner which is the subject of the complaint does not relate to fraud or dishonesty,
  - (c) the matter the subject of the complaint is capable of being substantially resolved by the legal practitioner concerned in a prompt manner in accordance with guidelines published by the Authority pursuant to *section 56*, 25
- the Authority may invite the complainant and the legal practitioner concerned to make efforts to resolve the matter the subject of the complaint.
- (2) The agreement by the complainant and the legal practitioner to make efforts to resolve the matter the subject of the complaint shall not prevent the Authority continuing with its consideration or investigation of the complaint. 30
- (3) Notwithstanding *subsection (2)*, where the Complaints Committee, the Disciplinary Tribunal or the High Court is satisfied that an act or omission of a legal practitioner the subject of a complaint has been resolved or that proper effort was made by the legal practitioner concerned to resolve the matter in accordance with this section, the Complaints Committee, Disciplinary Committee or the High Court, as the case may be, shall, in determining the appropriate sanction (if any) that should be imposed upon the legal practitioner, give due regard to the efforts to resolve the matter made by the legal practitioner concerned. 35

### **Resolution of complaint by mediation or informal means-additional provisions**

- 53.** (1) No answer or statement made, in the course of attempting to resolve a complaint in the manner specified in *section 52*, by—
- (a) the complainant, or
  - (b) the legal practitioner who is the subject of the complaint, 5
- may be used in any disciplinary, civil or criminal proceedings or communicated to any person other than the persons participating in the attempt to resolve the complaint.
- (2) Any costs arising from an attempt to resolve a complaint in the manner specified in *section 52* shall be borne equally by the parties to the complaint unless the parties agree otherwise. 10

### **Agreement by legal practitioner to participate in resolution of matter under *section 52* not to be treated as admission of liability**

- 54.** 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 52* shall not be taken as an admission of any allegation of misconduct insofar as such misconduct consists of an act or omission on the part of the legal practitioner that in the provision of legal services the legal practitioner has fallen short to a substantial degree of the standards reasonably expected of a legal practitioner. 15

### **Complaints relating to fraud or dishonesty**

- 55.** Where the complaint relates to a solicitor and the Authority considers that the complaint or a part of the complaint would constitute fraud or dishonesty on the part of the solicitor, if substantiated, the Authority may— 20
- (a) proceed to carry out an investigation under *Part 5*,
  - (b) refer the matter to the Complaints Committee, or
  - (c) request the Law Society to carry out an investigation under the Solicitors Acts 1954 to 2013. 25

### **Guidelines for resolution of complaints by mediation or informal means**

- 56.** The Authority shall prepare and publish guidelines in relation to the resolution of complaints by mediation or informal means and those guidelines may—
- (a) set out the process whereby a determination can be made in respect of whether a complaint can be resolved by mediation or informal means, 30
  - (b) provide for the recording of the manner in which a complaint was resolved and of the terms of any agreement between the complainant and the legal practitioner the subject of the complaint,
  - (c) outline the steps to be taken (including notice to the complainant, the legal practitioner concerned and the Complaints Committee) if the complaint cannot, in the opinion of the person attempting to do so, be resolved by mediation or informal means, and 35

- (d) contain any other matters that the Authority considers necessary or appropriate for facilitating the resolution of the complaint by mediation or informal means.

## CHAPTER 2

### *Consideration of complaints by Complaints Committee*

- Establishment and membership of Complaints Committee** 5
57. (1) The Authority shall establish a committee, to be known as the Complaints Committee, for the purpose of considering and investigating complaints referred to it by the Authority under this Act.
- (2) The term of office of the Complaints Committee shall be determined by the Authority.
- (3) The Complaints Committee shall be appointed by the Authority and shall consist of not more than 27 members of whom— 10
- (a) the majority shall be lay persons,
  - (b) not less than 8 shall be persons nominated by the Law Society, each of whom has practised as a solicitor for more than 10 years, and
  - (c) not less than 4 shall be persons nominated by the Bar Council, each of whom has practised in the State as a barrister for more than 10 years. 15
- (4) In appointing lay persons to be members of the Complaints Committee the Authority shall ensure that those members are persons who—
- (a) are independent of professional bodies as respects legal practitioners, and
  - (b) have expertise in or knowledge of— 20
    - (i) the provision of legal services,
    - (ii) the maintenance of standards in a profession (including those regulated by a statutory body),
    - (iii) the investigation and consideration of complaints relating to services, or
    - (iv) the interests of consumers of legal services. 25
- (5) The Complaints Committee shall act in divisions of not less than 3 members and not more than 5 members (in this Act referred to as a “Divisional Committee”).
- (6) A Divisional Committee shall consist of an uneven number of members.
- (7) Each Divisional Committee shall have a majority of lay members.
- (8) The chairperson of each Divisional Committee shall be one of the lay members of that Divisional Committee. 30
- (9) The chief executive shall make arrangements for the provision of such administrative and secretarial support to each Divisional Committee as he or she considers necessary.
- (10) Subject to *subsections (6) and (7)*, where a complaint relates to a solicitor—
- (a) in a case where the Divisional Committee is comprised of 3 members, one of the members of the Divisional Committee shall be a solicitor, 35

- (b) in a case where the Divisional Committee is comprised of 5 members, 2 of the members of the Divisional Committee shall be a solicitor.
- (11) Subject to *subsections (6) and (7)*, where a complaint relates to a barrister—
  - (a) in a case where the Divisional Committee is comprised of 3 members, one of the members of the Divisional Committee shall be a barrister, 5
  - (b) in a case where the Divisional Committee is comprised of 5 members, 2 of the members of the Divisional Committee shall be a barrister.

**Investigation of complaints**

- 58.** (1) A Divisional Committee shall consider and investigate complaints made under this Part referred to it by the Authority. 10
- (2) When referring a complaint to a Divisional Committee the Authority shall prepare a summary of the complaint which document shall be furnished to the Divisional Committee with the complaint.
- (3) Unless the legal practitioner to whom the complaint relates has already been furnished with a copy of the complaint, the Divisional Committee shall furnish a copy of the complaint to the legal practitioner concerned, requesting the legal practitioner to furnish his or her response to the complaint within such reasonable period as is specified by the Divisional Committee. 15
- (4) Where the Divisional Committee receives an explanation from the legal practitioner concerned which indicates that the act or omission did not constitute misconduct it shall furnish a copy of the explanation to the complainant inviting him or her to furnish observations to the Divisional Committee in relation to the explanation of the legal practitioner within such a period as may be specified by the Divisional Committee. 20
- (5) Where— 25
- (a) the response of the legal practitioner does not satisfy the Divisional Committee that the act or omission did not constitute misconduct, or
  - (b) the legal practitioner does not furnish a response within the period specified in the notice,
- the Divisional Committee shall, subject to the provisions of this Chapter, take such steps as it considers appropriate to investigate the complaint. 30
- (6) For the purposes of investigating a complaint in accordance with *subsection (1)* the Divisional Committee—
- (a) shall have due regard to information furnished to it by the Authority,
  - (b) may, by notice in writing to the complainant, do one or more of the following: 35
    - (i) require the complainant to verify, by affidavit or otherwise, anything contained in the complaint;
    - (ii) request the complainant to supply to the Committee, within a reasonable period specified in the notice—

- (I) such information relating to the complaint as is specified in the notice,  
or
- (II) such documents relating to the complaint as it may require;
- (iii) require that information requested under *subparagraph (ii)* be verified by affidavit or otherwise, 5
- and
- (c) may by notice in writing to the legal practitioner the subject of the complaint require him or her to supply the Committee, within a reasonable period specified in the notice, with—
  - (i) such information relating to the complaint as is specified in the notice, or 10
  - (ii) such documents relating to the complaint as it may require.
- (7) The complainant concerned shall comply with a notice issued to him or her by the Divisional Committee under *subsection (6)(b)*.
- (8) The legal practitioner concerned shall comply with a notice issued to him or her by the Divisional Committee under *subsection (6)(c)*. 15
- (9) The Divisional Committee may, having had due regard to—
  - (a) information furnished to it by the Authority,
  - (b) any information or documents provided to it by the complainant or the legal practitioner concerned under this section,
  - (c) any explanation furnished to the Divisional Committee by the legal practitioner 20 concerned pursuant to this section, and
  - (d) any observations furnished by the complainant under *subsection (3)*,

require the complainant and the legal practitioner to appear before the committee for the purposes of the investigation of the complaint.
- (10) The complainant and the legal practitioner may be represented by a person of their 25 choice for the purposes of their appearance before the Divisional Committee and the costs of such representation, if any, shall be borne by the person who requested such representation.
- (11) Where a complaint is withdrawn when it is being investigated by the Divisional Committee, the committee may— 30
  - (a) decide that no further action be taken in relation to the matter the subject of the complaint, or
  - (b) proceed as if the complaint had not been withdrawn.
- (12) Where the Divisional Committee determines that the act or omission does not constitute misconduct it shall so advise the complainant and the legal practitioner in 35 writing, giving reasons for the determination.
- (13) The Divisional Committee shall make reasonable efforts to ensure that—
  - (a) the complainant is kept informed of all decisions made by the committee in

- relation to the complaint concerned,
- (b) the committee acts expeditiously, and
- (c) complaints are processed in a timely manner.

**Power of Divisional Committee to specify measures**

59. (1) Where the Divisional Committee determines that the act or omission the subject of the complaint constitutes misconduct and that such conduct is of a kind that it does not warrant the making of an application in respect of the matter to the Legal Practitioners Disciplinary Tribunal for the holding of an inquiry under *section 70*, it may—
- (a) issue a direction to the legal practitioner concerned to take such measures as are specified in the determination of the Divisional Committee being measures specified in *paragraphs (a) to (i) of subsection (5)*, or
  - (b) where the legal practitioner concerned so consents in writing take one of the measures specified in the determination of the Divisional Committee being a measure specified in *paragraph (a) or (b) of subsection (6)*.
- (2) Where the Divisional Committee issues one or more than one direction in accordance with *subsection (1)(a)* and the legal practitioner complies with each such direction the complaint shall be considered as determined.
- (3) Where the Divisional Committee (with the consent of the legal practitioner concerned) takes one of the measures specified in *subsection (1)(b)* the complaint shall be considered as determined.
- (4) The Divisional Committee shall not make a determination under *subsection (1)* unless the committee considers it to be a reasonable and appropriate manner of determining the complaint.
- (5) The measures referred to in *subsection (1)(a)* are the following:
- (a) 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;
  - (b) 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;
  - (c) a direction to the legal practitioner—
    - (i) that he or she waive all or a part of any fees otherwise payable by the complainant to the legal practitioner concerned, or
    - (ii) 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;
  - (d) a direction that the legal practitioner take such other action in the interest of the client as the Committee may specify;

- (e) a direction to the legal practitioner to comply with (in whole or in part) an undertaking given by the legal practitioner to another legal practitioner or to another person or body;
- (f) a direction to the legal practitioner to withdraw or amend an advertisement;
- (g) a direction to the legal practitioner to pay a sum not exceeding €5,000 as compensation for any financial or other loss suffered by the client in consequence of any such inadequacy in the legal services provided or purported to have been provided by the legal practitioner, provided that any such payment made in compliance with the direction shall be without prejudice to any legal right of the client; 5  
10
- (h) a direction to the legal practitioner to pay to the Authority a sum not exceeding €5,000 by way of contribution towards the costs incurred by the Authority in investigating the complaint;
- (i) where the Divisional Committee has determined that the legal practitioner has in the course of the investigation refused, neglected or otherwise failed, without reasonable cause, to respond appropriately in a timely manner, or at all, to a written request from the Divisional Committee and that the Authority has incurred additional costs in relation to the investigation of the complaint in consequence of that refusal, neglect or failure, a direction to the legal practitioner to pay to the Authority a sum not exceeding €2,500 by way of contribution towards those additional costs incurred by the Authority in investigating the complaint. 15  
20
- (6) The measures referred to in *subsection (1)(b)* are the following:
  - (a) the issue of a caution, admonishment or reprimand to the legal practitioner in respect of the act or omission the subject of the complaint; 25
  - (b) the issue of a notice—
    - (i) in the case of a legal practitioner who is a solicitor, to the Law Society informing the Law Society of the determination of misconduct by the Divisional Committee and directing the Law Society to impose a specified restriction or condition on the practising certificate of the legal practitioner concerned, or 30
    - (ii) in the case of a legal practitioner who is a barrister, to the chief executive of the Authority of the determination of misconduct by the Divisional Committee and directing the chief executive to impose a specified restriction or condition on the legal practitioner concerned in respect of his or her practice as a barrister. 35
- (7) (a) Subject to *subsection (8)* where the Divisional Committee considers that the act or omission the subject of the complaint constitutes misconduct of a kind that is more appropriate for consideration by the Legal Practitioners Disciplinary Tribunal than under this section, it may make an application in respect of the matter to it for the holding of an inquiry under *section 70*. 40
- (b) In determining whether it would be more appropriate for the complaint to be considered by the Legal Practitioners Disciplinary Tribunal the Complaints



Committee shall have regard to the extent of the misconduct which was disclosed in the course of the investigation of the complaint by the Complaints Committee.

- (8) (a) Where the Divisional Committee considers that one of the measures specified in *subsection (6)* is the appropriate measure to be taken as respects the complaint it shall notify the legal practitioner concerned to that effect and specify the precise measure (including in the case of a restriction or condition to be placed on the practising certificates of the legal practitioner, the precise restriction or condition) it proposes to take. 5
- (b) The notification referred to in *paragraph (a)* shall indicate that unless the legal practitioner concerned furnishes to the Divisional Committee his or her consent in writing to the imposition of the specified measures within 21 days of the issue of the notification, the Divisional Committee will apply to the Legal Practitioners Disciplinary Tribunal for the holding of an inquiry into the complaint by the Tribunal under this Part. 10
- (c) Where the Divisional Committee issues a notification pursuant to *paragraph (b)* and does not receive the written consent of the legal practitioner concerned within 21 days to the imposition of the specified measures, it shall apply to the Legal Practitioners Disciplinary Tribunal for the holding of an inquiry by it into the complaint in so far as the Committee has not found that the complaints are unfounded or that the act or omission concerned does not constitute misconduct. 15 20

#### **Publication of reports by Authority relating to its functions under this Part**

60. (1) The Authority shall publish, in such manner as the Authority considers appropriate, a report on the performance of its functions under this Part.
- (2) A report referred to in *subsection (1)* shall include information in respect of the relevant reporting period of— 25
- (a) the number and type of complaints received by the Authority under this Part during the relevant reporting period,
- (b) the general nature and outcome of those complaints,
- (c) the number of complaints referred to the Complaints Committee in the relevant reporting period, 30
- (d) the outcome of those complaints which were considered by the Complaints Committee during the relevant reporting period including—
- (i) the determination made by the Complaints Committee,
- (ii) the nature of any misconduct found,
- (iii) the measures taken by the Complaints Committee, and 35
- (iv) where the Authority considers it appropriate, the name of the legal practitioner concerned.
- (3) A report published under *subsection (1)* shall be published by the Authority at intervals no greater than 6 months.

*Legal Practitioners Disciplinary Tribunal***Establishment of Legal Practitioners Disciplinary Tribunal**

- 61.** There shall stand established a body to be known as the Legal Practitioners Disciplinary Tribunal to consider applications brought before it by the Authority under *section 64* as to whether a specified act or omission by a legal practitioner constitutes misconduct and to perform the other functions assigned to it by this Act. 5

**Membership of Disciplinary Tribunal**

- 62.** (1) The Disciplinary Tribunal shall be appointed by the President of the High Court on the nomination of the Minister and shall consist of not more than 16 members of whom— 10
- (a) the majority shall be lay persons,
  - (b) not less than 3 shall be persons, nominated by the Law Society, each of whom has practised in the State as a solicitor for more than 10 years, and
  - (c) not less than 3 shall be persons, nominated by the Bar Council, each of whom has practised in the State as a barrister for more than 10 years. 15
- (2) One of the persons appointed under *subsection (1)* shall be appointed as chairperson of the Disciplinary Tribunal.
- (3) The Minister shall ensure that those lay persons nominated to be members of the Disciplinary Tribunal are persons who are independent of the Government and the professional bodies and have knowledge and expertise of— 20
- (a) the provision of legal services,
  - (b) the maintenance of standards in a profession (including those regulated by a statutory body),
  - (c) the investigation and consideration of complaints relating to services, 25
  - (d) commercial matters, or
  - (e) the interests of consumers of legal services.
- (4) The Disciplinary Tribunal shall act in divisions consisting of—
- (a) an uneven number of members,
  - (b) a majority of lay members, and 30
  - (c) not less than 3 members and not more than 5 members.
- (5) The chairperson of each division of the Disciplinary Tribunal shall be one of the lay members.
- (6) Where a complaint relates to a solicitor the division of the Disciplinary Tribunal shall include at least one solicitor. 35
- (7) Where a complaint relates to a barrister the division of the Disciplinary Tribunal shall

include at least one barrister.

### **Chairperson of Disciplinary Tribunal**

- 63.** (1) The person appointed as chairperson of the Disciplinary Tribunal shall—
- (a) where the person is a legal practitioner, have practised as a barrister or solicitor for not less than 10 years, 5
  - (b) where the person is not a legal practitioner, have knowledge and expertise of—
    - (i) the provision of legal services,
    - (ii) the maintenance of standards in a profession (including those regulated by a statutory body),
    - (iii) the investigation and consideration of complaints relating to services, or 10
    - (iv) the interests of consumers of legal services.
- (2) The term of office of the chairperson shall be 5 years, and the chairperson may be appointed for a second term not exceeding 5 years.
- (3) The chairperson shall be required to retire on attaining the age of 70 years.
- (4) The chairperson shall be appointed by the President of the High Court from the persons nominated by the Minister for membership of the Tribunal. 15

### **Applications to Disciplinary Tribunal**

- 64.** An application for the holding of an inquiry by the Disciplinary Tribunal under this Part shall be made by the Authority.

### **Presentation of case to Disciplinary Tribunal** 20

- 65.** The Authority, or a person appointed to do so on its behalf, shall present the evidence to the Disciplinary Tribunal grounding the contention that misconduct by the legal practitioner concerned has occurred.

### **Regulations relating to Disciplinary Tribunal**

- 66.** (1) The Disciplinary Tribunal may make Regulations, consistent with this Act, 25 regulating—
- (a) the making of applications to the Disciplinary Tribunal under this Act,
  - (b) the proceedings of the Disciplinary Tribunal under this Act.
- (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 30
  - (b) the parties, other than the Authority, the complainant 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 Chapter on the basis of affidavits and supporting documentation and records where the legal practitioner, the complainant and the Authority consent. 5

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

67. (1) The Disciplinary Tribunal shall, for the purposes of any inquiry under this Chapter, have the powers, rights and privileges vested in the High Court or a judge thereof on the hearing of an action, in respect of— 10

- (a) the enforcement of the attendance of witnesses and their examination on oath or otherwise,
- (b) the compelling of the production of documents, and
- (c) the compelling of the discovery under oath of documents, 15

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 of documents.

- (2) The Disciplinary Tribunal may require the Authority and the respondent legal practitioner 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. 20

- (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, may so inform the Authority or respondent legal practitioner, as the case may be, and bring to the attention of the Authority or respondent legal practitioner, the provisions of *subsection (4)*. 25

- (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 complainant or respondent legal practitioner was unnecessary and thereby involved the witness in avoidable expense, by order direct that the Authority or respondent legal practitioner, as the case may be, shall pay a specified amount or 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 respondent legal practitioner, as the case may be, as a simple contract debt. 35

- (5) Before making an order under *subsection (4)*, the Disciplinary Tribunal shall notify in writing the complainant or respondent legal practitioner 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. 40

- (6) The Authority or respondent legal practitioner 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 referred to in *subsection (4)*, 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, 5
  - (b) being in attendance 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 required by the Disciplinary Tribunal to be produced or discovered under oath by him or her, or to answer any question to which the Disciplinary Tribunal may require an answer, 10
  - (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 15
  - (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. 20
- (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. 25
- (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. 30

### **Inquiry by Disciplinary Tribunal**

68. (1) Where the Disciplinary Tribunal receives an application from the Authority for the holding of an inquiry, it shall arrange a date for the hearing and notify in writing the respondent legal practitioner, the complainant and the Authority. 35
- (2) An inquiry under this section shall be conducted by way of oral hearing and subject to *subsection (3)* shall be heard in public.
- (3) Where the Disciplinary Tribunal are satisfied that it is necessary to do so in the interests of justice, it may direct that the hearing of the inquiry or any part thereof be held otherwise than in public. 40

- (4) The respondent legal practitioner, the complainant and the Authority may be represented at any hearing before the Disciplinary Tribunal by a legal practitioner.
- (5) Witnesses appearing before the Disciplinary Tribunal shall give evidence on oath.
- (6) The respondent legal practitioner and the Authority shall have an opportunity to examine every witness giving evidence to the Disciplinary Tribunal. 5
- (7) If the Tribunal considers that, for the purposes of the inquiry, it requires the advice or assistance of an expert in respect of any matter, it may, subject to such terms and conditions as it may determine, appoint such number of persons having expertise in relation to the matter concerned as it considers necessary to provide it with such advice or assistance. 10
- (8) Having conducted the inquiry, the Disciplinary Tribunal shall 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 69* or *70*. 15
- (9) A determination referred to in *subsection (8)* shall—
  - (a) be in writing,
  - (b) specify the reasons for the determination,
  - (c) specify the sanction to be imposed (if any) pursuant to *section 69* or *70*, and
  - (d) be notified to the legal practitioner, the complainant, and the Authority. 20

**Sanctions following finding of misconduct by Disciplinary Tribunal**

- 69. Where, pursuant to the holding of an inquiry under this Chapter, the Disciplinary Tribunal 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, the Disciplinary Tribunal may make an order imposing one or more of the following sanctions on the legal practitioner: 25
  - (a) a reprimand;
  - (b) a warning;
  - (c) a caution;
  - (d) 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; 30
  - (e) a direction that the legal practitioner concerned—
    - (i) 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, 35
    - (ii) refund all or any part of any costs paid to the legal practitioner concerned in respect of the matter the subject of the complaint;
  - (f) 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;

- (g) a direction that the legal practitioner take, at his or her own expense, such other action in the interests of the complainant as the Disciplinary Tribunal may specify; 5
- (h) 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 having regard to the circumstances, including the existence of any right to possession or retention of such documents or any of them vested in the legal practitioner or in any other person; 10
- (i) a direction that the legal practitioner pay a sum, not exceeding €15,000, as restitution or part restitution to any aggrieved party, without prejudice to any legal right of such party; and 15
- (j) 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 shall be assessed by the Legal Costs Adjudicator in default of agreement). 20

#### **Further provisions regarding sanctions following finding of misconduct by Disciplinary Tribunal**

- 70.** (1) Where, pursuant to the holding of an inquiry under this Chapter, the Disciplinary Tribunal makes a finding that there has been misconduct by a legal practitioner and determines that the issue of sanction should be dealt with pursuant to this section, the Disciplinary Tribunal shall make a recommendation to the High Court: 25
- (a) 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 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; 30
  - (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; 35
  - (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) in the case of a barrister, that the name of the barrister be struck off the roll of practising barristers; 40
  - (f) in the case of 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 142(2)* in respect of that grant.
- (2) In this section and *section 73*, “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. 5

**Persons who may appeal determination of Disciplinary Tribunal and matters in respect of which appeal may be brought**

- 71.** (1) Where the Disciplinary Tribunal makes a determination that the act or omission concerned does not constitute misconduct, the complainant or the Authority may appeal that finding to the High Court. 10
- (2) Where the Disciplinary Tribunal makes a determination that the act or omission concerned constitutes misconduct and deals with the issue of sanction under *section 69* an appeal may be brought to the High Court—
- (a) by the respondent legal practitioner as respects the determination of misconduct or the sanction imposed, 15
  - (b) by the complainant as respects the sanction imposed, and
  - (c) by the Authority as respects the sanction imposed.
- (3) Where the Disciplinary Tribunal makes a determination that the act or omission concerned constitutes misconduct and deals with the matter under *section 70*, the respondent legal practitioner may appeal that determination to the High Court. 20
- (4) Where the respondent legal practitioner does not appeal the determination of the Disciplinary Tribunal in accordance with *subsection (3)* the High Court shall proceed to deal with the matter in accordance with *section 73*.

**Appeals to High Court from Disciplinary Tribunal**

- 72.** (1) Where a person who by virtue of *section 71* may bring an appeal to the High Court brings such an appeal within the period of 28 days of the date on which the determination in writing was sent to the parties concerned by the Disciplinary Tribunal, the High Court shall determine with the appeal in accordance with this section and any rules of court made in relation to such appeals. 25
- (2) Each party who was a party participating in the inquiry of the Disciplinary Tribunal shall be entitled to appear and make submissions in connection with the matter under appeal. 30
- (3) Where the appeal is brought by a complainant as respects a determination by the Disciplinary Tribunal that the act or omission concerned did not constitute misconduct, the High Court may— 35
- (a) confirm the determination of the Disciplinary Tribunal, or
  - (b) allow the appeal, and impose a sanction which the Disciplinary Tribunal could impose pursuant to *section 69* or impose a sanction which the Disciplinary Tribunal could have recommended to the High Court pursuant to *section 70*.



- (4) Where the Disciplinary Tribunal deals with the matter under *section 70* and the appeal is brought—
- (a) by the respondent legal practitioner as respects the determination of misconduct or the sanction imposed,
  - (b) by the complainant as to the sanction imposed, or 5
  - (c) by the Authority as to the sanction imposed,
- the High Court may make an order—
- (i) confirming that the act or omission the subject of the inquiry does constitute misconduct,
  - (ii) determining that the act or omission the subject of the inquiry does not constitute misconduct, 10
  - (iii) confirming that the sanction imposed by the Disciplinary Tribunal was appropriate,
  - (iv) determining that the sanction imposed by the Disciplinary Tribunal was not the appropriate sanction and imposing a sanction which the Disciplinary Tribunal could impose pursuant to *section 69* or imposing a sanction which the Disciplinary Tribunal could have recommended to the High Court pursuant to *section 70*. 15

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

73. (1) Where a matter is referred to the High Court by the Disciplinary Tribunal pursuant to *section 70* and the respondent legal practitioner appeals against the finding of misconduct the Court shall first determine the issue as to whether the act or omission concerned constitutes misconduct. 20
- (2) In respect of that appeal the High Court may—
- (a) confirm the determination of the Disciplinary Tribunal as to misconduct, or 25
  - (b) determine that the act or omission concerned did not constitute misconduct.
- (3) Where the High Court confirms the determination of the Disciplinary Tribunal it shall, having 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— 30
- (a) impose one or more of the sanctions which the Disciplinary Tribunal could impose under *section 69*, or
  - (b) make an order—
    - (i) 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 considers appropriate, 35
    - (ii) 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,

- (iii) 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,
- (iv) 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, 5
- (v) in the case of a barrister, that the name of the barrister be struck off the roll of practising barristers,
- (vi) in the case of a solicitor, that the name of the solicitor be struck off the roll of solicitors, 10
- (vii) in the case of a legal practitioner to whom a Patent has been granted, that the Authority make an application referred to in *section 142(2)* in respect of that grant.

#### **Exercise of jurisdiction of High Court under *sections 72 and 73***

74. The jurisdiction vested in the High Court by *sections 72 and 73* shall be exercised by the President of the High Court or, if and whenever 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. 15

#### **Appeals to Supreme Court**

75. The Authority or the legal practitioner concerned may appeal to the Supreme Court against an order of the High Court made under *section 73* within a period of 21 days beginning on the date of the order and, unless the High Court or the Supreme Court otherwise orders, the order of the High Court shall have effect pending the determination of such appeal. 20

#### **Orders made by High Court or determinations made by Authority** 25

76. (1) A copy of every order made by the High Court under *section 72 or 73* and any determination made by the Disciplinary Tribunal under *sections 68 to 70* shall 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.
- (2) Where an order— 30
- (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 72 or 73*, 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. 35
- (3) Where a matter is determined by the Disciplinary Tribunal in accordance with *section*

69 and the time for lodging an appeal has expired the Authority shall arrange for the publication of—

- (a) its determination,
- (b) the nature of the misconduct,
- (c) the sanction imposed, and 5
- (d) the name of the legal practitioner concerned.

(4) Where the High Court makes an order—

- (a) under *section 72(3)(b)*,
- (b) under *section 72(4)* (other than *paragraph (ii)*),
- (c) under *section 73* (other than *subsection (2)(b)*), 10

the Authority shall arrange for the publication of—

- (i) the finding of misconduct,
- (ii) the nature of the misconduct,
- (iii) the sanction imposed, and
- (iv) the name of the legal practitioner concerned. 15

#### **Privilege in respect of certain proceedings**

77. The following shall be absolutely privileged:

- (a) complaints made to the Authority under this Part and documents created or furnished to the parties entitled to receive them under this Part;
- (b) proceedings and documents associated with an inquiry held by the Disciplinary Tribunal under this Part; 20
- (c) a report made by the Disciplinary Tribunal to the High Court in accordance with this Part;
- (d) a notice authorised by *section 76* to be published or communicated.

#### **Enforcement of order of Disciplinary Tribunal under this Part 25**

78. (1) 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 determination made by the Disciplinary Tribunal under this Part, the Court may by order direct the legal practitioner or other person, as the case may be, to comply in whole or in part as may be appropriate, with the determination of the Disciplinary Tribunal. 30
- (2) An application by the Authority pursuant to *subsection (1)* shall be on notice to the legal practitioner or other person concerned unless the High Court otherwise orders.
  - (3) An order of the High Court under *subsection (1)* may contain such provisions of a consequential nature as the Court considers appropriate. 35

## PART 7

### IMPOSITION OF LEVY ON PROFESSIONAL BODIES AND CERTAIN BARRISTERS TO COVER EXPENSES OF AUTHORITY AND DISCIPLINARY TRIBUNAL

#### **Levy to be paid by Law Society, Bar Council and certain barristers**

79. (1) Subject to *section 81*, the following shall, in accordance with this Part, pay to the Authority in each financial year a levy in the amount determined in accordance with this section: 5
- (a) the Law Society;
  - (b) the Bar Council;
  - (c) each barrister who is not a member of the Law Library. 10
- (2) At the end of each financial year, the Authority shall, with the consent of the Minister for Public Expenditure and Reform, determine for the purposes of this section—
- (a) the operating costs and administrative expenses that are properly incurred in that financial year by the Authority in the performance of its functions under this Act (in this section referred to as “approved expenses of the Authority”), and 15
  - (b) the operating costs and administrative expenses incurred in that financial year by the Disciplinary Tribunal in the performance of its functions under this Act (in this section referred to as “expenses of the Disciplinary Tribunal”).
- (3) The approved expenses of the Authority include—
- (a) the remuneration (including allowances for expenses) of the members of the Authority, 20
  - (b) the remuneration (including allowances for expenses and superannuation benefits) of inspectors and members of the staff of the Authority,
  - (c) any superannuation contributions paid in respect of the members of the staff of the Authority out of moneys provided by the Oireachtas, 25
  - (d) fees due to consultants and advisers appointed under *section 16*,
  - (e) the cost of office premises, and
  - (f) any costs or expenses, not referred to in *paragraphs (a) to (e)*, incurred by the Authority in the performance of its functions under *Part 5*.
- (4) The Authority shall determine— 30
- (a) the proportion of the approved expenses of the Authority that was incurred by the Authority in the performance of its functions—
    - (i) under *Part 5*, and
    - (ii) under this Act, other than *Part 5*,and 35
  - (b) in relation to the approved expenses of the Authority referred to in *paragraph (a) (i)*, the proportion of those expenses that was incurred by the Authority in the

- consideration and investigation of—
- (i) complaints in respect of solicitors,
  - (ii) complaints in respect of barristers who are members of the Law Library, and
  - (iii) complaints in respect of barristers who are not members of the Law Library.
- (5) The Authority, in consultation with the Disciplinary Tribunal, shall determine, in relation to the expenses of the Disciplinary Tribunal, the proportion of those expenses that was incurred by the Tribunal in the consideration of applications brought before it that concerned— 5
- (a) complaints in respect of solicitors,
  - (b) complaints in respect of barristers who are members of the Law Library, and 10
  - (c) complaints in respect of barristers who are not members of the Law Library.
- (6) The amount of the levy payable in each financial year shall be the sum of—
- (a) the approved expenses of the Authority, and
  - (b) the expenses of the Disciplinary Tribunal,
- in respect of the preceding financial year. 15
- (7) The liability for payment of the amount referred to in *subsection (6)* shall be apportioned as follows:
- (a) in the case of the proportion of the approved expenses of the Authority referred to in *subsection (4)(a)(i)*—
    - (i) 10 per cent of that amount shall be apportioned *pro rata* between the Bar Council and the barristers who are not members of the Law Library, according to the number of barristers whose names are on the roll of practising barristers who are members of the Law Library and the number of barristers whose names are on that roll who are not such members, respectively, 25
    - (ii) 10 per cent of that amount shall be apportioned to the Law Society, and
    - (iii) the remaining 80 per cent of that amount shall be apportioned *pro rata* among the Law Society, the Bar Council and the barristers who are not members of the Law Library, respectively, according to the proportion, calculated under *subsection (4)(b)*, of those expenses that was incurred by the Authority in the consideration and investigation of— 30
      - (I) complaints in respect of solicitors,
      - (II) complaints in respect of barristers who are members of the Law Library, and
      - (III) complaints in respect of barristers who are not members of the Law Library; 35
  - (b) the proportion of approved expenses referred to in *subsection (4)(a)(ii)* shall be apportioned *pro rata* among the Law Society, the Bar Council and the barristers who are not members of the Law Library, respectively, according to the number

of solicitors on the roll of solicitors, the number of barristers on the roll of practising barristers who are members of the Law Library and the number of barristers on that roll who are not such members;

- (c) in the case of the expenses of the Disciplinary Tribunal—
- (i) 10 per cent of that amount shall be apportioned *pro rata* between the Bar Council and the barristers who are not members of the Law Library, according to the number of barristers whose names are on the roll of practising barristers who are members of the Law Library and the number of barristers whose names are on that roll who are not such members, respectively, 10
  - (ii) 10 per cent of that amount shall be apportioned to the Law Society, and
  - (iii) the remaining 80 per cent of that amount shall be apportioned *pro rata* among the Law Society, the Bar Council and the barristers who are not members of the Law Library, respectively, according to the proportion, calculated under *subsection (5)*, of those expenses that was incurred in the consideration of applications brought before the Tribunal that concerned— 15
    - (I) complaints in respect of solicitors,
    - (II) complaints in respect of barristers who are members of the Law Library, and
    - (III) complaints in respect of barristers who are not members of the Law Library. 20
- (8) The Authority shall—
- (a) calculate, in accordance with *subsection (7)*, the proportion of the amount referred to in *subsection (6)* that is payable by— 25
    - (i) the Law Society,
    - (ii) the Bar Council, and
    - (iii) the barristers who are not members of the Law Library, and
  - (b) apportion the amount calculated under *paragraph (a)(iii)* equally among all barristers who are not members of the Law Library. 30
- (9) As soon as practicable after the beginning of each financial year, the Authority shall provide a notice (in this Act referred to as a “levy assessment notice”) to each of the bodies or persons referred to in *subsection (1)*.
- (10) A levy assessment notice shall specify—
- (a) the approved expenses of the Authority in respect of the preceding financial year, 35
  - (b) the proportion of the approved expenses referred to in *subparagraphs (i) and (ii) of subsection (4)(a)*,
  - (c) the proportion, calculated under *subsection (4)(b)*, of the expenses referred to in *subsection (4)(a)(i)* that was incurred in the consideration and investigation of—

- (i) complaints in respect of solicitors,
  - (ii) complaints in respect of barristers who are members of the Law Library, and
  - (iii) complaints in respect of barristers who are not members of the Law Library,
- (d) the expenses of the Disciplinary Tribunal in respect of the preceding financial year, 5
- (e) the proportion, calculated under *subsection (5)*, of the expenses of the Disciplinary Tribunal that was incurred in the consideration of applications brought before it concerning—
- (i) complaints in respect of solicitors,
  - (ii) complaints in respect of barristers who are members of the Law Library, and 10
  - (iii) complaints in respect of barristers who are not members of the Law Library,
- (f) the amount of levy payable by the professional body or person concerned, calculated in accordance with *subsection (7)* and, where applicable, *subsection (8)(b)*,
- (g) the date by which the levy becomes payable, and 15
- (h) the rate of interest payable if all or part of the amount specified under *paragraph (f)* is not paid by the date referred to in *paragraph (g)*.
- (11) The levy received under *subsection (1)* shall be paid into or disposed of for the benefit of the Exchequer in such manner as the Minister for Public Expenditure and Reform directs. 20
- (12) For the purposes of this section—
- (a) a reference to the number of barristers whose names are on the roll of practising barristers shall be construed as a reference to the number of barristers whose names are on that roll during the financial year to which the expenses concerned relate, less the number of such barristers to whom *section 81* applies, and 25
  - (b) a reference to the number of solicitors on the roll of solicitors is a reference to the number of solicitors on that roll in the financial year to which the expenses concerned relate, less the number of such solicitors to whom *section 81* applies.
- (13) In this Part—
- “barrister who is not a member of the Law Library” means a barrister whose name, in the financial year to which the expenses concerned relate, is on the roll of practising barristers, where the entry concerned specifies that he or she is not a member of the Law Library, and “barrister who is a member of the Law Library” shall be construed accordingly; 30
- “superannuation benefits” means pensions, gratuities and other allowances payable on resignation, retirement or death. 35

#### **Failure to pay amount specified in levy assessment notice**

- 80.** (1) If all or part of the amount specified in a levy assessment notice is not paid on or before the date specified in the notice, interest, at a rate calculated in accordance with

regulations under *section 82*, on the unpaid amount accrues from that date to the date of payment.

- (2) Where a barrister who is not a member of the Law Library has not, within one month of the date on which the amount becomes payable, paid all of the amount specified in a levy assessment notice as payable by him or her in respect of the levy imposed by this Part, the Authority shall provide that barrister with a further notice, which shall— 5
- (a) be accompanied by a copy of the levy assessment notice concerned,
  - (b) specify the rate of interest payable on the unpaid amount, and
  - (c) contain a statement of the effect of *subsection (3)*.
- (3) Where, after the expiry of 3 months from the date on which the amount, specified in a levy assessment notice as payable by him or her in respect of the levy imposed under this Part, becomes payable, a barrister who is not a member of the Law Library has not paid all of that amount together with any interest on the unpaid amount that has accrued in accordance with *subsection (1)* on that amount, the Authority shall remove the name of the barrister from the roll of practising barristers. 15
- (4) Subject to *subsection (5)*, the Authority may recover, as a simple contract debt in any court of competent jurisdiction, from the professional body or person concerned, any amount payable by that body or person in respect of the levy imposed by this Part and any interest that has accrued, in accordance with *subsection (1)*, on that amount.
- (5) For the purposes of *subsection (4)*, where the professional body concerned is the Bar Council, proceedings may be brought against the Chairman of the Bar Council, in a representative capacity, on behalf of the Bar Council and, if in those proceedings the Authority obtains a judgment, order or decree for any amount payable by the Bar Council, any assets held by or on behalf of or for the benefit of the Bar Council may be used or otherwise applied towards satisfying all or any of the claims under the judgment, order or decree, as the case may be. 20 25

#### **Exemption for legal practitioner in full time service of the State**

- 81.** (1) *Section 79(1)* shall not apply in respect of a legal practitioner who is in the full time service of the State.
- (2) No fee shall be payable by a legal practitioner to whom *subsection (1)* applies to the Law Society or Bar Council in respect of an amount of levy payable by that professional body under this Part. 30

#### **Regulations relating to levy**

- 82.** (1) The Authority may by regulations provide for all or any of the following matters relating to the levy under *section 79*: 35
- (a) the date on which payment of the levy becomes payable;
  - (b) the keeping by the Authority and the Disciplinary Tribunal of specified records in respect of matters connected with the liability to pay the levy;
  - (c) the collection and recovery of the levy;



- (d) subject to *subsection (2)*, the rate of interest on amounts not paid when due;
  - (e) such other matters as are necessary for, or incidental to, the imposition, payment and collection of the levy.
- (2) Regulations under *subsection (1)* may prescribe a formula for determining the interest rate referred to in *subsection (1)(d)* by reference to— 5
- (a) the prevailing Euro Interbank Offered Rate,
  - (b) an additional rate certified by the Central Bank of Ireland, and
  - (c) such other additional rate as the Minister considers appropriate, taking into account the cost of recovering unpaid levy, including any bank charges the Authority may incur in maintaining a bank overdraft to cover a shortfall in funds arising out of unpaid levy. 10

## PART 8

### LEGAL PARTNERSHIPS, DIRECT PROFESSIONAL ACCESS AND MULTI-DISCIPLINARY PRACTICES

#### **Interpretation (*Part 8*)**

- 83.** In this Part— 15
- “contentious matter” means a matter that has arisen in proceedings, to which the person instructing the barrister concerned is a party, before any court, tribunal or other body or person before which the respective legal rights and obligations of two or more parties are determined;
- “legal partnership” means a partnership formed under the law of the State by written agreement, by two or more legal practitioners, at least one of whom is a barrister, for the purpose of providing legal services; 20
- “multi-disciplinary practice” means a partnership formed under the law of the State by written agreement, by two or more persons, at least one of whom is a legal practitioner, for the purpose of providing legal services and services other than legal services. 25

#### **Professional code not to prevent legal partnerships**

- 84.** No professional code shall operate to prevent a legal practitioner from providing legal services as a partner or employee of a legal partnership.

#### **Professional code not to prevent direct professional access to barrister**

- 85.** No professional code shall operate to prevent a barrister from providing legal services in relation to a matter, other than a contentious matter, where his or her instructions on that matter were received directly from a person who is not a solicitor. 30

#### **Professional code not to prevent multi-disciplinary practices**

- 86.** No professional code shall operate to prevent a legal practitioner from providing legal services as a partner in or employee of a multi-disciplinary practice. 35

### **Notification of Authority of commencement, cessation of provision of legal services by multi-disciplinary practice**

87. (1) A multi-disciplinary practice 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)*. 5
- (2) A multi-disciplinary practice 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. 10

### **Partners in multi-disciplinary practice**

88. (1) Each partner in a multi-disciplinary practice shall be jointly and severally liable in respect of his or her acts or omissions, those of the other partners and those of the employees of the partnership. 15
- (2) A partner in a multi-disciplinary practice may share with another partner in that multi-disciplinary practice fees or other income arising from the provision of services by the practice, regardless of whether—
- (a) either or both partners are legal practitioners, or
  - (b) the services concerned are legal services or services other than legal services. 20
- (3) Subject to *subsection (4)*, a person may be a partner in a multi-disciplinary practice notwithstanding that he or she does not provide legal services or services other than legal services.
- (4) The following shall not be a partner in a multi-disciplinary practice:
- (a) a person in respect of whom the High Court has made an order under *section 73(3)(b)(iii)* that he or she be prohibited from providing legal services otherwise than as an employee; 25
  - (b) for the period specified in the order, a person in respect of whom the High Court has made an order under *section 73(3)(b)(iv)* that he or she be suspended from practice as a legal practitioner unless, in the case of a person who at the time the order was made was a partner in a multi-disciplinary practice, the order expressly permits him or her to continue to be a partner of that multi-disciplinary practice; 30
  - (c) a person in respect of whom the High Court has made an order under *subparagraph (v)* or *(vi)* of *section 73(3)(b)* that his or her name be struck off the roll of practising barristers or the roll of solicitors. 35

### **Managing legal practitioner**

89. (1) A multi-disciplinary practice shall have at least one legal practitioner (referred to in this Part as the “managing legal practitioner”) who shall be a partner in or an

employee of the multi-disciplinary practice, who shall be responsible for the management and supervision of the provision of legal services by the practice.	
(2) Where a multi-disciplinary practice fails to be in compliance with <i>subsection (1)</i> for a period of 7 days or longer, it shall—	
(a) notify the Authority of that fact, and	5
(b) cease providing legal services until a managing legal practitioner is appointed under <i>subsection (1)</i> .	
(3) The managing legal practitioner shall ensure that the multi-disciplinary practice is managed so as to ensure the provision of legal services by the practice—	
(a) is in accordance with the requirements of this Act and regulations made under it and any other applicable enactment or rule of law, and	10
(b) adheres to the professional principles specified in <i>section 12(5)</i> .	
(4) Where a managing legal practitioner has reason to believe that the multi-disciplinary practice is providing, or is likely to provide, legal services in a manner that does not comply with <i>paragraph (a)</i> or <i>(b)</i> of <i>subsection (3)</i> , or if it would be reasonable for the managing legal practitioner to so believe, he or she shall take all reasonable action available to him or her to—	15
(a) ensure that those paragraphs are complied with, and	
(b) remedy any defaults in compliance with those paragraphs.	
<b>Obligations of legal practitioners in multi-disciplinary practice</b>	20
<b>90.</b> Nothing in this Part—	
(a) shall be construed as preventing an act or omission on the part of a legal practitioner who is a partner in or an employee of a multi-disciplinary practice that is in contravention of this Part also being found to amount to misconduct under <i>section 46</i> , or	25
(b) derogates from the obligations, liabilities or privileges of such a legal practitioner under this Act or any other enactment or rule of law.	
<b>Operation of multi-disciplinary practice</b>	
<b>91.</b> (1) A multi-disciplinary practice shall have written procedures in place, to which all partners and employees of the practice are subject, that—	30
(a) ensure that legal services are provided by the practice in a manner that complies with <i>paragraphs (a)</i> and <i>(b)</i> of <i>section 89(3)</i> , and	
(b) facilitate compliance by the managing legal practitioner with his or her obligations under this Act.	
(2) Without prejudice to the generality of <i>subsection (1)</i> , procedures referred to in that subsection shall—	35
(a) provide that partners and employees of the multi-disciplinary practice concerned are obliged to comply with—	

- (i) such directions of the managing legal practitioner as he or she considers necessary to issue in order to comply with his or her obligations under this Act, and
  - (ii) *subsection (3)*,
- and 5
- (b) include such procedures as may be specified in regulations under *section 97*.
- (3) A person shall not cause or induce a legal practitioner who is a partner in or an employee of a multi-disciplinary practice to provide legal services in a manner that does not comply with *paragraphs (a) or (b) of section 89(3)*.
- (4) The managing legal practitioner of a multi-disciplinary practice shall ensure that— 10
  - (a) separate accounting records are maintained by the multi-disciplinary practice in respect of—
    - (i) the legal services provided by it, and
    - (ii) the services other than legal services provided by it,
  - (b) moneys received, held, controlled or paid by a legal practitioner who is a partner 15
    - in, or an employee of, the multi-disciplinary practice, arising from the provision by the practice of legal services, are held in a separate bank account to moneys otherwise received, held or controlled by the practice, and
  - (c) fees or other income arising from the provision by the practice of legal services 20
    - are held in a separate bank account to fees or other income arising from the provision by the practice of services other than legal services. 20
- (5) A legal practitioner who is a partner in or employee of a multi-disciplinary practice shall not, in the provision by him or her of legal services to a client, disclose the affairs of the client to a partner or employee of the practice who is not also engaged in the provision of legal services to that client, without the express consent of the client 25
 concerned.
- (6) Subject to *subsection (7)*, nothing in this Part shall be construed as affecting any entitlement of a person under an enactment or rule of law to inspect a multi-disciplinary practice or to obtain information from a partner in or employee of such a practice in relation to the provision by the practice of services other than legal 30
 services.
- (7) *Subsection (6)* shall not be construed as permitting a person referred to in that subsection to obtain information in the possession of a legal practitioner who is a partner in or employee of a multi-disciplinary practice where that information is the subject of legal privilege. 35

**Letter of engagement**

- 92. A legal practitioner who is a partner in or an employee of a multi-disciplinary practice shall not provide legal services to a client of the multi-disciplinary practice unless he or she provides the client with a notice in writing which shall—
  - (a) specify the services to be provided to the client by the multi-disciplinary practice, 40

- (b) specify which of the services referred to in *paragraph (a)* are to be provided by a legal practitioner,
- (c) specify which of the services referred to in *paragraph (a)* are services other than legal services,
- (d) specify which (if any) of the services referred to in *paragraph (a)* are services to which section 21 (as amended by section 29 of the Solicitors (Amendment) Act 1994) of the Solicitors (Amendment) Act 1960 applies, and 5
- (e) provide such additional information as may be prescribed.

**Multi-disciplinary practice to have professional indemnity insurance**

93. (1) A multi-disciplinary practice shall not provide 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 multi-disciplinary practice in the provision of those services. 10
- (2) This section is without prejudice to any obligation of a multi-disciplinary practice under *section 37* or any regulations made under it. 15
- (3) For the purpose of *subsection (1)*, a policy of professional indemnity insurance referred to in that subsection shall not adequately cover a multi-disciplinary practice 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— 20
- (a) by a multi-disciplinary practice arising from the provision of services, or
  - (b) by a partner, employee or agent or former partner, employee or agent of the multi-disciplinary practice arising from such provision. 25

**Saver for Compensation Fund under section 21 of Solicitors (Amendment) Act 1960**

94. Nothing in this Part shall be construed as extending the obligation of the Law Society under section 21(4) (as amended by section 29 of the Solicitors (Amendment) Act 1994) of the Solicitors (Amendment) Act 1960 to loss sustained in consequence of dishonesty on the part of a legal practitioner who is a partner in or an employee of a multi-disciplinary practice or any clerk or servant of that legal practitioner arising from the provision by that legal practitioner of legal services to a client, where that legal practitioner is not a practising solicitor. 30

**Power of Authority to specify measures**

95. (1) Where the Authority is satisfied that a provision of this Part or regulations made under it are not being, or have not been, complied with by the multi-disciplinary practice or managing legal practitioner concerned, it may, in accordance with this section, issue a direction to the multi-disciplinary practice or managing legal practitioner concerned to take such measures as are specified in the direction. 35

- (2) The Authority shall not issue a direction under this section unless it considers it to be necessary to ensure compliance by the multi-disciplinary practice or managing legal practitioner, as the case may be, with its or, as the case may be, his or her obligations under this Part or regulations made under it.
- (3) A direction under this section may, where the multi-disciplinary practice concerned has been found to be in breach of *section 89(1)*, direct the practice to appoint, within 7 days of the date on which the notice is issued, a managing legal practitioner. 5
- (4) Where the Authority reasonably believes that the multi-disciplinary practice or managing legal practitioner concerned is in breach of any other provision of this Part or regulations made under it, the Authority— 10
- (a) shall send the multi-disciplinary practice or managing legal practitioner, as the case may be, a notice in writing—
- (i) setting out its belief and the reasons for it,
- (ii) setting out the measures it proposes to direct the multi-disciplinary practice or, as the case may be, the managing legal practitioner to take in order to comply with its or, as the case may be, his or her, obligation under the provision concerned, 15
- (iii) inviting the multi-disciplinary practice or managing legal practitioner, as the case may be, to make within such reasonable period as the Authority may specify in the notice, observations on the finding or proposal, or both, 20
- and
- (b) may, having considered any observations made by the multi-disciplinary practice or managing legal practitioner under *paragraph (a)(iii)*, issue a direction to the multi-disciplinary practice or managing legal practitioner, directing it, or him or her, as the case may be, to take such measures, within such period as may be specified in the direction, as the Authority considers necessary to ensure compliance by the multi-disciplinary practice or managing legal practitioner, as the case may be, with the provision concerned. 25
- (5) A multi-disciplinary practice or managing legal practitioner may, within 21 days of the issuing to it of a direction under this section, appeal that direction to the High Court. 30
- (6) An appeal under *subsection (5)* shall be on notice to the Authority.
- (7) The High Court, on hearing an appeal under this section, may—
- (a) confirm the direction concerned, or
- (b) where it considers that the direction is oppressive, unreasonable or unnecessary, revoke or vary the direction. 35

**Application to High Court for order suspending or ceasing provision of legal services by multi-disciplinary practice**

96. (1) Where a multi-disciplinary practice or, as the case may be, a managing legal practitioner, fails to comply with a notice under *section 95*, the Authority may apply to the High Court for an order— 40

- (a) requiring the multi-disciplinary practice or managing legal practitioner to comply with the direction,
  - (b) suspending the provision by the multi-disciplinary practice concerned of legal services, or
  - (c) directing the multi-disciplinary practice to cease providing legal services. 5
- (2) An application under *subsection (1)* shall be on notice to the multi-disciplinary practice and managing legal practitioner concerned.
- (3) The High Court, on hearing an application for an order referred to in *subsection (1) (b)*, may make an order that the multi-disciplinary practice be suspended from providing legal services for a specified period and subject to such terms and conditions as the Court considers appropriate. 10
- (4) The High Court, on hearing an application for an order referred to in *subsection (1) (c)*, may make an order—
- (a) that the multi-disciplinary practice be suspended from providing legal services for a specified period and subject to such terms and conditions as the Court considers appropriate, or 15
  - (b) that the multi-disciplinary practice cease providing legal services.
- (5) The jurisdiction vested in the High Court under this section shall be exercised by the President of the High Court or, if and whenever 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. 20
- (6) The Authority or the legal practitioner concerned may appeal to the Supreme Court against an order of the High Court made under this section within a period of 21 days beginning on the date of the order and, unless the High Court or the Supreme Court otherwise orders, the order of the High Court shall have effect pending the determination of such appeal. 25
- (7) Where an order is made by the High Court under *subsection (3)* or *(4)*, 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. 30

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

97. (1) The Authority shall make regulations in relation to the operation and management of a legal partnership or a multi-disciplinary practice.
- (2) Without prejudice to the generality of *subsection (1)*, regulations in relation to the operation and management of a multi-disciplinary practice may— 35
- (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; 40

- (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 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; 5
  - (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 arising from the provision by him or her of legal services, for or on account of a client or any other person or himself. 10
- (3) In making regulations under this Part, the Authority shall have regard to the objectives referred to in *section 12(4)*.

**Public consultation on operation etc., of legal partnerships, multi-disciplinary practices**

98. (1) The Authority— 15
- (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 and multi-disciplinary practices.
- (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. 20
- (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. 25

**Public consultation on certain issues relating to barristers**

99. (1) The Authority shall engage in a public consultation process on—
- (a) the extent, if any, to which the restriction on legal practitioners, other than solicitors, holding the moneys of clients, as provided under *section 35*, should be retained, 30
  - (b) the retention or removal of restrictions on a barrister receiving instructions in a contentious matter, directly from a person who is not a solicitor, and the reforms, whether administrative, legislative, or to existing professional codes, that are required to be made in the event that the restrictions are retained or, as the case may be, removed, and 35
  - (c) the circumstances and the manner in which a barrister may hold clients' monies.
- (2) The public consultation process referred to in *subsection (1)* shall be carried out in the following manner:



- (a) the Authority shall invite members of the public to make submissions, within a specified time limit, on the matters referred to in *subsection (1)*, where such invitation is made by means of a notice to that effect published in a newspaper circulating within the State and on the internet;
- (b) the Authority may, where it considers it appropriate to do so, consult with such bodies, including professional bodies and persons, in relation to the matters referred to in *subsection (1)*; 5
- (c) the Authority shall, immediately following the expiry of the time limit referred to in *paragraph (a)*, and having regard to the submissions duly received under that paragraph and any consultation held under *paragraph (b)*, prepare a report to the Minister setting out its recommendations in relation to the matters specified in *subsection (1)*; 10
- (d) the report referred to in *paragraph (c)* shall be completed and submitted to the Minister within 12 months of the establishment day.
- (3) (a) At any time before the completion of the report referred to in *subsection (2)(c)*, the Authority shall, on the request of the Minister, and may, on its own initiative, prepare an interim report for the Minister. 15
- (b) An interim report referred to in *paragraph (a)* may refer to the general progress of the public consultation process and shall refer—
  - (i) where the Minister has requested the interim report, to such matters as the Minister has requested in the report, or 20
  - (ii) where the interim report is prepared on the initiative of the Authority, to such matters as the Authority considers appropriate,
 and the interim report may contain recommendations in respect of such matters.
- (4) The Minister shall cause copies of the report referred to in *subsection (2)(c)* or, as the case may be, *subsection (3)*, to be laid before each House of the Oireachtas within 30 days of its receipt by him or her. 25

## PART 9

### OBLIGATIONS OF PRACTISING BARRISTERS

- Roll of practising barristers** 30
- 100.** (1) The Authority shall—
- (a) set up and maintain a roll of practising barristers (in this Part referred to as the “roll”), and
  - (b) within six months of the commencement date, enter on the roll the name of, and additional information in respect of, every person who is, on the commencement date, a practising barrister. 35
- (2) The Authority shall make a copy of the roll available at its principal office during normal working hours to members of the public for inspection free of charge.

- (3) If the roll is kept in an electronic or other non-written form, the Authority may comply with its obligation under *subsection (2)* by making it publicly available on its website.
- (4) An entry on the roll shall, in respect of each practising barrister—
  - (a) contain such information as is required by this Part,
  - (b) contain such additional information as may be prescribed under *subsection (5)*, 5
  - (c) specify whether he or she is a member of the Law Library, and
  - (d) specify whether he or she is in the full time service of the State.
- (5) The Authority may, having regard to the objectives specified in *section 12(4)*, prescribe additional information in relation to the professional qualifications and areas of expertise of the practising barrister concerned that is to be contained in an entry on the roll. 10
- (6) In this Part—
  - “additional information”, in relation to a practising barrister, means the additional information relating to him or her that is prescribed under *subsection (5)*;
  - “commencement date” means the date on which this section comes into operation. 15

#### **Entry of name on roll**

- 101.** (1) A person who has been called to the Bar of Ireland and who intends to provide legal services as a barrister shall apply to the Authority to have his or her name, and additional information relating to him or her, entered on the roll and the Authority, on being satisfied that the person is a qualified barrister, shall enter the name of that person and the additional information concerned on the roll. 20
- (2) An application under *subsection (1)* shall be in such form as may be prescribed.

#### **Variation of entry on roll**

- 102.** (1) The Authority shall remove the name of a person from the roll—
  - (a) where it is required to do so under *section 38(10)*, 25
  - (b) where the High Court makes an order under *section 73(3)(b)(v)* that the person’s name be struck off the roll,
  - (c) where *section 80(3)* applies in respect of that person,
  - (d) on application to it under *subsection (3)* by the person concerned,
  - (e) on the death of that person, where the Authority has received a certified copy, referred to in *subsection (4)*, of the entry in the register of deaths concerning that person. 30
- (2) Where the High Court makes an order under *section 73(3)(b)(iv)* that a practising barrister be suspended from practice as a legal practitioner, the Authority shall, for the period specified in the order, maintain a record on the roll of— 35
  - (a) the fact of such suspension, and

- (b) any terms and conditions specified in the order to which the suspension is subject.
- (3) A person whose name has been entered on the roll, who no longer wishes to provide legal services as a practising barrister, may apply to the Authority to have his or her name removed from the roll. 5
- (4) Where a registrar of deaths within the meaning of the Civil Registration Act 2004 registers in the register of deaths (within the meaning of Part 5 of that Act) the death of a person whose name is on the roll, the registrar shall as soon as practicable send by post to the Authority a certified copy of the entry in the register of deaths, and may charge the cost of the certificate and of the sending thereof to the Authority as an expense of his or her office of registrar of deaths. 10
- (5) Where the Authority removes the name of a person from the roll under this section, it shall also remove from the roll any information in respect of him or her specified in *section 100(4)* that is contained in the entry concerned.
- Prohibition on unqualified person providing legal services as practising barrister** 15
- 103.** (1) Subject to *subsection (5)*, an unqualified person shall not provide legal services as a practising barrister.
- (2) A person who contravenes *subsection (1)* shall, without prejudice to any other liability or disability to which he may be subject, be guilty of an offence and shall be liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years, or at the discretion of the court, to a fine not exceeding €30,000 or to both such fine and such imprisonment, or 20
- (b) on summary conviction, to imprisonment for a term not exceeding six months or, at the discretion of the Court, to a Class A fine or to both such fine and such imprisonment. 25
- (3) A person who contravenes *subsection (1)* in relation to a court of justice shall also be guilty of contempt of that court and shall be punishable accordingly.
- (4) In this section, “unqualified person” means a person who—
- (a) is not a qualified barrister,
- (b) notwithstanding that he or she is a qualified barrister, is not a person whose name is entered on the roll of practising barristers, or 30
- (c) is not a practising solicitor.
- (5) *Subsection (1)* shall not, during the period referred to in that paragraph, apply to a practising barrister to whom *paragraph (b)* of *section 100(1)* applies.
- Prohibition on pretending to be qualified barrister** 35
- 104.** (1) A person who is not a qualified barrister shall not pretend to be a qualified barrister or take or use any name, title, addition or description or make any representation or demand implying that he is a qualified barrister.
- (2) A person who contravenes *subsection (1)* shall be guilty of an offence and shall be

liable on summary conviction to a Class A fine.

## PART 10

### LEGAL COSTS

#### CHAPTER 1

#### *Interpretation* 5

#### **Interpretation (Part 10)**

#### **105.** In this Part—

“application” means an application for adjudication of legal costs under *section 121*;

“bill of costs” means a document setting out the amount of legal costs chargeable to a client in respect of legal services provided to him or her, prepared by a legal practitioner in accordance with *section 119* or, where applicable, *section 121(1)*; 10

“Chief Legal Costs Adjudicator” means the Chief Legal Costs Adjudicator appointed under *section 106(2)*;

“commercially sensitive information” means—

- (a) financial, commercial, scientific, technical or other information the disclosure of which could reasonably be expected to result in a material financial loss or gain to the person to whom it relates, or could prejudice the competitive position of that person in the conduct of his or her business or otherwise in his or her occupation, or 15
- (b) information the disclosure of which could prejudice the conduct or outcome of contractual or other negotiations of the person to whom it relates; 20

“contentious business” means legal services provided by a legal practitioner for the purposes of, or in contemplation of, proceedings before a court, tribunal or other body, the Personal Injuries Assessment Board or an arbitrator appointed under the Arbitration Act 2010 or in connection with an arbitration; 25

“disbursement” means a fee or cost (whether or not fixed by or under a statute or rules of court) payable to a third party that is necessarily and reasonably incurred by a legal practitioner for the purposes of the provision by that legal practitioner of legal services to a client, and includes fees or costs payable by the legal practitioner to a barrister or an expert witness, but does not include general costs incurred in the course of the legal practitioner’s practice as a legal practitioner; 30

“enactment” means—

- (a) an Act of the Oireachtas,
- (b) a statute that was in force in Saorstát Éireann immediately before the date of the coming into operation of the Constitution and that continues in force by virtue of Article 50 of the Constitution, or 35
- (c) an instrument made under—

- (i) an Act of the Oireachtas, or
- (ii) a statute referred to in *paragraph (b)*;

“legal costs” means fees, charges, disbursements and other costs incurred or charged in relation to contentious or non-contentious business, and includes—

- (a) the costs of or arising out of any cause or matter in any court, 5
- (b) any costs which are the subject of an order made by an arbitral tribunal in accordance with section 21(4) of the Arbitration Act 2010 for the adjudication of the costs of the arbitration by a Legal Costs Adjudicator,
- (c) the costs of a receiver appointed in any cause or matter, on the application of the receiver or of any party to the cause or matter, 10
- (d) costs that arise from an inquiry, investigation or other proceeding conducted under an enactment, and
- (e) the cost of registering judgments as mortgages, of obtaining grants of probate and of letters of administration, of satisfying judgments, and any other costs usually adjudicated *ex parte*; 15

“Legal Costs Adjudicator” means a person appointed under *section 106(2)* to be a Legal Costs Adjudicator;

“non-contentious business” means legal services that do not relate to contentious business;

“Office” means the Office of the Legal Costs Adjudicators referred to in *section 106*; 20

“register of determinations” means the register of determinations referred to in *section 107*.

## CHAPTER 2

### *Office of the Legal Costs Adjudicator*

#### **Office** 25

**106.** (1) The Office heretofore known as the Taxing-Masters’ Office shall be known as the Office of the Legal Costs Adjudicators.

(2) The Minister may, in accordance with the provisions of the Courts (Supplemental Provisions) Act 1961, appoint—

- (a) the Chief Legal Costs Adjudicator, and 30
- (b) such 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.

(3) A function, power or jurisdiction conferred by or under any enactment on a Taxing-Master shall be deemed to be conferred on the Chief Legal Costs Adjudicator and every Legal Costs Adjudicator. 35

(4) The role and functions of the Chief Legal Costs Adjudicator and every Legal Costs

Adjudicator appointed under this Act are limited to the jurisdiction heretofore proper to the Taxing-Masters' Office and shall not extend to the lower courts or to the jurisdiction of County Registrars.

**Register of determinations**

- 107.** (1) The Chief Legal Costs Adjudicator shall ensure that a register of determinations is established and maintained in relation to applications for adjudication of legal costs under this Part. 5
- (2) Subject to this section, the register of determinations shall contain the following particulars in relation to each application:
- (a) the date of the receipt by the Office of the application; 10
  - (b) the names of the parties to the adjudication;
  - (c) the date of receipt by the Office of the bill of costs and each other document in connection with the application, including, if the application arises from contentious business, the title of the proceedings and record number of the proceedings (if any); 15
  - (d) the date on which the adjudication is assigned and, where the adjudication is assigned to a Legal Costs Adjudicator, the Legal Costs Adjudicator to whom the adjudication is assigned;
  - (e) the outcome of determination made under *section 124(1)* and the dates on which it was made and on which the notice of it was furnished to the parties; 20
  - (f) where a party applies under *section 127* for a determination to be considered, the date on which the Legal Costs Adjudicator concerned makes his or her decision under *section 127(5)*, the date on which notice of that decision is furnished to the parties and, where a new determination is made under *section 127(5)(b)*, the outcome of that determination; 25
  - (g) where a party applies under *section 128* for a review of a determination made under *section 127*, the date on which the High Court determines that review, the outcome of the review and, where the High Court remits the matter under *section 128(4)(b)(i)*, the determination of the Legal Costs Adjudicator to whom the matter is remitted; 30
  - (h) the reasons for the determination, prepared by the Chief Legal Costs adjudicator in accordance with *subsection (3)*.
- (3) Subject to *subsections (4) to (7)*, the Chief Legal Costs Adjudicator shall prepare, and cause to be placed on the register of determinations, the reasons for a determination unless— 35
- (a) the adjudication relates to an application for adjudication of legal costs as between the parties to proceedings which—
    - (i) were held otherwise than in public, or
    - (ii) if there had been a hearing, would have been held otherwise than in public,
  - (b) the adjudication relates to an application for adjudication of legal costs as 40

- between a legal practitioner and his or her client,
- (c) the adjudication relates to an application for adjudication of legal costs as between the parties to proceedings where the proceedings have been settled prior to the conclusion of the hearing by a court of the proceedings, or
  - (d) the Chief Legal Costs Adjudicator considers, having obtained the views of the parties to the adjudication, that it would be contrary to public interest for that information to be published. 5
- (4) For the purposes of *subsection (3)*, the Chief Legal Costs Adjudicator need not publish the reasons for a determination where he or she is of the opinion that the adjudication concerned does not involve a matter of legal importance. 10
- (5) Where *paragraph (a), (b) or (c) of subsection (3)* applies, notwithstanding that section and *subsection (2)*, the Chief Legal Costs Adjudicator shall cause to be published the outcome of and the reasons for the determination, as well as the information referred to in *paragraphs (b) and (c) of subsection (2)*, in such a manner that—
- (a) where *subsection (3)(a)(i)* applies, information which is protected from disclosure by reason of those proceedings is not disclosed, 15
  - (b) where *subsection (3)(a)(ii)* applies, information is not disclosed which would have been protected from disclosure if the matter had been disposed of by proceedings which would have been held otherwise than in public, and
  - (c) where *subsection (3)(b)* applies, the client concerned may not be identified, whether by name, address, or economic activity. 20
- (6) Where the adjudication concerned relates to legal costs as between parties to proceedings, or a legal practitioner and his or her client, the Chief Legal Costs Adjudicator shall ensure that the information referred to in *subsection (2)* is published in such a manner that commercially sensitive information relating to either party, or to the client, as the case may be, is not disclosed. 25
- (7) A reference to a determination in *subsection (2)(h)* shall be construed, as the case may be, as a reference to—
- (a) subject to *paragraphs (b) and (c)*, a determination made under *section 126(1)*,
  - (b) subject to *paragraph (c)*, where a party applies under *section 127* for a determination to be considered, and a new determination is made under *section 127(5)(b)*, that determination, or 30
  - (c) where a party applies under *section 128* for a review of a determination made under *section 127*, and the High Court remits the matter under *section 128(4)(b)(i)*, the determination under that provision of the Legal Costs Adjudicator to whom the matter is remitted. 35
- (8) The register of determinations shall be available for inspection during office hours without payment by any person who applies to inspect it.

### County registrars

- 108.** (1) A County Registrar, on a taxation of costs, shall have regard to the principles relating to legal costs specified in *Schedule 1*. 40

- (2) Each County Registrar shall ensure that a register of taxation determinations is established and maintained by him or her in relation to applications to him or her for taxation of costs.
- (3) A register referred to in *subsection (2)* shall contain the following particulars in relation to each application for taxation of costs: 5
  - (a) the date of the receipt by the county registrar concerned of the application for taxation;
  - (b) the names of the parties to the application;
  - (c) the date on which the determination was made;
  - (d) an outline of the disputed issues; 10
  - (e) the outcome, in monetary terms, of the taxation;
  - (f) the reasons for the outcome, as determined by the County Registrar.
- (4) The register referred to in *subsection (2)* shall be available for inspection during office hours without payment by any person who applies to inspect it.
- (5) Each County Registrar shall report annually to the Chief Legal Costs Adjudicator 15 providing a summary of the information contained in the register of taxation determinations maintained by him or her.

**Guidelines on performance of functions of Chief Legal Costs Adjudicator under this Part**

- 109.** (1) After consulting with the Minister, the Minister for Environment, Community and Local Government and any person or body that the Chief Legal Costs Adjudicator 20 considers to be an appropriate person or body to be consulted for the purposes of this section, the Chief Legal Costs Adjudicator may from time to time prepare, for the guidance of Legal Costs Adjudicators, legal practitioners and the public, guidelines not inconsistent with this Act (including any regulations made under this Act) or Rules of Court indicating the manner in which the functions of the Chief Legal Costs 25 Adjudicator and the Legal Costs Adjudicators are to be performed.
- (2) The Chief Legal Costs Adjudicator shall ensure that guidelines prepared by him or her under this section are published as soon as practicable after the guidelines have been prepared.
  - (3) Without prejudice to the generality of *subsection (1)*, guidelines under this section 30 may—
    - (a) describe the procedures for the adjudication of legal costs under this Part,
    - (b) set out the documents and other information that are required by or under this Part to accompany an application for the adjudication of legal costs,
    - (c) describe the notices and other information that will be provided by the Legal 35 Costs Adjudicator in relation to any such applications,
    - (d) identify the provisions of this Part and the Rules of Court relevant to an application, including those relating to the time limits within which the documentation and information referred to in *paragraph (b)* are to be provided,



- (e) describe the procedures that are to be followed in the Office of the Legal Costs Adjudicators in relation to the adjudication of legal costs,
- (f) provide guidance as to the circumstances in which a Legal Costs Adjudicator may exercise his or her powers under *subsection (4) or (5) of section 123*,
- (g) set out the fees that are to be charged in the Office of the Legal Costs Adjudicators in respect of the services provided by it, and the manner in which those fees may be paid, 5
- (h) provide such other information as appears to the Chief Legal Costs Adjudicator to be appropriate, having regard to the purposes of the guidelines referred to in *subsection (1)*. 10

### **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—

- (a) review the scales of fees for contentious and non-contentious business set out in Appendix W to the Rules of the Superior Courts, 15
- (b) prepare a report setting out the amendments or alterations (if any) that, in the opinion of the Committee, having regard to the matters specified in *Schedule 1*, should be made to that Appendix, and
- (c) furnish a copy of the report under *paragraph (b)* to the Minister.

### **Strategic plan** 20

**111.** (1) As soon as practicable and in any event not later than 6 months after the coming into operation of this section, the Chief Legal Costs Adjudicator shall prepare a strategic plan for the 3 year period following that coming into operation and submit the plan to the Chief Executive Officer of the Courts Service for his or her approval.

(2) The Chief Legal Costs Adjudicator shall also prepare, not later than 6 months before each third anniversary of the coming into operation mentioned in *subsection (1)*, a strategic plan for the next ensuing 3 year period and submit the plan to the Chief Executive Officer of the Courts Service for his or her approval. 25

(3) A strategic plan shall—

- (a) set out the key objectives, outputs and related strategies for the performance of the functions of the Chief Legal Costs Adjudicator and the Legal Costs Adjudicators, and 30
- (b) have regard to the need to ensure the most effective and efficient use of resources possible.

(4) The Chief Executive Officer of the Courts Service shall as soon as practicable after approving a strategic plan under this section, forward that plan to the Minister, and the Minister shall, as soon as practicable after receiving that strategic plan, cause a copy of it to be laid before each House of the Oireachtas. 35

## **Business plan**

- 112.** (1) Subject to this section, the Chief Legal Costs Adjudicator shall, in each year—
- (a) prepare a business plan in respect of that year or of such other period as may be determined by the Chief Executive Officer of the Courts Service, and
  - (b) submit the plan to that Chief Executive Officer for approval. 5
- (2) The Chief Legal Costs Adjudicator shall prepare a business plan in a form and manner in accordance with any directions issued by the Chief Executive Officer of the Courts Service (including any time limit by which the plan shall be submitted to him or her) and shall ensure that the plan—
- (a) indicates the activities of the Chief Legal Costs Adjudicator and the Legal Costs Adjudicators during the period to which the plan relates, and 10
  - (b) contains any other information specified by that Chief Executive Officer.
- (3) The Chief Legal Costs Adjudicator shall, in preparing a business plan, have regard to the strategic plan prepared under *section 109* and in operation at that time.
- (4) The Chief Legal Costs Adjudicator shall implement the business plan unless the Chief Executive Officer of the Courts Service, within 30 days of the submission of the business plan, directs the Chief Legal Costs Adjudicator in writing to amend the plan or not to give effect to it. 15

## **Chief Legal Costs Adjudicator to submit annual report**

- 113.** (1) The Chief Legal Costs Adjudicator shall, not later than 30 April in each year, prepare a report (in this section referred to as the “annual report”) of the activities of the Office in the immediately preceding financial year and submit it to the Chief Executive Officer of the Courts Service. 20
- (2) The Chief Executive Officer of the Courts Service may specify, by direction in writing to the Chief Legal Costs Adjudicator, the form of the annual report and any information that is required to be included in the annual report. 25
- (3) The Chief Legal Costs Adjudicator shall comply with a direction given to him or her under *subsection (2)*.
- (4) The Chief Legal Costs Adjudicator—
- (a) may make any other reports that he or she considers appropriate, to draw to the attention of the Chief Executive Officer of the Courts Service matters that have come to his or her notice and that should, because of their gravity be the subject of another report, and 30
  - (b) shall make a report on any other matter if that Chief Executive Officer so requests. 35
- (5) The annual report shall be laid before each House of the Oireachtas together with the annual report of the Courts Service.

## **Amendment of Court Officers Act 1926**

- 114.** Section 3(3) of the Court Officers Act 1926 is amended by substituting “Master of the

High Court” for “Master of the High Court and the Taxing-Masters” in each place where it occurs.

### **Amendment of Courts (Supplemental Provisions) Act 1961**

**115.** (1) The Eighth Schedule to the Courts (Supplemental Provisions) Act 1961 is amended—

(a) in paragraph 2, by substituting “The Office of the Legal Costs Adjudicators” for “The Taxing-Masters’ Office”, 5

(b) in paragraph 3, by substituting “the Chief Legal Costs Adjudicator and the Legal Costs Adjudicators appointed in accordance with the other provisions of this Schedule” for “Two Taxing-Masters”,

(c) by substituting the following for paragraph 8: 10

“8. The Office of the Legal Costs Adjudicators shall be under the management of the Chief Legal Costs Adjudicator, and there shall be transacted in that Office the business of the Chief Legal Costs Adjudicator and the Legal Costs Adjudicators, other than such business as is required by law to be transacted by the Chief Legal Costs Adjudicator or a Legal Costs Adjudicator in person.”, 15

(d) by substituting the following for paragraph 18:

“18.(1) No person shall be appointed to be the Chief Legal Costs Adjudicator, or a Legal Costs Adjudicator, unless —

(a) that person is included in a group of not more than 5 persons who have been selected by the Public Appointments Service, after a competition for that purpose under section 47 of the Public Service Management (Recruitment and Appointments) Act 2004 has been held on behalf of the Minister for Justice and Equality, in order to find persons who are suitable to be selected as the Chief Legal Costs Adjudicator or a Legal Costs Adjudicator, as the case may be, and 20 25

(b) that person—

(i) has practised as a solicitor for a period of not less than 10 years, 30

(ii) has practised as a barrister for a period of not less than 10 years, or

(iii) has practised as a legal costs accountant, within the meaning of the *Legal Services Regulation Act 2014*, for a period of not less than 10 years. 35

(2) In computing the periods referred to in subparagraph (1)(b)—

(a) in the case of a solicitor, periods during which a person has practised as a barrister or a legal costs accountant may be aggregated with the person’s practice as a solicitor,

(b) in the case of a barrister, periods during which a person has practised as a solicitor or a legal costs accountant may be 40

- aggregated with the person's practice as a barrister,
- (c) in the case of a legal costs accountant, periods during which a person has practised as a solicitor or barrister may be aggregated with the person's practice as a legal costs accountant. 5
- (3) In applying subparagraph (2) no period of time may, as respects any person, be counted more than once.
- (4) A person appointed to be the Chief Legal Costs Adjudicator or, as the case may be, a Legal Costs Adjudicator, shall be appointed by the Government on the nomination, from amongst a group of persons referred to in subparagraph (1), of the Minister. 10
- (5) Notwithstanding any other enactment, the Chief Legal Costs Adjudicator appointed pursuant to this paragraph—
- (a) shall, subject to clauses (b) and (c), hold office for a period not exceeding 7 years, 15
- (b) shall be required to retire on attaining the age of 70 years, and
- (c) shall, on the expiry of the period referred to in clause (a), be taken to have been appointed under this paragraph as a Legal Costs Adjudicator for the period beginning on that expiry and ending on his or her attainment of the age of 70 years. 20
- (6) Notwithstanding any other enactment, a Legal Costs Adjudicator appointed pursuant to this paragraph—
- (a) shall, subject to clauses (b) and (c), hold office for a period not exceeding 5 years,
- (b) shall be required to retire on attaining the age of 70 years, and 25
- (c) shall not be eligible for re-appointment or to have the term of appointment extended.
- (7) A person appointed pursuant to this paragraph may resign from office by notice in writing addressed to the Government and the resignation takes effect on the date the Government receives the notice or, if a date is specified in the notice and the Government agree to that date, on that date. 30
- (8) A person appointed pursuant to this paragraph immediately ceases to be the Chief Legal Costs Adjudicator or a Legal Costs Adjudicator, as the case may be, on— 35
- (a) being nominated as a member of Seanad Éireann,
- (b) being elected as a member of either House of the Oireachtas or of the European Parliament,
- (c) being regarded, pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act 1997, as having been elected to be a member of the European Parliament, 40

- (d) becoming a member of a local authority,
  - (e) being appointed to be a judge, or
  - (f) being appointed Attorney General.
- (9) A person shall be disqualified for being the Chief Legal Costs Adjudicator or a Legal Costs Adjudicator during any period during which— 5
- (a) he or she is entitled under the Standing Orders of either House of the Oireachtas to sit in that House,
  - (b) he or she is a member of the European Parliament, or
  - (c) he or she is entitled under the standing orders of a local authority to sit as a member of the local authority. 10
- (10) A period during which a solicitor or barrister is the Chief Legal Costs Adjudicator or a Legal Costs Adjudicator shall be reckonable as a period of professional practice for the purposes of an application for appointment as a judge. 15
- (11) The Government may at any time remove the Chief Legal Costs Adjudicator or a Legal Costs Adjudicator from office if—
- (a) in the opinion of the Government, he or she has become incapable through ill-health of performing the functions of the office, 20
  - (b) he or she has committed stated misbehaviour,
  - (c) he or she has failed without reasonable cause, in the opinion of the Government, to perform the functions of the office for a continuous period of at least 3 months beginning not earlier than 6 months before the day of removal, or 25
  - (d) he or she has contravened to a material extent a provision of the Ethics in Public Office Acts 1995 and 2001 that, by virtue of a regulation under section 3 of the Ethics in Public Office Act 1995, applies to him or her.
- (12) The Chief Legal Costs Adjudicator or a Legal Costs Adjudicator ceases to hold office if he or she— 30
- (a) is convicted on indictment of an offence,
  - (b) is convicted of an offence involving fraud or dishonesty,
  - (c) 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, 35
  - (d) is sentenced to a term of imprisonment by a court of competent jurisdiction, or
  - (e) is removed by a competent authority for any reason (other 40

than failure to pay a fee) from any register established for the purpose of registering members of a profession in the State or in another jurisdiction.

(13) The Government may appoint a person who would be eligible under this Part to be the Chief Legal Costs Adjudicator or, as the case may be, a Legal Costs Adjudicator, to temporarily fill a vacancy until an appointment is made under this section, where the vacancy occurs because the Chief Legal Costs Adjudicator or a Legal Costs Adjudicator—

(a) dies, resigns, becomes disqualified for or is removed from office, or

(b) is for any reason temporarily unable to continue to perform his or her functions as Chief Legal Costs Adjudicator or, as the case may be, a Legal Costs Adjudicator.”,

and

(e) in paragraph 19, by substituting “The Chief Legal Costs Adjudicator and each of the Legal Costs Adjudicators” for “Each of the Taxing-Masters”.

(2) *Subsection (1)(d)* applies only as respects the appointment of the Chief Legal Costs Adjudicator or a Legal Costs Adjudicator made after the coming into operation of this section.

### CHAPTER 3

#### *Legal practitioners’ duties in relation to legal costs*

#### **Prohibitions on charging costs in certain circumstances**

**116.** (1) A legal practitioner shall not charge any amount in respect of legal costs if—

(a) 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 his or her client, other than in relation to a matter seeking only to recover a debt or liquidated demand, or

(b) 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.

(2) A legal practitioner shall not, without the prior written agreement of his or her client, deduct or appropriate 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.

#### **Legal practitioner to provide notice of conduct of matter, costs, etc.**

**117.** (1) A legal practitioner shall, whenever required to do so under this section, provide to his or her client a notice (in this section referred to as a “notice”) written in clear language that is likely to be easily understood by the client and that otherwise complies with this section.

- (2) On receiving instructions from a client, a legal practitioner shall provide the client with a notice which shall—
- (a) disclose the legal costs that will be incurred in relation to the matter concerned, or
  - (b) if it is not reasonably practicable for the notice to disclose the legal costs at that time, set out the basis on which the legal costs are to be calculated. 5
- (3) Where *subsection (2)(b)* applies, the legal practitioner concerned shall, as soon as may be after it becomes practicable to do so, provide to the client a notice containing the information specified in *subsection (2)(a)*.
- (4) A notice shall: 10
- (a) subject to *subsection (2)(b)*, specify the amount of legal costs—
    - (i) certified by the legal practitioner as having been incurred as at the date on which the notice is provided,
    - (ii) certified by the legal practitioner to be of a fixed nature or otherwise certain to be incurred (or if it would be impracticable for the legal practitioner to so certify, the basis on which they are to be charged), and 15
    - (iii) insofar as is practicable, certified by the legal practitioner to be likely to be incurred;
  - (b) specify the amount of value-added tax to be charged in respect of the amounts referred to in *paragraph (a)*; 20
  - (c) set out the basis on which the amounts were or are to be calculated, explained by reference to the matters set out in *paragraph 2 of Schedule 1*;
  - (d) contain a statement of the legal practitioner’s obligation under *subsection (5)*;
  - (e) if the matter which is the subject of the notice involves or is likely to involve litigation, provide— 25
    - (i) an outline of the work to be done in respect of each stage of the litigation process and the costs or likely costs or basis of costs involved in respect of each such stage, including the likelihood of engaging a barrister, expert witnesses, or providers of other services,
    - (ii) a statement of the legal practitioner’s obligation under *subsection (6)*, 30
    - (iii) information as to the likely legal and financial consequences of the client’s withdrawal from the litigation and its discontinuance, and
    - (iv) information as to the circumstances in which the client would be likely to be required to pay the costs of one or more other parties to the litigation, and information as to the circumstances in which it would be likely that the costs of the legal practitioner would not be fully recovered from other parties to the litigation; 35
  - (f) specify a period, which shall be not longer than 10 working days, for the purposes of *subsection (7)*.
- (5) Where the legal practitioner becomes aware of any factor that would make the legal 40

costs likely to be incurred in a matter significantly greater than those disclosed or indicated in a notice relating to that matter provided under this section, he or she shall, as soon as may be after he or she becomes aware of that factor, provide the client concerned with a new notice.

- (6) Where a matter which is the subject of a notice under this section involves or is likely to involve litigation, the legal practitioner shall not, in relation to that matter, engage a barrister, expert witness or provider of any other service without first, to the extent practicable— 5
- (a) ascertaining the likely cost or basis of cost of engaging the person,
  - (b) providing the client with the information referred to in *paragraph (a)*, and 10
  - (c) having complied with *paragraph (b)*, satisfying himself or herself of the client's approval (whether express or implied) of the engaging of the person.
- (7) A legal practitioner shall not, during the period referred to in *subsection (4)(f)* that is specified in a notice, provide any legal services in relation to the matter concerned, unless— 15
- (a) the client concerned confirms that he or she wishes to instruct the legal practitioner to continue to provide legal services in connection with the matter concerned, or
  - (b) *subsection (8)* applies.
- (8) A legal practitioner to whom *subsection (7)* applies shall, notwithstanding that subsection, provide legal services in relation to the matter concerned where— 20
- (a) 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, 25
  - (b) a court orders the legal practitioner to provide legal services to the client, or
  - (c) where the matter involves litigation, a notice of trial has been served in relation to the matter or a date has been fixed for the hearing of the matter concerned.
- (9) The legal practitioner shall provide his or her client with clarification in relation to a notice, as soon as is reasonably practicable after having been requested to do so by the client. 30
- (10) Where a solicitor, having received instructions from a client in relation to a matter, proceeds to instruct a barrister in relation to that matter—
- (a) an obligation on the barrister under this section to provide a notice shall be fulfilled where the barrister provides the notice concerned to the solicitor, 35
  - (b) a duty owed by the barrister under *subsection (6), (7) or (9)* to his or her client shall be construed as a duty owed by the barrister to the solicitor, and
  - (c) the solicitor concerned shall—
    - (i) where he or she considers it appropriate, or where requested to do so by the client, request the barrister to provide clarification in relation to a notice 40



provided by the barrister, and

- (ii) immediately on receipt of a notice referred to in *paragraph (a)* or the clarification referred to in *subparagraph (i)*, provide that notice or clarification to the client.

**Agreement regarding legal costs, etc.**

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**118.** (1) A legal practitioner and his or her client may 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.

(2) An agreement under *subsection (1)* may include all the particulars required by *section 117(4)* and if it does—

(a) the legal practitioner need not also provide a notice referred to in *subsection (2)* of that section, and

(b) references to the notice under that section shall be taken to include references to the agreement.

15

(3) An agreement under *subsection (1)* shall constitute the entire agreement between the legal practitioner and the client as respects the provision of legal services in relation to the matter concerned, and no other amount shall be chargeable in relation to those legal services, except to the extent otherwise indicated in the agreement.

(4) An agreement under *subsection (1)* shall, in an adjudication under this Part, be amenable to adjudication by the Chief Legal Costs Adjudicator or a Legal Costs Adjudicator.

**Legal practitioner to provide bill of costs**

**119.** (1) A legal practitioner shall, as soon as is practicable after concluding the provision of legal services in relation to a legal matter for a client, prepare and sign a bill of costs, which shall contain the particulars specified in this section and shall be in such form (if any) as may be specified in rules of court.

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(2) Subject to *subsections (5) to (7)*, a bill of costs shall contain the following particulars:

(a) a summary of legal services provided to the client in connection with the matter concerned;

30

(b) an itemised statement of the amounts in respect of the legal costs in connection with the legal services;

(c) the registration number of the legal practitioner for the purposes of value-added tax, and the amount of value-added tax chargeable in respect of the amounts referred to in *paragraph (b)*;

35

(d) where time is a factor in the calculation of the legal costs concerned, the time spent in dealing with the matter;

(e) the amount, where known to the legal practitioner, of any damages or other moneys that are recovered by, or payable to, the client and that arose from the

matter in respect of which the legal services were provided;

- (f) the amount of any legal costs recovered by or payable to the legal practitioner concerned on behalf of the client, including costs recovered from another party, or an insurer on behalf of another party, to the matter concerned.
- (3) The legal practitioner shall 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, which shall contain the following information: 5
- (a) that the client may discuss the matter with the legal practitioner;
  - (b) that the client is obliged under *section 120(1)* to communicate to the legal practitioner the existence of a dispute on any aspect of the bill of costs, and the date and means by which this is to be communicated; 10
  - (c) that, where a dispute is communicated under *section 120(1)*, the legal practitioner is obliged under *section 120* to attempt to resolve the dispute by informal means, including mediation;
  - (d) that the client may have the dispute referred to mediation, including a reference to the procedures available for such mediation; 15
  - (e) that the client may apply for adjudication of legal costs, including the contact information for the Office and the potential cost to the client of seeking an adjudication of a bill of costs; and
  - (f) the date on which the legal practitioner may, subject to *section 120*, make an application under *section 121(5)* for an adjudication in the event that the bill of costs or any part thereof remains unpaid. 20
- (4) This section shall not be construed as limiting a right that any other person has to require a legal practitioner to submit a bill of costs for adjudication.
- (5) Where an agreement has been made under *section 118* by a legal practitioner and his or her client, that agreement shall be set out in, or annexed to, the bill of costs relating to the matter to which the agreement relates. 25
- (6) Where an agreement referred to in *subsection (5)* concerns all of the legal costs that are payable by the client to the legal practitioner for legal services provided in relation to the matter concerned, an invoice prepared by the legal practitioner containing a summary of the costs and outlays pursuant to the agreement, together with a copy of the agreement, shall constitute a bill of costs of the purposes of this section. 30
- (7) Where an agreement referred to in *subsection (5)* concerns a part of the legal costs that are payable by the client to the legal practitioner for legal services provided in relation to the matter concerned, a summary prepared by the legal practitioner of the costs and outlays pursuant to the agreement shall, as respects that part of the legal costs, satisfy the requirements of *paragraphs (a), (b) and (d) of subsection (2)*. 35
- (8) Where a solicitor, having received instructions from a client in relation to a matter, proceeds to instruct a barrister in relation to that matter, and the barrister has concluded providing legal services in relation to that matter— 40
- (a) an obligation on the barrister under this section to provide a bill of costs shall be fulfilled where the barrister provides the bill of costs concerned to the solicitor,

- (b) the solicitor concerned shall immediately on receipt of a bill of costs referred to in *paragraph (a)*, provide that bill of costs to the client.

**Legal practitioner to attempt to resolve dispute**

- 120.** (1) Where a client disputes any aspect of a bill of costs, he or she shall, within 14 days of the bill of costs being provided to him or her under *section 119*, send the legal practitioner concerned a statement in writing setting out the nature of the dispute. 5
- (2) Where a legal practitioner receives a statement in accordance with *subsection (1)*, he or she shall, before making an application under *section 121(5)*, take all appropriate and reasonable steps to attempt to resolve the dispute by informal means, which may include, where appropriate and with the consent of the client, mediation. 10
- (3) Where the legal practitioner or the client, as the case may be, having made reasonable attempts to resolve the dispute in accordance with *subsection (2)*, is of the opinion that the attempt has failed, he or she shall inform the other party in writing of that opinion.
- (4) In reckoning the period of time for the purposes of *subsection (5) or (7) of section 121*, the period beginning on the date on which the client sends the legal practitioner a statement under *subsection (1)* and ending on the date on which the legal practitioner or the client, as the case may be, informs the other party of his or her opinion referred to in *subsection (3)*, shall be disregarded. 15
- (5) Failure by a client to pay a bill of costs to a legal practitioner within the time period referred to in *section 121(5)* shall not be construed as a formal communication of the existence of a dispute by the client to the legal practitioner. 20

CHAPTER 4

*Adjudication of legal costs*

**Application for adjudication of legal costs** 25

- 121.** (1) In a case where a person is ordered by a court, tribunal or other body to pay, in whole or in part, the legal costs of another person, the person whose legal costs are to be paid by reason of that order shall furnish a bill of costs to the person who is the subject of the order to pay the legal costs, in a form and manner consistent with—
- (a) the terms of the order, 30
- (b) this Act, and
- (c) any rules of court relating to the preparation and furnishing of bills of costs in a case to which this subsection refers.
- (2) Where a person who is the subject of the order to pay costs receives a bill of costs prepared in accordance with *subsection (1)*, that person may, having attempted to agree the bill of costs with the person referred to in *subsection (1)*, apply to the Chief Legal Costs Adjudicator for adjudication on any matter or item claimed in the bill of costs. 35
- (3) Where a person in whose favour the order to pay costs has been made issues a bill of

costs prepared in accordance with *subsection (1)*, that person, having attempted to resolve any dispute regarding the bill of costs with the person who is the subject of the order, may apply to the Chief Legal Costs Adjudicator for the bill of costs or any matter or item in the bill of costs to be adjudicated upon.

- (4) Where a legal practitioner provides a bill of costs in accordance with *section 119* to his or her client and the client considers that any matter or item or the amount charged in respect of any matter or item in the bill of costs is not properly chargeable, taking account of the provisions of this Act, and any rules of court relating to costs payable to legal practitioners by clients, the client may apply to the Chief Legal Costs Adjudicator for the bill of costs or any matter or item in the bill of costs to be adjudicated upon. 5 10
- (5) (a) Where a legal practitioner provides a bill of costs in accordance with *section 119* to his or her client and the bill of costs or any part thereof remains unpaid on the expiry of a period of 30 days from the date on which the bill of costs was provided, the legal practitioner may apply to the Chief Legal Costs Adjudicator for the bill of costs or any matter or item in the bill of costs to be adjudicated upon. 15
- (b) Where a barrister has, in accordance with *section 119(8)*, provided a bill of costs to a solicitor, and the bill of costs or any part thereof remains unpaid on the expiry of a period of 30 days from the date on which the bill of costs was provided, the solicitor concerned may, with the consent of the barrister, apply to the Chief Legal Costs Adjudicator for the bill of costs or any matter or item in the bill of costs to be adjudicated upon. 20
- (c) An application to the Chief Legal Costs Adjudicator pursuant to *paragraph (a)* or *(b)* may not be made after the expiry of 12 months after the date on which the bill of costs concerned was provided to the client under *section 119*. 25
- (6) Where the legal practitioner applies for adjudication pursuant to *subsection (5)*, the legal practitioner shall indicate whether or not he or she is aware of any dispute regarding an item in the bill of costs and if so aware the matter to which the dispute relates. 30
- (7) Subject to *subsection (8)*, an application to the Chief Legal Costs Adjudicator by a client pursuant to *subsection (4)* may not be made after the expiry of 6 months after the date on which bill of costs concerned was provided to the client under *section 119*, or 3 months from the date of payment of the bill of costs, whichever first occurs, so long as the bill of costs is in a form and manner consistent with— 35
- (a) this Act, and
- (b) any rules of court relating to the preparation and provision of bills of costs by a legal practitioner to a client.
- (8) Where a bill of costs has been provided by a legal practitioner to his or her client and the legal practitioner has agreed to accept a lesser amount in discharge of the bill of costs which lesser amount is paid, neither the legal practitioner nor the client may make an application to the Chief Legal Costs Adjudicator for adjudication of the bill of costs under this section. 40
- (9) A legal practitioner who has provided a bill of costs in accordance with *section 119* to

his or her client may apply *ex parte* to the High Court or to a Legal Costs Adjudicator for the abridgement of the period of 30 days referred to in *subsection (5)* and, where it appears that it is just to do so, the Court or the Legal Costs Adjudicator, as appropriate, may grant an abridgement of that period.

- (10) Rules of court may make provision for— 5
- (a) the giving of notice of the application for adjudication to other parties or to such other persons as the Chief Legal Costs Adjudicator shall direct,
  - (b) the furnishing of documents, records and vouchers to the Chief Legal Costs Adjudicator or to other parties to the adjudication,
  - (c) the circumstances and manner in which written submissions are to be provided for the purposes of an adjudication, and 10
  - (d) the steps that may constitute an attempt, by a person referred to in *subsection (2)* or *(3)*, to agree a bill of costs, and the certification by a Legal Costs Adjudicator that the person has made such an attempt.
- (11) An application under this section shall be in a form specified by rules of court or, as the case may be, under *section 133(1)*. 15

#### **Matters to be ascertained in course of adjudication of costs**

- 122.** (1) *Schedule 1* on the principles relating to legal costs shall apply to the adjudication of a bill of costs by a Legal Costs Adjudicator.
- (2) Where the Chief Legal Costs Adjudicator is adjudicating an application under this Part, a reference to a Legal Costs Adjudicator shall be construed as including the Chief Legal Costs Adjudicator. 20
- (3) In determining an application for the adjudication of legal costs, the Legal Costs Adjudicator shall, 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. 25
- (4) In particular, the Legal Costs Adjudicator shall, as respects a matter or item the subject of the application—
- (a) verify that the matter or item represents work that was actually done,
  - (b) determine whether or not in the circumstances it was appropriate that a charge be made for the work concerned or the disbursement concerned, 30
  - (c) determine what a fair and reasonable charge for that work or disbursement would be in the circumstances, and
  - (d) determine whether or not the costs relating to the matter or item concerned were reasonably incurred. 35
- (5) In applying *subsection (4)* the Legal Costs Adjudicator shall, so far as reasonably practicable, ascertain, in relation to work (including work to which a disbursement relates)—
- (a) the nature, extent and value of the work,

- (b) who carried out the work, and
  - (c) the time taken to carry out the work.
- (6) In the application of *subsection (3)* to an adjudication relating to a bill of costs as between a legal practitioner and his or her client, the Legal Costs Adjudicator shall have regard to an agreement (if any) between the legal practitioner and the client in relation to the matter concerned, made under *section 118*. 5

**Powers of Legal Costs Adjudicator**

- 123.** (1) For the purposes of determining an application for adjudication of legal costs, a Legal Costs Adjudicator may—
- (a) inspect documents relating to or relevant to the matter concerned, and 10
  - (b) 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.
- (2) A Legal Costs Adjudicator may 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, whether or not any of the parties have requested that the Legal Costs Adjudicator do so. 15
- (3) If the parties agree to refer their dispute to mediation or other process referred to in *subsection (2)*, the Legal Costs Adjudicator shall adjourn the determination of the application and may give any other direction that he or she considers will facilitate the resolution of the dispute. 20
- (4) An oral hearing held for the purposes of an adjudication shall be held in public unless, in the opinion of the Legal Costs Adjudicator, the hearing or part thereof ought, in the interests of justice, be held otherwise than in public.
- (5) The Legal Costs Adjudicator may, with the consent of the parties, conduct an adjudication without an oral hearing where he or she is of the opinion that it is expedient and in the interests of justice to do so. 25
- (6) The High Court, in an application referred to in *subsection (1)*, may make such order as to costs as it thinks fit in respect of the application.

**Determination of applications**

- 124.** (1) A Legal Costs Adjudicator, having considered an application in accordance with *section 122*, shall, in accordance with this section, make a determination in respect of that application. 30
- (2) A determination shall, as soon as practicable after it is made, be furnished to the parties to the adjudication.
- (3) Subject to the other provisions of this section, and the principles relating to legal costs specified in *Schedule 1*, a Legal Costs Adjudicator shall confirm the charge in respect of an item of legal costs the subject of the application if, having regard to the matters that he or she considered and ascertained under *section 122*, he or she considers that— 35

- (a) charging in respect of the item is fair and reasonable in the circumstances, and
  - (b) the amount charged in the bill of costs in respect of that item is fair and reasonable in the circumstances.
- (4) A Legal Costs Adjudicator shall, 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. 5
- (5) A Legal Costs Adjudicator shall not confirm an amount for a disbursement unless—
- (a) there is a valid voucher or receipt in respect of the disbursement, or
  - (b) the parties have agreed, and the Legal Costs Adjudicator is satisfied, that such a voucher or receipt is not required. 10
- (6) A Legal Costs Adjudicator shall not 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 117* or, as the case may be, is not the subject of an agreement referred to in *section 118*, unless the Legal Costs Adjudicator is of the opinion that to disallow the matter or item would create an injustice between the parties. 15
- (7) If a Legal Costs Adjudicator is of the opinion that a party to the application has neglected or refused to provide documents, and that the refusal or neglect would likely be prejudicial to the interests of one or more of the other parties, the Legal Costs Adjudicator shall, in order to minimise the prejudice to those interests— 20
- (a) determine the application to the extent possible in the circumstances, and
  - (b) determine that only a nominal amount is to be payable to the party who has neglected or refused to provide the required documentation.
- (8) The Legal Costs Adjudicator, having made a determination, shall prepare a report under *subsection (9)*— 25
- (a) where he or she considers it to be in the public interest, or
  - (b) upon request by any party to the adjudication, made not later than 14 days after the making of the determination.
- (9) A report referred to in *subsection (8)* shall set out the matters or items the subject of the adjudication and 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— 30
- (a) specify the work involved relating to the matters or items the subject of the adjudication which was considered in reaching the determination,
  - (b) 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, 35
  - (c) set out a summary of the written or oral submissions made by or on behalf of the parties to the adjudication, and
  - (d) give reasons for his or her determination. 40

- (10) A copy of any report under *subsection (8)* shall be furnished to any requesting party to the adjudication as soon as practicable after it has been prepared.

### **Effect of determination**

- 125.** (1) Subject to *section 127*, the determination of a Legal Costs Adjudicator is final and shall take effect 20 days after it is furnished under *section 124(2)* to the parties to the adjudication. 5
- (2) Where an adjudication concerns only legal costs as between a legal practitioner and his or her client, and the Legal Costs Adjudicator has determined that the aggregate of the amounts to be paid is less than 15 per cent lower than the aggregate of those amounts set out in the bill of costs, the party chargeable to those costs shall pay the costs of the adjudication. 10
- (3) Where a Legal Costs Adjudicator has determined that the aggregate of the amounts to be paid in respect of the legal costs referred to in *subsection (2)* is 15 per cent or more than 15 per cent lower than the aggregate of those amounts set out in the bill of costs, the legal practitioner who issued the bill of costs shall be responsible for the costs of the adjudication. 15
- (4) Where *subsection (3)* applies, the Legal Costs Adjudicator may determine that the costs of the adjudication be set-off against the aggregate amount determined.

### **Reference to High Court**

- 126.** (1) A Legal Costs Adjudicator may, whether or not at the request of a party to an application for adjudication of legal costs, refer a question of law arising in the application to the High Court for the opinion of that Court. 20
- (2) Where, in the determination of an application, a question as to the enforceability of an agreement entered into under *section 118* arises, a Legal Costs Adjudicator shall refer the agreement to the High Court and the High Court shall decide if, and to what extent, the agreement is enforceable and— 25
- (a) if it considers that the agreement is enforceable, it shall make the order that it considers appropriate to enforce the agreement, or
- (b) if it considers that the agreement is not enforceable, it shall direct that the adjudication of the legal costs proceed as if no agreement had been entered into. 30
- (3) If a question has been referred to the High Court under this section, a Legal Costs Adjudicator may not—
- (a) make a determination to which the question is relevant while the reference is pending, or
- (b) proceed in a manner, or make a determination, that is inconsistent with the opinion of the High Court on the question. 35

### **Consideration by Legal Costs Adjudicator of determination**

- 127.** (1) Where a party to an adjudication is dissatisfied with a decision of a Legal Costs Adjudicator under *section 124* to confirm a charge, not to confirm a charge or to



determinate a different amount to be charged in respect of a matter or item the subject of the adjudication, he or she may, within 14 days of the date on which the determination is furnished to him or her under *section 124(2)*, apply to the Legal Cost Adjudicator for the consideration of the decision and the making of a determination under this section.

5

- (2) An application under *subsection (1)* shall be—
  - (a) in such form as may be specified in rules of court or, where applicable, under *section 133*, and shall specify by a list in a short and concise form the matters or items, or parts thereof, to which the decision of the Legal Costs Adjudicator being objected to relates and the grounds and reasons for such objections, and 10
  - (b) made on notice to the other party to the adjudication.
- (3) The Legal Costs Adjudicator shall, if he or she considers it appropriate to do so, and upon the application of the party entitled to the costs, issue an interim determination pending consideration of an application under *subsection (1)*, in respect of—
  - (a) the remainder of the matters or items in the determination to which no objection has been made, and 15
  - (b) such of the matters or items that are subject of the application as the Legal Costs Adjudicator considers reasonable.
- (4) For the purposes of an application under *subsection (1)*, the Legal Costs Adjudicator shall reconsider and review his determination having regard to the matters or items specified under *subsection (2)(a)*, and *sections 122 to 125* shall apply in relation to such a consideration. 20
- (5) The Legal Costs Adjudicator, having considered an application under this section may decide—
  - (a) not to vary his or her determination, or 25
  - (b) to make a new determination,and the determination referred to in *paragraph (a)* or *(b)* shall, subject to *section 128*, take effect immediately.
- (6) The functions of a Legal Costs Adjudicator in relation to an application under this section shall, insofar as practicable, be performed by the Legal Costs Adjudicator who made the determination to which the application relates. 30

### **Review of determination of Legal Costs Adjudicator**

- 128.** (1) A party to an adjudication who has made an application under *section 127* may, not later than 21 days after the date on which the Legal Costs Adjudicator has made his or her determination under *section 127(5)*, apply to the High Court for a review of the determination concerned. 35
- (2) A review under this section shall be made by motion on notice to all other parties to the adjudication and the Chief Legal Costs Adjudicator.
- (3) The court shall hear and determine the review on the evidence that was tendered to the Legal Costs Adjudicator unless the court orders that other evidence be submitted. 40

- (4) The court shall, having heard the review under *subsection (1)*—
- (a) confirm the determination of the Legal Costs Adjudicator, or
  - (b) allow the review and—
    - (i) remit the matter to the Legal Costs Adjudicator to determine the adjudication in accordance with the decision of the court, or 5
    - (ii) substitute its own determination for that of the Legal Costs Adjudicator.
- (5) The High Court shall allow a review under *subsection (4)(b)* only where it is satisfied that the Legal Costs Adjudicator has, in his or her determination, erred as to the amount of the allowance or disallowance so that the determination is unjust.
- (6) In this section “court” means— 10
- (a) if the adjudication the subject of the review is in relation to party and party costs, the court that heard the proceedings to which those costs relate, and
  - (b) in any other case, the High Court.

## CHAPTER 5

### *Miscellaneous* 15

#### **Privilege in respect of adjudications**

- 129.** Proceedings and documents created or furnished to the parties to a legal costs adjudication are absolutely privileged except—
- (a) to the extent required for an appeal from the determination of a Legal Costs Adjudicator, and 20
  - (b) in relation to a mediation or other procedure for the resolution of disputes as to the legal costs concerned.

#### **Power to specify forms**

- 130.** (1) Unless a form of document is specified in rules of court, the Chief Legal Costs Adjudicator may specify the form of documents required for the purposes of this Part as he or she considers appropriate. 25
- (2) The Chief Legal Costs Adjudicator’s power under *subsection (1)* may be exercised in such a way as to—
- (a) include in the specified form of any document referred to in that subsection a statutory declaration— 30
    - (i) that is to be made by the person completing the form, and
    - (ii) that states that the particulars contained in the form are true and correct to the best of that person’s knowledge and belief,
 and
  - (b) specify 2 or more forms of any document referred to in that subsection, whether 35
    - as alternatives, or to provide for particular circumstances or particular cases, as

the Chief Legal Costs Adjudicator considers appropriate.

- (3) A form specified under this section, or specified in rules of court, shall be—
- (a) completed in accordance with such directions and instructions as are specified in the form,
  - (b) accompanied by such documents as are specified in the form, and 5
  - (c) if the completed form is required to be provided to—
    - (i) the Chief Legal Costs Adjudicator,
    - (ii) another person on behalf of the Chief Legal Costs Adjudicator, or
    - (iii) any other person,
- so provided in the manner, if any, specified in the form. 10

#### **Transitional — Taxing-Masters**

- 131.** The Minister may designate a person who, immediately before the date on which this section commences, was serving as a Taxing-Master of the High Court, to perform the functions of a Legal Costs Adjudicator under this Part for a period that ends when his or her term as Taxing-Master would but for this Part otherwise expire and, if the Minister does so, that person may perform the functions of a Legal Costs Adjudicator under this Part, and shall be treated as though he or she were a Legal Costs Adjudicator appointed under *section 106(2)*, during that period. 15

#### **Transitional — matters in course and legal proceedings**

- 132.** (1) Where, before the day on which this subsection comes into operation, a matter has been referred for taxation and a hearing has taken place on the matter, whether before a Taxing-Master or a County Registrar exercising the powers of a Taxing-Master, the matter shall be dealt with in accordance with the applicable law as it stood before that day notwithstanding the provisions of this Part. 20
- (2) Where, before the day on which this subsection comes into operation, a decision has been made on a matter referred to taxation, any review of the decision shall be determined in accordance with the applicable law as it stood before that day, notwithstanding the provisions of this Part. 25
- (3) Where, before the day on which this subsection comes into operation, a matter has been referred for taxation but a hearing has not yet taken place on the matter, the matter shall be dealt with as though the referral were an application for adjudication of legal costs under *section 121* made on the day on which the matter was referred for taxation. 30
- (4) Where, immediately before the day on which this subsection comes into operation, any legal proceedings are pending to which a Taxing-Master, or a County Registrar exercising the powers of a Taxing-Master, is a party and the proceedings have reference to any functions that on or after that day are functions of the Chief Legal Costs Adjudicator or a Legal Costs Adjudicator, the name of the Chief Legal Costs Adjudicator or Legal Costs Adjudicator, as the case may be, shall, in so far as the proceedings relate to those functions, be substituted in those proceedings for that of 35 40

the Taxing-Master, or County Registrar, or added in those proceedings, and those proceedings shall not abate by reason of such substitution.

**Information, documents, records, etc.**

133. (1) Any information or document provided, before the day on which this section commences, to a Taxing-Master, or a County Registrar exercising the powers of a Taxing-Master, under a statute or rule of court relating to the taxation of legal costs, shall, on and after that day, be treated as information or a document provided to the Chief Legal Costs Adjudicator under this Part. 5
- (2) A book, index, document or other record (including such a record in electronic or other non-legible form that is capable of being converted into permanent legible form) that was held, before the day on which this section commences, by a Taxing-Master, or a County Registrar exercising the powers of a Taxing-Master, under a statute or rule of court relating to the taxation of legal costs, shall, on and after that day, be treated as such a record held by or on behalf of the Chief Legal Costs Adjudicator. 10

**References** 15

134. On and after the day on which this section comes into operation—
- (a) a reference in any other enactment to taxation of costs shall be construed as a reference to adjudication of costs,
  - (b) a reference to the Taxing-Masters’ Office contained in any other enactment or any other document shall be construed as a reference to the Office of the Legal Costs Adjudicators, and 20
  - (c) a reference to a Taxing-Master contained in any other enactment or any other document shall be construed as a reference to the Chief Legal Costs Adjudicator and every Legal Costs Adjudicator.

PART 11 25

LEGAL COSTS IN CIVIL PROCEEDINGS

**Power to award legal costs**

135. (1) Subject to the provisions of this Part, a court may, on application by a party to civil proceedings, at any stage in, and from time to time during, those proceedings—
- (a) order that a party to the proceedings pay the costs of or incidental to the proceedings of one or more other parties to the proceedings, or 30
  - (b) where proceedings before the court concern the estate of a deceased individual, or the property of a trust, order that the costs of or incidental to the proceedings of one or more parties to the proceedings be paid out of the property of the estate or trust. 35
- (2) Without prejudice to *subsection (1)*, the order may include an order that a party shall pay—

- (a) a portion of another party's costs,
  - (b) costs from or until a specified date, including a date before the proceedings were commenced,
  - (c) costs relating to one or more particular steps in the proceedings,
  - (d) where a party is partially successful in the proceedings, costs relating to the successful element or elements of the proceedings, and 5
  - (e) interest on costs from or until a specified date, including a date before the judgment.
- (3) Nothing in this Part shall be construed as—
- (a) restricting any right of action for the tort of maintenance, or 10
  - (b) restricting any right of a trustee, mortgagee or other person, existing on the day on which this section commences, to be paid costs out of a particular estate or fund to which he or she would be entitled under any rule of law or equity.

**Costs to follow event**

- 136.** (1) 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, including— 15
- (a) conduct before and during the proceedings,
  - (b) whether it was reasonable for a party to raise, pursue or contest one or more issues in the proceedings, 20
  - (c) the manner in which the parties conducted all or any part of their cases,
  - (d) whether a successful party exaggerated his or her claim,
  - (e) whether a party made a payment into court and the date of that payment,
  - (f) whether a party made an offer to settle the matter the subject of the proceedings, and if so, the date, terms and circumstances of that offer, and 25
  - (g) where the parties were invited by the court to settle the claim (whether by mediation or otherwise) and the court considers that one or more than one of the parties was or were unreasonable in refusing to engage in the settlement discussions or in mediation. 30
- (2) Where the court orders that a party who is entirely successful in civil proceedings is not entitled to an award of costs against a party who is not successful in those proceedings, it shall give reasons for that order.
- (3) Where a party succeeds against one or more than one of the parties to civil proceedings but not against all of them, the court may order, to the extent that the court considers that it is proper to do so in all the circumstances, that— 35
- (a) the successful party pay any or all of the costs of the party against whom he or she has not succeeded, or

- (b) the party or more than one of the parties against whom the successful party has succeeded pay not only the costs of the successful party but also any or all of the costs that the successful party is liable to pay under *paragraph (a)*.
- (4) Unless the court before which civil proceedings were commenced orders otherwise, or the parties to those proceedings agree otherwise, a party who discontinues or abandons the proceedings after they are commenced (including discontinuance or abandonment of an appeal) is liable to pay the reasonable costs of every other party who has incurred costs in the defence of the civil proceedings concerned until the discontinuance or abandonment. 5
- (5) Nothing in this Part shall be construed as affecting section 50B of the Planning and Development Act 2000 or Part 2 of the Environment (Miscellaneous Provisions) Act 2011. 10

## PART 12

### PATENTS OF PRECEDENCE

#### **Definitions (*Part 12*)** 15

#### **137.** In this Part—

“Committee” means the Advisory Committee on the grant of Patents of Precedence established under *section 139*;

“Patent”, subject to *section 138(2)*, means—

- (a) in relation to a barrister, a Patent of Precedence at the Bar, the grant of which to the barrister entitles him or her to be called to the Inner Bar and to use the title of “Senior Counsel”, and 20
- (b) in relation to a solicitor, a Patent of Precedence at the Bar, the grant of which to a solicitor entitles him or her to use the title of “Senior Counsel”;

“tax clearance certificate” means a certificate issued under section 1095 of the Taxes Consolidation Act 1997. 25

#### **Power to grant, and to revoke grant of, Patent**

#### **138.** (1) The Government may—

- (a) on the recommendation of the Committee under *section 141*, grant a Patent to a legal practitioner, and 30
- (b) on the recommendation of the Committee under *section 142*, revoke the grant of a Patent to a legal practitioner.

- (2) For the purposes of *subsection (1)(b)* and *section 142*, “Patent” includes a Patent granted in the State before the commencement of this section.

#### **Advisory Committee on the grant of Patents of Precedence** 35

#### **139.** (1) The Authority shall establish an Advisory Committee on the grant of Patents of

Precedence to perform the functions assigned to it under this Part.

- (2) The Committee shall consist of:
- (a) the Chief Justice, who shall be the chairperson of the Committee;
  - (b) the President of the High Court;
  - (c) the Attorney General; 5
  - (d) the Chairperson of the Bar Council;
  - (e) the President of the Law Society; and
  - (f) a lay member of the Authority nominated by the Minister.
- (3) A person appointed under *paragraph (f) of subsection (2)*—
- (a) shall be a member of the Committee for a period not exceeding 3 years from the date of his or her appointment as such a member, and 10
  - (b) shall be eligible for re-appointment to the Committee provided, and for so long as, he or she remains a member of the Authority.
- (4) A member of the Committee, who is unable to attend a meeting of the Committee, may nominate a deputy to attend in his or her place. 15
- (5) The Committee may act notwithstanding a vacancy in its membership.
- (6) On the death or retirement of the Chief Justice, the senior ordinary judge of the Supreme Court who is for the time being available shall be a member of the Committee until the appointment of a Chief Justice.
- (7) On the death or retirement of the President of the High Court, the senior ordinary judge of the High Court who is for the time being available shall be a member of the Committee until the appointment of a President of the High Court. 20
- (8) Subject to *subsection (9)*, the Committee shall not recommend under *section 141* that one of its members be granted a Patent.
- (9) Where a member of the Committee— 25
- (a) makes an application under *section 141(1)*, or
  - (b) is the subject of an application under *section 142(2)*,
- he or she shall take no part in any consideration by the Committee of that application.
- (10) All proceedings of the Committee and all communications by and to the Committee, including consultations by the Committee under *section 141(3)*, shall be confidential and shall not be disclosed except for the purposes of this Act. 30

### **Criteria for grant of Patent**

- 140.** (1) The Committee shall establish the criteria, based on the objectives specified in *subsection (2)*, to be met by a legal practitioner in order for a recommendation to be made by it to the Government that a Patent be granted to him or her. 35
- (2) The objectives referred to in *subsection (1)* are those of ensuring, in relation to a legal practitioner seeking to have a Patent granted to him or her, that he or she:

- (a) has, in his or her practice as a legal practitioner, displayed—
  - (i) a degree of competence and a degree of probity appropriate to and consistent with the grant to him or her of a Patent,
  - (ii) a capacity for advocacy,
  - (iii) a capacity for specialist litigation or a specialist knowledge of an area of law, 5  
and
  - (iv) professional independence;
- (b) is suitable on grounds of character and temperament;
- (c) is in possession of a tax clearance certificate that is in force;
- (d) is otherwise suitable to be granted a Patent. 10

### **Application for recommendation**

- 141.** (1) A legal practitioner who wishes to be granted a Patent under *section 138* may apply to the Committee for—
- (a) its consideration, in accordance with this section, of whether he or she meets the criteria established under *section 140*, and 15
  - (b) subject to *paragraph (a)*, its recommendation to the Government that he or she be granted a Patent.
- (2) An application under *subsection (1)* shall be accompanied by such information and such fee as may be prescribed.
- (3) Where the Committee receives an application under *subsection (1)*, it shall consider 20  
whether the applicant meets the criteria established under *section 140* and, for that purpose, may consult in confidence with such persons as it considers appropriate.
- (4) Following its consideration under *subsection (3)*, the Committee shall—
- (a) where it decides that an applicant meets the criteria established under *section 140*, recommend to the Government that the applicant be granted a Patent, and 25
  - (b) where it decides that the applicant does not meet those criteria, notify the applicant in writing of its decision and of the reasons for it.
- (5) The Minister may prescribe—
- (a) the form of application under this section,
  - (b) the information and fee (if any) that is to accompany an application for the grant 30  
of a Patent, and
  - (c) any other matters that the Minister considers necessary for purposes of this section.

### **Revocation of grant of Patent**

- 142.** (1) The Government may, on a recommendation from the Committee made in accordance 35  
with this section, revoke the grant of a Patent.



- (2) Where the High Court makes an order referred to in *section 73(3)(b)(vii)* in relation to a legal practitioner, the Authority shall apply to the Committee for—
- (a) its consideration, in accordance with this section, of whether the grant of a Patent to that legal practitioner should be revoked, and
  - (b) subject to *paragraph (a)*, its recommendation to the Government that that grant be revoked. 5
- (3) An application under *subsection (2)* shall be accompanied by—
- (a) a statement of the reasons for the application,
  - (b) copies of all documents that were before the Disciplinary Tribunal in the making of its determination under *section 68(8)*, and 10
  - (c) such other information, and such fee, as may be prescribed.
- (4) The Committee, on receipt of an application under *subsection (2)*, shall notify the person concerned in writing of the application.
- (5) A notification under *subsection (4)* shall include—
- (a) a copy of all documents furnished to the Committee in the application under *subsection (2)*, 15
  - (b) a statement that the person concerned may, within 30 working days of the sending of the notification or such other period as the Committee, having regard to the requirements of justice, may specify, make representations in the prescribed manner to the Committee as to why the grant should not be revoked, and 20
  - (c) a statement that, where no representations are received within the period specified under *paragraph (b)*, the Committee will, without further notice, proceed to consider the application.
- (6) In considering an application under *subsection (2)*, the Committee shall take into account— 25
- (a) the information furnished in the application,
  - (b) any representations made pursuant to *subsection (5)(b)*, and
  - (c) any other matter the Committee considers relevant for the purpose of its decision.
- (7) The Committee shall decide to recommend to the Government that the grant of a Patent be revoked only where satisfied, on the basis of the representations and matters referred to in *subsection (6)*, that the person concerned no longer meets the criteria established under *section 140*. 30
- (8) Where the Committee makes a decision referred to in *subsection (7)*, it shall notify the person concerned in writing of its decision and of the reasons for it.
- (9) A person referred to in *subsection (8)* may, within 30 working days of the sending of the notification under that subsection, appeal to the High Court against the decision of the Committee. 35
- (10) On hearing an appeal under *subsection (9)*, the High Court may, as it thinks proper, either affirm or overturn the decision concerned.

- (11) The Committee shall recommend to the Government that the grant of a Patent to a person referred to in *subsection (8)* be revoked only—
- (a) where no appeal is made under *subsection (9)*, after the expiry of the period referred to in that subsection,
  - (b) where an appeal is made under *subsection (9)*, if the High Court affirms the decision concerned. 5
- (12) The Minister may prescribe—
- (a) the form of application under *subsection (2)*,
  - (b) the information and fee (if any) that is to accompany such an application, and
  - (c) any other matters that the Minister considers necessary for the purposes of this section. 10

## PART 13

### MISCELLANEOUS

#### **Amendment of Courts Act 1971**

**143.** The Courts Act 1971 is amended by substituting the following for section 17: 15

**“Right of audience of solicitors.**

17. (1) Notwithstanding any other enactment or rule of law and subject to subsections (2) and (3), a solicitor who is acting for a party in an action, suit, matter or criminal proceedings in any court and a solicitor qualified to practise in the State (within the meaning of the Solicitors Acts 1954 to 2011) who is acting as his or her assistant shall have a right of audience in that court. 20
- (2) Subsection (1) shall apply notwithstanding that a solicitor referred to in that subsection has instructed a practising barrister in the action, suit, matter or criminal proceedings concerned. 25
- (3) (a) Subject to paragraph (b), in the circumstances referred to in subsection (2), it shall be a matter for agreement between the solicitor and the barrister concerned, with the consent of the party referred to in subsection (1), as to whether the right of audience shall, having due regard to the best interests of the party, be— 30
- (i) exercised by the solicitor or the barrister, or
  - (ii) partly exercised by the solicitor and partly exercised by the barrister.
- (b) Where the solicitor and the barrister referred to in paragraph (a) fail to reach agreement, the party shall determine the legal practitioner who is to take the lead role and the manner in which the right of audience shall be exercised on his or her behalf by the legal practitioners concerned.”. 35

**Barrister in employment may provide legal services to his or her employer**

- 144.** (1) No professional code may operate to prevent a barrister whose name is entered on the roll of practising barristers in accordance with *Part 9* from—
- (a) taking up paid employment, and
  - (b) as part of that employment, providing legal services to his or her employer, including by appearing on behalf of that employer in court. 5
- (2) A barrister shall not, as a condition of having his or her name entered on the roll of practising barristers, be required to provide an undertaking that he or she will not while his or her name remains on that roll—
- (a) take up paid employment, or 10
  - (b) take up paid employment that involves, as part of that employment, the provision of legal services to his or her employer, including by appearing on behalf of that employer in court.
- (3) Where, before the date on which this section commences, a barrister has given an undertaking of the nature or kind of the undertaking referred to in *subsection (2)*, such an undertaking shall, on and after that date, cease to be enforceable. 15
- (4) In this section, “employment” includes part-time employment, but does not include employment by a solicitor.

**Amendment of Courts and Court Officers Act 1995**

- 145.** The Courts and Court Officers Act 1995 is amended by substituting the following for section 49: 20
- “49. A legal practitioner when appearing in any court shall not be required to wear a wig or a robe of the kind heretofore worn or any other wig or robe of a ceremonial type.”.

**Restriction on withdrawal of legal practitioner from case where client in custody** 25

- 146.** (1) A legal practitioner who has accepted instructions to appear in court on behalf of a client who is in custody may not withdraw from the client’s case without obtaining permission from the court before which that client is next scheduled to appear.
- (2) The court, in deciding whether to grant a legal practitioner permission to withdraw from a case under *subsection (1)*, shall have regard to— 30
- (a) the likely consequences of such action for the client notwithstanding that the client may have concurred in the legal practitioner’s withdrawal from the case,
  - (b) any delay or other adverse consequences which may arise for the proceedings concerned as a result of the legal practitioner’s withdrawal, and
  - (c) any matter which is the subject of legal professional privilege between the legal practitioner and the client. 35
- (3) The court may hear an application for permission under *subsection (1) in camera* if it considers it necessary to do so in the interests of justice.

- (4) A withdrawal by a legal practitioner from a case in contravention of *subsection (1)* shall be notified to the Authority by the court whose permission to withdraw from that case is required under that subsection and the Authority, on being so notified, shall investigate the matter and take any necessary action under *Part 6*.

#### **Service of notices**

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**147.** Where a notice is required or authorised to be sent or given to a person by or under this Act, it shall be in writing and shall be addressed to the person concerned by name and shall be served on, sent or given to the person in one of the following ways:

- (a) by delivering it to the person;
- (b) by leaving it at the address at which the person ordinarily resides or carries on business or, in a case in which an address for service has been furnished, to that address; 10
- (c) by sending it by post in a pre-paid registered letter or by any other form of recorded delivery to the address at which the person ordinarily resides or carries on business or, in a case in which an address for service has been furnished, to that address. 15

#### **Protection for employees from penalisation for disclosing information relating to offences or misconduct**

**148.** (1) An employer shall not penalise or threaten penalisation against an employee, or cause or permit any other person to penalise or threaten penalisation against an employee— 20

- (a) 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 6*, or
- (b) for giving notice of his or her intention to do so.

(2) *Schedule 2* shall have effect in relation to an alleged contravention of *subsection (1)*. 25

(3) Nothing in *paragraphs (a), (c), (d), (e) and (f)* of the definition of “penalisation” in *subsection (6)* shall be construed in a manner which prevents an employer from—

- (a) ensuring that the business concerned is carried on in an efficient manner, or
- (b) taking any action required for economic, technical or organisational reasons.

(4) (a) If penalisation of an employee, in contravention of *subsection (1)*, constitutes a dismissal of the employee, as referred to in *paragraph (a)* of the definition of “penalisation”, the employee (or, in the case of an employee who has not reached the age of 18 years, the employee’s parent or guardian, with his or her consent) may institute proceedings in respect of that dismissal under the Unfair Dismissals Acts 1977 to 2007 or to recover damages at common law for wrongful dismissal 30 and, if the employee or his or her parent or guardian, as the case may be, does so, a complaint of such dismissal may not be presented to a rights commissioner under *paragraph 1(1)* of *Schedule 2*. 35

(b) If an employee (or, in the case of an employee who has not reached the age of 18 years, the employee’s parent or guardian, with his or her consent) presents a 40

complaint to a rights commissioner under *paragraph 1(1) of Schedule 2* in respect of a dismissal referred to in *paragraph (a)*, the employee or his or her parent or guardian, as the case may be, may not institute proceedings in respect of that dismissal under the Unfair Dismissals Acts 1977 to 2007 or to recover damages at common law for wrongful dismissal.

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(5) For the purposes of this section and *Schedule 2*, a reference to “dismissal” includes—

- (a) a dismissal within the meaning of the Unfair Dismissals Acts 1977 to 2007, and
- (b) a dismissal wholly or partly for or connected with the purpose of the avoidance of a fixed-term contract being deemed to be a contract of indefinite duration under section 9(3) of the Protection of Employees (Fixed-Term Work) Act 2003.

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(6) In this section, *section 149* and in *Schedule 2*—

“contract of employment” means a contract of employment or of service or of apprenticeship, whether the contract is express or implied and, if express, whether it is oral or in writing;

“disclosure”, in relation to an employee, means a disclosure by the employee to the Authority of information which he or she knows or believes might be of material assistance in—

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- (a) preventing the commission by any other person of an offence under this Act, or misconduct by any other person, or
- (b) securing the apprehension, prosecution or conviction of any other person for an offence under this Act, or the proper investigation under *Part 6* of a complaint that any other person has been guilty of misconduct;

20

“employee” means a person who has entered into or works under (or, where the employment has ceased, entered into or worked under) a contract of employment and references, in relation to an employer, to an employee shall be construed as references to an employee employed by that employer;

25

“employer”, in relation to an employee, means the person with whom the employee has entered into or for whom the employee works under (or, where the employment has ceased, entered into or worked under) a contract of employment, and includes—

- (a) a person (other than an employee of that person) under whose control and direction an employee works, and
- (b) where appropriate, the successor of the employer or an associated employer of the employer;

30

“penalisation” means any act or omission by an employer, or by a person acting on behalf of an employer, that affects an employee to his or her detriment with respect to any term or condition of his or her employment, and, without prejudice to the generality of the foregoing, includes—

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- (a) suspension, lay-off or dismissal,
- (b) the threat of suspension, lay-off or dismissal,
- (c) demotion or loss of opportunity for promotion,

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- (d) transfer of duties, change of location of place of work, reduction in wages or change in working hours,
- (e) the imposition or the administering of any discipline, reprimand or other penalty (including a financial penalty),
- (f) unfair treatment, 5
- (g) coercion, intimidation or harassment,
- (h) discrimination, disadvantage or adverse treatment,
- (i) injury, damage or loss, and
- (j) threats of reprisal.

**Offences relating to *section 148, etc.*** 10

- 149.** (1) An employee who makes a disclosure knowing it to be false or being reckless as to whether it is false is guilty of an offence.
- (2) An employer who contravenes *section 148(1)* is guilty of an offence.
- (3) A person who, upon examination on oath or affirmation authorised under *paragraph 2(7) of Schedule 2*, wilfully makes any statement which is material for that purpose and which the person knows to be false or does not believe to be true shall be guilty of an offence. 15
- (4) A person to whom a notice under *paragraph 2(8) of Schedule 2* has been given and who refuses or wilfully neglects to attend in accordance with the notice or who, having so attended, refuses to give evidence or refuses or wilfully fails to produce any document to which the notice relates shall be guilty of an offence. 20
- (5) A person guilty of an offence under *subsection (1) or (2)* is liable—
- (a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months or both, or
  - (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 2 years or both. 25
- (6) A person guilty of an offence under *subsection (3)* is liable on summary conviction to a class A fine or imprisonment for a term not exceeding 12 months or both.
- (7) A person guilty of an offence under *subsection (4)* is liable on summary conviction to a class A fine. 30
- (8) A document purporting to be signed by the chairperson or a deputy chairperson of the Labour Court stating that—
- (a) a person named in the document was, by a notice under *paragraph 2(8) of Schedule 2*, required to attend before the Labour Court on a day and at a time and place specified in the document, to give evidence or produce a document, or both, 35
  - (b) a sitting of the Labour Court was held on that day and at that time and place, and
  - (c) the person did not attend before the Labour Court in pursuance of the notice or, as the case may be, having so attended, refused to give evidence or refused or

wilfully failed to produce the document,  
shall, in a prosecution of the person under *subsection (4)*, be evidence of the matters so stated without further proof unless the contrary is shown.

### **Regulations on movement between professions of barrister and solicitor**

- 150.** (1) Notwithstanding any other enactment, the Authority may, with the consent of the Minister, by regulation provide that— 5
- (a) a barrister seeking to be admitted as a solicitor, or
  - (b) a solicitor seeking to become a barrister,
- be exempted from an admission requirement specified in the regulation, where the Authority is of the opinion that that admission requirement is, in the case of that barrister or solicitor, unnecessary. 10
- (2) Without prejudice to the generality of *subsection (1)*, regulations under that subsection may provide that a legal practitioner referred to in *paragraph (a)* or *(b)* of that subsection be exempted from an admission requirement that he or she—
- (a) attend at a course of education or training, 15
  - (b) sit and pass an examination, or
  - (c) serve a period of apprenticeship or pupillage, or a portion of such period.
- (3) Regulations under *subsection (1)* may provide different exemptions in relation to different legal practitioners or classes of legal practitioner.
- (4) For the purpose of this section, an admission requirement, in the case of a legal practitioner referred to in *paragraph (a)* or *(b)* of *subsection (1)*, is unnecessary where— 20
- (a) the admission requirement is in place for the purpose of ensuring that a person seeking to be admitted as a solicitor or to become a barrister, as the case may be, is in possession of particular knowledge, skill or experience, and 25
  - (b) the legal practitioner concerned is already in possession of that knowledge, skill or experience by virtue of—
    - (i) the educational qualifications and training that have previously been obtained by him or her, including those obtained in order for him or her to have become a barrister or to have been admitted as a solicitor, as the case may be, and 30
    - (ii) the experience in the provision of legal services obtained by him or her as a practising barrister or a practising solicitor, as the case may be.
- (5) Before making regulations under *subsection (1)*, the Authority shall consult with—
- (a) the Law Society, 35
  - (b) the Bar Council,
  - (c) the Honorable Society of King's Inns, and
  - (d) such other body or institution concerned with the provision of legal education

which in the opinion of the Authority should be consulted.

- (6) The following shall ensure that the admission requirements concerned are consistent with regulations made under this section:
- (a) the Honorable Society of King’s Inns and the Bar Council, in relation to the admission requirements relating to the barristers’ profession; 5
  - (b) the Law Society, in relation to the admission requirements relating to the solicitors’ profession;
  - (c) such other body, being empowered to establish admission requirements relating to the barristers’ profession or the solicitors’ profession, as the Minister may specify by regulation. 10
- (7) In this section—
- “admission requirements”—
- (a) in relation to the solicitors’ profession, means the requirements (including those relating to education and training) that a person is required to fulfil before he or she can be admitted as a solicitor, and 15
  - (b) in relation to the barristers’ profession, means the requirements (including those relating to education and training) that a person is required to fulfil before he or she becomes entitled to practice as a barrister,
- and, for the purpose of this definition, also includes any requirement under a Professional Code that a person undertake any training or serve a period of apprenticeship or pupillage following his or her admission as a solicitor or becoming a barrister, as the case may be; 20
- “barrister” means a person who is entitled to practice as a barrister in the State;
- “solicitor” means a person who has been admitted as a solicitor and whose name is on the roll of solicitors. 25

### **Advertising of legal services**

- 151.** (1) The Authority may, with the consent of the Minister, make regulations in relation to the advertising of legal services.
- (2) Without prejudice to the generality of *subsection (1)*, regulations made under that subsection may— 30
- (a) specify the category or categories of legal practitioner to whom such regulations apply,
  - (b) make provision in relation to advertisements that may be published or caused to be published by or on behalf of a legal practitioner, including provision in respect of the manner of publication of such advertisements and their form, content and size, 35
  - (c) provide that the information contained in an advertisement published or caused to be published by a legal practitioner shall be confined to specified information, including—



- (i) the name, address (including any electronic address), website address, telephone number, facsimile number, place or places of business of the legal practitioner,
  - (ii) particulars of the academic and professional qualifications and legal experience of the legal practitioner, 5
  - (iii) factual information on the legal services provided by the legal practitioner and on any areas of law to which those services relate, and
  - (iv) particulars of any charge or fee payable to the legal practitioner for the provision of any specified legal service,
  - (d) provide for restrictions on a legal practitioner making, or causing to be made, unsolicited approaches to any person or group or class of persons with a view to being instructed to provide legal services, 10
  - (e) provide for the manner in which the Authority is to determine whether any particular advertisement published or caused to be published by a legal practitioner is in contravention of any provision of, or regulations under, this section. 15
- (3) A legal practitioner shall not publish or cause to be published an advertisement which—
- (a) is likely to bring the profession of legal practitioner into disrepute,
  - (b) is in bad taste, 20
  - (c) reflects unfavourably on other legal practitioners,
  - (d) is false or misleading in any respect,
  - (e) is published in an inappropriate location, or
  - (f) does not comply with regulations under *subsection (1)*.
- (4) No professional code shall operate to prevent a group of practising barristers, who share a facility, premises or cost of practice, from advertising themselves as such a group. 25
- (5) In this section—
- “advertisement” means any communication (whether oral or in written or other visual form and whether produced by electronic or other means) which is intended to publicise or otherwise promote a legal practitioner in relation to the provision by him or her of legal services, including any— 30
- (a) brochure, notice, circular, leaflet, poster, placard, photograph, illustration, emblem, display, stationery, directory entry, article or statement for general publication, 35
  - (b) electronic address or any information provided by the legal practitioner that is accessible electronically,
  - (c) audio or video recording, or
  - (d) presentation, lecture, seminar or interview,

which is so intended but excluding a communication which is primarily intended to give information on the law;

“inappropriate location” means a hospital, clinic, doctor’s surgery, funeral home, cemetery, crematorium or other location of a similar character.

## SCHEDULE 1

*Sections 117(4) and 122.*

### PRINCIPLES RELATING TO LEGAL COSTS

1. A Legal Costs Adjudicator shall apply the following principles in adjudicating on a bill of costs pursuant to an application pursuant to *section 121*: 5
  - (a) that the costs have been reasonably incurred, and
  - (b) that the costs are reasonable in amount.
  
2. In determining whether the costs are reasonable in amount a Legal Costs Adjudicator shall consider each of the following matters:
  - (a) the complexity of the legal work concerned; 10
  - (b) the difficulty and novelty of the issues involved in the legal work;
  - (c) the skill or specialised knowledge relevant to the matter which the legal practitioner has applied to the matter;
  - (d) the time and labour that the legal practitioner has reasonably expended on the matter; 15
  - (e) the importance of the matter to the client;
  - (f) the urgency of the matter to the client and whether this urgency requires or required the legal practitioner to give priority to that matter over other matters;
  - (g) the place and circumstances in which the matter was transacted; 20
  - (h) the number, importance and complexity of the documents that the legal practitioner was required to draft, prepare or examine;
  - (i) where money, property or an interest in property is involved, the amount of the money, or the value of the property or the interest in the property concerned; 25
  - (j) whether or not there is an agreement to limit the liability of the legal practitioner pursuant to *section 38*;
  - (k) whether or not the legal practitioner necessarily undertook research or investigative work and, if so, the timescale within which such work was required to be completed; 30
  - (l) the use and costs of expert witnesses or other expertise engaged by the legal practitioner and whether such costs were necessary and reasonable.

## SCHEDULE 2

### Section 148.

#### REDRESS FOR CONTRAVENTION OF SECTION 148

##### *Complaints to rights commissioner*

1. (1) An employee (or, in the case of an employee who has not reached the age of 18 years, the employee's parent or guardian, with his or her consent) or any trade union of which the employee is a member, with the consent of the employee, may present a complaint to a rights commissioner that the employee's employer has contravened *section 148(1)* in relation to the employee. 5
  - (2) Where a complaint under *subparagraph (1)* is made, the rights commissioner shall— 10
    - (a) give the parties an opportunity to be heard by the commissioner and to present to the commissioner any evidence relevant to the complaint,
    - (b) give a decision in writing in relation to it, and
    - (c) communicate the decision to the parties. 15
  - (3) A decision of a rights commissioner under *subparagraph (2)* shall do one or more of the following:
    - (a) declare that the complaint was or, as the case may be, was not well founded;
    - (b) require the employer to take a specified course of action, which may include, in a case where the penalisation constitutes a dismissal, reinstatement or re-engagement; 20
    - (c) require the employer to pay to the employee compensation of such amount (if any) as is just and equitable having regard to all the circumstances, but not exceeding 2 years' remuneration in respect of the employee's employment calculated in accordance with regulations under section 17 of the Unfair Dismissals Act 1977; 25
- and the references in *clauses (b) and (c)* to an employer shall be construed, in a case where ownership of the business of the employer changes after the contravention to which the complaint relates occurred, as references to the person who, by virtue of the change, becomes entitled to such ownership. 30
- (4) Subject to *subparagraph (5)*, a rights commissioner shall not entertain a complaint under this paragraph if it is presented to him or her after the expiration of the period of 6 months beginning on the date of the contravention to which the complaint relates.
  - (5) Where a delay by an employee in presenting a complaint under this Schedule is due to any misrepresentation by the employer, *subparagraph (4)* shall be construed as if the reference to the date of the contravention were a reference to the date on which the misrepresentation came to the employee's notice. 35
  - (6) Notwithstanding *subparagraph (4)*, a rights commissioner may entertain a complaint under this paragraph presented to him or her after the expiration of the period referred to in *subparagraph (4)* (but not later than 6 months after such expiration) if he or she is satisfied that the failure to present the complaint within 40

that period was due to exceptional circumstances.

- (7) A complaint shall be presented by giving notice of it in writing to a rights commissioner and the notice shall contain such particulars and be in such form as may be specified from time to time by the Minister for Jobs, Enterprise and Innovation. 5
- (8) A copy of a notice under *subparagraph (7)* shall be given to the other party concerned by the rights commissioner.
- (9) Proceedings under this paragraph before a rights commissioner shall be conducted otherwise than in public.
- (10) A rights commissioner shall furnish the Labour Court with a copy of each decision given by the commissioner under *subparagraph (2)*. 10

*Appeals from decision of rights commissioner*

- 2. (1) A party concerned may appeal to the Labour Court from a decision of a rights commissioner under *paragraph 1(2)* and, if the party does so, the Labour Court shall— 15
  - (a) give the parties an opportunity to be heard by it and to present to it any evidence relevant to the appeal,
  - (b) make a determination in writing in relation to the appeal affirming, varying or setting aside the decision, and
  - (c) communicate the determination to the parties. 20
- (2) An appeal under this paragraph shall be initiated by the party concerned giving, within 6 weeks (or such greater period as the Labour Court may determine in the particular circumstances) from the date on which the decision to which it relates was communicated to the party, a notice in writing to the Labour Court containing such particulars as are determined by the Labour Court under *clauses (e) and (f) of subparagraph (4)* and stating the intention of the party concerned to appeal against the decision. 25
- (3) A copy of a notice under *subparagraph (2)* shall be given by the Labour Court to any other party concerned as soon as is practicable after the receipt of the notice by the Labour Court. 30
- (4) The following matters, and the procedures to be followed in relation to them, shall be determined by the Labour Court, namely:
  - (a) the procedure in relation to all matters concerning the initiation and the hearing by the Labour Court of appeals under this paragraph;
  - (b) the times and places of hearings of such appeals; 35
  - (c) the representation of the parties to such appeals;
  - (d) the publication and notification of determinations of the Labour Court;
  - (e) the particulars to be contained in a notice under *subparagraph (2)*;
  - (f) any matters consequential on, or incidental to, the foregoing matters.
- (5) The Labour Court may refer a question of law arising in proceedings before it under this paragraph to the High Court for its determination and the 40

determination of the High Court shall be final and conclusive.

- (6) A party to proceedings before the Labour Court under this paragraph may appeal to the High Court from a determination of the Labour Court on a point of law and the determination of the High Court shall be final and conclusive.
- (7) The Labour Court shall, on the hearing of any appeal referred to it under *subparagraph (1)*, have power to take evidence on oath or on affirmation and for that purpose may cause persons attending as witnesses at that hearing to swear an oath or make an affirmation. 5
- (8) The Labour Court may, by giving notice in that behalf in writing to any person, require such person to attend at such time and place as is specified in the notice— 10
- (a) to give evidence in relation to any appeal referred to the Labour Court under *subparagraph (1)*, or
- (b) to produce any document specified in the notice relating to the matter in the person's possession or power.
- (9) A witness at a hearing of an appeal before the Labour Court has the same privileges and immunities as a witness before the High Court. 15

*Paragraphs 1 and 2: Supplemental provisions*

3. (1) Where a decision of a rights commissioner in relation to a complaint under this Schedule has not been carried out by the employer concerned in accordance with its terms and— 20
- (a) the time for bringing an appeal against the decision has expired but no such appeal has been brought, or
- (b) an appeal has been brought, but it has been abandoned,
- the employee concerned (or, in the case of an employee who has not reached the age of 18 years, the employee's parent or guardian, with his or her consent) or, with the consent of the employee, any trade union of which the employee is a member, may bring the complaint before the Labour Court and the Labour Court shall, without hearing the employer concerned or any evidence (other than in relation to the matters aforesaid), make a determination to the like effect as the decision. 25 30
- (2) The bringing of a complaint before the Labour Court under *subparagraph (1)* shall be effected by giving to the Labour Court a written notice containing such particulars (if any) as may be determined by the Labour Court.
- (3) The Labour Court shall publish, in a manner it considers appropriate, particulars of any determination made by it under any of *clauses (a), (b), (c), (d), (e) and (f)* of *subparagraph (4)* of *paragraph 2* (not being a determination as respects a particular appeal under that paragraph) and *subparagraph (2)*. 35

*Enforcement of determinations of Labour Court*

4. (1) If an employer fails to carry out in accordance with its terms a determination of the Labour Court in relation to a complaint under *paragraph 1* within 28 days from the date on which the determination is communicated to the parties, the Circuit Court shall, on application made to it in that behalf by: 40

(a) the employee concerned (or, in the case of an employee who has not reached the age of 18 years, the employee's parent or guardian with his or her consent), or

(b) with the consent of the employee, any trade union of which the employee is a member,

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without hearing the employer or any evidence (other than in relation to the matters aforesaid), make an order directing the employer to carry out the determination in accordance with its terms.

(2) The reference in *subparagraph (1)* to a determination of the Labour Court is a reference to a determination in relation to which, at the expiration of the time for bringing an appeal against it, no such appeal has been brought or, if such an appeal has been brought, it has been abandoned, and the reference in that subparagraph to the date on which the determination is communicated to the parties shall, in a case where such an appeal is abandoned, be construed as a reference to the date of such abandonment.

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(3) In an order under this paragraph providing for the payment of compensation, the Circuit Court may, if in all the circumstances it considers it appropriate to do so, direct the employer concerned to pay to the employee concerned interest on the compensation (at the rate per annum standing specified for the time being in section 26 of the Debtors (Ireland) Act 1840) for each day or part of a day beginning 28 days after the day on which the determination of the Labour Court is communicated to the parties and ending on the day immediately before the day on which the order of the Circuit Court is made.

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(4) An application under this section to the Circuit Court shall be made to the judge of the Circuit Court for the circuit in which the employer concerned ordinarily resides or carries on any profession, trade, business or occupation.

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*Provisions relating to winding up and bankruptcy*

5. (1) There shall be included among the debts which, under section 285 of the Companies Act 1963 are, in the distribution of the assets of a company being wound up, to be paid in priority to all other debts, all compensation payable by virtue of a decision under *paragraph 1(2)(b)* or a determination under *paragraph 2(1)(b)* by the company to an employee, and that Act shall have effect accordingly.

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(2) Formal proof of the debts to which priority is given under *subparagraph (1)* shall not be required except in cases where it may otherwise be provided by rules made under the Companies Act 1963.

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(3) There shall be included among the debts which, under section 81 of the Bankruptcy Act 1988 are, in the distribution of the property of a bankrupt or arranging debtor, to be paid in priority to all other debts, all compensation payable by virtue of a decision under *paragraph 1(2)(b)* or a determination under *paragraph 2(1)(b)* by the bankrupt or arranging debtor, as the case may be, to an employee, and that Act shall have effect accordingly.

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(4) Formal proof of the debts to which priority is given under *subparagraph (3)* shall not be required except in cases where it may otherwise be provided under the

Bankruptcy Act 1988.

*Amendment of Protection of Employees (Employers' Insolvency) Act 1984*

6. Section 6 of the Protection of Employees (Employers' Insolvency) Act 1984 (as amended by Schedule 2 to the Criminal Justice Act 2011) is amended—

(a) in subsection (2)(a)— 5

(i) in subparagraph (xxvi), by deleting “and” after “that Schedule,”,

(ii) in subparagraph (xxvii), by substituting “that Schedule, and” for “that Schedule,” and

(iii) by inserting the following subparagraph after subparagraph (xxvii):

“(xxviii) any amount which an employer is required to pay by virtue of a 10  
decision of a rights commissioner under *paragraph 1(2)(b)* of  
*Schedule 2* to the *Legal Services Regulation Act 2014* or a  
determination by the Labour Court under *paragraph 2(1)(b)* of  
that Schedule.”,

(b) in subsection (2)(b), by substituting “, (xxvii) or (xxviii)” for “or (xxvii)”, 15

(c) in subsection (2)(c), by substituting “, (xxvii) or (xxviii)” for “or (xxvii)”, and

(d) in subsection (9), in the definition of “relevant date”, by substituting “,  
(xxvii) or (xxviii)” for “or (xxvii)”.



SCHEDULE 3

*Section 5.*

ENACTMENTS REPEALED

(1) Number and Year	(2) Short Title	(3) Extent of repeal
12 & 13 Vict., c. 54	Solicitors (Ireland) Act 1849	The whole Act
1994, No. 27	Solicitors (Amendment) Act 1994	Section 74
2009, No. 8	Legal Services Ombudsman Act 2009	The whole Act

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# BILLE

*(mar a leasaíodh sa Roghchoiste um Dhlí agus Ceart, Cosaint agus Comhionannas)*

*dá ngairtear*

Acht do dhéanamh socrú maidir le soláthar seirbhísí dlí a rialáil, do dhéanamh socrú chun an tÚdarás Rialála Seirbhísí Dlí a bhunú, do dhéanamh socrú chun an Binse Araíonachta Dlí-Chleachtóirí a bhunú chun cinntí a dhéanamh i dtaobh mí-iompair ag dlí-chleachtóirí, do dhéanamh socrú maidir le struchtúir nua ina bhféadfaidh dlí-chleachtóirí seirbhísí a sholáthar le chéile nó le daoine eile, do dhéanamh socrú maidir le rolla d'abhcóidí cleachtacha a bhunú, do dhéanamh socrú maidir leis an dlí a bhaineann le dlí-chleachtóirí do mhuirearú costas agus maidir leis an gcóras trína ndéantar measúnú ar chostais a bhaineann le soláthar seirbhísí dlí a athchóiriú, do dhéanamh socrú maidir leis an modh ar a gceapfar daoine chun bheith ina nAbhcóidí Sinsir, agus do dhéanamh socrú i dtaobh nithe gaolmhara.

*Ordaíodh ag an Roghchoiste a chlóbhualadh,*  
12 Feabhra, 2014

# BILL

*(as amended in the Select Committee on Justice, Defence and Equality)*

*entitled*

An Act to provide for the regulation of the provision of legal services, to provide for the establishment of the Legal Services Regulatory Authority, to provide for the establishment of the Legal Practitioners Disciplinary Tribunal to make determinations as to misconduct by legal practitioners, to provide for new structures in which legal practitioners may provide services together or with others, to provide for the establishment of a roll of practising barristers, to provide for reform of the law relating to the charging of costs by legal practitioners and the system of the assessment of costs relating to the provision of legal services, to provide for the manner of appointment of persons to be Senior Counsel, and to provide for related matters.

*Ordered by the Select Committee to be printed,*  
12th February, 2014

BAILE ÁTHA CLIATH  
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR  
Le ceannach díreach ó  
FOILSEACHÁIN RIALTAIS,  
52 FAICHE STIABHNA, BAILE ÁTHA CLIATH 2.  
(Teil: 01 - 6476834 nó 1890 213434; Fax: 01 - 6476843)  
no trí aon díoltóir leabhar.

DUBLIN  
PUBLISHED BY THE STATIONERY OFFICE  
To be purchased from  
GOVERNMENT PUBLICATIONS,  
52 ST. STEPHEN'S GREEN, DUBLIN 2.  
(Tel: 01 - 6476834 or 1890 213434; Fax: 01 - 6476843)  
or through any bookseller.

€12.70

ISBN 978-1-4468-0642-5



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