# DÁIL ÉIREANN

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## AN ROGHCHOISTE UM DHLÍ AGUS CEART, COSAINT AGUS COMHIONANNAS

## SELECT COMMITTEE ON JUSTICE, DEFENCE AND EQUALITY

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*Dé Céadaoin, 12 Feabhra 2014*

*Wednesday, 12 February 2014*

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The Select Committee met at 10 a.m.

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MEMBERS PRESENT:

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| Deputy Niall Collins, | Deputy Pádraig Mac Lochlainn, |
| Deputy Marcella Corcoran Kennedy, | Deputy Alan Shatter (*Minister for Justice and Equality*). |
| Deputy Anne Ferris, | |
| Deputy Seán Kenny, | |

In attendance: Deputy Michael McNamara..

DEPUTY DAVID STANTON IN THE CHAIR.

## Business of Select Committee

**Chairman:** As we now have a quorum the committee is in public session. This meeting has been convened to resume consideration of the Legal Services Regulation Bill 2011.

Apologies have been received from Deputies Alan Farrell and Finian McGrath. Deputy Mick Wallace is here in substitution for Deputy McGrath. I am also advised that Deputy Pádraig MacLochlainn may need to be absent for part of the meeting and in his absence Deputy Jonathan O'Brien will be his substitute.

Is it agreed that we take a break from 11.15 a.m. to 11.30 a.m. as requested? Agreed. We will continue until almost 1 p.m. and see how we get on.

I welcome the Minister and his officials to the meeting. I ask all present to turn off all mobile telephones as they cause a problem with the sound system.

## Legal Services Regulation Bill 2011: Committee Stage (Resumed)

**Chairman:** Amendments Nos. 153 to 156, inclusive, and 170 and 171 are related and will be discussed together. Deputy McGrath is not present so he cannot move amendments Nos. 153, 154 and 156. Amendments Nos. 170 and 171 are in the name of the Minister. I will ask the Minister to discuss those amendments.

Amendment No. 153 not moved.

### SECTION 71

Question proposed: "That section 71 stand part of the Bill."

**Minister for Justice and Equality (Deputy Alan Shatter):** With regard to Deputy McGrath's amendment, it is a pity that we have absent friends.

My amendments Nos. 170 and 171 provide that the authority will engage in two separate public consultation processes under sections 86 and 87, respectively, rather than the one consultation process which the published Bill had envisaged. Under section 86 the authority will engage in a consultation process with regard to the regulation, monitoring and operation of legal partnerships and multidisciplinary practices, MDPs. This consultation will feed into the exercise of the regulatory power of the new authority regarding business structures. It is envisaged that the authority will conduct the initial consultation process within six months following its establishment and not within 18 months as in the published Bill. The report of the section 86 public consultation process, once completed, will be presented to the Minister who will have it laid before the Houses of the Oireachtas. The Minister will also at that time furnish the report to Cabinet, along with details of the proposed date of commencement of the legal partnerships and multidisciplinary practices provided for under sections 72 and 74.

Section 86 also envisages that the authority may carry out other periodic consultations on the regulation, monitoring and operation of legal partnerships and MDPs. The authority under section 87 will carry out a separate public consultation process in respect of the manner in

which a barrister may hold clients' moneys and whether the current restrictions on barristers receiving instructions on a contentious matter directly from a person who is not a solicitor should be retained or removed. This consultation process is now to be completed within 12 months of the establishment of the new regulatory authority. The Bill, as members know, originally published prescribed a period also of 18 months with the relevant report to be laid before both Houses of the Oireachtas by the Minister within 30 days.

**Deputy Pádraig Mac Lochlainn:** I oppose the section and the principle of MDPs. I will deal with some of the Law Society's points on this. May I take the opportunity to indicate why I am opposed to the MDPs at this stage or should I deal with the section?

**Chairman:** We shall be putting the section later. If the Deputy wants to, he can take that opportunity to speak on the section.

**Deputy Pádraig Mac Lochlainn:** I do not understand why the Minister has gone in this direction and sought to introduce these sections or why he is going down the road of business structures, multidisciplinary practices. MDPs involving lawyers are not permitted in the following EU member states: Bulgaria, the Czech Republic, Cyprus, Denmark, Estonia, Finland, Greece, Hungary, Ireland – at present, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and Scotland. I do not know the rationale.

This Bill was supposedly driven by the troika and the need to reduce costs because certain sectors of the Irish economy were too costly and so on. This does not address that problem. The regulatory impact analysis conducted in respect of this Bill does not include any analysis of the proposals to introduce the MDPs. It makes assertions that the evidence does not back up. The report of the Competition Authority, which was intended to lead up to this Bill, did not recommend MDPs. The regulatory impact assessment cites Scotland and New South Wales as examples of jurisdictions that have them but fails to mention the critical point that barristers are not permitted to participate in MDPs in those areas.

As a Deputy from Donegal North East, a mainly rural constituency, I am concerned. One of the benefits of the current position is that one can go to a solicitor in the nearest town to deal with a range of challenges. That solicitor can access the service of the best-placed person within the Bar Council. That is an option for a person living outside the main urban bases. The difficulty in what the Minister suggests is that the best and brightest could be sucked into corporatised structures. For a State of 4.5 million people, I do not understand the requirement for this at all, although there are allegations of economies of scale.

There is also the issue of legal practitioners and indemnity. There is a need for clarity in this regard and if there is a multidisciplinary practice with a legal practitioner and others, the question of liability arises. In other jurisdictions difficulties arise when a range of people cover a multitude of bases. The Enron scandal was an example as people who were supposed to do audits were also involved in consultancy. I really do not know why there is a big drive towards this or why there is a demand. The phrase "one-stop shop" sounds good but it is a one-stop shop for big business and will not apply to Charlie Joe in Donegal, Mary in Galway or Mickey in Tralee who may have a complicated health, financial or family law issue. I must oppose this in its entirety as very little detailed research has been done. I know it is a compromise that clearly arises from the differences in Cabinet that there will be consultation. We can have regard to the concerns of the Law Society and the Bar Council, with an objective analysis of their opinion on the current state of play and what is proposed, and we would take the current state of play any

day of the week.

We understood that one of the primary objectives of the Bill is to reduce costs for people. I have indicated to the Minister on numerous occasions that the mediation Bill later in the year will do more to reduce costs than this Bill. I do not know what is the public interest in moving forward with these multidisciplinary practices. I will speak in more detail on the concerns of relevant stakeholders as we move forward. It is not just the Bar Council that has concerns, as the Law Society has a range of opinions on indemnity, clarification of the types of practising solicitors and the background and the definition of partners. There is a range of recommendations that have been submitted to the Minister and this committee. The Free Legal Advice Centres, the North Side Community Law Centre and the Irish Congress of Trade Unions are among the stakeholders telling us we should oppose these multidisciplinary practices.

In a corporate structure, a barrister would become answerable to many others, including shareholders, other partners, boards of management, high-paying clients and so on, rather than giving regard to the best interest of clients, and courts will no longer be a priority. There is also a real risk that should such corporate structures be introduced, the market will substantially contract, allowing only the largest firms access to the best of the Bar, thereby substantially transforming the character of access to justice for all the citizens of the State. It will be similar to football leagues in that the biggest firms with the deepest pockets will hire the best players and charge fees out of the range of all but powerful big business interests, leaving the ordinary workers outgunned on every occasion. There will be reduced opportunities to devil, which is the term for barristers serving their time and moving up the experience ladder. There is a range of issues but that is the initial statement about the concerns. We can probe other issues as we go through the sections.

**Deputy Alan Shatter:** Let us speak of what is involved with multidisciplinary practices. I am very disappointed by the contribution from Deputy Mac Lochlainn, although I do not mean that in a personal sense. I believed his party presented itself as being interested in reform not in maintaining structures in the State which we have had for over 100 years or representing the vested interests within the legal profession. His contribution, referencing what is essentially the Bar Council brief, reflects that council's approach of *non mutare*, or no change. We are living in a world different from the 18th century. This legislation is not about serving the legal profession but the general public by ensuring people have access to legal services and there is a wide range of business structures through which legal services can be provided. We are trying to ensure that practising lawyers have options on how to provide legal services and earn a living, and that regardless of the mechanisms through which legal services are provided, there should be appropriate regulatory provisions in place and independent oversight.

There is nothing about the "one-stop shop" or multidisciplinary practice that is so uniquely complex as to make it impossible to have appropriate regulatory oversight. There is nothing to make it compulsory for any individual legal practitioner, barrister or solicitor to provide services through multidisciplinary practice. The legal system currently allows solicitors to be sole traders or partners; there can be small firms with two or three partners and large firms with 50, 100, 200 or more partners. The large firm argument is that multidisciplinary practices will suck up all the good lawyers but have the five big legal firms sucked up all the good lawyers? There are many good lawyers outside the big five firms practising in a broad range of areas, with some in general practice and others engaged in niche specialties.

Some lawyers like to practise in big firms and others like to practise in small firms. With solicitors, some like to practise as individual sole traders and some like to practise with part-

ners. Barristers are all effectively individual sole traders and they cannot operate in partnership, although some have taken to acquiring premises together in which they have offices and out of which they share expenses. They cannot share fees. Some parts of rural Ireland do not go near the Bar library and to all intents and purposes the people may operate a legal practice but cannot advertise it as such. There is a range of restricted practices.

Many members of the general public who have legal issues need financial or other matters resolved. They may have to visit a lawyer, accountant, a surveyor or engineer, among others. They pay money for the lawyer to write to the accountant, who would write to the surveyor, and there would be individual meetings that incur unnecessary expense. The attraction of a one-stop shop for members of the public, where there is a particular type of legal issue on which people need assistance, is that they can all be met in one room. Perhaps one would not have to pay for multiple consultations or for people who should work together to send letters to each other.

This is about the public interest and understanding that the manner in which our legal system has developed is an historical accident. Our legal system did not develop based on any great plan but rather it reflected the manner in which the legal system developed in colonial times in the United Kingdom and England in particular through the 17th and 18th century. Divisions were created between barristers and solicitors, with formations devised. Ireland was differentiated as in England barristers can have chambers but in Ireland - at least in theory - they do not. In practice, some are operating to all intents and purposes through chambers. Multi-disciplinary practices are working, for example, in New South Wales.

What we are doing is looking at options. The difficulty is with a conservative profession, the most conservative wing of that profession is the Bar, where everything is seen as a threat and as being malevolent, nothing is seen as being in the public interest. There are a myriad young barristers in the country who cannot get work because they are dependent on the goodwill of their seniors or their relationship to some solicitor or some senior long-standing junior counsel to feed themselves, but who have enormous legal skills. Is there any reason they should not be employees in a solicitor's firm for a number of years and ply their legal skills there, with the option in the future to be single operators in some specialist area? In what way is that contrary to the public interest? It may be disruptive within the realms of the Bar but in what way is it contrary to the public interest? I cannot identify a public interest problem with that. If solicitors and barristers are working together in a practice, or barristers operating truly as partners in the sense that not only do they share the premises and the expenses but, depending on the luck when fees are coming in, may share the profits and their fees, in what way does that create a public interest issue, if appropriate regulatory oversight and the principles prescribed by the legislation, to which members of the legal profession must adhere, are in place, and a failure to adhere to them could result in a disciplinary intervention?

We are trying to provide options. Just as in the context of the Bar and the solicitors profession I have no doubt that following the enactment of this legislation when multi-disciplinary practices are established, for many years a majority of lawyers will continue to operate within the legal business structures that currently exist for lawyers but some will choose to do it differently. Where they do, it will be to the benefit of the public and will generate competition and insights and ensure those who have particular skills can utilise them and the professions can work together. Why is it that we think a one-stop-shop in other areas of life is a very good idea but in this context it is not a good idea?

I wish to deal with some of the specifics. In its 2006 report, the Competition Authority

observed that: "The ban on the formation of multi-disciplinary practices prevents the supply of inter-related services together in a way which may generate synergies known as economies of scope. It prevents professional service providers from catering for clients who have a set of inter-related needs, and from integrating their supply with providers of complementary services". It further stated: "The prohibition also limits the ability of clients to benefit from a one-stop-shop that hinders innovations which might otherwise result from the combination of different services, and it would allow for new products or services to be developed to the benefit of clients". The Legal Services Bill 2011 addresses that issue. In the UK, legal services are now being provided through a whole range of alternative business structures, including the co-operative movement, in order to provide ready access to the general public to legal services at lower cost and to provide that access through different locations, maybe high street locations rather than high-end office locations.

What are the benefits of multi-disciplinary practices to the legal profession? If one is a small solicitor's firm operating in a rural part of Ireland and nearby a small accountancy firm is operating and one is constantly interacting with the other because they serve the same area with, largely, the same clients, why should not one be able to operate a single business providing that service, the synergies and complementarity that come with it? On the disciplinary issue, in the context of a strong regulatory framework, an independent legal services regulatory authority and appropriate codes of practice, there is no difficulty or mystery as to how one ensures that the appropriate ethical principles and obligations of lawyers are complied with, including the lawyers' obligation as an officer of the court to behave in a particular manner.

Deputy Pádraig Mac Lochlainn recited the part that comes directly from the bible of the Bar Council submission about barristers. It is not phrased this way but the implication is that they might be corrupted by having to ply their trade within a corporate structure. I have more faith in the ethics of members of the Bar than that. At the end of this process if barristers find themselves in a position where there are part of a multi-disciplinary practice, they will have to comply with the legal ethics and principles prescribed by the legislation with the appropriate codes of practice that are consistent with the legislation, not the restrictive codes that are currently in place to provide a block on how one sells one's legal services. Should they fail to comply with the ethical requirements what will happen? If there is misconduct we will have an independent process to adjudicate on that.

Enron has been mentioned. It is one of the great myths that it is of some relevance to this particular issue. Enron is of no relevance to this issue. The circumstances that led to the problem with Enron had nothing to do with the existence of multi-disciplinary practices. The failures of Enron were not related to the conduct of lawyers but rather of corporate governance, an accountancy failure of regulation. That is the key. The Enron problem arose in respect of a large incorporated publicly quoted entity with a range of different business areas and subsidiaries in associated companies. The overall Enron entity, to which the share price was pinned, managed to portray itself as profitable in circumstances in which, clearly, it was not and it inflated the share price on the markets. At the same time it used various accounting devices to hide what were large scale losses. It did this through the use of the accounts of its subsidiary and regional operations. It appeared that the accounting firm, which was the Enron auditor, was at worst either complicit in the accounting devices of Enron or at best was negligently oblivious to them on an extraordinary scale. However, the source of the problem was not the professional conduct of lawyers but accountants supervising the accounts of a corrupted corporation. I do not know why Enron is brought into this debate, other than as some spectre to hang over of a threatening nature to indicate that if we have multi-disciplinary practices, everyone will be

automatically corrupted by the existence of the structure.

The issue of the relationship between the Enron case and multi-disciplinary practices is very specifically addressed by Mr. Paul Paton in a 2010 article in the *Fordham Law Review* in which he said:

> If accounting firms were willing to sacrifice audit integrity in order to secure more lucrative consulting arrangements, the argument went, then certainly lawyers working for MDPs controlled by accountants would be pressured to compromise their integrity and independence for financial gain. Such a position, however, fails to acknowledge one hard truth: Enron resulted from the improper behaviour of many professionals, including lawyers, acting in separate accounting or law firms [he emphasises the lawyers were acting in separate law firms, not in multi-disciplinary practices] rather than from an inherent flaw in the multi-disciplinary practice arrangements. Rather than pointing to Enron as a justification for banning MDPs, regulators and others should instead consider how best to structure incentives for the ethical behaviour of lawyers and others within all professional service firms, whatever the configuration of the firm. Simply banning outright a business model for delivering legal and other professional services fails to address the more complex questions of how best to reward independent, ethical, and candid advice, regardless of the conduit through which that advice is delivered.

What we envisage is ethical, independent and appropriate conduct with a sophisticated regulatory oversight independent of the legal profession. There is nothing the Deputy has said or presented which indicates there is a public interest reason for not proceeding with multi-disciplinary practices. All of the arguments are public interest reasons for doing so.

The Deputy has cited what exists in other parts of Europe. We recently passed our insolvency legislation. In other parts of Europe, there is not a precedent for the personal insolvency arrangement which allows arrangements to be entered into between debtors and creditors to resolve debt in circumstances where there is secured debt. We set a precedent in that regard and I am proud of that. That provision in our legislation is now forcing financial institutions to enter into arrangements without debtors having to engage in the formal structural approach set out in the personal insolvency legislation because the institutions know that if they do not so engage they may be forced to do so under the personal insolvency arrangement. They realise that if they do not co-operate in that engagement, the option of bankruptcy, with a very limited term, may be sought.

The rest of Europe is talking about replicating our insolvency legislation. One of the officials in my Department who is principally responsible for helping to draft that legislation is currently, at the request of European Commission, assisting with the drafting of similar insolvency legislation for another EU state. I do not mind if we are a trailblazer on the legal services Bill in dealing with an appropriate provision to establish multidisciplinary practices to enhance the public's ability to gain access to legal services. However, I do not accept what is suggested in this regard. There is no member of the Law Library, for example, who would be compelled to join a multidisciplinary practice. There will be many members of the library with niche expertise in their individual areas who will want to continue to work as they do, with the option of being recruited by individual solicitors when there are clients in need of their niche expertise. There will be areas of work in respect of which one could not possibly join a solicitors firm because the firm would not have the volume of work to justify employing one on an annualised basis as opposed to for an individual case. However, there will be circumstances where solicitors and barristers may work together to the benefit of their clients and their own business

arrangements. Members of the Bar will join in. I do not understand the fear that exists within the Bar on that issue.

The Deputy has raised some important issues regarding the Law Society. It was always the provision in this Bill that in advance of the creation of multidisciplinary practices, the legal services regulatory authority would engage in a consultative process to ensure any regulatory measures or codes of practice that need to be put in place would be considered and put in place. We would ensure they had the insights needed for anything that may need to be done in the area of financial oversight. On Committee Stage, as we go through the legislation, we are tidying up provisions in the Bill based on where we got to some weeks ago.

Owing to my interest in this Bill, I am very interested in all the submissions we have received, and I have paid very careful attention to them. The Law Society has made some very constructive suggestions for fine-tuning the legislation with regard to some regulatory matters. We will be taking these on board on Report Stage. Very recently I received a submission from the Law Society following the publication of the amendments we are dealing with today. It raised some issues and this is why the consultative process is so important. We are dealing with a new area. Just as the consultative process helped to improve the insolvency Bill, it will help to improve this one.

It is disappointing that a party that presents itself as reformist in the context of this Bill is simply presenting the arguments of those who are utterly opposed to reform, and particularly opposed to changing anything with regard to the manner in which legal services are delivered. It is opposed, apparently, to giving the public greater access to legal services, should it require them, and to the possibility that the cost of legal services may decrease if there is greater competition. I refer also to the desire to cut off the possibility of members of the legal profession who are qualified, ethical and well trained providing legal services through alternative business mechanisms in a manner that might produce economies of scale, reduce their overheads and enable them to pass the reduction in their overheads on to clients by way of reduced costs.

**Deputy Pádraig Mac Lochlainn:** I have a number of other issues to raise. The Minister referred to the bible of the Bar Council in regard to responding to a couple of quotes. The Bar Council is pleased to learn it is now in the hallowed company of the Irish Congress of Trade Unions. The references the Minister made came from its submission. The Bar Council and the Irish Congress of Trade Unions are now in a conservative camp together, apparently.

With regard to vested interests resisting change, I do not believe one can include the Irish Congress of Trade Unions, the free legal advice centres and the Northside Community Law Centre in that category. I respectfully disagree with the Minister. While I defer to his greater knowledge of legal matters, I believe we need to keep the debate in focus. A range of people, some of whom the Minister would argue are conservative and others of whom I would certainly argue are very progressive, have legitimate criticisms and concerns in regard to the multidisciplinary practices and business partnerships. We are clearly not going to change the Minister's mind on this. If we are to engage in the consultation process, we must acknowledge the many legitimate criticisms from a range of stakeholders, including some of those vested interests to whom the Minister referred. If we are to go down this road, the Minister should listen to all the constructive criticisms and try to include as many protections as possible to deal with legitimate concerns that have been put to him. Deputy Shatter, being the Minister, gets to make the law along with his majority in the Government but he should try to strengthen the legislation by acknowledging constructive criticism if he is to go down the road proposed.

**Chairman:** Deputy Collins's amendment, No. 155, is being discussed in this grouping.

**Deputy Niall Collins:** I apologise for being late. I did not hear the Minister's introductory speech entirely. With regard to multidisciplinary practices and alternative business structures, has the Minister received conclusive proof that legal costs will reduce for the consumer?

The Minister mentioned competition. If there are a number of multidisciplinary practice structures that manage to corner the market using a number of specialists in a particular field, could this lead to price inflation or prevent people from exercising the choice that might otherwise exist when tapping into services? This question points to the main problem that has been brought to my attention in regard to multidisciplinary practices.

Am I correct in understanding that the alternative business structures are such that non-legally qualified people could be providing the legal service? Is the Minister seeking to have people who would not be qualified to practise, either at the Bar or as a solicitor, providing legal services through certain mechanisms to the consumer?

**Deputy Alan Shatter:** I will respond briefly because we have explored a number of matters already. I do not understand why Deputy Collins believes a new, alternative model by which legal services can be provided will result in the concentration of all services through that model. According to that theory, there could be a small number of solicitors firms with expertise only in particular areas. The existence of an alternative structure through which to give legal advice does not, in itself, create a monopoly of expertise in a particular legal area within that structure. I do not understand the Deputy's argument and do not know where it is coming from.

The objective is that one will be able to gain access to legal advice through alternative business models. At present, for example, if one visits a solicitor's firm one will consult with a solicitor. In some instances, one might meet a legal executive whom the solicitor might authorise to talk to one about something. However, if such a legal executive speaks to or engages with one, one would expect it to be under the supervision of the solicitor. There is not a suggestion that one will create multidisciplinary practices in which there is a range of individuals who have no legal qualification but who are pretending to be lawyers, because that is not the way this should work. There is an interesting issue in that in its recent proposed amendments, the Law Society suggested some small amendment that might be made to the legislation to provide a protection in that regard. Again, I greatly appreciate the constructive engagement we are having in that context as we tease through the Bill. Consequently, there is no suggestion that one can create a multidisciplinary practice and then throw up a series of unqualified people who pretend to be lawyers and who give people advice, any more than a solicitor's firm would throw up a whole range of unqualified people who pretend to give people advice but do not have the qualifications to do it. There is no particular reason this should emerge to any greater extent from a multidisciplinary practice than out of a solicitor's firm. If one has in place the correct regulatory structures, it will not. Of course a multidisciplinary practice, just like barristers or solicitors, probably will employ non-lawyers, secretarial assistants and people to do other back-up work. That is part of the way the law has operated for many years.

I do not understand why the creation of multidisciplinary practices should make it more expensive to get legal advice. One of the great things about human beings in different walks of life who have expertise is they wish to ply their trade. Lawyers - and I am one - on occasion like to think that what we do is terribly mysterious and that we do something so mysterious that the rest of the world does not understand it. Whether one is a lawyer, an engineer, a doctor, a plumber or a landscape gardener, one has an expertise in one's life and one sells that

service to assist individuals who need it. Moreover, one earns a living by getting paid for what one does. It is no more mysterious than that, and providing an alternative mechanism through which one can deliver legal services is simply what it says on the tin, an alternative mechanism. The world, strangely, has not collapsed in England with all the reforms that have been introduced there in the past three or four years, to which Members of this House, the public and the legal profession in Ireland appear to be oblivious. A revolution is taking place an hour's flight away in the provision of legal services but what is interesting about that revolution is that it is still only a small proportion of practising qualified lawyers, in respect of a small proportion of the business mechanisms through which legal services are provided, who are using the new mechanisms. They are there, they are being used and they are providing opportunities, legal assistance and advice. However, many lawyers, because they are happy with the economics and the architecture of the way they have been doing business in decades past, have not changed. Nevertheless, I am providing the opportunity for change and evolution.

Finally, what is really interesting in this regard is that one Maeve Hosier has written a marvellous PhD thesis entitled "The Regulation of the Legal Profession in Ireland", which should be compulsory reading for us all. It sets out the history of the legal profession and how it evolved. It evolved continually until approximately 1870 and then went into paralysis and nothing has changed since. The only thing that has changed subsequently was as a result of the enactment of the Courts Act 1971, when the then Minister for Justice, Des O'Malley, conferred rights of audience on solicitors in all the superior courts. That is the only fundamental change effected since approximately 1870 to the manner in which the Irish legal profession operates. It is extraordinarily curious that people think the world stopped in 1870.

**Deputy Pádraig Mac Lochlainn:** I have one further brief question. I understand the Minister has indicated he will deal with the issue of limited liability partnerships on Report Stage. While we are on the subject of reform and modernisation, that is a matter of concern. I ask the Minister to indicate what he intends to do in that regard.

**Deputy Alan Shatter:** I intend to bring forward amendments on that matter. It is an issue that has arisen over the years. In other legal systems it is possible for a legal service to be provided through limited liability partnerships, but it requires ensuring that client protection is available, that commitments to maintain indemnity insurance are complied with and that, in the context of solicitors, for example, payments are made to the compensation fund. My Department is working on that particular area in the context of the required amendments and of course there will be every opportunity to discuss them on Report Stage.

**Chairman:** Section 71 is opposed by Deputy Mac Lochlainn. Does he wish to speak on the section or have members teased through it sufficiently?

**Deputy Pádraig Mac Lochlainn:** All I wish to say is that I reserve the right to table amendments later under section 71.

Question put and agreed to.

Amendment No. 154 not moved.

SECTION 72

**Deputy Niall Collins:** I move amendment No. 155:

In page 65, line 5, after "partnership." to insert the following:

"Nothing in this Act shall affect the right of a professional body to regulate the conduct of the members of that body and to make rules of membership for that purpose.".

Amendment put and declared lost.

Question proposed: "That section 72 stand part of the Bill."

**Chairman:** Section 72 is opposed by Deputy Mac Lochlainn.

**Deputy Pádraig Mac Lochlainn:** I reserve the right to table detailed amendments to section 72 on Report Stage.

Question put and agreed to.

Amendment No. 156 not moved.

SECTION 73

Question proposed: "That section 73 stand part of the Bill."

**Chairman:** Section 73 is opposed by Deputy Mac Lochlainn.

**Deputy Pádraig Mac Lochlainn:** Again, I reserve the right to table amendments to section 73 on Report Stage.

Question put and agreed to.

NEW SECTION

**Chairman:** Acceptance of amendment No. 157 involves the deletion of section 74 of the Bill. Amendments Nos. 157, 158 and 167 to 169, inclusive, are related and will be discussed together.

**Deputy Alan Shatter:** I move amendment No. 157:

**157.** In page 65, between lines 9 and 10, to insert the following:

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

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

On amendment No. 157, section 74 creates a basis for multidisciplinary practices by providing that a professional code shall not prevent a legal practitioner from providing legal services as a partner or an employee of a multidisciplinary practice, MDP. This section originally was contained in section 74 of the published Bill, which also contained a number of other provisions relating to the role of the managing legal practitioner in a multidisciplinary practice. The role of the managing legal practitioner has been developed further and now is set out in section 77. It should also be noted that sections 72 and 73 of the published Bill and the definitions in Part 7 remain unchanged.

Amendments Nos. 157, 158, 167 and 168 are part of a cluster of amendments that provide a

series of regulatory safeguards with regard to how legal services will be protected in MDPs and how consumers will be protected. Amendment No. 158 deals with notification of commencement and cessation. Under section 75, a multidisciplinary practice is obliged to notify the legal services regulatory authority, LSRA, of its intention to commence or cease the provision of legal services. This section is based on a similar provision in the legislation on MDPs in New South Wales and will ensure the LSRA must be informed of the existence and operation of all multidisciplinary practices in Ireland.

I will now turn to amendment No. 167 regarding the power of the authority to specify measures. Section 83 provides that the LSRA may issue directions to the managing legal practitioner or to the practice where it is satisfied that a provision of or regulations made under this Part are not being complied with. The section also provides that the multidisciplinary partnership, MDP, or the managing legal practitioner may appeal a direction of the authority to the High Court within 21 days. In such cases the High Court may confirm the direction of the authority or revoke or vary the direction.

With regard to amendment No. 168, application to High Court to suspend or cease providing legal services, section 84 provides that the authority may apply to the High Court for an order requiring an MDP or managing legal practitioner to comply with a direction. These powers escalate up to and including seeking a direction of the High Court that the MDP sees provision of legal services.

Amendment No. 169 to section 85 now provides that the Legal Services Regulatory Authority shall make regulations with regard to the operation and management of a legal partnership or a multidisciplinary practice. As previously mentioned, the authority would engage in a public consultation process under section 86 with regard to the regulation, monitoring and operation of legal partnerships and MDPs. This consultation will feed into the exercise of the regulatory power of the new authority regarding business structures.

Effectively, what we are dealing with is the important regulatory oversight provisions which I referenced in my earlier comments with regard to MDPs to ensure that as with other structures through which legal services are currently delivered such as solicitors' practices, sole traders or partnerships, the appropriate regulatory oversight and the appropriate regulations are ultimately put in place following on from a consultative process.

Amendment agreed to.

SECTION 74

Question proposed: "That section 74 be deleted."

**Chairman:** Deputy Mac Lochlainn is opposed to section 74 but as the section will not now stand part of the Bill, I am not sure how he can oppose something that has been changed.

**Deputy Alan Shatter:** We have a new section 74. We do this deliberately to confuse the Chairman.

**Chairman:** It is a bit convoluted.

**Deputy Pádraig Mac Lochlainn:** It is okay. I will make some additional points later but I indicate my right to speak on the new sections.

Question put and agreed to.

**Deputy Michael McNamara:** Can I speak to sections 74 and 75?

**Chairman:** We have just decided on section 74.

**Deputy Michael McNamara:** Can I speak to section 75 then?

**Chairman:** Yes, when we come to deal with the section.

NEW SECTION

**Deputy Alan Shatter:** I move amendment No. 158:

In page 65, between lines 34 and 35, to insert the following:

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

**75.** (1) A multi-disciplinary practice that intends to provide legal services—

(a) shall notify the Authority, in accordance with *subsection (3)*, of that fact, and

(b) shall not provide such services until it has complied with *paragraph (a)*.

(2) A multi-disciplinary practice that ceases providing legal services shall—

(a) notify the Authority, in accordance with *subsection (3)*, of that fact, and

(b) having complied with *paragraph (a)*, shall not provide legal services without providing the Authority with a further notification under *subsection (1)*.

(3) A notification under *subsection (1)* or *(2)* shall be in writing and in such form as may be prescribed.".

Amendment agreed to.

**Chairman:** Amendment No. 159 is out of order as it is outside the scope of the Bill.

Amendment No. 159 not moved.

SECTION 75

Question proposed: "That section 75 be deleted."

**Chairman:** Deputy Mac Lochlainn is opposed to section 75 but a new section is being inserted. Can we note-----

**Deputy Pádraig Mac Lochlainn:** It is similar to what I said earlier.

**Chairman:** I call Deputy McNamara to speak to the new section 75.

**Deputy Michael McNamara:** I am proposing an additional amendment. For an amendment to be discussed on Report Stage it must be notified on Committee Stage and this is the most appropriate time to do it. I am not certain that I want to do it but I seek clarification.

The Minister outlined the development of the legal professions in Ireland and the pace of change since 1870. It is probably not accurate to say there has been no change since 1870,

although any changes that have occurred have been glacial in their speed, but one of the few changes that occurred was an insertion in the code of conduct for barristers to the effect that no professional code shall operate to prevent a practising barrister from sharing any facility, premises or costs of practice, including capital or operating costs. That is to facilitate quasi chambers or at least barristers grouping together and sharing resources as it is more economical and, therefore, it would be hoped the economies of scale can be passed on to consumers. It is to the broad benefit of everybody concerned but this Bill envisages that barristers will remain in the Law Library, which would probably be the great majority, but equally there will be employed barristers - that is clearly provided for - and barristers in the service of the State.

I am not entirely clear, and clarification would be welcome, as to whether the Minister envisages that if this Bill is enacted there will be barristers who are in independent practice, namely, they are not working for the State. They may be in employment as waiters or whatever, as is the case with many young barristers, but they are not employed to provide legal services. They are independent barristers and therefore would receive instructions from solicitors or members of the public in non-contentious issues, which is a provision of the Bill, but who may operate in chambers. It is important to point out that chambers are not partnerships; they are a collective of sole practitioners. Is it the case that there will be sole practitioners operating in chambers who are not members of the Law Library? Is it envisaged in the Bill that all independent barristers will have to remain members of the Law Library? If it is envisaged that there will be a variety of methods by which people can practise or choose whether to be members of the Law Library, should an amendment be considered to the effect that no professional code shall operate to prevent a practising barrister from sharing any facility, premises or cost of practice, including any capital or operating costs, or to require a practising barrister to share any facility, premises or cost of practice, including capital or operating costs, with one or more other practising barristers?

**Deputy Alan Shatter:** I am happy to answer that. It is the intention of the Bill that a barrister can do exactly what the Deputy is proposing, namely, that there will be no obligation to be a member of the Law Library as such, that they can ply their trade as a barrister, that they can operate an office, alone or with others, as a barrister, that they would adhere to the professional principles, and that they will be on a roll of barristers maintained by the Legal Services Regulatory Authority. It would be desirable if there was only one roll being maintained as opposed to the necessity for two, but we seem to be in a space where there will be a need for two. I am happy to examine the legislation in the context of what Deputy McNamara is saying to ensure there is no issue or difficulty of any description but the specific provisions in the Bill dealing with the roll of practising barristers to be maintained by the Legal Services Regulatory Authority envisages exactly that.

**Deputy Michael McNamara:** There will be practising barristers who are employed by the Attorney General's office or other Departments and there will be practising barristers who are employed to provide legal services by banks or other corporations but is it the case that there will be independent barristers who are not members of the Law Library?

**Deputy Alan Shatter:** The answer is "Yes".

**Deputy Michael McNamara:** I thank the Minister.

Question put and agreed to.

**Chairman:** We are due to take a break at 11.15 a.m. As it is now 11.10 a.m., is it agreed that we will introduce the next amendment and conclude the discussion at 11.15 a.m.? Agreed.

Amendment No. 160 is in the name of the Minister. Amendments Nos. 160 to 166, inclusive, are related and may be discussed together.

**Deputy Alan Shatter:** I move amendment No. 160:

In page 67, between lines 22 and 23 but in Part 7, to insert the following:

**"Partners in multi-disciplinary practice**

**76.** (1) Each partner in a multi-disciplinary practice shall be jointly and severally liable in respect of his or her acts or omissions, those of the other partners and those of the employees of the partnership.

(2) A partner in a multi-disciplinary practice may share with another partner in that multidisciplinary practice fees or other income arising from the provision of services by the practice, regardless of whether—

(a) either or both partners are legal practitioners, or

(b) the services concerned are legal services or services other than legal services.

(3) Subject to *subsection (4)*, a person may be a partner in a multi-disciplinary practice notwithstanding that he or she does not provide legal services or services other than legal services.

(4) The following shall not be a partner in a multi-disciplinary practice:

(a) a person in respect of whom the High Court has made an order under *section 63(3)(b)(iii)* that he or she be prohibited from providing legal services otherwise than as an employee;

(b) for the period specified in the order, a person in respect of whom the High Court has made an order under *section 63(3)(b)(iv)* that he or she be suspended from practice as a legal practitioner unless, in the case of a person who at the time the order was made was a partner in a multi-disciplinary practice, the order expressly permits him or her to continue to be a partner of that multi-disciplinary practice;

(c) a person in respect of whom the High Court has made an order under *subparagraph (v)* or *(vi)* of *section 63(3)(b)* that his or her name be struck off the roll of practising barristers or the roll of solicitors.".

Government amendments Nos. 160 to 166, inclusive, form another cluster of amendments which provide a series of regulatory safeguards with regard to how legal services will be protected in MDPs, how consumers will be protected.

Amendment No. 160 relates to partners in multidisciplinary practices. Section 76(1) provides that each partner in an MDP is jointly and severally liable in respect of his or her acts or omissions, those of the other partners and those of the employees of the partnership. Section 76(2) provides that a partner of a multidisciplinary practice may share with another partner in the MDP fees or income arising from the provision of services by the practice.

Section 76(3) is an important subsection which provides that a person may be a partner in a multidisciplinary practice notwithstanding that he or she does not provide legal services or services other than legal services. Essentially, this permits a partner in an MDP to provide investment to the practice. Section 76(4) provides for the prohibition of certain legal practitioners from being a partner in an MDP, for example, where he or she is subject to an order of the High Court, suspension or striking off.

I am giving ongoing consideration to matters such as who can be a partner in an MDP, how best to provide for possible conflicts of interest and the delineation of who can provide legal services or be designated as a managing legal practitioner in an MDP, and I expect to return to these matters further Report Stage.

With reference to amendment No. 161, managing legal practitioner, many of the provisions contained in section 77 were previously contained in section 74 of the Bill as published. Section 77 provides that an MDP must have a managing legal practitioner who is responsible for the management and supervision of the provision of legal services by the practice. The managing legal practitioner is given specific statutory obligations to ensure that the multidisciplinary practice is managed to ensure that the provision of legal services by the practice complies with the Act and the stated professional principles. These obligations relate to the professional independence and integrity of legal practitioners acting in the best interests of clients, maintaining proper standards of work, compliance with duties owed to the court and the confidentiality of client affairs.

We have further developed the role of the managing legal practitioner based on the New South Wales legislative model. Section 77 will also now provide that an MDP must inform the authority where it does not have a managing legal practitioner in place for seven days or longer. The MDP cannot provide legal services until a managing legal practitioner is in place. Under section 77(4), the managing legal practitioner will be required, where he or she has reason to believe there is non-compliance, to take necessary steps to ensure compliance and to remedy any defaults.

I would point out that the Legal Service Regulatory Authority will not be regulating the activities of participants in an MDP who are providing services other than legal services. Where accountants, architects or other providers operate in an MDP, they will be subject to their own regulatory or professional supervisory bodies. Of course, lawyers in these entities will also be governed by the enhanced conduct, disciplinary and legal cost provisions of the Bill.

With reference to amendment No. 162, section 78 provides that nothing in this Part prevents an act or omission by a legal practitioner who is a partner in or an employee of a multidisciplinary practice that is in contravention of this Part from being found to amount to misconduct under section 45.

Amendment No. 163 deals with the operation of multidisciplinary practice. Section 79 requires the MDP to have written procedures binding on all partners and employees within the practice to ensure compliance with the requirements of the Act and adherence to the professional principles set out in section 9(5) of the Bill. This includes an obligation on all to comply with the directions of the managing legal practitioner and any procedures that are set out in regulations governing the operation and management of the MDP.

Returning to my conversation with Deputy Mac Lochlainn at the start of this, these are the crucial and important provisions to ensure proper regulatory oversight and to ensure that the

concerns that he raised with regard to MDPs are appropriately and comprehensively addressed.

**Chairman:** I will call a halt there. Is it agreed that we break for 15 minutes? Agreed. I would ask everyone to be back on time at 11.30 a.m. I will be starting regardless.

*Sitting suspended at 11.15 a.m. and resumed at 11.35 a.m.*

**Chairman:** We will resume with the Minister where he left off.

**Deputy Alan Shatter:** I thank the Chairman and I am sorry for delaying everyone. I shall move on to the prohibition on inducement, which is section 79(3) in the amendments that we are discussing. Section 79(3) has a requirement prohibiting anyone from inducing or causing a lawyer in a multi-disciplinary practice from acting in a non-compliant manner. Section 79 (4) requires that accounting, receipts and fees records for legal services and other services be kept separate.

Next we have a non-disclosure provision. Section 79(5) has a non-disclosure provision where a lawyer cannot disclose the affairs of a client to another person in an MDP, without the express consent of the client concerned. I wish to say something about the matter. I think I am right to attributing this to at least one of the submissions from the Law Society that logically pointed out that if one is running an MDP as a one-stop-shop then clearly the person who is the lawyer would need to be able to communicate with other professionals in the MDP with regard to the issue under discussion.

The intent of the section, as drafted, is clear. One may go into an MDP and one may only want the services of the lawyer. One may not want the services of the other professionals, one will want to be able to consult that lawyer and one may not want one's business discussed with other professionals. On the other hand, if one is using what I describe as the one-stop-shop and one expect one's lawyer and accountant in the MDP to consult together there will be a simple signing of the written consent and those consultations would take place. It allows a lawyer operating with an MDP to provide traditional legal services while other professionals they are working with would not have access to confidential information. Where one is using it as the one-stop-shop, because one is dealing with a number of professionals, that would be explained, and one would sign a consent and there would be no question of information being dealt with within the firm in a manner that the client was unhappy with.

We will have a further look at the way this is framed. In the context of concerns that people have expressed about MDPs and how they might operate, in a sense we are being quite conservative in the manner in which we are dealing with the matter to ensure that all of the multiple protections are in place and that people are fully informed, in the context of their consulting with the practice and that, I suppose, a formal consent is provided to the sharing of information with regard to an individual's circumstances, within the practice, between a legal professional and others operating in other areas to which the practice is engaged. As I say, we are working through this but that is the intent of the amendment, as prescribed.

I shall move on to the issue of inspection. The entitlement of a person to inspect an MDP or obtain information from a partner or employee in an MDP regarding the provision of services other than legal services under an enactment or rule of law is upheld under section 79(6). For example, a regulator, a professional body or a public body may have a right to inspect the premises in which a particular person or member of a particular profession carries out their business. The Legal Service Regulator Authority will have its own, separate powers of inspection under

the Bill to which I shall be returning on Report Stage.

I shall now turn to Government amendments Nos. 164, 165 and 166 that deal with the letter of engagement, professional indemnity insurance and the saver for compensation fund. Section 80 is again based on a provision in the legislation on MDPs in New South Wales. I should point out, in referencing the New South Wales legislation, that the enormous benefit is that MDPs have been operating there for some years. They have teased out initial teething problems and have addressed matters by way of legislation in a manner that is practical to ensure that MDPs can fully and properly work and that there is appropriate oversight. There is a very useful touchstone of expertise with regard to the workings of MDPs and when I visited Australia some time ago I had very detailed conversations in that regard with the relevant authorities there.

Section 80 provides for client protection at the point of engagement through the provision of a letter of engagement which specifies what services are being provided, including which of the services being provided by a legal practitioner are legal or non-legal. Again, I am conscious that there are law firms which provide services that could be regarded as legal services or as financial services and there may be a grey area in that context. However, if one has a detailed letter of engagement detailing services then it is quite clear what are regarded as legal services within the MDP and what are regarded as non-legal services. The letter of engagement also has to specify which of the services are to be covered by the compensation fund. I know that the Law Society was concerned that a myriad of inappropriate claims might be made against the compensation fund in circumstances in which it was alleged that something was a legal service when it was not. All of these matters can be adequately and properly dealt with through the regulatory structure. The legal services regulatory authority itself, in the context of regulations it will inevitably make following the consultation process, may address these issues further. The letter of engagement serves as an indicator of our awareness of this issue and of the need for clarity and agreement at the starting point for both client and legal practitioner - that is, agreement between a client and a solicitor or a client and the MDP as to what services are legal and what services are to be otherwise designated.

Section 81 provides that professional indemnity insurance must be held by an MDP to cover all of its services. In a saving provision, section 82 provides that nothing in this part of the Bill shall be construed as extending the obligations of the Law Society in relation to dishonesty arising in an MDP on the part of a legal practitioner who is not a practising solicitor.

In concluding my introduction to the proposed amendments to part 7 of the Bill, I am happy to acknowledge the views and concerns that have been conveyed to me by the Law Society on an ongoing basis with regard to certain of its provisions. These and other aspects of the Bill in relation to which views have been similarly received will be taken into consideration as part of the preparatory process for the Bill's forthcoming Report Stage. However, the provision being made in this part of the Bill for the regulated introduction of legal partnerships and multidisciplinary practices remain fundamental to the Bill's delivery of alternative legal business structures in support of greater competition in the provision of legal services in the State to the benefit of legal practitioners and the consumers of their services alike. Some have made submissions suggesting that we should remove from the Bill the provisions concerning legal partnerships - for example, between barristers and barristers or MDPs - but if we were to do that, we would be fundamentally changing the Bill in the area of seeking to ensure a multiplicity of optional business structures through which legal services can be provided.

**Deputy Pádraig Mac Lochlainn:** The Minister has acknowledged the submission from the Law Society and some of its recommendations, to which I will return in a moment. First, I

wish to raise the issue of the role of practising barristers.

**Chairman:** To which amendment is the Deputy speaking?

**Deputy Pádraig Mac Lochlainn:** It is proposed to change the existing section. Perhaps-----

**Deputy Alan Shatter:** It might be better to leave that discussion until we reach the next-----

**Deputy Pádraig Mac Lochlainn:** Yes, perhaps under amendment No. 172.

**Chairman:** We are on amendments No. 160 to 166, inclusive, all of which propose new sections.

**Deputy Pádraig Mac Lochlainn:** I just want to clarify something with the Minister with regard to amendment No. 172. I see now that it deals with section 76, so I will wait until then to deal with the barrister issue. I will now deal with the concerns of the Law Society.

**Chairman:** On which amendment is the Deputy speaking now?

**Deputy Pádraig Mac Lochlainn:** I am dealing now with the amendments to which the Minister has just referred - that is, Nos. 160 to 166. The Law Society submission expresses concerns about the provision whereby the managing legal practitioner is responsible for the management and supervision of the provision of legal services by the MDP. The society argues that there are no safeguards in place. It is also concerned about the scope of the definition as well as the complete absence of controls with regard to who can provide legal services within the MDP. In terms of the recommendations-----

**Chairman:** Is the Deputy now speaking on amendment No. 161?

**Deputy Pádraig Mac Lochlainn:** I am speaking on amendments Nos. 160 to 166, the amendments which the Minister has just put forward.

**Chairman:** I know, but the Deputy has just mentioned the managing legal practitioner, which is dealt with in amendment No. 161. I am just trying to be clear about which amendments we are actually discussing.

**Deputy Pádraig Mac Lochlainn:** Yes; I am speaking on the proposed new section 76. In fairness, the Minister gave us the proposed amendments early, which was very helpful in terms of being able to get submissions on his amendments. I must thank the Minister for giving us the amendments ahead of time on this occasion.

**Deputy Alan Shatter:** I am pleased the Deputy finds me helpful.

**Deputy Pádraig Mac Lochlainn:** It makes our job easier.

**Deputy Alan Shatter:** I enjoy giving the Deputy a greater opportunity to beat me up. It is part of my personal masochistic tendencies.

**Deputy Pádraig Mac Lochlainn:** In fairness to the Minister, he did acknowledge the submissions and the concerns expressed therein. The Law Society recommended that a requirement be introduced for non-legal-practitioner partners to be members of regulated professions such as accountants, actuaries, architects and so forth. This would fit the ethos of what an MDP is supposed to be - namely, a multidisciplinary practice, rather than a vehicle for unqualified persons to provide legal services.

The next recommendation relates to the proposed new section 76. The Law Society recommends that bodies corporate be prohibited from acting as non-legal-practitioner partners in MDPs. It also recommends that the provisions of section 76(4) as proposed by the Minister's amendments be extended to cover all legal practitioners restricted, suspended or struck off before the commencement of the Act, which is an important point. Regarding the proposed section 77, it is the recommendation of the Law Society that the regulations and requirements of MDPs with regard to client moneys and client accounts be no less rigorous than those imposed on solicitor firms. Regarding the proposed new section 80 dealing with the letter of engagement, the Law Society recommends that clear definitions of legal services and non-legal services with regard to MDPs be put in place. The society notes that in both sections 80 and 82, the relevant section in the Solicitors Acts regarding compensation for loss due the dishonesty of a solicitor should be section 21 of the Solicitors (Amendment) Act 1960 as substituted by section 29 of the Solicitors (Amendment) Act 1994, as amended by section 16 of the Solicitors (Amendment) Act 2002. I ask the Minister to respond to those issues.

**Deputy Alan Shatter:** I am looking at exactly the same document as the one from which Deputy Mac Lochlainn has just read. I received it a few days ago and went through it personally, as did my officials. I referenced it earlier as a constructive and helpful document in the continuing development of the Bill. Indeed, I addressed some of the issues the Deputy has just mentioned. I do not want to delay the committee by going into each of the issues, but suffice to say it is a very helpful and constructive submission and we are looking at it carefully. There are some issues which give rise to concern where there is no need for concern. There is certainly some additional tidying up that we can do on the Bill. I very much welcome the fact that we received the submission. We will constructively engage with it, to the extent of ensuring the objectives of the legislation are fully achieved and that we have what is the right and appropriate regulatory structure in place in this area with no room for ambiguity or concerns. I have no doubt we will return to the issues on Report Stage.

I could do what the Deputy is inviting me to do because I have extensive notes on the document, but it would delay the meeting for the next hour if we went through each of them. It is a useful exercise and I appreciate the Deputy putting these matters on the record. We will come back to them on Report Stage.

**Deputy Pádraig Mac Lochlainn:** It is very important for us, in particular in large complex Bills on which we do not have a range of expertise, that we get amendments in advance, as we have done on this occasion, because it helps the stakeholders to advise us and advise the Minister. In fairness, this is a submission to the Minister of which we are being made aware. It is good for the process of making a Bill stronger.

**Deputy Niall Collins:** Will the Minister give us his opinion on the provision of non-legal services? As outlined in the submission, is he open to restricting the range of non-legal services which might be provided in future under the multidisciplinary practices?

**Deputy Alan Shatter:** That is covered in the Law Society's amendment 2.29. It is an interesting issue on which I reflected following receipt of the recommendations. It seems on the surface an attractive issue but it might not be entirely so.

I will refer to my area of legal practice to which I do not anticipate I will return, so I have no particular vested interest in the outcome of the issue in the context of the legislation. If one takes a family law practice, I could well see a solicitor's firm practising in family law, interested in dispute resolution dealing with people with very difficult parentage disputes over children

with regard to custody and access issues or relationship issues, deciding that it would be a good idea for someone to create a family law practice in which one had two well-qualified family counsellors, a family mediator who might help mediate disputes in order that people would not have to go to court, and a number of lawyers. The practice might equally decide to bring in a pension expert to provide advice.

I am speculating. In the context of people dealing with family counselling, I am not sure there is an overall professional organisation that provides a disciplinary oversight of family counsellors. One of the issues is whether an individual is properly qualified and experienced. There is not a qualification, as one would have in the accountancy profession. I have some concerns about the idea that one would restrict it in the manner suggested. I can see the attraction of the approach in the context of disciplinary matters but I must be careful as we think this through that we do not create other difficulties.

In the mediation area, Members might be familiar with the heads of the mediation Bill we published. Further work is being done on that. There is no overall national body, for example, that is engaged in regulatory oversight of mediators. There are different types of commercial mediation groups which teach mediation to people from different walks of life. I would have thought, for example, that if one takes a commercial multidisciplinary lawyers' practice, one would have a number of lawyers who have become either arbitrators or mediators but one also has non-lawyers who become arbitrators and mediators. The Bar has an organisation of joint barristers and arbitrators to provide alternative dispute resolution measures. One could ask whether in the absence of an overarching regulatory body for mediators one would exclude a mediator from being part of a multidisciplinary practice.

The situation is perhaps more complex than the Law Society perceived it. I can well understand why it made that proposal in a regulatory framework context. In some areas it is important that one has that oversight. We are reflecting on the issue. Whether it is the family law area or the commercial law area I do not want to exclude the possibility of engagement by other professionals whose skills are complementary to the service provided and who could provide those skills to the benefit of the public within an overall one-stop shop framework. It seems there are well-qualified, well-trained individuals working in the community who could be excluded from being part of a multidisciplinary practice on the basis of what the Law Society has proposed.

**Chairman:** We did some work on the heads of the mediation Bill last year.

Amendment agreed to.

**Deputy Alan Shatter:** I move amendment No. 161:

In page 67, between lines 22 and 23 but in Part 7, to insert the following:

**"Managing legal practitioner**

**77.** (1) A multi-disciplinary practice shall have at least one legal practitioner (referred to in this Part as the "managing legal practitioner") who shall be a partner in or an employee of the multi-disciplinary practice, who shall be responsible for the management and supervision of the provision of legal services by the practice.

(2) Where a multi-disciplinary practice fails to be in compliance with *subsection (1)* for a period of 7 days or longer, it shall—

(a) notify the Authority of that fact, and

(b) cease providing legal services until a managing legal practitioner is appointed under *subsection (1)*.

(3) The managing legal practitioner shall ensure that the multi-disciplinary practice is managed so as to ensure the provision of legal services by the practice—

(a) is in accordance with the requirements of this Act and regulations made under it and any other applicable enactment or rule of law, and

(b) adheres to the professional principles specified in *section 9(5)*.

(4) Where a managing legal practitioner has reason to believe that the multi-disciplinary practice is providing, or is likely to provide, legal services in a manner that does not comply with *paragraph (a)* or *(b)* of *subsection (3)*, or if it would be reasonable for the managing legal practitioner to so believe, he or she shall take all reasonable action available to him or her to—

(a) ensure that those paragraphs are complied with, and

(b) remedy any defaults in compliance with those paragraphs.".

Amendment agreed to.

**Deputy Alan Shatter:** I move amendment No. 162:

In page 67, between lines 22 and 23 but in Part 7, to insert the following:

**"Obligations of legal practitioners in multi-disciplinary practice**

**78.** Nothing in this Part—

(a) shall be construed as preventing an act or omission on the part of a legal practitioner who is a partner in or an employee of a multi-disciplinary practice that is in contravention of this Part also being found to amount to misconduct under *section 45*, or

(b) derogates from the obligations, liabilities or privileges of such a legal practitioner under this Act or any other enactment or rule of law.".

Amendment agreed to.

**Deputy Alan Shatter:** I move amendment No. 163:

In page 67, between lines 22 and 23 but in Part 7, to insert the following:

**"Operation of multi-disciplinary practice**

**79**. (1) A multi-disciplinary practice shall have written procedures in place, to which all partners and employees of the practice are subject, that—

(a) ensure that legal services are provided by the practice in a manner that complies with *paragraphs (a)* and *(b)* of *section 77(3)*, and

(b) facilitate compliance by the managing legal practitioner with his or her obliga-

tions under this Act.

(2) Without prejudice to the generality of *subsection (1)*, procedures referred to in that subsection shall—

(a) provide that partners and employees of the multi-disciplinary practice concerned are obliged to comply with—

(i) such directions of the managing legal practitioner as he or she considers necessary to issue in order to comply with his or her obligations under this Act, and

(ii) *subsection (3)*,

and

(b) include such procedures as may be specified in regulations under *section 85*.

(3) A person shall not cause or induce a legal practitioner who is a partner in or an employee of a multi-disciplinary practice to provide legal services in a manner that does not comply with *paragraphs (a)* or *(b)* of *section 77(3)*.

(4) The managing legal practitioner of a multi-disciplinary practice shall ensure that—

(a) separate accounting records are maintained by the multi-disciplinary practice in respect of—

(i) the legal services provided by it, and

(ii) the services other than legal services provided by it,

(b) moneys received, held, controlled or paid by a legal practitioner who is a partner in, or an employee of, the multi-disciplinary practice, arising from the provision by the practice of legal services, are held in a separate bank account to moneys otherwise received, held or controlled by the practice, and

(c) fees or other income arising from the provision by the practice of legal services are held in a separate bank account to fees or other income arising from the provision by the practice of services other than legal services.

(5) A legal practitioner who is a partner in or employee of a multi-disciplinary practice shall not, in the provision by him or her of legal services to a client, disclose the affairs of the client to a partner or employee of the practice who is not also engaged in the provision of legal services to that client, without the express consent of the client concerned.

(6) Subject to *subsection (7)*, nothing in this Part shall be construed as affecting any entitlement of a person under an enactment or rule of law to inspect a multi-disciplinary practice or to obtain information from a partner in or employee of such a practice in relation to the provision by the practice of services other than legal services.

(7) *Subsection (6)* shall not be construed as permitting a person referred to in that subsection to obtain information in the possession of a legal practitioner who is a partner in or employee of a multi-disciplinary practice where that information is the subject of legal privilege.".

Amendment agreed to.

**Deputy Alan Shatter:** I move amendment No. 164:

In page 67, between lines 22 and 23 but in Part 7, to insert the following:

**"Letter of engagement**

**80**. A legal practitioner who is a partner in or an employee of a multi-disciplinary practice shall not provide legal services to a client of the multi-disciplinary practice unless he or she provides the client with a notice in writing which shall—

(a) specify the services to be provided to the client by the multi-disciplinary practice,

(b) specify which of the services referred to in *paragraph (a)* are to be provided by a legal practitioner,

(c) specify which of the services referred to in *paragraph (a)* are services other than legal services,

(d) specify which (if any) of the services referred to in *paragraph (a)* are services to which section 21 (as amended by section 29 of the Solicitors (Amendment) Act 1994) of the Solicitors (Amendment) Act 1960 applies, and

(e) provide such additional information as may be prescribed.".

Amendment agreed to.

**Deputy Alan Shatter:** I move amendment No. 165:

In page 67, between lines 22 and 23 but in Part 7, to insert the following:

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

**81.** (1) A multi-disciplinary practice shall not provide services unless there is in force, at the time of the provision of such services, a policy of professional indemnity insurance which adequately covers the multi-disciplinary practice in the provision of those services.

(2) This section is without prejudice to any obligation of a multi-disciplinary practice under *section 43* or any regulations made under it.

(3) For the purpose of *subsection (1)*, a policy of professional indemnity insurance referred to in that subsection shall not adequately cover a multi-disciplinary practice in the provision of legal services unless it complies with *section 43* and any applicable regulations made under it.

(4) In this section, "professional indemnity insurance" means a policy of indemnity insurance against losses arising from claims in respect of any description of civil liability incurred—

(a) by a multi-disciplinary practice arising from the provision of services, or

(b) by a partner, employee or agent or former partner, employee or agent of the multi-disciplinary practice arising from such provision.".

Amendment agreed to.

**Deputy Alan Shatter:** I move amendment No. 166:

In page 67, between lines 22 and 23 but in Part 7, to insert the following:

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

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

Amendment agreed to.

**Deputy Alan Shatter:** I move amendment No. 167:

In page 67, between lines 22 and 23 but in Part 7, to insert the following:

**"Power of Authority to specify measures**

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

(2) The Authority shall not issue a direction under this section unless it considers it to be necessary to ensure compliance by the multi-disciplinary practice or managing legal practitioner, as the case may be, with its or, as the case may be, his or her obligations under this Part or regulations made under it.

(3) A direction under this section may, where the multi-disciplinary practice concerned has been found to be in breach of *section 77(1)*, direct the practice to appoint, within 7 days of the date on which the notice is issued, a managing legal practitioner.

(4) Where the Authority reasonably believes that the multi-disciplinary practice or managing legal practitioner concerned is in breach of any other provision of this Part or regulations made under it, the Authority—

(a) shall send the multi-disciplinary practice or managing legal practitioner, as the case may be, a notice in writing—

(i) setting out its belief and the reasons for it,

(ii) setting out the measures it proposes to direct the multi-disciplinary practice or, as the case may be, the managing legal practitioner to take in order to comply with its or, as the case may be, his or her, obligation under the provision concerned,

(iii) inviting the multi-disciplinary practice or managing legal practitioner, as the

case may be, to make within such reasonable period as the Authority may specify in the notice, observations on the finding or proposal, or both,

and

(b) may, having considered any observations made by the multi-disciplinary practice or managing legal practitioner under *paragraph (a)(iii)*, issue a direction to the multi-disciplinary practice or managing legal practitioner, directing it, or him or her, as the case may be, to take such measures, within such period as may be specified in the direction, as the Authority considers necessary to ensure compliance by the multi-disciplinary practice or managing legal practitioner, as the case may be, with the provision concerned.

(5) A multi-disciplinary practice or managing legal practitioner may, within 21 days of the issuing to it of a direction under this section, appeal that direction to the High Court.

(6) An appeal under *subsection (5)* shall be on notice to the Authority.

(7) The High Court, on hearing an appeal under this section, may—

(a) confirm the direction concerned, or

(b) where it considers that the direction is oppressive, unreasonable or unnecessary, revoke or vary the direction.".

Amendment agreed to.

**Deputy Alan Shatter:** I move amendment No. 168:

In page 67, between lines 22 and 23 but in Part 7, to insert the following:

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

**84.** (1) Where a multi-disciplinary practice or, as the case may be, a managing legal practitioner, fails to comply with a notice under *section 83*, the Authority may apply to the High Court for an order—

(a) requiring the multi-disciplinary practice or managing legal practitioner to comply with the direction,

(b) suspending the provision by the multi-disciplinary practice concerned of legal services, or

(c) directing the multi-disciplinary practice to cease providing legal services.

(2) An application under *subsection (1)* shall be on notice to the multi-disciplinary practice and managing legal practitioner concerned.

(3) The High Court, on hearing an application for an order referred to in *subsection (1)(b)*, may make an order that the multi-disciplinary practice be suspended from providing legal services for a specified period and subject to such terms and conditions as the Court considers appropriate.

(4) The High Court, on hearing an application for an order referred to in *subsection (1)(c)*, may make an order—

(a) that the multi-disciplinary practice be suspended from providing legal services for a specified period and subject to such terms and conditions as the Court considers appropriate, or

(b) that the multi-disciplinary practice cease providing legal services.

(5) The jurisdiction vested in the High Court under this section shall be exercised by the President of the High Court or, if and whenever the President of the High Court so directs, by an ordinary judge of the High Court for the time being assigned in that behalf by the President of the High Court.

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

(7) Where an order is made by the High Court under *subsection (3)* or *(4)*, the Authority shall as soon as practicable thereafter cause a notice stating the effect of the operative part of the order to be published in *Iris Oifigiúil* and shall also cause the notice to be published in such other manner as the Authority may consider appropriate.".

Amendment agreed to.

**Deputy Alan Shatter:** I move amendment No. 169:

In page 67, between lines 22 and 23 but in Part 7, to insert the following:

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

**85.** (1) The Authority shall make regulations in relation to the operation and management of a legal partnership or a multi-disciplinary practice.

(2) Without prejudice to the generality of *subsection (1)*, regulations in relation to the operation and management of a multi-disciplinary practice may—

(a) specify procedures that are to be included in the written procedures referred to in *section 79(1)*, and

(b) provide for—

(i) the type or types of bank accounts that may be opened and kept by a multidisciplinary practice, and the opening and keeping of such accounts;

(ii) the accounting records to be maintained by a legal practitioner who is a partner in or an employee of a multi-disciplinary practice arising from the provision by him of legal services, including the minimum period or periods for which accounting records shall be retained by a legal practitioner during the period of, and following the conclusion of, the provision of legal services;

(iii) the keeping by a legal practitioner referred to in *subparagraph (ii)* of accounting records containing particulars of and information as to moneys received, held, controlled or paid by him arising from the provision by him or her of legal services, for or on account of a client or any other person or himself.

(3) In making regulations under this Part, the Authority shall have regard to the objectives referred to in *section 9(4)*.".

Amendment agreed to.

**Deputy Alan Shatter:** I move amendment No. 170:

In page 67, between lines 22 and 23 but in Part 7, to insert the following:

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

**86.** (1) The Authority—

(a) immediately following its establishment, shall, and

(b) periodically thereafter, may,

engage in a public consultation process in relation to the regulation, monitoring and operation of legal partnerships and multi-disciplinary practices.

(2) The Authority shall conduct its initial consultation referred to in *subsection (1)(a)* and report to the Minister within a period of 6 months following its establishment.

(3) Following any consultation conducted under *subsection (1)*, and having regard to any submissions duly received, the Authority shall prepare a report to the Minister setting out any recommendations in relation to the matters specified in *subsection (1)*.

(4) The Minister shall cause copies of any such report to be laid before each House of the Oireachtas within 30 days of its receipt by him or her.".

Amendment agreed to.

**Deputy Alan Shatter:** I move amendment No. 171:

In page 67, between lines 22 and 23 but in Part 7, to insert the following:

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

**87.** (1) The Authority shall engage in a public consultation process on—

(a) the extent, if any, to which the restriction on legal practitioners, other than solicitors, holding the moneys of clients, as provided under *section 33*, should be retained,

(b) the retention or removal of restrictions on a barrister receiving instructions in a contentious matter, directly from a person who is not a solicitor, and the reforms, whether administrative, legislative, or to existing professional codes, that are required to be made in the event that the restrictions are retained or, as the case may be, removed, and

(c) the circumstances and the manner in which a barrister may hold clients' monies.

(2) The public consultation process referred to in *subsection (1)* shall be carried out in the following manner:

(a) the Authority shall invite members of the public to make submissions, within a

specified time limit, on the matters referred to in *subsection (1)*, where such invitation is made by means of a notice to that effect published in a newspaper circulating within the State and on the internet;

(b) the Authority may, where it considers it appropriate to do so, consult with such bodies, including professional bodies and persons, in relation to the matters referred to in *subsection (1)*;

(c) the Authority shall, immediately following the expiry of the time limit referred to in *paragraph (a)*, and having regard to the submissions duly received under that paragraph and any consultation held under *paragraph (b)*, prepare a report to the Minister setting out its recommendations in relation to the matters specified in *subsection (1)*;

(d) the report referred to in *paragraph (c)* shall be completed and submitted to the Minister within 12 months of the establishment day.

(3) (a) At any time before the completion of the report referred to in *subsection (2)(c)*, the Authority shall, on the request of the Minister, and may, on its own initiative, prepare an interim report for the Minister.

(b) An interim report referred to in *paragraph (a)* may refer to the general progress of the public consultation process and shall refer—

(i) where the Minister has requested the interim report, to such matters as the Minister has requested in the report, or

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

and the interim report may contain recommendations in respect of such matters.

(4) The Minister shall cause copies of the report referred to in *subsection (2)(c)* or, as the case may be, *subsection (3)*, to be laid before each House of the Oireachtas within 30 days of its receipt by him or her.".

Amendment agreed to.

**Chairman:** Amendments Nos. 172 to 176, inclusive, are related and will be discussed together by agreement.

**Deputy Alan Shatter:** I move amendment No. 172:

In page 67, between lines 22 and 23, to insert the following:

"PART 8

OBLIGATIONS OF PRACTISING BARRISTERS

**Roll of practising barristers**

**76.** (1) The Authority shall—

(a) set up and maintain a roll of practising barristers (in this Part referred to as the "roll"), and

(b) within six months of the commencement date, enter on the roll the name of, and additional information in respect of, every person who is, on the commencement date, a practising barrister.

(2) The Authority shall make a copy of the roll available at its principal office during normal working hours to members of the public for inspection free of charge.

(3) If the roll is kept in an electronic or other non-written form, the Authority may comply with its obligation under *subsection (2)* by making it publicly available on its website.

(4) An entry on the roll shall, in respect of each practising barrister—

(a) contain such information as is required by this Part,

(b) contain such additional information as may be prescribed under *subsection (5)*,

(c) specify whether he or she is a member of the Law Library, and

(d) specify whether he or she is in the full time service of the State.

(5) The Authority may, having regard to the objectives specified in *section 9(4)*, prescribe additional information in relation to the professional qualifications and areas of expertise of the practising barrister concerned that is to be contained in an entry on the roll.

(6) In this Part—

"additional information", in relation to a practising barrister, means the additional information relating to him or her that is prescribed under subsection (5);

"commencement date" means the date on which this section comes into operation.".

Part 8 makes the legal services regulatory authority, and not the Bar Council, responsible for the keeping of the roll of practising barristers. This is a policy decision based on the fact that the Bar Council does not wish to be held responsible for maintaining a roll or collecting a levy payment from barristers who do not come under its aegis as members of the Law Library. This Bill will comprehend suitably qualified persons who have been duly called to the Bar and who practise as barristers outside the so-called traditional practise model of membership of the Law Library. Non-Law Library members such as in-house counsel, partners in a legal firm or a multidisciplinary practice and other sole practitioners will, therefore, come under the roll of practising barristers. I wish to recall, as previously indicated, that I will be returning on Report Stage to the interpretation provisions in section 2 as it relates to important terms such as those of "practising barrister" and "legal services" in order to reflect the Bill's development, including during this current Committee Stage consideration process.

I would now like to take the committee as briefly as possible through the Part as presented to the committee today. Section 76, inserted by amendment No.172, provides that the new legal services regulation authority will set up and maintain a publicly accessible roll of practising barristers. Every suitably qualified person who intends to so practice will be required to apply to the authority to have their name entered on the roll in accordance with section 77.

Section 78, based on section 79 in the published Bill, deals with the variation of entries on the roll. The section provides for the removal of a person's name from the roll for a variety of serious disciplinary related breaches, or where requested by the person, or upon the death of the person. The section is essentially *pro forma* and has only been amended to reflect the fact

that the authority and not the Bar Council will be in charge of the roll. I will also have to make a small correction to this section on Report Stage to remove the reference to section 38(10), which was deleted at last month's committee sitting and so should be referenced no longer. New sections 79 and 80 provide that unqualified persons and persons whose names are not properly on the roll of practising barristers will face sanction if they attempt or pretend to practise as barristers. This ensures that equivalent provisions to those already in place for solicitors under the Solicitors Acts are also in place for barristers.

**Deputy Pádraig Mac Lochlainn:** This presents us with a bit of a conundrum. The roll of practising barrister is now being taken under the aegis of the new regulatory authority which creates a difficulty in that the Bill acknowledges the existence of the Law Library and the Bar Council and therefore, the logic must follow that the Bar Council should continue to be entitled to insist that its members operate within the confines of a code of conduct that prohibits practice with a legal partnership employment or MDP structure. How do we deal with that conundrum?

**Deputy Alan Shatter:** Very simply. This brings us back to *nonemus mutare*, or we will not be changed. That is the special plea from the Bar, saying "do nothing, change nothing, do not allow members of the barristers profession to operate as partners, do not allow them to open chambers, do not allow them to share fees, do not allow for any change of any description because this is our motto: *nonemus mutare*". It is a special plea from the Bar to remove the provisions already in the Bill that seek to stop the continuation of the restrictive practices which are currently incorporated within the Bar's code of practice.

**Deputy Pádraig Mac Lochlainn:** With respect, what can the Bar Council, whose existence is acknowledged by this Bill, as well as that of the Law Library, do? It has a code of practice in place. How do we deal with that conundrum? I ask the Minister to respond to that point.

**Deputy Alan Shatter:** I presume it will exist. In my early college years when I did not know what it was I wanted to do, I studied philosophy and I always found Descartes extremely interesting. One of the great Cartesian principles, in wondering what the world is really about is, "I think, therefore I am". I think the Bar Council exists, therefore it will be. It will have its code, which will have to be in compliance with the legislation enacted by the Houses of the Oireachtas to the extent that there is any oversight for ensuring that restrictive practices are not enforced. Currently, there are restrictive practices. Those restrictive practices prevent members of the Bar forming partnerships with other members of the Bar. They also prevent members of the Bar forming partnerships with solicitors. The restrictive practices prevent a person who is a barrister from remaining a barrister if he or she is employed in a solicitors firm. We had the bizarre situation recently where a well-known English firm of solicitors decided to set up offices in Ireland. The firm wanted to employ solicitors in Ireland as well as individuals with particular legal expertise and, as I understand, employed a barrister. The barrister wanted to continue to do what the barrister had always done, which is to provide expert legal services and be entitled to appear in court but if the barrister had remained a barrister while in the employ of a solicitors firm, he or she might have been struck off by the Bar. The barrister did a very simple, chameleon-like thing and because the rules now provide for it was able to transmogrify from being a barrister into being a solicitor within a short number of weeks. *Ergo*, the barrister who was a barrister is now a solicitor and can continue to do exactly what the barrister did, which is to give legal advice and appear in court.

This legislation, based on the perspective of providing additional competition and removing barriers to competition, having regard to providing alternative means to deliver and receive legal services, makes it clear that a specific element of the Bar's code of practice will no lon-

ger be legal in this State. It is as simple as that. The Bar will continue to exist and flourish, I have no doubt and I wish everyone well in that context because members of the Bar perform an extremely important role in providing legal services. Despite some perceptions to contrary, I have the greatest of respect for lawyers in both professions who have great expertise, who do very interesting and challenging work and who perform a very important role in protecting the rights of individuals. However, protecting the rights of individuals has nothing to do with maintaining restrictive practices that developed in the 1800s. We live in a different world. It is unfortunate that there is a need to maintain two rolls. It would have been helpful if there could have been a single roll of barristers, whether they were formerly members of the Law Library or not. Ideally, barristers would be barristers and we would have a single roll, with some choosing to become members of the Law Library and those who are not members of the library practising as they deem appropriate, perhaps in the manner mentioned by Deputy McNamara.

It would be preferable to have a single roll but I am advised that the Bar is not agreeable to maintaining a roll which includes members of the barrister profession who are not members of the Law Library. I personally think that is regrettable because whether one is a member of the Law Library or not, if one is a practising barrister who has graduated through the process of becoming a barrister, passed the exams and gone through all of the training then I do not see any particular reason why we should need to maintain two separate rolls, but apparently we do. I say that as a member of the solicitors profession. Since 1971 solicitors have been able to do advocacy work throughout the courts system as well as general solicitor's work. Over the years, I was one of the very few solicitors who worked on a regular basis as an advocate in the higher courts. There are many solicitors who do not want to engage that way and I fully appreciate and understand that. There are many who act as advocates in the District Court but not in the other courts. It is a matter of choice. The Law Society did not feel the need to maintain some exclusive roll of solicitors who are advocates in the higher courts. I do not understand why the membership of a library should determine whether one is excluded from a particular roll when one is a practising, qualified barrister who has gone through the King's Inns and acquired all of the relevant qualifications that entitle one to be recognised as a barrister. Unfortunately, it appears to be the case that we have to maintain two rolls.

**Deputy Pádraig Mac Lochlainn:** To be very clear, the Bar Council's code of practice would be unenforceable in this regard as a result of this legislation.

**Deputy Alan Shatter:** Yes, insofar as it provides for a restrictive practice that the legislation makes clear is no longer legally allowed.

**Deputy Pádraig Mac Lochlainn:** If the Minister or I were to do a *vox pop* in any part of this State and ask people what is the biggest issue of concern regarding barristers, they would say cost. Let us be clear, not all barristers are fortunate to benefit from Government contracts but when the cost of a day in the High Court is prohibitive in terms of enabling people to get access to justice or to defend themselves against the State it become a major issue. There is nothing in this Bill that deals with that. The overwhelming public interest issue is how to significantly reduce the cost of pursuing justice. Essentially what we have here is the Minister's passion, which is fair enough. He is entitled to his passion and is a learned man with strong views on these matters.

**Deputy Alan Shatter:** Deputy Mac Lochlainn flatters me.

**Deputy Pádraig Mac Lochlainn:** I was going to get a candle and a bottle of wine.

**Chairman:** Steady on. We are discussing amendments Nos. 172 to 176.

**Deputy Alan Shatter:** If Deputy Mac Lochlainn is going to get the candle and the bottle of wine, could I put in a claim for a gin and tonic and a packet of peanuts?

**Chairman:** Can we focus on amendments Nos. 172 to 176 please?

**Deputy Michael McNamara:** It is welcome that amendment No. 172 will provide for the continuation of a unitary roll. I was under a misapprehension from what the Minister had said at our last meeting that the Bar Council would maintain its roll of practising barristers who were members of the Law Library and that a separate roll would be maintained for non-members.

**Deputy Alan Shatter:** One roll will be maintained for both.

**Deputy Michael McNamara:** That is welcome.

**Deputy Alan Shatter:** I got one thing wrong when I suggested we would maintain two rolls. One roll for both will be maintained by the regulatory authority, rather than one roll being maintained by the Bar Council. I was inaccurate because I was thinking of an earlier issue. That is the reason the regulatory authority, rather than the Bar Council, will maintain the roll. I apologise if I gave the wrong information. I was misinformed in a comment I had made about maintaining two rolls. It goes back to a conversation I had about the fact that if we had not brought the whole thing into the regulatory authority, there would have been two rolls. This was the solution to it. The other side is that the Law Society will continue to maintain the roll for solicitors. I would have preferred the legal services regulatory authority to do this. The Bar Council could have maintained the roll, but in circumstances where we would have had two rolls, we brought the whole thing into the legal services regulatory authority.

**Deputy Michael McNamara:** That is welcome, but I have several questions. The roll will be a public document that I imagine will be available on a website and certain details will be published of all barristers. The details will further the objectives specified in section 9(4) which include informing the public of available legal services and maintaining competition. I have no objection to any of this information being provided in respect of barriers, but I wonder whether additional information might also be useful. Clearly, it is useful to know whether a barrister is a member of the Law Library or in the full-time service of the State, but I fear a consumer might think all barristers who are not in the full-time service of the State are available to act against the State. On Second Stage I raised the issue that the Department of Justice and Equality requires undertakings not to act against the Minister in areas such as immigration and asylum. I disagree with this policy because it offends the principle of an independent Bar, but the Bar Council has acquiesced to, if not agreed with, it. Barristers will also be employed by banks and other companies to provide legal services. It is not reasonable to think such individuals would be available to act against their employers. It might be useful to note on the roll whether an individual is specifically employed to provide legal services. A significant number of members of the Law Library are precluded from acting against the Minister. It would be useful to include that information on the roll because it would be vital for consumers.

Some barristers will be available to be instructed by persons who are not solicitors. This will be limited to non-contentious issues for the time being but not every barrister would wish to be approached by non-solicitors. It would also be useful for the public to specify this on the roll.

There may be a misapprehension that only barristers who are members of the Law Library

are independent barristers who can take instruction from solicitors in villages and towns. It might be useful to specify whether barristers are available to be instructed in contentious matters. I do not refer to contentious matters for solicitors because I do not want to pre-empt the public consultation process envisaged in amendment No. 171. Barristers who are employed or in the service of the State will not wish to be engaged or instructed in contentious matters. I tabled the amendments in this context because I have to do so in order to submit them on Report Stage.

**Deputy Alan Shatter:** I value the Deputy's insights and experience in our deliberations on the Bill. He raised an important issue. It is one to which we have given some thought. It is interesting, arising from our deliberations, that an issue arises regarding whether we bring forward additional provisions and amendments to this provision on Report Stage having teased it out further, which we want to do. The Deputy will see that the proposed section 76(5) states: "The Authority may, having regard to the objectives specified in section 9(4), prescribe additional information in relation to the professional qualifications and areas of expertise of the practising barrister concerned that is to be contained in an entry on the roll". That will give the authority some discretion in determining what additional information might be included.

I can see advantages in providing on Report Stage for the express inclusion of some of the matters the Deputy has raised and, arising from his contribution, I have a particular concern that we may also need to consider in this context. Subsection (4)(b) relates to subsection (5) in the context of the specification of whether a person is a member of the Law Library and in the full-time service of the State. In the circumstances of barristers who are not full-time members of the Law Library and where members of the public may not understand the nuances of whether one is a member of the Law Library, on reflection I have a concern that a member of the public who, for example, wanted to approach a barrister directly on a non-contentious matter might have a less favourable view of barristers who were not members of the Law Library. He or she may think it a black mark against them. It is important that the information is available, but it is also important that the manner in which it is made available does not result in the wrong conclusions being drawn about the expertise of others and their capacity to undertake particular legal work.

I thank the Deputy for raising this issue. The reason for including subsection (5) was that I was troubled about whether everything that needed to be incorporated on the roll had been designated and I thought it was important for the Legal Services Regulatory Authority to reflect on this. Such a reflection would also be relevant to the consultative process in which it must engage. We will re-examine the subsection before Report Stage and if members have a particular amendment they would like to suggest to us prior to Report Stage, as opposed to it being an issue that arises on the day, I would welcome it.

**Deputy Michael McNamara:** Subsection (6) provides for a separate commencement date. Logically, this section should commence with the establishment of the authority. Why is a separate commencement date envisaged?

The Minister referred to a levy in his introduction to the amendments under Part 8. I presume there will be a cost in being entered on the roll of barristers. Will the cost be the same for all barristers, regardless of whether they are sole practitioners working in or outside of the Law Library, in the employ of the State, etc.? Will the Minister consider something similar to section 51 of the Legal Services Act 2007 in the UK, which provides that fees can be applied to certain permitted purposes and only to them? These are set out. As I explained when I raised this on Second Stage, my concern is that the great majority of barristers will practise in the

Law Library while others will come together in various configurations outside it. However, to become a barrister, all of them must do a pupillage or devil for somebody in the same way all solicitors have to serve an apprenticeship. The reality is people will not do pupillages in the Minister's office or the Attorney General's office or in banks or in-house. If chambers are established, they may end up doing pupillages in them.

In fairness to the Bar Council and Law Library, they have made great efforts to ensure everybody from the King's Inns can do a pupillage and that maintains wide access to the profession, which is an important aspect of competition. I do not say pupils should be paid but they are not paid. Nevertheless they incur the costs of living and it would be detrimental if only those whose parents can afford to support them can do pupillages. It would be similarly unfair if members of the Law Library were to bear all the cost of pupillages, which are essential to accessing the profession. Those who benefit from the system would then go in-house. Perhaps there is room for a levy to be imposed on all practising barristers which would then be used to pay pupils. It is a proposition. I agree entirely with the Minister's proposals to open up the Bar but I am afraid of any unintended consequence. While the configurations in which people could practise will be more widespread, access to the profession could be narrowed because members of the Law Library would be the only ones bearing the cost of pupils.

The Minister also mentioned the anomaly regarding the UK firm which wished to established itself here and had a barrister lined up to employ. Perhaps I am misreading section 116(4) which states, "In this section employment includes part-time employment but does not include employment by a solicitor". Does that maintain the anomaly?

I refer to the issue of a representative body. The Bar Council, as it is entitled to do, has declined to register non-members of the Law Library. Perhaps it is not that straightforward because its constitution requires it to. The constitution also states the council represents the Bar of Ireland. The Bar of England and Wales represents all of the Bar of England and Wales whether people are sole practitioners, of which there are relatively few, in chambers or in the Crown Prosecution Service. A body to represent the entire profession is useful. Freedom of association means that the council can accept whichever members it wishes and dissociate itself from whomever it wishes. I am a little sceptical about having to quote "The Life of Brian" but it is like the Judean People's Liberation Front and the People's Liberation Front of Judea. It is useful to have one body to represent all barristers because the representation of those at the Bar is an important aspect of the administration of justice and the council is in a unique position to promote certain values, the rule of law, which it consistently maintains, human rights, etc. That is perhaps less an issue for the Minister than for the council itself.

**Chairman:** The Deputy raised four issues, namely, the commencement date, the costs and fees, the UK barrister moving to here, and the role of the Bar Council.

**Deputy Michael McNamara:** I also raised education and access and how that will be paid for.

**Deputy Alan Shatter:** I might take them in reverse order. There is a great advantage in having representative bodies such as the Law Society representing solicitors and the Bar Council representing barristers and they have an important role to play. I am open to correction but I am not sure that barristers who are not currently members of the Law Library are officially represented by the Bar Council but I agree with the Deputy. It is of no advantage to anyone to have splinter organisations-----

**Chairman:** A telephone is interfering with the broadcast. It must be turned off completely and not put on silent mode because if they are on silent mode, they interfere with the system.

**Deputy Niall Collins:** It might be a bug.

**Deputy Alan Shatter:** The problem with the Deputy is that he sees bugs everywhere.

**Deputy Niall Collins:** I hear them as well.

**Deputy Alan Shatter:** Apparently he even reads scripts that might have been derived from people being bugged, which is interesting.

**Chairman:** Could we get back to the section please?

**Deputy Alan Shatter:** I am conscious that we are in a time of change and organisations have difficulties with change. I hope that when we move from enacting the Bill, the legal services regulatory authority is in place and change has been effected, in two or three years the Law Society will represent all practising solicitors and the Bar Council will represent all practising barristers, be they members of the Law Library or not and the disparate elements within each profession in the context of their engagements in providing legal services and the manner in which they engage with the public will appropriately feed into the policy dimensions and an approach will be taken by the two professional organisations to issues when they arise. There is a huge benefit in that because the alternative is the establishment of other organisations and they will spend half their time cannibalising each other rather than focusing outwardly on issues which are genuinely of benefit to society and their own members. However, I cannot address those internal issues.

On the issue of a separate commencement date, it is envisaged that there will be a six-month period following enactment during which the authority will have to establish the new roll. We cannot have a situation where the roll cannot be applied while the new roll must be established and there is no roll. This is purely a mechanical, administrative issue. Like everything else, we are open to suggestions in that context.

It is envisaged that all barristers on the roll will contribute to the levy. I am conscious that the levy has to be set by the authority based on the principles prescribed in the Bill, which seek also to have regard to the differentiation between the numbers of solicitors and barristers and the nature of the engagement by solicitors and barristers with disciplinary issues. It will be open to the authority to take a view regarding how a levy might be dealt with *vis-à-vis* young, recently qualified members of the legal profession who may be earning little income and others. There are issues to be dealt with.

On the issue of employment of barristers, let us say the legislation is enacted and we have dealt with regulatory issues and an employee barrister is employed by a firm of solicitors, there would be nothing to prevent him or her from doing contentious work but he or she would only be able to do it because he or she had been instructed by the solicitor in the firm. There will be an employee barrister who will be able to appear in court on a regular basis and will represent clients of that firm. It will be open to that firm to decide that on issues in which it has no engagement, that barrister might do other work - I do not know. However, he or she would need to be instructed by solicitors where it is contentious work. There is the regulatory oversight and there are issues to be addressed by the legal services regulatory authority during the consultative process. It is not my understanding, nor is it intended in the Bill, that if a barrister is employed as an employee within a solicitor's firm, he or she is only there part-time.

Coming back to a discussion I had with Deputy Mac Lochlainn earlier, it is also not envisaged that barristers who become employees in solicitors' firms would remain in such positions for the rest of their days. As with anybody else who is employed, they would be employed on some basis and if they decide they want to go back and operate out of the Law Library, it is assumed that they will do so. It is also assumed that there would be no code of practice that would prohibit or prevent them from doing that and that no new restrictive practices would be introduced that could defeat the purpose of the legislation. Solicitors are to some extent in a better position than barristers. Solicitors are still instructed by individuals from all around the country, depending on whether they have particular areas of expertise. It is quite odd that although a solicitor can at the moment do all the solicitor's work and all the barrister's work, and nobody is suggesting that this attacks the independence of solicitors or undermines the administration of justice, there is a suggestion coming from some quarters that if a barrister were employed within a solicitor's firm or if a solicitor were a partner with a barrister, that might undermine the system of justice and the independence of the legal profession. It makes no sense, but it is an indicator of the extent to which there is discomfort with change. In a profession in which there has been so little change for more than a hundred years, I understand there is a natural resistance to change. Sometimes there is too much focus on trying to identify all the reasons for having no change or reform, rather than trying to identify the benefits of change.

**Deputy Michael McNamara:** What about the issue of education and maintaining as large a number of pupillages as possible?

**Deputy Alan Shatter:** That is a really important issue. As Deputies know, the legislation contains a separate provision allowing the legal services regulatory authority to review the area of legal education and what changes might need to be effected to ensure that the doors are kept open and to ensure that those who wish to become a member of either profession can to do so and that nothing impedes that. The legislation contains very specific provisions with regard to our system of legal education, which has been run well. This is where there has been evolution on behalf of the Bar and the solicitor profession in the increased sophistication of lectures, studies and training provided to people who wish to become either a solicitor or a barrister. That is the area in which there has been change over the years. The competition between the Law Society and the Honourable Society of the King's Inns in the type of legal training they provide has helped to contribute to ensuring that its excellence has improved over the years.

However, there has not been an overarching examination of the provision of legal education in Ireland. Can it be accessed generally or do any sections of society have difficulty in accessing it? Are any structural changes needed? For example, as happens in England - I am not sure whether this is either desirable or necessary in Ireland because we are a much smaller jurisdiction - should the universities be licensed to have some remit in providing professional training for either profession? Before everybody gets excessively excited and thinks this is something I am advocating, I am not necessarily advocating it. I am very familiar with the system in England. It is necessary because of the extent of the population. I know the Law Society experimented with providing legal studies in Cork and it did not prove economically viable. Therefore, I am not sure there is a necessity for anything of that nature. However, it is a good idea for us to request the legal services regulatory authority to carry out an overview of educational matters.

In that context, I very much value the work done by both of the professional bodies in providing continuing legal education for the qualified members of both professions. I particularly welcome one development. Towards the end of last year I corresponded with the Law Society

and the Honourable Society of the King's Inns. This is something that is important and comes out of the independent legal professions in consultation with an independent Judiciary, as opposed to coming from the Department of Justice and Equality. I invited them to consider the creation of a course for qualified barristers and solicitors in judicial training, a course for members of the legal profession who aspire to become judges in the future or those who have no interest in becoming judges but who are regular advocates in the courts and would like to get a greater insight into the judicial function - for example, how judges approach cases, or the type of evidence they believe is helpful in clarifying issues. I invited both the Law Society and the Honourable Society of the King's Inns to consider whether they would either individually or collaboratively consider establishing such a course. I publicly welcome the positive response I received from the Honourable Society of the King's Inns, which, I understand, is engaging in a consultative process with the Judiciary with a view to establishing such a course. As I understand it, it would be a course available as an option in which practising lawyers could participate. I believe it would be very valuable if we moved on in the context of training. At the moment a judge gets judicial training after appointment. It would be an extra, valuable link in the chain for practising lawyers who may consider at some stage in their career applying to the Judicial Appointments Advisory Board to be appointed to the courts if they had some opportunity - with, I would very much hope, a substantial input from the Judiciary - to engage in this type of course. I very much look forward to seeing how this matter develops.

**Chairman:** That sounds very progressive and fascinating.

Amendment agreed to.

Section 76 deleted.

NEW SECTION

**Chairman:** Acceptance of amendment No. 173 involves the deletion of section 77 of the Bill.

**Deputy Alan Shatter:** I move amendment No. 173:

In page 68, between lines 3 and 4, to insert the following:

**"Entry of name on roll**

**77.** (1) A person who has been called to the Bar of Ireland and who intends to provide legal services as a barrister shall apply to the Authority to have his or her name, and additional information relating to him or her, entered on the roll and the Authority, on being satisfied that the person is a qualified barrister, shall enter the name of that person and the additional information concerned on the roll.

(2) An application under *subsection (1)* shall be in such form as may be prescribed.".

Amendment agreed to.

Section 77 deleted.

NEW SECTION

**Chairman:** Acceptance of amendment No. 174 involves the deletion of section 78 of the Bill.

**Deputy Alan Shatter:** I move amendment No. 174:

In page 68, between lines 10 and 11, to insert the following:

**"Variation of entry on roll**

**78.** (1) The Authority shall remove the name of a person from the roll—

(a) where it is required to do so under *section 38(10)*,

(b) where the High Court makes an order under *section 63(3)(b)(v)* that the person's name be struck off the roll,

(c) where *section 70(3)* applies in respect of that person,

(d) on application to it under *subsection (3)* by the person concerned,

(e) on the death of that person, where the Authority has received a certified copy, referred to in *subsection (4)*, of the entry in the register of deaths concerning that

person.

(2) Where the High Court makes an order under *section 63(3)(b)(iv)* that a practising barrister be suspended from practice as a legal practitioner, the Authority shall, for the period specified in the order, maintain a record on the roll of—

(a) the fact of such suspension, and

(b) any terms and conditions specified in the order to which the suspension is subject.

(3) A person whose name has been entered on the roll, who no longer wishes to provide legal services as a practising barrister, may apply to the Authority to have his or her name removed from the roll.

(4) Where a registrar of deaths within the meaning the Civil Registration Act 2004 registers in the register of deaths (within the meaning of Part 5 of that Act) the death of a person whose name is on the roll, the registrar shall as soon as practicable send by post to the Authority a certified copy of the entry in the register of deaths, and may charge the cost of the certificate and of the sending thereof to the Authority as an expense of his or her office of registrar of deaths.

(5) Where the Authority removes the name of a person from the roll under this section, it shall also remove from the roll any information in respect of him or her specified in *section 76(4)* that is contained in the entry concerned.".

Amendment agreed to.

Section 78 deleted.

NEW SECTION

**Chairman:** Acceptance of amendment No. 175 involves the deletion of section 79 of the Bill.

**Deputy Alan Shatter:** I move amendment No. 175:

In page 68, between lines 17 and 18, to insert the following:

**"Prohibition on unqualified person providing legal services as practising barrister**

**79.** (1) Subject to *subsection (5)*, an unqualified person shall not provide legal services as a practising barrister.

(2) A person who contravenes *subsection (1)* shall, without prejudice to any other liability or disability to which he may be subject, be guilty of an offence and shall be liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding two years, or at the discretion of the court, to a fine not exceeding €30,000 or to both such fine and such imprisonment, or

(b) on summary conviction, to imprisonment for a term not exceeding six months or, at the discretion of the Court, to a Class A fine or to both such fine and such imprisonment.

(3) A person who contravenes *subsection (1)* in relation to a court of justice shall also be guilty of contempt of that court and shall be punishable accordingly.

(4) In this section, "unqualified person" means a person who—

(a) is not a qualified barrister,

(b) notwithstanding that he or she is a qualified barrister, is not a person whose name is entered on the roll of practising barristers, or

(c) is not a practising solicitor.

(5) *Subsection (1)* shall not, during the period referred to in that paragraph, apply to a practising barrister to whom *paragraph (b)* of *section 76(1)* applies.".

Amendment agreed to.

Section 79 deleted.

NEW SECTIONS

**Deputy Alan Shatter:** I move amendment No. 176:

In page 69, between lines 3 and 4, but in Part 8, to insert the following:

**"Prohibition on pretending to be qualified barrister**

**80.** (1) A person who is not a qualified barrister shall not pretend to be a qualified barrister or take or use any name, title, addition or description or make any representation

or demand implying that he is a qualified barrister.

(2) A person who contravenes *subsection (1)* shall be guilty of an offence and shall be liable on summary conviction to a Class A fine.".

Amendment agreed to.

**Chairman:** Acceptance of amendment No. 177 involves the deletion of section 80 of the Bill. Amendments Nos. 177 to 184, inclusive, are related and will be discussed together.

**Deputy Alan Shatter:** I move amendment No. 177:

In page 69, between lines 3 and 4, to insert the following:

"PART 9

**Legal Costs**

**Chapter 1**

*Interpretation*

**Interpretation (*Part 9*)**

**80.** In this Part-

"application" means an application for adjudication of legal costs under *section 94*;

"bill of costs" means a document setting out the amount of legal costs chargeable to a client in respect of legal services provided to him or her, prepared by a legal practitioner in accordance with *section 92* or, where applicable, *section 94(1)*;

"Chief Legal Costs Adjudicator" means the Chief Legal Costs Adjudicator appointed under *section 81(2)*;

"commercially sensitive information" means—

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

(b) information the disclosure of which could prejudice the conduct or outcome of contractual or other negotiations of the person to whom it relates;

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

"disbursement" means a fee or cost (whether or not fixed by or under a statute or rules of court) payable to a third party that is necessarily and reasonably incurred by a legal practitioner for the purposes of the provision by that legal practitioner of legal services to a client, and includes fees or costs payable by the legal practitioner to a barrister

or an expert witness, but does not include general costs incurred in the course of the legal practitioner's practice as a legal practitioner;

"enactment" means—

(a) an Act of the Oireachtas,

(b) a statute that was in force in Saorstát Éireann immediately before the date of the coming into operation of the Constitution and that continues in force by virtue of Article 50 of the Constitution, or

(c) an instrument made under—

(i) an Act of the Oireachtas, or

(ii) a statute referred to in *paragraph (b)*;

"Legal Costs Adjudicator" means a person appointed under *section 81(2)* to be a Legal Costs Adjudicator;

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

(a) the costs of or arising out of any cause or matter in any court,

(b) any costs which are the subject of an order made by an arbitral tribunal in accordance with section 21(4) of the Arbitration Act 2010 for the adjudication of the costs of the arbitration by a Legal Costs Adjudicator,

(c) the costs of a receiver appointed in any cause or matter, on the application of the receiver or of any party to the cause or matter,

(d) costs that arise from an inquiry, investigation or other proceeding conducted under an enactment, and

(e) the cost of registering judgments as mortgages, of obtaining grants of probate and of letters of administration, of satisfying judgments, and any other costs usually adjudicated *ex parte*;

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

"Office" means the Office of the Legal Costs Adjudicators referred to in *section 81*;

"register of determinations" means the register of determinations referred to in *section 82*.".

Part 9 of the Bill has been extensively reworked, primarily to ensure operability and clarity and to incorporate a number of practical suggestions made to me by persons with expertise in the legal costs arena after publication of the Bill.

To return to a point made by Deputy Mac Lochlainn earlier, to which I did not respond, he stated there is nothing in the Bill dealing with legal costs. An entire part of the Bill deals with legal costs and is designed to ensure they are kept at an appropriate and reasonable level based on the work done, and that there is independent oversight and a very clear structure in place to

facilitate clients of the legal profession to have adjudications on the legal costs bills they receive which they may think are excessive, or where one side in court proceedings is ordered to pay the other side's costs. The adjudication process will determine the appropriate costs to be paid.

To make it easier for the committee to deal with this part, any section proposed for amendment is presented in its fully revised state rather than as a series of individual amendments. I will set out what each section in Part 9 provides and what changes, if any, are proposed.

Amendment No. 177 refers to section 80. This is a standard interpretation section to describe and delimit key terminology in the Part. It has been slightly reworked from the original for the sake of clarity. During the long consultation analysis period following publication of the Bill, new definitions, including those of disbursements and contentious business, were found to be necessary. These have been inserted into the text we have today.

Section 81 is a technical provision to enable the redesignation of the Taxing Master's office as the office of the legal costs adjudicators. This new office will have an increased capacity for making adjudications and will be headed by a chief legal costs adjudicator who will have certain core functions which I will outline as we go along.

Section 82 is a key section, representing as it does the twin policy imperatives of transparency and modernisation. The new chief legal costs adjudicator will be obliged to keep a publicly examinable register of determinations. This register will bring to light the decisions made by the legal costs adjudicators and the reason for these decisions. It is my belief and expectation this register will make a valuable contribution to competition in the legal services marketplace. As legal cost adjudications will be a quasi-judicial function in the Courts Service apparatus, it is appropriate that adjudications would be published and explained within reasonable limits so as not to breach confidentiality rules or overburden the office with bureaucracy.

Section 83 is new and provides clarity on the long-standing policy intention that while the new office of the legal costs adjudicator will replace the current Taxing Master's office, the *status quo* will continue with regard to county registrars and their existing and limited taxation functions. The only change regarding county registrars is that in maintaining their existing functions, they will be required to keep a register of their determinations and will in their own adjudications be guided by the principles relating to legal costs set out in Schedule 1.

Section 84 is a much improved upon section 83 of the Bill as published. This section provides that guidelines will be prepared by the chief legal costs adjudicator to the benefit of anyone making an application to the office setting out how the process works and what is required. I should point out the reference to the Minister for the Environment, Community and Local Government as one of the persons to be consulted on the guidelines comes about as result of Ireland's obligations under the Aarhus Convention which seeks to ensure access to justice on environmental matters is not prohibitively expensive.

Section 85 on the review of scales of fees is new. It came to my attention recently that appendix W to the Rules of the Superior Courts, which sets out certain scales of fees for specified legal services, is irregularly updated. I propose to provide that the Superior Court Rules committee, whenever it considers it appropriate to do so but at least every two years, would review and update appendix W in line with the new cost principles set out in Schedule 1 of the Bill.

Amendment No. 183 of the Bill provides for a new section 86 which, along with the unamended sections 85 and 86 from the original Bill, will help to modernise the operation of what

is currently the Taxing Master's office. The new office of legal costs adjudicators will be required to be run in a more business-like and transparent fashion in the framework of a strategic plan, an annual business plan and an annual report to be laid before the Houses of the Oireachtas together with the annual report of the Courts Service. I have ensured since publication that the powers of the Minister to influence and approve strategic plans have been removed from the text of section 86. They are now purely a matter for the chief legal costs adjudicator and the chief executive officer of the Courts Service.

The final amendment in this group is amendment No. 184 which relates to section 88. It provides for the substitution of the Taxing Master's office with the office of the legal costs adjudicators, and makes provision for a chief legal costs adjudicator and his or her terms of appointment along with those of other legal costs adjudicators. The key amendment is the deletion of previous references to bankruptcy and arrangements with creditors as a disqualification from holding office as the legal costs adjudicator. It is possible I will, on Report Stage, also revise the length of term of appointment for a legal costs adjudicator, which may not be entirely satisfactory. It stands at a five year term which is non-renewable. Having reflected on this, I am concerned the term may be too short and that by making it non-renewable, substantial good practice and expertise could be lost to the office and to the important work undertaken, and that continuity has a particular and important role to play. I want to reflect on how we further enhance the office and on how we address this issue in circumstances in which I am concerned if someone is appointed to the office, it should not necessarily be, and it is not necessarily in the public interest that it would be, a lifetime appointment, but I am also concerned to ensure the office is entirely independent and there is no suggestion the Minister of the day, or a Minister who may be unhappy with an adjudication, could in any way interfere with the workings of the office or exercise some discretion with regard to whether, if the appointment was for a five year period or longer, somebody's appointment should be renewed. I am giving some consideration as to how best to deal with this matter pending Report Stage.

Amendment agreed to.

Section 80 deleted.

NEW SECTION

**Deputy Alan Shatter:** I move amendment No. 178:

In page 70, between lines 6 and 7, to insert the following:

"CHAPTER 2
*Office of the Legal Costs Adjudicators*

**Office**

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

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

(a) the Chief Legal Costs Adjudicator, and

(b) such number of Legal Costs Adjudicators that the Minister, with the consent of the Minister for Public Expenditure and Reform, determines to be the number necessary

to ensure that the work of the Office may be carried out effectively and efficiently.

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

(4) The role and functions of the Chief Legal Costs Adjudicator and every Legal Costs Adjudicator appointed under this Act are limited to the jurisdiction heretofore proper to the Taxing-Masters' Office and shall not extend to the lower courts or to the jurisdiction of County Registrars.".

Amendment agreed to.

Section 81 deleted.

NEW SECTION

**Deputy Alan Shatter:** I move amendment No. 179:

In page 70, between lines 27 and 28, to insert the following:

**"Register of determinations**

**82.** (1) The Chief Legal Costs Adjudicator shall ensure that a register of determinations is established and maintained in relation to applications for adjudication of legal costs under this Part.

(2) Subject to this section, the register of determinations shall contain the following particulars in relation to each application:

(a) the date of the receipt by the Office of the application;

(b) the names of the parties to the adjudication;

(c) the date of receipt by the Office of the bill of costs and each other document in connection with the application, including, if the application arises from contentious business, the title of the proceedings and record number of the proceedings (if any);

(d) the date on which the adjudication is assigned and, where the adjudication is assigned to a Legal Costs Adjudicator, the Legal Costs Adjudicator to whom the adjudication is assigned;

(e) the outcome of determination made under *section 97(1)* and the dates on which it was made and on which the notice of it was furnished to the parties;

(f) where a party applies under *section 100* for a determination to be considered, the date on which the Legal Costs Adjudicator concerned makes his or her decision under *section 100(5)*, the date on which notice of that decision is furnished to the parties and, where a new determination is made under section *100(5)(b)*, the outcome of that determination;

(g) where a party applies under *section 101* for a review of a determination made under *section 100*, the date on which the High Court determines that review, the outcome of the review and, where the High Court remits the matter under *section*

*101(4)(b)(i)*, the determination of the Legal Costs Adjudicator to whom the matter is remitted;

(h) the reasons for the determination, prepared by the Chief Legal Costs adjudicator in accordance with *subsection (3)*.

(3) Subject to *subsections (4)* to *(7)*, the Chief Legal Costs Adjudicator shall prepare, and cause to be placed on the register of determinations, the reasons for a determination unless—

(a) the adjudication relates to an application for adjudication of legal costs as between the parties to proceedings which—

(i) were held otherwise than in public, or

(ii) if there had been a hearing, would have been held otherwise than in public,

(b) the adjudication relates to an application for adjudication of legal costs as between a legal practitioner and his or her client,

(c) the adjudication relates to an application for adjudication of legal costs as between the parties to proceedings where the proceedings have been settled prior to the conclusion of the hearing by a court of the proceedings, or

(d) the Chief Legal Costs Adjudicator considers, having obtained the views of the parties to the adjudication, that it would be contrary to public interest for that information to be published.

(4) For the purposes of *subsection (3)*, the Chief Legal Costs Adjudicator need not publish the reasons for a determination where he or she is of the opinion that the adjudication concerned does not involve a matter of legal importance.

(5) Where *paragraph (a)*, *(b)* or *(c)* of *subsection (3)* applies, notwithstanding that section and *subsection (2)*, the Chief Legal Costs Adjudicator shall cause to be published the outcome of and the reasons for the determination, as well as the information referred to in *paragraphs (b)* and *(c)* of *subsection (2)*, in such a manner that—

(a) where *subsection (3)(a)(i)* applies, information which is protected from disclosure by reason of those proceedings is not disclosed,

(b) where *subsection (3)(a)(ii)* applies, information is not disclosed which would have been protected from disclosure if the matter had been disposed of by proceedings which would have been held otherwise than in public, and

(c) where *subsection (3)(b)* applies, the client concerned may not be identified, whether by name, address, or economic activity.

(6) Where the adjudication concerned relates to legal costs as between parties to proceedings, or a legal practitioner and his or her client, the Chief Legal Costs Adjudicator shall ensure that the information referred to in *subsection (2)* is published in such a manner that commercially sensitive information relating to either party, or to the client, as the case may be, is not disclosed.

(7) A reference to a determination in *subsection (2)(h)* shall be construed, as the case

may be, as a reference to—

(a) subject to *paragraphs (b)* and *(c)*, a determination made under *section 99(1)*,

(b) subject to *paragraph (c)*, where a party applies under *section 100* for a determination to be considered, and a new determination is made under *section 100(5)(b)*, that determination, or

(c) where a party applies under *section 101* for a review of a determination made under *section 100*, and the High Court remits the matter under *section 101(4)(b)(i)*, the determination under that provision of the Legal Costs Adjudicator to whom the matter is remitted.

(8) The register of determinations shall be available for inspection during office hours without payment by any person who applies to inspect it.".

Amendment agreed to.

Section 82 deleted.

NEW SECTION

**Deputy Alan Shatter:** I move amendment No. 180:

In page 72, before line 1, to insert the following:

**"County registrars**

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

(2) Each County Registrar shall ensure that a register of taxation determinations is established and maintained by him or her in relation to applications to him or her for taxation of costs.

(3) A register referred to in *subsection (2)* shall contain the following particulars in relation to each application for taxation of costs:

(a) the date of the receipt by the county registrar concerned of the application for taxation;

(b) the names of the parties to the application;

(c) the date on which the determination was made;

(d) an outline of the disputed issues;

(e) the outcome, in monetary terms, of the taxation;

(f) the reasons for the outcome, as determined by the County Registrar.

(4) The register referred to in *subsection (2)* shall be available for inspection during office hours without payment by any person who applies to inspect it.

(5) Each County Registrar shall report annually to the Chief Legal Costs Adjudicator

providing a summary of the information contained in the register of taxation determinations maintained by him or her.".

Amendment agreed to.

Section 83 deleted.

NEW SECTION

**Deputy Alan Shatter:** I move amendment No. 181:

In page 72, between lines 13 and 14, to insert the following:

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

**84.** (1) After consulting with the Minister, the Minister for Environment, Community and Local Government and any person or body that the Chief Legal Costs Adjudicator considers to be an appropriate person or body to be consulted for the purposes of this section, the Chief Legal Costs Adjudicator may from time to time prepare, for the guidance of Legal Costs Adjudicators, legal practitioners and the public, guidelines not inconsistent with this Act (including any regulations made under this Act) or Rules of Court indicating the manner in which the functions of the Chief Legal Costs Adjudicator and the Legal Costs Adjudicators are to be performed.

(2) The Chief Legal Costs Adjudicator shall ensure that guidelines prepared by him or her under this section are published as soon as practicable after the guidelines have been prepared.

(3) Without prejudice to the generality of *subsection (1)*, guidelines under this section may—

(a) describe the procedures for the adjudication of legal costs under this Part,

(b) set out the documents and other information that are required by or under this Part to accompany an application for the adjudication of legal costs,

(c) describe the notices and other information that will be provided by the Legal Costs Adjudicator in relation to any such applications,

(d) identify the provisions of this Part and the Rules of Court relevant to an application, including those relating to the time limits within which the documentation and information referred to in *paragraph (b)* are to be provided,

(e) describe the procedures that are to be followed in the Office of the Legal Costs Adjudicators in relation to the adjudication of legal costs,

(f) provide guidance as to the circumstances in which a Legal Costs Adjudicator may exercise his or her powers under *subsection (4)* or *(5)* of *section 96*,

(g) set out the fees that are to be charged in the Office of the Legal Costs Adjudicators in respect of the services provided by it, and the manner in which those fees may be paid,

(h) provide such other information as appears to the Chief Legal Costs Adjudicator to be appropriate, having regard to the purposes of the guidelines referred to in *subsection (1)*.".

Amendment agreed to.

Section 84 deleted.

NEW SECTIONS

**Deputy Alan Shatter:** I move amendment No. 182:

In page 72, between lines 37 and 38, to insert the following:

**"Review of scales of fees**

**85.** The Superior Courts Rules Committee shall, whenever it considers it appropriate to do so and, in any case, not less than once every 2 years—

(a) review the scales of fees for contentious and non-contentious business set out in Appendix W to The Rules of the Superior Courts,

(b) prepare a report setting out the amendments or alterations (if any) that, in the opinion of the Committee, having regard to the matters specified in *Schedule 1*, should be made to that Appendix, and

(c) furnish a copy of the report under *paragraph (b)* to the Minister.".

Amendment agreed to.

**Deputy Alan Shatter:** I move amendment No. 183:

In page 72, between lines 37 and 38, to insert the following:

**"Strategic plan**

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

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

(3) A strategic plan shall—

(a) set out the key objectives, outputs and related strategies for the performance of the functions of the Chief Legal Costs Adjudicator and the Legal Costs Adjudicators, and

(b) have regard to the need to ensure the most effective and efficient use of resources possible.

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

Amendment agreed to.

Sections 85 to 87, inclusive, agreed to.

NEW SECTION

**Deputy Alan Shatter:** I move amendment No. 184:

In page 73, between lines 37 and 38, to insert the following:

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

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

(a) in paragraph 2, by substituting "The Office of the Legal Costs Adjudicators" for "The Taxing-Masters' Office",

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

(c) by substituting the following for paragraph 8:

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

(d) by substituting the following for paragraph 18:

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

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

(b) that person—

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

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

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

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

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

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

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

(3) In applying subparagraph (2) no period of time may, as respects any person, be counted more than once.

(4) A person appointed to be the Chief Legal Costs Adjudicator or, as the case may be, a Legal Costs Adjudicator, shall be appointed by the Government on the nomination, from amongst a group of persons referred to in subparagraph (1), of the Minister.

(5) Notwithstanding any other enactment, the Chief Legal Costs Adjudicator appointed pursuant to this paragraph—

(a) shall, subject to clauses (b) and (c), hold office for a period not exceeding 7 years,

(b) shall be required to retire on attaining the age of 70 years, and

(c) shall, on the expiry of the period referred to in clause (a), be taken to have been appointed under this paragraph as a Legal Costs Adjudicator for the period beginning on that expiry and ending on his or her attainment of the age of 70 years.

(6) Notwithstanding any other enactment, a Legal Costs Adjudicator appointed pursuant to this paragraph—

(a) shall, subject to clauses (b) and (c), hold office for a period not exceeding 5 years,

(b) shall be required to retire on attaining the age of 70 years, and

(c) shall not be eligible for re-appointment or to have the term of appointment extended.

(7) A person appointed pursuant to this paragraph may resign from office by notice in writing addressed to the Government and the resignation takes effect on the date the Government receives the notice or, if a date is specified in the notice and the Government agree to that date, on that date.

(8) A person appointed pursuant to this paragraph immediately ceases to be the Chief Legal Costs Adjudicator or a Legal Costs Adjudicator, as the case may be, on—

(a) being nominated as a member of Seanad Éireann,

(b) being elected as a member of either House of the Oireachtas or of the European Parliament,

(c) being regarded, pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act 1997, as having been elected to be a member of the European Parliament,

(d) becoming a member of a local authority,

(e) being appointed to be a judge, or

(f) being appointed Attorney General.

(9) A person shall be disqualified for being the Chief Legal Costs Adjudicator or a Legal Costs Adjudicator during any period during which—

(a) he or she is entitled under the Standing Orders of either House of the Oireachtas to sit in that House,

(b) he or she is a member of the European Parliament, or

(c) he or she is entitled under the standing orders of a local authority to sit as a member of the local authority.

(10) A period during which a solicitor or barrister is the Chief Legal Costs Adjudicator or a Legal Costs Adjudicator shall be reckonable as a period of professional practice for the purposes of an application for appointment as a judge.

(11) The Government may at any time remove the Chief Legal Costs Adjudicator or a Legal Costs Adjudicator from office if—

(a) in the opinion of the Government, he or she has become incapable through ill-health of performing the functions of the office,

(b) he or she has committed stated misbehaviour,

(c) he or she has failed without reasonable cause, in the opinion of the Government, to perform the functions of the office for a continuous period of at least 3 months beginning not earlier than 6 months before the day of removal, or

(d) he or she has contravened to a material extent a provision of the Ethics in Public Office Acts 1995 and 2001 that, by virtue of a regulation under section 3 of the Ethics in Public Office Act 1995, applies to him or her.

(12) The Chief Legal Costs Adjudicator or a Legal Costs Adjudicator ceases to hold office if he or she—

(a) is convicted on indictment of an offence,

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

(c) has a declaration under section 150 of the Companies Act 1990 made against him or her or is subject or is deemed to be subject to a disqualification

order by virtue of Part VII of that Act,

(d) is sentenced to a term of imprisonment by a court of competent jurisdiction, or

(e) is removed by a competent authority for any reason (other than failure to pay a fee) from any register established for the purpose of registering members of a profession in the State or in another jurisdiction.

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

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

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

and

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

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

Amendment agreed to.

Section 88 deleted.

Section 89 agreed to.

NEW SECTION

**Chairman:** Amendments Nos. 185 to 189, inclusive, are related and will be discussed together. Amendment No. 189 is a physical alternative to amendment No. 188.

**Deputy Alan Shatter:** I move amendment No. 185:

In page 77, between lines 33 and 34, to insert the following:

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

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

(2) On receiving instructions from a client, a legal practitioner shall provide the client with a notice which shall--

(a) disclose the legal costs that will be incurred in relation to the matter concerned, or

(b) if it is not reasonably practicable for the notice to disclose the legal costs at that time, set out the basis on which the legal costs are to be calculated.

(3) Where *subsection (2)(b)* applies, the legal practitioner concerned shall, as soon as may be after it becomes practicable to do so, provide to the client a notice containing the information specified in *subsection (2)(a)*.

(4) A notice shall:

(a) subject to *subsection (2)(b)*, specify the amount of legal costs--

(i) certified by the legal practitioner as having been incurred as at the date on which the notice is provided,

(ii) certified by the legal practitioner to be of a fixed nature or otherwise certain to be incurred (or if it would be impracticable for the legal practitioner to so certify, the basis on which they are to be charged), and

(iii) insofar as is practicable, certified by the legal practitioner to be likely to be incurred;

(b) specify the amount of value-added tax to be charged in respect of the amounts referred to in *paragraph (a)*;

(c) set out the basis on which the amounts were or are to be calculated, explained by reference to the matters set out in *paragraph 2 of Schedule 1*;

(d) contain a statement of the legal practitioner's obligation under *subsection (5)*;

(e) if the matter which is the subject of the notice involves or is likely to involve litigation, provide--

(i) an outline of the work to be done in respect of each stage of the litigation process and the costs or likely costs or basis of costs involved in respect of each such stage, including the likelihood of engaging a barrister, expert witnesses, or providers of other services,

(ii) a statement of the legal practitioner's obligation under *subsection (6)*,

(iii) information as to the likely legal and financial consequences of the client's withdrawal from the litigation and its discontinuance, and

(iv) information as to the circumstances in which the client would be likely to be required to pay the costs of one or more other parties to the litigation, and information as to the circumstances in which it would be likely that the costs of the legal practitioner would not be fully recovered from other parties to the litigation;

(f) specify a period, which shall be not longer than 10 working days, for the purposes of *subsection (7)*.

(5) Where the legal practitioner becomes aware of any factor that would make the

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

(6) Where a matter which is the subject of a notice under this section involves or is likely to involve litigation, the legal practitioner shall not, in relation to that matter, engage a barrister, expert witness or provider of any other service without first, to the extent practicable--

(a) ascertaining the likely cost or basis of cost of engaging the person,

(b) providing the client with the information referred to in *paragraph (a)*, and

(c) having complied with *paragraph (b)*, satisfying himself or herself of the client's approval (whether express or implied) of the engaging of the person.

(7) A legal practitioner shall not, during the period referred to in *subsection (4)(f)* that is specified in a notice, provide any legal services in relation to the matter concerned, unless--

(a) the client concerned confirms that he or she wishes to instruct the legal practitioner to continue to provide legal services in connection with the matter concerned, or

(b) *subsection (8)* applies.

(8) A legal practitioner to whom *subsection (7)* applies shall, notwithstanding that subsection, provide legal services in relation to the matter concerned where--

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

(b) a court orders the legal practitioner to provide legal services to the client, or

(c) where the matter involves litigation, a notice of trial has been served in relation to the matter or a date has been fixed for the hearing of the matter concerned.

(9) The legal practitioner shall provide his or her client with clarification in relation to a notice, as soon as is reasonably practicable after having been requested to do so by the client.

(10) Where a solicitor, having received instructions from a client in relation to a matter, proceeds to instruct a barrister in relation to that matter--

(a) an obligation on the barrister under this section to provide a notice shall be fulfilled where the barrister provides the notice concerned to the solicitor,

(b) a duty owed by the barrister under *subsection (6)*, *(7)* or *(9)* to his or her client shall be construed as a duty owed by the barrister to the solicitor, and

(c) the solicitor concerned shall--

(i) where he or she considers it appropriate, or where requested to do so by the client, request the barrister to provide clarification in relation to a notice provided by the barrister, and

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

Section 89 of the published Bill is unamended except for a tiny typographical change. It continues the existing prohibition on solicitors charging fees based on percentages of damages due to the client and it applies to barristers in addition. It also prohibits the automatic deduction of legal costs from damages or other awards. An innovation of this Bill is the prohibition on the charging by barristers of legal costs that are based on crude calculations of the value of junior counsel as a two thirds or other proportion of senior counsel's fees.

**Chairman:** On what section is the Minister?

**Deputy Alan Shatter:** Section 89.

**Chairman:** We have covered and gone past that. We are now on section 90.

**Deputy Alan Shatter:** I am sorry. I was just describing as an introduction to where I am going.

**Chairman:** That is fine.

**Deputy Alan Shatter:** Amendment No. 185 refers to section 90. It is being revised by the drafters to improve the flow and clarity of the text. It incorporates the best aspects of the existing section 68 of the Solicitors (Amendment) Act 1994 in respect of the obligation on solicitors to provide their clients with written fees estimates and makes significant improvements upon it. This is a key and innovative section in the Bill as regards legal costs transparency and will also apply for the first time to barristers. It sets out that legal practitioners will have to provide clients with a written legal cost notice written in clear language that is likely to be easily understood by the client. Such notice will set out either the legal costs that will be incurred or, if that is initially impossible to know due to the presence of variables, it will set out the basis on which legal costs are to be calculated. Factors such as the stages in the litigation process, cost of outside expertise, financial consequences for the client and withdrawing or losing the case are all to be covered where relevant. In addition, the legal practitioner will be under an obligation to inform the client of any emerging factor that would significantly add to the estimated cost for the client and a new notice will have to be provided. A ten-day cooling off period is allowed and, as an added protection for clients, legal practitioners may not engage counsel, expert witnesses or other service providers without first gaining confirmation from the client. Legal practitioners will also be obliged to provide any clarification in respect of the notice whenever so requested.

Section 91 allows legal practitioners and their clients to make agreements as to fees for services. This is a continuation of the *status quo*. The text has been enhanced since publication to make it clear that such agreements may still be amenable to adjudication by the legal costs adjudicator where appropriate.

Section 92 is another transparency-related section. It sets out in detail all the constituent items to be included by a legal practitioner in the final bill of costs provided to the client. It will describe in the form of an itemised statement the legal services provided, the time spent

and other relevant factors. It has been enhanced since publication to ensure that any fee-related agreement between the legal practitioner and the client is set out clearly in writing. It also sets out the preliminary steps in respect of the communication and resolution of any disputed item. It allows barristers to provide their bills of cost through the solicitor concerned, who shall provide them to the client immediately upon receipt.

Section 93 places an obligation on legal practitioners to attempt to resolve disputes around legal costs with their clients before resorting to making a formal application to the legal costs adjudicator. This is in keeping with the Bill's desire to encourage mediation and other informal resolution avenues. In support of this, the section also provides a new clock-stopping mechanism whereby the time taken in attempting to resolve a dispute is disregarded within the timeframe for making an application to the legal costs adjudicator.

Regarding Opposition amendment No. 189, I note Deputy Collins's absence, but perhaps I will nevertheless address it. Deputy Collins's proposed amendment is based on section 76 of the Finance Act 1982, which inserted a new section 5(4A) into the VAT Act 1972. It provides that VAT is payable on fees for services even where the supplier of the service is not legally entitled to recover payment of the fees. The effect of it is that VAT has been payable on barristers' fees since September 1982. As this part of the Bill's amendments do not impinge on the VAT regime, I am not willing to accept the Deputy's amendment. As I understand it, because barristers are not legally entitled to sue for fees payable to them, the Revenue Commissioners have accepted in practice that VAT on barristers' fees is payable upon receipt of the fee by the barrister rather than by reference to the date when the fee note is issued to an instructing solicitor. I have received submissions from interested parties asking me to ensure that the Revenue Commissioners continue to treat barristers' fees in this way in the event that a provision is inserted in the Bill to allow them to sue for their fees. I do not, as Minister for Justice and Equality, have the jurisdiction to dictate to Revenue how it should treat any category of taxpayer. Moreover, the Bill does not yet provide that barristers can sue for their fees. So, amendment No. 189 would be premature and may yet be irrelevant. While a provision to recover barristers' fees is being considered for insertion on Report Stage, the appropriate wording has not yet been found in conjunction with advisory and Parliamentary Counsel. I would also point out that the legislation that the Deputy refers to only places an obligation on barristers to pay VAT. It does not provide for the specific treatment of the VAT concerned. In these circumstances, the amendment would not do what the Deputy presumably wishes it to achieve.

Quite clearly, if we are to have provisions in the Bill that allow for direct access by members of the public to members of the Bar for non-contentious business and there are other possibilities depending on the outcome of the consultative process, in fairness to barristers it will be important that there is a clear provision to ensure that, should a barrister undertake work on behalf of a member of the public and not be paid for that work, in the absence of a solicitor being part of the relationship the barrister can properly sue to recover fees properly due to the barrister. Indeed, if the legislation were not to address that issue adequately, it would leave a very major lacuna in the legislation that would be inappropriate.

Amendment agreed to.

Section 90 deleted.

NEW SECTION

**Deputy Alan Shatter:** I move amendment No. 186:

In page 79, between lines 18 and 19, to insert the following:

**"Agreement regarding legal costs, etc.**

**91.** (1) A legal practitioner and his or her client may make an agreement in writing concerning the amount, and the manner of payment, of all or part of the legal costs that are or may be payable by the client to the legal practitioner for legal services provided in relation to a matter.

(2) An agreement under *subsection (1)* may include all the particulars required by *section 90(4)* and if it does--

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

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

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

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

Amendment agreed to.

Section 91 deleted.

NEW SECTION

**Deputy Alan Shatter:** I move amendment No. 187:

In page 79, between lines 34 and 35, to insert the following:

**"Legal practitioner to provide bill of costs**

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

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

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

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

(c) the registration number of the legal practitioner for the purposes of value-added tax, and the amount of value-added tax chargeable in respect of the amounts

referred to in *paragraph (b)*;

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

(e) the amount, where known to the legal practitioner, of any damages or other moneys that are recovered by, or payable to, the client and that arose from the matter in respect of which the legal services were provided;

(f) the amount of any legal costs recovered by or payable to the legal practitioner concerned on behalf of the client, including costs recovered from another party, or an insurer on behalf of another party, to the matter concerned.

(3) The legal practitioner shall provide to the client, along with the bill of costs, an explanation of the procedure available to the client should the client wish to dispute any aspect of the bill of costs, which shall contain the following information--

(a) that the client may discuss the matter with the legal practitioner;

(b) that the client is obliged under *section 93(1)* to communicate to the legal practitioner the existence of a dispute on any aspect of the bill of costs, and the date and means by which this is to be communicated;

(c) that, where a dispute is communicated under *section 93(1)*, the legal practitioner is obliged under *section 93* to attempt to resolve the dispute by informal means, including mediation;

(d) that the client may have the dispute referred to mediation, including a reference to the procedures available for such mediation;

(e) that the client may apply for adjudication of legal costs, including the contact information for the Office and the potential cost to the client of seeking an adjudication of a bill of costs; and

(f) the date on which the legal practitioner may, subject to *section 93*, make an application under *section 94(5)* for an adjudication in the event that the bill of costs or any part thereof remains unpaid.

(4) This section shall not be construed as limiting a right that any other person has to require a legal practitioner to submit a bill of costs for adjudication.

(5) Where an agreement has been made under *section 91* by a legal practitioner and his or her client, that agreement shall be set out in, or annexed to, the bill of costs relating to the matter to which the agreement relates.

(6) Where an agreement referred to in *subsection (5)* concerns all of the legal costs that are payable by the client to the legal practitioner for legal services provided in relation to the matter concerned, an invoice prepared by the legal practitioner containing a summary of the costs and outlays pursuant to the agreement, together with a copy of the agreement, shall constitute a bill of costs of the purposes of this section.

(7) Where an agreement referred to in *subsection (5)* concerns a part of the legal costs that are payable by the client to the legal practitioner for legal services provided

in relation to the matter concerned, a summary prepared by the legal practitioner of the costs and outlays pursuant to the agreement shall, as respects that part of the legal costs, satisfy the requirements of *paragraphs (a)*, *(b)* and *(d)* of *subsection (2)*.

(8) Where a solicitor, having received instructions from a client in relation to a matter, proceeds to instruct a barrister in relation to that matter, and the barrister has concluded providing legal services in relation to that matter--

(a) an obligation on the barrister under this section to provide a bill of costs shall be fulfilled where the barrister provides the bill of costs concerned to the solicitor,

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

Amendment agreed to.

Section 92 deleted.

NEW SECTION

**Deputy Alan Shatter:** I move amendment No. 188:

In page 80, between lines 28 and 29, to insert the following:

**"Legal practitioner to attempt to resolve dispute**

**93.** (1) Where a client disputes any aspect of a bill of costs, he or she shall, within 14 days of the bill of costs being provided to him or her under *section 92*, send the legal practitioner concerned a statement in writing setting out the nature of the dispute.

(2) Where a legal practitioner receives a statement in accordance with *subsection (1)*, he or she shall, before making an application under *section 94(5)*, take all appropriate and reasonable steps to attempt to resolve the dispute by informal means, which may include, where appropriate and with the consent of the client, mediation.

(3) Where the legal practitioner or the client, as the case may be, having made reasonable attempts to resolve the dispute in accordance with *subsection (2)*, is of the opinion that the attempt has failed, he or she shall inform the other party in writing of that opinion.

(4) In reckoning the period of time for the purposes of *subsection (5)* or *(7)* of *section 94*, the period beginning on the date on which the client sends the legal practitioner a statement under *subsection (1)* and ending on the date on which the legal practitioner or the client, as the case may be, informs the other party of his or her opinion referred to in *subsection (3)*, shall be disregarded.

(5) Failure by a client to pay a bill of costs to a legal practitioner within the time period referred to in *section 94(5)* shall not be construed as a formal communication of the existence of a dispute by the client to the legal practitioner.".

Amendment agreed to.

Amendment No. 189 not moved.

Section 93 deleted.

**Chairman:** Now may be a natural time to break.

**Deputy Pádraig Mac Lochlainn:** We are making good progress. Could we continue and see this through?

**Chairman:** No; it would not be fair on the staff. There is a lot to go yet.

**Deputy Pádraig Mac Lochlainn:** Fair enough. How long does the Chairman estimate it will take us to go through the rest? There are no objections to the remaining amendments. If the Minister is agreeable to shortening his presentations, we could go through them quickly.

**Chairman:** In fairness, we agreed to break at 1 p.m. until 2 p.m.

**Deputy Pádraig Mac Lochlainn:** I do not want to be belligerent, but would another 20 minutes or half an hour take it home?

**Chairman:** I am sorry, but we are stopping now. It would not be fair on the staff. They need a break, too.

**Deputy Pádraig Mac Lochlainn:** If it is about the staff, I have no objections, but it might actually benefit them to wrap up early.

**Chairman:** We will take a break for an hour and return at 2 p.m. I thank members.

**Deputy Alan Shatter:** Could I make the Chairman's life difficult by suggesting 2.10 p.m.?

**Chairman:** That would be fine.

**Deputy Pádraig Mac Lochlainn:** I will offer my apologies, as I will not be present.

**Chairman:** I know.

*Sitting suspended at 1 p.m. and resumed 2.10 p.m.*

NEW SECTION

**Chairman:** We are in public session. The next amendment is No. 190, acceptance of which involves the deletion of section 94 of the Bill. As amendments Nos. 190 to 198, inclusive, are related they will be discussed together.

**Deputy Alan Shatter:** I move amendment No. 190:

In page 80, between lines 35 and 36, to insert the following:

**"Application for adjudication of legal costs**

**94.** (1) In a case where a person is ordered by a court, tribunal or other body to pay, in whole or in part, the legal costs of another person, the person whose legal costs are to be paid by reason of that order shall furnish a bill of costs to the person who is the subject of t he order to pay the legal costs, in a form and manner consistent with—

(a) the terms of the order,

(b) this Act, and

(c) any rules of court relating to the preparation and furnishing of bills of costs in a case to which this subsection refers.

(2) Where a person who is the subject of the order to pay costs receives a bill of costs prepared in accordance with *subsection (1)*, that person may, having attempted to agree the bill of costs with the person referred to in *subsection (1)*, apply to the Chief Legal Costs Adjudicator for adjudication on any matter or item claimed in the bill of costs.

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

(4) Where a legal practitioner provides a bill of costs in accordance with *section 92** to his or her client and the client considers that any matter or item or the amount charged in respect of any matter or item in the bill of costs is not properly chargeable, taking account of the provisions of this Act, and any rules of court relating to costs payable to legal practitioners by clients, the client may apply to the Chief Legal Costs Adjudicator for the bill of costs or any matter or item in the bill of costs to be adjudicated upon.

(5) (a) Where a legal practitioner provides a bill of costs in accordance with *section 92** to his or her client and the bill of costs or any part thereof remains unpaid on the expiry of a period of 30 days from the date on which the bill of costs was provided, the legal practitioner may apply to the Chief Legal Costs Adjudicator for the bill of costs or any matter or item in the bill of costs to be adjudicated upon.

(b) Where a barrister has, in accordance with *section 92(8)**, provided a bill of costs to a solicitor, and the bill of costs or any part thereof remains unpaid on the expiry of a period of 30 days from the date on which the bill of costs was provided, the solicitor concerned may, with the consent of the barrister, apply to the Chief Legal Costs Adjudicator for the bill of costs or any matter or item in the bill of costs to be adjudicated upon.

(c) An application to the Chief Legal Costs Adjudicator pursuant to *paragraph (a)* or *(b)* may not be made after the expiry of 12 months after the date on which the bill of costs concerned was provided to the client under *section 92**.

(6) Where the legal practitioner applies for adjudication pursuant to *subsection (5)*, the legal practitioner shall indicate whether or not he or she is aware of any dispute regarding an item in the bill of costs and if so aware the matter to which the dispute relates.

(7) Subject to *subsection (8)*, an application to the Chief Legal Costs Adjudicator by a client pursuant to *subsection (4)* may not be made after the expiry of 6 months after the date on which bill of costs concerned was provided to the client under *section 92**, or 3 months from the date of payment of the bill of costs, whichever first occurs, so long as the bill of costs is in a form and manner consistent with—

(a) this Act, and

(b) any rules of court relating to the preparation and provision of bills of costs by a legal practitioner to a client.

(8) Where a bill of costs has been provided by a legal practitioner to his or her client and the legal practitioner has agreed to accept a lesser amount in discharge of the bill of costs which lesser amount is paid, neither the legal practitioner nor the client may make an application to the Chief Legal Costs Adjudicator for adjudication of the bill of costs under this section.

(9) A legal practitioner who has provided a bill of costs in accordance with *section 92** to his or her client may apply *ex parte* to the High Court or to a Legal Costs Adjudicator for the abridgement of the period of 30 days referred to in *subsection (5)* and, where it appears that it is just to do so, the Court or the Legal Costs Adjudicator, as appropriate, may grant an abridgement of that period.

(10) Rules of court may make provision for—

(a) the giving of notice of the application for adjudication to other parties or to such other persons as the Chief Legal Costs Adjudicator shall direct,

(b) the furnishing of documents, records and vouchers to the Chief Legal Costs SECTION 94 Adjudicator or to other parties to the adjudication,

(c) the circumstances and manner in which written submissions are to be provided for the purposes of an adjudication, and

(d) the steps that may constitute an attempt, by a person referred to in *subsection (2)* or *(3)*, to agree a bill of costs, and the certification by a Legal Costs Adjudicator that the person has made such an attempt.

(11) An application under this section shall be in a form specified by rules of court or, as the case may be, under *section 105(1)*.".

This amendment relates to section 94 and provides for applications for the adjudication of legal costs to a legal costs adjudicator. It is primarily intended to make improvements to the flow and practical workability of the section. The key amendment is found in subsection (5) which now includes subparagraphs that provide for a solicitor to make an application to the adjudicator in relation to a bill of costs provided by a barrister, which bill remains unpaid in whole or in part by their mutual client. This is in recognition of the fact that usually the business flows from the client to the solicitor to the barrister and not directly from the client to the barrister. Therefore, it makes sense that the solicitor should be able to make applications where this is the case. This will not be true in all cases as there is some direct access to barristers by clients such as architects, engineers, etc. Subsection (10) includes a couple of small additions to allow for rules of court to provide for the manner in which written submissions may be provided and the steps that may constitute an attempt to agree a bill of costs before having recourse to the adjudicator.

On section 95, some duplication has been removed and some minor improvements are being made to the text. The section continues to provide for the matters to be ascertained by the adjudicator in the course of an adjudication such as what work was actually undertaken by the legal practitioner, what would constitute a reasonable fee for that work, how long it took to do the work and whether it was appropriate in the circumstances that a charge was made for the work concerned.

Section 96 provides for the powers of the legal costs adjudicator to inspect documents, summon and examine witnesses, apply to the High Court for the enforcement of a summons and to adjourn hearings so that disputes may be referred to mediation or another informal resolution process, where appropriate. A new addition to the section, which had been intended at the time of publication of the Bill, is a provision that adjudications shall continue to be held in public unless the adjudicator is of the opinion that it is in the interests of justice that part or all of the hearing should be held *in camera.* Discretion is also being given to the adjudicator to conduct an adjudication without an oral hearing where it is expedient and in the interests of justice, but only with the consent of the parties.

The Chairman will have received a note from the Bills Office in relation to changes that had to be made to cross references within section 97**.** I trust those references are now in order. The section provides a detailed framework for the hearing and determination of legal costs adjudications. It includes a provision that the determinations will be made subject to the legal costs principles set out in the Schedule. It provides that fees for disbursements and other fees must be furnished with receipts and other documentary evidence and that any item not previously flagged to the client in the notice of costs will not generally be chargeable by the legal practitioner. In a departure from the current taxation process, the section also provides that the adjudicator shall write a report of the adjudication, setting out his or her reasons for the determination upon the request of a party or where it is considered to be in the interests of justice. The latter is intended to bring greater transparency and consistency to the legal costs process.

Section 98 provides for the effect of a legal costs adjudicator's determination, including a modernised version of the long established, so-called "one-sixth rule" whereby the costs of the adjudication process will be charged against any legal practitioner who is found to have issued a bill of costs that is determined by the adjudicator to be at least 15% higher than it should be. I have received written representations from lawyers' representatives asking me to increase that margin to at least 20% but I am of the view that 15% is appropriate and fair, representing as it does a less than 2% tightening of the traditional margin. The key amendments being made to this section are: the insertion of a 20-day grace period before the adjudicator's determination becomes final, which I will discuss further later; an amendment to clarify that the 15% rule applies only to legal costs charged by a legal practitioner to his or her own client, as opposed to "party & party" costs; and the insertion of a new subsection to allow for the costs of the adjudication to be offset against the aggregate amount owed to the legal practitioner as determined by the adjudicator.

The possibility of a referral of a question of law to the High Court in the original section 99 remains unamended. Section 100 is entirely new and is inserted here to reflect current practice in the Taxing Master's office whereby an objections procedure allows the Taxing Master to briefly reconsider disputed legal costs determinations. This is a commonsense filtering mechanism which works well in practice and helps to keep the number of referrals to the High Court lower than they would otherwise be. This, of course, is desirable. Parties seeking to utilise this mechanism must do so within 14 days of the determination, thus ensuring that proceedings are not drawn out.

Section 101 provides for a review of a determination of a legal costs adjudicator. This is a slightly amended version of the original section 100 of the Bill as published. The key change is a change in terminology from "appeal" to "review" to accurately reflect the process intended by this section, which gives the court power to confirm the determination of the adjudicator, to remit the matter to the adjudicator for another determination in line with the court's decision

or to substitute its own determination for that of the adjudicator. The only other change is the insertion of a new subsection (5) to carry over the "test" already provided for in section 27 of the Courts and Court Officers Act 1995, but inadvertently omitted from this Bill, whereby the High Court must first be satisfied that an adjudicator has erred in his or her determination to the extent that it is unjust before the High Court will allow a review of that determination.

The original sections 101 and 102 in relation to privilege and the power for the chief legal costs adjudicator to specify the form of documents required for the purposes of this Part, have not been amended. Sections 106 to 109, inclusive, of the original Bill are standard, transitional provisions to ensure a smooth hand-over from the Taxing Master's office to the new office of the legal costs adjudicator. The only amendments here are found in section 106 and are purely technical in nature.

Amendment No. 198 is the final amendment. Schedule 1 of the Bill provides for the principles relating to legal costs to be applied by legal costs adjudicators when making determinations on disputed bills of costs. The key principles are that only those costs that have been reasonably incurred and are reasonable in amount will be permitted. In considering what might constitute a "reasonable amount", the adjudicators will consider a number of relevant factors, including, for example: the complexity and difficulty of the legal work concerned; any relevant skill or specialised knowledge applied; the amount of time and labour spent on the work; and the number and complexity of the documents that were required to be drafted or examined. The key changes made to this Schedule from the published Bill are the deletion of subparagraph 1(c), which was recommended for deletion by those with expertise in the legal costs area, and the deletion of the original subparagraphs 2(l) and (m), which are considered unnecessary. The latter have been replaced with a new subparagraph 2(l) to cover the use of outside expertise in the legal services provided and whether such costs were necessary and reasonable.

Amendment agreed to.

Section 94 deleted.

NEW SECTION

**Chairman:** Acceptance of amendment No. 191 involves the deletion of section 95 of the Bill.

**Deputy Alan Shatter:** I move amendment No. 191:

In page 82, between lines 7 and 8, to insert the following:

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

**95.** (1) *Schedule 1* on the principles relating to legal costs shall apply to the adjudication of a bill of costs by a Legal Costs Adjudicator.

(2) Where the Chief Legal Costs Adjudicator is adjudicating an application under this Part, a reference to a Legal Costs Adjudicator shall be construed as including the Chief Legal Costs Adjudicator.

(3) In determining an application for the adjudication of legal costs, the Legal Costs Adjudicator shall, to the extent which he or she considers it necessary to do so, consider and have regard to the entire case or matter to which the adjudication relates and the

context in which the costs arise.

(4) In particular, the Legal Costs Adjudicator shall, as respects a matter or item the subject of the application—

(a) verify that the matter or item represents work that was actually done,

(b) determine whether or not in the circumstances it was appropriate that a charge be made for the work concerned or the disbursement concerned,

(c) determine what a fair and reasonable charge for that work or disbursement would be in the circumstances, and

(d) determine whether or not the costs relating to the matter or item concerned were reasonably incurred.

(5) In applying *subsection (4)* the Legal Costs Adjudicator shall, so far as reasonably practicable, ascertain, in relation to work (including work to which a disbursement relates)—

(a) the nature, extent and value of the work,

(b) who carried out the work, and

(c) the time taken to carry out the work.

(6) In the application of *subsection (3)* to an adjudication relating to a bill of costs as between a legal practitioner and his or her client, the Legal Costs Adjudicator shall have regard to an agreement (if any) between the legal practitioner and the client in relation to the matter concerned, made under *section 91*.".

Amendment agreed to.

Section 95 deleted.

NEW SECTION

**Deputy Alan Shatter:** I move amendment No. 192:

In page 83, between lines 6 and 7, to insert the following:

**"Powers of Legal Costs Adjudicator**

**96.** (1) For the purposes of determining an application for adjudication of legal costs, a Legal Costs Adjudicator may—

(a) inspect documents relating to or relevant to the matter concerned, and

(b) where there is an oral hearing, summon and examine witnesses and administer oaths, and apply to the High Court for the enforcement of a summons.

(2) A Legal Costs Adjudicator may invite the parties to an adjudication to refer their dispute to mediation or another informal resolution process if he or she considers that to do so would be appropriate in all the circumstances, whether or not any of the parties have requested that the Legal Costs Adjudicator do so.

(3) If the parties agree to refer their dispute to mediation or other process referred to in *subsection (2)*, the Legal Costs Adjudicator shall adjourn the determination of the application and may give any other direction that he or she considers will facilitate the resolution of the dispute.

(4) An oral hearing held for the purposes of an adjudication shall be held in public unless, in the opinion of the Legal Costs Adjudicator, the hearing or part thereof ought, in the interests of justice, be held otherwise than in public.

(5) The Legal Costs Adjudicator may, with the consent of the parties, conduct an adjudication without an oral hearing where he or she is of the opinion that it is expedient and in the interests of justice to do so.

(6) The High Court, in an application referred to in *subsection (1)*, may make such order as to costs as it thinks fit in respect of the application.".

Amendment agreed to.

Section 96 deleted.

NEW SECTION

**Chairman:** Acceptance of amendment No. 193 involves the deletion of section 97 of the Bill.

The Minister has advised that there are three typographical corrections to amendment No. 193 which the committee is being requested to accept when the relevant amendments are reached. Corrections to amendment No. 193 are as follows: the cross-reference in subsection (8) should refer to subsection (9); the cross reference in subsection (9) should refer to subsection (8); and the cross-reference in subsection (10) should refer to subsection (8). Is that agreed? Agreed.

**Deputy Alan Shatter:** I move amendment No. 193:

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

**"Determination of applications**

**97.** (1) A Legal Costs Adjudicator, having considered an application in accordance with *section 95*, shall, in accordance with this section, make a determination in respect of that application.

(2) A determination shall, as soon as practicable after it is made, be furnished to the parties to the adjudication.

(3) Subject to the other provisions of this section, and the principles relating to legal costs specified in *Schedule 1*, a Legal Costs Adjudicator shall confirm the charge in respect of an item of legal costs the subject of the application if, having regard to the matters that he or she considered and ascertained under *section 95*, he or she considers that—

(a) charging in respect of the item is fair and reasonable in the circumstances, and

(b) the amount charged in the bill of costs in respect of that item is fair and reasonable in the circumstances.

(4) A Legal Costs Adjudicator shall, if he or she determines that it is fair and reasonable to charge an amount in respect of an item but that the amount of the charge in respect of the item is not fair and reasonable, determine a different amount to be charged in respect of that item.

(5) A Legal Costs Adjudicator shall not confirm an amount for a disbursement unless—

(a) there is a valid voucher or receipt in respect of the disbursement, or

(b) the parties have agreed, and the Legal Costs Adjudicator is satisfied, that such a voucher or receipt is not required.

(6) A Legal Costs Adjudicator shall not confirm a charge in respect of a matter or item if the matter or item is not included in a notice referred to in *section 90* or, as the case may be, is not the subject of an agreement referred to in *section 91*, unless the Legal Costs Adjudicator is of the opinion that to disallow the matter or item would create an injustice between the parties.

(7) If a Legal Costs Adjudicator is of the opinion that a party to the application has neglected or refused to provide documents, and that the refusal or neglect would likely be prejudicial to the interests of one or more of the other parties, the Legal Costs Adjudicator shall, in order to minimise the prejudice to those interests—

(a) determine the application to the extent possible in the circumstances, and

(b) determine that only a nominal amount is to be payable to the party who has neglected or refused to provide the required documentation.

(8) The Legal Costs Adjudicator, having made a determination, shall prepare a report under *subsection (8)*—

(a) where he or she considers it to be in the public interest, or

(b) upon request by any party to the adjudication, made not later than 14 days after the making of the determination.

(9) A report referred to in *subsection (7)* shall set out the matters or items the subject of the adjudication and a brief outline of the background to the provision of the legal services concerned and the principal issues relating to the context of the provision of those services and—

(a) specify the work involved relating to the matters or items the subject of the adjudication which was considered in reaching the determination,

(b) specify the various stages of the legal services and the stage of the legal process at which such work was carried out by reference to distinct aspects of the course of the work,

(c) set out a summary of the written or oral submissions made by or on behalf of the parties to the adjudication, and

(d) give reasons for his or her determination.

(10) A copy of any report under *subsection (7)* shall be furnished to any requesting party to the adjudication as soon as practicable after it has been prepared.".

Amendment agreed to.

Section 97 deleted.

NEW SECTION

**Deputy Alan Shatter:** I move amendment No. 194:

In page 84, between lines 33 and 34, to insert the following:

**"Effect of determination**

**98.** (1) Subject to *section 100*, the determination of a Legal Costs Adjudicator is final and shall take effect 20 days after it is furnished under *section 97(2)* to the parties to the adjudication.

(2) Where an adjudication concerns only legal costs as between a legal practitioner and his or her client, and the Legal Costs Adjudicator has determined that the aggregate of the amounts to be paid is less than 15 per cent lower than the aggregate of those amounts set out in the bill of costs, the party chargeable to those costs shall pay the costs of the adjudication.

(3) Where a Legal Costs Adjudicator has determined that the aggregate of the amounts to be paid in respect of the legal costs referred to in *subsection (2)* is 15 per cent or more than 15 per cent lower than the aggregate of those amounts set out in the bill of costs, the legal practitioner who issued the bill of costs shall be responsible for the costs of the adjudication.

(4) Where *subsection (3)* applies, the Legal Costs Adjudicator may determine that the costs of the adjudication be set-off against the aggregate amount determined.".

Amendment agreed to.

Section 98 deleted.

Section 99 agreed to.

NEW SECTION

**Chairman:** Acceptance of amendment No. 195 involves the deletion of section 100 of the Bill.

**Deputy Alan Shatter:** I move amendment No. 195:

In page 85, between lines 20 and 21, to insert the following:

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

**100.** (1) Where a party to an adjudication is dissatisfied with a decision of a Legal

Costs Adjudicator under *section 97* to confirm a charge, not to confirm a charge or to determinate a different amount to be charged in respect of a matter or item the subject of the adjudication, he or she may, within 14 days of the date on which the determination is furnished to him or her under *section 97(2)*, apply to the Legal Cost Adjudicator for the consideration of the decision and the making of a determination under this section.

(2) An application under *subsection (1)* shall be—

(a) in such form as may be specified in rules of court or, where applicable, under *section 105*, and shall specify by a list in a short and concise form the matters or items, or parts thereof, to which the decision of the Legal Costs Adjudicator being objected to relates and the grounds and reasons for such objections, and

(b) made on notice to the other party to the adjudication.

(3) The Legal Costs Adjudicator shall, if he or she considers it appropriate to do so, and upon the application of the party entitled to the costs, issue an interim determination pending consideration of an application under *subsection (1)*, in respect of—

(a) the remainder of the matters or items in the determination to which no objection has been made, and

(b) such of the matters or items that are subject of the application as the Legal Costs Adjudicator considers reasonable.

(4) For the purposes of an application under *subsection (1)*, the Legal Costs Adjudicator shall reconsider and review his determination having regard to the matters or items specified under *subsection (2)(a)*, and *sections 95* to *98* shall apply in relation to such a consideration.

(5) The Legal Costs Adjudicator, having considered an application under this section may decide—

(a) not to vary his or her determination, or

(b) to make a new determination,

and the determination referred to in *paragraph (a)* or *(b)* shall, subject to *section 101*, take effect immediately.

(6) The functions of a Legal Costs Adjudicator in relation to an application under this section shall, insofar as practicable, be performed by the Legal Costs Adjudicator who made the determination to which the application relates.".

Amendment agreed to.

Section 100 deleted.

NEW SECTION

**Deputy Alan Shatter:** I move amendment No. 196:

In page 85, after line 45, to insert the following:

**"Review of determination of Legal Costs Adjudicator**

**101.** (1) A party to an adjudication who has made an application under *section 100* may, not later than 21 days after the date on which the Legal Costs Adjudicator has made his or her determination under *section 100(5)*, apply to the High Court for a review of the determination concerned.

(2) A review under this section shall be made by motion on notice to all other parties to the adjudication and the Chief Legal Costs Adjudicator.

(3) The court shall hear and determine the review on the evidence that was tendered to the Legal Costs Adjudicator unless the court orders that other evidence be submitted.

(4) The court shall, having heard the review under *subsection (1)*—

(a) confirm the determination of the Legal Costs Adjudicator, or

(b) allow the review and—

(i) remit the matter to the Legal Costs Adjudicator to determine the adjudication in accordance with the decision of the court, or

(ii) substitute its own determination for that of the Legal Costs Adjudicator.

(5) The High Court shall allow a review under *subsection (4)(b)* only where it is satisfied that the Legal Costs Adjudicator has, in his or her determination, erred as to the amount of the allowance or disallowance so that the determination is unjust.

(6) In this section "court" means—

(a) if the adjudication the subject of the review is in relation to party and party costs, the court that heard the proceedings to which those costs relate, and

(b) in any other case, the High Court.".

Amendment agreed to.

Sections 101 to 105, inclusive, agreed to.

NEW SECTION

**Deputy Alan Shatter:** I move amendment No. 197:

In page 88, before line 1, to insert the following:

**"References**

**106**. (1) On and after the day on which this section comes into operation—

(a) a reference in any other enactment to taxation of costs shall be construed as a reference to adjudication of costs,

(b) a reference to the Taxing-Masters' Office contained in any other enactment or any other document shall be construed as a reference to the Office of the Legal Costs Adjudicators, and

(c) a reference to a Taxing-Master contained in any other enactment or any other

document shall be construed as a reference to the Chief Legal Costs Adjudicator and every Legal Costs Adjudicator.".

Amendment agreed to.

Section 106 deleted.

Sections 107 to 122, inclusive, agreed to.

SECTION 123

Question proposed: "That section 123 stand part of the Bill."

**Deputy Michael McNamara:** Before we finish the final parts of the Bill, I feel obliged to bring this up at this stage. I was encouraged by what the Minister said just before the break. Will an amendment be included to the effect that any rule of law prohibiting either a barrister or a legal practitioner from instituting or prosecuting legal proceedings to recover professional fees owed to them is hereby abolished? The Minister said it was his intention to look into that aspect.

**Deputy Alan Shatter:** Yes, we are looking at that. In circumstances where a member of the Bar was being directly consulted by a client, he or she should be able to recover fees. I also regard it as an entirely anomalous and historical accident that if a member of the Bar has properly undertaken work on the instructions of a solicitor and he or she does not get paid, he or she is left effectively in limbo beyond making a complaint to the Law Society. That is entirely inappropriate and unfair, although it might have been an interesting concept in the 1800s. We are looking at how we can best address that. I hope we will have an amendment on Report Stage.

**Deputy Michael McNamara:** It may be necessary to include that this is without prejudice to any rule relating to liability for professional negligence because the two were linked at one point. Recent House of Lords decisions - maybe 100 years ago - separated the two, but-----

**Deputy Alan Shatter:** We are looking at how we can best address that. While I know I said earlier that it is an extraneous issue - the VAT issue is a Revenue matter and is not for us - it is an issue in the context of people finding they are unexpectedly being levied for VAT for fees that they may never get paid. There is an obvious issue that arises. That is an issue that affects the professional work of people, not just in the Bar, as it could in these circumstances, but also in other areas. As Minister for Justice and Equality, I cannot modify our VAT legislation. However, we will look at how we might deal with this to ensure there are not unexpected or unintended consequences that impact on people.

Question put and agreed to.

NEW SCHEDULE

**Chairman:** As discussed earlier, acceptance of amendment No. 198 involves the deletion of Schedule 1.

**Deputy Alan Shatter:** I move amendment No. 198:

In page 103, before line 1, to insert the following:

SCHEDULE 1

PRINCIPLES RELATING TO LEGAL COSTS

1. A Legal Costs Adjudicator shall apply the following principles in adjudicating on a bill of costs pursuant to an application pursuant to *section 94*:

(a) that the costs have been reasonably incurred, and

(b) that the costs are reasonable in amount.

2. In determining whether the costs are reasonable in amount a Legal Costs Adjudicator shall consider each of the following matters:

(a) the complexity of the legal work concerned;

(b) the difficulty and novelty of the issues involved in the legal work;

(c) the skill or specialised knowledge relevant to the matter which the legal practitioner has applied to the matter;

(d) the time and labour that the legal practitioner has reasonably expended on the matter;

(e) the importance of the matter to the client;

(f) the urgency of the matter to the client and whether this urgency requires or required the legal practitioner to give priority to that matter over other matters;

(g) the place and circumstances in which the matter was transacted;

(h) the number, importance and complexity of the documents that the legal practitioner was required to draft, prepare or examine;

(i) where money, property or an interest in property is involved, the amount of the money, or the value of the property or the interest in the property concerned;

(j) whether or not there is an agreement to limit the liability of the legal practitioner pursuant to *section 44*;

(k) whether or not the legal practitioner necessarily undertook research or investigative work and, if so, the timescale within which such work was required to be completed;

(l) the use and costs of expert witnesses or other expertise engaged by the legal practitioner and whether such costs were necessary and reasonable.".

Amendment agreed to.

Schedule 1 deleted.

Schedules 2 and 3 agreed to.

Title agreed to.

**Deputy Alan Shatter:** I thank the members of the committee, both today and on the previous occasions, for engaging with the Bill and for some of the interesting discussions we have

had. It is important to use this forum to enable amendments that are suggested from outside this House to be teased out. I would be of the view that simply because a Deputy is handed an amendment, it does not necessarily mean he or she should automatically table it. It has been a very useful opportunity to tease through aspects of the Bill. It is part of the process of ensuring we get the best possible legislation at the end of the day.

I have already referred to some areas in which we will introduce further amendments on Report Stage. In dealing with some issues on Report Stage, particularly dealing with limited liability issues we may need to recommit the Bill so that there is adequate time to discuss them. I will also try to ensure that our Report Stage amendments are published in reasonable time so that people have an opportunity to consider them and consult on them. They should have more than adequate opportunity to identify the issues on which they should kick me around, obviously in a constructive and helpful way so as to ensure that at the end of it all we get really good legislation.

**Chairman:** I thank the Minister and his officials for attending. I thank members of the committee for being so constructive and helpful to me in the job I had to do here.

Bill reported with amendments.

## Message to Dáil

**Chairman:** In accordance with Standing Order 87, the following message will be sent to the Dáil:

> The Select Committee on Justice, Defence and Equality has completed its consideration of the Legal Services Regulation Bill 2011 and has made amendments thereto.

The select committee adjourned at 2.30 p.m. *sine die*.