



SEANAD ÉIREANN

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

**LEASUITHE COISTE
COMMITTEE AMENDMENTS**

SEANAD ÉIREANN

AN BILLE UM RIALÁIL SEIRBHÍSÍ DLÍ, 2011 —AN COISTE

LEGAL SERVICES REGULATION BILL 2011 —COMMITTEE STAGE

Leasuithe Amendments

**Government amendments are denoted by an asterisk*

SECTION 1

*1. In page 9, between lines 27 and 28, to insert the following:

“(4) The Solicitors Acts 1954 to 2008 and *Part 14* may be cited together as the Solicitors Acts 1954 to 2015.”.

[#This is a reference to the Part proposed to be inserted by amendment 154.]

SECTION 2

*2. In page 9, between lines 29 and 30, to insert the following:

“ “Act of 1994” means the Solicitors (Amendment) Act 1994;”.

*3. In page 9, to delete line 30, and in page 10, to delete lines 1 to 4.

*4. In page 10, between lines 12 and 13, to insert the following:

“ “Compensation Fund” means the fund maintained by the Law Society under section 21 of the Solicitors (Amendment) Act 1960;”.

*5. In page 10, line 13, to delete “*Part 6*” and substitute “*Part 5*”.

[#This is a reference to the Part proposed to be inserted by amendment 50.]

*6. In page 10, lines 14 and 15, to delete “shall be construed in accordance with *section 48*” and substitute “means a complaint made, or deemed to have been made, in accordance with *section 42*”.

[#This is a reference to the section proposed to be inserted by amendment 52.]

*7. In page 10, line 22, to delete “appointed under *section 30*” and substitute “appointed under *section 36*”.

[#This is a reference to the section proposed to be inserted by amendment 39.]

*8. In page 11, between lines 7 and 8, to insert the following:

“ “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;”.

[SECTION 2]

*9. In page 11, between lines 12 and 13, to insert the following:

“ “limited liability partnership” has the same meaning as it has in *Part 8*.”

*10. In page 11, between lines 14 and 15, to insert the following:

“ “multi-disciplinary practice” means a partnership formed under the law of the State by written agreement, by two or more individuals, at least one of whom is a legal practitioner, for the purpose of providing legal services and services other than legal services;”

*11. In page 11, to delete line 29 and substitute the following:

“ “prescribed” means prescribed by regulations under this Act;”

*12. In page 11, between lines 37 and 38, to insert the following:

“ “professional indemnity insurance” means a policy of indemnity insurance to cover claims in respect of any description of civil liability incurred in the provision of legal services by—

- (a) a legal practitioner,
- (b) a legal partnership, multi-disciplinary practice or limited liability partnership, or
- (c) a partner, employee or agent or former partner of a person referred to in *paragraph (a)* or *(b)*.”

*13. In page 12, between lines 16 and 17, to insert the following:

“ “Solicitors Accounts Regulations” means—

- (a) the Solicitors Accounts Regulations 2001 to 2013,
- (b) the Solicitors Accounts Regulations 2014 (S.I. No. 516 of 2014), and
- (c) any other regulations made by the Law Society under section 66 of the Solicitor’s Act 1954 or section 73 of the Act of 1994.”

SECTION 6

*14. In page 13, between lines 27 and 28, to insert the following:

“Review of Act

6. (1) The Authority shall—

- (a) not later than 2 years after the establishment day and not later than the end of each subsequent 3 year period, commence a review of the operation of this Act, and
- (b) not later than 12 months after the commencement of a review under *paragraph (a)*, make a report to each House of the Oireachtas of its findings and conclusions, including such recommendations (if any) to the Minister resulting from that review as it considers appropriate.

(2) Recommendations under *subsection (1)(b)* shall include such recommendations (if any) for amendments to this Act, the *Solicitors Acts 1954 to 2015* or any instrument

[SECTION 6]

made under those Acts, as the Authority considers appropriate arising from its findings and conclusions.

- (3) In conducting a review under this section, the Authority shall consult with professional bodies and such other person as the Authority considers appropriate for such purpose.”.

SECTION 8

15. In page 14, between lines 25 and 26, to insert the following:

- “8. (1) The Authority shall consist of 13 members.
- (2) Subject to the provisions of this section, the members of the Authority shall be appointed by the Government and shall consist of the following persons:
- (a) 3 persons nominated by the Law Society of Ireland;
 - (b) 2 persons nominated by the Bar Council of Ireland;
 - (c) 1 Judge of the Superior Courts nominated by the Chief Justice;
 - (d) 1 person nominated by the Irish Business and Employers’ Confederation;
 - (e) 1 person nominated by the Irish Congress of Trade Unions;
 - (f) 1 person nominated by the National Consumer Council;
 - (g) 1 person nominated by the Free Legal Advice Centres (FLAC);
 - (h) 1 person selected by the Chief Justice from such persons as are nominated by non-profit legal advocacy groups, as defined in *subsection (6)*, operating in the State. For such purpose each such group shall be entitled to nominate one person for selection;
 - (i) 1 legal cost accountant nominated by the Institute of Legal Cost Accountants;
 - (j) 1 person selected by the Chief Justice from such persons as are nominated by legal education institutions, as defined in *subsection (7)*, operating in the State. For such purposes each such legal education institution shall be entitled to nominate one such person for selection.
- (3) The Authority shall, from time to time, elect one of its members, who is not a member of the legal profession, to be Chairperson of the Authority.
- (4) The Chairperson shall hold office as Chairperson for such term as may be specified by the Authority at the time of his or her appointment, unless—
- (a) he or she ceases to be or becomes disqualified or is removed from being a member of the Authority,
 - (b) he or she resigns as Chairperson and the resignation becomes effective under the following subsection, or
 - (c) the Authority by a resolution, for which not less than nine members of the Authority vote, and of the intention to propose which not less than 7 days’ notice is given to every member of the Authority, terminates the appointment of the

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Chairperson.

- (5) The Chairperson of the Authority may at any time resign from that office by giving notice in writing to the Authority but the resignation shall not take effect until/before the meeting next held by the Authority after the receipt by the Authority of the notice of resignation.
- (6) A “non-profit legal advocacy group” includes, for the purposes of *subsection (2)(h)* the Northside Community Law Centre, the Irish Council of Civil Liberties and any such other non-profit legal advocacy group as is designated by order made by the Minister under *section 3* of this Act.
- (7) A legal education institution is, for the purposes of *subsection (2)(i)*, including a University as provided for in the Universities Act 1997, the Law Society of Ireland, the Honourable Society of King’s Inns and such other institutions of legal education and training as designated by order made by the Minister under this Act.
- (8) Without prejudice to the generality of the other provisions of this Act relating to membership of the Authority, the Government may not refuse to appoint as a member of the Authority a person nominated under *subsection (2)*.
- (9) Subject to this Act, a member of the Authority shall hold office for a period of 4 years from the date of his or her appointment.
- (10) A person may not be appointed to be a member of the Authority for more than 2 consecutive terms but is otherwise eligible for reappointment.
- (11) A member of the Authority may at any time resign from office by letter addressed to the Chief Executive of the Authority, and the resignation shall take effect on the date specified in the letter or the date the letter is received by the Chief Executive of the Authority, whichever date is the later.
- (12) A member of the Authority shall, unless he or she sooner dies, becomes disqualified, resigns, is removed from office or otherwise ceases to be a member, hold office as such member until the expiry of his or her term of office.
- (13) Each member of the Authority shall—
 - (a) hold office on a part-time basis and on such other terms (other than payment of remuneration and allowances for expenses) as the Public Appointments Commission shall determine, and
 - (b) be paid by the Authority, out of the resources at its disposal, such remuneration (if any) and allowances for expenses (if any) as the Authority may, with the consent of the Minister for Public Expenditure and Reform, determine.
- (14) The Oireachtas may, for stated reasons, remove a member of the Authority from office if, in the opinion of the Oireachtas—
 - (a) the member has become incapable through ill health of effectively performing the functions of his office,
 - (b) the member has committed stated misbehaviour, or

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- (c) the member has a conflict of interest of such significance that, in the opinion of the Oireachtas, he or she should cease to hold office.
- (15) A person shall be disqualified from holding and shall cease to hold office as a member of the Authority if he or she—
- (a) is adjudged bankrupt,
 - (b) is convicted on indictment of an offence, excluding former political prisoners including those who qualified for release under the 1998 Good Friday Agreement,
 - (c) is convicted of an offence involving dishonesty,
 - (d) is struck off the roll of solicitors or practising barristers or, following a complaint against him or her, is found guilty of misconduct,
 - (e) has a declaration under section 150 of the Companies Act 1990 made against him or her or is subject or is deemed to be subject to a disqualification order by virtue of Part VII of that Act, or
 - (f) ceases to be ordinarily resident in the State.
- (16) Where a member of the Authority dies, becomes disqualified from holding office, resigns, is removed from office or otherwise ceases to be a member, the Government shall appoint a member to fill the resultant vacancy and in filling such vacancy shall appoint a person nominated by the person or body that nominated the person occasioning the vacancy.
- (17) A person who is appointed to be a member of the Authority under *subsection (16)* shall hold office for the remainder of the term of office of the member occasioning the casual vacancy.
- (18) Subject to the provisions of this Act, the Authority may act notwithstanding one or more vacancies in its membership.
- (19) In appointing members of the Authority regard shall be had to the objective to there being no fewer than 4 members who are men and no fewer than 4 members who are women.”.

—*Senators David Cullinane, Trevor Ó Clochartaigh, Kathryn Reilly.*

[*Acceptance of this amendment involves the deletion of section 8 of the Bill.*]

- *16. In page 15, line 9, to delete “Competition Authority” and substitute “Competition and Consumer Protection Commission”.
- *17. In page 15, line 10, to delete “Human Rights Commission” and substitute “Irish Human Rights and Equality Commission”.

SECTION 10

- *18. In page 17, to delete lines 13 to 22 and substitute the following:

“(c) in the case of a member who is a legal practitioner, his or her name 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 5#*, he or she is the subject

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of—

- (i) a determination under *section 72(1)##* and the member concerned has not brought an appeal in accordance with *section 73(2)(a)###*, or
 - (ii) a decision of the High Court under *subsection (2)(a)* or *(3)* of *section 75####*,
- (d) he or she—
- (i) has a declaration under section 819 of the Companies Act 2014 made against him or her or is deemed to be subject to such a declaration by virtue of Chapter 5 of Part 14 of that Act, or
 - (ii) is subject or is deemed to be subject to a disqualification order, within the meaning of Chapter 4 of Part 14 of the Companies Act 2014, whether by virtue of that Chapter or any other provisions of that Act, or”.

[#This is a reference to the Part proposed to be inserted by amendment 50.]

[##This is a reference to the section proposed to be inserted by amendment 82.]

[###This is a reference to the section proposed to be inserted by amendment 83.]

[####This is a reference to the section proposed to be inserted by amendment 85.]

19. In page 17, to delete line 26.

—*Senator Sean D. Barrett.*

SECTION 13

20. In page 21, line 10, to delete “in each period of three months” and substitute “per month”.

—*Senator Sean D. Barrett.*

21. In page 21, to delete lines 11 to 13.

—*Senator Sean D. Barrett.*

SECTION 20

22. In page 25, lines 35 and 36, to delete “in such manner as it considers appropriate” and substitute “following public advertisement”.

—*Senator Sean D. Barrett.*

23. In page 26, line 2, to delete “, as the Authority considers appropriate”.

—*Senator Sean D. Barrett.*

24. In page 26, line 8, after “practitioner” to insert “or any other person”.

—*Senator Sean D. Barrett.*

SECTION 23

25. In page 29, line 10, after “may” where it firstly occurs to insert “, after consultation with the professional bodies,”.

—*Senators David Cullinane, Trevor Ó Clochartaigh, Kathryn Reilly.*

[SECTION 23]

26. In page 29, between lines 11 and 12, to insert the following:

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

—*Senators David Cullinane, Trevor Ó Clochartaigh, Kathryn Reilly.*

27. In page 29, line 12, after “Authority,” to insert “after consultation with the professional bodies,”.

—*Senators David Cullinane, Trevor Ó Clochartaigh, Kathryn Reilly.*

*28. In page 29, between lines 18 and 19, to insert the following:

“(4) A member of staff of the Authority shall be a public servant.”.

SECTION 24

*29. In page 29, between lines 18 and 19, to insert the following:

“Transfer of staff of Law Society or Bar Council

24. (1) Subject to this section, the Authority may, for the purposes of discharging its functions under *Part 5#*, give appropriately qualified staff of the Law Society or the Bar Council an option to transfer to the Authority.

(2) Where a member of staff referred to in *subsection (1)* exercises an option under that subsection, the Authority shall request the Minister, with the consent of the Minister for Public Expenditure and Reform, to designate in writing such member to be transferred to the staff of the Authority from such date as may be specified in the designation (in this section referred to as “the effective date”).

(3) A member of staff of the Law Society or the Bar Council designated in accordance with *subsection (2)* shall become and be a member of staff of the Authority from the effective date and shall become a member of the Single Public Service Pension Scheme from that date.

(4) Save in accordance with a collective agreement negotiated with any recognised trade union or staff association concerned, persons transferred by virtue of a designation under *subsection (2)* shall not be brought to less favourable terms and conditions than the terms and conditions of service relating to basic remuneration to which the person was subject immediately before the effective date.

(5) Subject to *subsection (4)*, the Authority shall determine, in accordance with *section 23(2)*, the terms and conditions of service and the grade of a person transferred by virtue of a designation under *subsection (2)*.”.

[#This is a reference to the Part proposed to be inserted by amendment 50.]

*30. In page 29, lines 20 to 23, to delete all words from and including “(1) The Authority” in line 20 down to and including line 23 and substitute the following:

“(1) The Authority may, with the approval of the Minister for Public Expenditure and Reform, make a scheme or schemes for the granting of superannuation benefits to or

[SECTION 24]

in respect of any person appointed chief executive or any person who, on becoming a member of staff of the Authority, does not become a member of the Single Service Pension Scheme.”.

Amendment to Amendment No. 30

1. In the third line of subsection (1), to delete “or any person who, on becoming a member of staff of the Authority, does not become a member of the Single Service Pension Scheme”.

—*Senator Jillian van Turnhout.*

SECTION 28

31. In page 32, line 19, after “Authority” to insert “subject to the approval of the Competition and Consumer Protection Commission”.

—*Senator Sean D. Barrett.*

- *32. In page 32, line 30, to delete “Fees received under this Act” and substitute “Subject to subsection (4)#, fees received under this Act”.

[#This is a reference to the subsection proposed to be inserted by amendment 33.]

- *33. In page 32, between lines 31 and 32, to insert the following:

“(4) Fees prescribed under *Part 8* and paid to the Authority may be used by the Authority to meet the costs it incurs in carrying out its functions under that Part.”.

SECTION 30

- * *Section proposed to be deleted.*

SECTION 31

- * *Section proposed to be deleted.*

SECTION 33

34. In page 35, between lines 25 and 26, to insert the following:

“(d) the right of direct access to a barrister other than through a solicitor;”.

—*Senator Sean D. Barrett.*

35. In page 35, between lines 25 and 26, to insert the following:

“(d) the degree of monopolistic concentration among suppliers of legal services in the State;”.

—*Senator Sean D. Barrett.*

36. In page 35, line 33, to delete “2 years” and substitute “1 year”.

—*Senator Sean D. Barrett.*

37. In page 36, line 32, to delete “4 years” and substitute “1 year”.

—*Senator Sean D. Barrett.*

38. In page 37, to delete lines 14 to 18, and substitute the following:

“(5) Reports on the creation of a new profession of conveyancer including the conduct of conveyancing by other professions, the extent of monopolistic provision of legal

[SECTION 33]

services in the State and the right of direct access to a barrister other than through a barrister shall be provided to the Minister within 1 year of the establishment day.”.

—*Senator Sean D. Barrett.*

SECTION 36

*39. In page 38, between lines 7 and 8, to insert the following:

“PART 3#

INSPECTIONS - LEGAL PRACTITIONERS

Inspectors

36. (1) For the purposes of this Act, the Authority may appoint such and so many—
- (a) 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) 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 and consent of the Minister for Public Expenditure and Reform, may determine.
- (2) A person appointed to be an inspector under this section shall on his or her appointment be furnished with a warrant of appointment by the Authority and when exercising a power conferred by this Act shall, when requested by any person affected, produce such warrant or a copy thereof, together with a form of personal identification, to that person.
- (3) The Authority may revoke any appointment made by it under *subsection (1)*.
- (4) An appointment or revocation under this section shall be in writing.
- (5) The appointment of a person as an inspector under *subsection (1)* ceases—
- (a) on the revocation of the appointment by the Authority,
 - (b) in a case where the appointment is for a specified period, on the expiration of that period,
 - (c) on the resignation of that person from the appointment, or
 - (d) where the person was appointed under *subsection (1)(a)*, where that person ceases to be a member of staff of the Authority.”.

[#*The proposed new Part comprehends the inclusion of amendments 39 to 46.*]

*40. In page 38, between lines 7 and 8, to insert the following:

“Inspection on direction of Authority

37. An inspector shall, upon the direction of the Authority, have power to carry out an inspection in accordance with *section 38#*—

[SECTION 36]

- (a) for the purpose of an investigation of any complaint made or deemed to be made under this Act, or
- (b) to ensure compliance by a legal practitioner with—
 - (i) any requirements imposed by this Act on the practitioner,
 - (ii) any regulations made under this Act applicable to the practitioner,
 - (iii) any code of practice issued under *section 20*,and
- (c) for the purpose of the Authority exercising its power under *section 42(7)##*.”.

[#This is a reference to the section proposed to be inserted by amendment 41.]

[##This is a reference to the section proposed to be inserted by amendment 52.]

*41. In page 38, between lines 7 and 8, to insert the following:

“Powers of Inspectors

38. (1) For the purposes set out in *section 37#*, an inspector may—

- (a) subject to *subsections (2) and (4)*, enter and inspect any place—
 - (i) which he or she reasonably believes is being used to carry on the business of a legal practitioner,
 - (ii) at which he or she has reasonable grounds for believing records or documents relating to the business of a legal practitioner are being kept,
- (b) at such place inspect and take copies of any books, records, accounts or other documents (including books, records, accounts or documents stored in non-legible form), or extracts therefrom, that he or she finds in the course of his or her inspection,
- (c) require—
 - (i) any legal practitioner who carries on the business of a legal practitioner in the place concerned, or
 - (ii) any person at the place concerned, including the owner or person in charge of that place,

to produce to the inspector such books, records, accounts or other documents (and in the case of documents stored in non-legible form, produce to him or her a legible reproduction thereof) that are in that person’s possession or procurement, or under that person’s control, as that inspector may reasonably require for the purposes of his or her functions under this Act,

- (d) subject to an order being obtained for such purpose from the High Court under *section 39##*, seize and retain any such books, records, accounts or other documents from such premises and take any other steps which appear to the inspector to be necessary for preserving or preventing interference with such

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books, records, accounts or other documents,

- (e) where there is data equipment on the premises which the inspector reasonably believes is or has been used in connection with the business of the legal practitioner, require any person—

(i) who uses the data equipment or on whose behalf the data equipment is used,
or

(ii) having charge of, or who is otherwise concerned with the operation of, such equipment,

to afford the inspector all reasonable assistance in relation to the operation of such equipment and any associated apparatus or material,

- (f) subject to an order being obtained for such purpose from the High Court under *section 39##*, to secure for later inspection such data equipment and any associated apparatus or material,

- (g) subject to an order being obtained for such purpose from the High Court under *section 39##*, secure for later inspection the place or any part of the place, for such period as may reasonably be necessary for the purpose of exercising his or her powers under this section,

- (h) require—

(i) any legal practitioner who carries on the business of a legal practitioner in the place concerned, or

(ii) any person at the place concerned, including the owner or person in charge of that place,

to give the inspector such information and assistance as the inspector may reasonably require for the purposes of his or her functions under this Act,

- (i) examine with regard to any matter under this Act any person whom the inspector has reasonable grounds for believing to be—

(i) a legal practitioner who carries on the business of a legal practitioner in the place concerned, or

(ii) employed by a person referred to in *subparagraph (i)*,

and require the person to answer such questions as the inspector may ask relative to those matters and to make a declaration of the truth of the answers to those questions, and

- (j) require a legal practitioner who carries on the business of a legal practitioner in the place concerned, or any person duly authorised by the legal practitioner in that behalf, to give such authority in writing addressed to such bank or banks as an inspector requires for the purpose of enabling the inspector to inspect any accounts held by that practitioner at such bank or banks and obtain copies of any documents relating to such accounts.

- (2) An inspector may enter and inspect a place under *subsection (1)*—

[SECTION 36]

- (a) at any time during normal business hours with or without prior notice to the practitioner where an inspector reasonably believes that the business of a legal practitioner is carried on at that place or records or documents relating to the business of a legal practitioner are being kept at that place, and
 - (b) at any other time on reasonable notice to the practitioner.
- (3) When performing a function under this Act, an inspector may, subject to any warrant under *subsection (5)*, be accompanied by such number of other inspectors or members of the Garda Síochána as he or she considers appropriate.
- (4) An inspector shall not enter a dwelling other than—
- (a) with the consent of the occupier, or
 - (b) pursuant to a warrant under *subsection (5)*.
- (5) Upon the sworn information of an inspector, a judge of the District Court may—
- (a) for the purposes of enabling an inspector to carry out an inspection of a place that the inspector has reasonable grounds for believing is being used for the carrying on of the business of a legal practitioner, or
 - (b) if satisfied that there are reasonable grounds for believing that information, books, records, accounts or other documents (including information, books, records, accounts or other documents stored in non-legible form) required by an inspector under this section relating to the business of a legal practitioner is or are held in any place,
- issue a warrant authorising a named inspector accompanied by such other inspectors or members of the Garda Síochána as may be necessary, at any time or times, before the expiration of one month from the date of issue of the warrant, to enter the dwelling (if necessary by using reasonable force) and exercise the powers of an inspector under *subsection (1)*.
- (6) In this Part, “place” shall be construed in accordance with section 29 (inserted by section 1 of the Criminal Justice (Search Warrants) Act 2012) of the Offences Against the State Act 1939.”.

[#This is a reference to the section proposed to be inserted by amendment 40.]

[##This is a reference to the section proposed to be inserted by amendment 42.]

*42. In page 38, between lines 7 and 8, to insert the following:

“High Court order to exercise certain powers under *section 38*##

39. The High Court may, on application to it in that behalf by the inspector concerned, make an order authorising that inspector, accompanied by such other inspectors or members of the Garda Síochána as may be necessary, to exercise his or her powers under *paragraphs (d), (f) or (g) of section 38(1)*## where the Court is satisfied it is necessary for the purposes of *section 37*##.”.

[#This is a reference to the section proposed to be inserted by amendment 41.]

[SECTION 36]

[##This is a reference to the section proposed to be inserted by amendment 40.]

*43. In page 38, between lines 7 and 8, to insert the following:

“High Court direction to comply with inspection

40. (1) Where a person, without reasonable cause, fails, refuses or neglects to comply with a requirement of an inspector in the exercise of his or her powers under any of *paragraphs (c), (e), (h), (i) or (j) of section 38(1)#*, the Authority may, on notice to the person concerned, apply to the High Court for an order directing a person to comply with such requirement or requirements as the Authority considers necessary for the purposes of an inspection referred to in *section 38#*.
- (2) Where the person referred to in *subsection (1)* is not the legal practitioner in respect of whose business the inspection is concerned, the Authority shall, at the same time as notifying that person, notify that legal practitioner of the application.
- (3) The High Court may make an order in the terms sought by the Authority under *subsection (1)* or such other order as the Court considers necessary for the purpose of such inspection.”.

[#This is a reference to the section proposed to be inserted by amendment 41.]

*44. In page 38, between lines 7 and 8, to insert the following:

“Offences

41. (1) A person commits an offence if he or she—
- (a) obstructs or interferes with an inspector or a member of the Garda Síochána in the course of exercising a power conferred on him or her by *section 38#* or a warrant under *section 38(5)#* or impedes the exercise by the person or member, as the case may be, of such power,
 - (b) removes from a place referred to in *paragraph (a) of section 38(1)#*, or destroys, defaces or conceals, all or any part of his or her books, records, accounts or other documents (including books, records, accounts or other documents stored in non-legible form) with intent to prevent, or interfere with, the exercise of a power of an inspector or member conferred on him or her by *section 38#*, or
 - (c) fails or refuses to comply with a request or requirement of, or to answer a question asked by, the inspector or member pursuant to *section 38#*, or in purported compliance with such request or requirement or in answer to such question gives information to the inspector or member that he or she knows to be false or misleading in any material respect.
- (2) Where an inspector believes, upon reasonable grounds, that a person has committed an offence under this Part, he or she may require that person to provide him or her with his or her name and the address at which he or she ordinarily resides.
- (3) A statement or admission made by a person pursuant to a requirement under *paragraph (h) or (i) of section 38(1)#* shall not be admissible as evidence in proceedings brought against the person for an offence (other than an offence under

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subsection (1)).

- (4) A person who commits an offence under this section is liable on summary conviction to a class A fine or imprisonment for a term not exceeding 12 months or both.”.

[#This is a reference to the section proposed to be inserted by amendment 41.]

*45. In page 38, between lines 7 and 8, to insert the following:

“Report to Authority in certain circumstances following inspection

42. (1) An inspector shall, where an inspection relates to *paragraph (b)* or *(c)* of *section 37#*, prepare and furnish a report in writing to the Authority of the inspection within 21 days of completion of the inspection.
- (2) A report prepared under *subsection (1)* shall, where an inspection relates to *paragraph (b)* of *section 37#*, include a statement by the inspector as to whether he or she has found evidence of failure to comply with any of the matters set out in *subparagraphs (i), (ii) or (iii)* of that section.
- (3) A report prepared under *subsection (1)* shall, where an inspection relates to *paragraph (c)* of *section 37#*, include a statement by the inspector as to whether he or she has found evidence of an act or omission that may constitute misconduct (within the meaning of *section 41(1)##*) on the part of a legal practitioner.
- (4) The Authority shall refer the report of an inspector under this section to the officer of the Authority referred to in *subsection (3)* of *section 42###* for his or her consideration in accordance with that subsection.
- (5) An inspector may, if he or she considers it necessary to do so, make an interim report to the Authority in respect of any matter arising in the course of the inspection being carried out by him or her.
- (6) The Authority shall refer an interim report of an inspector under this section to the officer of the Authority referred to in *subsection (3)* of *section 44####* for his or her consideration in accordance with that subsection.”.

[#This is a reference to the section proposed to be inserted by amendment 40.]

[##This is a reference to the section proposed to be inserted by amendment 51.]

[###This is a reference to the section proposed to be inserted by amendment 52.]

[####This is a reference to the section proposed to be inserted by amendment 54.]

*46. In page 38, between lines 7 and 8, to insert the following:

“Admissibility of evidence obtained in course of inspection

43. Any report or interim report prepared under *section 42#* and any information or documents obtained in the course of an inspection under this Part may be admitted in evidence in any—

- (a) proceedings in respect of a legal practitioner under *Part 5##*, and

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- (b) investigation, inquiry or proceedings under the *Solicitors Acts 1954 to 2015* in respect of a legal practitioner who is a solicitor.”.

[#This is a reference to the section proposed to be inserted by amendment 51.]

[##This is a reference to the Part proposed to be inserted by amendment 50.]

SECTION 38

*47. In page 39, between lines 24 and 25, to insert the following:

“Legal practitioners to have professional indemnity insurance

38. (1) A legal practitioner shall not provide legal services unless there is in force, in respect of such practitioner, at the time of the provision of such services, a policy of professional indemnity insurance which complies with—
- (a) where a legal practitioner is a practising barrister, regulations made under *section 39#*, or
 - (b) where a legal practitioner is a practising solicitor, regulations made under section 26 of the Act of 1994.
- (2) A legal practitioner who provides legal services as a partner or employee of a legal partnership, a multi-disciplinary practice or a limited liability partnership shall be taken to comply with *subsection (1)* where at the time of provision of such services by the legal practitioner there is in place a policy of professional indemnity insurance in respect of the partnership or practice concerned which—
- (a) complies with regulations made under section 26 of the Act of 1994 relating to practising solicitors in such partnerships or practices, and
 - (b) complies with regulations made under *section 39#* in respect of practising barristers in such partnerships or practices.
- (3) The Authority may approve a group scheme of professional indemnity insurance for legal practitioners who are practising barristers where the scheme is provided under the aegis of a professional body and it is satisfied that the scheme complies with regulations made under *section 39#* in respect of practising barristers.
- (4) Where at the time of provision of legal services, a legal practitioner who is a practising barrister is covered by a scheme approved by the Authority under *subsection (3)*, he or she shall be taken to comply with *subsection (1)*.
- (5) A legal practitioner shall not knowingly make a false or misleading declaration of a material nature for the purpose of obtaining professional indemnity insurance.”.

[#This is a reference to the section proposed to be inserted by amendment 48.]

*48. In page 39, between lines 24 and 25, to insert the following:

“Regulations regarding professional indemnity insurance

39. (1) The Authority shall make regulations in relation to the professional indemnity insurance required to be maintained by—

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- (a) practising barristers,
 - (b) legal partnerships, multi-disciplinary practices and limited liability partnerships (in this section referred to as “legal practices”) other than in relation to practising solicitors in such partnerships or practices.
- (2) The Authority shall consult with each professional body before making regulations under this section.
- (3) Regulations made under *subsection (1)* shall specify the practising barristers or legal practice to whom or to which the regulations apply and may specify circumstances in which practising barristers may be exempted from any requirements in relation to professional indemnity insurance in regulations made under this section.
- (4) In making regulations under *subsection (1)* the Authority shall have due regard to the following objectives:
- (a) ensuring that the interests of clients of practising barristers and legal practices are protected;
 - (b) encouraging the provision of legal services of a high standard by practising barristers and legal practices at a reasonable cost;
 - (c) ensuring that there is adequate consideration given, in setting professional indemnity insurance requirements, to any different levels of risk which may apply in respect of practising barristers or different legal practices;
 - (d) ensuring, in setting professional indemnity insurance requirements in relation to legal practices, that there is adequate cover in place in respect of each practising barrister and other person in the legal practice concerned in respect of whom such insurance is required to be in place.
- (5) Without prejudice to the generality of *subsection (1)*, regulations made under that subsection may—
- (a) specify the matters or risks in respect of which insurance is to be maintained by practising barristers or legal practices 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 practising barristers or different legal practices or both,
 - (b) by reference to a monetary amount, specify minimum levels of insurance which are to be maintained by a practising barrister or legal practice to whom the regulations apply and such amount may be specified by reference to—
 - (i) a type or category of claim, or
 - (ii) practising barristers or different legal practices,
 - (c) by reference to a monetary amount, specify the maximum excess amount which shall apply in respect of the insurance maintained by a practising barrister or legal practice as the case may be, and such amount may be specified by reference to—

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- (i) a type or category of claim, or
 - (ii) practising barristers or different legal practices, as the case may be,
- and
- (d) 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.
- (6) Regulations made under *subsection (1)* may provide that the insurance required to be in place shall be considered as meeting the requirement if—
- (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.
- (7) Regulations made under *subsection (1)* may include such incidental or supplementary provisions as appears to the Authority to be necessary.”.

[*Acceptance of this amendment involves the deletion of section 38 of the Bill.*]

49. In page 39, line 26, to delete “may” and substitute “shall”.

—*Senator Sean D. Barrett.*

SECTION 40

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

“PART 5#

COMPLAINTS AND DISCIPLINARY HEARINGS IN RESPECT OF LEGAL PRACTITIONERS

Construction (*Part 5*)

40. (1) In this Part—

“barrister” means, in relation to a person who is the subject of a complaint under this Part—

- (a) a practising barrister, or
- (b) a person who, at the time of the act or omission to which the complaint relates, was a practising barrister;

“solicitor” means, in relation to a person who is the subject of a complaint under this Part—

- (a) a practising solicitor, or
- (b) a person who, at the time of the act or omission to which the complaint relates, was a practising solicitor.

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(2) For the purposes of this Part—

- (a) the legal services provided to a person by a legal practitioner shall be considered as being of an inadequate standard where, by act or omission of the legal practitioner, the legal services actually provided by him or her—
 - (i) where the legal practitioner is a barrister, were inadequate in any material respect and were not of the quality that could reasonably be expected of him as a barrister, and
 - (ii) where the legal practitioner is a solicitor, were inadequate in any material respect and were not of the quality that could reasonably be expected of him or her as a solicitor,
- (b) a reference to an amount of costs sought by a legal practitioner in respect of the provision of legal services means an amount of costs specified in a bill of costs issued by the legal practitioner concerned, and
- (c) a reference to the resolution of a matter in an informal manner includes a reference to the referral of the dispute concerned to mediation or other appropriate form of dispute resolution.”.

[#The proposed new Part comprehends the inclusion of amendments 50 to 92.]

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

“Misconduct by legal practitioners

- 41.** (1) An act or omission of a legal practitioner may be considered as constituting misconduct where the act or omission—
- (a) involves fraud or dishonesty,
 - (b) is connected with the provision by the legal practitioner of legal services, which were, to a substantial degree, of an inadequate standard,
 - (c) 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 the provision of legal services,
 - (d) consists of an offence under this Act,
 - (e) in the case of a solicitor, consists of a breach of the *Solicitors Acts 1954 to 2015* or any regulations made under those Acts,
 - (f) in the case of a solicitor, consists of an offence under the *Solicitors Acts 1954 to 2015*,
 - (g) in the case of a barrister, is likely to bring the barristers’ profession into disrepute,
 - (h) in the case of a solicitor, is likely to bring the solicitors’ profession into disrepute,
 - (i) 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

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managing legal practitioner,

- (j) consists of the commission of an arrestable offence,
 - (k) consists of the commission of a crime or offence outside the State which, if committed within the State, would be an arrestable offence,
 - (l) consists of seeking an amount of costs in respect of the provision of legal services, that is grossly excessive,
 - (m) consists of a breach of this Act or regulations made under it, or
 - (n) consists of a contravention of *section 153(1)*.
- (2) In determining whether an act or omission referred to in *paragraph (l) of subsection (1)* should be considered as constituting misconduct, the Authority, the Complaints Committee, the Disciplinary Tribunal or, as the case may be, the High Court may have regard to—
- (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.
- (3) In this section “arrestable offence” has the same meaning as it has in the Criminal Law Act 1997.”.

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

“Complaints under Part 5#

- 42.** (1) A person may, in writing and in accordance with this Part and regulations under *section 46##*, make a complaint to the Authority in respect of a legal practitioner where the person considers that—
- (a) an act or omission of the legal practitioner constitutes misconduct, or
 - (b) where the person is a client of the legal practitioner—
 - (i) the legal services provided to the person by the legal practitioner were or are of an inadequate standard, or
 - (ii) an amount of costs sought by the legal practitioner in respect of legal services provided to the person by the legal practitioner was or is excessive.
- (2) Subject to *section 43###*, on or after the coming into operation of this Part, a complaint to which *subsection (1)* applies may be made to the Authority only.
- (3) An officer of the Authority, having considered an interim report or a report of an inspector under *Part 3*, may make a complaint under *subsection (1)* in respect of the legal practitioner concerned.

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- (4) Subject to *subsection (5)*, where the Law Society, in the performance by it of its functions under the *Solicitors Acts 1954 to 2015*, forms the opinion that an act or omission of a solicitor constitutes misconduct, it shall, in such manner as may be prescribed, notify the Authority of its opinion, and such notification shall be deemed to be a complaint made by the Law Society under *subsection (1)*.
- (5) *Subsection (4)* shall not apply where—
 - (a) the act or omission concerned constitutes a breach of the Solicitors Accounts Regulations, or
 - (b) the Law Society is investigating, or proposes to investigate, a suspected breach of the Solicitors Accounts Regulations and is of the opinion that the circumstances of the act or omission means that it should be investigated by it as part of the investigation of the suspected breach.
- (6) The Authority, on receipt of a complaint under *subsection (1)* that is made in respect of a solicitor (other than a complaint made, or deemed under this Part to have been made, or referred under *section 43####*, by the Law Society), shall notify the Law Society of the complaint, which notification shall be accompanied by any documents relating to the complaint that are submitted by the complainant.
- (7) Nothing in this section shall be construed as affecting the power of the Authority to investigate an act or omission of a legal practitioner where no complaint has been received by it in relation to that legal practitioner.
- (8) This section and *section 43####* shall not operate to prevent the Authority or a person who is aggrieved by an act or omission of a legal practitioner seeking assistance from another person with a view to resolving the matter to which a complaint relates.”.

[#This is a reference to the Part proposed to be inserted by amendment 50.]

[##This is a reference to the section proposed to be inserted by amendment 56.]

[###This is a reference to the section proposed to be inserted by amendment 53.]

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

“Referral of complaints by Bar Council, Honorable Society of King’s Inns, Law Society

43. (1) Where, on or after the coming into operation of this Part, a client of a barrister makes, to the Bar Council or the Honorable Society of King’s Inns, a complaint in respect of an act or omission of the barrister to which *section 42(1)#* applies—
- (a) the Bar Council or the Honorable Society of King’s Inns, as the case may be, shall refer the complaint to the Authority, and
 - (b) the complaint shall be deemed to be a complaint made by the client under *section 42(1)#*.
- (2) Where, on or after the coming into operation of this Part, a client of a solicitor makes, to the Law Society, a complaint in respect of an act or omission of the solicitor to which *section 42(1)#* applies—
- (a) the Law Society shall refer the complaint to the Authority, and

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(b) the complaint shall be deemed to be a complaint made by the client in accordance with *section 42(1)#*.

(3) Nothing in this section shall be construed as preventing the Bar Council, the Honorable Society of King's Inns or the Law Society from making a complaint under *section 42#* in respect of a legal practitioner.”.

[#This is a reference to the section proposed to be inserted by amendment 52.]

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

“Limitation period

44. 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.”.

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

“Withdrawal of complaint under Part

45. Where a complaint made in accordance with this Part is withdrawn, the Authority may, notwithstanding the withdrawal, where it considers it to be in the public interest to do so, proceed or, as the case may be, continue to deal with the complaint in accordance with this Part.”.

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

“Regulations regarding complaints

46. (1) The Authority may make regulations regarding—

- (a) the making of complaints to the Authority under this Part, and
- (b) the procedures to be followed by the Authority and the Complaints Committee in investigating complaints under this Part.

(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 is satisfied that the extension or abridgement is appropriate and would not cause an injustice to the other parties to the complaint.

(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.”.

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

“Fees in respect of complaints

47. 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 under this Part and the regulations may specify the circumstances in which the fee shall be refunded.”.

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

“Preliminary review of complaints

48. (1) Where the Authority receives a complaint under this Part, it shall conduct a preliminary review of the complaint to determine whether or not the complaint is admissible under *section 49*#.

(2) The Authority, for the purpose of its preliminary review under *subsection (1)*, shall notify the legal practitioner concerned of the complaint, which notification shall request the legal practitioner to respond to the Authority, within such reasonable period as is specified in the notification, with his or her observations on the complaint.

(3) A notification under *subsection (2)* shall be accompanied by a copy of the complaint and any documents relating to the complaint that are submitted by the complainant.

(4) The Authority, for the purpose of determining whether a complaint is admissible under *section 49*#, may request from the complainant or the legal practitioner further information relating to the complaint.

(5) The Authority, having considered the response (if any) of the legal practitioner to the notification under *subsection (2)* and any information received under *subsection (4)*, shall determine that the complaint is—

- (a) admissible,
- (b) inadmissible, or
- (c) one to which *section 49(5)*# applies.

(6) The Authority shall notify the complainant and the legal practitioner concerned of its determination under this section and of the reasons for its determination.

(7) Where the Authority makes a determination referred to in *subsection (4)(b)*, it shall take no further action under this Part in relation to the complaint.”.

[#This is a reference to the section proposed to be inserted by amendment 59.]

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

“Admissibility of complaints

49. (1) The Authority shall determine a complaint under this Part to be inadmissible, if in the opinion of the Authority the complaint is—

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- (a) frivolous or vexatious, or
 - (b) without substance or foundation.
- (2) The Authority shall determine a complaint under this Part to be inadmissible 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.
- (3) The Authority shall determine a complaint under this Part that is made in respect of a solicitor to be inadmissible 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 2015*—
 - (i) by the High Court, or
 - (ii) by the Law Society or any of its Committees or Tribunals,
 - 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.
- (4) The Authority shall determine a complaint under this Part that is made in respect of a barrister to be inadmissible 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 the Honorable Society of King's Inns, 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) (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 under this Part of the complaint until the proceedings have been finally determined.
- (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

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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.

(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.

(6) In this section, “Barristers’ Professional Conduct Tribunal” means the body of that name constituted in accordance with the Disciplinary Code for the Bar of Ireland.”.

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

“Authority may request Law Society to investigate matter relevant to complaint

50. (1) The Authority may, at any stage in its investigation under this Part of a complaint in respect of a solicitor, and for the purposes of the investigation, request the Law Society to carry out an investigation under the *Solicitors Acts 1954 to 2015* into any matter that is relevant to the complaint.

(2) The Complaints Committee or Disciplinary Tribunal may, for the purposes of its consideration under this Part of a complaint, request the Law Society to carry out an investigation under the *Solicitors Acts 1954 to 2015* into any matter that is relevant to that consideration.

(3) The Law Society, on receipt of a request under *subsection (1) or (2)*, shall—

(a) comply with the request, and

(b) within one month of receipt of the request, or such later period as may be agreed between it and the Authority, provide the Authority with an interim report of its investigation and an indication of when its final report will be available.

(4) An interim report and final report of the Law Society referred to in *subsection (3)* shall be admissible in any proceedings under this Part.”.

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

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

51. (1) Where the Authority—

(a) decides under *section 49#* that a complaint to which *section 42(1)(b)(i)##* applies is admissible, and

(b) is of the opinion that the matter the subject of the complaint is capable of being resolved in accordance with this section,

the Authority shall invite the client and the legal practitioner concerned to make efforts to resolve the matter the subject of the complaint in an informal manner.

(2) Where the client and the legal practitioner agree to the Authority’s invitation under *subsection (1)*, and request the Authority to do so, the Authority shall facilitate the resolution of the matter—

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- (a) by offering its assistance in resolving it in an informal manner, or
 - (b) by identifying to the legal practitioner and the client other persons who are willing to assist in resolving the matter in an informal manner.
- (3) Where the Authority, having allowed the client and the legal practitioner a reasonable period to resolve the matter the subject of the complaint in an informal manner, considers that an agreement or resolution between the parties in relation to the complaint is unlikely to be reached in that manner, it 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 determine the complaint in accordance with this section.
- (4) Where *subsection (3)* applies, the Authority shall not determine the complaint concerned earlier than 30 days after the giving of notice under that subsection.
- (5) Where—
- (a) the client or the legal practitioner does not accept the Authority’s invitation under *subsection (1)*,
 - (b) the client or the legal practitioner, having attempted to resolve the matter in an informal manner, confirms to the Authority that he or she does not wish to continue to make such an attempt, or
 - (c) the Authority decides under *subsection (3)* to exercise its power to determine the complaint under this section,

the Authority 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.

- (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 were of an inadequate standard, 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:
- (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 (which shall not exceed €3,000), such other action as the Authority may specify;
 - (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;
 - (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

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the legal practitioner to the client being of an inadequate standard.

- (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 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)*, seek a review by the Review Committee established under *section 53###* of the direction or the failure.
- (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.”.

[#This is a reference to the section proposed to be inserted by amendment 59.]

[##This is a reference to the section proposed to be inserted by amendment 52.]

[###This is a reference to the section proposed to be inserted by amendment 63.]

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

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

52. (1) Where the Authority—

- (a) decides under *section 49#* that a complaint to which *section 42(1)(b)(ii)##* applies is admissible, and
- (b) is of the opinion that the matter the subject of the complaint is capable of being resolved, in accordance with this section,

the Authority may invite the client and the legal practitioner concerned to make efforts to resolve the matter the subject of the complaint.

- (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 in an informal manner, or
 - (b) by identifying other persons to the legal practitioner and the client who are willing to assist in resolving the matter in an informal manner.
- (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) Having facilitated the resolution of the complaint pursuant to *subsection (2)* and

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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.

- (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.”.

[#This is a reference to the section proposed to be inserted by amendment 59.]

[##This is a reference to the section proposed to be inserted by amendment 52.]

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

“Review Committee

- 53.** (1) The Authority shall establish a Review Committee to consider reviews requested by complainants or legal practitioners in relation to determinations of the Authority under *section 51#* or *52##*.
- (2) The Review Committee shall be composed of 3 persons, 2 of whom shall be lay persons and one of whom shall be a legal practitioner.
 - (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 this Part.
 - (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 determination of the Authority under *section 51#* or *52##*, as the case may be, was incorrect or unjust, determine the review by—
 - (a) confirming the determination 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 that the Authority is authorised to issue under *section 51(6)#*.
 - (6) Any payment made by a legal practitioner pursuant to a direction referred to in

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subsection (5) shall be without prejudice to any legal right of the client.”.

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

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

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

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

54. (1) Where the Authority—

(a) decides that a complaint under *section 42(1)(a)#* is admissible, 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 41(1)(b)##*, and

(b) is of the opinion that 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 57###*,

the Authority may invite the client 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.

(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.”.

[#This is a reference to the section proposed to be inserted by amendment 52.]

[##This is a reference to the section proposed to be inserted by amendment 51.]

[###This is a reference to the section proposed to be inserted by amendment 67.]

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

“Resolution of complaint by mediation or informal means-additional provisions

55. (1) No answer or statement made, in the course of attempting to resolve a complaint in the manner specified in *section 51#, 52## or 54###*, by—

(a) the complainant, or

(b) the legal practitioner who is the subject of the complaint,

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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 51#, 52## or 54###* shall be borne equally by the parties to the complaint unless the parties agree otherwise.”.

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

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

[###This is a reference to the section proposed to be inserted by amendment 64.]

- *66. In page 41, between lines 22 and 23, to insert the following:

“Agreement by legal practitioner to participate in resolution of matter under *section 51#, 52## or 54###* not to be treated as admission of liability

56. An agreement by a legal practitioner who is the subject of a complaint to attempt to resolve the complaint in the manner referred to in *section 54###* shall not be taken as an admission of any allegation of misconduct insofar as such misconduct consists of an act or omission 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.”.

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

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

[###This is a reference to the section proposed to be inserted by amendment 64.]

- *67. In page 41, between lines 22 and 23, to insert the following:

“Guidelines for resolution of complaints by mediation or informal means

57. 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,
 - (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
 - (d) contain any other matters that the Authority considers necessary or appropriate for facilitating the resolution of the complaint by mediation or informal means.”.

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

“Authority to refer complaints relating to misconduct to Complaints Committee

58. The Authority shall refer a complaint under *section 42(1)(a)*# to the Complaints Committee where—

- (a) it decides under *section 49*## that the complaint is admissible, and that *section 54(1)(b)*### does not apply to the complaint, or
- (b) where *section 54(1)(b)*### applied to the complaint, a client and legal practitioner do not succeed in resolving a matter in accordance with *section 54*###.”.

[#This is a reference to the section proposed to be inserted by amendment 52.]

[##This is a reference to the section proposed to be inserted by amendment 59.]

[###This is a reference to the section proposed to be inserted by amendment 64.]

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

“Establishment and membership of Complaints Committee

59. (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 *section 58*#.

(2) A member of the Complaints Committee shall—

- (a) hold office for a period of 4 years from the date of his or her appointment, and
- (b) be eligible for reappointment as a member of the Complaints Committee, provided that he or she does not hold office for periods the aggregate of which exceeds 8 years.

(3) The Complaints Committee shall be appointed by the Authority and shall consist of not more than 27 members of whom—

- (a) the majority shall be lay persons,
- (b) not fewer 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 fewer 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.

(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 the professional bodies, and
- (b) have expertise in or knowledge of—
 - (i) the provision of legal services,
 - (ii) the maintenance of standards in a profession (including those regulated by a statutory body),

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- (iii) the investigation and consideration of complaints relating to services, or
 - (iv) the interests of consumers of legal services.
- (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.
 - (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 consists of 3 members, one of the members of the Divisional Committee shall be a solicitor,
 - (b) in a case where the Divisional Committee consists of 5 members, 2 of the members of the Divisional Committee shall be solicitors.
 - (11) Subject to *subsections (6) and (7)*, where a complaint relates to a barrister—
 - (a) in a case where the Divisional Committee consists of 3 members, one of the members of the Divisional Committee shall be a barrister,
 - (b) in a case where the Divisional Committee consists of 5 members, 2 of the members of the Divisional Committee shall be barristers.”.

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

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

“Investigation of complaints

60. (1) A Divisional Committee shall consider and investigate complaints made under this Part referred to it by the Authority.
- (2) When referring a complaint to a Divisional Committee the Authority shall furnish to the Divisional Committee—
 - (a) a copy of the complaint and any documents relating to the complaint that have been submitted by the complainant, and
 - (b) a summary of the complaint.
- (3) Unless the legal practitioner to whom the complaint relates has already been furnished with the documents concerned, the Divisional Committee shall furnish a copy of the documents referred to in *subsection (2)* 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.
- (4) Where, in the opinion of the Divisional Committee, the response of the legal

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practitioner under *subsection (3)* indicates that he or she is not in agreement to the issuing of a direction under *section 61(1)(a)#* or the taking of a measure under *section 61(1)(b)#*, the Divisional Committee shall furnish a copy of the response to the complainant inviting him or her to furnish observations to the Divisional Committee in relation to the response of the legal practitioner within such a period as may be specified by the Divisional Committee.

(5) Where—

- (a) the response of the legal practitioner under *subsection (3)* does not satisfy the Divisional Committee that it should not issue a direction under *section 61(1)(a)#* or take a measure under *section 61(1)(b)#*, 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.

(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:
 - (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;

and

- (c) may by notice in writing to the legal practitioner the subject of the complaint require him or her to do one or more of the following:
 - (i) verify, by affidavit or otherwise, anything contained in his or her response under *subsection (3)*;
 - (ii) 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
 - (II) such documents relating to the complaint as it may require.

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- (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)*.
- (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 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 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—
 - (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 warrant the issuing of a direction under *section 61(1)(a)#* or the taking of a measure under *section 61(1)(b)#*, it shall so advise the complainant and the legal practitioner in 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.
- (14) Where the Divisional Committee, in the investigation by it under this section of a complaint forms the opinion that the complaint is one that would be more appropriately resolved in the manner referred to in *section 51##* or *52###*, it shall refer the complaint to the Authority to be dealt with in accordance with the provision concerned.”.

[#This is a reference to the section proposed to be inserted by amendment 71.]

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

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

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

“Power of Divisional Committee to specify measures

61. (1) Where the Divisional Committee, following an investigation under *section 60#*, considers that that the act or omission the subject of the complaint is not one to which *subsection (7)* applies, but determines that it warrants the imposition of a sanction under this section, 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 the measure specified in the determination of the Divisional Committee, being a measure specified in *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 a measure specified in *subsection (1)(b)*, the complaint shall be considered as determined.
- (4) The Divisional Committee shall not impose a sanction 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;

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- (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 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;
 - (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.
- (6) The measure referred to in *subsection (1)(b)* is the issue of a notice—
- (a) in the case of a legal practitioner who is a solicitor, to the Law Society informing the Law Society of the decision of the Divisional Committee to impose a sanction under *subsection (1)(b)* and directing the Law Society to impose a specified restriction or condition on the practising certificate of the legal practitioner concerned, or
 - (b) in the case of a legal practitioner who is a barrister, to the chief executive of the Authority of the decision by the Divisional Committee to impose a sanction under *subsection (1)(b)* 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.
- (7) (a) Subject to *subsection (8)*, where the Divisional Committee considers that the act or omission the subject of the complaint is 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 71###*.
- (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 gravity of the concerns raised and matters disclosed in the complaint and in the investigation under this section.

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- (8) (a) Where the Divisional Committee considers that a measure 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 imposed on the practising certificate of the legal practitioner or on the legal practitioner in respect of his or her practice as a barrister, the precise restriction or condition) it proposes to take.
- (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.
- (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 complaint is unfounded or that the act or omission concerned does not warrant the imposition of a sanction under this section or an application under *subsection (7)* to the Disciplinary Tribunal.”.

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

[##This is a reference to the section proposed to be inserted by amendment 81.]

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

“Appeal of determination of Divisional Committee

- 62.** (1) The legal practitioner concerned may appeal to the Disciplinary Tribunal against—
- (a) a determination under *section 61(1)#*, or
- (b) a sanction imposed under *section 61(1)(a)#*.
- (2) The Authority may appeal to the Disciplinary Tribunal against—
- (a) a determination under *section 61(1)#*,
- (b) a sanction imposed under *section 61(1)(a)#*, or
- (c) a failure of the Divisional Committee to make an application under *section 61(7)#*.
- (3) An appeal under *subsection (1)* or *(2)* shall—
- (a) take the form of an application to the Disciplinary Tribunal for an inquiry by it under this Part,
- (b) be made within 15 days of the sending to the legal practitioner concerned of the direction under *section 61(1)(a)#* and in accordance with regulations (if any) made under *section 46##*.”.

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[#This is a reference to the section proposed to be inserted by amendment 71.]

[##This is a reference to the section proposed to be inserted by amendment 56.]

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

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

63. (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—
- (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, and
 - (d) the outcome of those complaints which were considered by the Complaints Committee during the relevant reporting period including—
 - (i) the sanction imposed by the Complaints Committee,
 - (ii) where a sanction was imposed, the nature of the act or omission that was the subject of the complaint,
 - (iii) the measures taken by the Complaints Committee, and
 - (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.”.

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

“Establishment of Legal Practitioners Disciplinary Tribunal

64. There shall stand established a body to be known as the Legal Practitioners Disciplinary Tribunal to consider applications brought before it under *section 67#* and to perform the other functions assigned to it by this Act.”.

[#This is a reference to the section proposed to be inserted by amendment 77.]

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

“Membership of Disciplinary Tribunal

65. (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 33 members of whom—

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- (a) the majority shall be lay persons,
 - (b) not fewer than 6 shall be persons, nominated by the Law Society, each of whom has practised in the State as a solicitor for more than 10 years,
 - (c) not fewer than 6 shall be persons, nominated by the Bar Council, each of whom has practised in the State as a barrister for more than 10 years, and
 - (d) at least 40 per cent, calculated to the nearest whole number, shall be men and at least 40 per cent, as so calculated, shall be women.
- (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 of and expertise in one or more than one of the following:
- (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;
 - (d) commercial matters;
 - (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
 - (c) not fewer than 3 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.
- (7) Where a complaint relates to a barrister, the division of the Disciplinary Tribunal shall include at least one barrister.”.

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

“Chairperson of Disciplinary Tribunal

66. (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, and
 - (b) where the person is not a legal practitioner, have knowledge of and expertise in

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one or more than one of the following:

- (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;
 - (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 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.”.

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

“Applications to Disciplinary Tribunal

67. The Disciplinary Tribunal may hear the following applications that are brought to it in accordance with regulations under *section 69(1)#*:

- (a) an application by the Complaints Committee under *subsection (7) or (8)(c) of section 61##*;
- (b) an application by a legal practitioner under *section 62(1)###*;
- (c) an application by the Authority under *section 62(2)###*;
- (d) an application by the Law Society under subsection (6) or (7)(c) of section 14A of the Solicitors (Amendment) Act 1994;”.

[#This is a reference to the section proposed to be inserted by amendment 79.]

[##This is a reference to the section proposed to be inserted by amendment 71.]

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

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

“Presentation of case to Disciplinary Tribunal

68. (1) The Authority, or a person appointed to do so on its behalf, shall , in an application referred to in *paragraph (a), (b), or (c) of section 67#*, present the evidence to the Disciplinary Tribunal grounding the contention that misconduct by the legal practitioner concerned has occurred.

- (2) The Law Society, or a person appointed to do so on its behalf, shall, in an application referred to in *paragraph (d) of section 67#*, present the evidence to the Disciplinary Tribunal grounding the contention that misconduct by the solicitor concerned has occurred.”.

[#This is a reference to the section proposed to be inserted by amendment 77.]

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

“Regulations relating to Disciplinary Tribunal

69. (1) The Disciplinary Tribunal may make Regulations, consistent with this Act, regulating—
- (a) the making of applications to the Disciplinary Tribunal under this Act, and
 - (b) the proceedings of the Disciplinary Tribunal under this Act.
- (2) Regulations made under *subsection (1)* may make provision for the parties, other than the Authority, and the legal practitioner concerned, who may make submissions to the Disciplinary Tribunal.
- (3) The Disciplinary Tribunal, in making regulations under *subsection (1)*, shall have as objectives that the manner of making applications, and the conduct of proceedings, be as informal as is consistent with the principles of fair procedures, and that undue expense is not likely to be incurred by any party who has an interest in the application.
- (4) The Disciplinary Tribunal may consider and determine an application to it under this Part on the basis of affidavits and supporting documentation and records where the legal practitioner, and the Authority consent.”.

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

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

70. (1) The Disciplinary Tribunal shall, for the purposes of any inquiry under this Part, have the powers, rights and privileges vested in the High Court or a judge thereof on the hearing of an action, in respect of—
- (a) the enforcement of the attendance of witnesses and their examination on oath or on affirmation,
 - (b) the compelling of the production of documents, and
 - (c) the compelling of the discovery under oath or under affirmation of documents, and a summons signed by a member of the Disciplinary Tribunal may be substituted for and shall be equivalent to any formal procedure capable of being issued in an action for enforcing the attendance of witnesses and compelling the production and the discovery under oath or under affirmation of documents.
- (2) The Disciplinary Tribunal may require the Authority and the legal practitioner concerned to submit in writing an outline of the evidence expected to be given by each of the concerned witnesses whom they propose to have summoned to attend the hearing.
- (3) The Disciplinary Tribunal may, if of opinion that the evidence expected to be given by any witness whom it is proposed to have summoned to attend the hearing is irrelevant or does not add materially to that proposed to be given by other witnesses and that accordingly the attendance of the witness at the inquiry is likely to give rise to

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unnecessary delay or expense, may so inform the Authority or the legal practitioner concerned, as the case may be, and bring to the attention of the Authority or legal practitioner the provisions of *subsection (4)*.

- (4) On the completion of the inquiry the Disciplinary Tribunal, whether or not it has acted in accordance with *subsection (3)*, may, if of opinion that the attendance of any witness summoned at the request of the Authority was unnecessary and thereby involved the witness in avoidable expense, by order direct that the Authority or the legal practitioner concerned, as the case may be, shall pay a specified amount or amounts not exceeding €1,000 to the witness in respect of the expense incurred, and the witness may recover the sum or sums from the Authority or legal practitioner, as the case may be, as a simple contract debt.
- (5) Before making an order under *subsection (4)*, the Disciplinary Tribunal shall notify in writing the Authority or the legal practitioner concerned that it proposes to do so and shall consider any representations that may be made to it in writing by the person concerned within 14 days after the notification.
- (6) The Authority or the legal practitioner concerned in respect of whom an order has been made under *subsection (4)* may appeal to the High Court against the order within 21 days of the receipt by him or her of notification 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,
 - (b) being in attendance as a witness before the Disciplinary Tribunal, refuses to take an oath or make an affirmation when required by the Disciplinary Tribunal to do so, or to produce or discover under oath or under affirmation any documents in his or her possession or under his or her control or within his or her procurement required by the Disciplinary Tribunal to be produced or discovered under oath or under affirmation by him or her, or to answer any question to which the Disciplinary Tribunal may require an answer,
 - (c) wilfully gives evidence to the Disciplinary Tribunal which is material to its inquiry which he or she knows to be false or does not believe to be true,
 - (d) by act or omission, obstructs or hinders the Disciplinary Tribunal in the performance of its functions, or
 - (e) fails, neglects or refuses to comply with the provisions of an order made by the Disciplinary Tribunal,the person shall be guilty of an offence.
- (8) A witness before the Disciplinary Tribunal shall be entitled to the same immunities and privileges as if he or she were a witness before the High Court.
- (9) A person guilty of an offence under this section shall be liable—
 - (a) on summary conviction, to a class B fine or to imprisonment for a term not

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exceeding 6 months or to both, or

(b) on conviction on indictment, to a fine not exceeding €30,000 or to imprisonment for a term not exceeding 2 years or to both.

(10) Section 13 of the Criminal Procedure Act 1967 shall apply in relation to an offence under this section as if, in lieu of the penalties specified in subsection (3) of that section, there were specified therein the penalties provided for by *subsection (9)*, and the reference in subsection (2)(a) of that section to the penalties provided for in subsection (3) of that section shall be construed accordingly.

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

[#This is a reference to the section proposed to be inserted by amendment 81.]

[##This is a reference to the section proposed to be inserted by amendment 77.]

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

“Inquiry by Disciplinary Tribunal

71. (1) Where the Disciplinary Tribunal receives an application referred to in *section 67#* for the holding of an inquiry, it shall arrange a date for the hearing and notify in writing the respondent legal practitioner and the Authority.

(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 is 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.

(4) The legal practitioner concerned 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 or on affirmation.

(6) The legal practitioner concerned and the Authority shall have an opportunity to examine every witness giving evidence to the Disciplinary Tribunal.

(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.

(8) Where the application was made under *section 62##*, the Disciplinary Tribunal, having conducted the inquiry, and on the basis of the evidence properly before it—

(a) in an application to which *subsection (1)(a)* or *(2)(a)* of *section 62##* applies, may—

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- (i) confirm the determination of the Divisional Committee under *section 61(1)###*, or
 - (ii) set aside the determination of the Divisional Committee under *section 61(1)###*,
- and
- (b) in an application to which *subsection (1)(b) or (2)(b) of section 62##* applies, may—
 - (i) confirm the sanction imposed by the Divisional Committee under *section 61(1)(a)###*, or
 - (ii) set aside the sanction imposed by the Divisional Committee under *section 61(1)(a)###* and impose another sanction that the Divisional Committee could have imposed under *section 61(1)###* or a sanction referred to in *subsection (9)*,
- and
- (c) in an application to which *subsection (2)(c) of section 62##* applies, may affirm or set aside the decision of the Divisional Committee not to make an application under *section 61(7)###*.
- (9) Having conducted the inquiry (other than an inquiry to which *subsection (8)* applies), the Disciplinary Tribunal shall make a determination whether or not, on the basis of the evidence properly before it, each 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 *subsection (1) or (2) of section 72#####*.
- (10) A determination referred to in *subsection (8) or (9)* shall—
- (a) be in writing,
 - (b) specify the reasons for the determination,
 - (c) specify the sanction (if any) to be imposed under *subsection (8)* or, as the case may be, imposed pursuant to *section 72(1)#####* or recommended under *section 72(2)#####*, and
 - (d) be notified to the legal practitioner, and the Authority.”.

[#This is a reference to the section proposed to be inserted by amendment 77.]

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

[###This is a reference to the section proposed to be inserted by amendment 71.]

[####This is a reference to the section proposed to be inserted by amendment 82.]

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

“Sanctions following finding of misconduct by Disciplinary Tribunal

72. (1) Where, pursuant to the holding of an inquiry under *section 71#*, the Disciplinary

[SECTION 40]

Tribunal makes a determination under *section 71(9)#* 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 subsection, the Disciplinary Tribunal may make an order imposing one or more of the following sanctions on the legal practitioner:

- (a) a reprimand;
- (b) an admonishment;
- (c) a caution;
- (d) a direction that the legal practitioner participate in one or more modules of a professional competence scheme and furnish, within a specified period, evidence to the Disciplinary Tribunal of such participation;
- (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,
 - (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;
- (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;
- (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;
- (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 legal practitioner concerned (which costs shall be assessed by a Legal Costs Adjudicator in default of agreement);
- (k) where the legal practitioner is a practising solicitor, a direction that a specified condition be imposed on his or her practising certificate;

[SECTION 40]

- (1) where the legal practitioner is a practising solicitor, a direction that he or she pay a sum not exceeding €15,000 to the Compensation Fund.
- (2) Where, pursuant to the holding of an inquiry under this Chapter, the Disciplinary Tribunal makes a determination under *section 71(9)#* that there has been misconduct by a legal practitioner and determines that the issue of sanction should be dealt with pursuant to this subsection, the Disciplinary Tribunal shall make a recommendation to the High Court that the Court make one or more than one of the orders specified in *section 75(7)##*.”.

[#This is a reference to the section proposed to be inserted by amendment 81.]

[##This is a reference to the section proposed to be inserted by amendment 85.]

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

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

73. (1) Where the Disciplinary Tribunal makes a determination under *section 71(9)#* that the act or omission concerned does not constitute misconduct, the Authority may appeal that finding to the High Court.
- (2) Where the Disciplinary Tribunal makes a determination under *section 71(9)#* sue of sanction under *section 72(1)##*, an appeal may be brought to the High Court—
- (a) by the legal practitioner concerned as respects the determination of misconduct or the sanction imposed, or
 - (b) by the Authority as respects the sanction imposed.
- (3) Where the Disciplinary Tribunal makes a determination under *section 71(9)#* that the act or omission concerned constitutes misconduct and deals with the issue of sanction under *section 72(2)##*, the legal practitioner concerned may appeal that determination to the High Court.
- (4) Where the application to the Disciplinary Tribunal was brought by the Law Society, a reference in this section to the Authority shall be construed as including a reference to the Law Society.
- (5) An appeal under this section shall be brought within the period of 28 days of the date on which the notification under *section 71(9)(d)#* of the determination concerned was sent to the person making the appeal.”.

[#This is a reference to the section proposed to be inserted by amendment 81.]

[##This is a reference to the section proposed to be inserted by amendment 82.]

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

“Appeals to High Court from Disciplinary Tribunal

74. (1) The High Court shall determine an appeal brought in accordance with *section 73#* in accordance with this section and any rules of court made in relation to such appeals.

[SECTION 40]

- (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.
- (3) In an appeal under *section 73(1)#*, the High Court may—
 - (a) confirm the determination of the Disciplinary Tribunal, or
 - (b) allow the appeal, and—
 - (i) impose a sanction which the Disciplinary Tribunal could impose pursuant to *section 72(1)##*, or
 - (ii) consider, in accordance with that section, the imposition of a sanction under *section 75###*.
- (4) In an appeal under *section 73(2)(a)#*, the High Court may—
 - (a) confirm the determination of the Disciplinary Tribunal, or
 - (b) determine that the act or omission the subject of the inquiry does not constitute misconduct.
- (5) In an appeal under *section 73(2)(b)#*, or where the High Court makes a confirmation under *subsection (4)(a)*, the Court may—
 - (a) confirm the sanction imposed under *section 72(1)##*, or
 - (b) impose a sanction which the Disciplinary Tribunal could have imposed under *section 72(1)##*, or
 - (c) consider, in accordance with that section, the imposition of sanction under *section 75###*.”.

[#This is a reference to the section proposed to be inserted by amendment 83.]

[##This is a reference to the section proposed to be inserted by amendment 82.]

[###This is a reference to the section proposed to be inserted by amendment 85.]

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

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

75. (1) Where the Disciplinary Tribunal makes a consideration to the High Court under *section 72(2)#* and the legal practitioner concerned appeals in accordance with *section 73(3)##* against the determination of misconduct, the Court shall first determine the appeal.
- (2) In an appeal under *section 73(3)##*, the High Court may—
 - (a) confirm the determination of the Disciplinary Tribunal, or
 - (b) determine that the act or omission the subject of the inquiry does not constitute misconduct.
- (3) Where—

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

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

- (4) The sanction referred to in *subsection (3)* may be—
 - (a) one or more of the sanctions which the Disciplinary Tribunal could impose under *section 72(1)#*, or
 - (b) the making of an order under *subsection (6)*.
- (5) Before imposing a sanction under *subsection (3)*, the High Court may, if it thinks fit, remit the case to the Legal Practitioners Disciplinary Tribunal to take further evidence for submission to it and to make a supplementary report, and the Court may adjourn the hearing of the matter pending the submission to it of such further evidence and the making of such supplementary report.
- (6) In imposing a sanction under *subsection (3)*, the High Court shall take account of any finding of misconduct on the part of the legal practitioner concerned previously made by the Legal Practitioners Disciplinary Tribunal and not rescinded by the Court and of any order made by the Court under this Act or under the *Solicitors Acts 1954 to 2015*.
- (7) The Court, under this subsection, may by order direct one or more than one of the following:
 - (a) that the legal practitioner be censured or that he or she be censured and required to pay an amount of money to the Authority or, in the case of a solicitor, to the Compensation Fund, as the Court considers appropriate;
 - (b) that the legal practitioner be restricted as to the type of work which he or she may engage in, for such period as the Court considers appropriate and subject to such terms and conditions as the Court considers appropriate;
 - (c) that the legal practitioner be prohibited from practising as a legal practitioner otherwise than as an employee, and subject to such terms and conditions as the Court considers appropriate;
 - (d) that the legal practitioner be suspended from practice as a legal practitioner for a specified period and subject to such terms and conditions as the Court considers appropriate;
 - (e) where the legal practitioner is a barrister, that the name of the barrister be struck off the roll of practising barristers and the Honorable Society of King's Inns

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informed of the fact;

- (f) where the legal practitioner is a solicitor, that the name of the solicitor be struck off the roll of solicitors;
- (g) in the case of a legal practitioner to whom a Patent has been granted, that the Authority make an application referred to in *section 148(2)* in respect of that grant;
- (h) where the legal practitioner is a solicitor:
 - (i) that a specified bank shall furnish any information in its possession that the Law Society may require relating to any aspect of the financial affairs of the practice of the solicitor;
 - (ii) that the solicitor shall swear an affidavit disclosing all information relating to or contained in accounts, held in his or her own name or in the name of his or her firm or jointly with third parties with any bank within a specified duration of time, to be fixed by the Court;
 - (iii) that the solicitor make restitution to any aggrieved party the Court thinks fit;
 - (iv) on the application of the Law Society or the Authority, that the solicitor swear an affidavit (within a specified duration of time to be fixed by the Court) disclosing all information as to his or her assets either then in his or her possession or control or within his or her procurement and, if no longer in his or her possession or control or within his or her procurement, his or her belief as to the present whereabouts of those assets;
 - (v) that the solicitor make himself or herself available before the Court on a specified day and at a specified time for oral examination under oath or under affirmation in relation to the contents of any affidavit of assets sworn by him or her pursuant to *subparagraph (iv)*;
 - (vi) on the application of the Law Society or the Authority and where it is shown that the conduct of the solicitor or of any clerk or servant of that solicitor arising from that solicitor's practice as a solicitor has given or is likely to give rise to the making by the Law Society of a grant or grants out of the Compensation Fund, direct that the solicitor shall not reduce his assets below a certain specified amount or value unless the Court otherwise directs;
 - (vii) on the application of the Law Society or the Authority, the delivery to any person appointed by the Law Society or Authority of all or any documents in the possession or control or within the procurement of the solicitor arising from his practice as a solicitor;
 - (viii) either—
 - (I) that no bank shall, without leave of the Court, make any payment out of an account in the name of the solicitor or his firm, or
 - (II) that a specified bank shall not without leave of the Court, make any payment out of any account in the name of the solicitor or his or her

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firm;

(ix) that the solicitor shall not attend at the place of business of his or her practice as a solicitor unless otherwise permitted by the Court;

(x) that the solicitor shall not represent himself or herself as having, or hold himself or herself out as having, any connection with his or her former practice as a solicitor, or permit any other person to so represent that solicitor, unless otherwise permitted by the Court.

(8) In making an order under *subsection (6)*, the Court may, in addition—

(a) make such order as to costs incurred in the proceedings before it and the Legal Practitioners Disciplinary Tribunal as the Court thinks fit;

(b) make an ancillary order in relation to the matter which the Court thinks fit.

(9) In this section, “Patent” has the same meaning as it has in *Part 12*, and includes a Patent granted in the State before the coming into operation of this section.”.

[#This is a reference to the section proposed to be inserted by amendment 82.]

[##This is a reference to the section proposed to be inserted by amendment 83.]

[###This is a reference to the section proposed to be inserted by amendment 84.]

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

“Exercise of jurisdiction of High Court under sections 74# and 75##

76. The jurisdiction vested in the High Court by *sections 74# and 75##* 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.”.

[#This is a reference to the section proposed to be inserted by amendment 84.]

[##This is a reference to the section proposed to be inserted by amendment 85.]

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

“Appeals to Court of Appeal

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

[#This is a reference to the section proposed to be inserted by amendment 85.]

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

“Orders made by High Court or determinations made by Authority

78. (1) A copy of every order made by the High Court under *section 74# or 75##* and any

[SECTION 40]

determination made by the Disciplinary Tribunal under *sections 71#### and 72#####* or and to the Honorable Society of King's Inns in the case of an order relating to a practising barrister.

- (2) Where an order—
- (a) striking the name of a legal practitioner who is a solicitor off the roll of solicitors,
 - (b) striking the name of a legal practitioner who is a barrister off the roll of practising barristers, or
 - (c) suspending a legal practitioner from practice,
- is made by the High Court under *section 74# or 75##*, the Authority shall as soon as practicable thereafter cause a notice stating the effect of the operative part of the order to be published in *Iris Oifigiúil* and shall also cause the notice to be published in such other manner as the Authority may consider appropriate.
- (3) Where a matter is determined by the Disciplinary Tribunal in accordance with *section 72(1)#####* and the time for lodging an appeal has expired the Authority shall arrange for the publication of—
- (a) its determination,
 - (b) the nature of the misconduct,
 - (c) the sanction imposed, and
 - (d) the name of the legal practitioner concerned.
- (4) Where the High Court makes an order—
- (a) under *section 74(3)(b)#*,
 - (b) under *section 74(4)#* (other than *section 74(4)(b)#*),
 - (c) under *section 75##* (other than *section 75(2)(b)##*),
- 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.”.

[#This is a reference to the section proposed to be inserted by amendment 84.]

[##This is a reference to the section proposed to be inserted by amendment 85.]

[###This is a reference to the section proposed to be inserted by amendment 81.]

[####This is a reference to the section proposed to be inserted by amendment 82.]

[SECTION 40]

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

“Privilege (Part 5#)

79. 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;
- (c) a report made by the Disciplinary Tribunal to the High Court in accordance with this Part;
- (d) a notice authorised by *section 78##* to be published or communicated.”.

[#This is a reference to the Part proposed to be inserted by amendment 50.]

[##This is a reference to the section proposed to be inserted by amendment 88.]

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

“Enforcement of order of Disciplinary Tribunal under this Part

80. (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.
- (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.”.

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

“Transitional (Part 5#)

81. Where, before the date on which this subsection comes into operation, a complaint under section 8 or 9 of the Solicitors (Amendment) Act 1994 has been received by the Law Society, then, notwithstanding the amendment by this Act of Solicitors Acts 1954 to 2008, the provisions of those Acts shall continue to apply to the complaint as if those amendments had not been made.”.

[SECTION 40]

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

“Power of Authority under Part 5#

82. The Authority, in the performance by it of its functions under this Part in relation to a complaint made as respects a solicitor, may exercise any power conferred on the Law Society under the *Solicitors Acts 1954 to 2015*.”.

[#This is a reference to the Part proposed to be inserted by amendment 50.]

* Section proposed to be deleted.

SECTION 41

* Section proposed to be deleted.

SECTION 42

* Section proposed to be deleted.

SECTION 43

* Section proposed to be deleted.

SECTION 44

* Section proposed to be deleted.

SECTION 45

* Section proposed to be deleted.

SECTION 46

93. In page 46, line 11, after “Authority” to insert “following referral to the Chief Legal Costs Adjudicator appointed under *section 112(2)*”.

—Senator Sean D. Barrett.

* Section proposed to be deleted.

SECTION 47

* Section proposed to be deleted.

SECTION 48

* Section proposed to be deleted.

SECTION 49

* Section proposed to be deleted.

SECTION 50

* Section proposed to be deleted.

SECTION 51

* Section proposed to be deleted.

SECTION 52

* Section proposed to be deleted.

SECTION 53

* Section proposed to be deleted.

SECTION 54

* Section proposed to be deleted.

[SECTION 55]

SECTION 55

* *Section proposed to be deleted.*

SECTION 56

* *Section proposed to be deleted.*

SECTION 57

* *Section proposed to be deleted.*

SECTION 58

94. In page 52, line 32, to delete “27 members” and substitute “13 members”.

—*Senator Sean D. Barrett.*

95. In page 52, line 34, to delete “8 shall” and substitute “4 shall”.

—*Senator Sean D. Barrett.*

96. In page 52, line 36, to delete “4 shall” and substitute “2 shall”.

—*Senator Sean D. Barrett.*

* *Section proposed to be deleted.*

SECTION 59

* *Section proposed to be deleted.*

SECTION 60

* *Section proposed to be deleted.*

SECTION 61

* *Section proposed to be deleted.*

SECTION 62

* *Section proposed to be deleted.*

SECTION 63

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SECTION 70

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[SECTION 71]

SECTION 71

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SECTION 72

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SECTION 77

* *Section proposed to be deleted.*

SECTION 78

* *Section proposed to be deleted.*

SECTION 79

* *Section proposed to be deleted.*

SECTION 80

97. In page 68, between lines 25 and 26, to insert the following:

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

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

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

(4) The Authority shall endeavour to agree the approved expenses for the relevant financial year with the Bar Council and the Law Society.

(5) Approved expenses may include:

(a) the remuneration (including allowances for expenses, benefits in kind and superannuation benefits) of the Authority and its staff as provided for under this Act;

(b) any superannuation contributions paid in respect of the Authority or members of

[SECTION 80]

the Authority's staff out of monies provided by the Oireachtas;

- (c) fees due to advisers and consultants engaged by the Authority under this Act; and
 - (d) the cost of office premises.
- (6) Approved expenses shall not include (for example: costs of establishing the Authority and the preparation of policy documents for the Government which, the Bar Council agrees with the Law Society, should be paid for by the State and not by the professions).
- (7) The amount of the levy payable in each financial year shall be the amount expended by the Authority in the preceding financial year in respect of approved expenses, and the liability for payment of that amount shall be as follows:
- (a) 10 per cent of that amount shall be paid by the Bar Council;
 - (b) 10 per cent of that amount shall be paid by the Law Society; and
 - (c) the remaining 80 per cent of that amount shall be paid pro rata by the Bar Council and the Law Society according to the time spent by the Authority dealing with the oversight regulation of, and complaints made in relation to, barristers in the preceding financial year and the time spent dealing with oversight regulation of and complaints made in relation to solicitors in the preceding financial year.
- (8) As soon as practicable after the beginning of each financial year, subject to compliance with the requirements of the preceding subsections of this section, the Authority shall provide the Bar Council and the Law Society with a notice (in this Act referred to as a "levy assessment notice") specifying—
- (a) the amount of money expended by the Authority in the preceding financial year in respect of approved expenses,
 - (b) subject to the Schedule of this Act, the number (determined in accordance with regulations (if any) made under the Schedule) of complaints made in relation to barristers in the preceding financial year and the number and complexity of complaints and their financial implications made in relation to solicitors in the preceding financial year, the time spent dealing with such complaints as against barristers and solicitors, respectively, and the time spent dealing with the oversight regulation of solicitors and barristers provided for under this Act,
 - (c) the amount of levy payable by the professional body concerned, and
 - (d) the date, determined in accordance with regulations made under this Act, on which the levy becomes payable.
- (9) If all or part of the amount specified in a levy assessment notice is not paid on or before the date specified in that notice, interest on the unpaid amount accrues, from that date to the date of payment, calculated at the rate provided for in regulations under this Act.
- (10) Subject to *subsection (8)*, the Authority may recover, as a simple contract debt in any court of competent jurisdiction, from the professional body concerned, any amount due and owing by it in respect of the levy imposed by this section."

[SECTION 80]

—*Senators David Cullinane, Trevor Ó Clochartaigh, Kathryn Reilly.*

[*Acceptance of this amendment involves the deletion of section 80 of the Bill.*]

98. In page 71, to delete lines 10 to 15.

—*Senator Sean D. Barrett.*

SECTION 84

***99.** In page 74, to delete lines 9 to 15 and substitute the following:

“ “limited liability partnership” means a relevant business in respect of which an authorisation, granted under *section 109#*, is for the time being in force;

“relevant business” means—

- (a) a partnership of solicitors, or
- (b) a legal partnership.”.

[*#This is a reference to the section proposed to be inserted by amendment 129.*]

Section opposed.

—*Senators David Cullinane, Trevor Ó Clochartaigh, Kathryn Reilly.*

SECTION 85

***100.** In page 74, between lines 15 and 16, to insert the following:

“Legal partnerships and professional codes

85. (1) Subject to this Part, a legal practitioner may provide legal services as a partner in, or an employee of, a legal partnership.

(2) A professional body shall not, through its professional codes or otherwise, prevent or restrict a legal practitioner who is a member of that body from working with, or otherwise doing business with, a legal practitioner providing legal services in a legal partnership in accordance with *subsection (1)*.”.

[*Acceptance of this amendment involves the deletion of section 85 of the Bill.*]

Section opposed.

—*Senators David Cullinane, Trevor Ó Clochartaigh, Kathryn Reilly.*

SECTION 86

Section opposed.

—*Senators David Cullinane, Trevor Ó Clochartaigh, Kathryn Reilly.*

SECTION 87

***101.** In page 74, between lines 22 and 23, to insert the following:

“Multi-disciplinary practices and professional codes

87. (1) Subject to this Part, a legal practitioner may provide legal services as a partner in, or an employee of, a multi-disciplinary practice.

[SECTION 87]

- (2) A professional body shall not, through its professional codes or otherwise, prevent or restrict a legal practitioner who is a member of that body from working with, or otherwise doing business with, a legal practitioner providing legal services in a multi-disciplinary practice in accordance with *subsection (1)*.”.

[*Acceptance of this amendment involves the deletion of section 87 of the Bill.*]

Section opposed.

—*Senators David Cullinane, Trevor Ó Clochartaigh, Kathryn Reilly.*

SECTION 88

- *102. In page 74, between lines 25 and 26, to insert the following:

“Complaints under Part 5# in respect of legal practitioners in limited partnerships, multi-disciplinary practices and limited liability partnerships

88. For the avoidance of doubt, nothing in this Part shall be construed as preventing a person making a complaint to the Authority under *Part 5#* in respect of a legal practitioner who provides a legal service as a partner or employee of a legal partnership, a multi-disciplinary practice or a limited liability partnership.”.

[*#This is a reference to the Part proposed to be inserted by amendment 50.*]

Section opposed.

—*Senators David Cullinane, Trevor Ó Clochartaigh, Kathryn Reilly.*

- *103. In page 74, line 35, to delete “in such form as may” and substitute “in such form and subject to such fee (if any) as may”.

SECTION 89

- *104. In page 75, between lines 1 and 2, to insert the following:

“Legal partnership to have professional indemnity insurance

89. A legal partnership shall not provide legal services unless there is in force, at the time of the provision of such services, a policy of professional indemnity insurance which complies with regulations made under *section 39#* and section 26 of the Act of 1994 (if applicable).”.

[*Acceptance of this amendment involves the deletion of section 89 of the Bill.*]

[*#This is a reference to the section proposed to be inserted by amendment 48.*]

Section opposed.

—*Senators David Cullinane, Trevor Ó Clochartaigh, Kathryn Reilly.*

SECTION 90

- *105. In page 75, line 27, to delete “in such form as may” and substitute “in such form and subject to such fee (if any) as may”.

[SECTION 91]

SECTION 91

- *106. In page 76, line 19, to delete “himself” and substitute “himself or herself”.
- *107. In page 76, line 22, to delete “practice” and substitute “practise”.
- *108. In page 76, line 36, to delete “undischarged bankrupt” and substitute “undischarged bankrupt in this or another jurisdiction”.
- *109. In page 76, to delete lines 37 to 39.
- *110. In page 77, between lines 10 and 11, to insert the following:

“(6) A person who contravenes *subsection (4)*, and is not the subject of an order under *subsection (5)*, commits an offence.

(7) A person who commits an offence under *subsection (6)*# shall be liable on summary conviction to a class A fine or imprisonment for a term not exceeding 12 months or both.”.

[#This is a reference to the subsection proposed to be inserted by this amendment.]

- *111. In page 77, line 19, to delete “his or her” where it firstly occurs.

Section opposed.

—Senators David Cullinane, Trevor Ó Clochartaigh, Kathryn Reilly.

SECTION 92

- *112. In page 78, line 2, to delete “shall take all reasonable action” and substitute “shall, within a period of 14 days, take all reasonable action”.
- *113. In page 78, between lines 5 and 6, to insert the following:

“(5) Where a managing legal practitioner fails, within the period referred to in *subsection (4)*—

(a) in accordance with *paragraph (a)* of that subsection, to ensure compliance as referred to in that paragraph, or

(b) to remedy any defaults in accordance with *paragraph (b)* of that subsection,

he or she shall, within 7 days of the expiration of that period, notify the Authority of such failure.

(6) A managing legal practitioner who fails to notify the Authority in accordance with *subsection (5)* commits an offence.

(7) A person who commits an offence under *subsection (6)* shall be liable on summary conviction to a class A fine or imprisonment for a term not exceeding 12 months or both.”.

Section opposed.

—Senators David Cullinane, Trevor Ó Clochartaigh, Kathryn Reilly.

SECTION 93

Section opposed.

[SECTION 93]

—*Senators David Cullinane, Trevor Ó Clochartaigh, Kathryn Reilly.*

SECTION 94

Section opposed.

—*Senators David Cullinane, Trevor Ó Clochartaigh, Kathryn Reilly.*

SECTION 95

114. In page 79, between lines 35 and 36, to insert the following:

“(f) specify the cost to the client of the services specified at (a) to (e) inclusive”.

—*Senator Sean D. Barrett.*

Section opposed.

—*Senators David Cullinane, Trevor Ó Clochartaigh, Kathryn Reilly.*

SECTION 96

***115.** In page 79, between lines 35 and 36, to insert the following:

“Multi-disciplinary practice to have professional indemnity insurance

96. A multi-disciplinary practice shall not provide legal services unless there is in force, at the time of the provision of such services, a policy of professional indemnity insurance which complies with regulations made under *section 39#* and section 26 of the Act of 1994 (if applicable).”.

[*Acceptance of this amendment involves the deletion of section 96 of the Bill.*]

[*#This is a reference to the section proposed to be inserted by amendment 48.*]

Section opposed.

—*Senators David Cullinane, Trevor Ó Clochartaigh, Kathryn Reilly.*

SECTION 97

Section opposed.

—*Senators David Cullinane, Trevor Ó Clochartaigh, Kathryn Reilly, Sean D. Barrett.*

SECTION 98

Section opposed.

—*Senators David Cullinane, Trevor Ó Clochartaigh, Kathryn Reilly.*

SECTION 99

***116.** In page 82, line 9, to delete “Supreme Court” and substitute “Court of Appeal”.

***117.** In page 82, line 11, to delete “Supreme Court” and substitute “Court of Appeal”.

Section opposed.

—*Senators David Cullinane, Trevor Ó Clochartaigh, Kathryn Reilly.*

[SECTION 100]

SECTION 100

- *118. In page 82, line 30, to delete “services” and substitute “legal services”.
- *119. In page 83, line 19, to delete “maintained by a legal practitioner” and substitute “maintained (or cause to be maintained) by a legal practitioner”.
- *120. In page 83, line 29, to delete “himself” and substitute “himself or herself”.

Section opposed.

—*Senators David Cullinane, Trevor Ó Clochartaigh, Kathryn Reilly.*

SECTION 101

Section opposed.

—*Senators David Cullinane, Trevor Ó Clochartaigh, Kathryn Reilly.*

SECTION 102

Section opposed.

—*Senators David Cullinane, Trevor Ó Clochartaigh, Kathryn Reilly.*

SECTION 103

121. In page 85, line 2, after “operation” to insert “concentration ratio”.

—*Senator Sean D. Barrett.*

Section opposed.

—*Senators David Cullinane, Trevor Ó Clochartaigh, Kathryn Reilly.*

SECTION 104

122. In page 85, line 33, after “engage” to insert “within one year following the establishment day”.

—*Senator Sean D. Barrett.*

- *123. In page 86, to delete line 4 and substitute the following:

“(c) the circumstances and manner in which a barrister may hold clients’ monies and the mechanisms to be applied for the protection of clients’ monies which may be so held.”.

Section opposed.

—*Senators David Cullinane, Trevor Ó Clochartaigh, Kathryn Reilly.*

SECTION 105

124. In page 86, line 36, to delete “4 years after the commencement of *section 85*, and every 5 years” and substitute “2 years after the commencement of *section 85*, and every 2 years”.

—*Senator Sean D. Barrett.*

Section opposed.

—*Senators David Cullinane, Trevor Ó Clochartaigh, Kathryn Reilly.*

[SECTION 106]

SECTION 106

*125. In page 87, between lines 13 and 14, to insert the following:

“CHAPTER 3

Limited Liability Partnerships

Limited liability partnership and professional codes

106. A professional body shall not, through its professional code or otherwise, prevent or restrict a legal practitioner who is a member of that body from working with, or otherwise doing business with, a legal practitioner providing legal services as a partner in, or as an employee of, a limited liability partnership.”.

*126. In page 87, between lines 13 and 14, to insert the following:

“Liability of partner in a limited liability partnership

107. (1) A partner in a limited liability partnership shall not, by reason only of his or her being a partner or being held out as being a partner in that partnership, be personally liable directly or indirectly, by way of contribution or otherwise, for any debts, obligations or liabilities arising in contract, tort or otherwise of—

- (a) the limited liability partnership,
- (b) himself or herself,
- (c) any other partner in that limited liability partnership, or
- (d) any employee, agent or representative of that limited liability partnership.

(2) *Subsection (1)* shall not apply to a partner in a limited liability partnership to the extent that—

- (a) the debt, obligation or liability referred to in that subsection is incurred as a result of an act or omission of the partner involving fraud or dishonesty, and
- (b) that act or omission—

- (i) was the subject of a finding of misconduct under *Part 5#*, or
- (ii) constituted an offence of which the partner was convicted.

(3) *Subsection (1)* does not affect the liability of a partner in a limited liability partnership in respect of a debt, obligation or liability incurred by that partner for a purpose not connected with the carrying on of the business of the limited liability partnership.

(4) *Subsection (1)* does not affect the personal liability of a partner in a limited liability partnership for any debt, obligation or liability referred to in that subsection where the debt, obligation or liability was incurred by reason of an act or omission of the partner which occurred prior to the date of authorisation to operate as a limited liability partnership notified under *section 109(6)##*.

(5) The Partnership Act 1890 shall apply to limited liability partnerships to the extent that

[SECTION 106]

it is not inconsistent with this Chapter.”.

[#This is a reference to the Part proposed to be inserted by amendment 50.]

[##This is a reference to the section proposed to be inserted by amendment 128.]

*127. In page 87, between lines 13 and 14, to insert the following:

“Property of partnership

108. (1) *Section 107#* shall not operate to prevent or restrict the enforcement against the property of a limited liability partnership of any debt, obligation or liability that, apart from that section, would be enforceable against such property.

(2) The transfer of any partnership property out of the joint ownership of some or all of the partners in a limited liability partnership for the benefit of any one or more of those partners shall constitute a conveyance for the purposes of section 74 of the Land and Conveyancing Law Reform Act 2009 and section 7 of the Bankruptcy Act 1988.”.

[#This is a reference to the section proposed to be inserted by amendment 126.]

*128. In page 87, between lines 13 and 14, to insert the following:

“Application for limited liability partnership

109. (1) A relevant business shall not operate as a limited liability partnership unless authorised by the Authority to so operate under this section.

(2) An application for authorisation to operate a relevant business as a limited liability partnership shall be made to the Authority.

(3) An application under *subsection (2)* shall be in such form and be accompanied by—

(a) such information, and

(b) such fee (if any),

as may be prescribed in regulations made under *section 114#*.

(4) Subject to *subsection (5)*, where the Authority receives an application in accordance with *subsection (3)* and the Authority is satisfied that the relevant business has professional indemnity insurance in place which complies with regulations made under *section 39##* in relation to limited liability partnerships and under section 26 of the Act of 1994 (if applicable), the Authority shall authorise a relevant business to operate as a limited liability partnership.

(5) An authorisation under *subsection (4)* is subject to the condition that the limited liability partnership has professional indemnity insurance in place which complies with regulations made under *section 39##* in relation to limited liability partnerships and under section 26 of the Act of 1994 (if applicable) at all times in respect of that partnership.

(6) An authorisation given by the Authority under *subsection (4)* shall be in writing and shall have effect from such date as is specified in the notice.

[SECTION 106]

- (7) A limited liability partnership shall, as soon as practicable after receipt of the authorisation under *subsection (4)*, notify its clients and creditors of the fact that it is operating as a limited liability partnership and setting out the information prescribed in regulations made under *section 114(2)(c)#*.
- (8) A limited liability partnership shall—
 - (a) conduct the business of the partnership using a name that ends with either the expression “limited liability partnership” or the abbreviation “LLP”,
 - (b) use the name referred to in *paragraph (a)* on all contracts, invoices, negotiable instruments, orders for goods and services, advertisements, invitations to treat, websites or any other publication published in any format by or on behalf of the limited liability partnership, and
 - (c) comply with any obligations imposed on limited liability partnerships by or under this Act.
- (9) The Authority shall make a decision under *subsection (4)* not later than 60 days after receipt of an application which complies with *subsection (3)*.”.

[#This is a reference to the section proposed to be inserted by amendment 133.]

[#This is a reference to the section proposed to be inserted by amendment 48.]

***129.** In page 87, between lines 13 and 14, to insert the following:

“Authority to maintain register of limited liability partnerships

- 110.** (1) The Authority shall establish and maintain a register (in this section referred to as the “register”) of limited liability partnerships.
- (2) The Authority shall enter the following details in the register in relation to a limited liability partnership:
 - (a) the name and address of each of the partners in that partnership;
 - (b) the full name of the partnership and address at which the partnership ordinarily carries on business;
 - (c) the date on which the authorisation is to take effect under *section 109(6)#*;
 - (d) details of any order under *section 112##* suspending an authorisation issued under *section 109#*, the period for which the suspension is to operate and any conditions imposed by the High Court under that section;
 - (e) details of any order under *section 112##* which revokes an authorisation issued under *section 109#*.
 - (3) If a particular entered in the register is incorrect, the limited liability partnership to which the particular relates shall, as soon as may be after becoming aware of its being incorrect, inform the Authority thereof accordingly.
 - (4) The Authority shall, upon becoming aware that any particular entered in the register is incorrect or has ceased to be correct, make such alterations to that register as it

[SECTION 106]

considers necessary.

- (5) The Authority shall record in the register the date from which an authorisation stands revoked under *subsection (2)* or *subsection (3)* of *section 113###*.
- (6) The Authority shall make the register available for inspection free of charge to members of the public in such form and manner as it thinks appropriate.”.

[#This is a reference to the section proposed to be inserted by amendment 128.]

[##This is a reference to the section proposed to be inserted by amendment 131.]

[###This is a reference to the section proposed to be inserted by amendment 132.]

*130. In page 87, between lines 13 and 14, to insert the following:

“Power of Authority to issue direction for failure to comply with statutory requirements

111. (1) Where the Authority reasonably believes that a limited liability partnership is contravening or has contravened *subsection (8)* of *section 109#* it may, in accordance with this section, give a direction in writing to that partnership to do or refrain from doing such acts as are specified in the direction.
- (2) Where the Authority proposes to issue a direction under *subsection (1)*, it shall send the limited liability partnership a notice in writing—
 - (a) setting out the nature of the contravention that the Authority reasonably believes to be occurring or to have occurred and the reason it so believes,
 - (b) setting out the measures that it proposes to direct the limited liability partnership concerned to take in order to bring such contravention to an end, and
 - (c) inviting the limited liability partnership to make observations within such period as is specified in the notice in relation to the belief of the authority referred to in *paragraph (a)* or the measures proposed under *paragraph (b)* or both.
 - (3) The Authority may, having considered any observations made by the limited liability partnership under *subsection (2)* within the time specified in the notice, give a direction in writing to the partnership, directing it to take such measures within such period as may be specified in the direction, as the Authority considers necessary to ensure compliance by that partnership with any requirements under *section 109(8)#*.
 - (4) A limited liability partnership may, not later than 21 days after the giving of a direction under this section by the Authority, appeal that direction to the High Court.
 - (5) An appeal under *subsection (4)* shall be on notice to the Authority.
 - (6) 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.”.

[#This is a reference to the section proposed to be inserted by amendment 128.]

*131. In page 87, between lines 13 and 14, to insert the following:

“Application to High Court for order in respect of failure to comply with direction under section 111#

- 112.** (1) Where a limited liability partnership fails to comply with a direction under *section 111#*, the Authority may apply to the High Court for an order—
- (a) requiring the partnership to comply with the direction,
 - (b) suspending the authorisation issued under *section 109##*, or
 - (c) revoking the authorisation issued to that partnership under *section 109##*.
- (2) An application under *subsection (1)* shall be on notice to the limited liability partnership concerned.
- (3) The High Court, on hearing an application for an order under *subsection (1)* may make an order—
- (a) directing the limited liability partnership to comply with the direction under *section 111#*, or
 - (b) setting aside the direction.
- (4) The High Court, on hearing an application for an order referred to in *subsection (1) (b)*, may make an order suspending the authorisation issued under *section 109##* to the limited liability partnership concerned for such period as is specified in the order and subject to such conditions (if any) as the Court may specify.
- (5) The High Court, on hearing an application for an order referred to in *subsection (1) (c)*, may make an order—
- (a) suspending the authorisation issued under *section 109##* to the limited liability partnership concerned for such period as is specified in the order and subject to such conditions (if any) as the Court may specify, or
 - (b) revoking the authorisation issued under *section 109##* to the limited liability partnership concerned.
- (6) 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.
- (7) The Authority or the limited liability partnership concerned may appeal to the Court of Appeal against an order of the High Court made under this section not later than 21 days from the date of the making of the order and, unless the High Court or the Court of Appeal otherwise directs, the order of the High Court shall have effect pending the determination of such appeal.
- (8) Where an order is made by the High Court under *subsection (3)* or *(4)*, the Authority shall as soon as practicable thereafter cause—
- (a) a notice to be published in *Iris Oifigiúil* stating the effect of the order, and

[SECTION 106]

- (b) such notice to be published in such other manner as the Authority may consider appropriate.”.

[#This is a reference to the section proposed to be inserted by amendment 130.]

[##This is a reference to the section proposed to be inserted by amendment 128.]

*132. In page 87, between lines 13 and 14, to insert the following:

“Ceasing to operate as a limited liability partnership

113. (1) Where a limited liability partnership intends to cease operating as a limited liability partnership it shall notify the Authority in writing of its intention and the date on which it intends to cease to so operate.
- (2) An authorisation issued to a limited liability partnership under *section 109#* shall stand revoked from such date as is specified in a notification given to the Authority in accordance with *subsection (1)*.
- (3) An authorisation issued to a limited liability partnership under *section 109#* shall stand revoked from such date as the limited liability partnership ceases to have professional indemnity insurance in place as required by that section.
- (4) A notification under *subsection (1)* shall be in such form and accompanied by such fee (if any) as may be prescribed by regulations made under *section 114##*.”.

[#This is a reference to the section proposed to be inserted by amendment 128.]

[##This is a reference to the section proposed to be inserted by amendment 133.]

*133. In page 87, between lines 13 and 14, to insert the following:

“Regulations on operation of limited liability partnerships

114. (1) The Authority shall make regulations in relation to the operation and management of limited liability partnerships.
- (2) Without prejudice to the generality of *subsection (1)*, regulations under this section may make provision for—
- (a) the form of application for authorisation under *section 109#*,
- (b) the information to accompany any application for authorisation under *section 109#*, including the name and address of each of the partners in the relevant business making the application and the full name of the partnership and the address at which the partnership ordinarily carries on business,
- (c) the information (including the standard of such information) to be provided by a limited liability partnership to its clients and creditors as to the nature and effect of limited liability partnerships,
- (d) the information to be provided by a limited liability partnership to the Authority for the purposes of enabling the Authority to ensure compliance by that partnership with any requirements imposed on such partnerships by or under this Act, and

[SECTION 106]

- (e) the fee to accompany an application under *section 109* or a notification under *section 113*.”.

[#This is a reference to the section proposed to be inserted by amendment 128.]

[##This is a reference to the section proposed to be inserted by amendment 132.]

- *134. In page 87, between lines 13 and 14, to insert the following:

“Disapplication of section 3 of Registration of Business Names Act 1963

107. Section 3 of the Registration of Business Names Act 1963 shall not apply to a limited liability partnership.”.

- *135. In page 87, between lines 13 and 14, to insert the following:

“Amendment of section 27 of Companies Act 2014

108. Section 27 of the Companies Act 2014 is amended by the insertion of the following subsection after subsection (3):

“(3A) Subsection (1) as it relates to the use of the word “limited”, or any abbreviation of that word, shall not apply to a limited liability partnership (within the meaning of the *Legal Services Regulation Act 2015*).”.

SECTION 109

136. In page 89, to delete lines 16 and 17.

—*Senator Sean D. Barrett.*

SECTION 113

137. In page 92, to delete lines 28 and 29.

—*Senator Sean D. Barrett.*

SECTION 122

138. In page 100, to delete lines 9 to 12.

—*Senator Sean D. Barrett.*

SECTION 124

139. In page 102, line 31, to delete “may” and substitute “shall”.

—*Senator Sean D. Barrett.*

SECTION 125

140. In page 103, line 30, after “explanation” to insert “in writing”.

—*Senator Sean D. Barrett.*

[SECTION 126]

SECTION 126

141. In page 104, line 30, to delete “14 days” and substitute “28 days”.

—*Senator Sean D. Barrett.*

SECTION 129

142. In page 108, to delete lines 7 to 9.

—*Senator Sean D. Barrett.*

SECTION 131

143. In page 109, line 33, to delete “less than 15 per cent”.

—*Senator Sean D. Barrett.*

144. In page 109, line 35, after “adjudication” to insert the following:

“provided that no client shall be responsible for costs incurred by the practitioner where the said practitioner has not disclosed the legal costs that will be incurred in relation to the matter concerned irrespective of whether the said practitioner has set out the basis on which the legal costs are to be calculated”.

—*Senator Sean D. Barrett.*

145. In page 110, between lines 2 and 3, to insert the following:

“(5) A legal practitioner who does not comply with *section 122(1)* shall not be entitled to recover from the client any legal costs in relation to the matter concerned.”.

—*Senator Sean D. Barrett.*

SECTION 146

*146. In page 117, to delete lines 29 to 33 and substitute the following:

“(ii) professional independence; and

(iii) one or more of the following—

(I) a proven capacity for excellence in the practice of advocacy,

(II) a proven capacity for excellence in the practice of specialist litigation, or

(III) specialist knowledge of an area of law;”.

SECTION 150

147. In page 120, line 23, after “exercised” to insert “solely”.

—*Senator Sean D. Barrett.*

SECTION 151

*148. In page 120, between lines 30 and 31, to insert the following:

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

151. (1) A barrister whose name is entered on the roll of practising barristers in accordance with *Part 9* may—

(a) take up paid employment, and

[SECTION 151]

- (b) as part of that employment, provide legal services to his or her employer, including by appearing on behalf of that employer in a court, tribunal or forum for arbitration.
- (2) A professional body shall not, through its professional codes or otherwise, prevent or restrict a barrister who is a member of that body from working with, or otherwise doing business with, barristers providing legal services in accordance with *subsection (1)*.
- (3) In this section “employment” includes part-time employment.”.

[Acceptance of this amendment involves the deletion of section 151 of the Bill.]

SECTION 153

*149. In page 121, between lines 16 and 17, to insert the following:

“Amendment of Criminal Justice (Money Laundering and Terrorist Financing) Act 2010

153. Section 60 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 is amended in subsection (2)—

- (a) in paragraph (d), by the insertion of the words “who is a member of the Law Library” after “barrister”, and
- (b) by the insertion of the following paragraph after paragraph (d):
 - “(da) in the case of a designated person who is a barrister who is not a member of the Law Library, the Legal Services Regulatory Authority;”.”.

SECTION 157

150. In page 124, line 35, after “may” to insert “not”.

—*Senator Sean D. Barrett.*

151. In page 125, line 17, after “experience,” to insert “qualifications”.

—*Senator Sean D. Barrett.*

152. In page 125, line 24, after “experience” to insert “and qualifications”.

—*Senator Sean D. Barrett.*

SECTION 158

*153. In page 126, between lines 13 and 14, to insert the following:

“Advertising of legal services

158. (1) No professional code shall operate to prevent—

- (a) a legal practitioner from advertising his or her legal services,
- (b) a legal partnership, a multi-disciplinary practice or a limited liability partnership from advertising their legal services, or
- (c) a group of legal practitioners, who share a facility, premises or cost of practice,

[SECTION 158]

from advertising themselves as such a group.

- (2) The Authority may make regulations in relation to the advertising of legal services, including in relation to the information that may be contained in advertisements published or caused to be published by legal practitioners in relation to legal services they provide and any areas of law to which those services relate.
- (3) Before making regulations under *subsection (2)*, the Authority shall consult, in such manner as it considers appropriate, with—
 - (a) a professional body, the members of which will be subject to the regulations when made, and
 - (b) such other interested parties, including legal practitioners who are not members of a body referred to in *paragraph (a)* who will be subject to the regulations when made, as the Authority considers appropriate.
- (4) Regulations made under *subsection (2)* may not restrict the advertising of legal services unless such restriction is—
 - (a) necessary for—
 - (i) the protection of the independence, dignity and integrity of the legal profession, and
 - (ii) an overriding reason relating to the public interest,and
 - (b) non-discriminatory and proportionate.
- (5) Without prejudice to the generality of *subsection (2)*, regulations made under that subsection may—
 - (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 their content and size,
 - (c) 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 this section or any regulations under this section, and
 - (d) restrict the publication by or on behalf of a legal practitioner of any advertisement which in the opinion of the Authority—
 - (i) is likely to bring the legal profession into disrepute,
 - (ii) is in bad taste,
 - (iii) reflects unfavourably on other legal practitioners,
 - (iv) is false or misleading in any material respect,

[SECTION 158]

- (v) is published in an inappropriate location,
 - (vi) subject to *subsection (7)*, expressly or impliedly solicits, encourages or offers any inducement to any person or group or class of persons to make claims for personal injuries or seek legal services in connection with such claims.
- (6) A legal practitioner shall not publish or cause to be published an advertisement which does not comply with regulations made under *subsection (2)*.
- (7) Nothing in *subsection (5)(d)(vi)* shall be taken to authorise the Authority to impose a restriction on the inclusion in an advertisement published by or on behalf of a legal practitioner of the words “personal injuries” as part of the legal services provided by the legal practitioner.
- (8) 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—
 - (a) brochure, notice, circular, leaflet, poster, placard, photograph, illustration, emblem, display, stationery, directory entry, article or statement for general publication,
 - (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 physical location of a similar character.”.

[Acceptance of this amendment involves the deletion of section 158 of the Bill.]

Amendments to Amendment No. 153

1. In section 158(1), after “No professional code” to insert “or regulation”.

—Senators Jillian van Turnhout, James Heffernan.
2. In section 158, to delete subsection (5).

—Senator Jillian van Turnhout, James Heffernan.
3. In section 158(8)(b), to delete “electronic address or any information provided by the legal practitioner that is accessible electronically” and substitute “any advertisement provided by the legal practitioner that is accessible electronically”.

—Senators Jillian van Turnhout, James Heffernan.

[SECTION 158]

4. In section 158(8), to delete “ “inappropriate location” means a hospital, clinic, doctor’s surgery, funeral home, cemetery, crematorium or other physical location of a similar character.” and substitute “ “inappropriate location” means such locations as are defined by the Authority by regulation in compliance with subsection (4).”.

—*Senators Jillian van Turnhout, James Heffernan.*

NEW SECTION

- *154. In page 127, after line 30, to insert the following:

“PART 14#

AMENDMENTS TO SOLICITORS ACTS 1954 TO 2008

Amendment of section 3 of Solicitors (Amendment) Act 1960

159. Section 3 of the Solicitors (Amendment) Act 1960 is amended by the substitution of the following definition for the definition of “misconduct”:

“ ‘misconduct’ shall be construed in accordance with *section 41##* of the *Legal Services Regulation Act 2015*, in so far as that section relates to solicitors;”.

[#The proposed new Part comprehends the inclusion of amendments 154 to 157.]

[##This is a reference to the section proposed to be inserted by amendment 51.]

- *155. In page 127, after line 30, to insert the following:

“Amendment of section 2 of Solicitors (Amendment) Act 1994

160. Section 2 of the Solicitors (Amendment) Act 1994 is amended by the insertion of the following definition:

“ ‘Authority’ means the Legal Services Regulatory Authority;”.

- *156. In page 127, after line 30, to insert the following:

“Amendment of section 14A of Solicitors (Amendment) Act 1994

161. The Solicitors (Amendment) Act 1994 is amended by the substitution of the following for section 14A:

“14A. (1) For the avoidance of doubt, it is hereby declared that the power of the Society to investigate alleged misconduct by a solicitor may be exercised whether or not the Society receive—

(a) a complaint in relation to the solicitor, or

(b) a request under *section 50#* of the *Legal Services Regulation Act 2015* for the investigation into any matter that is relevant to a complaint under *Part 5##* of that Act in relation to the solicitor.

[NEW SECTION]

- (2) The Society shall, in addition to exercising its power in referred to in subsection (1), conduct an investigation in compliance with a request under *section 50#* of the *Legal Services Regulation Act 2015* for the investigation into any matter that is relevant to a complaint under *Part 5##* of that Act in relation to the solicitor.
- (3) Where the Society, following an investigation, considers that the act or omission the subject of the investigation is not one to which subsection (6) applies, but determines that it warrants the imposition of a sanction under this section, it may—
 - (a) issue a direction to the solicitor concerned to take such measures as are specified in the determination of the Society, being measures specified in respect of solicitors in *section 61(5)###* of the *Legal Services Regulation Act 2015*, or
 - (b) where the solicitor concerned so consents in writing, take the measure, being the measure specified in *section 61(6)(a)###* of the *Legal Services Regulation Act 2015*, specified in the determination of the Society.
- (4) Where the Society issues one or more than one direction in accordance with subsection (3)(a) and the solicitor complies with each such direction, the complaint shall be considered as determined.
- (5) Where the Society (with the consent of the solicitor concerned) takes one of the measures specified in subsection (3)(b), the complaint shall be deemed to be determined.
- (6)
 - (a) Subject to subsection (7), where the Society has commenced its investigation on or after the date on which the *Legal Services Regulation Act 2015* comes into operation, and it considers that the act or omission the subject of the investigation is of a kind that is more appropriate for consideration by the Legal Practitioners Disciplinary Tribunal than by it, it may make an application in respect of the matter to it for the holding of an inquiry under *section 73#####* of the *Legal Services Regulation Act 2015*.
 - (b) In determining whether it would be more appropriate for the matter to be considered by the Legal Practitioners Disciplinary Tribunal, the Society shall have regard to the gravity of the concerns raised and matters disclosed in the complaint and in its investigation.
- (7)
 - (a) Where the Society considers that the measure specified in *section 61(6)(a)###* of the *Legal Services Regulation Act 2015* is the appropriate measure to be taken as respects the finalisation of its investigation, it shall notify the solicitor concerned to that effect and specify the precise measure (including in the case of a restriction or condition to be placed on the practising certificate of the solicitor, the precise restriction or condition) it proposes to take.

[NEW SECTION]

- (b) The notification referred to in paragraph (a) shall indicate that unless the solicitor concerned furnishes to the Society his or her consent in writing to the imposition of the specified measures within 21 days of the issue of the notification, the Society will apply to the Legal Practitioners Disciplinary Tribunal for the holding of an inquiry under *section 71##### of the Legal Services Regulation Act 2015*.
- (c) Where the Society issues a notification pursuant to paragraph (b) and does not receive the written consent of the solicitor 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 under *section 71##### of the Legal Services Regulation Act 2015* by it into the matter, in so far as the Society has not found that the concerns giving rise to its investigation of the matter are unfounded or that the act or omission concerned does not warrant the imposition of a sanction under this section or an application under subsection (7) to the Legal Practitioners Disciplinary Tribunal.”.

[#This is a reference to the section proposed to be inserted by amendment 60.]

[##This is a reference to the section proposed to be inserted by amendment 50.]

[###This is a reference to the section proposed to be inserted by amendment 71.]

[####This is a reference to the section proposed to be inserted by amendment 83.]

[#####This is a reference to the section proposed to be inserted by amendment 81.]

*157. In page 127, after line 30, to insert the following:

“Amendment of section 26 of Solicitors (Amendment) Act 1994

162. Section 26 of the Solicitors (Amendment) Act 1994 is amended—

- (a) in subsection (1)—
 - (i) by the substitution of “The Society may, with the consent of the Authority, make regulations” for “The Society may make regulations”,
 - (ii) in paragraph (a), by the substitution of “solicitor,” for “solicitor, or”,
 - (iii) in paragraph (b), by the substitution of “as a solicitor, or” for “as a solicitor.”, and
 - (iv) by the insertion of the following paragraph after paragraph (b):
 - “(c) by a solicitor arising from his practice as a solicitor in a legal partnership, multi-disciplinary practice or limited liability partnership (within the meaning of the *Legal Services Regulation Act 2015*).”.
- (b) by the insertion of the following new subsection after subsection (1):

[NEW SECTION]

“(1A) In making indemnity regulations under subsection (1), regard shall be had to the objective of ensuring, in relation to solicitors in a legal partnership, multi-disciplinary practice or limited liability partnership referred to in paragraph (c) of that subsection, that there is adequate indemnity against losses in place in respect of each solicitor and other person in such partnership or practice concerned who is required to be covered.”.

(c) in subsection (5), by the substitution of “the Authority” for “the Minister”, and

(d) by the deletion of subsection (6).”.