

DÁIL ÉIREANN

AN ROGHCHOISTE UM DHLÍ AGUS CEART, COSAINT AGUS COMHIONANNAS

SELECT COMMITTEE ON JUSTICE, DEFENCE AND EQUALITY

Dé Céadaoin, 17 Iúil 2013

Wednesday, 17 July 2013

The Select Committee met at 9.30 a.m.

MEMBERS PRESENT:

Deputy Niall Collins,	Deputy Pádraig Mac Lochlainn,
Deputy Marcella Corcoran Kennedy,	Deputy Finian McGrath,
Deputy Anne Ferris,	Deputy Alan Shatter (<i>Minister for Justice and Equality</i>).
Deputy Seán Kenny,	

DEPUTY DAVID STANTON IN THE CHAIR.

Business of Select Committee

Chairman: This meeting has been convened to consider Committee Stage of the Legal Services Regulation Bill 2011. No apologies have been received. I welcome the Minister for Justice and Equality and his officials and ask everybody to ensure his or her mobile phone is turned off completely and not left in silent mode, as such devices interfere with the sound system. It is not fair to officials to have to listen to interference.

Legal Services Regulation Bill 2011: Committee Stage

SECTION 1

Question proposed: “That section 1 stand part of the Bill.”

Deputy Niall Collins: Could there be knock-on issues which could be relevant to section 1 which might come up in later sections?

Minister for Justice and Equality (Deputy Alan Shatter): I do not envisage changes to section 1 because of changes to other sections.

Question put and agreed to.

SECTION 2

Deputy Alan Shatter: I move amendment No. 1:

In page 10, subsection (1), line 31, to delete “Statute” and substitute “statute”.

This is a minor technical amendment to correct a typographical error in the Bill, as published.

Amendment agreed to.

Chairman: Amendments Nos. 2 and 4 are related and may be discussed together.

Deputy Alan Shatter: I move amendment No. 2:

In page 10, subsection (1), to delete lines 37 to 39 and substitute the following:

“ “lay person” shall be construed in accordance with *subsection (3)*.”.

The purpose of amendments Nos. 2 and 4 is to broaden slightly the definition of “lay person”. The current definition states it means a person who is not and never was a practising solicitor or barrister. I am proposing that the Institute of Legal Costs Accountants will be able to nominate a lay person to the authority under section 8 owing to the relevant expertise a nominee is likely to bring to it. It is not impossible that such a nominee might previously have been a practising lawyer. These amendments will allow for formerly practising barristers and solicitors for five years to be considered for nomination as a lay person.

While it is essential to ensure the authority will not suffer from regulatory capture by the legal professions, I do not think it unreasonable to allow some scope for persons with legal experience in the past but with no ongoing affiliation with the professions to be nominated as lay

persons where they have additional expertise. I expect that there will be other amendments to the interpretation and construction sections on Report Stage when certain other aspects of the Bill are settled.

Deputy Niall Collins: Is it correct that there is still not a regulatory impact assessment of the Bill? The Minister is introducing what we could term a cooling-off period of five years for former members of the profession before they could then be deemed laypersons. What is the basis for five years? Is there an industry or national standard for cooling-off periods? What has informed this decision?

Deputy Alan Shatter: I will take the last question first. There is no national standard for cooling-off periods. For some people who cease to be politicians, there is never a cooling-off period. I do not know. People have engagements in different professions but there are certainly people who might at some stage have been practising barristers or solicitors or engaged in other areas of life. Indeed, one could have a legal cost accountant who in a former life was a practising member of the legal profession but has not been a practising lawyer for many years. I did not want to entirely close off people who clearly were not practising barristers or solicitors from the possibility of an appointment. The period of five years is not a magical number. It arose by looking from a common-sense perspective at what would be an appropriate period of years during which somebody did not practise. I have no particular emotional or theological attachment to five years. This engagement gives us an opportunity to reflect on that. The suggestion is that it be five years. That is the amendment we are now making. I have no difficulty with members giving further thought to that if they believe the period should be longer. I do not think it should be shorter. There would clearly have to be a gap between someone being a practising lawyer and assuming the possible status of a layperson. I am happy to say that when we come back on Report Stage, if Members of the Oireachtas have a cogent argument as to why it should be a somewhat longer period, I would be very happy to listen to it. This seemed a practical number of years. In the context of former civil servants or Secretaries General in various Departments, there is now an ethical standard that suggests that for a period of time - I cannot recall whether it is one or two years - one does not take up a position that would be in conflict with one's former career. There are some new provisions relating to Ministers. If Deputy Collins has a different view, I am happy to engage on that issue.

Deputy Niall Collins: Before the Minister moves off that point, it is not under our area of responsibility but there is legislation being discussed and I attended a conference on the Registration of Lobbyists Bill. There is talk of cooling-off periods of two years. The Minister is indicating that he is only prepared to accept a period longer than five years with an argument to substantiate it but he has not given a reason why. He said he picked five years and has not really given a rationale.

Deputy Alan Shatter: The reason is to ensure that from a public perspective, someone clearly fits the category of being a layperson if one is talking about a body designed to be independent where there is an architecture with a certain representation from the legal professions and a specific number of laypeople. Under the guise of laypersons, we do not want it to become top-heavy with lawyers and undermine the balance we have tried to provide, so five years provides a period of time in which somebody would be substantially disconnected from their former life and one would have the layperson-lawyer balance. That is why I would be reluctant to reduce the period. It would be an issue of increasing the period if members thought that would be appropriate. One must remember that this is a regulatory body for the two professions and there is a particular balance we are trying to maintain.

In respect of Deputy Collins's first question, a regulatory impact assessment for the Legal Services Regulation Bill will be made available in advance of the resumption of Committee Stage after the summer recess. The issue of the regulatory impact assessment at that time will enable it to take account of the development of the Bill since its initial publication in 2011 and up to this autumn. Work on the Bill will continue over the summer and on the resumption of Committee Stage, I will be tabling a series of important amendments in respect of the remainder of the Bill. We want to factor the regulatory impact assessment oversight into that, which is important. This approach is best to ensure that the regulatory impact assessment is concurrent with the actual progress and contents of the Bill as amended or proposed to be amended rather than simply being out of kilter with its development in being based on the Bill as published. Doing it this way also shows some respect for the very interesting and varied submissions we have received and for what we propose to take on board. I hope approaching the matter in this way will also facilitate members of the committee in our further deliberations on Committee Stage. The alternative would have been to produce an assessment on the Bill as published. We have gone substantially past that point and this is a better way of dealing with this. Work is still being undertaken on amendments that have not been finalised and I want what we do to reflect that so members of the committee will understand not simply where the Bill started but where we hope to take it and the backdrop to some of the amendments that are being proposed. I hope that proves helpful to the committee.

In the context of what we are dealing with today and without going into the generality of it, we are dealing with a variety of issues on which I think there is a united view on the changes to be made. It may not be that the exact changes are specifically agreed. Despite all the controversy generated, I have always been of the view it is very important that there is no doubt about the independence of the Legal Services Regulatory Authority. It was never my intention as Minister to be engaged in its day-to-day work or interfere with it but insofar as people had concerns about that, the amendments with which we are dealing today seemed to be relatively straightforward in their intent to copper-fasten the independence issue without having to produce a regulatory impact assessment prematurely to include that when work is still being done on the later sections of the Bill.

Chairman: Clearly we will not get very far today.

Deputy Niall Collins: This is an important point as it is a challenge for all of us because of the time squeeze and when the amendments have been made available to us. In terms of carrying out a proper regulatory impact assessment, what is the Minister's time-line in terms of publishing the remainder of his amendments across the rest of the Bill? It is a challenge for us on this side to participate meaningfully and for others beyond the committee who will want to make submissions to the Minister and the Department on foot of the amendments when they are published. Where are we with the rest of them? It is not best practice to just publish them in as short a period of time as the first group of amendments. The Minister cannot disagree with that.

Deputy Alan Shatter: I know, and I am sure the Deputy is aware that during the 14 years during which his party was in Government and I was in Opposition it was quite usual for amendments to Bills to appear a maximum of four days before Committee Stage. There was nothing unusual about it. Unfortunately, in the context of the pressure of work involved between Departments and the Office of the Attorney General, it is often not possible to do it differently. In the context of where we are at the moment, ongoing work is being done on the amendments and will continue during the summer. I cannot give a definitive time-frame at the moment but I hope that before we restart on Committee Stage members will have at least a

week to see amendments in advance of the resumption of Committee Stage.

We must always remember that Committee Stage is one part of the process. We come back on Report Stage and if people consider that amendments have not been adequately teased out or do not have the time to tease them out, we always have an opportunity to revisit issues on Report Stage. I do not want to constrain it beyond that because having been in this House for many years, it has been rare that one would have Committee Stage amendments published weeks in advance of Committee Stage. It is not because I want to be unhelpful. It is simply because the demands and constraints on the Office of the Attorney General mean that I cannot give a definitive date as to when particular amendments will be made available to me. I hope that we will have a clearer view as to exactly where we are very early in September.

Deputy Niall Collins: I have a final key point.

Chairman: I am anxious not to go down a cul-de-sac.

Deputy Niall Collins: I understand.

Chairman: Will the Deputy please hear me out? We have 123 sections. We have completed 30 sections with amendments and if we keep going at this rate, we will be here until Christmas.

Deputy Niall Collins: I understand but it is a key point. To ensure a complete RIA, outside interested parties will want to make informed submissions to the Minister on foot of these amendments and they will have to be afforded an opportunity to do that as well. Squeezing into a few days before we next sit needs to be examined.

Deputy Pádraig Mac Lochlainn: The difficulty is that it has been 18 months since Second Stage and we are now engaged in a symbolic gathering for an hour and a half before the summer recess. We will revisit all of this during the recess. We will probably get through Parts 1 and 2 today but we will not get to Part IV. The difficulty is we are being asked to agree sections that have a cost implication for the legal profession. Fees will be applied and that could have an impact on people starting out in the profession. We need the full picture. We are being asked to sign up to the powers outlined for the regulatory authority, which will regulate directly and deal with significant numbers of complaints without an assessment of the cost of doing that and how the cost will be applied to the profession. Members of the legal profession are struggling, particularly on the bottom rungs of the ladder, to work their way up and there has to be a concern about how the powers of the authority, which are provided for in the early Parts of the legislation, impact on later Parts. Fees are dealt with later in the Bill.

We all know about the delays in the Attorney General's office. Many Bills have been delayed there but this is a piecemeal approach.

Chairman: The Deputy has made that point a number of times.

Deputy Pádraig Mac Lochlainn: We are being asked to subscribe as legislators to a regulatory authority without knowing what amendments will be made to it, given the Minister has indicated he will make considerable further amendments to the legislation down the line. We do not know what they will be and we are being asked to vote on part of a picture without knowing the full implications. That is not acceptable.

Chairman: The RIA is of concern. We will only deal with a few amendments today. It will be September before we get back to this debate, possibly before the Dáil resumes, but we can

discuss that later. We have strayed considerably from the amendment.

Deputy Alan Shatter: We are dealing with the appointment of people to the legal services regulatory authority, the modalities of that and the organisations that might make appointments. It is a matter of principle in the Bill that there will be an independent regulatory authority. Some of the issues raised by the Deputy relate to much later sections. If as a matter of principle it is accepted by members that there should be an independent authority for the legal profession, nothing hangs on what we are doing and a unique cost issue will not be created. This is about ensuring there can be no question of our handing over the independence of the body or the manner in which it operates. We will deal with other issues at a much later stage.

Amendment agreed to.

Deputy Alan Shatter: I move amendment No. 3:

In page 11, subsection (1), line 2, to delete “of solicitors”.

This is a technical amendment to ensure the bills of cost referred to are any bills of cost issued in the past or in the future by solicitors or barristers.

Amendment agreed to.

Deputy Alan Shatter: I move amendment No. 4:

In page 11, between lines 40 and 41, to insert the following subsection:

“(3) For the purposes of this Act, a person is a lay person on a particular date if, on that date, he or she—

(a) is not a practising solicitor or a practising barrister, and

(b) where he or she has previously been a practising solicitor or a practising barrister, he or she—

(i) has not been such in the period of 5 years immediately preceding that date, and

(ii) did not cease to be such as a result of a sanction imposed on him or her by a body that was authorised to require him or her to cease such practice.”.

Amendment agreed to.

Section 2, as amended, agreed to.

SECTION 3

Deputy Alan Shatter: I move amendment No. 5:

In page 11, lines 41 to 44, to delete subsection (1) and substitute the following:

“(1) A regulation or order made under this Act may contain such incidental, supplementary and consequential provisions as the Minister or the Authority considers necessary or expedient.”.

The amendment removes the current reference to the legal practitioners disciplinary tribunal as it is not desirable that the tribunal should have regulation making power.

Amendment agreed to.

Section 3, as amended, agreed to.

Sections 4 to 6, inclusive, agreed to.

SECTION 7

Deputy Alan Shatter: I move amendment No. 6:

In page 12, subsection (1), line 19, to delete “by this Act” and substitute “by or under this Act”.

This is a technical drafting amendment the Parliamentary Counsel has deemed necessary for this provision.

Amendment agreed to.

Section 7, as amended, agreed to.

NEW SECTION

Chairman: Amendments Nos. 8 to 17, inclusive, are related to amendment No. 7 and they may be discussed together. Amendment No. 10 is an alternative to amendment No. 9, amendment No. 12 is an alternative to No. 11 and amendments Nos. 14 to 17, inclusive, are alternatives to amendment No. 13.

Deputy Pádraig Mac Lochlainn: I move amendment No. 7:

In page 13, before section 8, to insert the following new section:

“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;

and

(j) 1 persons 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 *subsection (5)*, 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 day's notice is given to every member of the Authority, terminates the appointment of the 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.

(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.

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(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—

(a) shall 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) shall 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

(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.”.

The amendment was tabled on the basis of the Bill as drafted. I appreciate the Minister has moved to deal with the concerns around the independence of the authority but I ask him to go a little further. My amendments seek a total of 13 members on the authority to give a broader scope. I do not insist on what I have presented and I acknowledge the Minister has made different additions. Similar amendments have been tabled by Deputies McGrath and Collins and the Minister. The number of members should increase to 13 to broaden the scope of the board and of the contributions to it. I commend the fact that the Minister has dealt with the issue of independence.

I am also seeking that the chairperson does not necessarily have to be from the lay or legal backgrounds. The chairperson will be elected by the authority’s members. Reports should be made to the Oireachtas. I am trying to enshrine the authority’s independence in the legislation but I appreciate that the Minister has dealt with that. However, I only ask to him to increase the number of members to 13 with the composition up for discussion and agreement.

Deputy Finian McGrath: I strongly endorse Deputy Mac Lochlainn’s comments on the membership numbers. I thank and commend the Law Society and the Bar Council on their work on these issues.

Deputy Niall Collins: I tabled a similar amendment to Deputy Mac Lochlainn but we differ on the numbers relating to the different representative bodies, although we agree on the net figure of 13.

Deputy Alan Shatter: Several of the proposed amendments to section 8 are intended to increase the actual and perceived independence of the authority from the Government. When the Bill was published in 2011, concerns were raised about the issue of how the members of the new authority would be appointed and the independence of that process. These concerns emanated largely from the fact that the Bill, as published, drew heavily from standard provisions relating to State bodies whereas the legal services regulatory authority is a different type of entity. Immediately after publication of the Bill, therefore, I made clear my intention to remove any unnecessary ministerial consents or involvements in the appointment or functioning of the new regulatory authority. This first amendment makes it a requirement that an Oireachtas resolution be passed prior to the formal appointment of members of the authority taking place. Those members of the authority are now to be nominated by independent bodies, as we will see in my later amendments.

The device of using Dáil and Seanad resolutions prior to the making of important appointments has other precedents on the Statute Book. For example, this is how the Garda Síochána Ombudsman Commission is appointed under section 65 of the Garda Act 2005. It acts as one of a suite of safeguards being proposed in today’s amendments by me against the albeit unlikely scenario of any given Government of the day interfering with or arbitrarily interfering with the modalities of nomination and appointment to the new regulatory authority.

With regard to Government amendment No. 11, the original provision at section 8(3) pro-

vides that among those members to be appointed to the authority are persons who have expertise in regard to one or more of a range of matters, including the provision of legal services, the maintenance of standards in professions regulated by a statutory body and the needs of consumers of legal services. The proposed amendment to subsection (3) is a small but important one. It is based on an advisory counsel's opinion that more specific criteria in regard to eligibility for membership, such that all members must have some of the qualities identified at section 8(3), are required. The effect of the amendment is that not some but every member of the authority will have relevant expertise. This was always the intention, so it is a tidying up of that provision.

Government amendment No. 13 amends subsection (4). It belongs to a suite of amendments that are at the centre of what I would like to achieve here today as they bolster with legal clarity the independence of the authority from Government. The approach I wish to take has been influenced by written and verbal submissions from the Law Society, the Dublin Solicitors Bar Association, the Bar Council and several other key interested parties from whom we received submissions. It therefore meets most, if not all, of the concerns that lie behind the similar amendments being put forward by the Opposition today, which closely resemble those proposed by the Bar Council. We are in agreement, therefore, that a separate nominations process of selecting members to the authority is desirable. Such a process will allow the new body to be sufficiently independent while ensuring, under the criteria set out in the Bill, the members have the required and relevant experience and expertise.

Deputies will wish to note that, according to section 8(3), members of the authority should have expertise in regard to one or more of the following matters:

- (a) the provision of legal services;
- (b) legal education and legal training;
- (c) competition law and policy;
- (d) the maintenance of standards in professions regulated by a statutory body;
- (e) dealing with complaints against members of professions regulated by a statutory body;
- (f) business and commercial matters;
- (g) the needs of consumers of legal services.

I kept these criteria in mind while selecting the nominating bodies I believe are best suited to the task of finding the right people for the authority.

There will still be only 11 members of the authority, six of whom will be lay persons and five of whom will be nominees of the legal professional bodies and their close affiliates. The bodies represent a balance between meeting the representative needs of legal professionals, the needs of consumers of legal services and the needs of an authority which will have both a dedicated research as well as a regulatory function or remit. The nominating bodies for the lay bodies represent the consumer, academia and the protection of civil, legal and human rights aspects of the authority's remit.

In terms of the non-lay members of the authority, I have borne in mind the fact that there

are significantly more solicitors than barristers in the State - a factor of five to one. First, I have removed my ministerial entitlement to nominate a member of the authority. Then, rather than simply increase the number of nominees from the Law Society, I have chosen to designate the Legal Aid Board as an additional nominating body and to require it to nominate a solicitor. In addition, I have reduced the Bar Council's nominees from two to one but I have given the Honourable Society of King's Inns a nominee as a counterbalance, following representations from that body.

The proposed new subsections (5) and (6) are an attempt to ensure gender balance in the context of the new approach to nominations from the regulatory authority. They are partly based on statutory precedent in the Qualifications (Education and Training) Act 1999, which sets out the requirement for an appropriate gender balance for appointments to the National Qualifications Authority of Ireland.

Having addressed my amendments, I now want to address the Opposition amendments Nos. 7 to 9, inclusive, 12 and 14 to 17, inclusive. I am opposing these amendments on the basis that the issues they address are already being dealt with in the relevant Government amendments. I want to thank Deputy Mac Lochlainn for acknowledging that we are addressing this important issue of ensuring that no question mark can hang over the independence of the authority when it is up and running.

Practically all of the Opposition amendments have been previously considered as they were submitted pretty well verbatim by the Bar Council in its March 2012 document on proposed key amendments to sections of the Legal Services Regulation Bill 2011. I am satisfied the Government's amendments to section 8 put to rest the concerns raised on publication of the Bill regarding the actual and perceived independence of the authority from Government. I believe the nominating bodies chosen represent a balance between meeting the representative needs of the legal professionals, the needs of consumers of legal services and the needs of the authority. In addition, section 8 now provides that the members of the authority shall be appointed by Government, but only following a resolution approving such appointment being passed by both Dáil and Seanad Éireann.

The new section 9, entitled "Term of appointment of members of Authority" reproduces much of section 8(6) to subsection (15) in the published Bill. The disqualification for office of a member of the authority is now covered in a discrete section 10 and the provisions governing the removal of a member of the authority are now covered in section 11. In reality, with regard to these sections, there are only very slight differences between the Deputies' suggestions and the amendments that I have tabled. The drafters have, in preparing the new sections on these issues with my Department, given them renewed clarity of expression. I would, therefore, urge that the suite of Government amendments in regard to the appointment and other aspects of the new regulatory authority be supported in their entirety in meeting those concerns that have also largely informed the relevant Opposition amendments.

Having said all of that, I want to thank members of the Opposition for the amendments they tabled and for their very constructive engagement with Committee Stage and the manner in which they are approaching the issues.

Deputy Niall Collins: We are discussing a group of ten amendments. The Minister is sticking with amendment No. 11. Does this include the chair or will the position of chair be in addition?

The initial concern was that the Minister, his office or his successor, when we all move on, would have too much influence in the appointing of members. The Minister has gone some way towards addressing those concerns. Can he confirm the Minister does not have a veto in terms of the nominees who are being offered by the prescribed bodies, such as the Bar Council, the Legal Aid Board, the King's Inns and the Law Society, and that the persons nominated by those bodies will be accepted, subject to the qualification criteria? Will he take us through what he is proposing in regard to the other six members in terms of the input the Minister of the day will have in the appointing of those people?

Deputy Alan Shatter: The answer is that the Minister of the day does not have an influence. The people appointed have to satisfy the relevant criteria specified in the legislation and their appointment has to be approved by resolution of both Houses. It would be open to either House to decide on some individual and to effectively reject the nominations, given there has to be a resolution. Members on all sides in the Houses of the Oireachtas would have an opportunity, if they considered someone was nominated who was singularly inappropriate and ineligible for appointment, to reject that. The architecture I have created is designed to ensure that no one can suggest that the Minister of the day is going to cherry-pick individuals in any shape or form and by doing so put on the legal services authority individuals who might "do the wishes of the Minister". It was never the intention that the authority would operate in that way in any case, in so far as there was a perception that it might because we relied substantially initially in the Bill on the formal structure that applies to a variety of different other independent bodies. In so far as it gave rise to any perceptions, I am anxious that those perceptions be laid to rest. Of course the nominating bodies will have to satisfy themselves on expertise criteria when nominating people. I would expect that they would do that. It is not my intention that, as a Minister, I would be specifically engaged in choosing individuals.

The procedure applicable to the nomination for appointments is detailed at some length. I hope that the way we are dealing with this would be seen to be a good faith response to the concerns that people have expressed.

Deputy Niall Collins: All of us in our amendments have offered the option that the President of the High Court would appoint the lay members. Can the Minister give us his reasons for rejecting that?

Deputy Alan Shatter: It is appropriate that we have nominating bodies. Why would the President of the High Court be given that role? This involves lay people who will be appointed by a series of bodies whose engagements are quite clear in the areas of expertise they have. They are not bodies that are directly part and parcel of the legal profession. They are separate from it but they should have sufficient expertise to identify appropriate nominees based on the criteria provided. I am not sure it is appropriate that the President of the High Court be put in a position where he or she must make these decisions. If the President of the High Court were to make these decisions, there would be no accountability. I am not suggesting that the current President of the High Court would do anything inappropriate, just as I know when the issue arose as to the modalities of appointments most members did not believe that I would do anything inappropriate in the nomination of individuals, despite some of the brouhaha and allegations made by some campaigning against the Bill who initially did not want an independent legal service authority at all. We cannot assume that people in the future will always make the right judgments about these things. One cannot have a situation in which the courts are independent but the President of the High Court would nominate individuals to this body who would not be accountable if they got it wrong at some future date, which is not impossible.

The Houses of the Oireachtas would have absolutely no role of any description. Indeed, if they tried to play a role, they would be accused of interfering with judicial independence. It is crossing the boundary that we should not cross in respect of separation of powers. I also think that the public wants an assurance that the lay people are nominated without any influence good, bad or indifferent from, if I could put it this way, the legal professions, the Courts Service or the Judiciary in any shape or form. There has to be a perception of the true independence of our judicial system. I hope that would not be misinterpreted in any way as to be critical of any member of the Judiciary or the President of the High Court. It is important that there is a lay nominating process that is separate from our courts system and from the legal professions. That is why we have travelled this route. That is why, in circumstances in which people are nominated and ensuring that there is a mix of independence and some oversight, it is correct to adopt the procedure that we have for the Garda Ombudsman Commission, whereby the nominees must be accepted by way of Dáil resolution. That provides an area of accountability that ensures that the nominating bodies will feel constrained in years to come to abide by the eligibility criteria.

Deputy Pádraig Mac Lochlainn: The nominating body system is a good one with oversight by the Oireachtas. There appear to be two points of difference between what the Minister proposes and our amendments. The first is the existing section 8(2)(b). I do not understand why the Minister insists on the chairperson being a lay member and why the Government has to appoint that member. The subsection states, “The Government shall appoint one of the lay members of the Authority to be chairperson of the Authority”. Is the Minister leaving that as it is? The authority should be able to elect its own chairperson and that should not be limited to a lay person. Why will the Minister not concede that point? Why would he not extend the authority to 13 members? IBEC and the ICTU would make very good contributions. They are missing from the Minister’s list.

Deputy Alan Shatter: I have not heard any argument yet as to why it should be 13 rather than 11. I appreciate the number is somewhat arbitrary but one does not want an authority that is unnecessarily large or unwieldy so, to some extent, this is a subjective judgment. There is no ideal number for the authority’s operation and, looking at the balance to be struck and the nature of the representation from the legal profession, 11 appeared to be the appropriate number. If there are convincing arguments as to why it should be 13 and not 11, I am happy to listen to them.

In regard to the nominating bodies, this is not simply a question of identifying the social partners and automatically putting them in as nominating bodies. The nominating bodies have been carefully chosen based on their expertise in different areas and their areas of work. I am not sure any particular added value would be brought to the expertise on the authority by an extra two people, one of whom happens to be nominated by IBEC and one by the ICTU. I am not being critical of either of those organisations. They play a very important role but I cannot see what is to be achieved or what is the added value in their nominating two extra people and turning the body from one of 11 to 13.

Deputy Pádraig Mac Lochlainn: I shall give the Minister an explanation. If he looks at what he proposes to leave in the section in respect of requisite skills, “business and commercial matters”, there is no nominating body that has a particular remit in business and commercial matters. There is space to add IBEC in that context. If he adds IBEC it would be good practice to have the ICTU as well. That is why I am suggesting expanding it to 13, to include both those bodies to deal with that particular area of expertise that the Minister has included.

Deputy Alan Shatter: Among the nominating bodies to which we are referring are the

Competition Authority and the Consumers' Association of Ireland. They have insights into the area to which the Deputy refers. I expect that the legal professions may nominate some of those because they would have an insight into those areas. I am not convinced that we should add IBEC and the ICTU. I will reflect on that, however, between now and Report Stage because I am anxious that we have a proper engagement on this issue. The Deputies might also reflect on how large this body should be. It is important that it does not become unwieldy. I am happy to reflect on that between now and Report Stage.

Deputy Pádraig Mac Lochlainn: Will the Minister comment on the issue of the chairperson?

Deputy Alan Shatter: In the context of public confidence in the authority and in not being perceived as a body that is in any way dominated by the professions, there is an advantage in the chairman being a lay person. The professions themselves have had lay people chairing certain committees on occasion for the same reason. It is appropriate that the chairperson be a lay person, but I am interested in what the Deputy had to say about the members themselves electing who might be the chair. There could be problems with this because I would have concerns the body could start off in a divisive way where, for example - and I am not saying this would happen - all of the representatives of the legal profession wanted a particular individual as chairperson but all of the other lay persons other than this individual wanted someone else. It could sow the seeds of dissension from day one in the manner in which the authority operated.

In the context of the lay people being independently nominated, it was felt an appointment of one of these as chairperson is an appropriate way to go so there is no lobbying or pressure put on people who have only just met each other, as the first members of the authorities, to determine who should chair. This could be a matter of considerable difficulty at the start of the body, as a group of people which has just come together may not be able to make a judgment as to who should be the appropriate person to chair. They may not know each other sufficiently well. There are inherent difficulties in it being an election process. It would be different if these were people who had worked together for a long period of time, for example on a committee, and after years working together were going to elect, perhaps by secret ballot or otherwise, who their chairperson should be. This is a way to ensure no one can suggest the Government is in any way interfering because the nominees are independent of the Government, but an appointment is made to avoid difficulty and dissension with regard to the day-to-day interaction between members of the authority or at meetings because they start off with some God almighty row as to who should chair it. I am very anxious this does not happen.

Deputy Finian McGrath: I was going to raise the number of board members but the Minister stated he would reflect on whether it should be 11 or 13 and I thank him for this. It is important we have broader expertise. I was going to make the point that 13 is a very sensible number, and would not be unwieldy as the Minister pointed out. Groups such as IBEC and ICTU would bring a new dimension to it and have a different angle and they also have many years of experience.

Deputy Niall Collins: My concerns are similar to those of the Minister but I am coming at it from a different angle. If it is to be an authority to regulate the legal services industry, and the board is broken down six to five, immediately the main legal players find themselves in a minority on the board. Is this correct?

Deputy Alan Shatter: The legal professions will be regulated through the work of the authority.

Deputy Niall Collins: I know.

Deputy Alan Shatter: I am not sure what the Deputy's point is.

Deputy Niall Collins: The breakdown of board membership is six to five, with one representative each from the Bar Council, the Legal Aid Board, and the Kings Inns and two from the Law Society, with six more from the other parties plus the chairperson-----

Deputy Alan Shatter: The 11 includes the chairperson.

Deputy Niall Collins: The chair will come from the six lay people. Is this correct?

Deputy Alan Shatter: Yes.

Deputy Niall Collins: Will the Minister examine another composition? We propose 13 members and the Minister proposes 11. A total of 13 would give equilibrium.

Deputy Alan Shatter: An uneven number is required. One would hope when it comes to the approach taken-----

Deputy Niall Collins: If there is a division the chair will have a casting vote.

Deputy Alan Shatter: I hope when it comes to the approach taken on many issues that the members of the authority will discuss them and on most occasions will reach a consensus and will not have to go to a vote, but if it does go to a vote it is important the authority is not controlled by the legal profession. This is why there are more lay people than members of the legal profession. I hope the authority does not divide on issues and that there will be dialogue within the authority. While people may have different views on different issues I hope the authority will not divide with the nominated members of the legal professions on one side of an argument and all the lay people on the other. I hope the internal workings will be quite different. Should there be a difference of opinion ultimately on an issue and a vote is taken, quite clearly the chairman, who will be a lay person, will have a casting vote. This is quite a normal structure to apply to bodies of this nature. I do not think there is unusual about this.

Deputy Niall Collins: Is the Minister open to considering our proposal to recalibrate it? Is the Minister sticking on 11?

Deputy Alan Shatter: What I stated is I have listened to Deputies and am quite willing to reflect on whether it should be 11 or 13. My primary initial concern is that it does not become an unwieldy body and this is very important. There is the issue as to the desirability or not of IBEC and ICTU having representatives on it. I am quite willing to reflect on this issue this side of Report Stage.

Deputy Niall Collins: It is a fair point to state the law profession should have equal representation around the board table rather than being in a minority.

Deputy Alan Shatter: I think this could produce stasis. We must have an authority with an uneven number and this is the norm. There is nothing unusual about it.

Deputy Niall Collins: We will have a chairperson.

Deputy Alan Shatter: As I stated I am willing to reflect on whether the number should be 11 or 13 and whether the social partners should be nominating bodies. It will be interesting, following this discussion, to see what reaction those interested in the Bill may give to this par-

ticular suggestion. I will simply reflect on the issue. I cannot take it any further.

Chairman: We have given this matter a good run.

Deputy Pádraig Mac Lochlainn: I will withdraw amendment No. 7 on the basis I can resubmit it later as the Minister is considering extending the number to 13.

Chairman: Once it has been discussed on Committee Stage the Deputy can do so.

Amendment, by leave, withdrawn.

Deputy Niall Collins: I move amendment No. 8:

In page 13, before section 8, to insert the following new section:

“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) 2 persons nominated by the Bar Council of Ireland;

(b) 2 persons nominated by the Law Society 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 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;

(h) 1 legal cost accountant nominated by the Institute of Legal Cost Accountants;

(i) 2 persons 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; and

(j) 1 person nominated by the Minister for Justice and Equality who is not an officer of the Department of Justice and Equality.

(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 *subsection (5)*, 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 day's notice is given to every member of the Authority, terminates the appointment of the 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)(g)*, a Free Legal Advice Centre, 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

(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) makes a composition or arrangement with his or her creditors,

(c) is convicted on indictment of an offence,

(d) is convicted of an offence involving dishonesty,

(e) is struck off the roll of solicitors or practising barristers or, following a complaint against him or her, is found guilty of misconduct,

(f) 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

(g) 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.”.

Amendment put and declared lost.

SECTION 8

Deputy Niall Collins: I move amendment No. 9:

In page 13, lines 6 to 10, to delete subsection (2) and substitute the following:

“(2) (a) The members of the Authority, other than the lay members, shall be appointed by the Government.

(b) The lay members of the Authority shall be appointed by the President of the High Court.”.

Amendment put and declared lost.

Deputy Alan Shatter: I move amendment No. 10:

In page 13, subsection (2)(a), lines 6 and 7, to delete “by the Government.” and substitute the following:

“by the Government, a resolution approving such appointment having been passed by Dáil Éireann and by Seanad Éireann.”

Amendment agreed to.

Chairman: If amendment No. 11 is agreed to amendment No. 12 cannot be moved.

Deputy Alan Shatter: I move amendment No. 11:

In page 13, to delete lines 11 to 14 and substitute the following:

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

Amendment agreed to.

Amendment No. 12 not moved.

Chairman: If amendment No. 13 is agreed to, amendments Nos. 14 to 17, inclusive, cannot be moved.

Deputy Alan Shatter: I move amendment No. 13:

In page 13, lines 24 to 39, page 14 and in page 15, lines 1 to 16, to delete subsections (4) to (15) and substitute the following:

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

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

- (i) 1 shall be nominated for appointment by the Citizens Information Board,
- (ii) 1 shall be nominated for appointment by An tÚdarás um Ard-Oideachas,
- (iii) 1 shall be nominated for appointment by the Competition Authority,
- (iv) 1 shall be nominated for appointment by the Human Rights Commission,

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

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

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

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

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

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

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

(a) shall—

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

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

and

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

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

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

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

Amendment agreed to.

Amendments Nos. 14 to 17, inclusive, not moved.

Section 8, as amended, agreed to.

NEW SECTIONS

Deputy Alan Shatter: I move amendment No. 18:

In page 15, before section 9, to insert the following new section:

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

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

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

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

(ii) 4 other members of the Authority,

who shall be selected by the drawing of lots, conducted in such manner as the Chairperson of the Authority thinks proper, at the first meeting of the Authority referred to in *section 10(3)*.

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

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

(3) Each member of the Authority--

(a) shall act on a part-time basis and on such other terms and conditions (other than the payment of remuneration and allowances for expenses) as the Government may determine, and

(b) shall be paid by the Authority such remuneration (if any) and allowances for expenses (if any) as the Minister for Public Expenditure and Reform may determine.

(4) Subject to *subsection (5)*, a member of the Authority (including the Chairperson) whose term of office expires by the effluxion of time shall be eligible for reappointment as a member of the Authority.

(5) A person who is reappointed to the Authority in accordance with *subsection (4)* shall not hold office for periods the aggregate of which exceeds 8 years.

(6) A member of the Authority may resign from office by notice in writing addressed to the Minister and the resignation shall take effect on the date the Minister receives the notice or, if a date is specified in the notice and the Minister agrees to that date, on that date.

(7) The Chairperson may resign from office as Chairperson by notice in writing addressed to the Minister, but shall, unless otherwise stated in the notice, continue to hold office as member of the Authority for the remainder of his or her term of office, and the resignation takes effect on the date the Minister receives the notice or, if a date is specified in the notice and the Minister agrees to that date, on that date.

(8) Subject to *section 10(2)*, the Authority may act notwithstanding one or more vacancies in its membership.

(9) Where a member of the Authority dies, becomes disqualified for office, resigns,

is removed from office or otherwise ceases to be a member, the Government may appoint a person to be a member of the Authority to fill the resultant casual vacancy, and such person shall hold office for the remainder of the term of office of the member who occasioned the casual vacancy.”.

Much of this proposed amendment No. 18 is of a technical nature, in that it broadly reproduces existing provisions of the Bill. For drafting reasons, existing subsections of section 8, as published, have been drawn into this new section 9, the side note of which reads: “Term of appointment of members of Authority.” Two aspects of the proposed section 9 are significant, in that they differ from the published Bill. First, it has been enhanced, in that it includes a provision for the staggering of appointments. The staggering of appointments device echoes similar provisions in the Property Services (Regulation) Act 2011. It provides that, at the inception of the authority, five of its new members will be selected by the drawing of lots to have only a three-year renewable term. All other members will have a four-year renewable term.

The consequence of the provision is that there will still be a number of experienced members on the authority when the next group of new members are nominated. In this way, there is a graduated renewal of membership of the board and limited loss of memory and experience as members’ terms expire. It will also provide any wholesale reconfiguration of the membership by external actors.

The second point to note is that the reference to the Minister for Justice and Equality in determining the remuneration of members of the authority in the published Bill will be removed if this amendment is accepted. It is but one example of my determination to reduce to the greatest possible extent the application of ministerial consents to the authority.

Deputy Niall Collins: My question on the appointment of members to achieve a gender balance on the authority’s board relates to this and the previous section. If all of the nominees are male or female, how does the Minister propose to tackle the situation?

Deputy Alan Shatter: That is provided for in the section that we have now passed. It requires that nominating bodies nominate both a man and a woman in particular circumstances. There would be a need to ensure that there was a gender balance.

Chairman: We have already covered this matter.

Deputy Niall Collins: I know.

Deputy Anne Ferris: Regarding subsection (d), on the quorum, if the Minister is considering changing the number of members from 11 to 13 on Report Stage, would he also consider changing the quorum from seven to nine?

Deputy Alan Shatter: If we change the numbers, the quorum will change. I do not want to go back over the debate on changing the numbers. There was a balance in the original number of 11 between the legal professions and the lay membership. That was also a part of the thinking. Deputy Collins said that there should be an equality of membership. The way we have it, there is one more lay member than there are representatives of the legal professions. When talking about 13, one of the issues is whether putting in an extra two creates an imbalance between the representatives of the legal professions. Quite clearly, in the context of deliberating on whether it should be 11 or 13, that is an issue for consideration, but the issue that the Deputy

raised with regard to a quorum would be a relevant matter as well.

Deputy Anne Ferris: I thank the Minister.

Amendment agreed to.

Deputy Alan Shatter: I move amendment No. 19:

In page 15, before section 9, to insert the following new section:

10.--(1) A person shall be disqualified from and shall cease to hold office as a member of the Authority if he or she--

(a) is convicted on indictment of an offence,

(b) is convicted of an offence involving fraud or dishonesty,

(c) in the case of a member who is a legal practitioner, is struck off the roll of solicitors or the roll of practising barristers, as the case may be, or, following the investigation of a complaint under *Part 5*, is the subject of--

(i) a finding under *section 59* that there has been misconduct on his or her part, and the member concerned has not brought an appeal under *section 61(2)(a)* against the determination concerned within the period referred to in *section 62(1)*, or

(ii) an order of the High Court under *section 62(3)(b)*, *section 62(4)* (other than *paragraph (ii)*) or *section 63* (other than *subsection (2)(b)*),

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

(e) ceases to be resident in the State.

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

Amendment No. 19 is primarily a technical amendment for drafting clarity. It is a reproduction of section 8(13) of the Bill. It has been placed as a separate provision in this amendment. It is only significant in so far as it does not reproduce the criteria of bankruptcy and arrangements with creditors as disqualifying criteria for membership of the authority. These are proposed to be removed from the Bill, as I feel that they are no longer appropriate since the enactment of the Personal Insolvency Act 2012 and the establishment of the Insolvency Service of Ireland. We are in a new era, where the stigma of bankruptcy has been superseded by new resolution frameworks. I do not want to bring the old approach to these issues into the enactment of new legislation.

Amendment agreed to.

Deputy Alan Shatter: I move amendment No. 20:

In page 15, before section 9, to insert the following new section:

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

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

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

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

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

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

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

(b) has committed stated misbehaviour,

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

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

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

(a) the member concerned, and

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

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

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

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

(c) a statement that, where no representations are received within the period specified under *paragraph (b)*, the Government will, without further notice, proceed with the removal of the member from office in accordance with this section.

(5) In considering whether to remove a member from office, the Government shall take into account--

(a) any representations made pursuant to *subsection (4)(b)*, and

(b) any other matter that the Government consider relevant for the purpose of

their decision.

(6) Where, having taken into account the matters referred to in *subsection (5)*, the Government decide to remove the member from office, they shall notify the member, and the body referred to in *subsection (3)(b)*, in writing of their decision and of the reasons for it.

(7) The member or, as the case may be, the body referred to in *subsection (3)(b)*, may, within 30 working days of the sending of the notification under that subsection, appeal to the High Court against the decision of the Government.

(8) On hearing an appeal under *subsection (7)*, the High Court may, as it thinks proper, either affirm or overturn the decision concerned.”.

The proposed Government amendment No. 20 is a new section, the side note of which reads: “Removal of member of Authority.” It can be described as another cornerstone of the independence-enhancing amendments being tabled today, in that it seeks to replace section 8(12) of the published Bill with a much more detailed provision, the intention of which is to address previously voiced concerns that the Government would have a free hand in the removal of members of the authority without fair process or external scrutiny. Again, I would emphasise that this is something that was never intended to occur.

Key aspects of the new section are the following: the requirement of an Oireachtas resolution confirming the Government’s decision that a member of the authority ought to be removed for one or more of the reasons set out in subsection (2); the criteria for removal set out in subsection (2), which no longer include the Bill’s controversial original text that the removal of the words “appears to be necessary for the effective performance of the functions of the Authority”, but instead state that the person “is otherwise unfit to hold the office or unable to discharge its functions”; the right of reply of the person to be removed and his or her nominating body; and the additional safeguard of an appeal to the High Court by the person concerned or his or her nominating body.

Amendment agreed to.

Chairman: Acceptance of amendment No. 21 in the names of Deputies Collins and McGrath involves the deletion of section 9. Amendments Nos. 21, 22 and 25 to 28, inclusive, are related. Amendments Nos. 29 to 35, inclusive, are alternatives to amendment No. 21. Therefore, amendments Nos. 21, 22 and 25 to 35, inclusive, may be discussed together by agreement.

Deputy Niall Collins: I move amendment No. 21:

In page 15, before section 9, to insert the following new section:

“9.--(1) Subject to this Act, the Authority shall be responsible for overseeing the regulation of the provision of legal services by legal practitioners in the State, in an independent manner and shall ensure the maintenance and improvement of standards in the provision of such services in the State.

(2) The Authority shall at all times have due regard to the overriding public interest in the delivery of legal services in a manner that at all times supports the proper and effective administration of justice.

(3) Subject to this Act, the Authority may do anything it considers necessary or expedient to enable it to perform its functions, including liaising and co-operating with other statutory bodies and with other relevant institutions.

(4) Any function of this Authority may, without prejudice to its general responsibilities under this Act, be performed through or by the Chief Executive of the Authority as established by this Act or any member of its staff duly authorised in that behalf by the Authority.

(5) The Chief Executive or a member of staff of the Authority who performs any of its functions is presumed in any proceedings to have been authorised by it to do so on its behalf unless the contrary is shown.

(6) The Authority shall be independent in the performance of its functions.

(7) The Authority has all powers that are necessary for the performance of the functions of the office.”.

What is the Minister’s take on this issue? In this series of amendments, we are trying to give the authority a degree of independence and to unharness it as much as possible from the political process. We are on the same section to which the Minister referred.

Deputy Alan Shatter: I am opposed to the Opposition amendments Nos. 21, 22, 25 to 28, inclusive, and 35. These amendments are proposals that have previously been considered, as they were included in the Bar Council’s March 2012 submission. In essence, the amendments seek to provide for oversight of the legal professions rather than direct regulation of the legal professions - they are essentially designed to bring us back to the legislation relating to the legal ombudsman - which is the specific objective of the legislation and is central to this legislation.

These amendments run counter to Government policy as expressed in the Bill and its provisions for independent regulation of the legal professions. The Opposition amendments also fundamentally alter the functions of the authority while echoing others. It should be remembered that the programme for Government, entitled “Government for National Recovery 2011-2016”, undertakes to “establish independent regulation of the legal professions to improve access and competition, make legal costs more transparent and ensure adequate procedures for addressing consumer complaints”. These are shared commitments under the EU-IMF programme of financial support for Ireland, aimed at removing restrictions to trade and competition relating to the legal professions and legal costs, namely, to establish an independent regulator for the legal professions, to implement the recommendations of the legal costs working group and to implement the outstanding Competition Authority recommendations to reduce legal costs. The Bill therefore provides for the independent regulation of the legal professions rather than the supervised self-regulation model that the Bar Council is anchored to and which the Opposition Deputies seem to prefer, notwithstanding the much higher confidence of the public in independent regulation. This is precisely why an early decision was taken by the Government not to implement the Legal Services Ombudsman Act 2009, which was built on the wrong model of supervised self-regulation. The point of departure from the policy perspective of this Government is therefore independent regulation and not supervised self-regulation.

At this point I reiterate the continued urgency in the advancement of this Bill. The updated memorandum of understanding on specific economic policy conditionality for Ireland of 3 June 2013 includes a specific undertaking under the title of legal services reform that once the rel-

evant legislation has been enacted, the authorities would take appropriate measures to establish the legal services regulatory authority in an expedited fashion. The action is to be completed by the end of the fourth quarter of 2013 for the 13th review under the troika programme. The June 2013 staff report of the European Commission was critical of the delay and enactment of the Bill and gave the opinion that legal services costs have, for the most part, failed to adjust during the economic crisis, with legal services remaining “sheltered from competition and a drag on the economy’s overall competitiveness”.

The recent troika mission to Dublin again emphasised the need to realise the modernisation and reform measures contained in the Bill and the early establishment, on an “open for business” basis, of the new regulatory authority. The amendments tabled by the Deputy run entirely counter to that. The proposed Government amendment No. 29 to section 9(2)(a) is intended to allow the authority to make recommendations to the Minister following its review of the issues listed in that section rather than leave them gathering dust on a shelf. Matters such as the admission requirements to legal professional bodies and the availability and quality of education and training opportunities etc. will not be directly under the remit of the authority but will be monitored, and any action that needs to be taken to address any concerns of the authority may be flagged.

I oppose amendment No. 30. Keeping under review the admission requirements of the Law Society relating to the solicitor profession and that of the Bar Council relating to the barrister profession are important functions of the authority and I do not intend deleting them; otherwise we would be accused of having no measurement of any nature of the state of the legal professions in real time to inform the authority’s regulatory functions.

Government amendment No. 31 is proposed with regard to section 9(2)(a)(ii), and it responds to a concern about the original drafting formulation voiced by the heads of the law schools and specifically the University College, Cork, faculty of law, which provided the proposed drafting solution. They were concerned that the provision might result in the authority overstepping the mark between it and aspects of both academic freedom and quality assurance that are enshrined in the Universities Act 1997. There was also some concern that universities were singled out for mention when there are many other types of education institutions providing legal qualifications. I am happy to support the amendment as it allays their concerns but does not detract from the authority’s foreseen reviewing, in a very general sense, of the availability and quality of legal education. It is not intended to duplicate the existing academic standards regime with universities or colleges concerned.

Government amendment No. 32 is a minor technical amendment to correct a typographical error. Proposed Government amendments Nos. 33 and 34 are minor amendments designed to make the authority’s monitoring function a little more meaningful by allowing the authority to make recommendations to the Minister. I draw the attention of Deputies to the importance of the full independence in the manner of operation in the regulatory authority, which is not simply an oversight body with the professions doing the matters themselves.

Deputies may note that the insolvency regulations published for personal insolvency practitioners detail the various professionals who might perform that role, as well as others, and the eligibility criteria, audit oversight mechanisms and issues surrounding indemnity insurance. With the regulations as published, both solicitors and barristers are among those included as individuals who can operate as personal insolvency practitioners, and their function in practical terms exists between debtors and creditors. Whatever differences exist between Deputy Niall Collins or Deputy Mac Lochlainn and me with this Bill, we can agree that the function is essen-

tially to mediate between debtors and creditors to see if a debt settlement resolution is possible. I was surprised to note a report in one of our Sunday newspapers that the Bar Council might intend to block barristers from performing that function, which is contrary to competition and not in the public interest. If ever we needed an indication that there is a need for an independent regulatory authority to be confirmed, it was done in recent days and we must ensure proper competition in the area. In fairness to members of the legal profession - both solicitors and barristers - they have the facility to use their skill sets through constrained and limited different business models that currently exist.

Deputy Niall Collins: I do not know if the following is the opinion of the Minister or whether he was quoting from a troika report. There was an indication that legal fees represent a significant drag on the economy and competitiveness. I am sure others will share my opinion that nobody in the legal profession is recession-proof, least of all barristers and solicitors. We all know how the recession has affected legal practices, with some being closed and others being downsized, with resulting job losses. In our deliberations we must keep a sense of proportionality, as some high-end or high-profile cases may be reported but under the veneer is an industry that services the country in every village, town and city across Ireland. These people are employers who contribute to the economy and the community. We should not come at the problem from the perspective that all the sector is bad, as everybody has to live.

Chairman: That point is taken. I ask members, including the Minister, to stick to the amendments as laid down as closely as possible.

Deputy Pádraig Mac Lochlainn: The regulation issue is interesting. As the Minister knows, the Competition Authority did not recommend that the regulatory authority would have sole regulation powers. In Britain there is a practice of regulating the regulators and there is a difficulty in Ireland that is acknowledged by the Law Society. It rigorously defends the independence of the complaints procedure but there is a perception among the public that the process is not independent; the Law Society has conceded that this new regulatory authority should have a full complaint function.

I invite the Minister to outline why he believes the British model, where there is a process of regulating the regulators-----

Chairman: To which section is the Deputy speaking?

Deputy Pádraig Mac Lochlainn: I am speaking to the amendments.

Chairman: Which one?

Deputy Pádraig Mac Lochlainn: It is amendment No. 21 in particular. The amendments from Deputies Collins and McGrath would essentially remove the regulatory function from the authority and facilitate a process of regulating the regulators, as it is with the British model. Will the Minister elaborate on the issue? I have an open mind on this but will the Minister explain why he feels so strongly about the matter when it was not what the Competition Authority recommended?

Deputy Alan Shatter: We do not need duplication in these areas, with the professions regulating themselves and oversight of the professions. There is also an issue of public confidence. The model we are seeking to implement replicates the approach taken in Australia, although it is not identical, rather than the British model. I do not think anyone has sold the British model as an ideal to be adapted in other jurisdictions. We are a different jurisdiction and should take

a different approach.

I agree with Deputy Mac Lochlainn on one issue. Let us take the Law Society as an example. I think it has, in recent years, done what it can do to ensure it has a complaints system that seeks to deal with complaints made in a rigorous fashion. There is a problem with a professional body determining complaints made about a member of its own profession. It is the old issue: not only should justice be done, but it should be seen to be done. There should be no suggestion of bias. I am not suggesting there is, but there is a public perception of concern. In the past there have been issues of concern surrounding the manner in which some complaints are dealt with. I am not going to cast any stones because I do not know whether all of the concerns expressed are right. Part of the troika's requirements included the implementation of reform. The Government made a decision that was in the public interest. It decided there should be independent oversight of the two professions and an independent complaints structure about which no one can raise issues with regard to vested interests or a bias in the decision-making process. This is the correct way to go.

I regard the process that we are engaged in, because no one has a monopoly of wisdom in these things, as very valuable. We have had a lengthy consultative process. I would have liked to commence Committee Stage earlier, but the work that had to be undertaken on the insolvency Bill delayed matters, as the Office of the Attorney General was not in a position to deal with it. We will continue to tease out issues through Committee and Report Stages.

I believe this model is in the public interest. It can give public confidence in the manner in which complaints are dealt with, but it is much broader than that. It looks at other areas relating to the legal professions, including the provision of new business models and what may need to be done to ensure they can have in place any changed or appropriate regulatory structures or codes of conduct. It looks at a whole range of things that could not happen without having an independent regulatory authority. If matters were simply left as they are with an oversight body, such as the Legal Services Ombudsman, operating then the only role really would be what has already been done by the professions at present.

This also brings together a unified complaints system that applies to both branches of the profession, the solicitors' profession and the Bar. In public terms, there is more visibility and understanding of the approach taken by the solicitors' profession than of the Bar. Obviously, I am familiar with both approaches. Where complaints are made about members of the legal profession there should be consistency in how they are approached. Similar issues arise. I know that there are discrete issues that may presently arise in relation to solicitors that will not currently arise in relation to members of the Bar. There are other areas where they overlap. On occasion a complaint may be made by a client about a solicitor and a barrister who are both engaged in one area of litigation and jointly representing a client. If a complaint is made now, the complaint against the barrister is dealt with under one structure by one particular disciplinary body and that against the solicitor is dealt with under another structure by the solicitors' disciplinary body. In those circumstances, surely it is in the public interest, and in the interest of the members of the legal profession, to take this course of action, because not all complaints that are made are valid. Many spurious complaints are made against members of the legal profession who have absolutely done their best for their clients. On occasion, complaints are made by clients who have not told the full story to the legal professionals representing them and then blame the legal professionals when something goes wrong. I think a consistency of decision-making on complaints by one body, where the complaints may involve both branches of the profession arising out of one issue, is important. This structure provides for that.

Finally, I wish to return to something that Deputy Niall Collins said, which I absolutely agree with. In the current financial climate there is absolutely no doubt, in recent years, that various solicitors' practices have found themselves in far more difficult financial times than has been the case in the past. There are many solicitors, in the 2008-10 period, who lost their jobs as firms contracted. We have - I am open to correction if the figure is wrong - more than 1,000 young solicitors who are unemployed. Many members of the Bar who are fully and properly qualified are departing the Bar because there is no work available to them. I am not suggesting that every solicitor earns huge amounts of money. I quoted the troika, who took an oversight view of fees being charged in, I think, some general and commercial areas. It rightly or wrongly formed the view, which I was reciting, that legal fees generally in some areas have not decreased. I am personally aware, as I am sure the Deputies are, of firms that have hit hard financial times and have reduced the charges they issue to clients whom they represent. I would not want to be misrepresented in any way; I am not suggesting, across the legal professions and solicitors who are in every town and city in this country, that everyone is doing terribly well. There are many who are not doing well. There are many in difficulties. There are young solicitors who cannot get jobs at the moment. Providing greater competition, new business models and new opportunities will benefit not just the public but the legal profession itself.

Chairman: We are up against the time. We agreed to finish at 11 a.m. and it is close to that time now. The Order of Business is due to commence in the Chamber in a few minutes.

Deputy Alan Shatter: I understand that I am okay until 11.15 a.m., so we can finish these amendments.

Chairman: We could do. There will be a vote when we are in the middle of discussing something. That is the only difficulty that we may have.

Deputy Niall Collins: Are we going to finish the section?

Chairman: Is it agreed that I put the question on amendments Nos. 21 and 22? Agreed. Amendment No. 23 is different and must be discussed, and amendment No. 24 could take a little time. That is my problem. I would like to finish section 9 if possible. Amendments Nos. 23 and 24 were tabled by Deputy Niall Collins and are in the centre of the section.

Amendment put and declared lost.

Deputy Niall Collins: I move amendment No. 22:

In page 15, before section 9, to insert the following new section:

“10.—Without prejudice to the generality of *section 9*, the functions of the Authority under this Act shall include—

(a) overseeing the regulatory bodies for the legal professions of barristers and solicitors so as to promote the regulatory objectives of this Act,

(b) overseeing the regulation of legal services provided by barristers and solicitors in the State by such regulatory bodies so as to promote the regulatory objectives of this Act,

(c) promoting awareness among members of the public of matters concerning the rules or codes of conduct of the Bar Council and of the Law Society generally and, in particular, dealing with complaints made to those bodies,

(d) reviewing the rules or codes of conduct of the Bar Council and of the Law Society generally and, in particular, those provisions of such rules and codes,

(e) recommending and, if necessary, requiring changes to the rules or codes of conduct of the two branches of the legal profession so as to provide for—

(i) the removal of unnecessary barriers to switching between the two professions of solicitor and barrister,

(ii) the removal of any unnecessary restrictions on switching barrister or solicitor in a case,

(iii) the prohibition on a solicitor retaining a client's file pending payment from the client,

(iv) the exercise of part-time occupations by barristers that are not inconsistent with the rules or codes of conduct of the Bar Council,

(v) the removal of any prohibition on a barrister being led in court by a Senior Counsel who is not a barrister, and

(vi) the regulation of the right and entitlement of barristers and solicitors to advertise,

(f) receiving and investigating complaints in accordance with the provisions of this Act,

(g) carrying out any other duties and exercise any other powers assigned to the Authority by this Act, and

(h) promoting public awareness and disseminating information to the public in respect of the provision of legal services, including the cost of such services.”.

Amendment put and declared lost.

Chairman: Amendments Nos. 23 and 24 are related and may be discussed together.

Deputy Niall Collins: I move amendment No. 23:

In page 15, before section 9, to insert the following new section:

“11.—For the purposes of this Act, the regulatory objectives of the Authority are as follows—

(a) maintaining and supporting—

(i) the constitutional principle of the rule of law,

(ii) the proper and effective administration of justice,

(b) protecting—

(i) the interest of consumers,

(ii) the public interest generally,

(c) promoting—

(i) access to justice,

(ii) competition in the provision of legal services,

(d) promoting an independent, strong, diverse and effective legal profession,

(e) encouraging equal opportunities within the legal profession, and

(f) promoting and maintaining adherence to the professional principles as set out in *section 12*.”.

Deputy Alan Shatter: I oppose the amendments because they largely reflect, in principle, what is contained in the corresponding Government provisions.

Amendment put and declared lost.

Deputy Niall Collins: I move amendment No. 24:

In page 15, before section 9, to insert the following new section:

“12.—For the purposes of this Act, the professional principles are the principles that barristers and solicitors providing legal services should adhere to and include—

(a) maintaining and protecting the proper and effective administration of justice,

(b) acting with independence in the interests of justice,

(c) acting with integrity,

(d) acting in the best interests of their clients, except where that conflicts with a paramount interest in the proper and effective administration of justice, in which case the latter interest must prevail at all times,

(e) keeping the affairs of clients confidential unless disclosure is otherwise required in accordance with law,

(f) maintaining proper standards of work,

(g) when exercising before any court a right of audience, or conducting litigation in relation to proceedings in any court, by virtue of being barristers or solicitors, complying with their duty to act with independence in the overriding interests of justice at all times,

(h) meeting their obligations under any of the rules or codes of conduct applying to their profession as regulated by the Authority under this Act, and

(i) acting in conformity with professional ethics and best practice.”.

Amendment put and declared lost.

Deputy Niall Collins: I move amendment No. 25:

In page 15, before section 9, to insert the following new section:

13.—(1) The Authority shall keep under review the rules or codes of conduct of the Bar Council and of the Law Society in general and, in particular, in relation to the receipt and investigation of complaints in relation to barristers and solicitors.

(2) The Law Society and the Bar Council shall provide the Authority with information about intended new or amended rules or codes of conduct by the respective bodies at least 60 days before the intended adoption of such Rules and the Authority shall review such proposed rules under this section.

(3) In carrying out a review under this section, the Authority shall consider, in accordance with its functions under this Part—

(a) the rules or codes of conduct of the Bar Council and of the Law Society or the proposed rules or codes of conduct of the Bar Council and of the Law Society, as may be the case,

(b) the compliance of barristers and solicitors with the relevant rules or codes,

(c) such complaints made to the relevant professional body regarding breaches of those rules or codes as it considers appropriate,

(d) the effectiveness of the complaints procedures of the professions, including the length of time taken to complete investigations and make determinations,

(e) complaints relating to such matters as the Authority considers appropriate,

(f) statistical information provided by the professional body concerned including statistical information relating to multiple complaints in relation to the same barristers or solicitors, as the case may be,

(g) the removal of any unnecessary barriers to switching between the two branches of the legal profession, solicitors and barristers,

(h) the removal of the prohibition on direct access to barristers for legal advice,

(i) any restrictions on switching barrister or solicitor in a case,

(j) the exercise of part-time occupations by barristers that are not inconsistent with the rule or code of conduct, and

(k) any regulation of the right or entitlement of barristers and solicitors to advertise.

(4) The Bar Council and the Law Society must, upon request, provide the Authority with such information as it may reasonably require in order for it to carry out a review of the rules or codes of conduct or proposed rules or codes of conduct in question.

(5) For the purpose of a review under this section, the Authority shall consult with such persons or bodies, including those whose purpose or objective is to protect the rights and interests of consumers, as it considers appropriate.”

Amendment put and declared lost.

Deputy Niall Collins: I move amendment No. 26:

In page 15, before section 9, to insert the following new section:

14.—(1) Arising out of a review carried out under *section 10*, the Authority may make such written recommendations to the professional body concerned as the Authority considers appropriate regarding—

(a) the rules, or codes of conduct of the Bar Council and the Law Society,

(b) the procedures of the professional body concerned relating to the receipt and investigation and resolution of complaints,

(c) procedures to deal effectively with persistent patterns of complaints,

(d) procedures to deal effectively with any delays by the professional body concerned in investigating and determining complaints,

(e) procedures to ensure the co-operation of barristers or solicitors, as the case may be, with the procedures of the professional body concerned,

(f) removing unnecessary barriers to switching between the branches of solicitor and barrister,

(g) the removal of the prohibition on direct access to barristers for legal advice,

(h) the regulation on barristers and solicitors ability to advertise,

(i) the removal of restrictions on switching barrister or solicitor in a case,

(j) the removal of the prohibition on a solicitor retaining a client's file pending payment from the client,

(k) the exercise of part-time occupations by barristers that are not inconsistent with the rules or codes of conduct,

(l) the removal of the prohibition on a barrister being led in court by a Senior Counsel who is not a barrister, and

(m) any proposed rules or codes of conduct being considered for adoption by the Bar Council and the Law Society.

(2) Not later than 30 days after receiving a recommendation made under *subsection (1)*, the Bar Council or the Law Society concerned shall—

(a) inform the Authority of the action it proposes to take to implement that recommendation, or

(b) if it objects to the recommendation, inform the Authority of the reasons for such objection and any other observations it may have on the recommendation.

(3) The Authority, after having received a response under *subsection (3)(b)* may, within 45 days, issue an amended or new recommendation to the Bar Council or the Law Society, as the case may be.”.

Amendment put and declared lost.

Deputy Niall Collins: I move amendment No. 27:

In page 15, before section 9, to insert the following new section:

15.—(1) If the Authority is not satisfied with the response received from the professional body concerned under *section 13(4)*, the Authority may direct the body concerned to implement any recommendation made by it under *section 14(1)* or such amended recommendation as the Authority may make under *section 14(3)* having regard to such response as was received from the Bar Council or Law Society.

(2) The direction issued under *subsection (1)* shall specify a time-period, not later than 90 days, within which the direction shall be implemented by the body in question.

(3) On application by the chairman of the Bar Council or by the President of the Law Society within 28 days of the issuance of such a direction, the President of the High Court may revoke or vary a direction given by the Authority under *subsection (1)* where the President of the High Court considers that the direction is oppressive, unreasonable, unnecessary or contrary to the overriding public interest in the proper and effective administration of justice or he or she may confirm the direction.”.

Amendment put and declared lost.

Deputy Niall Collins: I move amendment No. 28:

In page 15, before section 9, to insert the following new section:

16.—The Authority shall include a report on the performance of its functions under sections 13, 14 and 15 of this Act in the annual report submitted by it to the Oireachtas under section 17.”.

Amendment put and declared lost.

SECTION 9

Deputy Alan Shatter: I move amendment No. 29:

In page 15, subsection (2)(a), line 23, to delete “review” and substitute the following:

“review, and make recommendations to the Minister in respect of,”.

Amendment agreed to.

Deputy Niall Collins: I move amendment No. 30:

In page 15, subsection (2)(a), to delete lines 24 to 26 and substitute the following:

“(i) perform the functions conferred on it by, or by regulations under, any other provisions of this Act including, in particular, *Part 5*;”.

Amendment put and declared lost.

Deputy Alan Shatter: I move amendment No. 31:

In page 15, subsection (2)(a), to delete lines 27 to 37 and substitute the following:

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“(ii) the availability and quality of the education and training (including ongoing training) for the solicitors’ and barristers’ professions, including—

(I) the curriculum arrangements for the provision of clinical legal education and the teaching of legal ethics, negotiation skills, alternative dispute resolution and advocacy, and

(II) the methods by which, and the persons by whom, such education and training is provided;”.

Amendment agreed to.

Deputy Alan Shatter: I move amendment No. 32:

In page 15, subsection (2)(a)(iii), line 41, to delete “practice” and substitute “practise”.

Amendment agreed to.

Deputy Alan Shatter: I move amendment No. 33:

In page 16, subsection (2)(g), line 23, after “and” to insert “make recommendations to”.

Amendment agreed to.

Deputy Alan Shatter: I move amendment No. 34:

In page 16, subsection (2)(h), line 30, to delete “them, and” and substitute the following:

“them, and make recommendations to the Minister arising from those projects or activities, and”.

Amendment agreed to.

Deputy Niall Collins: I move amendment No. 35:

In page 16, lines 33 and 34, to delete subsection (3) and substitute the following:

“(3) The Authority shall be independent in the performance of its functions.”.

Amendment put and declared lost.

Section 9, as amended, agreed to.

Chairman: I thank members, the Minister and his officials for attending.

Progress reported; Committee to sit again.

The select committee adjourned at 11.05 a.m. until 4.05 p.m. on Wednesday, 20 November 2013.