
Number 36 of 1954.

SOLICITORS ACT, 1954.

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[1954.]

Solicitors Act, 1954.

[No. 36.]

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Number 36 of 1954.

SOLICITORS ACT, 1954.

AN ACT TO PROVIDE FOR THE ADMISSION, ENROLMENT AND CONTROL OF SOLICITORS OF THE COURTS OF JUSTICE AND TO PROVIDE FOR OTHER MATTERS CONNECTED WITH THE MATTERS AFORESAID.

[22nd December, 1954.]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:—

PART I

PRELIMINARY AND GENERAL

- 1.—This Act may be cited as the Solicitors Act, 1954. Short title.
- 2.—This Act shall come into operation as follows: Commencement.
- (a) the portions of the Act relating to the making of regulations and rules and to the issue of notices and other proceedings preliminary to holding examinations shall come into operation on the passing of the Act,
- (b) section 44 of this Act shall come into operation as provided for in that section,
- (c) the remainder of the Act shall come into operation on the 6th day of January, 1955.
- 3.—(1) In this Act— Interpretation.
- "the Council" means the Council of the Society;
- ~~"the Disciplinary Committee" has the meaning assigned to it in section 13;~~
- "functions" includes powers and duties;
- "practice year" means any year ending on the 5th day of January;
- "practising certificate" has the meaning assigned to it in section 46;
- "prescribed" means prescribed by regulations made by the Society;

Repealed by Part I, First Schedule, 1960 Act. See page 76. For replacement definition, see section 3, 1960 Act, at page 56.

Substituted by section 3(1)(b), 1994 Act. See page 89.

"the register of practising solicitors" has the meaning assigned to it in section 47;

"registrar" has the meaning assigned to it in section 8;

"the roll" has the meaning assigned to it in section 9;

"the Society" means the Incorporated Law Society of Ireland;

"solicitor" means a solicitor of the Courts of Justice;

"solicitor in the full-time service of the State" has the meaning assigned to it in subsection (3) of section 54;

"solicitor qualified to practise" has the meaning assigned to it in subsection (1) of section 54;

"trust" and "trustee" extend to implied or constructive trusts and to cases where the trustee has a beneficial interest in the trust property, and to the duties incident to the office of a personal representative, and "trustee", where the context admits, includes a personal representative;

"unqualified person" means—

- (a) a solicitor who is not a solicitor qualified to practise, or
- (b) a person who is not a solicitor.

(2) A reference in this Act to performance of functions includes, as respects powers, a reference to exercise of those powers.

(3) A reference in this Act to contravention of a provision includes, where appropriate, a reference to refusal or failure to comply with that provision

(4) A reference in this Act to the Chief Justice shall, where the function in question stands delegated under section 6 of this Act to a judge of the ~~Supreme Court~~ or High Court, be construed as a reference to that judge.

4.—The functions vested in the Society by or under this Act shall be performed by the Council. Performance of functions of Society.

5.—(1) The Society may make regulations in relation to any matter or thing referred to in this Act as prescribed or to be prescribed or as being the subject of regulations. Regulations generally.

(2) The Society may make regulations for the purpose of the execution of the provisions of this Act.

(3) Every regulation made under this Act shall be laid by the Society before each House of the Oireachtas as soon as may be after it is made.

Definition of "solicitor" substituted by section 3(1)(a), 1994 Act, and extended by section 2, 2009 Act. See page 89 and page 224.

"Supreme Court or" repealed by Part I, First Schedule, 1960 Act. See page 76. Section 25, 1960 Act, substituted President of the High Court for Chief Justice. See page 71.

“Supreme Court or” repealed by Part I, First Schedule, 1960 Act. See page 76. Section 25, 1960 Act, substituted President of the High Court for Chief Justice. See page 71.

6.—(1) The Chief Justice may delegate any of his functions under this Act to any judge of the ~~Supreme Court~~ or High Court.

Delegation by Chief Justice.

(2) The Chief Justice may revoke any delegation which he has made under subsection (1) of this section.

7.—(1) The enactments mentioned in the First Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule.

Repeals.

(2) A reference in a document to an Act or portion of an Act repealed by this Act shall be construed as a reference to this Act or the corresponding portion of this Act and a register, roll or list under an Act repealed by this Act shall be deemed part of the corresponding register, roll or list under this Act.

(3) Nothing in this Act shall affect the general application of the Interpretation Act, 1937 (No. 38 of 1937), with regard to the effect of repeals.

PART II

THE REGISTRAR OF SOLICITORS AND THE ROLL OF SOLICITORS

8.—(1) There shall be a registrar of solicitors (in this Act referred to as the registrar).

Registrar of solicitors.

(2) The Society shall appoint their secretary or some other suitable person to be the registrar.

(3) The registrar shall be appointed on such terms and conditions, and with such emoluments (if any) payable out of the funds of the Society, as the Society determines.

(4) The Society may remove the registrar from office.

(5) The Society may appoint a deputy to act as the registrar for a period and the functions of the registrar shall be performed by the deputy during that period.

Substituted by section 65, 1994 Act. See page 164.

~~**9.**—(1) The registrar shall maintain an alphabetical list of solicitors (in this Act referred to as the roll).~~

Roll of solicitors.

~~(2) The registrar shall keep the roll available for public inspection during office hours without payment.~~

Section 25, 1960 Act, substituted President of the High Court for Chief Justice. See page 71.

10.—(1) A person who has fulfilled such of the requirements of Part IV of this Act as apply in relation to him may apply to the Chief Justice to be admitted as a solicitor.

Admission and enrolment.

(2) On receiving an application in accordance with subsection (1) of this section, the Chief Justice, unless cause to the contrary is shown to his satisfaction, shall, by instrument in writing, admit the applicant as a solicitor.

(3) A person admitted as a solicitor may apply to the registrar to have his name entered on the roll and the registrar, on production of the instrument by which he was admitted, shall enter the name of such person on the roll.

11.—(1) A solicitor shall not be liable to have his name struck off the roll on account of a defect in his indentures of apprenticeship, or in the registration thereof or his service thereunder, or in his admission and enrolment, unless the application to strike his name off the roll is made within twelve months after the date of his enrolment.

Limitation of time for certain applications to strike off roll.

(2) Subsection (1) of this section shall not apply where fraud is proved to have been committed in connection with the indentures, registration, service, admission or enrolment.

12.—A registrar of deaths shall, where an entry is made in the register of deaths concerning a person whose name is on the roll, forthwith send by post to the registrar a certified copy of the entry, and may charge the cost of the certificate and of the sending thereof to the registrar as an expense of his office of registrar of deaths.

Notification of death.

The whole of Part III, with the exception of section 14(3), was repealed by the First Schedule to the 1960 Act. For replacement provisions, see Part II of the 1960 Act at page 57 and sections 16 to 25 of the 1994 Act at page 101.

PART III

THE DISCIPLINARY COMMITTEE

Repealed by Part I, First Schedule, 1960 Act. See page 76.

~~**13.**—(1) The Society shall appoint annually, from among members of the Council and such former members of the Council as are practising as solicitors, a disciplinary committee (in this Act referred to as the Disciplinary Committee) consisting of not less than seven and not more than ten persons.~~

Disciplinary Committee.

~~(2) The Society may remove a member of the Disciplinary Committee, may fill a vacancy therein and, subject to the limits stated in subsection (1) of this section, may increase or reduce the number of persons thereon.~~

~~(3) The members of the Disciplinary Committee shall go out of office on their successors being appointed under subsection (1) of this section, but any such member shall be eligible for re-appointment.~~

~~(4) The Disciplinary Committee may act notwithstanding one or more than one vacancy in their membership.~~

~~(5) The quorum of the Disciplinary Committee shall be five.~~

~~(6) An appointment or removal under subsection (1) or (2) of this section shall not be made save with the approval of the Chief Justice.~~

Subsections (1) and (2) repealed by Part I, First Schedule, 1960 Act. See page 76.

~~14.—(1) The following applications shall be made to the Disciplinary Committee:~~

Applications to Disciplinary Committee.

~~(a) an application by a solicitor to procure the removal of his name from the roll,~~

~~(b) an application by another person or the Society to strike the name of a solicitor off the roll on any of the following grounds:~~

~~(i) that the solicitor has been guilty of misconduct, including conduct tending to bring the solicitors' profession into disrepute,~~

~~(ii) that the solicitor has contravened a provision of this Act or of an order or regulation made under this Act,~~

~~(iii) that the solicitor has been convicted of treason or of a felony or misdemeanour or has been convicted outside the State of a crime or offence which would be a felony or misdemeanour if committed in the State,~~

~~(c) an application to require a solicitor to answer allegations contained in an affidavit,~~

~~(d) an application for replacement on the roll of a name which has been removed from or struck off the roll.~~

~~(2) An application under this section shall be in writing, shall be signed by the applicant and shall be sent to the Disciplinary Committee together with—~~

~~(a) an affidavit by the applicant setting forth the matters relied on in support of the application, and~~

~~(b) the documents relied on in support of the application or copies of those documents.~~

Extant provision.

(3) The Chief Justice or any judge of the High Court may, notwithstanding anything contained in this Act, exercise any jurisdiction over solicitors which he might have exercised if this Act had not been

passed.

Repealed by Part I, First Schedule, 1960 Act. See page 76.

~~15.—Where an application under paragraph (a) of subsection (1) of section 14 of this Act is duly made, the Disciplinary Committee shall consider the application and supporting affidavit and documents and—~~

Procedure where solicitor applies for removal of his name from roll.

~~(a) if they decide that the applicant is entitled to have his name removed from the roll without further inquiry, they shall order accordingly,~~

~~(b) if they decide that there is cause for inquiry, they shall hold an inquiry.~~

Repealed by Part I, First Schedule, 1960 Act. See page 76.

~~16.—(1) Where an application under paragraph (b) or (c) of subsection (1) of section 14 of this Act is duly made, the Disciplinary Committee shall consider the application and supporting affidavit and documents and—~~

Procedure where charge is made against solicitor.

~~(a) if they decide that a *prima facie* case has not been shown, they shall so notify the applicant and the solicitor and shall take no further action,~~

~~(b) if they decide that a *prima facie* case has been shown, they shall serve on the solicitor—~~

~~(i) a copy of the application,~~

~~(ii) a copy of the affidavit,~~

~~(iii) copies of the documents or, at the discretion of the registrar, a list of the documents, and~~

~~(iv) a notice requiring the solicitor to send to the Disciplinary Committee, within a specified period, an affidavit by him in answer to the application, together with any documents, or copies thereof, which he relies on in support of his answer.~~

~~(2) Where a notice under subsection (1) of this section is served, either party may inspect the documents furnished by the other.~~

~~(3) After the expiration of the period specified in a notice under subsection (1) of this section, the Disciplinary Committee shall consider the application and the supporting affidavit and documents and such (if any) affidavit and documents as have been furnished by the solicitor and—~~

~~(a) if they decide that there is no cause for further inquiry, they shall so notify the applicant and the solicitor and shall take no~~

further action;

~~(b) if they decide that there is cause for inquiry, they shall hold an inquiry.~~

~~(4) Where an applicant has been notified under paragraph (a) of subsection (1) or paragraph (a) of subsection (3) of this section, the Disciplinary Committee shall, if so required by the applicant, make a formal order embodying their decision.~~

Repealed by Part I, First Schedule, 1960 Act. See page 76.

~~17. Where an application under paragraph (d) of subsection (1) of section 14 of this Act is duly made, the Disciplinary Committee shall consider the application and supporting affidavit and documents and shall by order either refuse the application or direct that the name in question be replaced on the roll.~~

Procedure where application is made for replacement on roll.

Repealed by Part I, First Schedule, 1960 Act. See page 76.

~~18. (1) Where the Disciplinary Committee hold an inquiry, they may make an order providing for one or more of the following:~~

Orders by Disciplinary Committee on inquiry.

~~(a) the dismissal of the application,~~

~~(b) the admonishment of the solicitor,~~

~~(c) the suspension of the solicitor from practice,~~

~~(d) the removal from or striking off the roll of the name of the solicitor,~~

~~(e) the payment by any party to the inquiry of costs, or of a stated sum as a contribution towards costs,~~

~~(f) the making by the solicitor of such restitution or satisfaction to any aggrieved party as the Disciplinary Committee think fit.~~

~~(2) The Disciplinary Committee may postpone the making of an order under this section.~~

~~(3) Where the making of an order under this section is postponed, the Disciplinary Committee may, on request made to them in that behalf when the matter is considered after the postponement, allow the application to be withdrawn without any order being made under this section.~~

~~(4) The Disciplinary Committee may, on the application of the solicitor to whom an order under this section relates, suspend the operation of the order pending an appeal under subsection (1) of section 23 of this Act.~~

~~(5) An order under this section shall not, while suspended, be filed or enforceable under subsection (1) of section 21 of this Act.~~

Repealed by Part I, First Schedule, 1960 Act. See page 76.

19.—(1) The Disciplinary Committee shall, on an inquiry held by them, have the powers, rights and privileges, vested in the High Court or a judge thereof on the occasion of an action, in respect of—

Powers of Disciplinary Committee as to taking evidence, etc.

(a) ~~the enforcement of the attendance of witnesses and their examination on oath or otherwise, and~~

(b) ~~the compelling of the production of documents,~~

and a summons signed by a member of the Disciplinary Committee may be substituted for and shall be equivalent to any formal process capable of being issued in an action for enforcing the attendance of witnesses and compelling the production of documents.

(2) Where the Disciplinary Committee hold an inquiry and a person—

(a) ~~on being duly summoned as a witness at the inquiry makes default in attending,~~

(b) ~~being in attendance as a witness at the inquiry refuses to take an oath legally required by the Disciplinary Committee to be taken, or to produce any document in his power or control legally required by the Disciplinary Committee to be produced by him or to answer any question to which the Disciplinary Committee may legally require an answer, or~~

(c) ~~does any other thing which, if the Disciplinary Committee were a court of law having power to commit for contempt, would be contempt of the court,~~

the offence of that person may, by certificate signed by two members of the Disciplinary Committee, be certified to the High Court and the High Court may thereupon inquire into the alleged offence and, after hearing any witnesses who may be produced against or on behalf of the person charged with the offence and any statement that may be offered in defence, punish or take steps for the punishment of that person in like manner as if he had been guilty of contempt of the High Court.

(3) A witness at an inquiry held by the Disciplinary Committee shall be entitled to the same immunities and privileges as if he were a witness before the High Court.

Repealed by Part I, First Schedule, 1960 Act. See page 76.

20.—(1) The Disciplinary Committee, with the concurrence of the Chief Justice, may make rules regulating applications to the Disciplinary Committee and the hearing, conduct and determination of such applications and of inquiries held by the Disciplinary Committee.

Rules regulating applications to Disciplinary Committee and inquiries.

(2) Rules under this section may provide, in particular, for extending the period for the furnishing of any affidavit or document, or for receiving an application or affidavit notwithstanding any irregularity in its form, where it appears to the Disciplinary Committee to be just to do so.

~~(3) Rules under this section may provide for award of costs and for taxation thereof by a Taxing Master of the High Court (subject to appeal to the High Court) under the scale of costs applicable to High Court proceedings, and any costs so taxed shall be recoverable as if they had been taxed under an order of the High Court.~~

Repealed by Part I, First Schedule, 1960 Act. See page 76.

21.—(1) An order made by the Disciplinary Committee shall contain a statement of their findings and shall be signed by two of their members and filed with the registrar, and as soon as it has been so filed shall be acted upon by the registrar and be enforceable as if it were a judgement or order of the High Court.

Filing, effect and notice of order made by Disciplinary Committee.

~~(2) Where, by an order made by the Disciplinary Committee, the name of a solicitor is ordered to be removed from or struck off the roll or a solicitor is suspended from practice, the registrar shall, unless the Disciplinary Committee otherwise direct, forthwith 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 Disciplinary Committee may direct.~~

~~(3) The registrar shall maintain separate files on which all orders made by the Disciplinary Committee shall be entered in the following manner:~~

~~(a) on a file to be termed File A, there shall be entered, in alphabetical order of the names of the solicitors concerned, each order directing that the name of a solicitor is to be removed from or struck off the roll or that a solicitor be suspended from practice;~~

~~(b) on a file to be termed File B, there shall be entered, in order of date, all other orders.~~

~~(4) On receipt of a copy of an order made on an appeal under section 23 of this Act, the registrar shall enter the order on File A or File B (as may be appropriate).~~

~~(5) The registrar shall furnish a copy of an entry on File A or File B to a person who applies in writing for such copy.~~

~~(6) Notwithstanding subsection (5) of this section, where—~~

~~(a) application is made for a copy of an entry on File B, being an entry under a date which is earlier than two years before the date of the application, or~~

~~(b) application is made for a copy of an entry on File A or File B, being an entry as respects which the Disciplinary Committee have directed the insertion of a note that the furnishing of a copy thereof might cause injustice,~~

~~a copy of the entry shall (save where the copy is furnished under an order~~

of a court) be furnished only by permission in writing of the Society.

Repealed by Part I, First Schedule, 1960 Act. See page 76.

~~22.—An application to or an inquiry or other proceeding before the Disciplinary Committee shall be a legal proceeding within the meaning of that expression as used in the Bankers' Books Evidence Act, 1879.~~

Application of Bankers' Books Evidence Act, 1879.

Repealed by Part I, First Schedule, 1960 Act. See page 76.

~~23.—(1) An appeal against an order made by the Disciplinary Committee shall lie to the Chief Justice at the instance either of the applicant to the Disciplinary Committee or of the solicitor to whom the order relates.~~

Appeal against order of Disciplinary Committee.

~~(2) An appeal shall also lie to the Chief Justice against the refusal of the Disciplinary Committee to suspend the operation of an order under section 18.~~

~~(3) The Society shall be entitled to appear and to be heard upon the hearing of an appeal under this section.~~

~~(4) A copy of an order made on an appeal under this section shall be sent to the registrar.~~

PART IV

QUALIFYING FOR ADMISSION AS SOLICITOR

Substituted by section 40, 1994 Act. See page 138.

24.—Subject to this Part of this Act, a person shall not be admitted as a solicitor unless—

Requirements for admission as solicitor.

(a) he has attained the age of 21 years;

(b) he has been bound by indentures of apprenticeship to serve as an apprentice to a practising solicitor for the appropriate term and has satisfied the Society that he has duly served under such indentures;

(c) he has obtained from the Society a certificate or certificates certifying that he has passed the appropriate prescribed examinations; and

(d) he has complied with any prescribed requirements as to service under indentures of apprenticeship and admission of persons to be solicitors or compliance therewith has been waived by the Society.

Substituted by section 41, 1994 Act. See page 139.

25.—Subject to this Part of this Act, a person shall not be capable of being bound by indentures of apprenticeship to serve as an apprentice to a solicitor unless—

Requirements for admission to apprenticeship.

- (a) ~~he has attained the age of 17 years,~~
- (b) ~~he has obtained from the Society a certificate or certificates certifying that he has passed the appropriate prescribed examinations,~~
- (c) ~~he has obtained the consent of the Society provided for by section 27 of this Act, and~~
- (d) ~~he has fulfilled any prescribed requirements as to admission to apprenticeship or compliance therewith has been waived by the Society.~~

Substituted by section 42, 1994 Act. See page 140.

26.—The term of indentures of apprenticeship to a practising solicitor shall be determined in accordance with the provisions contained in the Second Schedule to this Act.

Term of indentures.

Substituted by section 43, 1994 Act. See page 140.

27.—(1) ~~Not less than six weeks before a person becomes bound by indentures of apprenticeship, he shall give notice to the Society of his intention so to do and shall furnish the Society with the prescribed evidence of his character.~~

Evidence of good character.

(2) ~~Where the Society are satisfied with the evidence furnished pursuant to this section by a person and with the information obtained from any inquiries that they think proper to make, they shall issue their written consent to the entry of such person into indentures of apprenticeship.~~

(3) ~~The registrar shall refuse to register indentures of apprenticeship produced to him under section 28 of this Act unless the indentures are accompanied by a consent issued under this section and dated not earlier than six months before the date of the indentures.~~

(4) ~~Service of an apprentice under indentures of apprenticeship of which registration has been refused under this section shall be deemed not to be good service by the apprentice under his indentures.~~

28.—(1) Indentures of apprenticeship shall be produced to the registrar for registration and the registrar, on being satisfied by statutory declaration or such other evidence as he considers sufficient of the due execution of the indentures, shall enter in a register the names and addresses of the parties to the indentures, the date thereof and the date of the making of the entry.

Registration of indentures.

(2) The register under this section shall be kept available for public inspection during office hours without payment.

(3) Where the indentures of apprenticeship of an apprentice are not produced to the registrar for registration within six months from the date thereof, the service of the apprentice shall, unless the Society otherwise direct, be reckoned as commencing only upon the date of the production of the indentures.

(4) The provisions of this section with respect to the production and entry of indentures shall apply in the case of fresh indentures, and in the case of an assignment or transfer of indentures under section 32 or under an order under section 34 or 35 of this Act, in the same manner as they apply in the case of original indentures.

Substituted by section 44, 1994 Act, as amended by section 33, 2008 Act. See page 142 and page 212.

~~29.—(1) A solicitor shall not take any apprentice after such solicitor has ceased to practise or to be a solicitor qualified to practise, or while such solicitor is employed as an assistant or clerk by another solicitor.~~

Restriction on solicitor taking or retaining apprentice.

~~(2) A solicitor who has not at some time been in continuous practice as a solicitor for a period of seven years shall not, without special leave of the Society, take any apprentice.~~

~~(3) Regulations may restrict the taking of apprentices by solicitors who are in the whole-time employment of bodies corporate.~~

~~(4) Where a solicitor who is retaining an apprentice ceases to practise or to be a solicitor qualified to practise or becomes employed as an assistant or clerk to another solicitor, he shall not retain the apprentice for longer than six months thereafter.~~

~~(5) Service by an apprentice to a solicitor who has taken him in contravention of subsection (1), subsection (2) or regulations made for the purposes of subsection (3) of this section or service by an apprentice to a solicitor during any period when such solicitor retained him in contravention of subsection (4) of this section shall, unless the Society direct otherwise, be deemed not to be good service by the apprentice under his indentures of apprenticeship.~~

30.—A person shall not be disqualified for admission as a solicitor or be liable to be struck off the roll—

Saver for service of apprentice where solicitor disqualified.

(a) by reason of a solicitor, whom he served under indentures of apprenticeship for the whole or part of the term required by this Act, having neglected or omitted to take out a practising certificate, or

(b) by reason of a solicitor to whom he was bound by indentures of apprenticeship ceasing, after the termination of the period for which he was bound, to be a solicitor qualified to practise.

31.—(1) In a case in which the Society have directed, or have power to direct, the registrar to refuse the application of a solicitor for a practising

Prohibition on taking of

certificate, they may, by notice in writing served on the solicitor, prohibit him from taking any apprentice, and thereupon the solicitor shall not take any apprentice unless and until the Society withdraw the prohibition.

(2) Service by an apprentice to a solicitor who has taken him in contravention of a prohibition in force under this section shall, unless the Society direct otherwise, be deemed not to be good service by the apprentice under his indentures.

(3) Where under this section the Society prohibit a solicitor from taking any apprentice, they may, of their own motion, by order, discharge the indentures of any apprentice then already apprenticed to that solicitor upon such terms, including terms as to return of premium, as they think fit, and determine what period (if any) of service by the apprentice under the indentures shall be deemed good service.

Substituted by
section 45, 1994
Act. See page
143.

~~32.—Where, before the expiration of the term for which an apprentice is bound—~~

Assignment of
indentures or fresh
indentures on death
of solicitor, etc.

~~(a) the solicitor dies or ceases to practise as a solicitor,~~

~~(b) the indentures of apprenticeship are cancelled by mutual consent, or~~

~~(c) the indentures of apprenticeship are discharged by virtue of an order of the Society or of any court or otherwise,~~

~~the apprentice may be bound by an assignment of the indentures, or by fresh indentures, to another solicitor for the residue of the said term.~~

Substituted by
section 46, 1994
Act. See page
143.

~~33.—Where the Society are satisfied, on the application either of the solicitor or the apprentice, that indentures of apprenticeship ought to be discharged, they may by order discharge the indentures on such terms, including terms as to return of premium, as they think fit, and determine what period (if any) of service by the apprentice under the indentures shall be deemed good service.~~

General power to
discharge
indentures.

34.—(1) Where, before the expiration of the term for which an apprentice is bound, the solicitor—

Discharge or
assignment of
indentures on
removal from roll,
etc.

(a) is removed from or struck off the roll,

(b) becomes bankrupt,

(c) is imprisoned and remains in prison for a period of or exceeding twenty-one days,

(d) becomes of unsound mind, or

- (e) has been absent from the State for a period exceeding six months, or for two or more periods which were within twelve consecutive months and exceeded in the aggregate six months, without the consent of the Society or without complying with such terms and conditions as the Society may have fixed in relation to such absence,

the Society, on the application of the apprentice, may by order discharge the indentures of apprenticeship or, with the consent of another solicitor, by order direct that they shall be assigned to that solicitor on such terms and in such manner as the Society think fit.

(2) Nothing in this section shall affect any power of a court in relation to indentures of apprenticeship.

35.—Where—

Order transferring indentures.

- (a) an apprentice to a solicitor requires an assignment of his indentures of apprenticeship to be made under section 32 or under an order under section 34 of this Act, and
- (b) the Society, on the application of the apprentice, are satisfied that a difficulty exists in procuring the execution of the assignment,

the Society may, with the consent of another solicitor, by order transfer the indentures of apprenticeship to that solicitor.

Substituted by section 47, 1994 Act. See page 144.

36.—~~(1) A solicitor shall not have more than one apprentice at the same time.~~

Number of apprentices.

~~(2) Notwithstanding subsection (1) of this section, a solicitor may have two apprentices at the same time under a written consent of the Society, but the Society shall not grant any such consent except in special circumstances. Such consent shall not be withheld where the two apprentices are the children of the solicitor or where the second apprentice is the child of the solicitor and the first apprentice has been apprenticed with the solicitor for not less than two years.~~

Substituted by section 48, 1994 Act. See page 145.

37.—An apprentice shall, during the whole term of his indentures, serve a *bona fide* apprenticeship to the solicitor to whom he is bound.

Obligation to serve *bona fide* apprenticeship.

38.—(1) An apprentice shall not hold any office or engage in any employment other than employment under his apprenticeship unless, before doing so, he obtains the consent in writing of the solicitor to whom he is bound and the consent of the Society.

Holding of office or engaging in employment during apprenticeship.

(2) The following provisions shall have effect with respect to a consent by the Society for the purposes of this section:

- (a) the consent shall be by order of the Society,
- (b) before making the order, the Society shall be satisfied that the holding of the office or the engagement in the employment will not prejudice the applicant's work as an apprentice,
- (c) the order may impose on the applicant such terms and conditions regarding the office or employment and the applicant's service as an apprentice as the Society think fit,
- (d) where terms or conditions are so imposed, the applicant shall, before being admitted as a solicitor, satisfy the Society that he has fulfilled those terms or conditions.

39.—(1) The Society may grant relief to an apprentice against an irregularity with respect to his service under indentures of apprenticeship to such extent and on such terms as the Society think fit.

Relief against irregularity with respect to service of apprentice.

(2) In this section, the word "irregularity" includes a contravention of a provision made by or under this or any other Act.

Subsection (1) substituted by section 49(a), 1994 Act. See page 145.

40.—(1) ~~The Society may—~~

Education and examinations.

- ~~(a) provide educational facilities, including lectures, classes and other teaching,~~
- ~~(b) hold examinations,~~
- ~~(c) appoint professors, lecturers and examiners.~~

(2) Provision may be made by regulations for ascertaining—

- (a) the fitness and capacity of solicitors proposing to take apprentices to teach such apprentices,
- (b) the progress made by apprentices in acquiring knowledge of the theory and practice of the law.

(3) Regulations for the purposes of this section shall provide—

- (a) for the holding by the Society at least once in every year of—
 - (i) a first examination in the Irish language, that is to say, an examination in that language of persons seeking to be bound under indentures of apprenticeship, and
 - (ii) a second examination in the Irish language, that is to

say, an examination in that language of persons seeking to be admitted as solicitors,

- (b) for both of such examinations being obligatory except for persons who were over the age of fifteen years on the 1st day of October, 1929,
- (c) for such second examination being so conducted and of such nature as to secure that persons who pass it have a competent knowledge of the Irish language, that is to say, such a degree of oral and written proficiency in the use of the language as is sufficient to enable a solicitor efficiently to receive instructions, to advise clients, to examine witnesses and to follow proceedings in the Irish language,
- (d) for requiring that such second examination shall be passed within two years before the expiration of the term of apprenticeship or within two years before admission as a solicitor.

Subsection (4) substituted by section 49(b), 1994 Act. See page 146.

~~(4) Regulations for the purposes of this section shall provide for the holding by the Society at least once in every year of—~~

- ~~(a) a preliminary examination, that is to say, an examination of persons seeking to be bound under indentures of apprenticeship, and~~
- ~~(b) a final examination, that is to say, an examination of persons seeking to be admitted as solicitors, which may be divided, if the Society so think fit, into two or more parts.~~

(5) Without prejudice to the generality of the foregoing subsections, regulations for the purposes of this section may provide for—

Subsection 5(a), (b) and (c) substituted by section 49(c), 1994 Act. See page 146.

- ~~(a) the holding by the Society, in addition to the examinations mentioned in the foregoing subsections, of other examinations to ascertain the progress of apprentices and of persons seeking to be admitted as solicitors,~~
- ~~(b) restricting the taking of apprentices to solicitors whose fitness and capacity to teach apprentices is satisfactory,~~
- ~~(c) attendance of apprentices or intending apprentices at lectures, classes, debates and other teaching or training, whether provided by the Society or otherwise, and the course of study and training to be followed by those persons,~~
- (d) times when candidates will be eligible to take examinations,
- (e) subjects for and the mode of conducting examinations,

Subsection (5)(i) and (j) substituted and (k), (l) and (m) added by section 49(d), 1994 Act. See page 146.

- (f) standards of efficiency to be obtained at examinations,
- (g) times, places and notices of examinations,
- (h) certificates of having passed examinations,
- ~~(i) the control and discipline of apprentices;~~

New subsections (7) and (8) inserted by section 49(e), 1994 Act. See page 147.

- ~~(j) the exemption, subject to this Act, from examinations in whole or in part of persons who produce satisfactory evidence that they have acquired special qualifications.~~

(6) A person shall not be appointed under this section as examiner in the Irish language save with the approval of the Minister for Education.

Substituted by section 50, 1994 Act. See page 147.

~~41.—A certificate of his having passed the preliminary examination of the Society shall not be required—~~

General exemption from preliminary examination.

- ~~(a) from a person to whom paragraph 1 or 4 of the Second Schedule to this Act applies, or~~
- ~~(b) from a person who has passed an examination declared by regulations to be equivalent to the preliminary examination of the Society.~~

42.—The Society may, in special circumstances, exempt a person from the preliminary examination of the Society, or any part thereof, either unconditionally or subject to such conditions as they think fit.

Special exemption from preliminary examination.

Substituted by section 51, 1994 Act. See page 148.

43.—(1) This section applies to a person—

Exemptions for practising barrister of five years' standing.

- ~~(a) who proposes to become a solicitor,~~
- ~~(b) who has been called to the bar and practised continuously as a barrister for five years or longer during the ten years ending on the date of the final examination of the Society for which he proposes to sit,~~
- ~~(c) who has procured himself to be disbarred with a view to becoming a solicitor, and~~
- ~~(d) who has obtained from two of the Benchers of the Honourable Society of the King's Inns Dublin a certificate, dated not earlier than six months before the date of the said final examination, of his being a fit and proper person to practise as a solicitor.~~

(2) The following provisions shall have effect in relation to a person to whom this section applies:

- (a) ~~he shall not be required to obtain a certificate of his having passed any examination of the Society other than the final examination and (if obligatory on him) the second examination in the Irish language;~~
- (b) ~~he shall be entitled, without being bound or serving as an apprentice to a solicitor, to apply to present himself for the final examination;~~
- (c) ~~on passing the final examination (except so much of that examination as relates to indentures of apprenticeship and service thereunder) and (if obligatory on him) the second examination in the Irish language, he shall be entitled to apply to be admitted and enrolled as a solicitor.~~

Substituted by
section 52, 1994
Act. See page
150.

44.—(1) In this section "corresponding certificate" means a certificate issued by the Incorporated Law Society of Northern Ireland and corresponding to a practising certificate.

Exemptions
(reciprocal
provisions.).

(2) This section applies to a person —

- (a) ~~who proposes to become a solicitor, and~~
- (b) ~~who, during a continuous period of three years or longer, has held corresponding certificates.~~

(3) The following provisions shall have effect in relation to a person to whom this section applies:—

- (a) ~~he shall not be required to obtain a certificate of his having passed any examination of the Society other than an examination to ascertain whether he has an adequate knowledge of the legislation in force in the State and (if obligatory on him) the second examination in the Irish language;~~
- (b) ~~in order to present himself for the examination to ascertain whether he has an adequate knowledge of the legislation in force in the State, it shall be necessary for him to be the holder of a corresponding certificate, but he shall be entitled to present himself for that examination without being bound or serving as an apprentice;~~
- (c) ~~on passing that examination and (if obligatory on him) the second examination in the Irish language, he shall be entitled to apply to be admitted and enrolled as a solicitor.~~

~~(4) The Government may by order appoint a day for the coming into operation of the provisions of this section, being a day on which the Government are satisfied that reciprocal provisions will be in operation in relation to solicitors holding practising certificates.~~

45.—An appeal shall lie to the Chief Justice in the case of the exercise or refusal of exercise of a power conferred on the Society by subsection (3) of section 28, subsection (5) of section 29, subsection (2) or (3) of section 31, section 33, subsection (1) of section 34, section 35, section 38, section 39 or section 42 of this Act.

Appeals under Part IV.

PART V

PRACTISING CERTIFICATES

46.—The registrar shall issue in accordance with this Part of this Act certificates (in this Act referred to as practising certificates) certifying that the solicitors named therein are entitled to practise as solicitors.

Issue of practising certificates.

Substituted by section 54, 1994 Act. See page 152.

47.—~~(1) A solicitor applying for a practising certificate shall, in person or by his agent, deliver to the registrar a declaration which—~~

Application for practising certificate.

~~(a) shall be in the form set out in the Third Schedule to this Act or in a form to the like effect approved of by the Society, and~~

~~(b) shall be completed and signed by the applicant personally.~~

~~(2) Notwithstanding subsection (1) of this section, the registrar, on the ground of illness or absence abroad of the applicant or on any other ground considered by the registrar sufficient, may, either unconditionally or subject to conditions, dispense with signature of a declaration under this section by the applicant personally and may accept a declaration in a form to the like effect which has been completed and signed by a partner of the applicant or by some other person approved of by the registrar.~~

~~(3) The registrar shall enter in a register (in this Act referred to as the register of practising solicitors) the following particulars contained in a declaration under this section, that is to say:—~~

~~(a) the full name of the solicitor,~~

~~(b) his place or places of business, and~~

~~(c) the date of his admission.~~

~~(4) The register of practising solicitors shall be kept available for public inspection during office hours without payment.~~

(5) Subject to the provisions of this Act, the registrar, if satisfied that the name of an applicant under this section is on the roll, shall, within fourteen days after the delivery to him of the declaration, deliver to the applicant or his authorised agent on demand a practising certificate in the form set out in the Fourth Schedule to this Act or in a form to the like effect.

(6) Where the registrar wrongly refuses or neglects to issue a practising certificate, the applicant may apply to the Chief Justice for relief and the Chief Justice may make such order in the matter as he considers just.

Subsection (1) substituted by section 55(2)(a), 1994 Act. See page 154.

48.—(1) A practising certificate issued during the period beginning on the 6th day of January in any year and ending on the next following 5th day of February shall bear the date of the said 6th day of January and a practising certificate not so issued shall bear the date of the day on which it is issued.

Date and period of validity of practising certificate.

(2) A practising certificate shall, subject to subsection (3) of this section, be in force as on and from the day of which it bears the date.

In subsection (3) “5th” substituted with “1st” by section 55(2)(b), 1994 Act. See page 155.

(3) The Chief Justice may, on application made to him in that behalf, direct that, on payment by the applicant to the Society of such amount as may be fixed by the Chief Justice, a practising certificate which bears a date later than the 5th day of February in any practice year shall, either unconditionally or subject to specified conditions, be in force as on and from a specified date which is earlier than the date borne by the certificate and not earlier than the first day of that practice year.

(4) The Society shall be entitled to appear and to be heard upon the hearing of an application under subsection (3) of this section and the registrar shall be notified of the result of the application.

(5) The registrar shall enter in the register of practising solicitors a note of the date borne by a practising certificate and, where the Chief Justice directs that the certificate shall be in force as on and from a date earlier than the date borne by the certificate, a note of the earlier date.

(6) A practising certificate which is in force shall continue in force until the end of the practice year during which it was issued and shall then expire.

Substituted by section 61, 1994 Act, as amended by section 2, 2002 Act. See page 158 and page 187.

49.—(1) This section applies to the following cases where a solicitor applies for a practising certificate:

Direction to refuse practising certificate.

(a) ~~having, for twelve months or more, ceased to hold a practising certificate in force (exclusive of cases in which the applicant has practised as a solicitor in the full-time service of the State within twelve months before his application);~~

(b) ~~having been suspended from practice, the period of the suspension has expired;~~

- ~~(e) having been struck off the roll, his name has been restored thereto,~~
 - ~~(d) not having held a practising certificate in force within twelve months following the date of his admission to the roll,~~
 - ~~(e) being a person in respect of whose person or property any of the powers and provisions of the Lunacy Regulation (Ireland) Act, 1871, or any Act amending or extending that Act, relating to management and administration of property apply,~~
 - ~~(f) having an office or place of business in more than one place at any one time (disregarding, where he has a Dublin agent, the office or place of business of such agent) and having been invited by the Society to satisfy them that he exercises adequate personal supervision over each office or place of business, he has failed to satisfy the Society as aforesaid and has been notified in writing by the Society that he has so failed,~~
 - ~~(g) having been invited by the Society to give an explanation in respect of any matter affecting his conduct, he has failed to give to the Society an explanation in respect of that matter which the Society regard as sufficient and satisfactory, and has been notified in writing by the Society that he has so failed,~~
 - ~~(h) an order of attachment having been made against him,~~
 - ~~(i) a judgment or decree having been given against him which —
 - ~~(i) involves the payment of moneys other than costs, and~~
 - ~~(ii) is not a judgment or decree in relation to which he is entitled, as respects the whole effect of the judgment or decree upon him, to indemnity or relief from any other person, he has not produced to the registrar evidence of the satisfaction of such judgment or decree,~~~~
 - ~~(j) having been adjudicated a bankrupt,~~
 - ~~(k) having entered into a composition with his creditors or a deed of arrangement for the benefit of his creditors,~~
 - ~~(l) having contravened an order of the Disciplinary Committee directing any payment to be made by him.~~
- ~~(2) Where a solicitor applies for a practising certificate in a case to~~

which this section applies —

~~(a) he shall, unless the Society otherwise order, give to the registrar, at least three weeks before the application is made, notice of his intention to make the application;~~

~~(b) the Society may direct the registrar —~~

~~(i) to refuse to issue a certificate,~~

~~(ii) to issue a certificate unconditionally, or~~

~~(iii) to issue a certificate subject to such terms and conditions as the Society think fit,~~

~~(c) if the Society direct the registrar to refuse to issue a certificate or to issue a certificate subject to terms and conditions, the solicitor shall be notified in writing of the direction and the grounds on which it was given.~~

~~(3) Where —~~

~~(a) the Society have directed the registrar under subsection (2) of this section to refuse to issue a practising certificate, and~~

~~(b) the applicant satisfies the Society that he has appealed to the Chief Justice under subsection (5) of this section against the direction;~~

the following provisions shall have effect:

~~(i) the Society, notwithstanding that they have already given the direction, shall cause the registrar to issue a practising certificate to the applicant and~~

~~(ii) if at any time the Society satisfy the Chief Justice that the applicant has delayed unduly in proceeding with his appeal, the Chief Justice may dismiss the appeal and suspend the practising certificate.~~

~~(4) Where, in a case referred to in paragraph (h) or paragraph (i) of subsection (1) of this section, an appeal has been made to the appropriate court against the order of attachment, judgment or decree (as the case may be), the application for a practising certificate shall not be refused pending the determination of the appeal unless, in the opinion of the Society, the proceedings on the appeal have been unduly protracted by the appellant.~~

~~(5) Within one month after being notified of a direction of the Society under subsection (2) of this section, the applicant may appeal against the direction to refuse or against the terms and conditions (as the case may be)~~

to the Chief Justice, and the Chief Justice may—

~~(a) in case the appeal is against a direction to refuse—~~

~~(i) refuse the appeal and suspend any practising certificate already issued, or~~

~~(ii) discharge the direction without giving any direction as to any practising certificate already issued or to be issued, or~~

~~(iii) discharge the direction and direct that any practising certificate already issued, or any practising certificate to be issued, shall be subject to such terms and conditions as the Chief Justice considers proper, or~~

~~(b) in case the appeal is against terms and conditions, refuse the appeal or vary or discharge the terms and conditions.~~

~~(6) A suspension under subsection (5) of this section of a practising certificate shall continue until the certificate expires.~~

~~(7) The registrar shall cause a note of a suspension under subsection (5) of this section of a practising certificate to be entered against the name of the solicitor in the register of practising solicitors.~~

~~(8) Where, having regard to the facts of a case to which this section applies—~~

~~(a) the Society have directed the registrar under subsection (2) of this section to issue a practising certificate unconditionally, or~~

~~(b) the Chief Justice, on an appeal under subsection (5) of this section, discharges a direction to refuse a practising certificate without giving any direction as to any practising certificate already issued or to be issued or discharges terms or conditions,~~

~~this section shall cease to apply to the case by reason of those facts.~~

50.—(1) Adjudication in bankruptcy of a solicitor shall operate immediately to suspend his practising certificate (if any) until—

(a) the certificate expires, or

(b) the adjudication in bankruptcy is annulled and an office copy of the order annulling the adjudication is served on the registrar, or

Suspension of practising certificate on adjudication in bankruptcy.

- (c) the suspension is terminated by order under section 51 of this Act,

whichever first occurs.

(2) The registrar shall cause a note of the suspension under this section of a practising certificate to be entered against the name of the solicitor in the register of practising solicitors.

51.—(1) Where a practising certificate is suspended by virtue of section 50 of this Act, the solicitor may, at any time before the certificate expires and the adjudication in bankruptcy is annulled, apply to the Society to terminate the suspension and the Society may by order terminate the suspension unconditionally or subject to such terms and conditions as they think fit or refuse the application.

Termination of suspension of practising certificate.

(2) Where the Society, on an application under subsection (1) of this section, refuse the application or terminate the suspension subject to any terms or conditions, the solicitor may appeal to the Chief Justice, and the Chief Justice may terminate the suspension unconditionally or subject to such terms and conditions as he thinks fit, vary any terms or conditions to which the termination of the suspension has been made subject or refuse the appeal.

(3) Where the suspension of the practising certificate of a solicitor is terminated by annulment of the adjudication in bankruptcy of the solicitor and service on the registrar of an office copy of the order annulling the adjudication, or by order of the Society or the Chief Justice under this section, the registrar shall forthwith cause a note of the termination of the suspension to be entered against the name of the solicitor in the register of practising solicitors and, if so requested in writing by the solicitor, cause a notice thereof to be published, at the expense of the solicitor, in *Iris Oifigiúil*.

52.—So long as the suspension of a practising certificate continues, the certificate shall, notwithstanding any other provision of this Act, be regarded for the purposes of section 54 of this Act as being not in force.

Effect of suspension of practising certificate.

53.—(1) ~~A list purporting to be published by the authority of the Society and to contain the names of the solicitors who have obtained practising certificates for the current practice year before the 6th day of February in that year shall, until the contrary is proved, be evidence that the persons named on the list are solicitors holding those certificates.~~

Evidence of holding or not holding practising certificate.

(2) The absence from a list referred to in subsection (1) of this section of the name of a person shall, until the contrary is proved, be evidence that that person is not the holder of a practising certificate for the current practice year, but in the case of any such person, a document, purporting to be an extract from the register of practising solicitors and to be certified as correct by the registrar shall be evidence of the facts appearing in the extract.

Substituted by section 81, 1994 Act. See page 184.

PART VI

PRACTICE

Substituted by section 62, 1994 Act. See page 163.

~~54.—(1) A solicitor who has the qualifications specified in subsection (2) of this section may act as a solicitor and is referred to in this Act as a solicitor qualified to practise.~~

Qualifications for acting as solicitor.

~~(2) The qualifications referred to in subsection (1) of this section are:—~~

~~(a) that the name of the solicitor is on the roll;~~

~~(b) that he does not stand suspended from practice; and~~

~~(c) that either he is a solicitor in the full time service of the State or a practising certificate in respect of him is in force.~~

~~(3) A solicitor shall be regarded as a solicitor in the full time service of the State if and while he is required to devote the whole of his time to the service of the State as solicitor and is remunerated in respect of such service wholly out of moneys provided by the Oireachtas.~~

In subsection (2)(a), “two hundred pounds” substituted with “£10,000” by section 63, 1994 Act and subsequently substituted with “€30,000” by section 22(2)(a), 2002 Act. See page 164 and page 208.

55.—(1) An unqualified person shall not act as a solicitor.

Prohibition on unqualified person acting as solicitor.

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

(a) on conviction thereof on indictment, to imprisonment for a term not exceeding two years or, at the discretion of the Court, to a fine not exceeding ~~two hundred pounds~~ or to both such fine and such imprisonment, or

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

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

In subsection (2)(b), “fifty pounds” substituted with “£1,500” by section 63, 1994 Act and subsequently substituted with “€3,000” by section 22(1)(a), 2002 Act. See page 164 and page 207.

56.—(1) A person who is not a solicitor shall not pretend to be a solicitor or take or use any name, title, addition or description or make any representation or demand implying that he is a solicitor.

Prohibition on pretending to be solicitor.

(2) A person who contravenes subsection (1) of this section shall be guilty of an offence under this section and shall be liable on summary

In subsection (2),

“fifty pounds” substituted with “£1,500” by section 64, 1994 Act and subsequently substituted with “€3,000” by section 22(1)(b), 2002 Act. See page 164 and page 207.

conviction thereof to a fine not exceeding ~~fifty pounds~~.

57.—(1) Where a solicitor acts as a solicitor while he is not a solicitor qualified to practise, costs in respect of anything done by such solicitor so acting shall not be recoverable in any action, suit or matter by such solicitor or any person claiming through or under him.

Costs not recoverable where solicitor acts while not qualified to practise.

(2) Nothing in subsection (1) of this section shall affect any indemnity which a client of a solicitor has under an order of any court in respect of costs awarded under the order, to the extent (if any) to which the client may have paid such costs to the solicitor at the date of the order.

The effect of this section may be limited consequent on the making of regulations under section 78, 1994 Act. See page 179.

58.—(1) This section applies to the following acts:

Restriction on drawing documents, etc.

- (a) the drawing or preparing of a document relating to real or personal estate or any legal proceeding,
- (b) the procuring or attempting to procure the execution by an Irish citizen of a document relating to—
 - (i) real or personal estate, or movable or immovable property, situate or being outside the State and the United Kingdom, or
 - (ii) any legal proceeding, actual or in contemplation, of which the subject-matter is any such estate or property,
- (c) the making of an application, or the lodging of a document for registration, under the Registration of Title Act, 1891, or any Act amending that Act, at the Land Registry or to or with a local registering authority,
- (d) the taking of instructions for, or drawing or preparing of, documents on which to found or oppose a grant of probate or letters of administration.

Subsection (2) substituted by section 77(a), 1994 Act, as amended by section 22(2)(b), 2002 Act. See page 178 and page 208.

~~(2) An unqualified person who does an act to which this section applies shall, subject to subsection (3) of this section and without prejudice to any other liability or disability to which he may be subject, be guilty of an offence under this section and be liable on summary conviction thereof to a fine not exceeding one hundred pounds.~~

(3) The following acts shall be excepted from the foregoing provisions of this section—

- (a) an act not done either directly or indirectly for or in expectation of any fee, gain or reward,

Subsection (3)(b) substituted by section 77(c), 1994 Act. See page 178.

- ~~(b) an act done by a practising barrister,~~
- (c) an act done by any public officer in the course of his duty,
- (d) an act done by a duly accredited diplomatic or consular officer of another State in the course of his duty,
- (e) an act done by a notary public as such,
- (f) an act consisting merely of engrossing a document,
- (g) an act done by a person in the employment of a practising barrister or a solicitor qualified to practise and while acting in the course of such employment by the direction and under the supervision of his employer.

New paragraph (h) inserted by section 77(b), 1994 Act. See page 178.

(4) In this section, the word "document" includes a document under seal and a document not under seal, but does not include—

- (a) a letter or power of attorney exclusively for the sale or transfer of stocks, shares, bonds, debentures or other stock exchange securities,
- (b) a transfer of stocks, shares, bonds, debentures or other stock exchange securities containing no trust or limitation thereof,
- (c) a purely banking document, or
- (d) a purely commercial or mercantile document.

The effect of this section may be limited consequent on the making of regulations under sections 71 or 78, 1994 Act. See page 170 and page 179.

59.—(1) A solicitor shall not wilfully—

- (a) act, in business carried on by him as a solicitor, as agent for an unqualified person so as to enable that person to act as a solicitor,
- (b) permit his name to be made use of, in business carried on by him as a solicitor, upon the account, or for the profit of, an unqualified person, or
- (c) do an act enabling an unqualified person to act as a solicitor.

Prohibition on solicitor acting as agent for unqualified person.

(2) This section shall have effect subject to the provisions of this Act and to any exceptions that may be made by regulations under section 71 of this Act.

Substituted by section 20, 1994 Act. See page 112.

~~60.—(1) A solicitor shall not, save under and in accordance with a written permission under this section, employ or remunerate, in connection with his practice as a solicitor, a person who to his knowledge is an unqualified person by reason of the striking off the roll of such person's name, the suspension of such person from practice or the suspension of his practising certificate.~~

Restriction on employment of person struck off roll or suspended.

~~(2) The Society may grant a permission for the purposes of subsection (1) of this section for such period and subject to such conditions as they think fit.~~

~~(3) A solicitor aggrieved by the refusal of the Society to grant a permission under this section, or by any conditions attached by the Society to the grant thereof, may appeal to the Chief Justice, and the Chief Justice may confirm the refusal or conditions, as the case may be, or may grant the permission for such period and subject to such conditions as he thinks fit.~~

Substituted by section 31, 1994 Act. See page 131.

~~61.—(1) Where a solicitor dies, his personal representatives may appoint a solicitor to carry on the practice of the deceased solicitor for such period and on such terms as the Society may approve of.~~

Carrying on of practice in case of death or disability.

~~(2) Where a solicitor becomes of unsound mind or incapable of managing his own affairs, the President of the High Court may, on the application of the Society or the committee of his estate, appoint a solicitor to carry on the practice of the solicitor for such period and on such terms as the President of the High Court may approve of.~~

~~(3) Where a solicitor is adjudicated a bankrupt, the court by whom he is adjudicated a bankrupt may appoint a solicitor to carry on the practice of the solicitor for such period and on such terms as that court may approve of.~~

The effect of this section may be limited consequent on the making of regulations under section 71, 1994 Act. See page 170.

~~62.—(1) A solicitor shall not reward, or agree to reward, an unqualified person for legal business introduced by such person to the solicitor.~~

Prohibition with respect to introduction of business.

~~(2) An agreement in contravention of this section shall be void.~~

~~(3) This section shall have effect subject to the provisions of this Act and to any exceptions that may be made by regulations under section 71 of this Act.~~

Substituted by section 21, 1994 Act, as amended by section 22(1) (d), 2002 Act. See page 113 and page 207.

~~63.—(1) A person who is an unqualified person, by reason of the striking off the roll of his name, his suspension from practice or the suspension of his practising certificate, shall not seek or accept employment by a solicitor in connection with the solicitor's practice without previously informing the solicitor that he is such an unqualified person.~~

Disclosure of having been struck off roll, etc.

~~(2) A person who contravenes subsection (1) of this section shall be guilty of an offence under this section and shall be liable on summary~~

~~conviction thereof to a fine not exceeding fifty pounds.~~

The effect of this section may be limited consequent on the making of regulations under section 70, 1994 Act. See page 168.

In subsection (2) "one hundred pounds" is substituted with "€3,000" and "twenty-five pounds" is substituted with "€3,000" by section 22(3)(e), 2002 Act. See page 208.

64.—(1) A body corporate or director, officer or servant thereof shall not do any act of such nature or in such manner as to imply that the body corporate is qualified, or recognised by law as qualified, to act as a solicitor.

Bodies corporate.

(2) Where there is a contravention of subsection (1) of this section, the body corporate shall be guilty of an offence under this section and shall be liable on summary conviction thereof to a fine not exceeding ~~one hundred pounds~~ and, where the act was done by a director, officer or servant of the body corporate, he also shall be guilty of an offence under this section and shall be liable on summary conviction thereof to a fine not exceeding ~~twenty-five pounds~~.

(3) In sections 55, 58 and 59 of this Act, references to unqualified persons, and references to persons, include references to bodies corporate.

65.—Where a solicitor enters an appearance or is acting generally for a party in an action, suit, matter or criminal proceedings, a solicitor qualified to practise who is acting as his assistant shall have a right of audience therein in any court or tribunal in which the first-mentioned solicitor has a right of audience.

Right of audience in certain cases.

PART VII

ACCOUNTS OF SOLICITORS

Substituted by section 76, 1994 Act, as amended by sections 3 and 22(e), 2002 Act. See page 173, page 188 and page 207.

~~**66.**—(1) Regulations made with the concurrence of the Chief Justice shall make provision with respect to the following matters:~~

Regulations for accounts.

~~(a) the opening and keeping by solicitors of accounts at banks for clients' moneys and for moneys of any trust of which the sole trustee is a solicitor or the trustees are a solicitor with a partner, clerk or servant of his or with more than one of such persons;~~

~~(b) the keeping by solicitors of accounts containing particulars of and information as to moneys received, held or paid by them for or on account of clients;~~

~~(c) the keeping by solicitors of accounts containing particulars of and information as to moneys received, held or paid by them for or on account of any trust of which the sole trustee is a solicitor or the trustees are a solicitor with a partner, clerk or servant of his or with more than one of such persons;~~

- ~~(d) enforcing compliance with the regulations;~~
- ~~(e) ascertaining whether the regulations have been complied with;~~
- ~~(f) the delegation by the Society to the Disciplinary Committee of any such power of enforcement or ascertainment.~~

~~(2) The provisions contained in regulations for the purposes of this section for ascertaining whether the regulations have been complied with may include, in particular, provisions requiring solicitors to furnish certificates by duly qualified accountants that the regulations have been complied with.~~

~~(3) Regulations for the purposes of this section shall not apply in relation to—~~

- ~~(a) a solicitor in the full-time service of the State, or~~
- ~~(b) any solicitor who is in the part-time service of the State, so far as regards moneys received, held or paid by him in the course of such service.~~

67.—(1) A banking company shall not, in connection with any transaction on an account of a solicitor kept with them or with another banking company (other than an account kept by a solicitor as trustee for a specified beneficiary), incur a liability or be under an obligation to make inquiry or be deemed to have knowledge of a right to money paid or credited to the account which they would not incur, be under or be deemed to have in the case of an account kept by a person entitled absolutely to the money paid or credited thereto.

Provisions with respect to banking companies.

Nothing in this subsection shall relieve a banking company from any liability or obligation which they would be under apart from this Act.

(2) Notwithstanding subsection (1) of this section, a banking company which keeps an account of a solicitor for moneys of clients, or of any trust of which the sole trustee is a solicitor or the trustees are a solicitor with a partner, clerk or servant of his or with one or more of such persons, shall not, in respect of a liability of the solicitor to the banking company, not being a liability in connection with that account, have or obtain any recourse or right, whether by way of set-off, counter-claim, charge or otherwise, against moneys standing to the credit of that account.

Nothing in this subsection shall deprive a banking company of a right, existing at the time when the first regulations made for the purposes of section 66 of this Act come into operation, in respect of moneys previously deposited with such banking company.

68.—Where a solicitor keeps in a bank an account for moneys of clients or of any trust of which the sole trustee is a solicitor or the trustees are a

Priority of claims to clients' moneys.

solicitor with a partner, clerk or servant of his or with more than one of such persons, neither the State nor any person shall have or obtain any recourse or right against moneys standing to the credit of that account in respect of a claim or right against the solicitor until all proper claims of the clients, or of the persons interested in the trust, against those moneys have been fully satisfied.

PART VIII

THE COMPENSATION FUND

Repealed by Part II, First Schedule, 1960 Act. See page 76.

~~69.—(1) The Society shall establish and maintain a fund to be known as the Compensation Fund.~~

Compensation Fund.

~~(2) The Society may make grants out of the Compensation Fund to relieve or mitigate losses sustained in consequence of dishonesty of solicitors.~~

~~(3) The provisions contained in the Fifth Schedule to this Act shall have effect in relation to the Compensation Fund.~~

~~(4) A reference in this section or in the Fifth Schedule to this Act to dishonesty of a solicitor shall be construed as a reference to dishonesty of a solicitor, or a clerk or servant of a solicitor, in connection with such solicitor's practice or with a trust of which such solicitor is a trustee.~~

Repealed by Part I, First Schedule, 1960 Act. See page 76.

~~70.—(1) Before a practising certificate is issued to a solicitor, he shall pay to the registrar the annual contribution to the Compensation Fund and any additional contribution that may be appropriate and—~~

Contributions to Compensation Fund.

~~(a) the registrar may withhold issue of the certificate until the payment is made, and~~

~~(b) on the payment being made, the registrar shall pay it into the Compensation Fund.~~

~~(2) The annual contribution payable by a solicitor to the Compensation Fund shall be—~~

~~(a) in case the practising certificate with respect to which it is paid is the fourth certificate issued to the solicitor since his admission or is any subsequent certificate five pounds or such less amount as may be specified by regulations made with the concurrence of the Minister for Justice,~~

~~(b) in case such practising certificate is the first, second or third certificate issued to the solicitor since his admission one-half of the amount that would be payable in the case of a~~

certificate referred to in the foregoing paragraph.

~~(3) At any time not later than the 30th day of November in any year (being the year 1960 or any later year) the Society may resolve that it is expedient in order to secure the financial stability of the Compensation Fund that every solicitor taking out a practising certificate in respect of the next following practice year (being the fourth certificate issued to him since his admission or any subsequent certificate) shall pay an additional contribution of a specified amount not exceeding five pounds to the Compensation Fund.~~

PART IX

PROFESSIONAL PRACTICE, CONDUCT AND DISCIPLINE

Amended by addition of subsections (2) to (7) by section 69, 1994 Act, as substituted by section 4, 2002 Act. See page 167 and page 188.

71.—Regulations may be made with respect to the professional practice, conduct and discipline of solicitors.

Regulations for professional practice, conduct and discipline.

PART X

MISCELLANEOUS

Repealed by Part 1, Schedule 3, Stamp Duties Consolidation Act, 1999.

~~**72.**—(1) Stamp duty shall not be charged on the admission of a person as a solicitor or on a practising certificate.~~

Stamp duties.

~~(2) For the reference to £80 contained in the First Schedule to the Stamp Act, 1891, under the first of the headings "ARTICLES OF CLERKSHIP" there shall be substituted a reference to £14.~~

73.—(1) The Council may appoint a committee for any purpose which the Council consider would be better effected by means of a committee and may delegate to the committee, with or without restrictions, the exercise of any functions of the Council.

Committees of the Council.

(2) The number of members of a committee under this section and their term of office shall be fixed by the Council.

Subsections (3) and (4) substituted by section 7(1), 1994 Act, and further substituted and extended by the addition of a new subsection (4A)

~~(3) A committee under this section may include persons who are not members of the Council, but—~~

~~(a) at least two-thirds of the members of the committee shall be members of the Council, and~~

~~(b) where functions of the Society which are performable by the Council are delegated to the committee, the committee shall~~

by section 34,
2008 Act. See
page 91 and page
212.

consist wholly of members of the Council.

~~(4) Where functions of the Society which are performable by the Council are delegated to a committee under this section, the quorum of the committee shall be three.~~

New subsections
(6), (7), (8) and
(9) inserted by
section 27, 1960
Act. See page 71.
Subsection (9)
substituted and
subsection (10)
added by section
7(2), 1994 Act.
See page 91.

(5) The Council shall ensure that no member of the Disciplinary Committee shall act as a member of any committee under this section concerned with complaints against solicitors.

74.—The Society shall be entitled, without payment of any fee, to inspect the file of proceedings in bankruptcy relating to a solicitor against whom proceedings in bankruptcy have been taken and to be supplied with office copies of the proceedings on payment of the usual charge for such copies.

Inspection of file of
proceedings in
bankruptcy of
solicitor.

75.—For the purposes of a statutory provision or custom whereby the qualification of a solicitor for holding an office depends on his having been admitted and enrolled for a particular period, that period shall, in the case of a solicitor who before admission was a barrister, be reckoned as if he had been admitted and enrolled on the date on which he was called to the bar.

Qualification for
holding office of
former barrister.

76.—The limitation in the Charters of the Society on the value of land to be held by the Society shall cease to have effect.

Cesser of limitation
on value of land.

77.—(1) An offence under this Act may be prosecuted by the Society.

Prosecution of
offences.

(2) Notwithstanding any provision in any Act specifying the period within which summary proceedings may be commenced, proceedings in respect of an offence under this Act may be commenced at any time within the period of three months from the date on which evidence, sufficient in the opinion of the Society to justify a prosecution, comes to their knowledge, or within the period of twelve months after the commission of the offence, whichever period last expires.

(3) For the purposes of subsection (2) of this section, a certificate issued by the Society as to the date on which such evidence as aforesaid came to their knowledge shall be conclusive evidence thereof.

Substituted by
section 5, 1994
Act. See page 90.

~~78.—Notwithstanding the provisions of their Charters, the Society shall make any amendments in the bye-laws of the Society that are necessary to bring them into conformity with this Act and the regulations made thereunder.~~

Amendment of bye-
laws so as to
conform with this
Act and regulations
thereunder.

79.—(1) A regulation, certificate, notice or other document made or issued by the Society may be signed on behalf of the Society by the

Authentication and
evidence of
regulations and

president of the Society, the secretary of the Society, or the registrar, or by any officer of the Society nominated for that purpose by the Council. other documents.

(2) *Prima facie* evidence of a regulation, certificate, notice or other document made or issued by the Society may be given by production of a document purporting to be a copy thereof and to be signed as specified in subsection (1) of this section.

Repealed by Part I, First Schedule, 1960 Act. See page 76. For replacement provision, see section 30, 1960 Act, at page 72.

~~80.—A notice or other document which is required or authorised by or under this Act to be served on any person may, without prejudice to any other method of service, be served by sending it by registered post in an envelope addressed to the person at his last known place of business or residence.~~

Service of documents.

The register of practising solicitors is provided for in section 47, 1954 Act (as substituted by section 54, 1994 Act). See page 152.

81.—A practising solicitor shall give notice to the registrar of any change in his place of business or places of business within fourteen days after the change is made, and the registrar shall record the change by amending the latest entry relating to the solicitor in the register of practising solicitors.

Notification by practising solicitor of change in place of business.

82.—(1) There shall be paid to the Society, in respect of the applications mentioned in the Sixth Schedule to this Act, such fees as may be prescribed for those applications respectively.

Fees payable to the Society.

Sixth Schedule may be amended by inclusion of such additional applications as may be prescribed by Society with the concurrence of President of the High Court. See section 66, 1994 Act, at page 165.

(2) Regulations prescribing fees for the applications referred to in paragraphs 1 to 6 of the Sixth Schedule to this Act shall require the concurrence of the Chief Justice.

(3) Different fees may be prescribed pursuant to this section for a first application to attend an examination and any subsequent application by the same applicant to attend that examination.

(4) Where a fee is prescribed pursuant to this section in respect of an application, payment thereof shall be a condition precedent to the entertainment of the application.

Repealed by Part I, First Schedule, 1960 Act. See page 76. For replacement provision, see section 25(2), 1960 Act, at page 71.

~~83.—(1) The Superior Courts Rules Committee may make rules of court for the purposes of—~~

Rules of Court and costs.

~~(a) applications and appeals under this Act to the Chief Justice, and~~

~~(b) applications under this Act to the President of the High Court.~~

~~(2) An order made on any such application or appeal may contain such provisions with respect to costs as the Chief Justice or the President of the High Court (as the case may be) considers proper.~~

84.—(1) A reference in any enactment to a solicitor, attorney or proctor shall be construed as a reference to a solicitor within the meaning of this Act. Construction of certain references.

(2) A reference in any enactment to the registrar of attorneys and solicitors shall be construed as a reference to the registrar within the meaning of this Act.

85.—To remove doubt, it is hereby declared that the Attorneys' and Solicitors' Act, 1870, applies, and always applied, in the State. Application of Attorneys' and Solicitors' Act, 1870.

86.—Nothing in this Act shall affect any rights or privileges of persons who are solicitors or assistant solicitors to the Revenue Commissioners or require any such person, or any clerk or officer acting for him, to be admitted or enrolled or to hold a practising certificate. Saver for solicitors to the Revenue Commissioners and other persons.

87.—Nothing in this Act shall affect any provision made by or under statute or by common law by which an unqualified person is authorised to conduct, defend or otherwise act in relation to any action, suit or matter. Saver for authorisation to conduct action, etc.

88.—(1) A person who is not a solicitor and who has passed any examination under the Solicitors (Ireland) Act, 1898, or under section 4 of the Legal Practitioners (Qualification) Act, 1929 (No. 16 of 1929), shall be deemed to have passed the corresponding examination under this Act. Transitional provisions.

(2) Where at the commencement of this section a solicitor has two apprentices, he may retain them until the expiration of their indentures as if he had obtained the consent of the Society under subsection (2) of section 36 of this Act.

(3) Any admission, appointment, approval, fee, notice, certificate, instrument, order, rule, regulation, direction, appeal or proceeding under or for the purposes of an enactment repealed by this Act shall be treated as being under or for the purposes of the corresponding enactment of this Act, and—

(a) any such order, rule or regulation shall remain in force until corresponding provision is made under this Act, and

(b) any such proceeding which was brought before the committee established under section 34 of the Solicitors (Ireland) Act, 1898, and which stood not completed immediately before the commencement of this section shall be completed by the Disciplinary Committee in like manner as if this Act had not been passed.

(4) From the commencement of this section until the first appointment under subsection (1) of section 13 of this Act, the Disciplinary Committee shall consist of the persons who immediately before the commencement of

[1954.]

Solicitors Act, 1954.

[*No. 36.*]

this section were the members of the committee established under section 34 of the Solicitors (Ireland) Act, 1898.

FIRST SCHEDULE.

Section 7.

ENACTMENTS REPEALED.

Session and Chapter or Number and Year	Short Title	Extent of Repeal
14 & 15 Vict., c. 88.	Solicitors Act, 1851.	The whole Act.
27 & 28 Vict., c. 8.	Conveyancers (Ireland) Act, 1864.	The whole Act.
54 & 55 Vict., c. 39	Stamp Act, 1891.	The words "part of" in section 28; the words "solicitor or" in sub-section (1) of section 43; section 44.
61 & 62 Vict., c. 17.	Solicitors (Ireland) Act, 1898.	The whole Act.
62 & 63 Vict., c. 4.	Solicitors Act, 1899.	The whole Act.
63 & 64 Vict., c. 14.	Colonial Solicitors Act, 1900.	The whole Act.
8 Edw. 7, c. 38.	Irish Universities Act, 1908.	Section 12.
11 & 12 Geo. 5, c. 32.	Finance Act, 1921.	Section 60.
No. 10 of 1923.	Solicitors (Ireland) Act, 1898, Amendment Act, 1923.	The whole Act.
No. 16 of 1929.	Legal Practitioners (Qualification) Act, 1929.	Section 4.
No. 12 of 1943.	Solicitors Act, 1943.	The whole Act.
No. 36 of 1947.	Solicitors (Amendment) Act, 1947.	The whole Act.

Second
Schedule ceased
to have effect
after 4th May
1995. See
section 42, 1994
Act, at page
140.

SECOND SCHEDULE.

Section 26.

TERM OF INDENTURES OF APPRENTICESHIP.

1. The term shall be three years for a person who, before being bound, has taken the degree of bachelor of arts or bachelor of laws, or other degree which in the opinion of the Society is equivalent thereto, in any of the universities of Ireland, England, Scotland or Wales.

2. The term shall be four years for a person who, after the commencement of his apprenticeship and before his admission as a solicitor, takes the degree of bachelor of arts, or other degree which in the opinion of the Society is equivalent thereto, in the University of Dublin, or in the National University of Ireland.

3. The term shall be four years for a person who, as a matriculated or non-matriculated student of a prescribed university, or a constituent college thereof, attends the prescribed lectures and passes the prescribed examinations of the professors of the faculty of law in that university for a period of two collegiate years.

4. The term shall be three years for a person who, having been called to the bar, has, before being bound, procured himself to be disbarred.

5. The term shall be three years for a person—

- (a) who, before being bound, has for the period of seven years been a *bona fide* clerk to a solicitor,
- (b) who, during that period, has been *bona fide* engaged in the transaction and performance under the direction and superintendence of the solicitor of such legal business as the Society are satisfied was of a sufficiently responsible nature, and
- (c) who produces to the Society satisfactory evidence that he has faithfully, honestly and diligently served as such clerk.

6. The term shall be five years for any other person.

Third Schedule
ceased to have
effect on the
coming into
effect of
regulations
made under
section 47 of the
1954 Act (as
substituted by
section 54 of the
1994 Act). See
page 152.

THIRD SCHEDULE.

Section 47.

**FORM OF ANNUAL DECLARATION FOR OBTAINING
PRACTISING CERTIFICATE.**

No.

I, _____, hereby make the following declaration:—

(1) I was admitted a Solicitor of the Courts of Justice in the
_____ sittings in the year _____ and my place(s) (a) of
business is/are as follows (a):—
.....

~~(2) (b) the provisions of section 49 of the Solicitors Act, 1954, do not
apply to me.~~

~~(or)~~

~~(b) the provisions of section 49 of the Solicitors Act, 1954, apply to
me and I have duly given the notice required by that section.~~

~~(3) (c) I have, to the best of my knowledge and belief, complied with the
Solicitors' Accounts Regulations (d).~~

~~(or)~~

~~(e) I have not complied with the Solicitors' Accounts Regulations (d)
in the following respects:—(e)~~

.....
.....
.....

Dated the _____ day of _____, 19

-(Signature).....

To the Registrar.

~~(a) All places of business if more than one must be stated with an indication as to which of them is the principal place of business. If any changes have taken place since last practising certificate, particulars should be given.~~

~~(b) Strike out whichever of the alternative paragraphs does not apply.~~

~~(c) Strike out whichever of the alternative paragraphs does not apply.~~

~~(d) A copy of the Solicitors' Accounts Regulations now in force is printed in full on the back of this form.~~

~~(e) State the respects in which the Solicitors' Accounts Regulations have not been complied with.~~

Fourth Schedule
ceased to have
effect on the
coming into
effect of
regulations
made under
section 47 of the
1954 Act (as
substituted by
section 54 of the
1994 Act). See
page 152.

FOURTH SCHEDULE.

Section 47.

FORM OF PRACTISING CERTIFICATE.

No. _____ For the practice year ending the 5th day of January,
19____

~~Pursuant to the Solicitors Act, 1954, the Registrar of Solicitors hereby certifies that~~

~~solicitor, whose sole or principal place of business is at~~

.....

~~has delivered to the Registrar of Solicitors a declaration in writing pursuant to the said Act, and hereby further certifies that the said solicitor is duly enrolled as a solicitor of the Courts of Justice, and is entitled to practise as such solicitor.~~

Given under the hand of the Registrar of Solicitors _____
this..... day of
19.....

Registrar.

NOTE.

~~A practising certificate is in force only as on and from the day of which it bears the date unless an order directing otherwise has been obtained under the Solicitors Act, 1954.~~

The whole of the Fifth Schedule was repealed by Part II, First Schedule, 1960 Act. See page 76.

FIFTH SCHEDULE.

Section 69.

PROVISIONS RELATING TO THE COMPENSATION FUND.

1. In this Schedule "the Fund" means the Compensation Fund.
2. ~~(a) As respects losses which, in the opinion of the Society, arose during the period beginning on the 6th day of January, 1955, and ending on the 5th day of January, 1960, the making of grants out of the Fund and the amounts of such grants shall be at the absolute discretion of the Society.~~
 - ~~(b) As respects losses which, in the opinion of the Society, arose on or after the 6th day of January, 1960,—~~
 - ~~(i) the making of grants out of the Fund and the amounts of such grants shall be at the absolute discretion of the Society in cases in which the Society are of opinion that there has been negligence on the part of the loser, or of any person for whom he is responsible, which has contributed to the loss in question;~~
 - ~~(ii) in all other cases a grant shall be made out of the Fund if the Society are of opinion that the loss in question is established and the amount of the grant shall be such as represents in the opinion of the Society full indemnity for the loss.~~
 - ~~(c) This paragraph is without prejudice to any other provisions of or made under the subsequent provisions of this Schedule.~~
3. ~~A grant may be made out of the Fund notwithstanding that the solicitor has, after the act of dishonesty, died, had his name removed from or struck off the roll, ceased to practise, been suspended from practice, or had his practising certificate suspended.~~
4. ~~A grant may be made out of the Fund whether or not the solicitor had a practising certificate in force when the act of dishonesty occurred.~~
5. ~~A grant shall not be made out of the Fund unless notice of the loss is received by the Society—~~
 - ~~(a) in the prescribed manner, and~~
 - ~~(b) within the prescribed period after the loss came to the knowledge of the loser.~~
6. ~~A grant shall not be made out of the Fund in respect of a loss which, in the opinion of the Society, arose before the 6th day of January, 1955.~~
7. ~~(a) A grant out of the Fund may, at the discretion of the Society, be paid either in one sum or by instalments.~~
 - ~~(b) The Society may, if they are of the opinion that the financial stability of the Fund so requires, postpone payment of any~~

~~grant out of the Fund payable in one sum or payment of any instalment of a grant out of the Fund.~~

~~8. (1) The Society may borrow for the Fund and, for the purpose of giving security with respect to such borrowing, may charge investments of the Fund.~~

~~(2) The total amount which shall at any time stand borrowed under this paragraph shall not exceed ten thousand pounds.~~

~~9. The Society may invest moneys of the Fund in securities in which trustees are authorised by law to invest trust funds.~~

~~10. The Society may insure against a risk relating to the Fund.~~

~~11. The following shall be paid into the Fund:~~

~~(a) interest, dividends and other income and accretions of capital arising from investments of the Fund,~~

~~(b) the proceeds of the realisation of investments of the Fund,~~

~~(c) moneys borrowed for the Fund,~~

~~(d) sums received by the Society under any insurance effected by the Society in relation to the Fund,~~

~~(e) other moneys belonging to or accruing to the Fund or received by the Society in respect thereof.~~

~~12. The following shall be paid out of the Fund:~~

~~(a) expenses incurred in establishing, maintaining or administering the Fund,~~

~~(b) premiums on insurance effected by the Society in relation to the Fund,~~

~~(c) repayments of moneys borrowed by the Society for the Fund and payments of interest on such moneys,~~

~~(d) expenses incurred by the Society under or in exercise of powers conferred by or under this Schedule,~~

~~(e) other sums properly payable out of the Fund.~~

~~13.—The Society, for the purposes of inquiry into any matters which may affect the making or refusal of a grant from the Fund, may take evidence on oath, and administration of such oath is hereby authorised.~~

~~14.—Where a grant is made out of the Fund—~~

~~(a) the Society shall, to the amount of the grant, be subrogated—~~

~~(i) to any rights or remedies to which the grantee was entitled on~~

account of the loss against the solicitor or any other person or against the estate of such solicitor or other person;

(ii) to any rights or remedies to which the solicitor, or his clerk or servant, was entitled on account of the loss against any other person or against the estate of such other person;

(iii) to all other rights and remedies (if any) of the grantee or such solicitor, clerk or servant in respect of the loss;

(b) the grantee or his representatives shall not have a right under bankruptcy or other legal proceedings to receive any sum out of the assets of such solicitor or other person in respect of the loss until the Society has been reimbursed for the full amount of the grant.

~~15. (1) Where the Society have reasonable cause to believe that dishonesty of a solicitor has occurred, they may by notice require the production or delivery to any person appointed by the Society, and may take possession of, all or any documents in the possession or control of such solicitor or his firm, or relating to any trust of which such solicitor is the sole trustee or of which the trustees are such solicitor with a partner, clerk or servant of his or with more than one of such persons.~~

~~(2) Where a person, having possession or control of documents which he has been required under this paragraph to produce or deliver, refuses or fails to produce or deliver them in accordance with the requirement—~~

~~(a) he shall be guilty of an offence under this paragraph and shall be liable on summary conviction thereof to a fine not exceeding fifty pounds, and~~

~~(b) the Society may apply to the High Court and that Court may by order require such person to produce or deliver the documents.~~

~~(3) Where the Society take possession of documents produced or delivered under a requirement under this paragraph, they shall serve, on the solicitor and on every other person from whom the documents were received, a notice giving particulars of the documents and the date of taking possession thereof.~~

~~(4) Within fourteen days after service of a notice under subparagraph (3) of this paragraph on a solicitor or other person, he may apply to the High Court for an order directing the Society to return the documents received by the Society to the person or persons from whom they were received or to such other person or persons as the applicant may require and the High Court may make the order applied for or such other order as the Court thinks fit.~~

~~(5) Where an application is not made in accordance with subparagraph (4) of this paragraph or the High Court on such application directs that the documents shall remain in the custody or control of the Society, the Society may make inquiries to ascertain the person or persons to whom the documents belong and may deal with the documents in accordance with the directions of such person or persons.~~

~~(6) In this paragraph, the word "documents" includes deeds, wills, papers, books of account, records, vouchers and documents constituting or evidencing the title to any property.~~

~~16. The following provisions shall have effect for the purposes of subparagraph (5) of paragraph 15 of this Schedule:~~

- ~~(a) the Society, on receipt of an application for the delivery of documents from a person claiming to be entitled to the possession or custody thereof, may either—~~
 - ~~(i) investigate the claim of such person to the possession or custody of the documents, or~~
 - ~~(ii) require such person to nominate a solicitor to take delivery of the documents on his behalf,~~
- ~~(b) the Society shall not be bound to investigate the claim of any person who applies for delivery of documents in the possession of the Society or to schedule or list such documents save at the expense of such person, and payment of such sum as the Society may require as a deposit in respect of the costs and expenses of the investigation, scheduling or listing shall be a condition precedent to the undertaking of the investigation or to the delivery of such documents to such person by the Society,~~
- ~~(c) the Society or the person making a deposit as aforesaid may, after the claim has been investigated, require the costs and expenses to which the deposit relates to be taxed by a Taxing Master of the High Court (subject to appeal to the High Court), and the amount found due on such taxation after allowing all just credits shall be a simple contract debt due by such person to the Society or by the Society to such person (as the case may be) and recoverable in any court of competent jurisdiction,~~
- ~~(d) if the Society, in lieu of investigating the claim of the person applying for delivery of documents, requires such person to nominate a solicitor to take delivery thereof on his behalf, the Society may retain the documents until the nomination is duly made,~~
- ~~(e) on the nomination of a solicitor to take delivery of documents, the Society may deliver the documents to the solicitor in exchange for—~~
 - ~~(i) a receipt for the documents,~~
 - ~~(ii) a statutory declaration by the solicitor that, to the best of his knowledge and belief, the person on whose nomination he is acting is lawfully entitled to possession of the documents and that no other person has any prior title thereto or claim thereon by way of mortgage, charge, lien or otherwise,~~
 - ~~(iii) a statutory declaration by the person applying for delivery of~~

the documents to the same effect, and

- (iv) ~~an undertaking by the solicitor to return the documents to the Society if it should be ascertained, while the documents are in his possession, that his client was not so entitled at the date of the declaration;~~

~~and such receipt, declarations and undertaking shall constitute a full discharge to the Society for the documents;~~

- ~~(f) no action or claim shall lie against the Society by any person claiming to be entitled to documents or to any property to which they relate, or to any mortgage, charge or lien in respect of such documents or property, for any loss or injury occasioned by the taking of possession of the documents by the Society, or by the delivery of the documents by the Society in accordance with this paragraph;~~

- ~~(g) the Society shall have a lien over documents for all costs and expenses, if any, incurred by the Society in connection therewith (including, where appropriate, the costs and expenses of investigating the claim of any person claiming to be entitled thereto).~~

~~17. Where the Society are satisfied that dishonesty of a solicitor has occurred, they may apply to the High Court for, and the High Court may make, an order directing either—~~

- ~~(a) that no banking company shall, without leave of the High Court, make any payment out of a banking account in the name of the solicitor or his firm, or~~

- ~~(b) that a specified banking company shall not, without leave of the High Court, make any payment out of a banking account kept by such company in the name of the solicitor or his firm.~~

~~18. (1) In this paragraph—~~

~~"the corresponding society" means the Incorporated Law Society of Northern Ireland;~~

~~"corresponding certificate" means a certificate issued by the corresponding society and corresponding to a practising certificate;~~

~~"corresponding practitioners" means persons holding corresponding certificates.~~

~~(2) Where a scheme operated by the corresponding society requires corresponding practitioners controlled by that society to contribute to any fund or insurance policy, or to take out any insurance policy, for the compensation or indemnification of clients for or against losses due to defalcations of such practitioners or their clerks or servants, the Society may make arrangements and agreements with the corresponding society in regard to persons who are entitled both to take out practising certificates and to take out corresponding certificates, and any such arrangement or~~

agreement may provide—

- (a) for the payment by each such person of one combined annual contribution and the manner in which the combined contribution is to be applied for the purposes of the Fund and any fund or insurance policy maintained for the purposes of the said scheme,
- (b) for the manner in which claims in respect of defalcations by any such person, or his clerk or servant, shall be treated and the extent, if any, to which those claims shall be paid by the Society and the corresponding society respectively,
- (c) for any consequential or incidental matters.

19. Regulations made with the concurrence of the Chief Justice may—

- (a) provide for procedure (other than court procedure) to be followed in giving effect to the provisions of section 69 of this Act and of this Schedule,
- (b) make provisions ancillary or supplemental to the provisions of this Schedule,
- (c) make provisions giving effect to any arrangement or agreement pursuant to paragraph 18 of this Schedule or ancillary or supplemental thereto.

SIXTH SCHEDULE.

Section 82.

APPLICATIONS FOR WHICH FEES MAY BE PRESCRIBED.

1. Application for consent of the Society to entry into indentures.
2. Application for entry by the registrar of indentures of apprenticeship.
3. Application to attend any examination.
4. Application to attend any course of lectures.
5. Application for permission to give late notice of intention to attend any examination or course of lectures.
6. Application for entry of a name on the roll of solicitors.
7. Application for a practising certificate.
8. Application under section 21 of this Act for a copy of an entry in File A or File B.

Sixth Schedule may be amended by inclusion of such additional applications as may be prescribed by Society with the concurrence of President of the High Court. See section 66, 1994 Act, at page 165.

In paragraph 8, "section 21 of this Act" substituted with "section 17 of the 1960 Act" by section 28, 1960 Act. See page 72.

Number 37 of 1960.

SOLICITORS (AMENDMENT) ACT, 1960.

ARRANGEMENT OF SECTIONS

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PRELIMINARY AND GENERAL

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2. [Commencement.](#)
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PART II

DISCIPLINARY PROVISIONS IN RELATION TO SOLICITORS

6. [Disciplinary Committee.](#)
7. [Inquiry by the Disciplinary Committee into the conduct of a solicitor alleged to have committed misconduct.](#)
8. [Proceedings before the High Court in relation to a report brought before the Court under section 7.](#)
9. [Removal at his own request of name of solicitor from the roll.](#)
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11. [Jurisdiction of the High Court in relation to a solicitor in respect of whom order striking his name off the roll was purported to have been made under section 18 of the Principal Act.](#)

Section

12. Finality of orders of the High Court.
13. Exercise of jurisdiction of the High Court under sections 8, 9, 10 and 11.
14. Privilege in respect of certain proceedings under the Principal Act and this Act.
15. Powers of the Disciplinary Committee as to taking evidence, etc.
16. Rules as to procedure in relation to applications to the Disciplinary Committee.
17. Filing of orders made by the High Court or the Disciplinary Committee and notice of certain orders made by the High Court.
18. Application of Bankers' Books Evidence Acts, 1879 and 1959.

PART III**CONTROL OF SOLICITOR'S PROPERTY AND
COMPENSATION TO CLIENTS IN CERTAIN CASES**

19. Power of Society to deal with documents of certain solicitors.
20. Control of banking accounts of solicitors.
21. Compensation for loss due to dishonesty of solicitor or clerk or servant of solicitor.
22. Contributions to the Compensation Fund by solicitors.
23. Arrangements with the Incorporated Law Society of Northern Ireland.
24. Regulations for purposes of Part III.

PART IV**MISCELLANEOUS**

25. Transfer to the President of the High Court of certain functions of the Chief Justice under the Principal Act, and rules of court in relation to the exercise of those functions.

[1960.]

Solicitors (Amendment) Act, 1960.

[No. 37.]

Section

26. [Amendment of section 49 of the Principal Act.](#)
27. [Amendment of section 73 of the Principal Act.](#)
28. [Amendment of the Sixth Schedule to the Principal Act.](#)
29. [Penalty for false evidence, etc.](#)
30. [Service of documents.](#)
31. [Provisions as to accountants' certificates.](#)
32. [Provisions in relation to certain accounts kept by a solicitor at a bank.](#)
33. [Additional extraordinary members of the Council.](#)

FIRST SCHEDULE

PROVISIONS OF THE PRINCIPAL ACT REPEALED

SECOND SCHEDULE

PROVISIONS HAVING EFFECT FOR THE PURPOSES OF SECTIONS 8 (2) (a) AND 19 (5) (a) OF THIS ACT

THIRD SCHEDULE

PROVISIONS IN RELATION TO THE COMPENSATION FUND

Number 37 of 1960.

SOLICITORS (AMENDMENT) ACT, 1960.

AN ACT TO AMEND AND EXTEND THE SOLICITORS ACT,
1954. [22nd November, 1960.]

[22nd November, 1960.]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:—

PART I

PRELIMINARY AND GENERAL

1.—(1) This Act may be cited as the Solicitors (Amendment) Act, 1960. Short title and
collective citation.

(2) The Principal Act and this Act may be cited together as the Solicitors
Acts, 1954 and 1960.

2.—This Act shall come into operation as follows: Commencement.

(a) section 31 shall come into operation on such day as the Minister
for Justice, by order made on the request of the Society,
appoints,

(b) the remainder of this Act shall come into operation on the
passing of this Act.

3.—(1) In this Act— Interpretation.

"the Compensation Fund" means the Compensation Fund established
under section 69 (repealed by this Act) of the Principal Act;

"the Disciplinary Committee" has the meaning assigned to it by section 6
of this Act;

Substituted by
section 3(3), 1994
Act. See page 89.

~~"documents" includes deeds, wills, papers, books of account, records,
vouchers and correspondence;~~

"the former Disciplinary Committee" means the committee constituted by
section 13 (repealed by this Act) of the Principal Act;

"misconduct" includes—

(a) the commission of treason or a felony or a misdemeanour,

Paragraph (c) substituted by section 24, 1994 Act as substituted by section 7, 2002 Act. See page 116 and pages 191-192.

- (b) the commission, outside the State, of a crime or an offence which would be a felony or a misdemeanour if committed in the State,
- ~~(c) the contravention of a provision of the Principal Act or this Act or any order or regulation made thereunder;~~
- ~~(d) conduct tending to bring the solicitors' profession into disrepute;~~

Paragraph (d) amended by substitution of new paragraphs (d) and (e) by section 7, 2002 Act. See pages 191-192.

"the Principal Act" means the Solicitors Act, 1954; 1954, No.36.

"the Solicitors' Accounts Regulations" means the regulations relating to accounts made by the Society for the purposes of section 66 of the Principal Act.

(2) In this Act, references to the Principal Act shall, where the context so requires or permits, be construed as references to the Principal Act as amended by this Act.

(3) This Act shall be construed as one with the Principal Act.

Repealed and replaced by section 3, 1994 Act. See page 89.

~~4. In the Principal Act and this Act, "solicitor", where the context so permits or requires, includes a former solicitor or a deceased solicitor.~~

Meaning of "solicitor" in the Principal Act and this Act.

5.—(1) The provisions of the Principal Act set out in column (1) of Part I of the First Schedule to this Act are hereby repealed to the extent specified in column (2) of the said Part I.

Repeals.

(2) The provisions of the Principal Act set out in column (1) of Part II of the First Schedule to this Act are hereby repealed to the extent specified in column (2) of the said Part II, but shall continue to apply to any case where, in the opinion of the Society, the loss arose before the passing of this Act.

PART II

DISCIPLINARY PROVISIONS IN RELATION TO SOLICITORS

Substituted by section 16, 1994 Act, as amended by section 8, 2002 Act, and further amended by the insertion of a new subsection (1B) by section 35, 2008 Act. See page 101, page 192 and page 212.

~~6.—(1) The President of the High Court shall, from time to time as occasion requires, appoint, from amongst the members of the Council and such former members of the Council as are practising as solicitors, a disciplinary committee (in this Act referred to as the Disciplinary Committee) consisting of not less than seven and not more than ten persons.~~

Disciplinary Committee.

(2) A member of the Disciplinary Committee may resign his office by letter sent by registered post to the President of the High Court and his resignation shall take effect on the date on which the letter is delivered.

~~(3) The President of the High Court may remove a member of the Disciplinary Committee, may fill a vacancy therein and, subject to the limits stated in subsection (1) of this section, may increase or reduce the number of persons thereon.~~

~~(4) The Disciplinary Committee may act notwithstanding one or more than one vacancy in their membership.~~

~~(5) The Society shall defray any costs or expenses incurred by the Disciplinary Committee.~~

~~(6) The quorum of the Disciplinary Committee shall be three.~~

~~(7) A member of the Disciplinary Committee, who was a member of the Council at the date of his appointment, may act on the Disciplinary Committee notwithstanding the fact that he has ceased to be a member of the Council.~~

New section 6A
inserted by
section 36, 2008
Act. See page
213.

~~7. (1) An application by another person or by the Society for an inquiry into the conduct of a solicitor on the ground of alleged misconduct shall, subject to the provisions of this Act, be made to and heard by the Disciplinary Committee in accordance with rules made under section 16 of this Act.~~

Inquiry by the
Disciplinary
Committee into the
conduct of a
solicitor alleged to
have committed
misconduct.

~~(2) Where an application in relation to a solicitor is duly made under this section and the Disciplinary Committee, after consideration of the application, are of opinion that there is no *prima facie* case for inquiry, they shall so inform the applicant in writing and shall take no further action in relation to the application.~~

~~(3) Where an application in relation to a solicitor is duly made under this section and the Disciplinary Committee, after consideration of the application, are of opinion that there is a *prima facie* case for inquiry, the following provisions shall have effect—~~

~~(a) they shall proceed to hold an inquiry;~~

~~(b) on completion of the inquiry, the Disciplinary Committee shall embody their findings in a report to the High Court, specifying therein the nature of the application and the evidence laid before them and any other matters in relation to the solicitor which they may think fit to report, including their opinion as to the fitness or otherwise of the solicitor to be a member of the solicitors' profession having regard to the contents of the report;~~

~~(c) the Disciplinary Committee find that there has been misconduct on the part of the solicitor in respect of any matter complained of in the application or that the solicitor has not answered satisfactorily the allegations against him, the Society shall bring the report before the High Court.~~

Substituted by
section 17, 1994
Act, as amended
by section 9, 2002
Act. See page 103
and page 193.

~~(4) Where an application is made under this section, the Disciplinary Committee may, at any stage of the proceedings in relation to the application and before making a report to the High Court, postpone the taking of any steps or further steps in the matter for a specified period and, if they do so, then, if before the expiration of that period the applicant applies to the Disciplinary Committee for leave to withdraw the application, the Disciplinary Committee may, if they think fit, allow the application to be withdrawn and, if they do so, no further action shall be taken by them in relation to the application.~~

~~(5) The Society—~~

~~(a) shall be entitled to make an application to the Disciplinary Committee in accordance with the provisions of this section, notwithstanding that any other person may be entitled to make such an application, and~~

~~(b) may authorise any person on their behalf to do all such things and acts as may be necessary for the purposes of such application.~~

Substituted by section 18, 1994 Act, as amended by sections 10 and 22(1)(f), 2002 Act and as further amended by section 37(a), 2008 Act. See page 107, page 197, page 207 and page 213.

~~8.—(1) Where the Disciplinary Committee, after holding an inquiry into the conduct of a solicitor, make, under section 7 of this Act, to the High Court a report which is brought before the High Court by the Society under the said section 7, the following provisions shall have effect—~~

~~(a) the High Court, after consideration of the report—~~

~~—(i) may by order~~

~~(I) strike the name of the solicitor off the roll,~~

~~(II) suspend the solicitor from practice for such period as the High Court may fix, or~~

~~(III) censure the solicitor or censure him and require him to pay a money penalty,~~

~~(ii) may make such order as to the costs incurred in the proceedings before it and the Disciplinary Committee as it thinks fit,~~

~~(iii) may make any ancillary order in relation to the case which the High Court may think fit,~~

~~(b) the High Court may, if it thinks fit, on special grounds, remit the case to the Disciplinary Committee to take further evidence for~~

Proceedings before the High Court in relation to a report brought before the Court under section 7.

submission to it and make to it a supplementary report, and the Court may adjourn the hearing of the case pending the submission to it of such further evidence and the making of such supplementary report,

~~(c) in addition to doing any of the things specified in the foregoing paragraphs of this subsection, the High Court may also by order do any one or more of the following things—~~

~~(i) direct the solicitor to make such restitution to any aggrieved party as the High Court thinks fit,~~

~~(ii) on the application of the Society, direct the delivery to any person appointed by the Society of all or any documents in the possession or control of the solicitor or his firm or relating to any trust of which the solicitor is or was the sole trustee or of which the trustees are or were the solicitor with a partner, clerk or servant of his or with more than one of such persons;~~

~~(iii) direct either—~~

~~(I) that no banking company shall, without leave of the High Court, make any payment out of a banking account in the name of the solicitor or his firm, or~~

~~(II) that a specified banking company shall not, without leave of the High Court, make any payment out of a banking account in the name of the solicitor or his firm.~~

~~(2)(a) Where an order with respect to documents is made by the High Court under subparagraph (ii) of paragraph (c) of subsection (1) of this section, the Society may make inquiries to ascertain the person or persons to whom the documents belong and may deal with the documents in accordance with the direction of such person or persons.~~

~~(b) For the purposes of paragraph (a) of this subsection, the provisions set out in the Second Schedule to this Act shall have effect.~~

~~(3) Where the High Court by an order under subsection (1) of this section requires a solicitor to pay a money penalty, the order shall operate as a judgment against the solicitor in favour of the Society, and the money penalty, when recovered, shall be paid into the Compensation Fund.~~

~~(4) If any person acts as agent or nominee of a solicitor or his firm so as to render nugatory an order made by the High Court under~~

~~subparagraph (iii) of paragraph (c) of subsection (1) of this section, such person shall be guilty of an offence under this subsection and shall be liable on summary conviction thereof to a fine not exceeding one hundred pounds.~~

9.—(1) An application by a solicitor to have his name removed from the roll shall be made to and heard by the Disciplinary Committee in accordance with rules made under section 16 of this Act.

Removal at his own request of name of solicitor from the roll.

(2) Where an application is made by a solicitor under this section, the Disciplinary Committee shall consider the application, and thereupon the following provisions shall have effect—

- (a) if they are of opinion that the application should be granted without making a report to the High Court, they shall order accordingly,
- (b) if not of that opinion—
 - (i) they shall make a report on the application to the High Court,
 - (ii) the Society shall bring the report before the High Court,
 - (iii) the High Court, after consideration of the application and the report, may make an order either refusing the application or granting it and as to the payment of costs.

10.—(1) The High Court shall have power to order that the name of a solicitor, whose name has been struck off the roll by an order made by the High Court under section 8 of this Act or under the said section 8 as applied by section 11 of this Act or whose name has been removed from the roll under section 9 of this Act, shall be restored to the roll.

Restoration of name of solicitor to the roll.

(2) A person seeking to have his name restored to the roll under this section may apply to the High Court and shall give notice of his intended application to the Society, who shall be entitled to appear and be heard on any such application.

(3) On the hearing of an application under this section the High Court may refuse the application or may order that the name of the applicant be restored to the roll and may order the payment by the applicant of the costs and expenses of the Society in relation to the application.

New subsection (4) inserted by section 19, 1994 Act. See page 111.

11.—Where, before the passing of this Act, the former Disciplinary Committee made, in purported exercise of powers purported to have been conferred on them by section 18 (repealed by this Act) of the Principal Act, an order providing for the striking off the roll of the name of a solicitor, the Society may, on notice to the solicitor, apply by notice of motion (of not less than ten days' duration) to the High Court for an order

Jurisdiction of High Court in relation to a solicitor in respect of whom order striking his name off the roll was

striking off the roll the name of the solicitor, and, if the Society so apply, then the following provisions shall have effect—

purported to have been made under section 18 of the Principal Act.

- (a) all available affidavits and other available documentary evidence which were before the former Disciplinary Committee and all available transcripts of evidence given before them shall be admissible as evidence on the consideration of the application by the High Court,
- (b) the High Court, after reading those affidavits, other documentary evidence and transcripts, receiving any additional evidence tendered by the Society or the solicitor and taking into consideration any other matters in relation to the solicitor brought to its notice by the Society, shall deal with the application as if it were a report in relation to the solicitor made to the High Court by the Disciplinary Committee and brought before the High Court by the Society under section 7 of this Act, and section 8 of this Act shall apply accordingly.

Substituted by section 39, 1994 Act. See page 137.

~~12.—(1) Subject to subsection (2) of this section, an order of the High Court under section 8 of this Act, under that section as applied by section 11 of this Act or under section 9 or section 10 of this Act shall be final and not appealable.~~

Finality of orders of the High Court.

~~(2) By leave of the High Court, an appeal, by the Society or the solicitor concerned, from an order of the High Court under section 8 of this Act, under that section as applied by section 11 of this Act or under section 9 or section 10 of this Act shall lie to the Supreme Court on a specified question of law.~~

13.— The jurisdiction vested in the High Court by section 8, 9, 10 or 11 of this Act shall be exercised by the President of the High Court or, if and wherever the President of the High Court so directs, by an ordinary judge of the High Court for the time being assigned in that behalf by the President of the High Court.

Exercise of jurisdiction of the High Court under sections 8, 9, 10 and 11.

14.— The following—

- (a) the doing, before the passing of this Act, by the former Disciplinary Committee or the registrar, in purported exercise of the powers purported to have been conferred on them or him by section 18 or 21 of the Principal Act, of any act, being an act purported to have been authorised to be done by such section,
- (b) the making to the High Court by the Disciplinary Committee of a report under section 7 or 9 of this Act or a supplemental report under paragraph (b) of subsection (1) of section 8 of this Act,

Privilege in respect of certain proceedings under the Principal Act and this Act.

- (c) the bringing by the Society of a report before the High Court under section 7 or 9 of this Act,
- (d) the publishing, in accordance with section 17 of this Act, of any notice authorised by the said section 17,
- (e) the making, before the passing of this Act, of an application to the former Disciplinary Committee under section 14 of the Principal Act or the giving of any information in connection with such an application, and
- (f) the making of an application under section 7 of this Act or the giving of any information in connection with such application,

shall be absolutely privileged and shall, in respect of the doing of any act specified in paragraph (a) or (e) of this section, be deemed always to have been absolutely privileged.

Substituted by section 25, 1994 Act, as amended by sections 11 and 22(1)(g) and 22(2)(d), 2002 Act. See page 116, page 118, page 198 and page 207.

~~15.—(1) The Disciplinary Committee shall, for the purposes of any inquiry held by them under section 7 of this Act or the consideration of an application under section 9 of this Act, or the taking of further evidence under paragraph (b) of subsection (1) of section 8 of this Act, have the powers, rights and privileges, vested in the High Court or a judge thereof on the hearing of an action, in respect of—~~

Powers of the Disciplinary Committee as to taking evidence, etc.

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

~~and a summons signed by a member of the Disciplinary Committee may be substituted for and shall be equivalent to any formal procedure capable of being issued in an action for enforcing the attendance of witnesses and compelling the production of documents.~~

~~(2) Where—~~

- ~~(a) a person on being duly summoned to attend before the Disciplinary Committee makes default in attending, or~~
- ~~(b) a person, being in attendance as a witness before the Disciplinary Committee, refuses to take an oath lawfully required by the Disciplinary Committee to be taken, or to produce any document in his power or control lawfully required by the Disciplinary Committee to be produced by him or to answer any question to which the Disciplinary Committee may lawfully require an answer, or~~
- ~~(c) a person, being in attendance before the Disciplinary Committee, does anything which, if the Disciplinary~~

~~Committee were a court of law having power to commit for contempt, would be contempt of court,~~

~~the offence of that person may, by certificate, signed by two members of the Disciplinary Committee, be certified to the High Court and the High Court may thereupon inquire into the alleged offence and, after hearing any witnesses who may be produced against or on behalf of the person charged with the offence and any statements that may be offered in defence, punish or take steps for the punishment of that person in like manner as if he had been guilty of contempt of the High Court.~~

~~(3) A witness before the Disciplinary Committee shall be entitled to the same immunities and privileges as if he were a witness before the High Court.~~

16.—(1) The Disciplinary Committee, with the concurrence of the President of the High Court, may make rules (not inconsistent with this Act) regulating—

- (a) the making of applications to the Disciplinary Committee under this Act,
- (b) the proceedings of the Disciplinary Committee under this Act,

Rules as to procedure in relation to applications to the Disciplinary Committee.

and generally as to procedure in relation to those matters.

(2) Rules under this section may provide in particular for extending the period for furnishing any affidavit or document or for receiving an application or document notwithstanding any irregularity in its form where it appears to the Disciplinary Committee to be just to do so.

17.—(1) The following—

- (a) a copy of every order made by the High Court under this Act, and
- (b) any order made by the Disciplinary Committee under section 9 of this Act,

Filing of orders made by the High Court or the Disciplinary Committee and notice of certain orders made by the High Court.

shall be filed by the Disciplinary Committee with the registrar.

(2) Where an order striking the name of a solicitor off the roll or suspending a solicitor from practice is made by the High Court under section 8 of this Act or under the said section 8 as applied by section 11 of this Act, the registrar shall forthwith 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 Disciplinary Committee may direct.

(3) The registrar shall maintain separate files on which all orders made under this Act by the High Court or the Disciplinary Committee shall be entered in the following manner—

- (a) on a file to be termed File A, there shall be entered each order striking the name of a solicitor off the roll or suspending a solicitor from practice made by the High Court under section 8 of this Act or under the said section 8 as applied by section 11 of this Act,
- (b) on a file to be termed File B, there shall be entered any other order made under this Act by the High Court and any order made under section 9 of this Act by the Disciplinary Committee.

(4) The registrar shall furnish a copy of an entry on File A or File B to a person who applies in writing for such copy.

(5) Notwithstanding subsection (4) of this section, where—

- (a) application is made for a copy of an entry on File A or File B, being an entry which is earlier than two years before the date of the application, or
- (b) application is made for a copy of an entry on File A or File B, being an entry in respect of which the Disciplinary Committee have directed the insertion of a note that the furnishing thereof might cause injustice, a copy of the entry shall (save where the copy is furnished by order of a court) be furnished only by permission in writing of the Society.

18.—An application to or an inquiry or other proceeding before the Disciplinary Committee under this Act shall be a legal proceeding within the meaning of that expression as used in the Bankers' Books Evidence Acts, 1879 and 1959.

Application of Bankers' Books Evidence Acts, 1879 and 1959.

PART III

CONTROL OF SOLICITOR'S PROPERTY AND COMPENSATION TO CLIENTS IN CERTAIN CASES

Substituted by section 27, 1994 Act, as amended by section 22(1)(h), 2002 Act. See page 121 and page 207.

19.—(1) Where the Society are of opinion that a solicitor or a clerk or servant of a solicitor has been guilty of dishonesty in connection with that solicitor's practice as a solicitor or in connection with any trust of which that solicitor is a trustee, they may by notice require the production or delivery to any person appointed by the Society and may take possession of all or any documents in the possession or control of such solicitor or his firm or relating to any trust of which such solicitor is the sole trustee or of which the trustees are such solicitor with a partner, clerk or servant of his or with more than one of such persons.

Power of Society to deal with documents of certain solicitors.

~~(2) Where a person, having possession or control of documents which he has been required under this section to produce or deliver, refuses or fails to produce or deliver them in accordance with the requirement—~~

~~(a) he shall be guilty of an offence under this section and shall be liable on summary conviction thereof to a fine not exceeding fifty pounds, and~~

~~(b) the Society may apply to the High Court and that Court may by order require such person to produce or deliver the documents.~~

~~(3) Where the Society take possession of documents produced or delivered under a requirement under this section—~~

~~(a) they shall serve, on the solicitor and on every other person from whom the documents were received, a notice giving particulars of the documents and the date of taking possession thereof, and~~

~~(b) if any of the documents are grouped together as relating to a particular matter, the notice may give particulars of those documents by referring to the group and the matter to which it relates.~~

~~(4) Within fourteen days after service of a notice under subsection (3) of this section on a solicitor or other person, he may apply to the High Court for an order directing the Society to return the documents received by the Society to the person or persons from whom they were received or to such other person or persons as the applicant may require and the High Court may make the order applied for or such other order as the Court thinks fit.~~

~~(5) (a) Where an application is not made in accordance with subsection (4) of this section or the High Court on such application directs that the documents shall remain in the custody or control of the Society, the Society may make inquiries to ascertain the person or persons to whom the documents belong and may deal with the documents in accordance with the directions of such person or persons.~~

~~(b) For the purposes of paragraph (a) of this subsection, the provisions set out in the Second Schedule to this Act shall have effect.~~

~~20.—(1) Where the Society are of opinion that a solicitor or a clerk or servant of a solicitor has been guilty of dishonesty in connection with that solicitor's practice as a solicitor or in connection with any trust of which that solicitor is a trustee, they may apply to the High Court, and the High Court may make an order directing either—~~

~~(a) that no banking company shall, without leave of the High Court, make any payment out of a banking account in the name of the solicitor or his firm, or~~

Substituted by section 28, 1994 Act, as amended by section 22(1) (i), 2002 Act. See page 123 and page 207.

Control of banking accounts of solicitors.

~~(b) that a specified banking company shall not, without leave of the High Court, make any payment out of a banking account kept by such company in the name of the solicitor or his firm.~~

~~(2) The High Court shall have power to hear *in camera* an application for an order under subsection (1) of this section.~~

~~(3) Where the High Court make in relation to a solicitor an order under subsection (1) of this section, the High Court may at the same time order that his practising certificate be suspended until the certificate expires.~~

~~(4) If any person acts as agent or nominee of a solicitor or his firm so as to render nugatory an order made by the High Court under subsection (1) of this section, such person shall be guilty of an offence under this section and shall be liable on summary conviction thereof to a fine not exceeding one hundred pounds.~~

Substituted by section 29, 1994 Act, as amended by section 16, 2002 Act. See page 125 and page 202.

21.—(1) In this section—

"the Fund" means the Compensation Fund;

"grant" means a grant under subsection (4) of this section.

Compensation for loss due to dishonesty of solicitor or clerk or servant of solicitor.

~~(2) The Society shall continue to maintain the Fund.~~

~~(3) The Fund shall be maintained and administered in accordance with the provisions of the Third Schedule to this Act.~~

~~(4) Where it is proved to the satisfaction of the Society that any person has sustained loss in consequence of dishonesty on the part of any solicitor or any clerk or servant of a solicitor in connection with that solicitor's practice as a solicitor or in connection with any trust of which that solicitor is a trustee, then, subject to the provisions of this section, the Society shall make a grant to that person out of the Fund and the amount of the grant shall be such as represents in the opinion of the Society full indemnity for that loss.~~

~~(5) The Society shall have a discretion to make or refuse to make a grant—~~

~~(a) in a case in which the solicitor did not have a practising certificate in force at the time when, in the opinion of the Society, the loss arose,~~

~~(b) in a case in which the Society are of opinion that there has been negligence on the part of the claimant or of any person for whom he is responsible which has contributed to the loss in question, and~~

~~(c) in a case in which the Society are of opinion that the claimant has by his conduct actively assisted in the commission of misconduct by the solicitor,~~

and, where the Society decide to make a grant in any such case, they shall have a discretion to make it only to a limited extent.

~~(6) A grant may be made notwithstanding that the solicitor has, after the act of dishonesty, died, had his name removed from or struck off the roll, ceased to practise, been suspended from practice, or had his practising certificate suspended.~~

~~(7) No grant may be made in respect of a loss made good otherwise.~~

~~(8) (a) On the making of any grant to any person (in this subsection referred to as the grantee) in respect of any loss—~~

~~(i) the Society shall, to the amount of the grant, be subrogated—~~

~~(I) to any rights or remedies to which the grantee was entitled on account of the loss against the solicitor or any other person or against the estate of such solicitor or other person;~~

~~(II) to any rights or remedies to which the solicitor or his clerk or servant was entitled on account of the loss against any other person or against the estate of such other person;~~

~~(III) to all other rights and remedies (if any) of the grantee or such solicitor, clerk or servant in respect of the loss;~~

~~(ii) the grantee or his representative shall have no right under bankruptcy or other legal proceedings or otherwise to receive any sum out of the assets of the solicitor, clerk or servant in respect of the loss until the Society has been reimbursed the full amount of the grant.~~

~~(b) In paragraph (a) of this subsection, references to the grantee or the solicitor, clerk or servant include, in the event of his death, insolvency or other disability, references to his personal representative or any other person having authority to administer his estate.~~

~~(9) No grant shall be made unless notice of the loss is received by the Society—~~

~~(a) in the prescribed manner, and~~

~~(b) within the prescribed period after the loss comes to the knowledge of the loser.~~

~~(10) The Society, for the purposes of inquiry into any matters which may affect the making or refusal of a grant, may take evidence on oath, and the administration of such oath is hereby authorised.~~

~~(11) (a) A grant may, at the discretion of the Society, be paid either in one sum or in such instalments as the Society may determine.~~

~~(b) The Society, if they are of opinion that the financial stability of the Fund so requires, may postpone payment of any grant payable in one sum or payment of any instalment of a grant.~~

Substituted by section 30, 1994 Act, as amended by section 16, 2002 Act. See page 130 and page 202.

22.—(1) In this section "the Fund" means the Compensation Fund.

Contributions to the Compensation Fund by solicitors.

~~(2) Before a practising certificate is issued to a solicitor in respect of the practice year ending on the 5th day of January, 1962, or any subsequent practice year, he shall pay to the Society such annual contribution to the Fund as may be appropriate in accordance with the subsequent subsections of this section and the registrar may withhold the issue of the certificate until the payment is made.~~

~~(3) Subject to subsection (4) of this section, the annual contribution to the Fund payable by a solicitor under subsection (2) of this section shall be—~~

~~(a) in case the practising certificate in respect of which it is paid is issued to him within the period of three years beginning on the day of his admission—five pounds, and~~

~~(b) in any other case—twenty pounds.~~

~~(4) (a) At any time in any practice year, being—~~

~~(i) the practice year next following that at the end of which, for the first time, the total amount standing to the credit of the Fund (including the value of all investments forming part of the Fund but after deducting all outstanding liabilities) is more than £25,000 or~~

~~(ii) any subsequent practice year,~~

~~the Society may, if they think fit, determine that every solicitor taking out a practising certificate in respect of the next following practice year (not being a certificate issued to him within the period of three years beginning on the day of his admission) shall pay to the Society, as the annual contribution payable under subsection (2) of this section in the case of that year, such amount greater or less than twenty pounds as the Society may fix.~~

~~(b) In exercising the powers conferred by the foregoing paragraph, the Society shall have regard to the principle of maintaining the total amount standing to the credit of the Fund (including the value of all investments forming part of the Fund but after deducting all outstanding liabilities) at £25,000.~~

The effect of this section may be limited by regulations made by the Society under section 22(4) of the 1960 Act (as substituted by section 30, 1994 Act). See page 130.

23.—(1) In this section—

"the corresponding society" means the Incorporated Law Society of Northern Ireland,

"corresponding certificate" means a certificate issued by the corresponding society and corresponding to a practising certificate,

"corresponding practitioners" means persons holding corresponding certificates.

(2) Where a scheme operated by the corresponding society requires corresponding practitioners controlled by that society to contribute to any fund or insurance policy, or to take out any insurance policy, for the compensation or indemnification of clients for or against losses due to defalcations of such practitioners or their clerks or servants, the Society may make arrangements and agreements with the corresponding society in regard to persons who are entitled both to take out practising certificates and to take out corresponding certificates, and any such arrangement or agreement may provide—

(a) for the payment by each such person of one combined annual contribution and the manner in which the combined contribution is to be applied for the purposes of the Compensation Fund and any fund or insurance policy maintained for the purposes of the said scheme,

(b) for the manner in which claims in respect of defalcations by any such person, or his clerk or servant, shall be treated and the extent, if any, to which those claims shall be paid by the Society and the corresponding society respectively,

(c) for any consequential or incidental matters.

24.—Regulations made with the concurrence of the President of the High Court may—

(a) provide for procedure (other than court procedure) to be followed in giving effect to the provisions of this Part of this Act and the Second and Third Schedules to this Act,

(b) make provisions ancillary or supplemental to the provisions of this Part of this Act and the Second and Third Schedules to this Act,

Arrangements with the Incorporated Law Society of Northern Ireland.

Regulations for purposes of Part III.

- (c) make provisions giving effect to any arrangement or agreement pursuant to section 23 of this Act or ancillary or supplemental thereto.

PART IV

MISCELLANEOUS

25.—(1) The functions of the Chief Justice under any of the provisions (other than subsection (3) of section 14) of the Principal Act are hereby transferred to the President of the High Court, and references in those provisions to the Chief Justice shall be construed accordingly.

Transfer to the President of the High Court of certain functions of the Chief Justice under the Principal Act, and rules of court in relation to the exercise of those functions.

- (2) (a) The Superior Courts Rules Committee may make rules of court for the purposes of the hearing by the President of the High Court of applications and appeals under the Principal Act, as amended by subsection (1) of this section, and generally as to procedure in relation to those matters.

- (b) An order made on any application or appeal to the President of the High Court under the Principal Act, as amended by subsection (1) of this section, may contain such provisions as to costs as the President of the High Court considers proper.

New section 49 substituted by section 61, 1994 Act. See page 158.

26.—~~The following paragraphs shall be substituted for paragraph (1) of subsection (1) of section 49 of the Principal Act:~~

Amendment of section 49 of the Principal Act.

~~"(1) having failed to comply with an order of the High Court,~~

~~(m) having failed to comply with regulations made under section 66 or 71 of this Act."~~

27.—The following subsections shall be added to section 73 of the Principal Act:

Amendment of section 73 of the Principal Act.

"(6) A member of a committee under this section may resign his office by letter sent by registered post to the Council and his resignation shall take effect on the date on which the letter is delivered.

(7) The Council may remove a member of a committee under this section, may fill a vacancy therein and may increase or reduce the number of persons thereon.

(8) A committee under this section may act notwithstanding one or more than one vacancy in their membership.

~~(9) A member of a committee under this section, who was a~~

Subsection (9) substituted and

subsection (10)
added by section
7(2), 1994 Act.
See page 91.

~~member of the Council at the date of his appointment, may act on the committee notwithstanding the fact that he has ceased to be a member of the Council and, for the purposes of paragraph (a) or (b) (where relevant) of subsection (3) of this section, he shall be regarded as a member of the Council."~~

28.—In paragraph 8 of the Sixth Schedule to the Principal Act, the reference to section 21 (repealed by this Act) of the Principal Act shall be construed as a reference to section 17 of this Act.

Amendment of the Sixth Schedule to the Principal Act.

29.—Any person who, upon examination on oath authorised under this Act or the Principal Act, or in any affidavit in or about any matter arising under this Act or the Principal Act, wilfully and corruptly gives false evidence or wilfully and corruptly swears anything which is false, being convicted thereof, shall be liable to the penalties for wilful and corrupt perjury.

Penalty for false evidence, etc.

30.—Where any document is required or authorised by or under the Principal Act or this Act or any regulations made thereunder to be served on any person, the following provisions shall apply in relation to the service of that document—

Service of documents.

(a) it may be served—

(i) by delivering it to that person, or

(ii) by sending it by registered post in an envelope addressed to that person at his last known place of business or residence in the State or, if he is a solicitor, at the last address appearing in the register of practising solicitors,

(b) where that person is absent from the State or his whereabouts is unknown and cannot be ascertained by reasonable inquiries, or where the notice or document, having been sent by registered post in the manner specified in subparagraph (ii) of paragraph (a) of this subsection, has been returned undelivered, the High Court may make such order for substituted or other service, or for the substitution for service of notice, by advertisement or otherwise, as may seem just.

31.—(1) Every solicitor to whom the provisions of the Solicitors' Accounts Regulations apply shall, once in each practice year, unless he satisfies the Society that owing to the circumstances of his case it is unnecessary to do so, deliver to the registrar a certificate signed by an accountant (in this section referred to as an accountant's certificate) stating—

Provisions as to accountants' certificates.

(a) that in compliance with this section and any regulations made thereunder the accountant has examined the books, accounts and documents of the solicitor or his firm for such accounting

period as may be specified in the certificate,

- (b) whether or not the accountant is satisfied, from his examination of the books, accounts and documents produced to him and from the information and explanations given to him, that during the said accounting period the solicitor or his firm has complied with the Solicitors' Accounts Regulations, and
- (c) if the accountant is not satisfied as aforesaid, the matters in respect of which he is not so satisfied.

(2) The Society shall, with the concurrence of the President of the High Court, make regulations (in this section referred to as the Accountant's Certificate Regulations) prescribing—

- (a) the qualifications to be held by an accountant by whom an accountant's certificate may be given,
- (b) the nature and extent of the examination to be made by the accountant of the books and accounts of a solicitor or his firm and of any other relevant documents with a view to the signing of a certificate to be delivered by the solicitor under this section,
- (c) the form of the accountant's certificate, and
- (d) the evidence, if any, which shall satisfy the Society that the delivery of an accountant's certificate is unnecessary and the cases in which such evidence is or is not required.

(3) The Accountant's Certificate Regulations may include provision—

- (a) permitting in such special circumstances as may be defined in the regulations a different accounting period from that specified in subsection (4) of this section, and
- (b) regulating any matters of procedure or matters incidental, ancillary or supplemental to the provisions of this section.

(4) Subject to the Accountant's Certificate Regulations, the accounting period for the purposes of an accountant's certificate shall—

- (a) begin at the expiry of the last preceding accounting period for which an accountant's certificate has been delivered,
- (b) cover not less than twelve months,
- (c) terminate not more than twelve months, or such less period as the Accountant's Certificate Regulations may prescribe, before

the date of the delivery of the certificate to the registrar, and

- (d) where possible, consistently with the foregoing paragraphs, correspond to a period or consecutive periods for which the accounts of the solicitor or his firm are ordinarily made up.

(5) A certificate under the hand of the registrar shall, until the contrary is proved, be evidence that a solicitor has or, as the case may be, has not delivered to the registrar an accountant's certificate or supplied any evidence required under this section or the Accountant's Certificate Regulations.

(6) Before a practising certificate is issued to a solicitor, he shall comply with the provisions of this section and the Accountant's Certificate Regulations and the registrar may withhold the issue of the practising certificate until the solicitor delivers to him an accountant's certificate in respect of the last preceding accounting period stating that the solicitor has during that period complied with the Solicitors' Accounts Regulations.

32.—(1) Where—

- (a) a solicitor is adjudicated a bankrupt or enters into a composition with his creditors or a deed of arrangement for the benefit of his creditors or dies insolvent, and
- (b) the sum at the credit of the client account kept by the solicitor at a bank in accordance with regulations made under section 66 of the Principal Act, or, where two or more such accounts are kept by the solicitor, the total of the sums at the credit of the said accounts, is less than the total of the sums received by the solicitor in the course of his practice on behalf of his clients and remaining due by him to them,

Provisions in relation to certain accounts kept by a solicitor at a bank.

then, notwithstanding any rule of law to the contrary, the sum at the credit of the said client account, or where the solicitor has kept two or more client accounts the total of the sums at the credit of those accounts, shall be divisible proportionately amongst the clients of the solicitor according to the respective sums received by the solicitor in the course of his practice on behalf of his clients and remaining due by him to them.

(2) For the purposes of this section no account shall be taken—

- (a) of any account at a bank kept by the solicitor in his own name for a specified client,
- (b) of sums received by the solicitor in the course of his practice on behalf of that client and remaining due by him to the client so far as represented by the sum in the bank account in the name of the solicitor for the client,
- (c) of any account at a bank kept by the solicitor in his own name

for moneys of any trust of which the sole trustee is the solicitor or the trustees are the solicitor with a partner, clerk or servant of his or with more than one of such persons, or

- (d) of sums received by the solicitor in the course of his practice on behalf of that trust and remaining due by him to the trust so far as represented by the sum in the bank account in the name of the solicitor for the trust.

(3) Where the Official Assignee in Bankruptcy is appointed a trustee by the High Court under section 25 of the Trustee Act, 1893, in respect of any account or accounts kept by a solicitor at a bank in accordance with regulations made under section 68 of the Principal Act, there shall be payable in the Bankruptcy Office such court fees as are payable on a realisation account of the Official Assignee in a bankruptcy matter.

(4) For the purposes of this section any reference to an account at a bank shall include a reference to a deposit receipt at a bank.

33.—(1) In this section—

"the Charter" means the Royal Charter dated the 5th day of April, 1852, whereby the Incorporated Law Society of Ireland was, by the name of "the Incorporated Society of Attorneys and Solicitors of Ireland", incorporated;

"the Supplemental Charter" means the Royal Charter dated the 14th day of December, 1888, whereby the terms of the Charter were amended and extended.

(2) Notwithstanding anything contained in the Supplemental Charter, the Council may appoint as an additional extraordinary member of the Council any solicitor holding at the time of his appointment the office of President or member of the Council of the Dublin Solicitors' Bar Association.

(3) The number of additional extraordinary members shall not at any time be more than three.

(4) Every additional extraordinary member shall hold office for the period for which ordinary members of the Council, holding office at the time at which such additional extraordinary member is appointed, hold office.

(5) Additional extraordinary members shall have the same powers and duties during their terms of office as are given by the Charter and the Supplemental Charter to ordinary members of the Council, except that no extraordinary additional member shall be eligible to be President or Vice-President of the Council.

Additional
extraordinary
members of the
Council.

FIRST SCHEDULE**PROVISIONS OF THE PRINCIPAL ACT REPEALED****PART I***Provisions Repealed Absolutely*

Section 5 (1).

Provisions of the Principal Act (1)	Extent of Repeal (2)
Subsection (1) of section 3.	The definition of the expression “the Disciplinary Committee”.
Subsection (4) of section 3.	The words “Supreme Court or”.
Subsection (1) of section 6.	The words “Supreme Court or”.
Section 13.	The whole section.
Section 14.	Subsections (1) and (2).
Sections 15 to 23.	The whole of each of the sections.
Subsection (1) of section 49.	Paragraphs (b), (c) and (l).
Subsection (1) of section 66.	Paragraph (f).
Section 70.	The whole section.
Section 80.	The whole section.
Section 83.	The whole section.

PART II*Provisions Repealed with Saving*

Section 5 (2).

Provisions of the Principal Act (1)	Extent of Repeal (2)
Section 69.	The whole section.
The Fifth Schedule.	The whole of the Schedule.

Heading and introduction substituted by section 34(2)(a), 1994 Act. See page 135.

SECOND SCHEDULE

~~PROVISIONS HAVING EFFECT FOR THE PURPOSES OF SECTIONS 8 (2) AND 19 (5) (a) OF THIS ACT~~

Sections (8)(2) (b) and 19(5) (b).

~~The following provisions shall have effect for the purposes of the following provisions of this Act, namely, paragraph (a) of subsection (2) of section 8 and paragraph (a) of subsection (5) of section 19—~~

- (a) the Society, on receipt of an application for the delivery of documents from a person claiming to be entitled to the possession or custody thereof, may either—
- (i) investigate the claim of such person to the possession or custody of the documents, or
 - (ii) require such person to nominate a solicitor to take delivery of the documents on his behalf,
- (b) the Society shall not be bound to investigate the claim of any person who applies for delivery of documents in the possession of the Society or to schedule or list such documents save at the expense of such person, and payment of such sum as the Society may require as a deposit in respect of the costs and expenses of the investigation, scheduling or listing shall be a condition precedent to the undertaking of the investigation or to the delivery of such documents to such person by the Society,
- (c) the Society or the person making a deposit as aforesaid may, after the claim has been investigated, require the costs and expenses to which the deposit relates to be taxed by a Taxing Master of the High Court (subject to appeal to the High Court), and the amount found due on such taxation after allowing all just credits shall be a simple contract debt due by such person to the Society or by the Society to such person (as the case may be) and recoverable in any court of competent jurisdiction,
- (d) if the Society, in lieu of investigating the claim of the person applying for delivery of documents, require such person to nominate a solicitor to take delivery thereof on his behalf, the Society may retain the documents until the nomination is duly made,
- (e) on the nomination of a solicitor to take delivery of documents, the Society may deliver the documents to the solicitor in exchange for—
- (i) a receipt for the documents,

- (ii) a statutory declaration by the solicitor that, to the best of his knowledge and belief, the person on whose nomination he is acting is lawfully entitled to possession of the documents and that no other person has any prior title thereto or claim thereon by way of mortgage, charge, lien or otherwise,
- (iii) a statutory declaration by the person applying for delivery of the documents to the same effect, and
- (iv) an undertaking by the solicitor to return the documents to the Society if it should be ascertained, while the documents are in his possession, that his client was not so entitled at the date of the declaration,

and such receipt, declarations and undertaking shall constitute a full discharge to the Society for the documents,

- (f) no action or claim shall lie against the Society by any person claiming to be entitled to documents or to any property to which they relate, or to any mortgage, charge or lien in respect of such documents or property, for any loss or injury occasioned by the taking of possession of the documents by the Society, or by the delivery of the documents by the Society in accordance with this Schedule,
- (g) the Society shall have a lien over documents, for all costs and expenses, if any, incurred by the Society in connection therewith (including, where appropriate, the costs and expenses of investigating the claim of any person claiming to be entitled thereto).

New paragraph
(h) inserted by
section 34(2)(b),
1994 Act. See
page 136.

THIRD SCHEDULE

PROVISIONS IN RELATION TO THE COMPENSATION FUND

Section 21

1. In this Schedule "the Fund" means the Compensation Fund.
2. The Society may invest moneys of the Fund in securities in which trustees are authorised by law to invest trust funds.
3. The Society may borrow for the Fund and, for the purpose of giving security with respect to such borrowing, may charge investments of the Fund.
4. The Society may insure against any risk relating to the Fund.
5. The following shall be paid into the Fund—

- (a) all annual contributions and additional contributions paid to the Society under section 22 of this Act,
 - (b) all interest, dividends and other income and accretions of capital arising from the investment of the Fund or any part thereof,
 - (c) the proceeds of any realisation of any investments of the Fund,
 - (d) all moneys borrowed for the purposes of the Fund,
 - (e) all moneys received by the Society under any insurance effected by the Society under paragraph 4 of this Schedule,
 - (f) all penalties recovered by the Society under subsection (3) of section 8 of this Act,
 - (g) all moneys received by the Society under subsection (8) of section 21 of this Act,
 - (h) any other moneys which may belong to or accrue to the Fund or be received by the Society in respect thereof.
6. The following shall be paid out of the Fund—
- (a) costs, charges and expenses incurred in maintaining, protecting, administering and applying the Fund,
 - (b) premiums on any insurance effected by the Society under paragraph 4 of this Schedule,
 - (c) repayments of moneys borrowed by the Society for the Fund and payments of interest on such moneys,
 - (d) payments of any grants which the Society may make under section 21 of this Act,
 - (e) costs, charges and expenses incurred by the Society under Part III of this Act or under this Schedule,
 - (f) costs, charges and expenses incurred by the Society in enforcing compliance with the Solicitors' Accounts Regulations and ascertaining whether those Regulations have been complied with,

[1960.]

Solicitors (Amendment) Act, 1960.

[No. 37.]

(g) other sums properly payable out of the Fund.

Number 27 of 1994.

SOLICITORS (AMENDMENT) ACT, 1994.

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY AND GENERAL

Section

1. Short title, collective citation, construction and commencement.
2. Interpretation.
3. Amendment of section 3 of Principal Act and amendment of sections 3 and 4 of Act of 1960.

PART II

NAME AND MEMBERSHIP OF LAW SOCIETY OF IRELAND

4. Change of name of Society.
5. Amendment of bye-laws so as to conform with the *Solicitors Acts, 1954 to 1994*, and regulations thereunder (section 78 of Principal Act).
6. Honorary and associate membership of Society.
7. Amendment of section 73 of Principal Act.

PART III

INVESTIGATION OF COMPLAINTS

8. Power of Society to impose sanctions for inadequate services.
9. Power of Society to impose sanctions for charging excessive fees.

Section

10. Production of documents.
11. Appeals to the High Court against determinations, directions or requirements of the Society.
12. Contribution by solicitor.
13. Adjournment of investigations under *sections 8 and 9* of this Act.
14. Power to inspect documents.
15. Investigation of complaints.
16. Disciplinary Tribunal (section 6 of Act of 1960).
17. Inquiry by the Disciplinary Tribunal into the conduct of a solicitor on the ground of alleged misconduct (section 7 of Act of 1960).
18. Proceedings before High Court (section 8 of Act of 1960).
19. Amendment of section 10 of Act of 1960.
20. Restriction on employment of person struck off roll or suspended (section 60 of Principal Act).
21. Disclosure of having been struck off roll, etc. (section 63 of Principal Act).
22. Publication of information on complaints.
23. Publication of orders.
24. Amendment of section 3 of Act of 1960.
25. Powers of Disciplinary Tribunal as to taking evidence, etc. (section 15 of Act of 1960).

PART IV**PROTECTION OF CLIENTS**

26. Provision of professional indemnity cover.
27. Power of Society to deal with documents of certain solicitors (section 19 of Act of 1960).
28. Control of banking accounts or assets of solicitors (section 20 of Act of 1960).

Section

29. Compensation for loss due to dishonesty of solicitor or clerk or servant of solicitor (section 21 of Act of 1960).
30. Contributions to the Compensation Fund by solicitors (section 22 of Act of 1960).
31. Intervention in practice of sole practitioner in cases of death, incapacity, bankruptcy, or abandonment (section 61 of Principal Act).
32. Intervention in practice of solicitor who has died.
33. Sale of solicitor's practice in certain circumstances.
34. Ancillary provisions in relation to certain applications or orders (Second Schedule to the Act of 1960).
35. Notice of court applications to be given to the Society.
36. Defences in actions against Society.
37. Restriction following admission as solicitor on practising as a sole practitioner.
38. General powers of the High Court.
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PART V**QUALIFYING FOR ADMISSION AS A SOLICITOR**

40. Requirements for admission as solicitor (section 24 of the Principal Act).
41. Requirements for admission to apprenticeship (section 25 of Principal Act).
42. Term of indentures (section 26 of Principal Act).
43. Evidence of education, employment and character (section 27 of Principal Act).
44. Restriction on solicitor taking or retaining apprentice (section 29 of Principal Act).
45. Assignment of indentures on death of solicitor, etc. (section 32 of Principal Act).
46. General power to discharge indentures (section 33 of Principal Act).

Section

47. Number of apprentices (section 36 of Principal Act).
48. Obligation to serve *bona fide* apprenticeship (section 37 of Principal Act).
49. Amendment of section 40 of Principal Act.
50. General exemption from preliminary examination (section 41 of Principal Act).
51. Exemptions for practising barristers (section 43 of Principal Act).
52. Exemptions (reciprocal provisions) (section 44 of Principal Act).
53. Exemption for certain apprentices.

PART VI**PRACTISING CERTIFICATES AND PRACTICE**

54. Application for practising certificate (section 47 of Principal Act).
55. Saving for regulations made under section 47 of Principal Act and amendment of section 48 of Principal Act.
56. Prohibition on practising as a solicitor without practising certificate.
57. Acting as a solicitor without a practising certificate.
58. Suspension of practising certificates.
59. Imposition of conditions while practising certificates are in force.
60. Proof of practice by an unqualified person.
61. Direction to grant or refuse practising certificate (section 49 of Principal Act).
62. Qualifications for acting as solicitor (section 54 of Principal Act).
63. Amendment of section 55 of Principal Act.
64. Amendment of section 56 of Principal Act.

PART VII**MISCELLANEOUS PROVISIONS**

Section

65. Roll of solicitors (section 9 of Principal Act).
66. Fees for applications to Society.
67. Register of solicitors prepared to act in certain cases.
68. Charges to clients.
69. Amendment of section 71 of Principal Act.
70. Incorporated practices.
71. Fee-sharing by solicitors.
72. Administration of oaths and taking of affidavits.
73. Interest on clients' moneys.
74. Restriction on the withdrawal of a solicitor from a case.
75. Extension of list of approved institutions.
76. Regulations for accounts (section 66 of Principal Act).
77. Amendment of section 58 of Principal Act.
78. Will making and probate services provided by credit unions.
79. Investigation of complaints about credit unions.
80. Non-application to applicants under European Communities regulations.
81. Amendment of section 53 of Principal Act.
82. Laying of regulations.

ACTS REFERRED TO

Arbitration Acts, 1954 and 1980	1954, No. 26 and 1980, No. 7
Attorneys and Solicitors Act, 1870	1870, c.28
Attorneys and Solicitors (Ireland) Act, 1849	1849, c. 53
Central Bank Acts, 1942 to 1989	
Courts Act, 1981	1981, No. 11
Credit Union Act, 1966	1966, No. 19
Criminal Procedure Act, 1967	1967, No. 12
Debtors (Ireland) Act, 1840	1840, c. 3 – 4 Vict. c.105
Legal Practitioners (Qualification) Act, 1929	1929, No. 16
Lunacy Regulation (Ireland) Act, 1871	1871, c. 22
National Council for Educational Awards Act, 1979	1979, No. 30
Petty Sessions (Ireland) Act, 1851	1851, 14 – 25 Vict. c.93
Registration of Title Act, 1891	1891, c. 29
Solicitors Acts, 1954 and 1960	1954, No. 36 and 1960, No. 37
Stamp Duties Management Act, 1891	1891, c. 38
Statutory Instruments Act, 1947	1947, No. 44
Succession Act, 1965	1965, No. 22
Supreme Court of Judicature Act (Ireland), 1877	1877, c. 57

Number 27 of 1994.

SOLICITORS (AMENDMENT) ACT, 1994.

AN ACT TO AMEND AND EXTEND THE SOLICITORS ACTS, 1954 AND 1960, AND TO PROVIDE FOR RELATED MATTERS. [4th November, 1994]

[4th November, 1994]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART I

PRELIMINARY AND GENERAL

1.—(1) This Act may be cited as the Solicitors (Amendment) Act, 1994.

Short title, collective citation, construction and commencement.

(2) The Solicitors Acts, 1954 and 1960, and this Act may be cited together as the Solicitors Acts, 1954 to 1994, and shall be construed together as one Act.

(3) *Section 68* of this Act shall come into operation 3 months after the date of its passing.

(4) *Sections 16, 17, 18, 22, 23, 25 and 58 (3)* of this Act shall come into operation on such day as may be fixed by order of the Minister.

2.—In this Act, unless the context otherwise requires—

Interpretation.

"the Principal Act" means the Solicitors Act, 1954;

"the Act of 1960" means the Solicitors (Amendment) Act, 1960;

"apprentice" includes a person who has completed the term of his indentures of apprenticeship but who has not yet been admitted as a solicitor;

"authorised person" means a person authorised in writing by the Society for the purpose of exercising any of the Society's functions pursuant to *section 14* of this Act or pursuant to or as prescribed pursuant to *section 66* (as substituted by this Act) of the Principal Act;

"bank" and cognate words shall be construed in accordance with *section 75* of this Act;

Definition of "authorised investment business firm" inserted by section 45 of the Investor Compensation Act, 1998. See Addendum at pages 253, 256 and 260.

"bill of costs" includes any statement of account sent, or demand made, by a solicitor to a client for fees, charges, outlays, disbursements or expenses;

"clerk or servant" includes an apprentice and a person employed whole-time or part-time by a solicitor and a person providing services under a contract for services;

"client" includes the personal representative of a client and any person on whose behalf the person who gave instructions was acting in relation to any matter in which a solicitor or his firm had been instructed; and includes a beneficiary to an estate under a will, intestacy or trust;

"client account" means an account opened and kept by a solicitor arising from his practice as a solicitor at a bank for clients' moneys, in accordance with regulations made pursuant to subsection (1) of section 66 (as substituted by this Act) of the Principal Act;

"clients' moneys" means moneys received, held or controlled by a solicitor arising from his practice as a solicitor for or on account of a client or clients, whether the moneys are received, held or controlled by him as agent, bailee, stakeholder, trustee or in any other capacity;

"Compensation Fund" means the fund maintained by the Society pursuant to sections 21 and 22 (as substituted by this Act) of the Act of 1960;

"contentious business" means business done by a solicitor in or for the purposes of or in contemplation of proceedings before a court or tribunal or before an arbitrator appointed under the Arbitration Acts, 1954 and 1980;

Definition of "investment business services" inserted by section 45 of the Investor Compensation Act, 1998. See Addendum at page 253, 256 and 260.

"Disciplinary Tribunal" means the Disciplinary Tribunal established by section 6 (as substituted by this Act) of the Act of 1960, and, as and from the coming into operation of *section 16* of this Act, any reference to the Disciplinary Committee in the Act of 1960 shall, subject to *section 16 (2)* of this Act, be construed as a reference to the Disciplinary Tribunal;

"indentures" means indentures of apprenticeship;

"indentures of apprenticeship" includes any form of agreement as may be prescribed whereunder solicitors in the course of their practice as solicitors provide training for persons seeking to be admitted as solicitors;

Definition of "legal services" substituted by section 45 of the Investor Compensation Act, 1998. See Addendum at page 253.

~~"legal services" means services of a legal or financial nature provided by a solicitor arising from that solicitor's practice as a solicitor, and includes any part of such services;~~

"the Minister" means the Minister for Justice;

"moneys" includes moneys in a currency other than that of the State, cheques, bank notes, postal orders, money orders or any form of negotiable or non-negotiable instrument, moneys deposited or otherwise credited to a bank account or moneys deposited or otherwise credited to a bank or other financial institution outside the State;

Section 2 amended by the addition of a new subsection (2) inserted by

"persons seeking to be admitted as solicitors" includes persons seeking to

section 12, 2002 Act and substituted by section 38, 2008 Act. See pages 198-199 and page 214.

be bound by indentures of apprenticeship;

"the register" has the meaning assigned to it in section 47 (as substituted by this Act) of the Principal Act;

"sole practitioner" means a solicitor who is practising as a sole principal in a solicitor's practice.

Subsection (1)(a) extended by section 2, 2009 Act. See page 224.

3.—(1) Section 3 of the Principal Act is hereby amended by—

(a) the deletion of the definition of "solicitor" and the substitution of the following definition:

" 'solicitor' means a person who has been admitted as a solicitor and whose name is on the roll; and a reference to a solicitor includes a reference to a firm of solicitors unless the context otherwise requires and includes a former solicitor or a deceased solicitor unless the context otherwise requires;"; and

(b) with effect from the 1st day of January, 1996, the substitution of the following definition for the definition of "practice year":

" 'practice year' means any year ending on the 31st day of December;".

(2) Section 4 of the Act of 1960 is hereby repealed.

(3) Section 3 of the Act of 1960 is hereby amended by the deletion of the definition of "documents" and the substitution of the following definition:

" 'documents' includes deeds, wills, papers, books of account, records, vouchers, correspondence and files and shall be construed to include any documents stored in an electronic or other non-written form or on film or otherwise;".

Amendment of section 3 of Principal Act and amendment of sections 3 and 4 of Act of 1960.

PART II

NAME AND MEMBERSHIP OF LAW SOCIETY OF IRELAND

4.—(1) The body heretofore known as the "Incorporated Law Society of Ireland" shall be known as the "Law Society of Ireland" and may provide itself with a seal.

Change of name of Society.

(2) Where, before the coming into operation of this section, any legal proceedings are pending to which the Incorporated Law Society of Ireland

is a party, the name Law Society of Ireland shall be substituted in the proceedings for the name Incorporated Law Society of Ireland and the proceedings shall not abate because of such substitution.

(3) References to the Incorporated Law Society of Ireland contained immediately before the coming into operation of this section in any statute or statutory instrument (within the meaning of the Statutory Instruments Act, 1947) or in the memorandum or articles of association of any company or in any will, trust, deed, agreement or other document shall be construed on and after the coming into operation of this section as references to the Law Society of Ireland.

5.—The Principal Act is hereby amended by the substitution of the following section for section 78:

"Amendment of bye-laws so as to conform with the *Solicitors Acts, 1954 to 1994*, and regulations thereunder.

78.—(1) Notwithstanding the provisions of their Charters, the Society shall make any amendments to the bye-laws of the Society that are necessary to bring them into conformity with the *Solicitors Acts, 1954 to 1994*, and any regulations made thereunder.

Amendment of bye-laws so as to conform with the *Solicitors Acts, 1954 to 1994*, and regulations thereunder (section 78 of Principal Act).

(2) Notwithstanding anything contained in their Charters, the Society may in their bye-laws make provision for all or any of the following, namely—

- (i) the membership of the Council,
- (ii) the election or appointment of persons to membership of the Council,
- (iii) the admission of persons as honorary or associate members of the Society.

(3) In this section 'their Charters' means, respectively, the Charter and the Supplemental Charter of the Society referred to in section 33 (1) of the Act of 1960."

6.—(1) The Society may—

- (a) admit as an honorary member of the Society any person whom the Society wish so to admit, and
- (b) admit as an associate member of the Society any person or class of persons who is or are a member or members of a corresponding professional body in another jurisdiction.

Honorary and associate membership of Society.

(2) In this section "corresponding professional body" means a body established outside the State with objectives and functions similar to those

of the Society.

7.—(1) Section 73 (as amended by the Act of 1960) of the Principal Act is hereby amended by the substitution of the following subsections for subsections (3) and (4):

Amendment of
section 73 of
Principal Act.

Subsections (3)
and (4)
substituted by
section 34, 2008
Act. See page
212.

~~"(3) A committee under this section may include solicitors who are not members of the Council and persons who are not solicitors, but where functions of the Society which are performable by the Council are delegated to a committee, at least two thirds of the members of the committee and of any quorum of the committee shall be members of the Council.~~

~~(4) Where functions of the Society which are performable by the Council are delegated to a committee under this section, that committee, in the performance of all or any of its delegated functions, may sit in one or more divisions, provided that—~~

~~(a) the quorum of such committee or any division of such committee shall be three, and~~

~~(b) where there are one or more members of such committee who are not solicitors, the quorum of such committee or any division of such committee shall include at least one of such members."~~

(2) Section 73 (as amended by the Act of 1960) of the Principal Act is hereby amended by the substitution of the following subsections for subsection (9):

"(9) A member of a committee under the section, who was a member of the Council at the date of his appointment, may act on the committee notwithstanding the fact that he has ceased to be a member of the Council and, for the purposes of subsection (3) of this section, he shall be regarded as a member of the Council.

(10) Where the Council has delegated functions to a committee under subsection (1) of this section, that committee may, subject to the prior approval of the Council, delegate any of such functions to a designated senior officer or senior officers for the time being appointed by the Society for that purpose, with or without restrictions, for such period as the committee may specify with the approval of the Council, and the committee or the Council may revoke such delegation with or without notice."

PART III

INVESTIGATION OF COMPLAINTS

8.—(1) Where the Society receive a complaint from a client of a Power of Society to

solicitor, or from any person on behalf of such client, alleging that the legal services provided or purported to have been provided by that solicitor in connection with any matter in which he or his firm had been instructed by the client were inadequate in any material respect and were not of the quality that could reasonably be expected of him as a solicitor or a firm of solicitors, then the Society, unless they are satisfied that the complaint is frivolous or vexatious, shall investigate the complaint and shall take all appropriate steps to resolve the matter by agreement between the parties concerned and may, if they think fit, following investigation of the complaint, do one or more of the following things, namely—

impose sanctions for inadequate services.

- (a) determine whether the solicitor is entitled to any costs in respect of such legal services or purported services, and if he is so entitled, direct that such costs in respect of such services shall be limited to such amount as may be specified in their determination;
- (b) direct the solicitor to comply, or to secure compliance, with such of the requirements set out in subsection (2) of this section as appear to them to be necessary as a result of their investigation;
- (c) direct the solicitor to secure the rectification, at his own expense or at the expense of his firm, of any error, omission or other deficiency arising in connection with the said legal services as the Society may specify;
- (d) direct the solicitor to take, at his own expense or at the expense of his firm, such other action in the interests of the client as the Society may specify;
- (e) direct the solicitor to transfer any documents relating to the subject matter of the complaint (but not otherwise) to another solicitor nominated by the client or by the Society with the consent of the client, subject to such terms and conditions as the Society may deem appropriate having regard to the circumstances, including the existence of any right to possession or retention of such documents or any of them vested in the first-mentioned solicitor or in any other person.

(2) The requirements referred to in *subsection (1)* of this section are—

- (a) a requirement to refund, whether wholly or to any specified extent, any amount already paid by or on behalf of the client in respect of the solicitor's costs in connection with the services he had provided or purported to provide, and
- (b) a requirement to waive, whether wholly or to any specified extent, the right to recover the costs of the solicitor to the extent that they have not already been paid by or on behalf of the client.

New subsection (1)(da) inserted by section 39(a), 2008 Act. See page 214.

(3) (a) The Society shall not make a determination or give a direction under *subsection (1)* of this section unless they are of opinion that it would in the circumstances be appropriate to do so.

(b) In determining whether it would be appropriate to make a determination or give a direction, the Society may have regard to such matters as they think fit including—

- (i) the existence of any remedy that could reasonably be expected to be available to the client in civil proceedings;
- (ii) whether proceedings seeking any such remedy have not been commenced by the client and whether it would be reasonable to expect the client to commence such proceedings;
- (iii) whether *section 13* of this Act applies to the subject matter of the complaint.

(4) Where the Society have made a determination or given a direction under *subsection (1)* of this section as to the costs of a solicitor in respect of any legal services provided or purported to have been provided by him, then—

(a) for the purposes of any subsequent taxation of a bill of costs covering those costs, the amount charged by the bill of costs in respect of those costs shall be deemed to be limited to the amount specified in the Society's determination and a copy of the written confirmation of either or both the Society's determination or direction given under *subsection (1)* of this section shall be included with the bill of costs submitted for taxation, and

(b) where a bill of costs covering those costs has not been taxed, the client shall, for the purposes of the recovery of those costs (by whatever means) and notwithstanding any statutory provision or agreement to the contrary, be deemed to be liable to pay in respect of those costs only the amount specified in the determination of the Society.

(5) Where a bill of costs covering costs of a solicitor has been taxed in accordance with *subsection (4) (a)* of this section, the determination of the Society under *subsection (1)* of this section shall, so far as relating to those costs, cease to have effect.

(6) The fact that a person who was a party before any court, tribunal or arbitrator appointed under the Arbitration Acts, 1954 and 1980, was not satisfied with the outcome of such proceedings, shall not, of itself, be grounds for a complaint to the Society under this section.

(7) The Society shall not enter upon, or proceed with, the investigation of a complaint under this section, or otherwise apply the provisions of this section, where the Society are of the opinion that such complaint relates to the alleged inadequacy in any material respect of legal services provided by a solicitor more than five years before the date on which the complaint was made.

(8) The Society, with the concurrence of the President of the High Court, may make rules of procedure in relation to complaints received by the Society under this section.

New subsection
(9) inserted by
section 39(b),
2008 Act. See
page 214.

9.—(1) Where the Society receive a complaint from a client of a solicitor, or from any person on behalf of such client, that a solicitor has issued a bill of costs that is excessive, in respect of legal services provided or purported to have been provided by that solicitor, the Society, unless they are satisfied that the complaint is frivolous or vexatious, shall investigate the complaint and shall take all appropriate steps to resolve the matter by agreement between the parties concerned and may, if they are satisfied that the bill of costs is excessive, direct the solicitor to comply or to secure compliance with one or both of the following requirements, namely—

Power of Society to
impose sanctions
for charging
excessive fees.

- (a) a requirement to refund without delay, whether wholly or to any specified extent, any amount already paid by or on behalf of the client in respect of the solicitor's costs in connection with the said legal services;
- (b) a requirement to waive, whether wholly or to any specified extent, the right to recover those costs.

(2) Nothing in *subsection (1)* of this section shall prevent any person from exercising any existing right in law to require a solicitor to submit a bill of costs to a Taxing Master of the High Court for taxation on a solicitor and own client basis.

(3) Where the Society have received a complaint under *subsection (1)* of this section and the client concerned (before or after the receipt of the complaint) has duly requested the solicitor concerned to submit his bill of costs to a Taxing Master of the High Court for taxation on a solicitor and own client basis, the Society shall not make a direction under *subsection (1)* of this section unless, after due notice to that solicitor, they are of the opinion that the solicitor or his agent in that regard is unreasonably delaying in submitting such bill of costs to a Taxing Master of the High Court for such taxation.

(4) Where a bill of costs, which has been the subject of a complaint under *subsection (1)* of this section has been subsequently taxed, then—

- (a) if the Society have given a direction under *subsection (1)* of this section, such direction shall cease to have effect, or
- (b) if the Society have not given a direction under *subsection (1)* of

this section, the Society shall not enter upon or proceed with the investigation of such complaint or otherwise apply the provisions of this section.

(5) Where the Society have notified a solicitor of the making of a complaint under *subsection (1)* of this section in relation to a bill of costs issued by that solicitor, the solicitor shall not—

- (a) issue or cause to be issued civil proceedings (whether on his own behalf or on behalf of any other person or persons), or
- (b) if already issued, proceed further with civil proceedings,

in relation to the amount (or any part thereof) of such bill of costs without the written consent of the Society before the Society has completed any investigation of the complaint pursuant to *subsection (1)* of this section, unless on application by that solicitor, on notice to the Society, a court otherwise orders.

(6) The Society shall not enter upon or proceed with the investigation of a complaint under this section or otherwise apply the provisions of this section, where the Society are of the opinion that the bill of costs, the subject of such complaint, was issued prior to a date that is five years before the date on which the complaint was made.

(7) The Society, with the concurrence of the President of the High Court, may make rules of procedure in relation to complaints received by the Society under this section.

10.—(1) Where it appears to the Society that it is necessary to do so for the purpose of investigating any complaint made to the Society—

Production of documents.

- (a) alleging misconduct by a solicitor, or
- (b) alleging that the provision of legal services by a solicitor was inadequate in any material respect and was not of the quality that could reasonably be expected of him as a solicitor, or
- (c) alleging that a solicitor has issued a bill of costs that is excessive,

the Society may give notice in writing to the solicitor or his firm requiring the production or delivery to any person appointed by the Society, at a time and place to be fixed by the Society, of all documents in the possession or under the control or within the procurement of the solicitor or his firm in connection with the matters to which the complaint relates (whether or not they relate also to other matters).

(2) The Society shall return any documents delivered to them under *subsection (1)* of this section to the solicitor or to his firm when their investigations are completed unless the Society exercise their power under

section 8 (1) (e) of this Act in relation to such documents.

Section 10A
inserted by
section 13, 2002
Act. See page
199.

11.—(1) A solicitor in respect of whom a determination or direction has been made or given by the Society under *section 8 (1), 9 (1) or 12 (1)* of this Act or who has received a notice for production or delivery of documents from the Society under *section 10 (1)* of this Act may, within a period of 21 days of the notification of such determination or direction to him, or the receipt of such notice by him, apply to the High Court for an order directing the Society to rescind or to vary such determination or direction, or to vary or withdraw such notice, and on hearing such application the Court may make such order as it thinks fit.

Appeals to the High Court against determinations, directions or requirements of the Society.

(2) Where a solicitor in respect of whom a determination or direction has been made or given by the Society under the provisions of *section 8 (1), 9 (1) or 12 (1)* of this Act has not applied within the period provided to the High Court under *subsection (1)* of this section, such determination or direction shall become absolutely binding on the solicitor immediately upon the expiration of such period.

(3) Where the Society have given notice in writing to a solicitor or his firm under the provisions of *section 10 (1)* of this Act and where an application has not been made by the solicitor within the period provided under *subsection (1)* of this section, the Society may apply to the High Court for an order directing the solicitor to produce or deliver to any person authorised by the Society all documents in respect of which such notice was given.

(4) Where an application has been made by a solicitor under *subsection (1)* of this section, the Society may apply to the High Court and the Court may dismiss the application of the solicitor if it is satisfied that such application has no merits and has been made purely for the purposes of delay, and, where applicable and if the Court thinks fit, shall order the solicitor to produce or deliver to any person appointed by the Society all documents in respect of which a notice has been given to the solicitor or his firm under *section 10 (1)* of this Act.

In subsection (5),
“£1,500”
substituted with
“€3,000” by
section 22(1) (j),
2002 Act. See
page 207.

(5) If a solicitor, in respect of whom a determination or a direction has been made or given by the Society under the provisions of *section 8 (1) or 9 (1)* of this Act or who has received a notice for production or delivery of documents from the Society under the provisions of *section 10 (1)* of this Act (to the extent that it has not been rescinded or varied by the High Court pursuant to an application under *subsection (1)* of this section), refuses, neglects or otherwise fails to comply with such determination or direction or notice without reasonable excuse, he shall be guilty of an offence and be liable on summary conviction thereof to a fine not exceeding £1,500.

Section 12
substituted by
section 14, 2002
Act. See pages
199-201.

12.—(1) ~~Where, following an investigation of a complaint under *section 8 (1) or 9 (1)* of this Act against a solicitor, the Society have made a determination or given a direction under the provisions of *section 8 (1) or 9 (1)* of this Act, the Society may require payment from the solicitor of a sum not exceeding £1,000 to the Society by way of contribution towards the costs incurred by the Society in investigating the complaint and the~~

Contribution by solicitor.

solicitor shall comply with any such requirement.

~~(2) Subject to any order made under *section 11 (1)* of this Act, the Society may recover any sum the payment of which has been required by the Society by way of contribution under *subsection (1)* of this section as a liquidated debt payable to the Society.~~

13.—(1) Where civil proceedings or criminal proceedings are instituted in connection with a matter that is the subject of a complaint under *section 8* or *9* of this Act and have not been finally determined, and the Society consider that in those proceedings it is likely that the court will determine an issue relevant to or concerning such complaint, the Society may adjourn their investigation under *section 8* or *9* of this Act of such complaint until the civil proceedings or criminal proceedings, as the case may be, have been finally determined.

Adjournment of investigations under *sections 8* and *9* of this Act.

(2) If the Society consider that the subject matter of a complaint under *section 8* or *9* of this Act has been investigated by a court in civil proceedings or criminal proceedings and that a final determination of the issues which are, in substance, the issues involved in the complaint has been made by the court in those proceedings in favour of the solicitor concerned (whether or not the solicitor was a party to those proceedings), the Society may decide to take no action or no further action in relation to the complaint.

(3) Proceedings shall not be regarded as finally determined for the purposes of *subsection (1)* or *(2)* of this section until any appeal (including an appeal by way of case stated), rehearing or retrial in relation to those proceedings has been determined.

Subsections (1) and (2) substituted by section 15, 2002 Act. See pages 201-202.

14.—(1) ~~Where it appears to the Society, whether as a result of a complaint or otherwise, that it is necessary, for the purpose of investigating alleged misconduct by a solicitor, for an authorised person to attend with or without prior notice at the place or places of business of that solicitor, an authorised person may so attend at such place or places.~~

Power to inspect documents.

~~(2) Where an authorised person attends under this section at the place or places of business of a solicitor, he shall inform such solicitor or any clerk or servant of the solicitor of the purpose of his attendance as specified in *subsection (1)* of this section and may in pursuance of that purpose require the solicitor or any clerk or servant of the solicitor to make available to him for inspection such specified documents or categories of documents in the possession or under the control or within the procurement of the solicitor as the authorised person deems necessary to fulfil that purpose (whether or not such documents or any of them relate also to other matters).~~

New section 14A inserted by section 40, 2008 Act. See page 215.

(3) If a solicitor or clerk or servant of a solicitor who is required to make available specified documents or categories of documents to an authorised person for inspection under *subsection (1)* of this section refuses, neglects or otherwise fails without reasonable cause to duly comply with such requirement, the Society may, on notice to the solicitor, apply to the High

New section 14B inserted by section 41, 2008 Act. See page 215.

New section 14C inserted by section 42, 2008 Act. See pages 215-216.

Court for an order (which said order the Court is hereby empowered to make) requiring the solicitor to make available for inspection at his place or places of business such specified documents or categories of documents as the Society deem necessary for the purpose specified in *subsection (1)* of this section or as the Court thinks fit.

Repealed by section 37, 2009 Act. See page 248.

~~15. (1) The Minister may, by regulations, require the Society to establish, maintain and fund a scheme for the examination and investigation by an independent adjudicator of any written complaint made to the adjudicator by or on behalf of a member of the public against the Society, concerning the handling by the Society of a complaint about a solicitor made to the Society by any person.~~

Investigation of complaints.

~~(2) Without prejudice to the generality of *subsection (1)* of this section, regulations under this section may make provision in relation to any one or more of the following—~~

- ~~(a) the establishment and administration of a scheme for the examination and investigation of complaints to the adjudicator,~~
- ~~(b) the manner of appointment by the Society of an adjudicator and the terms and conditions of his appointment,~~
- ~~(c) the appointment of staff to assist the adjudicator and the terms and conditions of their appointment,~~
- ~~(d) the matters to be subject to examination or investigation under the scheme, including the reinvestigation of complaints handled by the Society,~~
- ~~(e) the procedures to be followed in the conduct of an investigation by the adjudicator,~~
- ~~(f) the procedures for making complaints to the adjudicator,~~
- ~~(g) the attendance of the adjudicator at meetings of the Society, or of any committee of the Society, concerned with complaints made to the Society by members of the public about solicitors,~~
- ~~(h) the reporting to the Society of conclusions or recommendations of the adjudicator in relation to cases investigated by him, and the consideration of such conclusions or recommendations by the Society,~~
- ~~(i) the powers of the adjudicator to direct the Society with regard to the making of applications to the Disciplinary Tribunal under section 7 (as substituted by this Act) of the Act of 1960,~~

- ~~(j) — the provision by the Society of any information that may be required by the adjudicator in relation to any case with which he is involved,~~
 - ~~(k) — the powers of the adjudicator to recommend changes in the procedures of the Society in relation to complaints to the Society by members of the public about solicitors,~~
 - ~~(l) — the submission of reports, including annual reports, by the adjudicator to the Minister in relation to the discharge of his duties, and the publication of such reports and the laying of such reports before both Houses of the Oireachtas.~~
- ~~(3) (a) The consent of the Minister shall be obtained by the Society for the appointment of any independent adjudicator under this section.~~
- ~~—(b) A person appointed as an adjudicator shall not be a practising solicitor, a member of the Society, or a practising barrister and shall be independent in the exercise of his functions.~~
- ~~(4) An adjudicator appointed under this section —~~
- ~~(a) shall not examine or investigate any issue which is being or has been determined by —~~
 - ~~(i) a court,~~
 - ~~—(ii) the Disciplinary Committee appointed under Part II of the Act of 1960, or~~
 - ~~—(iii) the Disciplinary Tribunal appointed under Part II (as amended by this Act) of the Act of 1960,~~
 - ~~(b) may, subject to paragraph (f) of this subsection, examine or investigate a complaint made to him under this section relating to a matter which arose before this section comes into operation,~~
 - ~~(c) may examine or investigate a complaint made to him under this section even though the person making the complaint may be entitled to bring proceedings in any court with respect to the matter complained of,~~
 - ~~(d) may make more than one recommendation in a report to the Society,~~
 - ~~(e) shall give reasons for his conclusions or recommendations in every report to the Society,~~

~~(f) may not examine or investigate a complaint made to him under this section after the expiration of three years following the determination by the Society of a complaint made to the Society.~~

~~(5) An adjudicator appointed under this section shall have power to require the production of documents in the possession of the Society in connection with his examination or investigation of a complaint.~~

~~(6) Subject to paragraph (f) of subsection (4) of this section, an adjudicator may direct the Society to re-examine or reinvestigate a complaint made to the Society about a solicitor, if the adjudicator is not satisfied that the Society have investigated the complaint adequately.~~

~~(7) Subject to paragraph (f) of subsection (4) of this section and notwithstanding the provisions of subsection (6) of this section, an adjudicator appointed under this section may re-examine or reinvestigate a complaint made to the Society about a solicitor, if the adjudicator is not satisfied that the Society has investigated the complaint adequately, and no provision in this section or in any regulations made pursuant to subsection (2) of this section shall prevent, or shall be construed as preventing, an adjudicator from re-examining or reinvestigating any complaint under this subsection.~~

~~(8) Where an adjudicator re-examines or reinvestigates a complaint made to the Society under subsection (7) of this section, he shall have power, following that re-examination or reinvestigation, to direct the Society to make an application to the Disciplinary Tribunal under section 7 (as substituted by this Act) of the Act of 1960, or to recommend that the Society should take any other action, which he may specify, in relation to the solicitor pursuant to the Society's powers under the *Solicitors Acts, 1954 to 1994*.~~

~~(9) Where an adjudicator re-examines or reinvestigates a complaint made to the Society under subsection (7) of this section, he may require any person who, in his opinion, is in possession of information, or has a document or thing in his power or control, that is relevant to the re-examination or reinvestigation, to furnish that information, document or thing to him and, where appropriate, may require the person to attend before him for that purpose, and the person concerned shall comply with each such requirement.~~

~~(10) A person to whom a requirement is addressed under subsection (9) of this section may, within a period of 21 days of the notification of such requirement, apply to the High Court for an order to rescind or vary the requirement and, where the Court is satisfied that the information, documents or things, or any of them, are not relevant or are not reasonably required for the purposes of the re-examination or reinvestigation or are confidential to the interests of that person, it may rescind or vary the requirement or make such other order as it thinks fit.~~

~~(11) An adjudicator may not require a solicitor to furnish any information, document or thing that is held in the possession or control of~~

the solicitor on behalf of a client of that solicitor, without receiving the prior written authority of that client to such a requirement.

(12) A person to whom a requirement is addressed under *subsection (9)* of this section shall be entitled to the same immunities and privileges as if he were a witness before the High Court.

(13) A person shall not by act or omission obstruct or hinder an adjudicator in the performance of his functions or do any other thing which would, if the adjudicator were a court having power to commit for contempt of court, be contempt of such court.

(14) A person who contravenes *subsection (9)* or *(13)* of this section shall be guilty of an offence and shall be liable on summary conviction thereof to a fine not exceeding €1,500.

In subsection (14), “€1,500” substituted with “€3,000” by section 22(1) (j), 2002 Act. See page 207.

(15) Any information, document or thing obtained by an adjudicator in the course of or for the purpose of the examination or investigation or the re-examination or reinvestigation of a complaint shall not be disclosed except for the purposes of that examination or investigation or re-examination or reinvestigation and the adjudicator shall not be called upon to give evidence in any proceedings of matters coming to his knowledge in the course of an examination or investigation or a re-examination or reinvestigation.

(16) An adjudicator appointed under this section may decide not to examine or investigate a complaint made to the adjudicator under this section, or may discontinue an examination or investigation of such complaint, if he becomes of opinion that—

- (a) the complaint is trivial or vexatious, or
- (b) the person making the complaint has an insufficient interest in the matter, or
- (c) the person making the complaint has not taken reasonable steps to seek redress in respect of the subject matter of the complaint, or if he has, has not been refused redress.

(17) Every regulation made under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.

16.—(1) The Act of 1960 is hereby amended by the substitution of the following section for section 6:

Disciplinary Tribunal (section 6 of Act of 1960).

Subsection (1) substituted by section 8(a), 2002

"Disciplinary Tribunal.

6.—(1) The President of the High Court shall, from time to time as the occasion requires, appoint a tribunal (to be known and in this Act referred to as

Act and subsection (1A) inserted by section 8(b), 2002 Act, and further amended by the insertion of a new subsection (1B) by section 35, 2008 Act. See page 192 and page 212.

~~'the Disciplinary Tribunal' consisting of—~~

~~(a) not more than ten persons from among practising solicitors of not less than 10 years standing (to be known and referred to in this section as 'solicitor members'), one of whom shall be appointed by the President of the High Court to be chairperson of the Disciplinary Tribunal and each of whom shall be appointed after consultation with the Society, and~~

~~(b) not more than five persons, who are not solicitors or barristers (to be known and referred to in this section as 'lay members'), who shall be nominated by the Minister to represent the interests of the general public,~~

~~for such a period, not exceeding five years, as the President of the High Court may determine, and any such person so appointed shall be eligible for reappointment to the Disciplinary Tribunal.~~

(2) A member of the Disciplinary Tribunal may resign his membership by letter sent by registered post to the President of the High Court and his resignation shall take effect on the date on which the letter is delivered.

(3) (a) The President of the High Court may remove a member of the Disciplinary Tribunal, may fill a vacancy therein and, subject to the limits stated in subsection (1) of this section, may increase or reduce the number of persons thereon.

(b) The President of the High Court may not remove a lay member of the Disciplinary Tribunal, without prior consultation with the Minister.

(4) The Society shall defray any reasonable costs and expenses incurred by the Disciplinary Tribunal.

(5) For the purpose of hearing and determining any application under section 7 (as substituted by the *Solicitors (Amendment) Act, 1994*) of this Act, the Disciplinary Tribunal shall sit in divisions, each of which shall comprise three members of whom one

shall be a lay member and two shall be solicitor members.

Subsection (6) substituted by section 8(c), 2002 Act. See page 192.

~~(6) There shall be paid to the members of the Disciplinary Tribunal, out of funds at the disposal of the Society, reasonable travelling and subsistence expenses incurred by them in connection with their attendance at meetings of the Disciplinary Tribunal.~~

(7) Any information, document or thing obtained by any member of the Disciplinary Tribunal as a result of any application to the Disciplinary Tribunal, or in the course of any inquiry by that Tribunal, shall not be disclosed except for the purposes of the *Solicitors Acts, 1954 to 1994*."

(2) *Subsection (1)* of this section shall not apply to any application under section 7 of the Act of 1960 made before the coming into operation of this section to the Disciplinary Committee appointed under section 6 of the Act of 1960.

17.—(1) The Act of 1960 is hereby amended by the substitution of the following section for section 7:

"Inquiry by the Disciplinary Tribunal into the conduct of a solicitor on the ground of alleged misconduct.

7.—(1) An application by a person (not being a person who has made a complaint to an independent adjudicator under *section 15* of the *Solicitors (Amendment) Act, 1994*, about the conduct of a solicitor referred to in the application) or by the Society for an inquiry into the conduct of a solicitor on the ground of alleged misconduct shall, subject to the provisions of this Act, be made to and heard by the Disciplinary Tribunal in accordance with rules made under section 16 of this Act.

Inquiry by the Disciplinary Tribunal into the conduct of a solicitor on the ground of alleged misconduct (section 7 of Act of 1960).

Subsections (2) and (3) substituted by section 9(a), 2002 Act. See page 193.

~~(2) Where an application in relation to a solicitor is duly made under this section and the Disciplinary Tribunal, after consideration of the application, are of opinion that there is no *prima facie* case for inquiry, they shall so inform the applicant in writing and shall take no further action in relation to the application.~~

~~(3) Where an application in relation to a solicitor is duly made under this section and the Disciplinary Tribunal, after consideration of the application, are of opinion that there is a *prima facie* case for inquiry, the following provisions shall have effect:~~

~~(a) they shall proceed to hold an inquiry;~~
~~(b) on the completion of the inquiry, the~~
Disciplinary Tribunal shall —

~~(i) embody their findings in a report to the High Court, specifying therein the nature of the application and the evidence laid before them and any other matters in relation to the solicitor (hereinafter referred to in this section as the 'respondent solicitor') which they may think fit to report;~~

~~(ii) in a case where the Disciplinary Tribunal find that there has been misconduct on the part of the respondent solicitor and they have not made, and do not intend to make, an order under subsection (9) of this section, the Disciplinary Tribunal shall include in their report their opinion as to the fitness or otherwise of the respondent solicitor to be a member of the solicitor's profession having regard to the contents of the report and their recommendations as to the sanction which in their opinion should be imposed, and the Society shall bring the report before the High Court.~~

(4) Where, on completion of an inquiry under subsection (3) of this section, the Disciplinary Tribunal find that there has been misconduct on the part of the respondent solicitor but they have made or are of the opinion that it is appropriate that they should make an order under subsection (9) of this section, the Disciplinary Tribunal shall include in their report the reasons for their opinion that it is appropriate to make an order under subsection (9) of this section.

(5) The Disciplinary Tribunal shall, as soon as possible after it has been prepared, make available to the respondent solicitor a copy of their report prepared pursuant to subsections (3) and (4) of this section, as the case may be.

Subsection (5)
substituted by
section 9(b), 2002
Act. See page
195.

Subsection (6)
substituted by
section 9(c), 2002
Act. See page
195.

~~(6) Where, on completion of an inquiry under subsection (3) of this section, the Disciplinary Tribunal have found that there has been no misconduct on the part of the respondent solicitor, they shall take no further action in relation to the matter and they shall so inform the respondent solicitor and the Society or other person who made the application as the case may be.~~

(7) Where an application is made under this section, the Disciplinary Tribunal may, at any stage of the proceedings in relation to the application and before the completion of any inquiry under subsection (3) of this section, postpone the taking of any steps or further steps in the matter for a specified period and, if they do so, then, if before the expiration of that period the applicant applies to the Disciplinary Tribunal for leave to withdraw the application, the Disciplinary Tribunal may, if they think fit, allow the application to be withdrawn and, if they do so, no further action shall be taken by them in relation to the application.

(8) The Society shall be entitled to make an application to the Disciplinary Tribunal in accordance with the provisions of this section, notwithstanding that any other person may be entitled to make such an application.

(9) Where, on completion of an inquiry under subsection (3) of this section, the Disciplinary Tribunal find that there has been misconduct on the part of the respondent solicitor, they shall have power, by order, to do one or more of the following things, namely—

- (a) to advise and admonish or censure the respondent solicitor;
- (b) to direct payment of a sum, not exceeding £5,000, to be paid by the respondent solicitor to the Compensation Fund;
- (c) to direct that the respondent solicitor shall pay a sum, not exceeding £5,000, as restitution or part restitution to any aggrieved party, without prejudice to any legal right of such party;
- (d) to direct that the whole or part of the costs

In subsections
(9)(b) and (9)(c),
“£5,000”
substituted with
“€15.000” by
section 9(d)(i),
2002 Act. See
page 195.

Subsection (9)(d),
extended by

section 9(d)(ii),
2002 Act.
See page 195.

of the Society or of any person appearing before them, as taxed by a Taxing Master of the High Court, in default of agreement, shall be paid by the respondent solicitor.

Subsection (10)
substituted by
section 9(e), 2002
Act. See page
196.

~~(10) On the making of an order under subsection (9) of this section, the Disciplinary Tribunal shall, as soon as possible, serve a copy of such order on the respondent solicitor, either personally or by sending same by prepaid registered post to his address as stated in the register (or, if never on the register, the roll).~~

Subsection (11)
substituted by
section 9(f), 2002
Act. See page
196.

~~(11) A respondent solicitor in respect of whom an order has been made by the Disciplinary Tribunal under subsection (9) of this section may, within the period of 21 days beginning on the date of the due service of the order, appeal to the High Court to rescind or vary the order in whole or in part, and the Court on hearing such an appeal may—~~

~~(i) rescind or vary the order, or~~

~~(ii) confirm that it was proper for the Disciplinary Tribunal to make the order.~~

(12) The Society, or any person who has made an application under subsection (1) of this section, may, within the period provided under subsection (11) of this section, appeal to the High Court against an order made by the Disciplinary Tribunal under subsection (9) of this section on the ground that the sanction imposed by the Disciplinary Tribunal is inadequate, or that the Disciplinary Tribunal, in lieu of making such an order, ought to have exercised their powers under subsection (3) (b) (ii) of this section, and the Court, on hearing such an appeal, may—

New additional
subsections (12A)
and (12B)
inserted by
section 9(g) of the
2002 Act. See
page 196-197.

(i) confirm the sanction imposed by the Disciplinary Tribunal on the respondent solicitor, or

(ii) in relation to the respondent solicitor, do one or more of the things specified in section 8 (1) (a) (as substituted by the *Solicitors (Amendment) Act, 1994*) of this Act.

(13) A respondent solicitor may appeal to the

High Court against a finding of misconduct on his part by the Disciplinary Tribunal pursuant to subsection (3) of this section, and the Court shall determine such appeal when it considers the report of the Disciplinary Tribunal in accordance with the provisions of section 8 (as substituted by the *Solicitors (Amendment) Act, 1994*) of this Act, or as part of its determination of any appeal under subsection (11) of this section, as the case may be.

(14) Where a respondent solicitor refuses, neglects or otherwise fails to comply with an order made under subsection (9) (b) or (c) of this section (to an extent that it has not been rescinded or varied by the High Court consequent on an appeal to the High Court under subsection (11) of this section), the Society or any aggrieved party to whom a sum by way of restitution or part restitution has been ordered, may recover that sum as a liquidated debt.

(15) An application brought under subsection (1) of this section may relate to one or more complaints against a respondent solicitor.

(16) An application by the Society under subsection (1) of this section shall include an application made by the Society pursuant to a direction by an adjudicator appointed under *section 15* of the *Solicitors (Amendment) Act, 1994*.

(17) The Society may authorise any person on their behalf to do all such things and acts as may be necessary for the purposes of any application made or inquiry held under this section."

(2) *Subsection (1)* of this section shall not apply to any application under section 7 of the Act of 1960 made before the coming into operation of this section.

18.—(1) The Act of 1960 is hereby amended by the substitution of the following section for section 8:

Proceedings before High Court (section 8 of Act of 1960).

"Proceedings before High Court.

8.—(1) Where the Disciplinary Tribunal, after holding an inquiry into the conduct of a solicitor, make a report to the High Court under section 7 (as substituted by the *Solicitors (Amendment) Act, 1994*) of this Act which is brought before the Court by the Society under the said section 7, the following provisions shall have effect:

In subsection (1)(a) “the High Court, after consideration of the report” substituted by section 37(a), 2008 Act. See page 213.

(a) ~~the High Court, after consideration of the report —~~

(i) may by order do one or more of the following things, namely—

(I) strike the name of the solicitor off the roll;

(II) suspend the solicitor from practice for such specified period and on such terms as the Court thinks fit;

(III) prohibit the solicitor from practising on his own account as a sole practitioner or in partnership for such period, and subject to such further limitation as to the nature of his employment, as the Court may provide;

(IV) restrict the solicitor practising in a particular area of work for such period as the Court may provide;

(V) censure the solicitor or censure him and require him to pay a money ~~penalty~~;

(ii) may by order direct that a specified bank shall furnish any information in its possession that the Society may require relating to any aspect of the financial affairs of the practice of the solicitor;

(iii) may by order direct that the solicitor shall swear an affidavit disclosing all information relating to or contained in any accounts, held in his own name or in the name of his firm or jointly with third parties, with any bank within a specified duration of time, to be fixed by the Court;

(iv) may make such order as to the costs

In subsection (1)(a)(i)(V), “penalty” substituted and extended by section 10(a), 2002 Act. See page 197.

incurred in the proceedings before it and the Disciplinary Tribunal as the Court thinks fit;

(v) may make any ancillary order in relation to the matter which the Court thinks fit;

(b) the High Court may, if it thinks fit, remit the case to the Disciplinary Tribunal to take further evidence for submission to it and to make to it a supplementary report, and the Court may adjourn the hearing of the matter pending the submission to it of such further evidence and the making of such supplementary report;

(c) in addition to doing any of the things specified in the foregoing paragraphs of this subsection, the Court may also by order do any one or more of the following things, namely —

(i) direct the solicitor to make such restitution to any aggrieved party as the Court thinks fit;

(ii) on the application of the Society, direct that the solicitor swear an affidavit (within a specified duration of time to be fixed by the Court) disclosing all information as to his assets either then in his possession or control or within his procurement or which had been but no longer are in his possession or control or within his procurement and, if no longer in his possession or control or within his procurement, his belief as to the present whereabouts of those assets;

(iii) direct that the solicitor make himself available before the Court on a specified date and at a specified time for oral examination under oath in relation to the contents of any affidavit of assets sworn by him pursuant to subparagraph (ii) of this paragraph;

- (iv) on the application of the Society and where it is shown that the conduct of the solicitor or of any clerk or servant of that solicitor arising from that solicitor's practice as a solicitor has given or is likely to give rise to the making by the Society of a grant or grants out of the Compensation Fund under section 21 (as substituted by the *Solicitors (Amendment) Act, 1994*) of this Act, direct that the solicitor shall not reduce his assets below a certain specified amount or value unless the Court otherwise directs;
- (v) on the application of the Society, direct the delivery to any person appointed by the Society of all or any documents in the possession or control or within the procurement of the solicitor arising from his practice as a solicitor;
- (vi) direct either—
 - (I) that no bank shall, without leave of the Court, make any payment out of an account in the name of the solicitor or his firm, or
 - (II) that a specified bank shall not, without leave of the Court, make any payment out of an account in the name of the solicitor or his firm;
- (vii) direct that the solicitor shall not attend at the place of business of his practice as a solicitor unless otherwise permitted by the Court;
- (viii) direct that the solicitor shall not represent himself as having, or hold himself out as having, any connection with his former practice as a solicitor, or permit any other person to so represent that solicitor, unless otherwise permitted by the Court.

In subsection (1)(c)(viii), “Court” substituted and extended by section 10(b), 2002 Act. See page 197.

New subsection (1A) inserted by section 37(b), 2008 Act. See page 213.

(2) (a) Where an order in respect of documents is made by the High Court under subparagraph (v) of paragraph (c) of subsection (1) of this section, the Society may make such enquiries as may be reasonably necessary to ascertain the person or persons entitled to the possession or custody of such documents and may thereafter deal with such documents, or any of them, in accordance with the directions of such person or persons so entitled.

(b) For the purposes of paragraph (a) of this subsection, the Second Schedule (as amended by the *Solicitors (Amendment) Act, 1994*) to this Act shall have effect.

(3) Where the High Court by an order under subsection (1) of this section requires a solicitor to pay a money penalty, the order shall operate as a judgment against the solicitor in favour of the Society, and the money penalty, when recovered, shall be paid into the Compensation Fund.

In subsection (4), "£1,500" substituted with "€3,000" by section 22(1) (f), 2002 Act. See page 207.

(4) Where any person acts as agent or nominee of a solicitor or his firm so as to render nugatory an order made by the High Court under subparagraph (vi) of paragraph (c) of subsection (1) of this section, such person shall be guilty of an offence under this subsection and shall be liable on summary conviction thereof to a fine not exceeding £1,500."

(2) *Subsection (1)* of this section shall not apply to any report to the High Court made under section 7 of the Act of 1960 before the coming into operation of this section.

New section 18A inserted by section 43, 2008 Act. See page 216.

19.—Section 10 of the Act of 1960 is hereby amended by the insertion of the following subsection:

Amendment of section 10 of Act of 1960.

"(4) Where, on the hearing of an application under this section, it is shown that the circumstances which gave rise to the striking off the roll of the applicant's name involved an act or acts of dishonesty on the part of the applicant arising from his former practice as a solicitor or that the applicant was convicted of a criminal offence, the High Court shall not restore the applicant's name to the roll, either conditionally or unconditionally, unless it is satisfied that, having regard to all the evidence, the applicant is a fit and proper person to practise as a solicitor and that the restoration of the applicant to the roll would not adversely affect public confidence in the solicitors' profession as a whole or in the administration of

justice.".

20.—The Principal Act is hereby amended by the substitution of the following section for section 60:

"Restriction on employment of person struck off roll or suspended.

60.—(1) No person shall knowingly, save under and in accordance with a written permission under this section, employ or remunerate in any capacity involving or in connection with the provision of legal services a solicitor who is an unqualified person by reason of—

Restriction on employment of person struck off roll or suspended (section 60 of Principal Act).

(a) his name having been struck off the roll, or

(b) his suspension from practice, or

(c) his having had the issue to him of a practising certificate refused under section 49 (as substituted by the *Solicitors (Amendment) Act, 1994*) of this Act, or

(d) his having his practising certificate suspended under *section 58* of the *Solicitors (Amendment) Act, 1994*, or

(e) his having given to the High Court an undertaking not to practise as a solicitor.

(2) The Society may grant a permission for the purposes of subsection (1) of this section for such period and subject to such conditions as they think fit, or may refuse to grant such a permission.

(3) A person aggrieved by the refusal of the Society to grant a permission under subsection (2) of this section, or by any conditions attached by the Society to the grant thereof, may appeal to the High Court and the Court may confirm the refusal or the conditions, as the case may be, or may grant the permission for such period and subject to such conditions as the Court thinks fit.

(4) Where a person continues to employ an unqualified person in contravention of subsection (1) of this section notwithstanding his having been requested by the Society to discontinue such employment, the Society may apply to the High Court, and the Court may by order restrain that person from continuing the employment of that unqualified person.

(5) Where a solicitor has been issued with a practising certificate that is subject to a condition or conditions under *section 59* of the *Solicitors (Amendment) Act, 1994*, that solicitor shall be deemed to be an unqualified person for the purposes of subsection (1) of this section to the extent that such condition or conditions prohibit him from engaging in the provision of a certain category or categories of legal services."

21.—The Principal Act is hereby amended by the substitution of the following section for section 63:

Disclosure of having been struck off roll, etc. (section 63 of Principal Act).

63.—(1) A person who is an unqualified person by reason of —

"Disclosure of having been struck off roll, etc.

(a) his name having been struck off the roll, or

(b) his suspension from practice, or

(c) his having had the issue to him of a practising certificate refused under section 49 (as substituted by the *Solicitors (Amendment) Act, 1994*) of this Act, or

(d) his having his practising certificate suspended under *section 58* of the *Solicitors (Amendment) Act, 1994*, or

(e) his having given to the High Court an undertaking not to practise as a solicitor,

shall not seek or accept employment from any person in any capacity involving or in connection with the provision of legal services without previously informing that person that he is such an unqualified person.

(2) Save under and in accordance with a written permission under this section, a solicitor—

(a) whose name has been struck off the roll, or

(b) who is suspended from practice, or

(c) to whom a practising certificate has been refused under section 49 (as substituted

by the *Solicitors (Amendment) Act, 1994* of this Act, or

(d) whose practising certificate has been suspended under *section 58* of the *Solicitors (Amendment) Act, 1994*, or

(e) who has given an undertaking to the High Court not to practise as a solicitor,

shall not engage in any work in any capacity involving, or in connection with, the provision of legal services, whether in relation to his former practice as a solicitor or otherwise, until —

- (i) the High Court has made an order restoring his name to the roll, or
- (ii) the High Court has lifted the said order of suspension from practice, or
- (iii) the High Court has made an order directing the granting of a practising certificate to him, or
- (iv) the High Court has discharged any order of suspension of his practising certificate, or
- (v) the High Court has released him from any undertaking by him not to practise as a solicitor,

as the case may be.

In subsection (3), “£1,500” substituted with “€3,000” by section 22(1) (d), 2002 Act. See page 207.

(3) A solicitor who contravenes subsection (1) or (2) of this section shall be guilty of an offence under this section and shall be liable on summary conviction thereof to a fine not exceeding ~~£1,500~~.

(4) The Society may grant a permission for the purposes of subsection (2) of this section for such period and subject to such conditions as they think fit.

(5) Where a solicitor has been issued with a practising certificate that is subject to a condition or conditions under *section 59* of the *Solicitors*

(Amendment) Act, 1994, that solicitor shall be deemed to be an unqualified person for the purposes of subsection (1) of this section to the extent that such condition or conditions prohibit him from engaging in the provision of a certain category or categories of legal services."

22.—The Society shall publish annually, in the Gazette of the Society and in any other manner as the Society may direct, information on—

Publication of information on complaints.

- (a) the number of complaints together with a description of the general nature of those complaints received by the Society about solicitors;
- (b) the number of complaints together with a description of the general nature of those complaints referred to the Disciplinary Tribunal; and
- (c) the outcome of the investigation of those complaints by the Disciplinary Tribunal.

Subsection (1) substituted by section 17(a), 2002 Act. See page 202.

23.—(1) ~~Where, on the completion of an inquiry by the Disciplinary Tribunal held under section 7 (3) (as substituted by this Act) of the Act of 1960, the Disciplinary Tribunal have made an order under section 7 (9) (as substituted by this Act) of the Act of 1960, the Disciplinary Tribunal shall notify the Society in writing of the making of such order and the Society may arrange to publish the order of the Disciplinary Tribunal, or notice of the making of the order and its effect, in such a manner as the Society think fit.~~

Publication of orders.

Subsection (2) substituted by section 17(b), 2002 Act. See page 202.

(2) ~~Where, on the completion of an inquiry by the Disciplinary Tribunal held under section 7 (3) (as substituted by this Act) of the Act of 1960, the Disciplinary Tribunal have made an order under section 7 (9) (as substituted by this Act) of the Act of 1960, the order of the Disciplinary Tribunal, or notice of the making of the order and its effect, shall not be published by the Society until a period of at least 21 days shall have elapsed after the making of the order, or until any application made under section 7 (11) (as substituted by this Act) of the Act of 1960 has been determined by the High Court, and thereafter the notice of the making of the order shall not be published if the Court rescinds the order of the Disciplinary Tribunal.~~

(3) Where, following the consideration by the High Court of a report of the Disciplinary Tribunal brought before it under section 7 (3) (as substituted by this Act) of the Act of 1960, the Court has made an order under the provisions of section 8 (as substituted by this Act) of the Act of 1960, the Society shall arrange to publish the order of the Court, or notice of the making of the order and its effect, in the Gazette of the Society and in any other manner as the Society may decide, save that where the Court has ordered that the name of a solicitor be struck off the roll or that a solicitor be suspended from practice for a specified period of time, the

Society shall as soon as possible arrange to publish the order of the Court or notice of the making of the order and its effect in the *Iris Oifigiúil* and in the Gazette of the Society, and, in addition, in any other manner as the Society may think fit.

Subsection (4) inserted by section 17(c), 2002 Act. See pages 203.

24.—Section 3 of the Act of 1960 is hereby amended by the substitution of the following paragraph for paragraph (c) in the definition of "misconduct":

Amendment of section 3 of Act of 1960.

Paragraph (c) substituted by section 7, 2002 Act. See pages 191-192.

"(c) the contravention of a provision of the Principal Act or this Act or the *Solicitors (Amendment) Act, 1994*, or any order or regulation made thereunder,"

and the said definition as so amended is set out in the Table to this section.

TABLE

"misconduct" includes —

- (a) the commission of treason or a felony or a misdemeanour,
- (b) the commission, outside the State, of a crime or an offence which would be a felony or a misdemeanour if committed in the State,
- ~~(c) the contravention of a provision of the Principal Act or this Act or the *Solicitors (Amendment) Act, 1994*, or any order or regulation made thereunder,~~
- ~~(d) — conduct tending to bring the solicitors' profession into disrepute;~~

Paragraphs (c) and (d) substituted and new paragraph (c) added by section 7, 2002 Act. See pages 191-192.

25.—The Act of 1960 is hereby amended by the substitution of the following section for section 15:

Powers of Disciplinary Tribunal as to taking evidence, etc. (section 15 of Act of 1960).

New additional subsections (1A), (1B), (1C), (1D) and (1E) inserted by section 11, 2002 Act. See page 198.

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

15.—(1) The Disciplinary Tribunal shall, for the purposes of any inquiry held by them under section 7 (as substituted by the *Solicitors (Amendment) Act, 1994*) of this Act or the consideration by them of an application under section 9 of this Act, or the taking by them of further evidence under paragraph (b) of subsection (1) of section 8 (as substituted by the *Solicitors (Amendment) Act, 1994*) of this Act, have the powers, rights and privileges vested in the High Court or a judge thereof on the hearing of an action, in respect of—

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

- (c) the compelling of the discovery under oath of documents,

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

(2) If a person—

- (a) on being duly summoned as a witness before the Disciplinary Tribunal, without just cause or excuse disobeys the summons, or
- (b) being in attendance as a witness before the Disciplinary Tribunal, refuses to take an oath or to make an affirmation when legally required by the Disciplinary Tribunal to do so, or to produce or discover under oath any documents (which said word shall be construed in this subsection and in subsection (1) of this section as including things) in his possession or under his control or within his procurement legally required by the Disciplinary Tribunal to be produced or discovered under oath by him, or to answer any question to which the Disciplinary Tribunal may legally require an answer, or
- (c) wilfully gives evidence to the Disciplinary Tribunal which is material to their inquiry which he knows to be false or does not believe to be true, or
- (d) by act or omission, obstructs or hinders the Disciplinary Tribunal in the performance of their functions, or
- (e) fails, neglects or refuses to comply with the provisions of an order made by the Disciplinary Tribunal, or
- (f) does or omits to do any other thing which would, if the Disciplinary Tribunal had

been the High Court, have been contempt of that Court,

the person shall be guilty of an offence.

(3) A witness before the Disciplinary Tribunal shall be entitled to the same immunities and privileges as if he were a witness before the High Court.

(4) (a) A person guilty of an offence under this section shall be liable—

In subsection (4)(a)(i), “£10,000” substituted with “€30,000” by section 22(2)(d), 2002 Act. See page 208.

(i) on conviction on indictment thereof to a fine not exceeding ~~£10,000~~ or to imprisonment for a term not exceeding two years or to both such fine and such imprisonment, and

In subsection (4)(a)(ii), “£1,500” substituted with “€3,000” by section 22(1) (g), 2002 Act. See page 207.

(ii) on summary conviction thereof to a fine not exceeding ~~£1,500~~ or to imprisonment for a term not exceeding 12 months or to both such fine and such imprisonment.

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

PART IV

PROTECTION OF CLIENTS

26.—(1) The Society may make regulations (in this section referred to as “indemnity regulations”) making provision for indemnity against losses arising from claims in respect of any description of civil liability incurred—

Provision of professional indemnity cover.

(a) by a solicitor arising from his practice as a solicitor, or

- (b) by a partner, clerk or servant or former partner, clerk or servant of a solicitor arising from that solicitor's practice as a solicitor.

(2) For the purposes of providing such indemnity, indemnity regulations may do any one or more of the following, namely—

- (a) authorise the Society to establish and maintain any indemnity fund or funds, including a mutual fund;
- (b) authorise the Society to effect and maintain a general policy of indemnity insurance making provision for indemnity against losses arising from claims in respect of any description of civil liability, in which solicitors would be required to participate;
- (c) require solicitors or any specified category of solicitors to effect and maintain a policy of indemnity insurance with insurers approved of by the Society or to participate or to continue to participate in a fund or funds established or maintained pursuant to *paragraph (a)* of this subsection or in any other fund approved of by the Society, including the mutual fund known as the "Solicitors Mutual Defence Fund Limited".

(3) The Society may, without prejudice to any of their other powers, carry into effect any arrangements which they consider necessary or expedient for the purpose of ensuring that there is indemnity against losses pursuant to this section.

(4) Without prejudice to the generality of *subsections (1), (2) or (3)* of this section, indemnity regulations may—

- (a) specify terms and conditions on which indemnity against losses is to be available to solicitors from any indemnity fund or funds or under any general policy of indemnity insurance or under any policy of indemnity insurance with insurers approved of by the Society and any circumstances in which the right to such indemnity is to be excluded or modified;
- (b) specify minimum levels of cover for indemnity against losses arising from claims or different classes of claims;
- (c) provide for the management, administration and protection of any fund maintained under *subsection (2)* of this section and require solicitors or any specified category of solicitors to make payments to any such fund;
- (d) require that solicitors or any specified category of solicitors make payments by way of premium in respect of any general policy of indemnity insurance maintained by the Society by virtue of *subsection (2)* of this section;

- (e) specify conditions which indemnity cover shall satisfy for the purposes of *subsection (2)* of this section;
- (f) provide for the determination by the management of any fund maintained by the Society under *subsection (2)* of this section of the contribution payable by solicitors or any specified category of solicitors in respect of each description of civil liability for which cover is provided by such fund;
- (g) specify the circumstances in which, where a solicitor for whom indemnity cover is provided has failed to comply with the indemnity regulations or with the terms and conditions of such indemnity cover, proceedings for the recovery of sums paid by way of indemnity against losses in respect of that solicitor may be taken against him by the providers of such indemnity cover or by the Society, as may be appropriate;
- (h) specify circumstances in which any solicitor or specified category of solicitor may be exempted from the indemnity regulations;
- (i) enable the Society to take such steps as they think necessary or expedient to ascertain whether or not the indemnity regulations are being complied with;
- (j) include arrangements for the submission to arbitration of any dispute arising between a solicitor and his client in relation to any claim or claims by the client against the solicitor in respect of civil liability to which the indemnity regulations apply by reason of the provisions of this section, where both the solicitor and the client have agreed in writing to submit the dispute to arbitration;
- (k) specify the manner in which solicitors or any specified category of solicitors shall bring their compliance with, or exemption from, the indemnity regulations to the notice of their clients or the Society; and
- (l) include incidental, procedural or supplementary provisions in relation to any of the matters set out in *paragraphs (a) to (k)* of this subsection.

(5) Notwithstanding the foregoing provisions of this section, the Minister may direct the Society to make or amend indemnity regulations.

(6) It shall be misconduct for a solicitor to whom indemnity regulations apply knowingly to make a false or misleading declaration of a material nature for the purpose of obtaining indemnity against losses arising from claims in respect of any description of civil liability incurred by him.

New section 26A
inserted by
section 44, 2008
Act. See page
216.

27.—The Act of 1960 is hereby amended by the substitution of the following section for section 19:

Power of Society to deal with documents of certain solicitors (section 19 of Act of 1960).

"Power of Society to deal with documents of certain solicitors.

19.—(1) Where the Society are of the opinion that—

- (a) a solicitor or a clerk or servant of a solicitor has been guilty of dishonesty arising from that solicitor's practice as a solicitor, or
- (b) a solicitor who is a sole practitioner has abandoned his practice or has ceased to carry on his practice other than for one or more of the reasons set forth in section 60 (1) (as substituted by the *Solicitors (Amendment) Act, 1994*) of the Principal Act,

and that adequate arrangements have not been made for the making available to the clients of such solicitor of all or any documents held in the possession or in the control or within the procurement of that solicitor on behalf of those clients, the Society may give notice in writing to that solicitor or to any other person or persons in possession or control of such documents, or any of them, requiring the production and delivery to any person appointed by the Society, at a time and place to be fixed by the Society, of such documents or any of them.

(2) Where a solicitor or other person to whom subsection (1) of this section applies refuses, neglects or otherwise fails without reasonable excuse to produce or deliver documents in his possession or control or within his procurement within 14 days after receipt by him of a notice under subsection (1) of this section from the Society—

- (a) he shall be guilty of an offence under this section and shall be liable on summary conviction thereof to a fine not exceeding £1,500, and
- (b) the Society may apply to the High Court and the Court may by order require such solicitor or other person to produce or deliver such documents or any of them within such time as the Court thinks fit.

In subsection (2)(a), "£1,500" substituted with "€3,000" by section 22(1) (h), 2002 Act. See page 207.

(3) Where the Society take possession of documents produced or delivered under a requirement under this section—

(a) they shall serve on the solicitor and on every other person from whom the documents were received a notice giving particulars of the documents and the date of taking possession thereof, and

(b) if any of the documents are grouped together as relating to a particular matter, the notice may give particulars of those documents by referring to the group and the matter to which it relates.

(4) Within 14 days after service of a notice under subsection (3) of this section on a solicitor or other person, the solicitor or other person may apply to the High Court for an order directing the Society to return the documents received by the Society to him or to such other person or persons as the applicant may require and the Court may make the order applied for or such other order as the Court thinks fit.

(5) (a) Where an application is not made in accordance with subsection (4) of this section or the High Court on such application directs that the documents shall remain in the possession of the Society, the Society may make such enquiries as may be reasonably necessary to ascertain the person or persons entitled to the possession or custody of such documents, or any of them, and may thereafter deal with such documents, or any of them, in accordance with the directions of such person or persons so entitled.

(b) For the purposes of paragraph (a) of this subsection, the provisions set out in the Second Schedule (as amended by the *Solicitors (Amendment) Act, 1994*) to this Act shall have effect.

(6) Where it appears to the Society, in relation to a solicitor who is a sole practitioner who has, to the knowledge of or in the opinion of the Society, abandoned his practice or has otherwise ceased to carry on his practice, that any premises occupied or

formerly occupied by that solicitor which contain or might contain documents relating to that solicitor's practice are not sufficiently secured, a person authorised in writing by the Society shall have power to enter upon such premises for the purpose of securing such documents either there or elsewhere in the interests of clients of that solicitor."

28.—The Act of 1960 is hereby amended by the substitution of the following section for section 20:

Control of banking accounts or assets of solicitors (section 20 of Act of 1960).

"Control of banking accounts or assets of solicitors.

20.—(1) Where the Society are of opinion that a solicitor or a clerk or servant of a solicitor has been guilty of dishonesty arising from that solicitor's practice as a solicitor, or where any of the circumstances of paragraph (b) of section 19 (1) (as substituted by the *Solicitors (Amendment) Act, 1994*) of this Act apply, the Society may apply to the High Court and the Court may make an order directing one or more of the following things, namely—

- (a) that no bank shall, without leave of the Court, make any payment out of an account in the name of the solicitor or his firm;
- (b) that a specified bank shall not, without leave of the Court, make any payment out of an account kept at such bank in the name of the solicitor or his firm;
- (c) that the solicitor shall not, without leave of the Court, dispose of or direct or facilitate the disposal of any assets in his possession or control or within his procurement;
- (d) that the solicitor shall not, without leave of the Court, reduce his assets below a certain specified amount or value.

(2) The High Court shall have power to hear *in camera* an application for an order under subsection (1) of this section.

(3) Where the High Court makes in relation to a solicitor an order under subsection (1) of this section, the Court may at the same time order that any practising certificate issued to him be suspended.

In subsection (4),
“£1,500”
substituted with
“€3,000” by
section 22(1) (i),
2002 Act. See
page 207.

(4) Where any person acts as agent or nominee of a solicitor or his firm so as to render nugatory an order made by the High Court under subsection (1) of this section, such person shall be guilty of an offence under this section and shall be liable on summary conviction thereof to a fine not exceeding £1,500.

(5) Where the High Court makes in relation to a solicitor an order under subsection (1) of this section, the Court may make one or more of the following further orders, namely, an order or orders—

- (i) directing a specified bank to furnish any information in its possession that the Society require relating to any aspect of the financial affairs of the practice of the solicitor;
- (ii) directing the solicitor to swear an affidavit disclosing all information relating to or contained in any account with any bank held in his own name, or in the name of his firm, or jointly with third parties, within a specified duration of time to be fixed by the Court;
- (iii) directing the solicitor to swear an affidavit disclosing all information as to his assets, either then in his possession or control or within his procurement or which had been but are no longer in his possession or control or within his procurement, within a specified duration of time to be fixed by the Court, and, if no longer in his possession or control or within his procurement, his belief as to the present whereabouts of those assets;
- (iv) directing the solicitor to make himself available before the Court on a specified date and at a specified time for oral examination under oath in relation to the contents of any affidavit of assets sworn by him pursuant to paragraph (iii) of this subsection.

(6) Where the High Court makes in relation to a

solicitor an order under subsection (1) of this section, the solicitor shall forthwith lodge (or cause to be lodged) in the manner prescribed under section 66 (1) (as substituted by the *Solicitors (Amendment) Act, 1994*) of the Principal Act any clients' moneys subsequently received by him to the appropriate client account or client accounts, unless otherwise ordered by the Court.

In subsection (7), “£1,500” substituted with “€3,000” by section 22(1) (i), 2002 Act. See page 207.

(7) A solicitor who refuses, neglects or otherwise fails without reasonable excuse to comply with subsection (6) of this section shall be guilty of an offence and shall be liable on summary conviction thereof to a fine not exceeding €1,500.

(8) Where the High Court is satisfied, on an application being made to it by the Society, that there is reason to believe that any person holds or has held moneys or assets on behalf of a solicitor or his firm to whom subsection (1) of this section applies, the Court may order that person to disclose to the Society all information as to such moneys or assets, either then in his possession or control or within his procurement or which had been but are no longer in his possession or control or within his procurement, and, if no longer within his possession or control or within his procurement, his belief as to the present whereabouts of those moneys or assets."

29.—The Act of 1960 is hereby amended by the substitution of the following section for section 21:

"Compensation for loss due to dishonesty of solicitor or clerk or servant of solicitor.

21.—(1) In this section and in section 22 of this Act—

'the Fund' means the Compensation Fund;

'grant' means a grant under subsection (4) of this section.

(2) The Society shall continue to maintain the Fund.

(3) The Fund shall be maintained and administered in accordance with the provisions of the Third Schedule to this Act.

(4) (a) Where it is proved to the satisfaction of the Society that any client of a solicitor has sustained loss in

Compensation for loss due to dishonesty of solicitor or clerk or servant of solicitor (section 21 of Act of 1960).

consequence of dishonesty on the part of that solicitor or any clerk or servant of that solicitor arising from that solicitor's practice as a solicitor within the jurisdiction of the State, then, subject to the provisions of this section, the Society shall make a grant to that client out of the Fund.

- (b) Subject to the provisions of this section, the amount of the grant referred to in paragraph (a) of this subsection shall be such as represents in the opinion of the Society reimbursement of the amount or value of the loss sustained with, where appropriate in the opinion of the Society, interest (at the rate per annum standing specified for the time being in section 26 of the Debtors (Ireland) Act, 1840, as varied from time to time pursuant to section 20 of the Courts Act, 1981) on the whole or any part of the amount or value of such loss in respect of the whole or any part of the period between the date when such loss was sustained and the date of the making of a grant, but excluding damages or any other form of loss consequent on the client of a solicitor being deprived of the amount or value of the loss sustained.

(5) Notwithstanding the foregoing provisions of this section, if it is shown to the satisfaction of the Society that a client of a solicitor has entrusted moneys to that solicitor, with express instructions to apply or to invest those moneys in a specified manner which would (if so applied or invested) have yielded a return higher than that which would have accrued had the moneys been applied or invested at the rate of interest standing specified for the time being in section 26 of the Debtors (Ireland) Act, 1840, as varied from time to time pursuant to section 20 of the Courts Act, 1981, and the solicitor has dishonestly misappropriated such moneys, the amount granted under subsection (4) of this section shall, in lieu of interest at the rate mentioned in that subsection, include an amount representing such higher return in respect of the whole or any part of the period, as appropriate, between the date when such moneys were so entrusted to that solicitor and the date of the making of a grant.

In subsection (6),
“£350,000”
substituted with
“€700,000” by
section 16(a),
2002 Act. See
page 202.

(6) The amount of a grant made to any client of a solicitor (including any body or bodies corporate beneficially owned or controlled by that client) under subsection (4) of this section shall not exceed ~~£350,000~~ in respect of matters arising from the relationship between such client and that solicitor.

(7) The Minister may, from time to time, vary by regulations the amount specified in subsection (6) of this section having regard to changes in the value of money generally in the State since the said amount was first specified.

(8) Notwithstanding the amount specified in subsection (6) of this section (as may from time to time be varied pursuant to subsection (7) of this section), a grant of a larger amount may, at the discretion of the Society, be made to a client of a solicitor, where the Society are of opinion that the particular circumstances giving rise to the making of a grant under subsection (4) of this section are such that none of the provisions of subsection (9) of this section apply and that grave hardship would be caused if such grant of a larger amount was not made (whether in one sum or in such instalments as the Society, in their discretion, determine).

(9) Notwithstanding the provisions of subsection (4) of this section, the Society shall have a discretion to make or refuse to make a grant—

- (a) in a case in which the solicitor did not have a practising certificate in force at the time when, in the opinion of the Society, the loss was sustained,
- (b) in a case in which the Society are of opinion that there has been dishonesty or negligence on the part of the client of the solicitor or of any person for whom that client is responsible which has contributed to the loss in question,
- (c) in a case in which the Society are of opinion that the client of the solicitor has assisted (whether by act or omission) in the commission of misconduct by the solicitor,
- (d) in a case in which the Society are of opinion that the loss sustained has arisen

otherwise than as a result of the dishonest misappropriation or dishonest conversion of moneys, securities or other property of a client of a solicitor entrusted by the client, or by any other person for or on behalf of the client, to that solicitor or to any clerk or servant of that solicitor,

- (e) in a case in which the Society are of opinion that, having regard to all the circumstances, the loss sustained by the client of the solicitor did not arise from, or was not directly related to, the provision of services of a legal nature to the client by the solicitor,

and, where the Society decide to make a grant in any such case, they shall have a discretion to make it only to a limited extent.

(10) A grant may be made notwithstanding that the solicitor has, after the act of dishonesty, died, had his name removed from or struck off the roll, ceased to practise, been suspended from practice, or had his practising certificate suspended.

(11) No grant may be made in respect of a loss made good otherwise.

(12) (a) On the making of any grant to any client of a solicitor in respect of any loss—

- (i) the Society shall, to the amount of the grant, be subrogated—

(I) to any rights or remedies to which that client was entitled on account of the loss against the solicitor or any other person or against the estate of such solicitor or other person,

(II) to any rights or remedies to which the solicitor or his clerk or servant was entitled on account of the loss against any other person or against the estate of such other person, and

(III) to all other rights and remedies (if any) of that client or such solicitor, clerk or servant in respect of the loss; and

(ii) the client of the solicitor shall have no right under bankruptcy or other legal proceedings or otherwise to receive any sum out of the assets of the solicitor, clerk or servant in respect of the loss until the Society has been reimbursed the full amount of the grant.

(b) In paragraph (a) of this subsection, references to the client of a solicitor or to the solicitor, clerk or servant include, in the event of his or their death, insolvency or other disability, references to his or their personal representative or any other person having authority to administer his or their estate or estates.

(13) No grant shall be made unless notice of the loss is received by the Society—

(a) in the prescribed manner, and

(b) within the prescribed period after the loss comes to the knowledge of the client of the solicitor concerned.

(14) The Society, for the purposes of inquiry into any matters which may affect the making or refusal of a grant, may take evidence on oath, and the administration of such oath is hereby authorised.

(15) (a) A grant may, at the discretion of the Society, be paid either in one sum or in such instalments as the Society may determine.

(b) The Society, if they are of opinion that the financial stability of the Fund so requires, may postpone payment of any grant or any instalment of any grant.

(16) Where the Society are of opinion that—

- (i) there has been no dishonesty or negligence on the part of a solicitor, and
- (ii) that solicitor is vicariously liable to any one or more of his or his firm's clients who has or have sustained loss in consequence of dishonesty on the part of any partner of that solicitor in circumstances where, but for such vicarious liability of that solicitor, a grant would have been made under subsection (4) of this section to such client or clients,

a grant may, nonetheless, at the discretion of the Society, be made under subsection (4) of this section to any such client or clients of an amount determined by the Society, subject to the provisions of this section.

(17) For the purposes of this section, a solicitor or a body corporate beneficially owned or controlled by that solicitor shall not be a client of a solicitor's practice in which he is the sole practitioner or in which he is a partner.

(18) The Society may apply, by regulations, to the extent provided in such regulations, the provisions of this section to a solicitor's practice outside the jurisdiction of the State."

30.—The Act of 1960 is hereby amended by the substitution of the following section for section 22:

"Contributions to the Compensation Fund by solicitors.

22.—(1) Before a practising certificate is issued to a solicitor in respect of the practice year following the coming into operation of this section or any subsequent practice year, he shall pay to the Society an annual contribution to the Fund of such amount as may be prescribed from time to time, and the registrar may withhold the issue of such practising certificate to that solicitor until the payment is made.

Contributions to the Compensation Fund by solicitors (section 22 of Act of 1960).

In subsection (2), "£1,000,000" substituted with "€2,000,000" by section 16(b), 2002 Act. See

(2) In exercising the powers conferred on them under this section, the Society shall have regard to the principle that the total amount standing to the credit of the Fund (including the value of all investments forming part of the Fund) should be not less than €1,000,000, or such greater sum as may be

page 202.

prescribed from time to time, on the date that is three months after the commencement date of each practice year.

(3) No annual contribution to the Fund shall be payable by a solicitor in the full-time service of the State within the meaning of section 54 (3) (as substituted by the *Solicitors (Amendment) Act, 1994*) of the Principal Act.

(4) The Society may, by regulations, provide that no contribution to the Fund shall be payable by a solicitor who resides outside the State and is engaged in the provision of legal services outside the State.

(5) Notwithstanding the provisions of section 21 of this Act (as substituted by the *Solicitors (Amendment) Act, 1994*), no grant shall be made out of the Fund in consequence of dishonesty on the part of a solicitor in the full-time service of the State or any clerk or servant of that solicitor. "

Section 30A inserted by section 46 of the Investor Compensation Act, 1998. See Addendum at page 253.

31.—The Principal Act is hereby amended by the substitution of the following section for section 61:

Intervention in practice of sole practitioner in cases of death, incapacity, bankruptcy, or abandonment (section 61 of Principal Act).

"Intervention in practice of sole practitioner in cases of death, incapacity, bankruptcy, or abandonment.

61.—(1) Where a solicitor who was a sole practitioner has died, his personal representative may appoint another solicitor to carry on his practice for such period and on such terms as the Society may think fit.

(2) Where a solicitor who is a sole practitioner becomes of unsound mind or becomes otherwise incapacitated by illness or accident to such an extent that he is, in the opinion of the Society, incapable (whether permanently or temporarily) of managing his own affairs or the affairs of his practice, the High Court may, on the application of the Society (or, if applicable, on the application of the committee of his estate on notice to the Society), appoint another solicitor to carry on the practice (including the operation by that appointed solicitor, either solely or jointly with another person nominated by the Society and approved of by the Court, of any client account) of that incapacitated solicitor for such period and on such terms as the Court thinks fit, and may require the production and delivery to the appointed solicitor of all documents of such practice in the possession or control or within the procurement of that incapacitated solicitor or any clerk or servant or former clerk or servant of that incapacitated solicitor.

(3) Where a solicitor who is a sole practitioner is adjudicated a bankrupt, then, as the case may be —

(a) the court by whom he is adjudicated a bankrupt, after due notice to the Society, or

(b) the High Court, on the application of the Society or of the Official Assignee,

may appoint another solicitor to carry on the practice of that solicitor for such period and on such terms as that court or the High Court thinks fit.

(4) Where, in relation to a solicitor who is a sole practitioner, any of the circumstances of paragraph (b) of section 19 (1) (as substituted by the *Solicitors (Amendment) Act, 1994*) of the Act of 1960 apply, the High Court may, on the application of the Society, appoint another solicitor to carry on the practice (including the operation by that appointed solicitor, either solely or jointly with another person nominated by the Society and approved of by the Court, of any client account) of the solicitor for such period and on such terms as the Court thinks fit, and may require the production and delivery to the appointed solicitor of all documents of such practice in the possession or control or within the procurement of that solicitor or any clerk or servant or former clerk or servant of that solicitor.

(5) Any reference to a 'personal representative' in this section or in *section 32 or 34* of the *Solicitors (Amendment) Act, 1994*, shall be construed as a reference to any person or persons entitled to apply for a grant of probate or for letters of administration in relation to the estate of a deceased solicitor."

32.—(1) Where a solicitor who was a sole practitioner has died, and another solicitor has not been appointed within four weeks of his death to carry on his practice under section 61 (1) (as substituted by this Act) of the Principal Act, then, without prejudice to the rights of any personal representative under that section, the right to operate or otherwise deal with any client account in the name of the deceased solicitor or his firm shall vest in the Society and shall be exercisable as and from the death of that solicitor by a solicitor appointed in writing by the Society in that behalf for such period and on such terms as the Society may determine and the Society shall be empowered to take any further measures in relation to the practice as they deem necessary in the interests of the clients of the deceased solicitor.

Intervention in practice of solicitor who has died.

(2) Where the Society have operated or otherwise dealt with a client account under *subsection (1)* of this section, the Society shall be entitled to recover from the estate of the deceased solicitor such reasonable expenses as the Society have thereby incurred.

(3) The Society may apply to the High Court for an order in relation to the disposal of any moneys that are in any client account of any sole practitioner who died before or after the provisions of this section come into effect, or in relation to the disposal of any documents in his practice and the Court may make such order as it thinks fit.

(4) Where a solicitor who was a sole practitioner has died and where the Society are of opinion that that solicitor or any clerk or servant of that solicitor has been guilty of dishonesty arising from that solicitor's practice as a solicitor and that, notwithstanding his death, it is appropriate for the Society to issue proceedings with a view to applying to the High Court for an order or orders under section 20 (as substituted by this Act) of the Act of 1960 in relation to that deceased solicitor, the Society may issue proceedings naming as defendant or defendants a clerk or servant or other person closely connected with the practice of, or spouse or relative of, or personal representative of, that deceased solicitor, and may apply to the Court, with or without prior notice to such defendant or defendants, for such orders as the Society deem appropriate.

(5) The High Court, on the hearing of any application under *subsection (4)* of this section, may make such order or orders under section 20 (as substituted by this Act) of the Act of 1960 on such terms and conditions (if any) as the Court thinks fit, including an order joining any other person or persons as defendant or defendants or an order requiring that notice be given to any person or persons of such application.

(6) Where an order is made by the High Court under *subsection (5)* of this section, the Court, with or without prior notice to any person or persons, may make such further order or orders on such terms and conditions (if any) as the Court thinks fit to enable the Society to have access to the former place or places of business of the deceased solicitor concerned and to examine and take into their possession all documents found there to be retained by the Society in their possession until such time as their investigations in relation to the practice of that deceased solicitor are completed, whereupon the Society shall deliver such documents or any part of them to such person or persons whom the Society deem entitled to receive them or as may be directed by the Court.

(7) (a) Where an order in respect of documents is made by the High Court under *subsection (6)* of this section, the Society may make such enquiries as may be reasonably necessary to ascertain the person or persons entitled to the possession or custody of such documents, or any of them, and may thereafter deal with such documents, or any of them, in accordance with the directions of such person or persons so entitled.

(b) For the purposes of *paragraph (a)* of this subsection, the provisions set out in the Second Schedule (as amended by

this Act) to the Act of 1960 shall have effect.

(8) Notwithstanding the making of an order by the High Court under *subsection (6)* of this section, any person or persons may apply to the Court for an order directing the Society to deliver to such person or persons the documents, or any of them, so taken by the Society into their possession and the Court may make such order on such terms and conditions (if any) as the Court thinks fit.

33.—(1) Where, in relation to any solicitor or deceased solicitor to whom section 61 (as substituted by this Act) of the Principal Act or *section 32* of this Act applies, the Society are of the opinion that the conduct of such solicitor or deceased solicitor, arising from his practice as a solicitor, has given, or is likely to give, rise to the Society making a grant or grants out of the Compensation Fund, the High Court may, on the application of the Society and after due notice to and after hearing such person or persons as the Court may think fit, authorise the Society to sell the practice of that solicitor (including, where appropriate, premises, furniture, fittings and equipment and goodwill of such practice), upon such terms, including such terms as to the temporary investment of the proceeds of sale of the practice pending the hearing of an application under *subsection (3)* of this section as the Court thinks fit.

Sale of solicitor's practice in certain circumstances.

(2) (a) Where the Society have sold the practice of a solicitor or deceased solicitor pursuant to *subsection (1)* of this section, the Society shall, within a period of four weeks following the date of completion of the sale, make application to the High Court for directions as to the manner in which the proceeds of such sale are to be applied.

(b) Notice of such application shall be given by the Society in at least one daily newspaper circulating in the area in which the solicitor or deceased solicitor carried on practice not less than 10 days prior to the hearing of the application, and the notice shall state that persons having claims against the solicitor or deceased solicitor may attend the hearing.

(3) On an application made to the High Court pursuant to *subsection (2) (a)* of this section, the Court may, after hearing such person or persons as the Court may think fit, by order direct that the proceeds of sale, or such part thereof as the Court thinks fit, of the practice of the solicitor—

(a) be paid to the Compensation Fund, or

(b) be held in trust by the Society for such period and on such terms as to the investment of such proceeds as the Court may specify, and the Court may make one or more orders in exercising its powers under this subsection.

(4) (a) Where the High Court orders that any proceeds of the sale of a practice be kept in trust for a specified period under

subsection (3) (b) of this section, the Society shall cause notice of the making of that order to be given in at least one daily newspaper circulating in the area in which the solicitor or deceased solicitor carried on practice.

- (b) Notice of the making of an order under *subsection (3) (b)* of this section shall, in addition, indicate that persons having claims against the solicitor or deceased solicitor should furnish details of their claims to the Society within 21 days of the date of publication of such notice or such longer period as the High Court may order, and the Society shall keep a record of all such claims received.
- (5) (a) The Society shall, prior to the expiry of the period specified by the High Court pursuant to *subsection (3) (b)* of this section and after the expiry of the time limit for the furnishing of claims pursuant to *subsection (4) (b)* of this section, apply to the Court for directions as to the disposal of any proceeds of sale of a practice held in trust by the Society pursuant to *subsection (3) (b)* of this section.
- (b) On an application under this subsection, the Society shall furnish to the High Court a list of all claims against the solicitor or deceased solicitor received by the Society, and the Court may direct that notice of the application for directions be given to such person or persons as the Court thinks fit.
- (6) The High Court may, on the application of the Society and after due notice to and after hearing such person or persons as the Court thinks fit, make such order or orders as the Court thinks fit to facilitate the completion of the sale of the practice of a solicitor or deceased solicitor sold or to be sold pursuant to *subsection (1)* of this section, including orders as to the transfer of property, the discharge of encumbrances and the indemnifying by the Society of any purchaser of such practice.

34.—(1) The Second Schedule to the Act of 1960 shall have effect in relation to all or any documents taken into the possession of the Society under any provision of the *Solicitors Acts, 1954 to 1994*.

Ancillary provisions in relation to certain applications or orders (Second Schedule to the Act of 1960)

(2) The Second Schedule to the Act of 1960 is hereby amended by—

- (a) the substitution for the heading thereof and the introductory four line paragraph of the following:

"Provisions Having Effect in Relation to any Documents of a Solicitor's Practice taken into the Possession of the Society"

The following provisions shall have effect in relation to any documents of a solicitor's practice taken into the possession of the

Society:",

(b) the insertion of the following paragraph:

"(h) The foregoing provisions of this Schedule shall have effect in relation to documents notwithstanding the existence or alleged existence of any right to possession or retention of such documents or any of them vested in any solicitor or in any other person."

(3) The High Court, on the application of the Society and after due notice to and after hearing such person or persons as the Court thinks fit, may order that vouched expenditure incurred by the Society under section 19 (as substituted by this Act) of the Act of 1960 or section 61 (as substituted by this Act) of the Principal Act or *section 32* of this Act, including the costs of any person exercising powers and functions under those provisions on behalf of the Society, shall be recouped to the Society by the solicitor concerned or his personal representative and shall be recoverable as a debt owing to the Society.

35.—Without prejudice to any specific provision as to notice contained in any section of the Principal Act or the Act of 1960 or this Act, notice of any application brought by any person to any court pursuant to or in connection with the *Solicitors Acts, 1954 to 1994*, shall be given to the Society, unless a court otherwise orders.

Notice of court applications to be given to Society.

36.—(1) Without prejudice to any other defence, it shall be a defence to an action for damages against the Society in relation to exercising or in relation to not exercising any power conferred on the Society by the *Solicitors Acts, 1954 to 1994*, for the Society to prove that—

Defences in actions against Society.

(a) the Society, in relation to exercising or not exercising their powers, have acted in good faith, and

(b) the Society, in relation to exercising their powers, have acted reasonably having regard to all the circumstances.

(2) In this section "the Society" includes any person acting for or appointed by the Society.

37.—(1) A solicitor shall not, without the written consent of the Society, commence to carry on practice—

Restriction following admission as solicitor on practising as a sole practitioner.

(a) as a sole practitioner, or

(b) as a partner with another solicitor or other solicitors, except where such other solicitor or one of them has been continuously engaged full-time in the provision of legal services for a period of not less than three years at the time of

such commencement,

unless, following the date of his admission as a solicitor, he has been employed full-time as a solicitor in the provision of legal services for such period not exceeding three years as may be prescribed, and lesser periods of such employment may be aggregated in reckoning the period so prescribed.

(2) A solicitor who may not practise as a sole practitioner, or as a partner with another solicitor or other solicitors, by virtue of the provisions of *subsection (1)* of this section, shall attend such course or courses of further education or training (or both) as may be prescribed.

(3) In considering an application for their consent under *subsection (1)* of this section, the Society may have regard to any professional experience gained by a solicitor in another jurisdiction.

(4) Where the Society refuse to grant their consent to a solicitor under *subsection (1)* of this section, that solicitor may appeal against their refusal to the President of the High Court who may make such order as he thinks fit.

(5) The Society shall be entitled to be heard in connection with the hearing of an appeal under *subsection (4)* of this section.

38.—(1) On any application coming before it under the *Solicitors Acts, 1954 to 1994*, the High Court may make such order as it thinks fit in relation to a solicitor, including any order in relation to the production, delivery, inspection, disposal or destruction of any document or documents in the possession or control or within the procurement of that solicitor or any clerk or servant or any former clerk or servant of that solicitor or his firm, to protect or secure the rights of a client or clients of that solicitor or the public interest or the interests of the solicitors' profession as a whole, or to enable the Society to discharge their functions under those Acts, without prejudice to the determination of any issue that may be, or may later come, before the Court as to the conduct of the solicitor named in such order.

General powers of the High Court.

(2) The High Court, on the hearing of any application or appeal coming before it under the *Solicitors Acts, 1954 to 1994*, may make such order as to costs as the Court thinks fit.

39.—The Act of 1960 is hereby amended by the substitution of the following section for section 12:

Finality of orders of the High Court (section 12 of Act of 1960).

"Appeals to Supreme Court.

12.—The Society or the solicitor concerned may appeal to the Supreme Court against an order of the High Court made under section 8 (1) (as substituted by the *Solicitors (Amendment) Act, 1994*) or section 9 or 10 (as amended by the *Solicitors (Amendment) Act, 1994*) of this Act 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."

PART V

QUALIFYING FOR ADMISSION AS A SOLICITOR

40.—The Principal Act is hereby amended by the substitution of the following section for section 24:

"Requirements for admission as solicitor.

24.—(1) Subject to this Part of this Act, a person shall not be admitted as a solicitor unless—

Requirements for admission as solicitor (section 24 of Principal Act).

- (a) he has attained the age of 21 years,
- (b) he has been bound by indentures of apprenticeship for the appropriate term and has satisfied the Society that he has duly served under such indentures of apprenticeship, or has been exempted, as may be prescribed, from being bound by or from service under such indentures of apprenticeship,
- (c) he has duly attended such course or courses of education or training (or both) and passed such examination or examinations as may be prescribed, or has been exempted as may be prescribed from attending such course or courses or passing such examinations, or any of them, except those examinations that are obligatory for him,
- (d) he has complied with the prescribed requirements (if any) as to service under indentures of apprenticeship and admission of persons to be solicitors or compliance therewith has been waived in the prescribed manner by the Society, and
- (e) he has satisfied the Society that he is a fit and proper person to be admitted as a solicitor.

(2) (a) Where the Society decide that a person has not satisfied them that he is a fit and proper person to be admitted as a solicitor, the Society shall, as soon as practicable, send a notice in writing to that person stating that decision, the date thereof and the reasons therefor.

(b) A person to whom a decision under paragraph (a) of this subsection relates may, within a period of two months from the date of receipt from the Society of notice in writing stating that decision, apply to the President of the High Court to rescind that decision and the President of the High Court, on hearing such application, and on directing such further enquiries as he may think fit, may by order—

(i) confirm that it was proper for the Society to make the decision, or

(ii) rescind the decision and declare that person to be a fit and proper person to be admitted as a solicitor."

41.—The Principal Act is hereby amended by the substitution of the following section for section 25:

"Requirements for admission to apprenticeship.

25.—Subject to this Part of this Act, a person shall not be capable of being bound by indentures of apprenticeship unless—

Requirements for admission to apprenticeship (section 25 of Principal Act).

(a) he has attained the age of 17 years,

(b) he has duly attended such course or courses of education or training (or both) as may be prescribed pursuant to section 40 (as amended by the *Solicitors (Amendment) Act, 1994*) of this Act,

(c) he has passed such examination or examinations as may be prescribed pursuant to section 40 (as amended by the *Solicitors (Amendment) Act, 1994*) of this Act,

- (d) he has obtained the written consent of the Society under section 27 (2) (as substituted by the *Solicitors (Amendment) Act, 1994*) of this Act, and
- (e) he has complied with any requirements as may be prescribed as to admission to apprenticeship, or compliance therewith has been waived as may be prescribed."

42.—The Principal Act is hereby amended by the substitution of the following section for section 26:

Term of indentures
(section 26 of
Principal Act).

"Term of
indentures.

26.—(1) The Society may by regulations provide for the term or terms (not to exceed two years) of service under indentures of apprenticeship of persons (including law clerks) or specified categories of persons seeking to be admitted as solicitors and any such regulations shall apply to indentures of apprenticeship existing at the date on which such regulations come into effect.

(2) On the date which is six months after the coming into operation of this section, or the coming into effect of regulations made under subsection (1) of this section, whichever is the sooner, the provisions of the Second Schedule to this Act shall cease to have effect.

(3) In this section 'law clerk' means a person who has satisfied the Society—

- (a) that he has for a continuous period of at least five years been a *bona fide* clerk to a practising solicitor or solicitors,
- (b) that he has, during such period, been *bona fide* engaged in the transaction and performance under the direction and supervision of a practising solicitor or solicitors of such legal business as the Society are satisfied was of a sufficiently responsible nature, and
- (c) that he has diligently served as such clerk."

43.—The Principal Act is hereby amended by the substitution of the Evidence of

following section for section 27:

"Evidence of education, employment and character.

27.—(1) Before a person becomes bound by indentures of apprenticeship, he shall give notice to the Society of his intention so to do and shall furnish the Society with such evidence as may be prescribed of his previous education and employment record and of his character.

education, employment and character (section 27 of Principal Act).

(2) Where the Society are satisfied with the evidence furnished under subsection (1) of this section by a person seeking to become bound by indentures of apprenticeship and with any information obtained from any enquiries they deem it proper to make and are satisfied that that person has complied with the provisions of paragraphs (a), (b), (c) and (e) of subsection (1) of section 25 (as substituted by the *Solicitors (Amendment) Act, 1994*) of this Act, the Society shall issue their written consent to such person becoming bound by indentures of apprenticeship.

(3) Where the Society are not satisfied with the evidence furnished under subsection (1) of this section by a person seeking to become bound by indentures of apprenticeship, the Society may decide to refuse to issue their written consent under subsection (2) of this section to such person becoming bound by indentures of apprenticeship, and where the Society so decide they shall, as soon as practicable, send a notice in writing to that person stating the decision, the date thereof and the reasons therefor.

(4) A person to whom a decision made under subsection (3) of this section relates may, within a period of two months from the date of receipt by him of notice in writing stating that decision, apply to the President of the High Court to rescind that decision, and the President of the High Court, on hearing such application and on directing such further enquiries as he may think fit, may by order—

- (i) confirm that it was proper for the Society to make that decision, or
- (ii) rescind that decision and direct the Society to issue their written consent under subsection (2) of this section to such person becoming bound by indentures of apprenticeship.

(5) The registrar shall refuse to register indentures of apprenticeship produced to him under section 28 of this Act unless the indentures are accompanied by a consent issued under this section and dated not earlier than six months before the date of the indentures.

(6) Service of an apprentice under indentures of apprenticeship of which registration has been refused under this section shall be deemed not to be good service by the apprentice under his indentures."

44.—The Principal Act is hereby amended by the substitution of the following section for section 29:

"Restriction on solicitor taking or retaining apprentice.

29.—(1) Only a practising solicitor may take an apprentice under indentures of apprenticeship.

(2) A practising solicitor who has not at some time been in continuous practice as a solicitor for a period of at least ~~five~~ years shall not, without the written consent of the Society, take an apprentice.

(3) Where a solicitor, who has taken an apprentice under indentures of apprenticeship the term of which is unexpired, ceases to practise or to be a solicitor qualified to practise or becomes employed as an assistant or clerk by another solicitor, he shall not, without the written consent of the Society, retain that apprentice for longer than six months thereafter.

(4) Where a solicitor has taken or retains an apprentice under indentures of apprenticeship in contravention of the foregoing provisions of this section, service or continued service by that apprentice under such indentures of apprenticeship shall be deemed not to be good service, unless the Society direct otherwise.

(5) In this section and in sections 26, 32, 36, 40, 43 and 44 (as substituted by the *Solicitors (Amendment) Act, 1994*) of this Act 'practising solicitor' means a solicitor engaged full-time in the provision of legal services as—

(a) a sole practitioner, or

(b) a partner in a firm of solicitors, or

Restriction on solicitor taking or retaining apprentice (section 29 of Principal Act).

Subsection (2) amended by substituting "four" for "five" by section 33, 2008 Act. See page 212.

(c) a solicitor in the whole time employment of a body corporate, or

(d) a solicitor in the full-time service of the State within the meaning of section 54 (3) (as substituted by the *Solicitors (Amendment) Act, 1994*) of this Act."

45.—The Principal Act is hereby amended by the substitution of the following section for section 32:

"Assignment of indentures on death of solicitor, etc.

32.—Where, before the expiration of the term for which an apprentice is bound by indentures of apprenticeship—

(a) the solicitor concerned dies or ceases to practise as a solicitor, or

(b) the indentures of apprenticeship are cancelled by mutual consent, or

(c) the indentures of apprenticeship are discharged by virtue of an order of the Society or of any court or otherwise,

the apprentice may, with the written consent of the Society, be bound by an assignment of the indentures of apprenticeship or by fresh indentures of apprenticeship to another practising solicitor for the residue of the said term."

Assignment of indentures on death of solicitor, etc. (section 32 of Principal Act).

46.—The Principal Act is hereby amended by the substitution of the following section for section 33:

"General power to discharge indentures.

33.—(1) Where the Society are of opinion that indentures of apprenticeship ought to be discharged, the Society may, after due notice to, and after due consideration of any submissions from, each party to the indentures of apprenticeship, by order discharge the indentures of apprenticeship on such terms (if any) as they think fit, and determine what period (if any) of service by the apprentice under the indentures of apprenticeship should be deemed good service.

(2) Where the Society make an order pursuant to subsection (1) of this section, the Society shall, as soon as practicable, send a notice in writing to each party to the indentures of apprenticeship stating the

General power to discharge indentures (section 33 of Principal Act).

terms of the order, the date thereof and the reasons therefor.

(3) A party to indentures of apprenticeship, the subject of an order of the Society made pursuant to subsection (1) of this section, may, within a period of two months from the date of receipt by him of notice in writing pursuant to subsection (2) of this section, apply to the President of the High Court to rescind that decision, and the President of the High Court, on hearing such application and on directing such further enquiries as he may think fit, may, by order—

(a) confirm that it was proper for the Society to make such an order, or

(b) rescind or vary the order of the Society,

and give such consequential directions (if any) as he thinks fit, including a direction as to what period (if any) of service by the apprentice under the indentures of apprenticeship should be deemed good service."

47.—The Principal Act is hereby amended by the substitution of the following section for section 36:

Number of apprentices (section 36 of Principal Act).

"Number of apprentices.

36.—(1) Subject to subsection (2) of this section, a practising solicitor shall not have more than two apprentices at the same time under indentures of apprenticeship.

(2) A practising solicitor may, with the written consent of the Society, have under indentures of apprenticeship one apprentice for every two assistant solicitors in his employment or in the employment of his firm at the date of the registration under section 28 of this Act of each such indentures of apprenticeship.

(3) Where a practising solicitor has, under subsection (2) of this section, an apprentice or apprentices under indentures of apprenticeship the terms of which are unexpired, that solicitor shall notify the Society in the event of the number of assistant solicitors employed being reduced below the ratio provided for in that subsection and the notification shall be made within three months of the reduction of the number of assistant solicitors below the said ratio.

(4) Where the Society have been notified under subsection (3) of this section or otherwise become aware of a reduction in the number of assistant solicitors employed below the ratio provided for in that subsection, service or continued service under his indentures of apprenticeship by each apprentice concerned shall be deemed not to be good service, unless the Society direct otherwise."

48.—The Principal Act is hereby amended by the substitution of the following section for section 37:

Obligation to serve *bona fide* apprenticeship (section 37 of Principal Act).

"Obligation to serve *bona fide* apprenticeship.

37.—An apprentice shall, during the whole term of his indentures of apprenticeship serve, in the prescribed manner, a *bona fide* apprenticeship."

49.—Section 40 of the Principal Act is hereby amended by—

Amendment of section 40 of Principal Act.

(a) the substitution of the following subsection for subsection (1):

"(1) The Society may—

(a) either on their own or by arrangement with or in association with any other body or institution, provide or procure the provision of courses and the holding of examinations for the education or training (or both) of—

(i) persons seeking to be admitted as solicitors, or

(ii) solicitors or other persons;

(b) authorise any other body or institution, either on its own or by arrangement with or in association with the Society, to provide or procure the provision of courses and the holding of examinations for the education or training (or both) of—

(i) persons seeking to be admitted as solicitors, or

(ii) solicitors or other persons;

(c) join or associate with any other body or institution providing education or training (or both) in providing or procuring the provision of courses and the holding of examinations leading, in appropriate cases, to a joint or common qualification;

- (d) provide for aptitude or other testing of persons seeking to be admitted as solicitors;
 - (e) appoint professors, lecturers, tutors and examiners;
 - (f) award diplomas, certificates and other awards of merit.";
- (b) the substitution of the following subsection for subsection (4):
- "(4) Regulations for the purposes of this section shall provide for the holding by the Society, either on their own or by arrangement with or in association with any other body or institution, at least once in every 12 month period, of—
- (a) a preliminary examination (of such content and form and standard as may be prescribed) to be passed by a person seeking to be bound under indentures of apprenticeship who is not otherwise exempted therefrom pursuant to section 41 (as substituted by the *Solicitors (Amendment) Act, 1994*) and section 42 of this Act;
 - (b) such other examination or examinations as are required by the Society to be passed by a person seeking to be admitted as a solicitor.";
- (c) the substitution for paragraphs (a), (b) and (c) of subsection (5) of the following paragraphs:
- "(a) restricting the taking of apprentices to practising solicitors whose fitness and capacity to train apprentices is deemed satisfactory by the Society,
- (b) the attendance of apprentices, intending apprentices or other persons seeking to be admitted as solicitors at education or training courses (or both) and the content of such education or training courses,
 - (c) the passing by apprentices, intending apprentices, or other persons seeking to be admitted as solicitors of such examination or examinations as are required by the Society to be passed by a person before being admitted as a solicitor,";
- (d) the substitution for paragraphs (i) and (j) of subsection (5) of the following paragraphs:

- "(i) the control and discipline of apprentices, intending apprentices or other persons seeking to be admitted as solicitors,
- (j) the exemption, subject to this Act, from courses or examinations (or both), in whole or in part, of persons who produce satisfactory evidence that they have acquired degrees or professional qualifications of a standard and content deemed satisfactory by the Society and awarded by a university or body or institution recognised by the Society as being appropriate, or who have such other special qualifications as the Society deem appropriate,
- (k) the holding of courses of further education or training (or both) and the required attendance by solicitors or any specified category of solicitors at one or more of such courses,
- (l) the designation of an age below which persons may not sit for the preliminary examination,
- (m) the awarding of diplomas, certificates or other awards of merit to solicitors or other persons who have duly completed prescribed courses or passed prescribed examinations (or both)."; and
- (e) the insertion of the following subsections:

"(7) Regulations made pursuant to this section shall be made only with the concurrence of the Minister.

(8) Every regulation made under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder."

50.—The Principal Act is hereby amended by the substitution of the following section for section 41:

"General exemption from preliminary examination.

41.—The preliminary examination of the Society shall not be required to be passed—

- (a) by a person who holds a degree from any of the universities of Ireland, England, Scotland or Wales, or a degree

General exemption from preliminary examination (section 41 of Principal Act).

conferred or recognised by the National Council for Educational Awards under section 3 of the National Council for Educational Awards Act, 1979,

- (b) by a person who has passed an examination prescribed as being equivalent thereto, or
- (c) by a person who holds the degree of barrister-at-law from the Honorable Society of King's Inns, Dublin, or other professional qualification prescribed as being equivalent thereto."

51.—The Principal Act is hereby amended by the substitution of the following section for section 43:

Exemptions for practising barristers (section 43 of Principal Act).

"Exemptions for practising barristers.

43.—(1) This section applies to a person—

- (a) who seeks to be admitted as a solicitor,
- (b) who has been called to the bar of Ireland and has practised as a barrister in the State for such period (not exceeding three years) and at such time or times as may be prescribed,
- (c) who has procured himself to be disbarred with a view to being admitted as a solicitor,
- (d) who has obtained from two of the Benchers of the Honorable Society of the King's Inns, Dublin, a certificate of his being in good standing while he was practising as a barrister in the State, and
- (e) who has satisfied the Society that he is a fit and proper person to be admitted as a solicitor.

(2) Subject to subsection (8) of this section, the following provisions shall have effect in relation to a person to whom this section applies:

- (a) he shall not be required to obtain a certificate of his having passed any examination of the Society other than

the final examination (being the examination or an examination in like form referred to in section 40 of this Act before the coming into operation of section 49 of the *Solicitors (Amendment) Act, 1994*, as 'a final examination' and in this section referred to as the final examination) and (if obligatory on him) the second examination in the Irish language which is referred to in the said section 40, but he shall not be re-examined in any subject of substantive law which he has passed or is deemed to have passed as part of a qualifying examination for the degree of barrister-at-law,

- (b) he shall be entitled, without being bound under indentures of apprenticeship to a practising solicitor, to apply to present himself for the final examination,
- (c) on passing the final examination (except so much of that examination as relates to indentures of apprenticeship and service thereunder) and (if obligatory on him) the second examination in the Irish language, he shall be entitled to apply to be admitted and enrolled as a solicitor.

(3) A person to whom this section applies shall not be required to become bound under indentures of apprenticeship to a practising solicitor but shall attend such courses (if any) and complete such training (if any) and pass such examinations (if any) as may be prescribed but he shall not be re-examined in any subject of substantive law which he has passed or is deemed to have passed as part of a qualifying examination for the degree of barrister-at-law.

(4) A person to whom this section applies shall not be required to pass any examination in the Irish language held by the Society under section 40 (3) of this Act if he has passed or was exempted from an examination in the Irish language prescribed by the Chief Justice under section 3 of the *Legal Practitioners (Qualification) Act, 1929*.

(5) Subject to the provisions of subsection (1) of this section, a person who has attended such courses (if any) completed such training (if any) and passed

such examinations (if any) as he shall have been required to undertake pursuant to regulations (if any) made under this section, shall be entitled to apply to be admitted and enrolled as a solicitor.

(6) For the purposes of this section, service by a person as a member of the judiciary in the State, or as a barrister in the full-time service of the State or as a barrister in employment shall be deemed to be practice as a barrister.

(7) In this section—

'barrister in employment' means a barrister who satisfies the Society in the prescribed manner that he has been engaged, under a contract of employment with an employer, full-time in the provision of services of a legal nature for a prescribed period (not exceeding three years) at such time or times as may be prescribed;

'barrister in the full-time service of the State' means a barrister who is required to devote the whole of his time to the service of the State in the provision of services of a legal nature and is remunerated for such service wholly out of moneys provided by the Oireachtas.

(8) Subsection (2) of this section shall stand repealed on the coming into operation of regulations made under subsection (3) of this section."

52.—The Principal Act is hereby amended by the substitution of the following section for section 44:

"Exemptions (reciprocal provisions).

44.—(1) In this section 'corresponding profession' means a profession in another jurisdiction, other than the jurisdiction of a Member State of the European Communities, which in the opinion of the Society corresponds substantially to the profession of solicitor.

Exemptions (reciprocal provisions) (section 44 of Principal Act).

(2) This section applies to a person who—

(a) is qualified to practise in a corresponding profession,

(b) has applied to the Society to be admitted

as a solicitor or who has been admitted as a solicitor under subsection (5) of this section having so applied, and

- (c) has satisfied the Society that he is a fit and proper person to be admitted as a solicitor.

(3) Subject to subsections (4) and (6) of this section, the following provisions shall have effect in relation to a person to whom this section applies:

- (a) he shall not be required to become bound under indentures of apprenticeship;
- (b) he shall not be required to comply with the provisions of section 40 (3) of this Act;
- (c) he shall be required to have practised his profession in the jurisdiction in which he is qualified to practise for such minimum period as may be prescribed;
- (d) he shall attend such course or courses of education or training (or both) and pass such examination or examinations as may be prescribed;
- (e) he shall not, for such period as may be prescribed (not to exceed three years) following the date of his admission as a solicitor (during which period he shall have worked full-time in the provision of legal services) commence to carry on practice—
 - (i) as a sole practitioner, or
 - (ii) as a partner with another practising solicitor or other practising solicitors unless that other practising solicitor or one of such other practising solicitors has been engaged full-time in the provision of legal services for a period of not less than three years at the time of such commencement;
- (f) he shall, during the period referred to in

paragraph (e) of this subsection, be required to attend such courses of further education or training (or both) as may be prescribed.

(4) The Society may waive in the prescribed manner, in whole or in part, any one or more of the provisions of paragraphs (c), (d), (e) or (f) of subsection (3) of this section in relation to any prescribed category of person to whom this section applies.

(5) A person to whom this section applies who has complied with the provisions of paragraphs (c) and (d) of subsection (3) of this section (insofar as they have not been waived in whole or in part under subsection (4) of this section) shall be entitled to be admitted as a solicitor.

(6) The Minister may by order appoint a day or days for the coming into operation of this section in relation to a corresponding profession in any jurisdiction being a day or days on which he is satisfied that reciprocal provisions will be in operation in that jurisdiction in respect of solicitors whose names are on the roll and he may revoke an order so made if such reciprocal provisions cease to apply."

53.—For the purposes of Part IV (as amended by this Act) of the Principal Act, the Society may prescribe by regulations the circumstances in and the conditions under which a person may become bound by indentures of apprenticeship to a person who holds a certificate issued by the Law Society of Northern Ireland or, in relation to England and Wales, the Law Society, corresponding to a practising certificate issued by the Society.

Exemption for certain apprentices.

PART VI

PRACTISING CERTIFICATES AND PRACTICE

54.—The Principal Act is hereby amended by the substitution of the following section for section 47:

"Application for practising certificate.

47.—(1) Subject to the provisions of this Act, the Society may make regulations with regard to—

Application for practising certificate (section 47 of Principal Act).

- (a) applications for practising certificates, and
- (b) the issue of practising certificates (including the form of such certificates).

(2) The Society may make regulations pursuant to subsection (1) of this section requiring that every solicitor who applies to the Society for a practising certificate in respect of a practice year commencing after a date specified in the regulations shall not be issued with such practising certificate unless such solicitor has furnished to the Society written evidence of there being in force the prescribed minimum level of cover for indemnity against losses arising from claims against him as required by indemnity regulations in force under *section 26* of the *Solicitors (Amendment) Act, 1994*, for the duration of the practice year in respect of which such practising certificate so applied for relates.

(3) The registrar shall maintain a register of practising solicitors (in this Act known as 'the register') and the register shall include the following particulars relating to each solicitor issued with a practising certificate—

- (a) the full name of the solicitor,
- (b) his place or places of business,
- (c) the date of his admission as a solicitor, and
- (d) particulars of his cover for indemnity against losses for claims against him required by indemnity regulations in force under *section 26* of the *Solicitors (Amendment) Act, 1994*.

- (4) (a) The register, which may be kept in an electronic or such other non-written form as is considered appropriate by the Society, shall be available for inspection during office hours without payment by any person who applies to inspect it,
- (b) if the register is kept in an electronic or other non-written form, the Society may comply with its obligation to have the register available for

inspection under paragraph (a) of this subsection by making any relevant entry in the register available in written form for inspection in accordance with the said paragraph (a), and

- (c) the Society may publish at any time in whatever manner they deem appropriate the names and the place or places of business of solicitors entered on the register.

(5) Subject to the provisions of this Part of this Act and of the *Solicitors (Amendment) Act, 1994*, the registrar shall issue a practising certificate to a solicitor on application being duly made by him in that behalf, as may be prescribed.

(6) Where a solicitor alleges that the registrar has wrongly refused to issue him with a practising certificate, he may apply to the President of the High Court who may make such order in the matter as he thinks fit.

(7) On the coming into effect of regulations made under subsection (1) of this section, the provisions of the Third Schedule and the Fourth Schedule to this Act shall cease to have effect.

(8) The Minister may direct the Society to make regulations (or to amend regulations made) under subsection (1) of this section providing for the requirement set forth in subsection (2) of this section."

55.—(1) Notwithstanding the coming into effect of regulations made by the Society under section 47 (1) (as substituted by this Act) of the Principal Act, a practising certificate which is in force at the time of the passing of this Act shall, unless subsequently suspended pursuant to section 20 (3) (as substituted by this Act) of the Act of 1960 or *section 58* of this Act, continue in force until the end of the practice year during which it was issued and shall then expire.

Saving for regulations made under section 47 of Principal Act and amendment of section 48 of Principal Act.

(2) Section 48 of the Principal Act shall be amended with effect from the 1st day of January, 1996—

- (a) by the substitution of the following subsection for subsection (1):

"(1) A practising certificate issued during the period beginning on the 1st day of January in any year and ending on the next following 1st day of February shall bear the date of the said 1st day of January and a practising certificate not so issued shall bear the date of the day on which it is issued.",

(b) by the substitution in subsection (3) of:

"the 1st day of February" for "the 5th day of February" where it occurs.

56.—(1) No solicitor shall practise as a solicitor unless a practising certificate in respect of him is in force.

Prohibition on practising as solicitor without practising certificate.

(2) Without prejudice to section 29 (5) (as substituted by this Act) of the Principal Act, a solicitor shall be deemed to practise as a solicitor if he engages in the provision of legal services whether as a sole practitioner or as a partner in a solicitor's practice or as an employee of any solicitor or of any other person or body, or as a solicitor in the full-time service of the State within the meaning of section 54 (3) (as substituted by this Act) of the Principal Act.

(3) *Subsection (1)* of this section shall not apply to—

- (a) a solicitor in the full-time service of the State within the meaning of section 54 (3) (as substituted by this Act) of the Principal Act, or
- (b) a solicitor whose name is on the roll and who does not stand suspended from practice and who is employed full-time in the State to provide conveyancing services for his employer, provided that such employer is not a solicitor.

(4) In *paragraph (b)* of *subsection (3)* of this section "conveyancing services" means services in connection with the preparation of transfers, conveyances, contracts, leases or other assurances in connection with the disposition or acquisition of estates or interests in land.

57.—Without prejudice to the generality of section 3 (as amended by this Act) of the Act of 1960, and without prejudice to any provision of or proceedings under section 55 (as amended by this Act) of the Principal Act a solicitor who acts as a solicitor when not a solicitor qualified to practise under section 54 (as substituted by this Act) of the Principal Act by reason of a practising certificate in respect of him not being in force when such a practising certificate is required by the *Solicitors Acts, 1954 to 1994*, shall be guilty of misconduct.

Acting as a solicitor without a practising certificate.

58.—(1) Where a solicitor fails to comply with any provision of the

Suspension of practising

Solicitors Acts, 1954 to 1994, or with any regulations made thereunder or with any conditions specified in a direction relating to a practising certificate under *section 59* of this Act, and the Society are of the opinion that such failure to comply is serious and warrants the making of an application under this section, the Society may, on notice to that solicitor, apply to the President of the High Court and the President of the High Court may (after hearing such evidence and receiving such submissions from the Society, the solicitor concerned and such other person or persons as the President of the High Court thinks fit) by order do one or more of the following things, namely—

- (a) suspend the current practising certificate of the solicitor for such period as the President of the High Court thinks fit up to and including the end of the current practice year;
- (b) direct the Society not to issue to the solicitor a practising certificate during any subsequent practice year until such time as the President of the High Court thinks fit;
- (c) direct the solicitor to take such action as the President of the High Court thinks fit to remedy any consequences of his failure to comply with such Acts, regulations or conditions;
- (d) direct the solicitor to take such action as the President of the High Court thinks fit to ensure that the solicitor does not in the future so fail to comply with such Acts, regulations or conditions;
- (e) adjourn the application and direct that further enquiries be made by the Society in regard to the matter, or require the Society to furnish further information to the Court;
- (f) adjourn the application for such period as the President of the High Court thinks fit, to enable the solicitor to comply with any direction or directions of the President of the High Court under *paragraph (c)* or *(d)* (or both) of this subsection;
- (g) dismiss the Society's application.

(2) The Society shall, unless otherwise directed by the President of the High Court, arrange to publish, as soon as possible after it is made, the terms of any order made by the President of the High Court under *subsection (1)(a)* or *(1)(b)* of this section in the *Iris Oifigiúil* and in the Gazette of the Society and in any other manner as the Society may think fit.

(3) Any application made by the Society pursuant to *subsection (1)* of this section shall be without prejudice to the right of the Society under section 7 (as substituted by this Act) of the Act of 1960 to apply to the Disciplinary Tribunal for an inquiry into the conduct of the solicitor concerned on the ground of alleged misconduct.

59.—(1) Subject to and in accordance with the provisions of this section, the Society may give a direction that the practising certificate issued to a solicitor and for the time being in force shall have effect subject to such specified conditions as the Society may think fit and a reference in this section to such a direction shall be deemed to include a reference to such specified conditions.

Imposition of conditions while practising certificates are in force.

(2) The Society may give a direction under *subsection (1)* of this section where, had an application for a practising certificate been made by the solicitor concerned at the time the direction is given, one or more of the circumstances set out in section 49(1) (c) to (p) (as substituted by this Act) of the Principal Act would have applied to that solicitor.

(3) Subject to *subsection (4)* of this section, a direction given under *subsection (1)* of this section shall have effect from the date that is 21 days after the date of receipt by the solicitor concerned of notification in writing of the giving of such direction, whereupon that solicitor shall, within that period of 21 days, surrender his current practising certificate to the Society and the Society shall, as soon as possible, reissue it with the specified conditions endorsed thereon to that solicitor.

(4) A solicitor in relation to whom the Society give a direction under *subsection (1)* of this section may, within 21 days of the receipt by him of notification in writing of the giving of such direction, appeal to the President of the High Court against the giving of that direction.

(5) Notwithstanding that the solicitor concerned appeals to the President of the High Court under *subsection (4)* of this section, the direction given by the Society under *subsection (1)* of this section shall have effect from the date specified in *subsection (3)* of this section up to the date of the determination of such appeal, unless the President of the High Court, on application by that solicitor, otherwise orders.

(6) Where an appeal has been brought by a solicitor under *subsection (4)* of this section and the President of the High Court has made an order under *subsection (5)* of this section staying the coming into effect of the direction given by the Society, the Society may, on notice to that solicitor, make application to the President of the High Court at any time thereafter, and the President of the High Court may (on the hearing of that application) dismiss such appeal and confirm the direction given by the Society if the President of the High Court is satisfied that that solicitor has delayed unduly in proceeding with such appeal and may for that purpose revoke any order which he has made under *subsection (5)* of this section.

(7) On hearing an appeal under *subsection (4)* of this section, the President of the High Court may, by order, do one or more of the following things, namely—

- (a) confirm the direction given by the Society;
- (b) direct that the current practising certificate of that solicitor shall have effect subject to such conditions as the President of the High Court thinks fit;

- (c) direct that any subsequent practising certificate issued to that solicitor shall have effect subject to such conditions as the President of the High Court thinks fit;
- (d) revoke the direction given by the Society;
- (e) direct as the President of the High Court otherwise thinks fit;
- (f) revoke or vary any order which he has made under *subsection (5)* of this section.

60.—(1) Where the registrar has reasonable grounds to believe that an unqualified person was at a particular time acting as a solicitor, he may issue a certificate in writing to that effect.

Proof of practice by an unqualified person.

(2) Upon production in court by or on behalf of the Society or the registrar of a document purporting to be a certificate referred to in *subsection (1)* of this section, it shall be presumed until the contrary is proved that the said certificate was properly issued by the registrar and the contents of the certificate shall be admitted as *prima facie* evidence of the facts therein stated.

61.—The Principal Act is hereby amended by the substitution of the following section for section 49:

Direction to grant or refuse practising certificate (section 49 of Principal Act).

49.—(1) This section applies where a solicitor makes application for a practising certificate in any one or more of the following circumstances:

- "Direction to grant or refuse practising certificate.
- (a) he has, for 12 months or more, ceased to hold a practising certificate in force (exclusive of cases in which the applicant has practised as a solicitor in the full-time service of the State within 12 months before his application);
- (b) he has not held a practising certificate in force within 12 months following the date of his admission as a solicitor;
- (c) he is a person in respect of whose person or property any of the powers and provisions of the Lunacy Regulation (Ireland) Act, 1871, or any Act amending or extending that Act, relating to management and administration of property apply;

- (d) he has an office or place of business in more than one place at any one time (disregarding, where he has a Dublin agent, the office or place of business of such agent) and having been invited by the Society to satisfy them that he exercises adequate personal supervision over each office or place of business, he has failed to satisfy the Society as aforesaid and has been notified in writing by the Society that he has so failed;

- (e) he has been invited by the Society to give an explanation in respect of any matter affecting his conduct (including conduct in another jurisdiction), and he has failed to give the Society an explanation in respect of that matter which the Society regard as sufficient and satisfactory, and has been notified in writing by the Society that he has so failed;

- (f) he has had an order of attachment or committal made against him;

- (g) he has had a judgment or decree given against him —
 - (i) which involves the payment of moneys, and

 - (ii) which is not a judgment or decree in relation to which he is entitled, as respects the whole effect of the judgment or decree upon him, to indemnity or relief from any other person,and he has not produced to the registrar evidence of the satisfaction of such judgment or decree;

- (h) he has been adjudicated a bankrupt;

- (i) he has entered into a composition with his creditors or a deed of arrangement for the benefit of his creditors;

- (j) he has failed to comply with an order of the High Court;
- (k) he has failed to comply with regulations made under section 66 (as substituted by the *Solicitors (Amendment) Act, 1994*) or 71 (as amended by the *Solicitors (Amendment) Act, 1994*) of this Act or section 73 of the *Solicitors (Amendment) Act, 1994*;
- (l) he has failed to comply with a determination, requirement or direction of the Society under section 8, 9 or 10 of the *Solicitors (Amendment) Act, 1994*;
- (m) he has been sentenced to a term of imprisonment;
- (n) he has failed to comply with the terms of any regulations in force by virtue of the power vested in the Society by section 26 of the *Solicitors (Amendment) Act, 1994*;
- (o) he has failed to attend a course or courses of further education or training (or both), where his attendance at such course or courses was required in the prescribed manner by the Society;
- (p) he has failed to satisfy the Society that he is fit to carry on the practice of a solicitor, having regard to the state of his physical or mental health;
- ~~(q) he has failed to satisfy the Society that, having regard to all the circumstances, including the financial state of his practice, he should be issued with a practising certificate or a practising certificate not subject to specified conditions.~~

Paragraph (q)
substituted by
section 2, 2002
Act. See page
187.

- (2) (a) Where this section applies, the Society shall as soon as practicable consider the application (including such submissions as may be made by or on

behalf of the applicant) and shall thereafter direct the registrar to do any one of the following things:

- (i) issue a practising certificate unconditionally;
- (ii) issue a practising certificate subject to such specified conditions as the Society think fit, including conditions requiring the solicitor concerned to take any specified steps that the Society consider necessary for his carrying on an efficient practice as a solicitor and notwithstanding that any such specified steps may result in expenditure being incurred by the solicitor concerned; or
- (iii) refuse to issue a practising certificate.

(b) If the Society direct the registrar either to refuse to issue a practising certificate or to issue a practising certificate subject to specified conditions, the solicitor concerned shall, as soon as possible, be notified in writing by the Society of the direction and the grounds on which it was given.

(3) A solicitor in relation to whom the Society have directed the registrar under subsection (2) (a) of this section either to refuse to issue a practising certificate or to issue a practising certificate subject to specified conditions may, within 21 days of the receipt by him of the notification in writing of such direction, appeal to the President of the High Court against such direction to refuse or against the specified conditions, or any of them, as the case may be.

(4) Notwithstanding that the solicitor concerned appeals to the President of the High Court under subsection (3) of this section, the direction of the Society to the registrar under subsection (2) (a) of this section shall have effect up to the determination of such appeal, unless the President of the High Court, on application by that solicitor, otherwise orders pending the determination by him of such appeal.

(5) Where an appeal has been brought by a solicitor under subsection (3) of this section and the President of the High Court has made an order under subsection (4) of this section directing the registrar to issue a practising certificate (whether unconditionally or subject to specified conditions) to that solicitor pending the hearing of such appeal, the Society may, on notice to that solicitor, make application to the President of the High Court at any time thereafter, and the President of the High Court (on the hearing of that application) may dismiss such appeal and confirm the direction of the Society to the registrar under subsection (2) (a) of this section, if the President of the High Court is satisfied that the solicitor concerned has delayed unduly in proceeding with such appeal and may for that purpose revoke any order which he has made under subsection (4) of this section.

(6) On hearing an appeal under subsection (3) of this section, the President of the High Court may—

(a) in relation to an appeal against a direction by the Society to the registrar to refuse to issue a practising certificate to the solicitor concerned, by order—

- (i) confirm the direction to refuse and revoke any practising certificate already issued pursuant to an order under subsection (4) of this section,
- (ii) rescind the direction to refuse and direct that any practising certificate already issued pursuant to an order under subsection (4) of this section or any practising certificate to be issued by the registrar be issued unconditionally, or
- (iii) rescind the direction to refuse and direct that any practising certificate already issued pursuant to an order under subsection (4) of this section or any practising certificate to be issued by the registrar be issued subject to such specified conditions as the President of the High Court thinks fit;

(b) in relation to an appeal against a direction by the Society to the registrar to issue a practising certificate subject to specified conditions, by order—

(i) confirm the direction,

(ii) rescind the direction, or

(iii) vary the specified conditions, or any of them.

(7) The registrar shall cause particulars of a direction by the Society under subsection (2) (a) (ii) or (iii) of this section or an order of the President of the High Court under subsection (6) of this section to be entered in the register in relation to the solicitor concerned."

62.—The Principal Act is hereby amended by the substitution of the following section for section 54:

Qualifications for acting as solicitor (section 54 of Principal Act).

"Qualifications for acting as solicitor.

54.—(1) A solicitor who has the qualifications specified in subsection (2) of this section may act as a solicitor and is referred to in this Act as a solicitor qualified to practise.

(2) The qualifications referred to in subsection (1) of this section are—

(a) that the name of the solicitor is on the roll;

(b) that he does not stand suspended from practice;

(c) that either he is a solicitor in the full-time service of the State or a practising certificate in respect of him is in force; and

(d) that the solicitor concerned has not given an undertaking to the High Court that he will not act as a solicitor or if he has given such an undertaking, that it has been discharged by the Court.

(3) A solicitor shall be regarded as a solicitor in

the full-time service of the State if and while he is required to devote the whole of his time to the service of the State as solicitor and is remunerated in respect of such service wholly out of moneys provided by the Oireachtas."

63.—Section 55 of the Principal Act is hereby amended by the substitution in subsection (2) of "£10,000" for "two hundred pounds" and "£1,500" for "fifty pounds" and the subsection as so amended is set out in the Table to this section. Amendment of section 55 of Principal Act.

In subsection (2)(a), "£10,000" substituted with "€30,000" by section 22(2)(a), 2002 Act. See page 208.

TABLE

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

(a) on conviction thereof on indictment, to imprisonment for a term not exceeding two years or, at the discretion of the Court, to a fine not exceeding £10,000 or to both such fine and such imprisonment, or

(b) on summary conviction thereof, to imprisonment for a term not exceeding six months or, at the discretion of the Court, to a fine not exceeding £1,500 or to both such fine and such imprisonment.

In subsection (2)(b), "£1,500" substituted with "€3,000" by section 22(1) (a), 2002 Act. See page 207.

64.—Section 56 of the Principal Act is hereby amended by the substitution in subsection (2) of "£1,500" for "fifty pounds" and the subsection as so amended is set out in the Table to this section. Amendment of section 56 of Principal Act.

In subsection (2), "£1,500" substituted with "€3,000" by section 22(1) (b), 2002 Act. See page 207.

TABLE

(2) A person who contravenes subsection (1) of this section shall be guilty of an offence under this section and shall be liable on summary conviction to a fine not exceeding £1,500.

PART VII

MISCELLANEOUS PROVISIONS

65.—The Principal Act is hereby amended by the substitution of the following section for section 9: Roll of solicitors (section 9 of Principal Act).

"Roll of solicitors.

9.—(1) The registrar shall maintain a roll of solicitors (in this Act referred to as 'the roll').

(2) The roll, which may be kept in an electronic or such other non-written form as is considered appropriate by the Society, shall be available for inspection during office hours without payment by

any person who applies to inspect it.

(3) If the roll is kept in an electronic or other non-written form, the Society may comply with its obligation to have the roll available for inspection under subsection (2) of this section by making any relevant entry available in written form for inspection in accordance with the said subsection (2)."

66.—The Sixth Schedule to the Principal Act may be amended from time to time by the inclusion of such additional applications as may be prescribed with the concurrence of the President of the High Court.

Fees for applications to Society.

67.—(1) The Society shall establish and maintain a register of solicitors who have indicated to the Society that they are willing to provide legal services to any person who is unable to obtain the services of a solicitor to act for him in civil proceedings against another solicitor, arising from the conduct of that other solicitor while acting for that person.

Register of solicitors prepared to act in certain cases.

(2) The Society shall make available information included in any register maintained under *subsection (1)* of this section to any person requesting such information, and shall take all reasonable measures to assist any person to obtain the services of a solicitor for the purposes of *subsection (1)* of this section.

68.—(1) On the taking of instructions to provide legal services to a client, or as soon as is practicable thereafter, a solicitor shall provide the client with particulars in writing of—

Charges to clients.

- (a) the actual charges, or
- (b) where the provision of particulars of the actual charges is not in the circumstances possible or practicable, an estimate (as near as may be) of the charges, or
- (c) where the provision of particulars of the actual charges or an estimate of such charges is not in the circumstances possible or practicable, the basis on which the charges are to be made,

by that solicitor or his firm for the provision of such legal services and, where those legal services involve contentious business, with particulars in writing of the circumstances in which the client may be required to pay costs to any other party or parties and the circumstances, if any, in which the client's liability to meet the charges which will be made by the solicitor of that client for those services will not be fully discharged by the amount, if any, of the costs recovered in the contentious business from any other party or parties (or any insurers of such party or parties).

(2) A solicitor shall not act for a client in connection with any contentious business (not being in connection with proceedings seeking only to recover a debt or liquidated demand) on the basis that all or any part of the charges to the client are to be calculated as a specified percentage or proportion of any damages or other moneys that may be or may become payable to the client, and any charges made in contravention of this subsection shall be unenforceable in any action taken against that client to recover such charges.

(3) A solicitor shall not deduct or appropriate any amount in respect of all or any part of his charges from the amount of any damages or other moneys that become payable to a client of that solicitor arising out of any contentious business carried out on behalf of that client by that solicitor.

(4) *Subsection (3)* of this section shall not operate to prevent a solicitor from agreeing with a client at any time that an amount on account of charges shall be paid to him out of any damages or other moneys that may be or may become payable to that client arising out of any contentious business carried out on behalf of that client by that solicitor or his firm.

(5) Any agreement under *subsection (4)* of this section shall not be enforceable against a client of a solicitor unless such agreement is in writing and includes an estimate (as near as may be) of what the solicitor reasonably believes might be recoverable from any other party or parties (or any insurers of such party or parties) in respect of that solicitor's charges in the event of that client recovering any damages or other moneys arising out of such contentious business.

(6) Notwithstanding any other legal provision to that effect a solicitor shall show on a bill of costs to be furnished to the client, as soon as practicable after the conclusion of any contentious business carried out by him on behalf of that client—

- (a) a summary of the legal services provided to the client in connection with such contentious business,
- (b) the total amount of damages or other moneys recovered by the client arising out of such contentious business, and
- (c) details of all or any part of the charges which have been recovered by that solicitor on behalf of that client from any other party or parties (or any insurers of such party or parties),

and that bill of costs shall show separately the amounts in respect of fees, outlays, disbursements and expenses incurred or arising in connection with the provision of such legal services.

(7) Nothing in this section shall prevent any person from exercising any existing right in law to require a solicitor to submit a bill of costs for taxation, whether on a party and party basis or on a solicitor and own client basis, or shall limit the rights of any person or the Society under *section 9* of this Act.

(8) Where a solicitor has issued a bill of costs to a client in respect of the provision of legal services and the client disputes the amount (or any part thereof) of that bill of costs, the solicitor shall—

- (a) take all appropriate steps to resolve the matter by agreement with the client, and
- (b) inform the client in writing of—
 - (i) the client's right to require the solicitor to submit the bill of costs or any part thereof to a Taxing Master of the High Court for taxation on a solicitor and own client basis, and
 - (ii) the client's right to make a complaint to the Society under *section 9* of this Act that he has been issued with a bill of costs that he claims to be excessive.

(9) In this section "charges" includes fees, outlays, disbursements and expenses.

(10) The provisions of this section shall apply notwithstanding the provisions of the Attorneys and Solicitors (Ireland) Act, 1849 and the Attorneys and Solicitors Act, 1870.

69.—Section 71 of the Principal Act is hereby amended by the insertion of the following subsections:

Amendment of section 71 of Principal Act.

Subsections (2) to (7) substituted and subsections (8) to (10) added by section 4, 2002 Act. See page 188.

~~"(2) Without prejudice to the generality of subsection (1) of this section, the Society shall not prohibit a solicitor from charging less for a legal service than any charge or fee or remuneration specified for that legal service by way of any statutory scale or scales for the time being in force.~~

(3) The Society shall not prohibit advertising by solicitors.

~~(4) Nothing in subsection (3) of this section shall prevent the Society prohibiting advertising which—~~

~~(a) is likely to bring the solicitors' profession into disrepute, or~~

~~(b) is in bad taste, or~~

~~(c) reflects unfavourably on other solicitors, or~~

~~(d) contains an express or implied assertion by a solicitor that he has specialist knowledge in any area of law or practice superior to other solicitors, or~~

~~(e) is false or misleading in any respect, or~~

~~(f) comprises or includes unsolicited approaches to any person with a view to obtaining instructions in any legal matter, or~~

~~(g) is contrary to public policy.~~

~~(5) Subject to subsection (6) of this section, nothing in subsection (4) of this section shall entitle the Society to prohibit the advertising of any charge or fee by a solicitor for the provision of any specified legal service.~~

~~(6) Where the Society consider it appropriate, they may make regulations, after the expiration of 2 years following the coming into operation of section 69 of the *Solicitors (Amendment) Act, 1994*, prohibiting the advertising of any charge or fee by a solicitor for the provision of any specified legal service, provided that such regulations may be made only with the consent of the Minister and where the Minister is satisfied that such regulations are in the public interest.~~

~~(7) Notwithstanding the provisions of paragraph (d) of subsection (4) of this section, the Society may by regulations provide that a solicitor who in the prescribed manner satisfies the Society of his specialist knowledge in a prescribed area of law or practice be permitted by the Society to designate himself as having specialist knowledge in that area of law or practice."~~

70.—(1) Notwithstanding section 64 of the Principal Act, the Society, with the concurrence of the Minister given after consultation with the Minister for Enterprise and Employment, may make regulations providing for any one or more of the following matters, namely—

Incorporated practices.

- (a) the management and control by solicitors of bodies corporate (in this section referred to as "incorporated practices") carrying on business consisting of the provision of legal services such as are provided by individuals practising as solicitors;
- (b) the circumstances in which incorporated practices may be recognised by the Society as suitable to undertake the provision of any such legal services, and the revocation of such recognition on the grounds that it was granted improperly as a result of any error or fraud;
- (c) the conditions which (subject to any exceptions provided by the regulations) shall be satisfied at all times by incorporated practices so recognised if they are to remain so recognised;
- (d) the manner and form in which applications for recognition under this section are to be made, and for the payment of fees in connection with such applications;
- (e) the regulating of the names that may be used by incorporated

practices;

- (f) the period for which any recognition of incorporated practices remains in force;
- (g) the keeping by the Society of a list containing the names and places of business of all incorporated practices and for the information contained in any such list to be available for inspection;
- (h) the empowering of the Society to take such steps as they consider necessary or expedient to ascertain whether or not any regulations applicable to incorporated practices are being complied with;
- (i) regulating the conduct of the affairs of incorporated practices.

(2) Regulations made by the Society under the *Solicitors Acts, 1954 to 1994*, shall apply and have effect in relation to incorporated practices recognised by the Society pursuant to regulations made under *subsection (1)* of this section with such additions, omissions or other modifications as appear to the Society to be necessary or expedient.

(3) The Minister may by order provide that any enactment or statutory instrument (within the meaning of the Statutory Instruments Act, 1947), passed or made before the commencement of this section and having effect in relation to solicitors shall have effect in relation to incorporated practices recognised by the Society pursuant to regulations made under *subsection (1)* of this section, with such additions, omissions or other modifications as appear to the Minister to be necessary for the purposes of enabling such provisions to have effect.

(4) Any order made by the Minister under *subsection (3)* of this section may make provision for the application, subject to any necessary adaptations, of any of the provisions of the *Solicitors Acts, 1954 to 1994*, to incorporated practices recognised by the Society pursuant to regulations made under *subsection (1)* of this section.

- (5) (a) Every regulation made under *subsection (1)* of this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.
- (b) A draft of every order proposed to be made under *subsection (3)* of this section shall be laid before each House of the Oireachtas and the order shall not be made until a resolution approving of the draft has been passed by each such House.

71.—(1) Notwithstanding the provisions of section 59 of the Principal Act, the Society, with the concurrence of the Minister and, in the case of regulations made under *paragraph (a)* of this subsection, after consultation with the Minister for Enterprise and Employment, may make regulations in respect of—

Fee-sharing by solicitors.

- (a) the sharing of fees between a solicitor and a person who is not qualified to practise as a solicitor arising either from a partnership between them or from an agency arrangement concluded between them, or
- (b) the sharing of fees between a solicitor and a person who is not qualified to practise as a solicitor but who is a member, and entitled to practise as such, of a legal profession in another jurisdiction, arising either from a partnership between them or from an agency arrangement concluded between them.

(2) Every regulation made under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.

In section 72 the words “section 24 of the Stamp Duties Management Act, 1891” substituted with “section 157 of the Stamp Duties Consolidation Act, 1999” by Schedule 4 of the Stamp Duties Consolidation Act, 1999

72.—(1) Subject to the provisions of this section, every solicitor who holds a practising certificate which is in force shall, subject to any condition to which that practising certificate is subject under the *Solicitors Acts, 1954 to 1994* (in this section referred to as a “relevant condition”), have all the powers conferred by any enactment or statutory instrument (within the meaning of the Statutory Instruments Act, 1947) on a commissioner for oaths (including ~~section 24 of the Stamp Duties Management Act, 1891~~) and any reference to such a commissioner in any such enactment or statutory instrument, whether passed or made before or after the commencement of this section, shall include a reference to such a solicitor, unless the context otherwise requires.

Administration of oaths and taking of affidavits.

(2) A solicitor shall not exercise the powers conferred by this section in any proceedings in which he is solicitor to any of the parties or in which he has an interest, or in contravention of any relevant condition.

(3) A solicitor before whom any oath or affidavit is taken or made shall state in the jurat or attestation at which place and on what date the oath or affidavit is taken or made.

(4) A document containing the statement in the jurat or attestation mentioned in *subsection (3)* of this section and purporting to be sealed or signed by a solicitor pursuant to his powers as a commissioner for oaths or pursuant to this section shall be admitted in evidence without proof of the said seal or signature, and without proof that he is a solicitor or that he holds a practising certificate which is in force or that such document has not been so sealed or signed in contravention of a relevant condition.

(5) Nothing in this section shall affect the power to appoint

commissioners for oaths under section 73 of the Supreme Court of Judicature Act (Ireland), 1877.

73.—(1) Without prejudice to section 66 (as substituted by this Act) of the Principal Act the Society shall make regulations within six months of the coming into operation of this section, with the consent of the President of the High Court, to— Interest on clients' moneys.

- (a) require a solicitor, in prescribed cases, either—
 - (i) to open and maintain a separate deposit account at a bank for the benefit of the client for the holding of money received for or on account of the client, or
 - (ii) to pay to such client a sum equivalent to the interest which would have accrued if the money so received had been held on deposit by that solicitor,
- (b) define the obligations of a solicitor under *paragraph (a)* of this section by reference to the amount of any sum received or to the period for which it is or is likely to be held or both, and
- (c) enable a client (without prejudice to any other remedy) to require that any question arising under *paragraph (a)* or *(b)* (or both) of this subsection in relation to the client's money be referred to and determined by the Society.

(2) Except as provided for by regulations made under *subsection (1)* of this section, a solicitor shall not be liable by virtue of the relationship between solicitor and client to account to any client for interest received by the solicitor on money deposited at a bank, being money received or held for or on account of his clients generally.

(3) Nothing in this section or in regulations made under this section shall—

- (a) affect any arrangement in writing, whenever made, between a solicitor and his client as to the application of the client's money or interest thereon, or
- (b) apply to money received by a solicitor, being money subject to a trust of which the solicitor is a trustee.

(4) For the purposes of regulations made under *subsection (1)* of this section and subject to *subsection (3)* of this section, "client's money" and "money received for or on account of the client" shall mean money held or received by a solicitor on account of a person for whom he is acting in relation to the holding or receipt of such money either as a solicitor or, arising from his practice as a solicitor, as agent, bailee, stakeholder or in any other capacity.

74.—(1) A solicitor who has accepted instructions to appear in court for a client who is in custody may not withdraw from the client's case without obtaining permission from the court before which that client is next scheduled to appear. Restriction on the withdrawal of a solicitor from a case.

(2) The court shall, in deciding whether to grant a solicitor permission to withdraw from a case under *subsection (1)* of this section, have regard to—

- (a) the likely consequences of such action for the client notwithstanding that the client may have concurred in the solicitor's withdrawal from the case, and
- (b) any delay or other adverse consequences which may arise for the proceedings in question as a result of the solicitor's withdrawal,

and the court shall have regard to any matter which is the subject of privilege between the solicitor and the client.

(3) The court may hear an application for permission under *subsection (1)* of this section *in camera* if it considers it necessary to do so in the interests of justice.

(4) A withdrawal by a solicitor from a case in contravention of *subsection (1)* of this section shall be notified to the Society by the court whose permission is required under that subsection to withdraw from the case and the Society, on being so notified, shall investigate the matter and take any necessary action under the provisions of Part II (as amended by this Act) of the Act of 1960.

75.—(1) For the purposes of Part VII (as amended by this Act) of the Principal Act and *section 73* of this Act and regulations made thereunder, "bank" means— Extension of list of approved institutions.

- (a) a bank which is the holder of a licence under *section 9 (1)* of the Central Bank Act, 1971,
- (b) any financial institution referred to in *subsection (4) (a) (ii) and (iii)* of *section 7* (as inserted by the Central Bank Act, 1989) of the Central Bank Act, 1971, and
- (c) a bank or financial institution standing designated by order of the Minister under *subsection (2)* of this section,

and cognate words shall be construed accordingly:

Provided that such bank or financial institution, or the relevant branch thereof, is situate in the State.

(2) The Minister, after consultation with the Minister for Finance, may

by order designate banks or financial institutions under *subsection (1) (c)* of this section.

(3) A solicitor may open and keep a client account only at a bank within the meaning of *subsection (1)* of this section.

(4) For the purposes of sections 7, 8 and 20 (as respectively substituted by the *Solicitors (Amendment) Act, 1994*) of the Act of 1960, relating to the powers of the Society or the High Court in matters concerning the protection of clients or the disciplining of solicitors, "bank" shall include a bank within the meaning of *subsection (1)* of this section and shall also include any person or body corporate carrying on business as a bank or other financial institution, whether in the State or outside the State, and cognate words shall be construed accordingly.

(5) The Minister may by order amend or revoke an order made under *subsection (2)* of this section.

(6) Every order made under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order is passed by either such House within the next 21 days on which that House has sat after the order is laid before it, the order shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.

76.—The Principal Act is hereby amended by the substitution of the following section for section 66:

Regulations for accounts (section 66 of Principal Act).

"Regulations for accounts.

66.—(1) The Society may make regulations, with the concurrence of the President of the High Court, providing for all or any of the following matters:

- (a) the category or categories of solicitor to whom such regulations apply;
- (b) the type or types of accounts at banks which may be opened and kept by a solicitor arising from his practice as a solicitor;
- (c) the opening and keeping of accounts at banks by a solicitor arising from his practice as a solicitor;
- (d) the rights, duties and responsibilities of a solicitor in relation to moneys received, held, controlled or paid by him arising from his practice as a solicitor, including the lodgment to and withdrawal from a client account

of clients' moneys;

- (e) the accounting records to be maintained by a solicitor arising from his practice as a solicitor, including the minimum period or periods for which accounting records shall be retained by a solicitor during the period of, and following the conclusion of, the provision of legal services;
- (f) the keeping by a solicitor of accounting records containing particulars of and information as to moneys received, held, controlled or paid by him arising from his practice as a solicitor, for or on account of a client or any other person or himself;
- (g) the enforcement by the Society of compliance with the regulations;
- (h) imposing fees on solicitors in cases of non-compliance where the Society has to conduct further enquiries (being fees not exceeding the cost of making such enquiries);
- (i) the appointment by the Society of persons to carry out, on behalf of the Society, functions relating to securing compliance with and enforcing such regulations;
- (j) the circumstances and manner in which a solicitor engaged in practice as a solicitor (or a duly qualified accountant on his behalf) verifies compliance with such regulations, including the frequency of doing so;
- (k) the examination, by or on behalf of the Society, of the financial circumstances of a solicitor engaged in practice as a solicitor insofar as such circumstances could affect his capacity to carry on such practice.

(2) Regulations made pursuant to subsection (1) of this section shall not apply to—

(a) a solicitor in the full-time service of the State within the meaning of section 54 (3) (as substituted by the *Solicitors (Amendment) Act, 1994*) of the Principal Act, or

(b) a solicitor who is in the part-time service of the State, in respect of moneys received, held, controlled or paid by him in the course of such service.

(3) A solicitor who knowingly lodges clients' moneys (or who knowingly causes clients' moneys to be lodged) to a client account at a bank other than a bank within the meaning of *section 75 (1)* of the *Solicitors (Amendment) Act, 1994*, shall be guilty of an offence.

(4) A solicitor who, having received any clients' moneys, fails, without reasonable cause, to lodge (or to cause to be lodged) in the prescribed manner such clients' moneys to the appropriate client account (or client accounts) shall be guilty of an offence.

(5) A solicitor who fails, without reasonable cause, to maintain and keep (or to cause to be maintained and kept) accounting records in the prescribed manner shall be guilty of an offence.

(6) A solicitor who, having received clients' moneys, fails, without reasonable cause, to record (or to cause to be recorded) in the prescribed manner such receipt in accounting records shall be guilty of an offence.

(7) A solicitor who, having received any clients' moneys and having duly lodged (or caused to be lodged) in the prescribed manner such clients' moneys to the appropriate client account (or client accounts) fails, without reasonable cause, to record (or to cause to be recorded) in the prescribed manner such lodgment in accounting records, shall be guilty of an offence.

(8) A solicitor who makes knowingly (or causes so to be made) a false or misleading entry or record in accounting records shall be guilty of an offence.

(9) It shall not be a defence to a charge under subsection (6) or (7) of this section to show that an entry or record of a receipt or lodgment of clients'

moneys was recorded in accounting records, if it is established that such entry or record is false or misleading.

(10) Where it appears to the Society that it is necessary for the purpose of exercising any of the Society's functions prescribed under subsection (1) of this section for an authorised person to attend, with or without prior notice, at a place of business of a solicitor, an authorised person may so attend at such place for that purpose.

Subsection (11)
substituted by
section 3, 2002
Act. See page
188.

~~(11) Where an authorised person attends pursuant to subsection (10) of this section at a place of business of a solicitor, he shall inform the solicitor or any clerk or servant of the solicitor of the purpose of his attendance as specified in subsection (10) of this section and may thereupon or thereafter, in pursuance of that purpose, require the solicitor or any clerk or servant of the solicitor to do any one or more of the following things:~~

~~(a) to make available to him for inspection all or any part of the solicitor's accounting records;~~

~~(b) to furnish to him such copies of the solicitor's accounting records as the authorised person deems necessary to fulfil the purpose specified in subsection (10) of this section;~~

~~(c) to give such written authority addressed to such bank or banks as the authorised person requires to enable the authorised person to inspect any account or accounts opened, or caused to be opened, by the solicitor at such bank or banks (or any documents relating thereto) and to obtain from such bank or banks copies of such documents relating to such account or accounts for such period or periods as the authorised person deems necessary to fulfil the purpose specified in subsection (10) of this section.~~

(12) If a solicitor or clerk or servant of a solicitor who is required by an authorised person to do any one or more of the things specified in subsection (11) of this section, refuses, neglects or otherwise fails, without reasonable cause, to comply

with such requirement or requirements, the Society may, on notice to the solicitor, apply to the High Court for an order (which said order the Court is hereby empowered to make) requiring the solicitor to comply with such requirement or requirements (or any one or more of them) as the Society deem necessary in pursuance of the purpose specified in subsection (10) of this section or as the Court thinks fit.

(13) It shall be an offence for a solicitor—

- (a) to refuse, neglect or otherwise fail, without reasonable cause, to duly comply with any requirement of an authorised person under subsection (11) of this section;
- (b) to remove from his place or places of business, or to destroy, deface or mutilate, all or any part of his accounting records, with intent to prevent or interfere with an authorised person acting in pursuance of the purpose specified in subsection (10) of this section;
- (c) to provide knowingly false or misleading information to an authorised person acting in pursuance of the purpose specified in subsection (10) of this section.

(14) A summary offence under any of the provisions of this section may be prosecuted by the Society.

(15) Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act, 1851, summary proceedings for an offence under any of the provisions of this section may be instituted within twelve months from the date the offence came to the knowledge of the Society.

(16) A person guilty of an offence under this section shall be liable—

- (a) on summary conviction thereof to a fine not exceeding £1,500,

In subsection (16)(a), “£1,500” substituted with “€3,000” by section 22(1)(e), 2002 Act. See page 207

In subsection
(16)(b),
“£10,000”
substituted with
“€30,000” by
section 22(2)(c),
2002 Act. See
page 208.

(b) on conviction thereof on indictment to a fine not exceeding £10,000.

(17) Without prejudice to the generality of this section and any regulations made thereunder, a solicitor shall not, arising from his practice as a solicitor, lodge (or cause to be lodged) for collection through any bank account kept by him, or otherwise collect, an unendorsed cheque or other negotiable or non-negotiable instrument drawn in favour of a person other than himself, his firm, or a partner.

(18) In this section—

'accounting records' means the books of account and all other documents required to be maintained and kept by a solicitor arising from his practice as a solicitor in accordance with regulations made pursuant to subsection (1) of this section."

77.—Section 58 of the Principal Act is hereby amended—

Amendment of
section 58 of
Principal Act.

(a) by the insertion of the following subsection for subsection (2):

In subsection 2(a),
“£1,500”
substituted with
“€3,000” by
section 22(1)(c),
2002 Act. See
page 207.

"(2) An unqualified person who does any act to which this section applies shall, subject to subsection (3) of this section and without prejudice to any other liability or disability to which he may be subject, be guilty of an offence under this section and shall be liable—

In subsection
(2)(b), “£10,000”
substituted with
“€30,000” by
section 22(2)(b),
2002 Act. See
page 208.

(a) on summary conviction thereof, to a fine not exceeding £1,500, or

(b) on conviction thereof on indictment, to a fine not exceeding £10,000."

(b) by the insertion of the following paragraph in subsection (3):

"(h) an act done by a lawyer to whom Council Directive No. 77/249/EEC of 22 March, 1977¹ (as adapted by the Acts concerning the Conditions of Accession of Greece, Spain and Portugal, to the Treaties establishing the European Communities) and any instrument which may amend or replace that Directive applies by way of provision of legal services within the limits and under the conditions laid down in that Directive (or such instrument), other than the preparation of a formal document for obtaining title to administer the estate of a deceased person and the drafting of a formal document creating or transferring an interest in land."

(c) by the substitution of the following paragraph for paragraph (b) of subsection (3):

- "(b) (i) an act done by a barrister practising in the State,
- (ii) an act done by a barrister employed full-time in the State, in the provision of conveyancing services within the meaning of *section 56 (4)* of the *Solicitors (Amendment) Act, 1994*, for his employer, provided that such employer is not a solicitor,".

Minister for Finance substituted for Minister for Enterprise and Employment by Part 18, Schedule 1, of the Central Bank Act, with effect from 30th April, 2003.

78.—(1) Notwithstanding anything to the contrary in the Principal Act, the Minister may, after consultation with the Minister for Enterprise and Employment, make regulations authorising credit unions to provide services as follows—

Will making and probate services provided by credit unions.

- (a) to draw up or prepare a will or other testamentary instrument, or
- (b) to take instructions for a grant of probate or administration, or
- (c) to draw or prepare any papers on which to found or oppose any such grants.

(2) The services referred to in *subsection (1)* of this section may be provided by credit unions in accordance with the provisions of regulations made under this section and in compliance with the requirements of this section.

(3) Regulations under this section may include provision for all or any of the following, namely—

- (a) the protection of persons for whom services are provided under this section by credit unions from conflicts of interest that might otherwise arise in connection with the provision of the services,
- (b) securing that adequate compensation is available to such persons in respect of negligence, fraud or other dishonesty on the part of officers or employees of credit unions in connection with the provision of the services,
- (c) (i) the extent to which and the manner in which services provided under this section would require the involvement of persons qualified to practise as solicitors within the meaning of the Principal Act, and

- (ii) the qualifications and experience of personnel generally engaged in the provision of the services,
- (d) the class or classes of persons to whom the services may be provided,
- (e) requirements relating to the approval by the Registrar of Friendly Societies of a credit union proposing to provide services,
- (f) the restriction of the power to provide the services to credit unions of a specified class or classes,
- (g) maximum rates or scales of fees, costs or expenses which may be charged by credit unions for the provision of the services,
- (h) taxation by a Taxing Master of the High Court of fees, costs or expenses charged by credit unions for the services,
- (i) such further conditions in relation to the provision of the services as the Minister may prescribe in accordance with this section.

(4) In this section "probate" and "administration" have the meanings assigned to them by section 3 of the Succession Act, 1965.

(5) Any communication made to or by a credit union (including a communication made to or by an officer or employee of a credit union) in the course of its acting as such for a person in connection with providing services under *subsection (1)* of this section shall in any legal proceedings be privileged from disclosure in like manner as if the credit union had at all material times been acting as that person's solicitor.

(6) (a) A credit union providing services under subsection (1) of this section shall not in relation to the provision of such services be an unqualified person within the meaning of the Principal Act.

(b) A credit union which provides any of the services mentioned in *subsection (1)* of this section otherwise than in accordance with the provisions of this section or of any regulations made under this section shall be guilty of an offence under section 58 (2) (as amended by this Act) of the Principal Act.

(7) Section 58 (as amended by this Act) of the Principal Act shall not apply to—

- (a) a credit union,
- (b) any officer or employee of a credit union by reason of any act done by him in the course of his office or employment on

behalf of the credit union, where the credit union is providing services in accordance with *subsection (1)* of this section.

(8) Section 59 of the Principal Act shall not apply to any solicitor by reason of any act done by him as an officer or employee of a credit union where that credit union is providing services in accordance with *subsection (1)* of this section.

(9) Where a credit union provides services under *subsection (1)* of this section, it shall include in any document or advertisement issued to the public, which contains a reference to the provision of the services, a statement of the charges or the basis for the charges in respect of the services and a client shall be entitled to ask for and to be furnished with an itemised statement of that credit union's charges in respect of services provided by the credit union under *subsection (1)* of this section.

(10) On the taking of instructions to provide services under this section to a person, or as soon as is practicable thereafter, a credit union shall provide the person with particulars in writing of—

- (a) the actual charges, or
- (b) where the provision of particulars of the actual charges is not in the circumstances possible or practicable, an estimate (as near as may be) of the charges, or
- (c) where the provision of particulars of the actual charges or an estimate of such charges is not in the circumstances possible or practicable, the basis on which the charges are to be made, by that credit union for the provision of such services.

(11) Any information which comes into the possession of an officer or employee of a credit union by virtue of his involvement in the provision of services under *subsection (1)* of this section by a credit union shall not be used by him or by the credit union to promote the business of the credit union.

(12) (a) A credit union providing services under *subsection (1)* of this section shall maintain separate accounting records and prepare accounts in respect of each year showing—

- (i) the cost to the credit union of providing the services, and
- (ii) the income accruing to the credit union from the charges made for the services,

and, subject to *subsection (3) (g)* of this section, shall so provide and charge for the services that the income from the provision of the services is not less than sufficient to meet all costs properly attributable to the provision of the services taking one year with another.

- (b) A statement attesting the correctness of the accounts prepared in accordance with *paragraph (a)* of this subsection and confirming that such accounts have not been distorted as a result of any arrangement which would affect the apportionment of costs and income associated with the provision of the services and that such apportionments as have been made have been properly made shall be signed by the chairperson and treasurer of the credit union and attached to the annual accounts of the credit union.

(13) A credit union shall not provide services under the provisions of this section unless at least one of the following conditions is satisfied:

- (a) regulations have been made under *section 79* of this Act, or
- (b) the credit union is a member of a scheme (other than a scheme established under *section 79* of this Act) which has been established for the investigation of complaints against the credit union in relation to the provision of services under this section and which has been approved of by the Minister.

(14) If a person exercising any right under this section or a person acting on behalf of such a person applies for any grant of probate or letters of administration and—

- (a) makes a statement in the application, or supports the application with a document, which he knows to be false or misleading in a material particular, or
- (b) recklessly makes a statement in the application, or supports the application with a document, which is false or misleading in a material particular,

he shall be guilty of an offence.

In subsection (15)(a), “£10,000” substituted with “€30,000” by section 22(2)(e), 2002 Act. See page 208.

(15) Any person guilty of an offence under *subsection (14)* of this section shall be liable—

- (a) on conviction on indictment thereof, to a fine not exceeding £10,000,
- (b) on summary conviction thereof, to a fine not exceeding €1,500.

In subsection (15)(b), “£1,500” substituted with “€3,000” by section 22(1)(j), 2002 Act. See page 207.

(16) Every regulation made under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.

(17) In this section "credit union" means an industrial and provident society registered as a credit union under the Credit Union Act, 1966.

79.—(1) The Minister may, by regulations made after consultation with the Minister for Enterprise and Employment, require a credit union to establish, or join in establishing, and to maintain and fund a scheme or schemes for the investigation of complaints against a credit union in relation to any services provided or any act done by such a credit union under the provisions of *section 78* of this Act.

Investigation of complaints about credit unions.

(2) Without prejudice to the generality of *subsection (1)* of this section, regulations under this section may make provision in relation to any one or more of the following—

- (a) the establishment and administration of a scheme,
- (b) the manner of appointment of an independent adjudicator to conduct investigations,
- (c) the matters to be subject to investigation under the scheme,
- (d) the grounds on which a complaint must be based,
- (e) the powers of, and procedure to be followed in the conduct of investigations by, the adjudicator,
- (f) the circumstances in and the extent to which determinations are binding,
- (g) the procedures for the making of complaints,
- (h) the publication of the adjudicator's findings.

(3) Subject to *subsection (4)* of this section, the reference of a complaint under a scheme established under this section shall not affect the rights of any person to have a dispute determined in any other manner provided by law.

(4) Where, in relation to a complaint under a scheme established under this section the parties concerned agree that a determination in accordance with the scheme shall be binding on them and the scheme provides for such an agreement, then the determination shall be binding on the parties.

(5) Every regulation made by the Minister under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

80.—Section 24 (as substituted by this Act) of the Principal Act and regulations under section 40 (as amended by this Act) of that Act shall not apply to an applicant to whom paragraph (a) or (b) of regulation 4 of the European Communities (General System for the Recognition of Higher Education Diplomas) Regulations, 1991, or any provision which may amend or replace that regulation, applies.

Non-application to applicants under European Communities regulations.

81.—With effect from the 1st day of January, 1996, section 53 of the Principal Act is amended by the substitution of the following subsection for subsection (1):

Amendment of section 53 of Principal Act.

"(1) A list purporting to be published by the authority of the Society and to contain the names of the solicitors who have obtained practising certificates for the current practice year before the 2nd day of February in that year shall, until the contrary is proved, be evidence that the persons named on the list are solicitors holding those certificates."

82.—Save as otherwise provided by this Act, every regulation made by the Society under this Act shall be laid by the Society before each House of the Oireachtas as soon as may be after it is made.

Laying of regulations.

¹ O.J No. L78, 26.3.1977

Number 19 of 2002

SOLICITORS (AMENDMENT) ACT, 2002

ARRANGEMENT OF SECTIONS

Section

1. [Interpretation.](#)
2. [Amendment of section 49\(1\) of Principal Act.](#)
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4. [Amendment of section 71 of Principal Act.](#)
5. [Prohibition of certain advertisements by unqualified persons.](#)
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7. [Amendment of section 3 of Act of 1960.](#)
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9. [Amendment of section 7 of Act of 1960.](#)
10. [Amendment of section 8 of Act of 1960.](#)
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12. [Amendment of section 2 of Act of 1994.](#)
13. [Amendment of Act of 1994.](#)
14. [Amendment of section 12 of Act of 1994.](#)
15. [Amendment of section 14 of Act of 1994.](#)
16. [Amendment of sections 21\(6\) and 22\(2\) of Act of 1960.](#)
17. [Publication of outcome of disciplinary inquiry.](#)
18. [Prohibition of contravention of *Solicitors Acts, 1954 to 2002.*](#)
19. [Inquiry into alleged misconduct by apprentice.](#)
20. [Implementation of Directive 98/5/EC and any corresponding measure.](#)

[2002.]

Solicitors (Amendment) Act, 2002.

[No. 19.]

Section

21. [Law Reports.](#)

22. [Amendment of maximum fines provided for in Solicitors Acts.](#)

23. [Short title, commencement, collective citation and construction.](#)

ACTS REFERRED TO

Criminal Law Act, 1997	1997, No. 14
European Communities Act, 1972	1972, No. 27
European Communities (Amendment) Act, 1993	1993, No. 25
Solicitors Act, 1954	1954, No. 36
Solicitors Acts, 1954 and 1960	
Solicitors Acts, 1954 to 1994	
Solicitors (Amendment) Act, 1960	1960, No. 37
Solicitors (Amendment) Act, 1994	1994, No. 27

Number 19 of 2002

SOLICITORS (AMENDMENT) ACT, 2002

AN ACT TO AMEND THE SOLICITORS ACTS, 1954 TO 1994,
AND TO PROVIDE FOR FACILITATING THE PRACTICE
OF THE PROFESSION OF LAWYER THROUGHOUT THE
EUROPEAN ECONOMIC AREA AND THE SWISS
CONFEDERATION. [13th April, 2002]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—In this Act—

Interpretation.

“Act of 1960” means the Solicitors (Amendment) Act, 1960;

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

“Disciplinary Tribunal” means the Solicitors Disciplinary Tribunal established by section 6(1) (as substituted by this Act) of the Act of 1960, and references to the Disciplinary Tribunal in the Acts of 1960 and 1994 shall be construed as references to the Solicitors Disciplinary Tribunal;

“Minister” means the Minister for Justice, Equality and Law Reform;

“Principal Act” means the Solicitors Act, 1954.

2.—Section 49(1) (as substituted by section 61 of the Act of 1994) of the Principal Act is hereby amended by the substitution of the following paragraph for paragraph (q):

Amendment of section 49(1) of Principal Act.

“(q) the solicitor has failed to satisfy the Society that he or she should be issued with a practising certificate or a practising certificate not subject to specified conditions, having regard to all the circumstances, including, where appropriate—

- (i) the financial state of the practice,
- (ii) the number and nature of complaints made to the Society, either alleging misconduct by the solicitor or under section 8 or 9 of the Solicitors (Amendment) Act, 1994, within the preceding two practice years, or
- (iii) the need adequately to protect or secure the interests of the solicitor’s clients.’’.

3.—The Principal Act is hereby amended in section 66 (as substituted by section 76 of the Act of 1994) by the substitution of the following for subsection (11): Amendment of section 66 of Principal Act.

“(11) An authorised person who attends pursuant to subsection (10) of this section at a place of business of a solicitor shall inform the solicitor or any clerk or servant of the solicitor of the purpose of the attendance as specified in that subsection, except where the Society reasonably consider that to do so could prejudice the exercise of any of the Society’s functions as so specified, and may in pursuance of that purpose require the solicitor or any such clerk or servant to do one or more than one of the following:

- (a) to make available for inspection all or any part of the solicitor’s accounting records;
- (b) to furnish such copies of those records as the authorised person deems necessary to fulfil the said purpose;
- (c) to give such written authority addressed to such bank or banks as the authorised person requires to enable the authorised person to inspect any account or accounts opened, or caused to be opened, by the solicitor at such bank or banks (or any documents relating thereto) and to obtain from such bank or banks copies of such documents relating to such account or accounts for such period or periods as the authorised person deems necessary to fulfil the said purpose.’’.

4.—The Principal Act is hereby amended in section 71 (which relates to regulations with respect to the professional practice, conduct and discipline of solicitors) by the substitution, for subsections (2) to (7) (inserted by the Act of 1994), of the following subsections: Amendment of section 71 of Principal Act.

“(2) A solicitor shall not publish or cause to be published an advertisement which—

- (a) is likely to bring the solicitors’ profession into disrepute,
- (b) is in bad taste,
- (c) reflects unfavourably on other solicitors,
- (d) without prejudice to any regulations under subsection (8) of this section, contains an express or implied assertion that the solicitor has specialist knowledge in any area of law or practice which is superior to that of other solicitors,
- (e) is false or misleading in any respect,
- (f) is published in an inappropriate location,
- (g) does not comply with subsection (3), or regulations under subsection (5) or (6), of this section,
- (h) expressly or impliedly refers to—

- (i) claims or possible claims for damages for personal injuries,
 - (ii) the possible outcome of claims for damages for personal injuries, or
 - (iii) the provision of legal services by the solicitor in connection with such claims,
- (i) expressly or impliedly solicits, encourages or offers any inducement to any person or group or class of persons to make the claims mentioned in paragraph (h) of this subsection or to contact the solicitor with a view to such claims being made, or
- (j) is contrary to public policy.
- (3) An advertisement published or caused to be published by a solicitor shall not include more than—
- (a) the name, address (including any electronic address), telephone number, facsimile number, place or places of business of the solicitor and any reference to the location of information provided by the solicitor that is accessible electronically,
 - (b) particulars of the academic and professional qualifications and legal experience of the solicitor,
 - (c) subject to subsection (2) of this section, factual information on the legal services provided by the solicitor and on any areas of law to which those services relate,
 - (d) subject to any regulations under subsection (6) of this section, particulars of any charge or fee payable to the solicitor for the provision of any specified legal service, and
 - (e) any other information specified in regulations under subsection (5) of this section.
- (4) Without prejudice to paragraphs (h) and (i) of subsection (2) of this section, a solicitor may, where appropriate, include the words ‘personal injuries’ in any advertisement which contains factual information, pursuant to paragraph (c) of subsection (3) of this section, on the legal services provided by the solicitor or on any areas of law to which those services relate.
- (5) Without prejudice to the generality of section 5 of this Act and subsection (1) of this section, the Society shall, with the consent of the Minister, make regulations to give effect to subsections (2), (3) and (4) of this section and, in particular—
- (a) to make provision, having regard to those subsections, in relation to advertisements that may be published or caused to be published by a solicitor, including provision in respect of the manner of their publication and their form, content and size,
 - (b) to specify advertisements which, having regard to the manner of

their publication or their form, content or size, would be in contravention of subsection (2) of this section,

- (c) subject to subsection (2) of this section, to provide that an advertisement published or caused to be published by a solicitor may include specified information in addition and of a similar nature to the information provided for in paragraphs (a) to (d) of subsection (3) of this section,
- (d) to provide for restrictions on a solicitor making, or causing to be made, unsolicited approaches to any person or group or class of persons with a view to being instructed to provide legal services, and
- (e) to provide for the manner in which the Society is to determine whether any particular advertisement published or caused to be published by a solicitor is in contravention of any provision of, or regulations under, this section.

(6) The Society, where they consider it appropriate, may make regulations prohibiting the advertisement of any charge or fee payable to a solicitor for the provision of any specified legal service, provided that such regulations may be made only with the consent of the Minister and where the Minister is satisfied that such regulations are in the public interest.

(7) Without prejudice to the generality of section 5 of this Act and subsection (1) of this section, the Society shall not prohibit a solicitor from charging less for a legal service than any charge or fee specified for that legal service by or under any enactment for the time being in force.

(8) Notwithstanding paragraph (d) of subsection (2) and subsection (3) of this section, the Society may by regulations provide that a solicitor who in the prescribed manner satisfies the Society of having specialist knowledge in a prescribed area of law or practice may be permitted by the Society to be designated, whether in an advertisement or otherwise, as having specialist knowledge in that area.

(9) Regulations under section 5 and this section and in force immediately before the commencement of the *Solicitors (Amendment) Act, 2002*, shall, save in so far as they may be inconsistent with this section or regulations made thereunder after such commencement, continue in force until revoked as if they had been duly made under those sections.

(10) In this section—

‘advertisement’ means any communication (whether oral or in written or other visual form and whether produced by electronic or other means) which is intended to publicise or otherwise promote a solicitor in relation to the solicitor’s practice, including—

- (a) any brochure, notice, circular, leaflet, poster, placard, photograph, illustration, emblem, display, stationery, directory entry, article or statement for general publication,

(b) any electronic address or any information provided by the solicitor that is accessible electronically,

(c) any audio or video recording, or

(d) any presentation, lecture, seminar or interview,

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

‘claims for damages for personal injuries’ means claims, whether made in court proceedings or otherwise, for damages or compensation for personal injuries suffered, or alleged to have been suffered, by a person or persons owing to an act or omission, or alleged act or omission, of another person or persons;

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

‘the Minister’ means the Minister for Justice, Equality and Law Reform;

‘personal injuries’ includes any disease and any impairment of a person’s physical or mental condition or death.’’.

5.—(1) Without prejudice to sections 55 and 56 (which prohibit an unqualified person from acting as or pretending to be a solicitor) of the Principal Act, a person who is not a solicitor shall not publish or cause to be published an advertisement—

Prohibition of certain advertisements by unqualified persons.

(a) which expressly or impliedly undertakes to provide a specified service, being a service of a legal nature that could otherwise be provided by a solicitor, for or in expectation of a fee, gain or reward that is directly related to the provision of that service, and

(b) which, if published or caused to be published by a solicitor, would not be in compliance with paragraph (h) or (i) of subsection (2) or subsection (4) of section 71 (as amended by section 4 of this Act) of the Principal Act.

(2) In subsection (1) of this section “advertisement” has the meaning assigned to it by subsection (10) of section 71 (as so amended) of the Principal Act, with the substitution, where appropriate, of “a person who is not a solicitor” for “a solicitor in relation to that solicitor’s practice”.

6.—Sections 4 and 5 of this Act shall not apply to advertisements that are published not more than 3 months after the commencement of those provisions.

Saver.

7.—The Act of 1960 is hereby amended in section 3 (as amended by section 24 of the Act of 1994) by the substitution, for paragraphs (c) and (d) of the definition of “misconduct”, of the following paragraphs:

Amendment of section 3 of Act of 1960.

“(c) the contravention of a provision of the *Solicitors Acts, 1954 to 2002*, or any order or regulation made thereunder,

(d) in the course of practice as a solicitor—

(i) having any direct or indirect connection, association or arrangement with any person (other than a client) whom the solicitor knows, or upon reasonable enquiry should have known, is a person who is acting or has acted in contravention of section 55 or 56 or section 58 (which prohibits an unqualified person from drawing or preparing certain documents), as amended by the Act of 1994, of the Principal Act, or *section 5* of the *Solicitors (Amendment) Act, 2002*, or

(ii) accepting instructions to provide legal services to a person from another person whom the solicitor knows, or upon reasonable enquiry should have known, is a person who is acting or has acted in contravention of those enactments,

(e) any other conduct tending to bring the solicitors’ profession into disrepute.”.

Further amended
by the insertion of
a new subsection
(1B) by section
35, 2008 Act. See
page 212.

8.—The Act of 1960 is hereby amended in section 6 (as substituted by section 16 of the Act of 1994)—

Amendment of
section 6 of Act of
1960.

(a) by the substitution of the following subsection for subsection (1):

“(1) The President of the High Court shall, from time to time as occasion requires, appoint a tribunal which shall be known as the Solicitors Disciplinary Tribunal (in this Act referred to as the ‘Disciplinary Tribunal’) consisting of—

(a) not more than twenty persons from among practising solicitors of not less than 10 years standing (to be known and referred to in this section as ‘solicitor members’), one of whom shall be appointed by the President of the High Court to be chairperson of the Disciplinary Tribunal and each of whom shall be appointed after consultation with the Society, and

(b) not more than ten persons, who are not solicitors or barristers (to be known and referred to in this section as ‘lay members’), who shall be nominated by the Minister to represent the interests of the general public,

for such a period, not exceeding five years, as the President of the High Court may determine, and any such person so appointed shall be eligible for reappointment to the Disciplinary Tribunal for not more than one such period.”.

(b) by the insertion of the following subsection after subsection (1):

“(1A) At least 40 per cent of the solicitor members and of the lay members of the Disciplinary Tribunal, calculated by rounding to the nearest whole number, shall be men and at least 40 per cent, as so calculated, shall be women.”,

and

(c) by the substitution of the following subsection for subsection (6):

“(6) The Society shall pay to each member of the Disciplinary Tribunal, out of funds at the disposal of the Society, either—

(a) the reasonable travelling and subsistence expenses incurred by the member in connection with attendance at meetings of the Disciplinary Tribunal, or

(b) with the consent of the member concerned, an annual sum (the amount of which shall be determined by the Society from time to time and which shall be payable in arrear at the end of each year) in respect of those expenses.”.

9.—The Act of 1960 is hereby amended in section 7 (as substituted by section 17 of the Act of 1994) in the following respects:

Amendment of section 7 of Act of 1960.

(a) by the substitution of the following subsections for subsections (2) and (3):

“(2) (a) Where an application in relation to a solicitor (in this section referred to as the ‘respondent solicitor’) is duly made under this section, the Disciplinary Tribunal shall—

(i) where the Society is not the applicant, inform the Society as soon as practicable of the receipt of the application, and

(ii) before deciding whether there is a *prima facie* case for inquiry:

(I) send a copy of the application and of any accompanying documents to the respondent solicitor, and

(II) request that any observations which he or she may wish to make on the application be supplied to the Disciplinary Tribunal within a specified period.

(b) If, after receipt of the respondent solicitor's observations or on the expiration of the specified period, the Disciplinary Tribunal find that there is no *prima facie* case for inquiry, they shall so inform the applicant, the Society (where the Society is not the applicant) and the respondent solicitor and take no further action in relation to the application.

(3) If the Disciplinary Tribunal find that there is a *prima facie* case for inquiry, the following provisions shall have effect:

(a) they shall proceed to hold an inquiry and notify the respondent solicitor and the applicant (and, where the Society is not the applicant, the Society) of the date on which it is to be held;

(b) when holding the inquiry the Disciplinary Tribunal shall—

(i) consider each allegation of misconduct made against the respondent solicitor, and

(ii) make a separate finding in respect of each such allegation;

(c) on completion of the inquiry the Disciplinary Tribunal shall specify in a report (which shall include a verbatim note of the evidence given and submissions made) to the High Court—

(i) the nature of the application and the evidence laid before them,

(ii) the finding made on each allegation of misconduct and the reasons therefor,

(iii) any other matters in relation to the respondent solicitor which they may think fit to report,

(iv) in case they find that there has been misconduct on the part of the respondent solicitor and they have not made, and do not intend to make, an order under subsection (9) of this section—

(I) their opinion as to the fitness or otherwise of the respondent solicitor to be a member of the solicitor's profession, having regard to their findings, and

(II) their recommendations as to the sanction which in their opinion should be imposed, having regard to their findings, to any finding of misconduct

on the part of the respondent solicitor previously made by them (or by their predecessor, the Disciplinary Committee) and not rescinded by the Court, and to any order made by the Court under the *Solicitors Acts, 1954 to 2002*, in respect of the respondent solicitor,

and in that case the Society shall bring the report before the Court.”,

(b) by the substitution of the following subsection for subsection (5):

“(5) The Disciplinary Tribunal shall, as soon as possible and not later than 21 days after their report has been prepared, serve a copy of it on—

- (a) the respondent solicitor either personally or by sending it by registered post to the respondent solicitor’s last-known residence or place of business,
- (b) the Society by sending it to the Society by registered post, and
- (c) any person other than the Society who has made an application under subsection (1) of this section either personally or by sending it by registered post to the person’s last-known residence or place of business.”,

(c) by the substitution of the following subsection for subsection (6):

“(6) Where, on completion of an inquiry under subsection (3) of this section, the Disciplinary Tribunal find that there has been no misconduct on the part of the respondent solicitor, they shall inform the respondent solicitor and the applicant (and, where the Society is not the applicant, the Society) of their finding and the reasons therefor and take no further action in relation to the matter.”,

(d) in subsection (9)—

- (i) by the substitution of “€15,000” for “£5,000” in paragraphs (b) and (c), and
- (ii) by the substitution of the following for “solicitor.” in paragraph (d):

“solicitor,

and, in making any such order, the Disciplinary Tribunal shall take account of any finding of misconduct on the part of the respondent solicitor previously made by them (or by their

predecessor, the Disciplinary Committee) and not rescinded by the Court, and of any order made by the Court under the *Solicitors Acts, 1954 to 2002*, in respect of the respondent solicitor.”,

(e) by the substitution of the following subsection for subsection (10):

“(10) On the making of an order under subsection (9) of this section, the Disciplinary Tribunal shall as soon as possible and not later than 28 days thereafter serve, in the manner provided for in subsection (5) (as substituted by the *Solicitors (Amendment) Act, 2002*) of this section in relation to service of their report, a copy of the order on the respondent solicitor, the Society and any person other than the Society who has made an application under subsection (1) of this section.”,

(f) by the substitution of the following subsection for subsection (11):

“(11) (a) A respondent solicitor in respect of whom an order has been made by the Disciplinary Tribunal under subsection (9) of this section, or

(b) without prejudice to subsection (12) of this section, the Society or any person other than the Society who has made an application under subsection (1) of this section,

may, within the period of 21 days beginning on the date of the service of a copy of the order or of the report, whichever date is the later, appeal to the High Court to rescind or vary the order in whole or in part, and the Court, on hearing the appeal, may—

(i) rescind or vary the order, or

(ii) confirm that it was proper for the Disciplinary Tribunal to make the order.”,

and

(g) by the insertion of the following subsections after subsection (12):

“(12A) The Society or any person who has made an application under subsection (1) of this section may appeal to the High Court within the period specified in subsection (12B) of this section—

(a) against a finding of the Disciplinary Tribunal that there is no *prima facie* case for inquiry into the conduct of the respondent solicitor, or

(b) against a finding of the Disciplinary Tribunal that there has been no misconduct on the part of the

respondent solicitor in relation to an allegation of misconduct (whether or not there has been a finding by the Disciplinary Tribunal of misconduct in relation to any other such allegation), and the Court may—

- (i) confirm the finding concerned,
- (ii) where the appeal is under paragraph (a) of this subsection, make a finding that there is a *prima facie* case in relation to the allegation of misconduct concerned or, as the case may be, one or more than one of such allegations and require the Disciplinary Tribunal to proceed to hold an inquiry under subsection (3) of this section in relation to such allegation or allegations, or
- (iii) where the appeal is under paragraph (b) of this subsection, rescind or vary any finding of the Disciplinary Tribunal that there has been no misconduct on the part of the respondent solicitor in relation to an allegation of misconduct and, in relation to that solicitor, by order do one or more than one of the things specified in section 8(1)(a) (as substituted by the Act of 1994) of this Act.

(12B) An appeal against a finding of the Disciplinary Tribunal under subsection (12A) of this section shall be made within 21 days of the receipt by the appellant of notification in writing of the finding.’’.

10.—The Act of 1960 is hereby amended in section 8 (as substituted by section 18 of the Act of 1994)—

Amendment of
section 8 of Act of
1960.

- (a) by the substitution of the following for “penalty;” in subsection (1)(a)(i)(V):

“penalty;

and, in making any such order, the Court shall take account of any finding of misconduct on the part of the respondent solicitor previously made by the Disciplinary Tribunal (or by their predecessor, the Disciplinary Committee) and not rescinded by the Court, and of any order made by the Court under the *Solicitors Acts, 1954 to 2002*, in respect of the respondent solicitor;”,

and

- (b) by the substitution of the following for “Court.” in subsection (1)(c)(viii):

“Court;

and, in making any such order, the Court shall take account of any finding of misconduct on the part of the respondent solicitor previously made by the Disciplinary Tribunal (or by their predecessor, the Disciplinary Committee) and not rescinded by the Court and of any order made by the Court under the *Solicitors Acts, 1954 to 2002*, in respect of the respondent solicitor.”.

11.—The Act of 1960 is hereby amended in section 15 (as substituted by section 25 of the Act of 1994) by the insertion of the following subsections after subsection (1):

Amendment of
section 15 of Act of
1960.

“(1A) The Disciplinary Tribunal may require the applicant and the respondent solicitor to submit in writing an outline of the evidence expected to be given by each of the witnesses whom they propose to have summoned to attend the inquiry.

(1B) The Disciplinary Tribunal may, if of opinion that the evidence expected to be given by any such witness is irrelevant or does not add materially to that proposed to be given by other witnesses and that accordingly the attendance of the witness at the inquiry is likely to give rise to unnecessary delay or expense, so inform the applicant or respondent solicitor, as the case may be, and draw his or her attention to the provisions of subsection (1C) of this section.

(1C) On the completion of the inquiry the Disciplinary Tribunal, whether or not they have acted in accordance with subsection (1B) of this section, may, if of opinion that the attendance of any witness summoned at the request of the applicant or respondent solicitor was unnecessary and thereby involved the witness in avoidable expense, by order direct that the applicant or respondent solicitor, as the case may be, shall pay a sum or sums not exceeding €10,000 to the witness in respect of the expense, and the witness may recover the sum or sums from the applicant or respondent as a liquidated debt.

(1D) Before making an order under subsection (1C) of this section, the Disciplinary Tribunal shall notify the applicant or respondent solicitor that they propose to do so and to consider any representations that may be made to them in writing by the person affected within 14 days after the notification.

(1E) The applicant or respondent solicitor in respect of whom an order has been made under subsection (1C) of this section may appeal to the High Court against the order within 21 days of the receipt by him or her of notification in writing of it, and the Court may make such order on the appeal as it thinks fit.”.

12.—Section 2 of the Act of 1994 is hereby amended by the insertion of the following subsection:

Amendment of
section 2 of Act of
1994.

Substituted by
section 38, 2008
Act. See page
214.

“(2) References in sections 10, 10A (as inserted by *section 13* of the *Solicitors (Amendment) Act, 2002*), 12 (as substituted by *section 14* of that Act) and 22 of this Act to complaints made to or received by the Society include references to any complaints made to the Society by the registrar alleging a breach of any provision of the *Solicitors Acts, 1954 to 2002*, or any order or regulation made thereunder, and those provisions of this Act shall have effect accordingly.”.

13.—The Act of 1994 is hereby amended by the insertion of the following section after section 10:

Amendment of Act
of 1994.

“10A.—(1) Where, in relation to a complaint made to the Society alleging misconduct by a solicitor or a complaint under section 8(1) or 9(1) of this Act, it appears to the Society that the solicitor concerned is obstructing the investigation of the complaint by the Society by refusing, neglecting or otherwise failing, without reasonable cause—

(a) to respond appropriately in a timely manner, or at all, to correspondence from the Society in relation to the complaint, or

(b) to attend a meeting convened by the Society at which the complaint would be considered, the Society may apply to the High Court for an order compelling the solicitor to respond appropriately within a specified time to such correspondence or to attend such a meeting.

(2) An order under subsection (1) of this section may provide for censuring the solicitor and requiring the solicitor to pay a money penalty and for such matters of a consequential nature as the Court considers appropriate.

(3) Where an order under subsection (1) of this section requires a solicitor to pay a money penalty, the order shall operate as a judgment against the solicitor in favour of the Society, and the money penalty, when recovered, shall be paid into the Compensation Fund.

(4) In subsection (1) of this section, ‘meeting convened by the Society’ includes a meeting convened by a committee to which functions of the Society which may be performed by the Council have been delegated pursuant to section 73 (as amended by the Act of 1960 and this Act) of the Principal Act.”.

14.—The Act of 1994 is hereby amended by the substitution of the following section for section 12:

Amendment of
section 12 of Act of
1994.

“Contribution
by solicitor.

12.—(1) (a) Following an investigation of a complaint made to the Society against a solicitor under section 8(1) or 9(1) of this Act,

the Society may—

(i) in case the Society have made a determination or given a direction under either of those sections, require payment by the solicitor of a sum not exceeding €3,000 to the Society by way of contribution towards the costs incurred by the Society in investigating the complaint, or

(ii) in any other case, if the Society have made a determination that the solicitor has in the course of the investigation refused, neglected or otherwise failed, without reasonable cause, to respond appropriately in a timely manner, or at all, to a written request from the Society and that the Society have incurred costs in consequence of the refusal, neglect or failure, require payment by the solicitor to the Society of a sum not exceeding €3,000 by way of contribution towards those costs,

and the solicitor shall comply with any such requirement.

(b) Paragraph (a) (other than subparagraph (i)) of this subsection shall apply in relation to a complaint made to the Society alleging misconduct by a solicitor as it applies in relation to a complaint referred to in that paragraph.

(c) Where, in relation to a complaint made to the Society alleging misconduct by a solicitor or a complaint under section 8(1) or 9(1) of this Act, the Society—

(i) are of opinion that the complaint is justified but is not of sufficient seriousness to warrant an application being made to the Disciplinary Tribunal under subsection (1) of section 7 (as substituted by section 17 of this Act) of the Act of 1960, or

(ii) have made a determination that the

solicitor has in the course of the investigation refused, neglected or otherwise failed, without reasonable cause, to respond appropriately in a timely manner, or at all, to a written request from the Society and that the Society have incurred costs in consequence of such refusal, neglect or failure,

the Society may, in addition to or in substitution (in whole or in part) for requiring payment by way of contribution towards the costs incurred by the Society as provided for in subparagraph (i) or (ii) of paragraph (a) of this subsection, issue to the solicitor a reprimand in writing in such terms as the Society deem appropriate and reasonable and so notify the person from whom the complaint was received.

(2) Subject to any order made under section 11(1) of this Act, the Society may recover any sum the payment of which has been required by the Society by way of contribution under subsection (1) of this section as a liquidated debt payable to the Society.”.

15.—The Act of 1994 is hereby amended in section 14 by the substitution of the following subsections for subsections (1) and (2):

Amendment of section 14 of Act of 1994.

“(1) Where it appears to the Society, whether as a result of a complaint or otherwise, that it is necessary for the purpose of investigating—

- (a) alleged misconduct by a solicitor,
- (b) a complaint against a solicitor under section 8(1) or 9(1) of this Act, or
- (c) the capacity of a solicitor engaged in the provision of legal services adequately to protect or secure the interests of the solicitor’s clients,

for an authorised person to attend with or without prior notice at the place or places of business of the solicitor, an authorised person may so attend at that place or places.

(2) An authorised person who attends under subsection (1) of this section at the place or places of business of a solicitor—

- (a) shall inform the solicitor or any clerk or servant of the solicitor of the purpose of the attendance as specified in

that subsection, except where the Society reasonably consider that to do so could prejudice the investigation, and

- (b) may in pursuance of that purpose require the solicitor or any such clerk or servant to make available to the authorised person for inspection such specified documents or categories of documents in the possession or under the control or within the procurement of the solicitor as the authorised person deems necessary to fulfil that purpose (whether or not such documents or any of them relate also to other matters).”.

16.—The Act of 1960 is hereby amended—

Amendment of sections 21(6) and 22(2) of Act of 1960.

- (a) in subsection (6) of section 21 (as substituted by section 29 of the Act of 1994) of the Act of 1960 by the substitution of “€700,000” for “£350,000”, and

- (b) in subsection (2) of section 22 (as substituted by section 30 of the Act of 1994) of the Act of 1960 by the substitution of “€2,000,000” for “£1,000,000”.

17.—The Act of 1994 is hereby amended in section 23—

Publication of outcome of disciplinary inquiry.

- (a) by the substitution of the following subsection for subsection (1):

“(1) Where, on the completion of an inquiry by the Disciplinary Tribunal held under section 7(3) of the Act of 1960, the Disciplinary Tribunal have—

- (a) made an order under section 7(9),
- (b) served on the Society a copy of the order pursuant to section 7(10), and
- (c) sent to the Society a copy of their report pursuant to section 7(5),

of that Act, then, subject to subsection (2) of this section, the Society may arrange to publish the order or notice of the making of the order and its effect, together with a summary of the report, in such a manner as the Society thinks fit.”,

- (b) by the substitution of the following subsection for subsection (2):

“(2) Where, on the completion of an inquiry by the Disciplinary Tribunal held under section 7(3) of the Act of 1960, the Disciplinary Tribunal have made an order under section 7(9) of that Act, the order, or notice of the making of the order and its effect, or any part of the report of the Disciplinary Tribunal or other detail of the inquiry, shall not be published by the Society until a period of at least 21 days

beginning on the date of the service of a copy of the order or of the report, whichever date is the later, shall have elapsed or until any application made under subsection (11) or (12) of section 7 of the Act of 1960 has been determined by the High Court, and thereafter the notice of the making of the order shall not be published if the Court rescinds the order of the Disciplinary Tribunal or, in the case of an application made under the said subsection (12), the Court orders that one or more of the aforementioned documents shall not be published.”,

and

(c) by the insertion of the following subsection after subsection (3):

“(4) References in subsections (1) and (2) of this section to provisions of section 7 of the Act of 1960 are to those provisions as substituted by this Act and, where appropriate, by the *Solicitors (Amendment) Act, 2002.*”.

18.—(1) Where, on the application of the Society, it is shown to the satisfaction of the High Court—

Prohibition of
contravention of
Solicitors Acts,
1954 to 2002.

(a) that a solicitor or any other person has contravened, is contravening or is likely to contravene any provision of the *Solicitors Acts, 1954 to 2002*, or

(b) that a solicitor has contravened, is contravening or is likely to contravene any provision of regulations under those Acts,

the Court may by order prohibit the solicitor or other person concerned from contravening that provision, notwithstanding that any such contravention may constitute an offence and notwithstanding section 77 of the Principal Act.

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

19.—(1) The Society may make an application to the Disciplinary Tribunal to hold an inquiry into alleged misconduct by an apprentice.

Inquiry into alleged
misconduct by
apprentice.

(2) (a) On such an application the Disciplinary Tribunal, before deciding whether there is a *prima facie* case for inquiry, shall—

(i) send a copy of the application and of any accompanying documents to the apprentice, and

(ii) request that any observations which he or she may wish to make on the application be supplied within a specified period.

(b) If, after receipt of the apprentice’s observations or on the expiration of the specified period, the Disciplinary Tribunal

find that there is no *prima facie* case for inquiry, they shall so inform the apprentice and the Society and take no further action in relation to the application.

(3) If the Disciplinary Tribunal find that there is a *prima facie* case for inquiry, the following provisions shall have effect:

- (a) they shall proceed to hold an inquiry and notify the apprentice and the Society of the date on which it is to be held;
- (b) when holding the inquiry under this section the Disciplinary Tribunal shall—
 - (i) consider each allegation of misconduct made against the apprentice, and
 - (ii) make a separate finding in respect of each such allegation;
- (c) if the Disciplinary Tribunal find that there has been no misconduct on the part of the apprentice, they shall take no further action in relation to the matter and so inform the apprentice and the Society;
- (d) if the Disciplinary Tribunal find that there has been such misconduct, they shall notify the apprentice and the Society of their finding and shall specify in a report (which shall include a verbatim note of the evidence given and submissions made) to the High Court—
 - (i) the nature of the application and the evidence laid before them,
 - (ii) the finding made on each allegation of misconduct and the reasons therefor,
 - (iii) any other matters in relation to the apprentice which they may think fit to report,
 - (iv) ~~their opinion as to the fitness of the apprentice, having regard to their finding or findings, to be admitted as a solicitor either at any time or until the apprentice has satisfied the Society or the President of the High Court as to such fitness.~~

Subsection
(3)(d)(iv)
substituted by
section 45(a),
2008 Act. See
pages 217-218.

(4) (a) The apprentice may appeal to the High Court against a finding of the Disciplinary Tribunal that there has been misconduct on his or her part within 21 days of the receipt by him or her of written notification of the finding.

(b) The Society may appeal to the High Court—

- (i) against a finding of the Disciplinary Tribunal that there is no *prima facie* case for inquiry into the conduct of the apprentice, or

- (ii) against a finding of the Disciplinary Tribunal that there has been no misconduct on the part of the apprentice in relation to an allegation of misconduct (whether or not there has been a finding of misconduct by the Disciplinary Tribunal in relation to any other such allegation),

within 21 days of the receipt by the Society of written notification of the finding.

- (c) The High Court may make such order on an appeal under this subsection as it thinks fit.

In subsection (5) “The High Court, on consideration of the report of the Disciplinary Tribunal, may by order” substituted by section 45(b), 2008 Act. See page 218.

~~(5) The High Court, on consideration of the report of the Disciplinary Tribunal, may by order—~~

- (a) declare that the apprentice is or is not a fit and proper person to be admitted as a solicitor, and
- (b) make such other provision in relation to the matter as it may think just, including provision for review of its order on application to the President of the High Court by the Society or the apprentice.

New subsection (5A) inserted by section 45(c), 2008 Act. See page 218.

(6) The Disciplinary Tribunal shall have such of the powers given to them under the *Solicitors Acts, 1954 to 2002*, as are necessary to enable them to perform the functions conferred on them by this section.

(7) In this section, “misconduct” means—

- (a) the commission of an offence under section 55, 56 or 58 of the Principal Act or of an arrestable offence (within the meaning of the Criminal Law Act, 1997),
- (b) conduct outside the State which constitutes an offence under the law of the jurisdiction concerned and which, if that conduct took place within the State, would constitute an arrestable offence (within that meaning), or
- (c) any other conduct which, if engaged in by a solicitor, would tend to bring the solicitors’ profession into disrepute.

New section 19A inserted by section 46(1), 2008 Act. See page 218.

20.—(1) In this section, unless the context otherwise requires—

“Compensation Fund” means the fund maintained by the Law Society of Ireland under sections 21 and 22 (as substituted by sections 29 and 30 of the Act of 1994) of the Act of 1960;

“corresponding EEA measure” means any measure or decision taken by the Joint Committee under the EEA Agreement and having an effect corresponding to that of the Directive;

“Directive” means Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of

Implementation of Directive 98/5/EC and any corresponding measure.

lawyer on a permanent basis in a member state other than that in which the qualification was obtained and includes any corresponding EEA measure and a measure which is in force by virtue of the entry into force of the Swiss Confederation Agreement;

“EEA Agreement” means the Agreement on the European Economic Area signed in Oporto on 2 May 1992, as adjusted by the Protocol to that Agreement done at Brussels on 17 March 1993;

“member state” means a member state of the European Union (other than the State) and—

(a) on the State being required to implement a corresponding EEA measure, includes a state (other than a member state of the European Union) which is a contracting party to the EEA Agreement, and

(b) on the entry into force of the Swiss Confederation Agreement, includes the Swiss Confederation;

“member state lawyers” means individuals who—

(a) have the right to pursue professional activities in a member state, and

(b) are pursuing, or proposing to pursue, professional activities by virtue of the Directive in the State under their home-country professional title;

“Swiss Confederation Agreement” means the Agreement between the European Community and its member states, of the one part, and the Swiss Confederation, of the other, on the free movement of persons, done at Luxembourg on 21 June 1999.

(2) Regulations under section 3 of the European Communities Act, 1972, may—

(a) authorise, subject to the Directive, a competent authority to require member state lawyers to take out professional indemnity insurance in accordance with its rules and, where their professional activities are those of a solicitor, to contribute also to the Compensation Fund, and

(b) provide that the rules of a competent authority governing professional practice, conduct and discipline, including any of those rules containing sanctions for breaches thereof, shall have effect, with any necessary modifications, in relation to—

(i) member state lawyers who are pursuing their professional activities by virtue of the Directive in the State under their home-country professional title, and

(ii) lawyers (other than member state lawyers) who have acquired the right to practise the profession of lawyer in the State and are pursuing their professional activities in a

member state by virtue of the Directive.

- (3) (a) The reference in *subsection (2)* to regulations under section 3 of the European Communities Act, 1972, is to regulations under that section, as amended by section 4 of the European Communities (Amendment) Act, 1993, or any subsequent enactment, and as extended by that subsection.
- (b) The reference in *subsection (2)(b)* to “rules”, in so far as it relates to solicitors or to member state lawyers pursuing the professional activities of a solicitor in the State, includes a reference to the provisions of enactments and regulations thereunder relating to solicitors.
- (c) A word or expression used in both this section and the Directive has the same meaning in this section as it has in the Directive.

21.—For the removal of doubt, a report of a case made by a solicitor shall have the same authority as if it had been made by a barrister. Law Reports.

22.—(1) The following provisions of the *Solicitors Acts, 1954 to 2002*, are hereby amended by the substitution of “€3,000” for “£1,500”: Amendment of maximum fines provided for in Solicitors Acts.

- (a) paragraph (b) of section 55(2) (as amended by section 63 of the Act of 1994) of the Principal Act;
- (b) section 56(2) (as amended by section 64 of the Act of 1994) of the Principal Act;
- (c) paragraph (a) of section 58(2) (as substituted by section 77(a) of the Act of 1994) of the Principal Act;
- (d) subsection (3) of section 63 (as substituted by section 21 of the Act of 1994) of the Principal Act;
- (e) subsection (16)(a) of section 66 (as substituted by section 76 of the Act of 1994) of the Principal Act;
- (f) subsection (4) of section 8 (as substituted by section 18 of the Act of 1994) of the Act of 1960;
- (g) subsection (4)(a)(ii) of section 15 (as substituted by section 25 of the Act of 1994) of the Act of 1960;
- (h) subsection (2)(a) of section 19 (as substituted by section 27 of the Act of 1994) of the Act of 1960;
- (i) subsections (4) and (7) of section 20 (as substituted by section 28 of the Act of 1994) of the Act of 1960; and
- (j) sections 11(5), 15(14) and 78(15)(b) of the Act of 1994.

(2) The following provisions of those Acts are hereby amended by the

substitution of “€30,000” for “£10,000”:

- (a) paragraph (a) of section 55(2) (as amended by section 63 of the Act of 1994) of the Principal Act;
- (b) paragraph (b) of section 58(2) (as substituted by section 77(a) of the Act of 1994) of the Principal Act;
- (c) subsection (16)(b) of section 66 (as substituted by section 76 of the Act of 1994) of the Principal Act;
- (d) subsection (4)(a)(i) of section 15 (as substituted by section 25 of the Act of 1994) of the Act of 1960; and
- (e) section 78(15)(a) of the Act of 1994.

(3) Section 64(2) of the Principal Act is hereby amended by the substitution of “€3,000” for “one hundred pounds” and for “twenty-five pounds”.

23.—(1) This Act may be cited as the Solicitors (Amendment) Act, 2002.

Short title,
commencement,
collective citation
and construction.

(2) *Section 20* shall come into operation on the passing of this Act and the remaining provisions shall come into operation on such day or days as may be appointed by order or orders made by the Minister, either generally or with reference to any particular purpose or provision, and different days may be so appointed for different purposes and different provisions of this Act.

(3) The Solicitors Acts, 1954 to 1994, and this Act may be cited together as the Solicitors Acts, 1954 to 2002, and shall be construed together as one, and references in any enactment, whether passed before or after this Act, to the Solicitors Acts, 1954 and 1960, the Solicitors Acts, 1954 to 1994, or the Solicitors Acts, 1954 to 2002, or to any of them shall be construed as references to those Acts, or as the case may be that Act, as amended or extended by or under any enactment, including this Act.

Number 14 of 2008

RELEVANT EXTRACTS FROM THE CIVIL LAW
(MISCELLANEOUS PROVISIONS) ACT 2008

ARRANGEMENT OF SECTIONS

PART 1

PRELIMINARY

1. Short title, commencement, collective citation and construction.
2. Definition of “Minister”.

PART 3

SOLICITORS

33. Amendment of section 29 of Solicitors Act 1954.
34. Amendment of section 73 of Solicitors Act 1954.
35. Amendment of section 6 of Solicitors (Amendment) Act 1960.
36. Insertion of new section 6A into Solicitors (Amendment) Act 1960.
37. Amendment of section 8 of Solicitors (Amendment) Act 1960.
38. Amendment of section 2 of Solicitors (Amendment) Act 1994.
39. Amendment of section 8 of Solicitors (Amendment) Act 1994.
40. Insertion of new section 14A into Solicitors (Amendment) Act 1994.
41. Insertion of new section 14B into Solicitors (Amendment) Act 1994.
42. Insertion of new section 14C into Solicitors (Amendment) Act 1994.
43. Insertion of new section 18A into Solicitors (Amendment) Act 1994.

[No. 14]

Civil Law (Miscellaneous Provisions) Act 2008.

[2008.]

44. Insertion of new section 26A into Solicitors (Amendment) Act 1994.
45. Amendment of section 19 of Solicitors (Amendment) Act 2002.
46. Insertion of new section 19A into Solicitors (Amendment) Act 2002.

Number 14 of 2008

CIVIL LAW (MISCELLANEOUS PROVISIONS) ACT 2008

AN ACT...TO AMEND...THE SOLICITORS ACT 1954, THE SOLICITORS (AMENDMENT) ACT 1960, THE SOLICITORS (AMENDMENT) ACT 1994, THE SOLICITORS (AMENDMENT) ACT 2002...

[14th July, 2008]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

PRELIMINARY

1.—(1) This Act may be cited as the Civil Law (Miscellaneous Provisions) Act 2008.

Short title, commencement, collective citation and construction.

(2) The Minister may, by order or orders, appoint such day or days on which this Act shall come into operation, and different days may be so appointed for different purposes and for different provisions.

.....

(5) The Solicitors Acts 1954 to 2002 and *Part 3* may be cited together as the Solicitors Acts 1954 to 2008.

2.—In this Act, “Minister” means Minister for Justice, Equality and Law Reform.

Definition of “Minister”.

.....

PART 3

SOLICITORS

33.—Section 29 (inserted by section 44 of the Solicitors (Amendment) Act 1994) of the Solicitors Act 1954 is amended in subsection (2) by substituting “four” for “five”. Amendment of section 29 of Solicitors Act 1954.

34.—Section 73 (as amended by section 7 of the Solicitors (Amendment) Act 1994) of the Solicitors Act 1954 is amended by substituting the following for subsections (3) and (4): Amendment of section 73 of Solicitors Act 1954.

“(3) Subject to subsections (4) and (4A), the membership and quorum of a committee under this section shall be as specified by the Council and any such membership may include—

(a) solicitors who are not members of the Council,

(b) persons who are not solicitors.

(4) Where functions of the Society which are performable by the Council are delegated to a committee under this section, that committee, in the performance of all or any of its delegated functions, may sit in one or more divisions, provided that the quorum of such a division shall be three.

(4A) Where functions of the Society under section 8 (as amended by *section 39* of the *Civil Law (Miscellaneous Provisions) Act 2008*) or 9 of the Solicitors (Amendment) Act 1994 are delegated to a committee under this section, then—

(a) a majority of the members of the committee, any quorum of the committee, any division of the committee or quorum of such division, shall be persons who are not solicitors, and

(b) that committee or any division of that committee shall be chaired by a person who is a solicitor.”.

35.— Section 6 (inserted by section 16 of the Solicitors (Amendment) Act 1994 and amended by section 8 of the Solicitors (Amendment) Act 2002) of the Solicitors (Amendment) Act 1960 is amended by inserting the following after subsection (1A): Amendment of section 6 of Solicitors (Amendment) Act 1960.

“(1B) Where a solicitor member of the Disciplinary Tribunal, during the course of his or her membership of the Disciplinary Tribunal, ceases to be a practising solicitor by virtue of not making an application for a practising certificate, that cesser shall not of itself—

- (a) cause the solicitor member to cease to be a solicitor member of the Disciplinary Tribunal, or
- (b) prevent the solicitor member from continuing to serve as a solicitor member of the Disciplinary Tribunal for the remainder of his or her appointment or reappointment as a solicitor member of the Disciplinary Tribunal.”.

36.— The Solicitors (Amendment) Act 1960 is amended by the insertion of the following section after section 6:

Insertion of new section 6A into Solicitors (Amendment) Act 1960.

“Power of Society to investigate alleged misconduct by solicitor.

6A.—(1) For the avoidance of doubt it is hereby declared that the Society have, and always have had, a power to investigate alleged misconduct by a solicitor.

(2) If subsection (1) would, but for this subsection, conflict with a constitutional right of any person, the operation of that subsection shall be subject to such limitation as is necessary to secure that it does not so conflict but shall otherwise be of full force and effect.”.

37.— Section 8 (inserted by section 18 of the Solicitors (Amendment) Act 1994 and amended by section 10 of the Solicitors (Amendment) Act 2002) of the Solicitors (Amendment) Act 1960 is amended—

Amendment of section 8 of Solicitors (Amendment) Act 1960.

- (a) in subsection (1)(a), by the substitution of “the High Court, after consideration of the report and the submissions (if any) made to it by the Society under subsection (1A) of this section” for “the High Court, after consideration of the report”, and
- (b) by the insertion of the following subsection after subsection (1):

“(1A) The Society may make submissions to the High Court in relation to—

- (a) the opinion of the Disciplinary Tribunal as to the fitness or otherwise of the solicitor to be a member of the solicitors’ profession, having regard to the findings of the Disciplinary Tribunal, and
- (b) the recommendations of the Disciplinary Tribunal

as to the sanction which in the opinion of the Disciplinary Tribunal should be imposed, having regard to their findings, to any finding of misconduct on the part of the solicitor previously made by them (or by their predecessor, the Disciplinary Committee) and not rescinded by the Court, and to any order made by the Court under the *Solicitors Acts 1954 to 2008* in respect of the solicitor.”.

38.— Section 2 of the Solicitors (Amendment) Act 1994 is amended by the substitution of the following subsection for subsection (2) (inserted by section 12 of the Solicitors (Amendment) Act 2002):

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

“(2) References in sections 10, 10A (inserted by section 13 of the Solicitors (Amendment) Act 2002), 12 (inserted by section 14 of that Act) and 22 of this Act to complaints made to or received by the Society include references to any complaints made to the Society by the registrar under section 14B of this Act, and those provisions of this Act shall have effect accordingly.”.

39.— Section 8 of the Solicitors (Amendment) Act 1994 is amended—

Amendment of section 8 of Solicitors (Amendment) Act 1994.

(a) in subsection (1), by inserting the following after paragraph (d):

“(da) direct the solicitor to pay to the client a sum not exceeding €3,000 or the prescribed amount, whichever is the greater, as compensation for any financial or other loss suffered by the client in consequence of any such inadequacy in the legal services provided or purported to have been provided by the solicitor, provided that any such payment made in compliance with the direction shall be without prejudice to any legal right of the client;”.

and

(b) by inserting the following after subsection (8):

“(9) (a) Subject to paragraphs (b) and (c), the Minister may by order prescribe an amount in respect of subsection (1)(da).

(b) The Minister shall only exercise the power under paragraph (a) to prescribe an amount referred to in that subsection such that the amount prescribed reflects the rate of inflation in the State.

(c) No order under paragraph (a) shall come into operation—

(i) before the second anniversary of the commencement of that paragraph,

(ii) thereafter at intervals of less than 2 years between orders made and not annulled under that paragraph.

(d) Every order made under this subsection shall be laid before each House of the Oireachtas as soon as practicable after it is made and, if a resolution annulling the order is passed by either such House within the next 21 days on which that House has sat after the order is laid before it, the order shall be annulled, but without prejudice to the validity of anything done under the order.”.

40.— The Solicitors (Amendment) Act 1994 is amended by the insertion of the following section after section 14:

Insertion of new section 14A into Solicitors (Amendment) Act 1994.

“Investigation of alleged misconduct by solicitor.

14A.—For the avoidance of doubt it is hereby declared that the power of the Society to investigate alleged misconduct by a solicitor may be exercised whether or not the Society receive a complaint in relation to the solicitor.”.

41.— The Solicitors (Amendment) Act 1994 is amended by the insertion of the following section after section 14A:

Insertion of new section 14B into Solicitors (Amendment) Act 1994.

“Charging excessive fees may constitute misconduct by solicitor.

14B.—Notwithstanding anything in this Part the issue by a solicitor of a bill of costs that is excessive may constitute misconduct.”.

42.— The Solicitors (Amendment) Act 1994 is amended by the insertion of the following section after section 14B:

Insertion of new section 14C into Solicitors (Amendment) Act 1994.

“Complaints by registrar.

14C.—The registrar may make a complaint to the Society in relation to a solicitor alleging—

(a) a contravention by the solicitor of any provision of the *Solicitors Acts 1954 to 2008* or any order or regulation made thereunder, or

(b) any conduct by the solicitor

tending to bring the solicitors' profession into disrepute.”.

43.— The Solicitors (Amendment) Act 1994 is amended by inserting the following after section 18:

Insertion of new section 18A into Solicitors (Amendment) Act 1994.

“Enforcement of order of Solicitors Disciplinary Tribunal.

18A.— (1) Where, on application by the Society in circumstances where the matter is not otherwise before the High Court, it is shown that a solicitor or any other person has refused, neglected or otherwise failed, without reasonable cause, to comply in whole or in part with an order made by the Solicitors Disciplinary Tribunal, the Court may by order direct the solicitor or other person, as the case may be, to comply in whole or in part with the order of the Solicitors Disciplinary Tribunal.

(2) An application by the Society pursuant to subsection (1) shall be on notice to the solicitor or other person concerned unless the High Court otherwise orders.

(3) An order of the High Court under subsection (1) may contain such provisions of a consequential nature as the Court considers appropriate.”.

44.— The Solicitors (Amendment) Act 1994 is amended by inserting the following after section 26:

Insertion of new section 26A into Solicitors (Amendment) Act 1994.

“Limitation of solicitors’, etc. liability by contract.

26A.— (1) Subject to subsections (2) and (3), a contract between a solicitor and a client of the solicitor that any description of civil liability incurred—

(a) by the solicitor arising from his or her practice as a solicitor in respect of the provision of legal services to the client be limited to an amount specified or referred to in the contract, or

(b) by a partner, clerk or servant or former partner, clerk or servant of the solicitor arising from that solicitor’s practice as a solicitor in respect of the provision of legal services to the client be limited to an amount specified or referred to

in the contract,

shall be binding on and enforceable by—

(i) if paragraph (a) is applicable, the solicitor and the client, and

(ii) if paragraph (b) is applicable, the partner, clerk or servant or former partner, clerk or servant of the solicitor and the client.

(2) Nothing in subsection (1) shall affect the operation of—

(a) section 40 (as amended by section 31 of the Restrictive Practices (Amendment) Act 1987) of the Sale of Goods and Supply of Services Act 1980, or

(b) Regulation 6 of the European Communities (Unfair Terms in Consumer Contracts) Regulations 1995 (S.I. No. 27 of 1995).

(3) The amount referred to in subsection (1) in respect of a description of civil liability the subject of the contract concerned shall be not less than the minimum level of cover, as specified from time to time in regulations under paragraph (b) of section 26(4), for indemnity against losses arising from those classes of claims which fall within that description of civil liability and, accordingly, any such amount which is less than such minimum level of cover shall, by virtue of this subsection, be deemed to be increased to such minimum level of cover, and such contract shall be binding and enforceable accordingly.

(4) Section 7 of the Attorneys and Solicitors Act 1870 is repealed on the commencement of *section 44* of the *Civil Law (Miscellaneous Provisions) Act 2008*.”

45.— Section 19 of the Solicitors (Amendment) Act 2002 is amended—

Amendment of section 19 of Solicitors (Amendment) Act 2002.

(a) in subsection (3)(d), by the substitution of the following for subparagraph (iv):

“(iv) their opinion as to the fitness of the apprentice, having regard to their finding or findings, to be

admitted as a solicitor either at any time or until the apprentice has satisfied the Society or the President of the High Court as to such fitness,

and the Society shall bring the report before the Court.”,

(b) in subsection (5), by the substitution of “The High Court, after consideration of the report of the Disciplinary Tribunal and the submissions (if any) made to it by the Society under subsection (5A) of this section” for “The High Court, on consideration of the report of the Disciplinary Tribunal”, and

(c) by the insertion of the following subsection after subsection (5):

“(5A) The Society may make submissions to the High Court in relation to the opinion of the Disciplinary Tribunal as to the fitness of the apprentice, having regard to the finding or findings of the Disciplinary Tribunal, to be admitted as a solicitor either at any time or until the apprentice has satisfied the Society or the President of the High Court as to such fitness.”.

46.— (1) The Solicitors (Amendment) Act 2002 is amended by the insertion of the following section after section 19:

Insertion of new section 19A into Solicitors (Amendment) Act 2002.

“Power of Society to investigate alleged misconduct by apprentice.

19A.— (1) For the avoidance of doubt it is hereby declared that the Society have a power to investigate alleged misconduct by an apprentice.

(2) The power of the Society referred to in subsection (1) of this section may be exercised whether or not the Society receive a complaint in relation to the apprentice.

(3) If subsection (1) of this section would, but for this subsection, conflict with a constitutional right of any person, the operation of that subsection shall be subject to such limitation as is necessary to secure that it does not so conflict but shall otherwise be of full force and effect.

(4) In this section ‘misconduct’ has the same meaning as it has in section 19 of this Act.”.

(2) This section shall be deemed to have come into operation on 1 January 2003.

Number 8 of 2009

LEGAL SERVICES OMBUDSMAN ACT 2009

ARRANGEMENT OF SECTIONS

PART 1

PRELIMINARY AND GENERAL

Section

1. Short title and commencement.
2. Interpretation.
3. Expenses.

PART 2

ESTABLISHMENT, ROLE AND ACCOUNTABILITY OF OFFICE OF
LEGAL SERVICES OMBUDSMAN

4. Establishment of office of Legal Services Ombudsman.
5. Appointment of Legal Services Ombudsman.
6. Period of office, resignation and removal from office.
7. Salary and superannuation.
8. Restriction on engaging in other employment.
9. Functions and powers.
10. Independence of Legal Services Ombudsman.
11. Staff.
12. Advances by Minister to Legal Services Ombudsman.
13. Accounts and audit.

14. Various reports by Legal Services Ombudsman.
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16. Appearance before Committee of Dáil Éireann established to examine, etc., appropriation accounts, etc.
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18. Privilege in respect of certain matters.

PART 3

IMPOSITION OF LEVY ON PROFESSIONAL BODIES TO COVER APPROVED EXPENSES OF LEGAL SERVICES OMBUDSMAN

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21. Making of complaints.
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29. Duty to notify complainant and others of results, directions and recommendations.
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32. Review of procedures of Bar Council and Law Society for dealing with complaints.

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CONSEQUENTIAL AMENDMENTS AND TRANSITIONAL PROVISIONS

- 36. Amendment of Freedom of Information Act 1997.
- 37. Repeal of section 15 of the Solicitors (Amendment) Act 1994.
- 38. Revocation of Solicitors (Adjudicator) Regulations 1997 and Solicitors (Adjudicator) (Amendment) Regulations 2005 and transitional provisions in relation thereto.

 ACTS REFERRED TO

Comptroller and Auditor General (Amendment) Act 1993	1993, No. 8
Civil Law (Miscellaneous Provisions) Act 2008	2008, No. 14
European Parliament Elections Act 1997	1997, No. 2
Freedom of Information Act 1997	1997, No. 13
Local Government Act 2001	2001, No. 37
Pensions Act 1990	1990, No. 25
Petty Sessions (Ireland) Act 1851	14 & 15 Vic., c. 93
Social Welfare (Miscellaneous Provisions) Act 2003	2003, No. 4
Solicitors Acts 1954 to 2008	
Solicitors (Amendment) Act 1960	1960, No. 37
Solicitors (Amendment) Act 1994	1994, No. 27
Solicitors (Amendment) Act 2002	2002, No. 19

Number 8 of 2009

LEGAL SERVICES OMBUDSMAN ACT 2009

AN ACT TO PROVIDE FOR THE APPOINTMENT AND FUNCTIONS OF A LEGAL SERVICES OMBUDSMAN; AND TO PROVIDE FOR RELATED MATTERS.

[10th March, 2009]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

PRELIMINARY AND GENERAL

1.—(1) This Act may be cited as the Legal Services Ombudsman Act 2009. Short title and commencement.

(2) This Act shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision, and different days may be so appointed for different purposes and for different provisions.

2.—In this Act, unless the context otherwise requires— Interpretation.

“Bar Council” means the General Council of the Bar of Ireland;

“barrister” includes a pupil as defined in the Disciplinary Code and a registered lawyer within the meaning of the European Communities (Lawyers’ Establishment) Regulations 2003 (S.I. No. 732 of 2003) who is pursuing the professional activities of a barrister in the State, but does not include a visiting lawyer within the meaning of the European Communities (Freedom to Provide Services) (Lawyers) Regulations 1979 (S.I. No. 58 of 1979) who is pursuing the professional activities of a barrister in the State;

“Barristers’ Professional Conduct Tribunal” means the body of that name constituted in accordance with the Disciplinary Code;

“Code of Conduct” means the Code of Conduct for the Bar of Ireland;

“Compensation Fund” means the fund maintained by the Law Society pursuant to section 21 (inserted by section 29 of the Solicitors (Amendment) Act 1994) of the Solicitors (Amendment) Act 1960;

“complainant” means a person who makes a complaint on the person’s own behalf or on behalf of another person;

“complaint” means a complaint made to the Legal Services Ombudsman under *subsection (1), (2) or (3) of section 21*;

“Disciplinary Code” means the Disciplinary Code for the Bar of Ireland;

“financial year” means—

(a) the period from the date of commencement of *section 4* to 31 December next following that date, and

(b) thereafter every period of 12 months ending on 31 December;

“grant” means a grant under subsection (4) of section 21 (inserted by section 29 of the Solicitors (Amendment) Act 1994) of the Solicitors (Amendment) Act 1960 out of the Compensation Fund;

“Law Society” means the Law Society of Ireland;

“levy assessment notice” shall be construed in accordance with *section 19*;

“local authority” has the same meaning as it has in the Local Government Act 2001;

“Minister” means the Minister for Justice, Equality and Law Reform;

“misconduct”—

(a) in relation to a complaint against a barrister, has the same meaning as in the Disciplinary Code as construed in conjunction with the Code of Conduct, and

(b) in relation to a complaint against a solicitor, has the same meaning as in section 3 (amended by section 7 of the Solicitors (Amendment) Act 2002) of the Solicitors (Amendment) Act 1960,

and in either case includes alleged misconduct;

“professional body” means the Bar Council or the Law Society;

“Professional Conduct Appeals Board” means the body of that name constituted in accordance with the Disciplinary Code;

“related complaint”, in relation to a complaint (in this definition referred to as the “complaint to the Legal Services Ombudsman”), means—

- (a) the complaint to the Bar Council referred to in *section 21(1)* the handling of which by the Barristers Professional Conduct Tribunal or, in the case of an appeal against a decision of the Tribunal in respect of the complaint, the Professional Conduct Appeals Board, is the ground for the making of the complaint to the Legal Services Ombudsman, or
- (b) the complaint to the Law Society referred to in *section 21(2)* the handling of which by the Law Society is the ground for the making of the complaint to the Legal Services Ombudsman;

“solicitor” includes a registered lawyer within the meaning of the European Communities (Lawyers’ Establishment) Regulations 2003 (S.I. No. 732 of 2003) who is pursuing the professional activities of a solicitor in the State, but does not include—

- (a) an apprentice solicitor, or
- (b) a visiting lawyer within the meaning of the European Communities (Freedom to Provide Services) (Lawyers) Regulations 1979 (S.I. No. 58 of 1979) who is pursuing the professional activities of a solicitor in the State;

“Solicitors Disciplinary Tribunal” means the Solicitors Disciplinary Tribunal established by section 6(1) (inserted by section 8 of the Solicitors (Amendment) Act 2002) of the Solicitors (Amendment) Act 1960.

3.—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of monies provided by the Oireachtas. Expenses.

PART 2

ESTABLISHMENT, ROLE AND ACCOUNTABILITY OF OFFICE OF LEGAL SERVICES OMBUDSMAN

4.—There is established by this section the office of Legal Services Ombudsman and the holder of the office shall be known as the Legal Services Ombudsman. Establishment of office of Legal Services Ombudsman.

5.—(1) The Legal Services Ombudsman shall be appointed by the Government on the nomination of the Minister. Appointment of Legal Services Ombudsman.

(2) In considering the appointment of a person to be the Legal Services Ombudsman, the Government shall satisfy themselves that the person has the appropriate experience, qualifications, training and expertise for the appointment.

(3) A person is not eligible for appointment as the Legal Services Ombudsman if he or she—

- (a) is a member of either House of the Oireachtas,
- (b) is entitled under the rules of procedure of the European Parliament to sit in that Parliament,
- (c) is a member of a local authority,
- (d) is a practising barrister or a practising solicitor,
- (e) is a member of the Law Society, or
- (f) is a member of the Bar Council or a bencher of the Honorable Society of King's Inns.

6.—(1) Subject to this section, a person appointed as the Legal Services Ombudsman holds office for such period, not exceeding 6 years, as may be specified by the Government in the instrument of appointment.

Period of office, resignation and removal from office.

(2) Such a person is eligible for re-appointment for a second or subsequent term.

(3) The Legal Services Ombudsman may resign from office at any time by letter addressed to the Government and copied to the Minister, and the resignation takes effect on the date the Government receive the letter.

(4) The Government may remove the Legal Services Ombudsman from office if—

- (a) in the opinion of the Government, the Ombudsman has become incapable through ill-health of performing the functions of the office,
- (b) in the opinion of the Government, the Ombudsman has committed stated misbehaviour,
- (c) the Ombudsman's removal from office appears to the Government to be necessary for the effective performance of the functions of the office,
- (d) the Ombudsman is adjudicated bankrupt,
- (e) the Ombudsman has failed without reasonable cause 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
- (f) the Ombudsman is convicted on indictment by a court of competent jurisdiction and sentenced to imprisonment.

(5) The Government shall cause to be laid before each House of the Oireachtas a statement of the reasons if the Legal Services Ombudsman is removed from office.

(6) A person ceases to hold the office of Legal Services Ombudsman when the person—

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

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

(c) is regarded, pursuant to section 19 of the European Parliament Elections Act 1997, as having been elected to the European Parliament to fill a vacancy, or

(d) becomes a member of a local authority.

7.—The Legal Services Ombudsman holds office on such terms and conditions relating to remuneration (including allowances for expenses, benefits-in-kind and superannuation) or other matters as may be determined by the Government at the time of appointment or reappointment. Salary and superannuation.

8.—The Legal Services Ombudsman may not engage in paid employment outside the duties of the office unless the Minister approves the employment. Restriction on engaging in other employment.

9.—(1) The functions of the Legal Services Ombudsman are— Functions and powers.

(a) to receive and investigate complaints,

(b) to review under *section 32* the procedures of the Bar Council and the Law Society for dealing with complaints made to those bodies,

(c) to assess the adequacy of the admission policies of the Law Society to the solicitors' profession and of the Bar Council to the barristers' profession,

(d) to promote awareness among members of the public of matters concerning the procedures of the Bar Council and the Law Society for dealing with complaints made to those bodies, and

(e) to carry out any other duties and exercise any other powers assigned to the Ombudsman by this Act.

(2) The Legal Services Ombudsman has all powers that are necessary for the performance of the functions of the office.

10.—The Legal Services Ombudsman shall be independent in the performance of the functions of the office.

Independence of
Legal Services
Ombudsman.

11.—(1) Subject to *subsection (2)*, the Legal Services Ombudsman may, from time to time, appoint persons to be members of the Ombudsman’s staff.

Staff.

(2) The Legal Services Ombudsman may appoint a person under *subsection (1)* only with the consent of the Minister and the Minister for Finance having, prior to seeking that consent, consulted with the Bar Council and the Law Society in respect of any appointment under that subsection.

(3) Persons appointed under *subsection (1)* are to be employed on such terms and conditions relating to remuneration (including allowances for expenses and superannuation) or other matters as, after consulting with the Bar Council and the Law Society, the Legal Services Ombudsman determines with the consent of the Minister and the Minister for Finance.

(4) With the consent of the Minister, the Legal Services Ombudsman may, from time to time, engage the services of professional and other advisers or consultants.

(5) The Legal Services Ombudsman may authorise a person appointed under *subsection (1)* to perform any of the functions assigned to the Ombudsman by this Act, except those assigned by *sections 14, 15, 16, 17 and 28 and subsections (4), (6), (7) and (9) of section 32*.

(6) Where a person is authorised to perform such functions, references in this Act to the Legal Services Ombudsman, in so far as the references relate to such functions the subject of the authorisation, are to be read as references to the authorised person.

(7) An act or thing done by a person within the scope of the authority given by the Legal Services Ombudsman has the same force and effect as if done by the Ombudsman.

(8) A person appointed under *subsection (1)* is not a civil servant of the Government or a civil servant of the State.

12.—The Minister shall advance to the Legal Services Ombudsman out of monies provided by the Oireachtas such amount or amounts as the Minister may, with the consent of the Minister for Finance, determine for the purposes of expenditure by the Ombudsman in the performance of his or her functions.

Advances by
Minister to Legal
Services
Ombudsman.

13.—(1) The Legal Services Ombudsman shall in respect of each financial year keep in such form as may be approved by the Minister,

Accounts and audit.

with the consent of the Minister for Finance, all proper and usual accounts of all monies received or expended by the Ombudsman in performing functions under this Act, including an income and expenditure account and a balance sheet and, in particular, shall keep all such special accounts as the Minister may from time to time direct.

(2) Not later than 3 months after the end of the financial year to which the accounts relate, the Legal Services Ombudsman shall submit the accounts kept under this section to the Comptroller and Auditor General for audit.

(3) Immediately following the audit, the Legal Services Ombudsman shall present to the Minister—

- (a) copies of the audited accounts, including the income and expenditure account, the balance sheet and such other (if any) accounts kept under this section as the Minister, after consulting with the Minister for Finance, may direct, and
- (b) the Comptroller and Auditor General's report on the audited accounts.

(4) As soon as practicable after receipt of the audited accounts and the Comptroller and Auditor General's report, the Minister shall cause copies of them—

- (a) to be laid before each House of the Oireachtas, and
- (b) to be sent to the Bar Council and the Law Society.

14.—(1) Not later than 4 months after the end of each financial year, the Legal Services Ombudsman shall make a written report to the Minister on the performance of the functions of the office during that year.

Various reports by
Legal Services
Ombudsman.

(2) The annual report submitted under *subsection (1)* shall be in such form and regarding such matters as the Legal Services Ombudsman thinks fit or the Minister may direct.

(3) The Legal Services Ombudsman shall, within 2 years from the date of being appointed, submit to the Minister a report on—

- (a) the effectiveness of the office of Legal Services Ombudsman,
and
- (b) the adequacy of the functions of the office.

(4) The report submitted under *subsection (3)* may contain recommendations for improving the effectiveness of the office of Legal Services Ombudsman.

(5) The Legal Services Ombudsman may make any other reports that he

or she considers appropriate for drawing to the Minister's attention matters that have come to the Ombudsman's notice and that, in his or her opinion, should, because of their gravity or other exceptional circumstances, be the subject of a special report to the Minister and shall make a report on any other matter if so requested by the Minister.

(6) Not later than 2 months after receiving a report under this section, the Minister shall cause a copy of the report to be laid before each House of the Oireachtas.

(7) Following compliance with *subsection (6)*, the Legal Services Ombudsman shall arrange for the publication of the report concerned and for it to be sent to the Bar Council and the Law Society.

15.—(1) Not later than 4 months after the end of each financial year, the Legal Services Ombudsman shall prepare and submit to the Minister a report—

Annual report on admission policies of legal professions.

(a) specifying the number of persons admitted to practise as barristers and solicitors respectively during that year, and

(b) containing an assessment as to whether, having regard to the demand for the services of practising barristers and solicitors and the need to ensure an adequate standard of education and training for persons admitted to practice, the number of persons admitted to practise as barristers and solicitors in that year is consistent with the public interest in ensuring the availability of such services at a reasonable cost.

(2) The Legal Services Ombudsman shall consult such persons or bodies as the Ombudsman considers appropriate for the purpose of preparing the report referred to in *subsection (1)*.

(3) The Bar Council, the Honorable Society of King's Inns and the Law Society shall provide the Legal Services Ombudsman with such information in their possession as is required by him or her for the purpose of preparing the report referred to in *subsection (1)*.

(4) As soon as practicable after receiving a report under this section, the Minister shall cause a copy of the report to be laid before each House of the Oireachtas.

(5) Following compliance with *subsection (4)*, the Legal Services Ombudsman shall arrange for the publication of the report and for it to be sent to the Bar Council and the Law Society.

16.—(1) The Legal Services Ombudsman shall, whenever required to do so by the Committee of Dáil Éireann established under the Standing Orders of Dáil Éireann to examine and report to Dáil Éireann on the appropriation accounts and reports of the Comptroller and Auditor General, give evidence to that Committee on—

Appearance before Committee of Dáil Éireann established to examine, etc., appropriation accounts, etc.

- (a) the regularity and propriety of the transactions recorded, or required to be recorded, in any book or other record of account subject to audit by the Comptroller and Auditor General that the Ombudsman is required by this Act to prepare,
- (b) the economy and efficiency of the Ombudsman in the use of resources,
- (c) the systems, procedures and practices employed by the Ombudsman for the purpose of evaluating the effectiveness of the operation of the office of the Ombudsman, and
- (d) any matter affecting the Ombudsman referred to in—
 - (i) a special report of the Comptroller and Auditor General under section 11(2) of the Comptroller and Auditor General (Amendment) Act 1993, or
 - (ii) any other report of the Comptroller and Auditor General that is laid before Dáil Éireann in so far as the report relates to a matter specified in any of *paragraphs (a) to (c)*.

(2) The Legal Services Ombudsman when giving evidence under this section shall not question or express an opinion on the merits of any policy of the Government or on the merits of the objectives of such policy.

17.—(1) The Legal Services Ombudsman shall attend a meeting of an Oireachtas Committee whenever asked to do so by the Committee and shall provide the Committee with such information (including documents) as it specifies and as is in the possession of, or is available to, the Ombudsman.

Appearance before other committees of Houses of Oireachtas.

(2) The Legal Services Ombudsman is not required to give an account before an Oireachtas Committee of any matter—

- (a) relating solely to an individual complaint, or
- (b) that is, or is likely to be, the subject of proceedings before a court or tribunal in the State.

(3) The Legal Services Ombudsman shall, if of the opinion that *subsection (2)* applies to a matter about which he or she is requested to give an account before an Oireachtas Committee, inform the Committee of that opinion and the reasons for the opinion.

(4) The information required under *subsection (3)* to be given to the Oireachtas Committee shall be given in writing unless it is given when the Legal Services Ombudsman is before the Committee.

(5) If, on being informed of the Legal Services Ombudsman's opinion about a matter, the Oireachtas Committee decides not to withdraw its request, the High Court may, on application under *subsection (6)*, determine whether *subsection (2)* applies to the matter.

(6) An application for a determination under *subsection (5)* may be made in a summary manner to the High Court by—

(a) the Legal Services Ombudsman not later than 21 days after being informed by the Oireachtas Committee of its decision not to withdraw its request, or

(b) the chairperson of the Oireachtas Committee acting on its behalf.

(7) Pending the determination of an application under *subsection (6)*, the Legal Services Ombudsman shall not attend before the Oireachtas Committee to give an account of the matter to which the application relates.

(8) If the High Court determines that *subsection (2)* applies to the matter, the Oireachtas Committee shall withdraw its request relating to the matter, but if the High Court determines that *subsection (2)* does not apply, the Legal Services Ombudsman shall attend before the Committee to give an account of the matter.

(9) In this section, "Oireachtas Committee" means—

(a) a committee appointed by either House of the Oireachtas or jointly by both Houses of the Oireachtas (other than the Committee referred to in *section 16(1)*, the Committee on Members' Interests of Dáil Éireann or the Committee on Members' Interests of Seanad Éireann), or

(b) a subcommittee of a committee as defined in *paragraph(a)*.

18.—The following are absolutely privileged for the purposes of the law of defamation:

Privilege in respect of certain matters.

(a) the publication of any matter in a report by the Legal Services Ombudsman laid before either House of the Oireachtas for the purposes of this Act;

(b) the publication by the Legal Services Ombudsman—

(i) to a person mentioned in *subsection (5)* or *(6)* of *section 22* of a notification sent to such person under either subsection,

(ii) to a person mentioned in *section 29* of a statement sent to such person under that section,

(iii) to a person mentioned in *subsection (4) of section 32* of a recommendation given to such person under that subsection, or

(iv) to a person mentioned in *subsection (6) of section 32* of a direction given to such person under that subsection.

PART 3

IMPOSITION OF LEVY ON PROFESSIONAL BODIES TO COVER APPROVED EXPENSES OF LEGAL SERVICES OMBUDSMAN

19.—(1) The Bar Council and the Law Society shall pay to the Minister, in each financial year beginning on 1 January, a levy in the amount determined in accordance with this section.

Levy to be paid by Bar Council and Law Society.

(2) The Minister may, with the consent of the Minister for Finance, determine for the purposes of this section the amount of the operating costs and administrative expenses of the Legal Services Ombudsman that are properly incurred under this Act (in this section referred to as “approved expenses”).

(3) Approved expenses shall include—

- (a) the remuneration (including allowances for expenses, benefits in kind and superannuation benefits) of the Legal Services Ombudsman,
- (b) the remuneration (including allowances for expenses and superannuation benefits) of the members of the Ombudsman’s staff,
- (c) any superannuation contributions paid in respect of the Ombudsman or members of the Ombudsman’s staff out of moneys provided by the Oireachtas,
- (d) fees due to advisers and consultants engaged under *section 11(4)*, and
- (e) the cost of office premises.

(4) The amount of the levy payable in each financial year shall be the amount expended by the Legal Services Ombudsman in the preceding financial year in respect of approved expenses, and the liability for payment of that amount shall be as follows:

- (a) 10 per cent of that amount shall be paid by the Bar Council;
- (b) 10 per cent of that amount shall be paid by the Law Society; and

(c) subject to *section 20(2)*, the remaining 80 per cent of that amount shall be paid *pro rata* by the Bar Council and the Law Society according to the number of complaints made in relation to barristers in the preceding financial year and the number of complaints made in relation to solicitors in the preceding financial year.

(5) As soon as practicable after the beginning of each financial year, the Minister shall provide the Bar Council and the Law Society with a notice (in this Act referred to as a “levy assessment notice”) specifying—

(a) the amount of money expended by the Legal Services Ombudsman in the preceding financial year in respect of approved expenses,

(b) subject to *section 20(2)*, the number (determined in accordance with regulations (if any) under *section 20*) of complaints made in relation to barristers in the preceding financial year and the number of complaints made in relation to solicitors in the preceding financial year,

(c) the amount of levy payable by the professional body concerned, and

(d) the date (determined in accordance with regulations under *section 20*) on which the levy becomes payable.

(6) If all or part of the amount specified in a levy assessment notice is not paid on or before the date specified in that notice, interest on the unpaid amount accrues, from that date to the date of payment, calculated at the rate provided for in regulations under *section 20*.

(7) Subject to *subsection (8)*, the Minister may recover, as a simple contract debt in any court of competent jurisdiction, from the professional body concerned, any amount due and owing by it in respect of the levy imposed by this section.

(8) For the purposes of *subsection (7)*, where the professional body concerned is the Bar Council, proceedings may be brought against the Chairman of the Bar Council, in a representative capacity, on behalf of the Bar Council, and if in those proceedings the Minister obtains a judgement, order or decree for any amount due and owing by the Bar Council, any assets held by or on behalf of or for the benefit of the Bar Council may be used or otherwise applied towards satisfying all or any of the claims under the judgement, order or decree, as the case may be.

(9) In this section, “superannuation benefits” means pensions, gratuities and other allowances payable on resignation, retirement or death.

20.—(1) The Minister may, by regulations, provide for all or any of the following matters relating to the levy under *section 19*:

Regulations relating to levy.

- (a) subject to *subsection (2)*, the manner in which the number of complaints made in relation to barristers and the number of complaints made in relation to solicitors is to be determined for the purposes of that section;
- (b) the date on which payment of the levy becomes due;
- (c) the keeping by the Legal Services Ombudsman of specified records in respect of matters connected with the liability to pay the levy;
- (d) the review by the Minister of a levy assessment notice that is claimed by the professional body concerned to be erroneous;
- (e) the time within which a request for such review shall be made and the conditions to be satisfied by the professional body concerned before such a request can be acceded to;
- (f) the manner in which the amount of any overpayment or underpayment made by the professional body concerned in respect of the levy may be set off against or added to any subsequent liability of that body to the Minister in respect of the levy;
- (g) the collection and recovery of the levy;
- (h) the rate of interest on amounts not paid when due;
- (i) such other matters as are necessary for, or incidental to, the imposition, payment and collection of the levy.

(2) The determination for the purposes of *section 19* of the number of complaints made in relation to barristers and the number of complaints made in relation to solicitors shall exclude any complaint which the Legal Services Ombudsman has decided under *section 22(4)* either not to investigate or to discontinue an investigation thereof.

(3) Every regulation under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

PART 4

COMPLAINTS AND REVIEWS

21.—(1) Subject to *subsection (8)*, a person who has made a complaint of misconduct to the Bar Council under the Disciplinary Code in relation to a barrister may, within the period specified in *subsection (6)*, complain

Making of
complaints.

to the Legal Services Ombudsman concerning the handling of the complaint by the Barristers' Professional Conduct Tribunal or, in the case of an appeal against a decision of the Tribunal in respect of the complaint, the Professional Conduct Appeals Board.

(2) Subject to *subsection (8)*, a person who has—

(a) made a complaint to the Law Society under section 8 (as amended by section 39 of the Civil Law (Miscellaneous Provisions) Act 2008) or 9 of the Solicitors (Amendment) Act 1994 in relation to a solicitor, or

(b) made a complaint of misconduct in relation to a solicitor,

may, within the period specified in *subsection (6)*, complain to the Legal Services Ombudsman about the handling of the complaint by the Law Society.

(3) A person who is dissatisfied with a decision of the Law Society relating to—

(a) the refusal to make a grant to that person,

(b) the amount of a grant made to that person, or

(c) the method of payment of a grant made to that person,

may, within the period specified in *subsection (6)*, complain to the Legal Services Ombudsman concerning that decision.

(4) Subject to *subsection (5)*, a complaint to the Legal Services Ombudsman shall be in writing in such form as may be approved by the Ombudsman.

(5) The Legal Services Ombudsman may receive a complaint made orally if he or she considers it appropriate to do so, but any such complaint shall be recorded in writing by the Ombudsman as soon as practicable after its receipt.

(6) For the purposes of this section, the period within which a complaint shall be made to the Legal Services Ombudsman is—

(a) in the case of—

(i) a complaint under *subsection (1)*, the period of 6 months beginning on the date of the determination by the Barristers' Professional Conduct Tribunal of the related complaint or, in the case of an appeal against a decision of the Tribunal in respect of the related complaint, the period of 6 months beginning on the date of the determination of that appeal by the Professional Conduct Appeals Board, or

- (ii) a complaint under *subsection (2)*, the period of 6 months beginning on the date of the determination by the Law Society of the related complaint,

or

- (b) in case of a complaint under *subsection (3)*, the period of 6 months beginning on the date of the determination by the Law Society of the application for the grant to which the complaint relates,

but the Ombudsman may accept a complaint made after the expiry of the period referred to in *paragraph (a)* or *(b)*, as the case may be, if it appears to the Ombudsman that special circumstances exist that make it proper to do so and, where he or she does so, the complaint is deemed to have been made to the Ombudsman within the period referred to in that paragraph.

(7) A person may make a complaint even if—

(a) in the case of—

- (i) a complaint under *subsection (1)*, the related complaint was determined by the Barristers' Professional Conduct Tribunal or, in the case of an appeal against a decision of the Tribunal in respect of the related complaint, the appeal was determined by the Professional Conduct Appeals Board, before the commencement of this section, or
- (ii) a complaint under *subsection (2)*, the related complaint was determined by the Law Society before the commencement of this section,

or

- (b) in the case of a complaint under *subsection (3)*, the application for the grant to which the complaint relates was determined by the Law Society before the commencement of this section,

provided that the determination concerned was made not more than 6 months before that commencement.

(8) Subject to *section 22*, a person shall not make a complaint under *subsection (1)* or *(2)* if—

- (a) the related complaint has been or is in the course of being determined by a court,
- (b) the related complaint—
 - (i) has yet to be investigated or determined, or
 - (ii) is still in the course of being investigated or determined,

by the Barristers' Professional Conduct Tribunal or the Law Society,

- (c) the related complaint has been or is the subject of an application for an inquiry by the Solicitors Disciplinary Tribunal,
 - (d) the related complaint concerns the alleged charging of excessive fees by a solicitor and the bill of costs in issue has been taxed or submitted to a Taxing Master of the High Court for taxation on a solicitor and own client basis,
 - (e) in the case of an appeal against a decision of the Barristers' Professional Conduct Tribunal in respect of the related complaint, the appeal has yet to be determined by the Professional Conduct Appeals Board,
 - (f) the related complaint was made in relation to a barrister by another barrister or a judge of a court established in the State, or
 - (g) the person was not entitled to make the related complaint.
- (9) A person shall not make a complaint under *subsection (3)* if—
- (a) the application for the grant to which the complaint relates is in the course of being determined by the Law Society, or
 - (b) the person was not entitled to make an application to the Law Society for a grant.
- (10) A complaint to the Legal Services Ombudsman may be made by any person on behalf of another person.
- (11) As soon as practicable after receiving a complaint under this section, the Legal Services Ombudsman shall provide the professional body concerned with a copy of the complaint.

22.—(1) Subject to *subsection (4)*, the Legal Services Ombudsman shall investigate a complaint made to the Ombudsman in accordance with this Act. Investigations of complaints.

(2) Notwithstanding *subsections (1) to (3)*, and *paragraph (b) or (e) of subsection (8)*, of *section 21*, the Legal Services Ombudsman may investigate a complaint that—

- (a) the Barristers' Professional Conduct Tribunal has failed to commence within a reasonable time an investigation of the related complaint under the Disciplinary Code,
- (b) the Barristers' Professional Conduct Tribunal has failed to complete within a reasonable time an investigation of the related complaint under the Disciplinary Code,

- (c) the Barristers' Professional Conduct Tribunal has not adequately investigated the related complaint under the Disciplinary Code,
 - (d) in the case of an appeal against a decision of the Barristers' Professional Conduct Tribunal in respect of a related complaint, the Professional Conduct Appeals Board—
 - (i) has failed to commence within a reasonable time the hearing of the appeal, or
 - (ii) has failed to complete within a reasonable time the hearing of the appeal,
 - (e) the Law Society has failed to commence within a reasonable time an investigation of the related complaint under section 8 (as amended by section 39 of the Civil Law (Miscellaneous Provisions) Act 2008) or 9 of the Solicitors (Amendment) Act 1994,
 - (f) the Law Society has failed to commence within a reasonable time an investigation of the related complaint of misconduct,
 - (g) the Law Society has failed to complete within a reasonable time an investigation of the related complaint under section 8 (as amended by section 39 of the Civil Law (Miscellaneous Provisions) Act 2008) or 9 of the Solicitors (Amendment) Act 1994,
 - (h) the Law Society has failed to complete within a reasonable time an investigation of the related complaint of misconduct,
 - (i) the Law Society has not adequately investigated the related complaint under section 8 (as amended by section 39 of the Civil Law (Miscellaneous Provisions) Act 2008) or 9 of the Solicitors (Amendment) Act 1994, or
 - (j) the Law Society has not adequately investigated the related complaint of misconduct.
- (3) The Legal Services Ombudsman may investigate a complaint even though the person making the complaint may be entitled to bring proceedings in any court with respect to the matter complained of.
- (4) The Legal Services Ombudsman may decide not to investigate a complaint, or to discontinue an investigation of a complaint, if he or she is satisfied that—
- (a) the complaint is frivolous or vexatious,
 - (b) the person making the complaint, or on whose behalf the complaint is made, has an insufficient interest in the matter, or

- (c) the person making the complaint, or on whose behalf the complaint is made, has not taken reasonable steps to seek redress in respect of the subject matter of the complaint or, if he or she has, has not been refused redress.

(5) On deciding under *subsection (4)* not to investigate a complaint or to discontinue an investigation of a complaint, the Legal Services Ombudsman shall notify in writing the following persons of the decision and the reason for the decision:

- (a) the complainant;
- (b) the professional body concerned;
- (c) in the case of a complaint under *subsection (1)* or *(2)* of *section 21*, the barrister or solicitor in relation to whom the related complaint was made.

(6) The Legal Services Ombudsman may also notify in writing such other person as he or she considers appropriate of his or her decision under *subsection (4)* and the reason for it.

23.—(1) Subject to this Act, the Legal Services Ombudsman may seek the resolution of complaints in such manner (including by any informal means) as the Ombudsman considers appropriate and reasonable.

Procedures for dealing with complaints to Legal Services Ombudsman.

(2) The Legal Services Ombudsman may establish procedures to be followed in relation to the receipt and investigation of complaints by the Ombudsman and shall publish those procedures, in such manner as he or she considers appropriate, to members of the public and members of the professions of barrister and solicitor.

24.—When investigating a complaint, the Legal Services Ombudsman shall provide—

Opportunity to make submissions.

- (a) the complainant,
- (b) the professional body concerned, and
- (c) in the case of a complaint under *subsection (1)* or *(2)* of *section 21*, the barrister or solicitor in relation to whom the related complaint was made,

with an opportunity to make submissions relating to the complaint.

25.—The Legal Services Ombudsman shall conduct investigations under this Act otherwise than in public.

Investigations to be conducted in private.

26.—(1) For the purpose of investigating a complaint, the Legal Services Ombudsman may— Power to require provision of information.

- (a) require any person who, in the Ombudsman’s opinion, is in possession of information, or has a document or thing in the person’s possession or control, that is relevant to the investigation to provide the Ombudsman with that information, document or thing, and
- (b) where appropriate, require the person to attend before the Ombudsman for that purpose,

and the person shall comply with such a requirement.

(2) The Legal Services Ombudsman may not require a barrister or solicitor to provide any information, document or thing that is held in the possession or control of the barrister or solicitor on behalf of a client, unless that client has, in writing, authorised its release.

(3) A person to whom a requirement is addressed under *subsection (1)* is entitled to the same immunities and privileges as if the person were a witness before the High Court.

(4) A person to whom a requirement is addressed under *subsection (1)* may, within a period of 21 days after being notified of the requirement, apply to the High Court for an order to revoke or vary the requirement.

(5) On an application under *subsection (4)*, the High Court may revoke or vary the requirement in respect of which the application is made if satisfied that the information, document or thing is not reasonably required for the purpose of the investigation or determination of the complaint and, in addition, the Court may make such order as it sees fit in relation to the application.

(6) If it appears to the Legal Services Ombudsman that a person has failed to comply with a requirement made under *subsection (1)*, the High Court may, on application in that behalf made by the Ombudsman, make an order requiring that person to comply with that requirement.

27.—(1) A person shall not by act or omission obstruct or hinder the Legal Services Ombudsman in the performance of his or her functions under this Act. Obstruction of Legal Services Ombudsman.

(2) A person who contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a fine not exceeding €2,000.

(3) Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act 1851, summary proceedings in respect of a matter relating to an offence under this section reported to the Director of Public Prosecutions may be instituted within 12 months of the offence.

28.—(1) On completing an investigation of a complaint under *section 21(1)*, the Legal Services Ombudsman may, by a statement in writing—

Power to issue directions or make recommendations following investigation.

(a) if satisfied that the Barristers' Professional Conduct Tribunal—

(i) has failed to commence within a reasonable time an investigation of the related complaint under the Disciplinary Code,

(ii) has failed to complete within a reasonable time an investigation of the related complaint under the Disciplinary Code,

(iii) has not adequately investigated the related complaint,

direct the Tribunal to—

(I) if *subparagraph (i)* is applicable, commence, under the Disciplinary Code, an investigation of the related complaint,

(II) if *subparagraph (ii)* is applicable, complete, within a reasonable time from being given that direction, an investigation of the related complaint under the Disciplinary Code,

(III) if *subparagraph (iii)* is applicable, re-investigate, in accordance with the Disciplinary Code, the related complaint,

(b) in the case of an appeal against a decision of the Barristers' Professional Conduct Tribunal in respect of a relevant complaint, if satisfied that the Professional Conduct Appeals Board—

(i) has failed to commence within a reasonable time the hearing of the appeal, or

(ii) has failed to complete within a reasonable time the hearing of the appeal,

direct the Board to—

(I) if *subparagraph (i)* is applicable, commence, under the Disciplinary Code, the hearing of the appeal,

(II) if *subparagraph (ii)* is applicable, complete, within a reasonable time from being given that direction, the hearing of the appeal,

or

(c) recommend to the Bar Council that it take any other action, which the Ombudsman may specify, in relation to the barrister concerned under the Disciplinary Code.

(2) On completing an investigation of a complaint under *section 21(2)*, the Legal Services Ombudsman may, by a statement in writing—

(a) if satisfied that the Law Society—

- (i) has failed to commence within a reasonable time an investigation of the related complaint under section 8 (as amended by section 39 of the Civil Law (Miscellaneous Provisions) Act 2008) or 9 of the Solicitors (Amendment) Act 1994,
- (ii) has failed to commence within a reasonable time an investigation of the related complaint of misconduct,
- (iii) has failed to complete within a reasonable time an investigation of the related complaint under section 8 (as amended by section 39 of the Civil Law (Miscellaneous Provisions) Act 2008) or 9 of the Solicitors (Amendment) Act 1994,
- (iv) has failed to complete within a reasonable time an investigation of the related complaint of misconduct,
- (v) has not adequately investigated the related complaint under section 8 (as amended by section 39 of the Civil Law (Miscellaneous Provisions) Act 2008) or 9 of the Solicitors (Amendment) Act 1994,
- (vi) has not adequately investigated the related complaint of misconduct,

direct the Law Society to—

- (I) if *subparagraph (i)* or *(ii)* is applicable, commence an investigation of the related complaint,
- (II) if *subparagraph (iii)* or *(iv)* is applicable, complete, within a reasonable time from being given the direction, an investigation of the related complaint,
- (III) if *subparagraph (v)* or *(vi)* is applicable, re-investigate the related complaint,

or

(b) direct the Law Society to make application to the Solicitors Disciplinary Tribunal for an inquiry into the conduct of the solicitor concerned on the ground of alleged misconduct under section 7 (inserted by section 17 of the Solicitors

(Amendment) Act 1994) of the Solicitors (Amendment) Act 1960, or

(c) recommend to the Law Society that it take any other action, which the Ombudsman may specify, in relation to the solicitor concerned pursuant to the Law Society's powers under the Solicitors Acts 1954 to 2008.

(3) On completing an investigation of a complaint under *section 21(3)* concerning a decision of the Law Society, the Legal Services Ombudsman may, by a statement in writing—

(a) if the decision by the Law Society relates to a refusal to make a grant out of the Compensation Fund, recommend to the Law Society that it exercise such discretion as it has under *section 21* (inserted by *section 29* of the Solicitors (Amendment) Act 1994) of the Solicitors (Amendment) Act 1960 to make a grant to the complainant,

(b) if the decision by the Law Society relates to the amount of a grant made to the complainant, recommend to the Law Society that, subject to the said *section 21*, the amount of the grant be increased, or

(c) if the decision by the Law Society relates to the method of payment of a grant made to the complainant, make such recommendation to the Law Society as the Ombudsman considers appropriate.

(4) The Law Society shall have all such powers as are necessary to implement a recommendation under *subsection (3)*.

(5) The Legal Services Ombudsman may request the professional body concerned to make observations or specify measures to be taken, within a period specified by the Ombudsman, in relation to a direction given or recommendation made under this section.

(6) Where it appears to the Legal Services Ombudsman that measures taken or proposed to be taken in relation to a direction given or a recommendation made under this section are not satisfactory, the Ombudsman may cause a special report on the case to be included in a report under *section 14*.

29.—Where the Legal Services Ombudsman investigates a complaint, he or she shall send a written statement of the results of the investigation, any direction given or recommendation made under *section 28*, and any observations made and measures to be taken under that section, to—

Duty to notify complainant and others of results, directions and recommendations.

(a) the complainant,

(b) the professional body concerned, and

(c) in the case of a complaint under *subsection (1) or (2) of section 21*, the barrister or solicitor in relation to whom the related complaint was made.

30.—If the Barristers’ Professional Conduct Tribunal does not comply with a direction given to it under *section 28(1)(a)*, the Professional Conduct Appeals Board does not comply with a direction given to it under *section 28(1)(b)*, or the Law Society does not comply with a direction given to it under *paragraph (a) or (b) of section 28(2)*, by the Legal Services Ombudsman, the High Court may, on application in that behalf by the Ombudsman—

Enforcement of directions of Legal Services Ombudsman.

(a) order the Tribunal, the Board or the Law Society, as the case may be, to comply with the direction, and

(b) make such other order, if any, as it considers necessary and just to enable the direction to have full effect.

31.—(1) When investigating a complaint, the Legal Services Ombudsman may, on his or her own initiative or at the request of the complainant or the professional body concerned, refer for the determination of the High Court a question of law arising in relation to the investigation of the complaint.

Legal Services Ombudsman may refer question of law to High Court.

(2) The High Court may hear and determine any question of law referred to it under this section.

(3) If a question of law has been referred to the High Court under this section, the Legal Services Ombudsman shall not—

(a) make a finding to which the question is relevant while the reference is pending, or

(b) proceed in a manner, or make a decision, that is inconsistent with the determination of the High Court on the question.

32.—(1) The Legal Services Ombudsman shall, with a view to making recommendations under *subsection (4)*, keep under review the procedures of the Bar Council and of the Law Society for receiving and investigating complaints in relation to barristers and solicitors respectively.

Review of procedures of Bar Council and Law Society for dealing with complaints.

(2) In carrying out a review under this section, the Legal Services Ombudsman shall examine—

(a) the procedures concerned,

(b) the compliance of barristers and solicitors with the procedures concerned,

(c) such complaints made to the professional body concerned as he

or she considers appropriate,

- (d) the effectiveness of the procedures concerned and the length of time taken to complete investigations and make determinations,
- (e) complaints relating to such matters as the Ombudsman considers appropriate, and
- (f) statistical information provided by the professional body concerned including statistical information relating to multiple complaints in relation to the same barristers or solicitors, as the case may be.

(3) For the purpose of a review under this section, the Legal Services Ombudsman shall consult with such persons or bodies, including those whose purpose or objective is to protect the rights and interests of consumers, as he or she considers appropriate.

(4) The Legal Services Ombudsman may make such written recommendations to the professional body concerned as the Ombudsman considers appropriate arising from the review under this section for the purpose of improving—

- (a) the procedures of the professional body concerned relating to the receipt or investigation of complaints,
- (b) procedures to deal effectively with persistent patterns of complaints,
- (c) procedures to deal effectively with any delays by the professional body concerned in investigating and determining complaints, or
- (d) procedures to ensure the co-operation of barristers or solicitors, as the case may be, with the procedures of the professional body concerned.

(5) Not later than 30 days after receiving a recommendation made under *subsection (4)*, the professional body concerned shall—

- (a) inform the Legal Services Ombudsman of the action it proposes to take to implement that recommendation, or
- (b) if it objects to the recommendation, inform the Legal Services Ombudsman of the reasons for such objection and any other observations it may have on the recommendation.

(6) If not satisfied with the response received from the professional body concerned under *subsection (5)*, the Legal Services Ombudsman may direct it to implement the recommendation made under *subsection (4)* or such amended recommendation as the Ombudsman may make having regard to such response.

(7) Following a complaint or on his or her own initiative, the Legal Services Ombudsman may, if he or she considers it appropriate, direct the professional body concerned to establish procedures in relation to the receipt or investigation of complaints of a particular class or classes.

(8) On application by the chairman of the Bar Council or by the Law Society, the High Court may, if it considers it appropriate, revoke or vary a direction given by the Legal Services Ombudsman under *subsection (7)* where it considers that the direction is oppressive, unreasonable or unnecessary or it may confirm the direction.

(9) The Legal Services Ombudsman shall include a report on the performance of his or her functions under this section in the annual report submitted to the Minister under *section 14*.

33.—(1) The Bar Council and the Law Society shall keep full and complete records of all investigations of, and of all proceedings at meetings relating to—

Duties of Bar Council and Law Society to keep and produce records.

(a) in the case of the Bar Council, complaints of misconduct made to it under the Disciplinary Code in relation to barristers, and

(b) in the case of the Law Society—

(i) complaints made to it under section 8 (as amended by section 39 of the Civil Law (Miscellaneous Provisions) Act 2008) or 9 of the Solicitors (Amendment) Act 1994 in relation to solicitors, and

(ii) complaints of misconduct made to it in relation to solicitors.

(2) If requested by the Legal Services Ombudsman for the purpose of an investigation or a review of procedures under this Act, the professional body concerned shall provide the Ombudsman with copies of any records so requested within the period specified in the request.

(3) *Subsection (2)* shall not operate to limit in any way the Legal Service Ombudsman's powers under *section 26*.

34.—Legal proceedings shall not be brought against the Legal Services Ombudsman without the leave of the High Court and without giving at least 14 days' notice of the application for such leave to the Ombudsman.

Legal proceedings against Legal Services Ombudsman.

35.—(1) The Legal Services Ombudsman or a member of staff of the Legal Services Ombudsman shall not, except in accordance with law, disclose any information, document, part of a document or thing obtained by him or her in the course, or for the purpose, of an investigation or a review of procedures under this Act except for the purposes of—

Confidentiality of information.

- (a) the investigation concerned,
- (b) the making, in accordance with this Act, of any statement, report or notification on that investigation or review, or
- (c) the making of a recommendation or the giving of a direction under this Act arising out of the investigation or review concerned.

(2) The Legal Services Ombudsman or a member of staff of the Legal Services Ombudsman shall not, except in accordance with law, be called on to give evidence in any proceedings of matters coming to his or her knowledge in the course of an investigation under this Act.

PART 5

CONSEQUENTIAL AMENDMENTS AND TRANSITIONAL PROVISIONS

36.—The Freedom of Information Act 1997 is amended—

Amendment of
Freedom of
Information Act

- (a) in section 2(1), in the definition of “head of a public body”, by inserting the following after paragraph (jjj) (inserted by section 23 of the Social Welfare (Miscellaneous Provisions) Act 2003):

“(jjjj) in relation to the Office of Legal Services Ombudsman, the Legal Services Ombudsman,”

- (b) in section 46(1)(c) (as amended by the Social Welfare (Miscellaneous Provisions) Act 2003)—

- (i) by deleting “or” at the end of subparagraph (iv),

- (ii) by substituting the following for subparagraph (v):

“(v) an examination or investigation carried out by the Pensions Ombudsman under the Pensions Act 1990, or

(vi) an investigation carried out by the Legal Services Ombudsman under the *Legal Services Ombudsman Act 2009*,”

and

- (iii) in clause (II), by substituting “the Office of the Pensions Ombudsman or the Office of the Legal Services

Ombudsman” for “or the office of the Pensions Ombudsman”,

and

(c) in paragraph (I)(2) of the First Schedule, by inserting “the Office of the Legal Services Ombudsman.”.

37.—Section 15 of the Solicitors (Amendment) Act 1994 is repealed.

Repeal of section 15 of the Solicitors (Amendment) Act 1994.

38.—(1) The Solicitors (Adjudicator) Regulations 1997 (S.I. No. 406 of 1997) and the Solicitors (Adjudicator) (Amendment) Regulations 2005 (S.I. No. 720 of 2005) are revoked.

Revocation of Solicitors (Adjudicator) Regulations 1997 and Solicitors (Adjudicator) (Amendment) Regulations 2005 and transitional provisions in relation thereto.

(2) Where an investigation of a complaint under the Regulations revoked under *subsection (1)*—

(a) has not been commenced, or

(b) has been commenced but has not been completed,

before the commencement of that subsection, the complaint shall, on and after the commencement of that subsection, be deemed to be a complaint made to the Legal Services Ombudsman, and the other provisions of this Act shall, with any necessary modifications, be construed accordingly.

(3) It shall be the duty of the Adjudicator to render such assistance as the Legal Services Ombudsman may reasonably require to enable the Ombudsman—

(a) to investigate a complaint under the Regulations revoked under *subsection (1)* which has not been commenced before the commencement of that subsection, or

(b) to complete the investigation of a complaint under those Regulations which has been commenced but has not been completed before the commencement of that subsection,

and such assistance may be or include the provision of records or documents, or copies thereof, relating to the complaint in the possession or control, or within the procurement, of the Adjudicator.

(4) In this section, “Adjudicator” means—

(a) before the commencement of *subsection (1)*, the Adjudicator within the meaning of Regulation 2(a) of the Solicitors (Adjudicator) Regulations 1997 (S.I. No. 406 of 1997),

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Legal Services Ombudsman Act 2009.

[2009.]

- (b) on and after that commencement, the person who was, immediately before that commencement, the Adjudicator referred to in *paragraph (a)*.

Addendum

ADDENDUM

INVESTMENT INTERMEDIARIES ACT, 1995.

[*Number 11 of 1995.*] (“Act of 1995”)

INVESTOR COMPENSATION ACT, 1998.

[*Number 37 of 1998.*] (“Act of 1998”)

These Acts have sections relating to solicitors which refer to provisions of the Solicitors Acts, 1954 to 2002. Specifically, sections 44, 45, 46 and 47 of the Act of 1998 relate to solicitors and are set out verbatim in Section A (below).

For ease of reference, the definitions of “authorised investment business firm”, “investment advice”, “investment business firm”, “investment business services”, “investment product intermediary”, and “restricted activity investment product intermediary”, as contained in the Act of 1995 and the Act of 1998, are set out verbatim in Section B; and subsections 2(7) & 2(8) of the Act of 1995, as amended by substitution by section 44 of the Act of 1998, is set out in Section A.

Note: A solicitor who may be considering engaging in the provision of investment business services in a manner that is not incidental to the provision of “legal services” (as now defined in section 45 (b) of the Act of 1998 and as set out verbatim in Section A) should have regard to the entirety of the Act of 1995 and the Act of 1998.

For further ease of reference, the Solicitors Acts, 1954 to 1994 (Investment Business & Investor Compensation) Regulations, 1998 (S.I. No. 439 of 1998) are set out verbatim in Section C.

Section A

(i) Subsections 2(7) & 2(8) of the Act of 1995:

.....

~~(7) Notwithstanding subsection (1) of this section, or any provision of Part VII of this Act, a solicitor in respect of whom a practising certificate (within the meaning of the Solicitors Acts, 1954 to 1994) is in force shall not be an investment business firm by virtue of the provision in an incidental manner of investment business services or investment advice.~~

Section 2(7)
amended by
substitution by
section 44 of the
Act of 1998. See
page 252 below.

(8) (a) Notwithstanding subsection (7) of this section, the Minister may prescribe that solicitors in respect of whom such practising certificates are in force shall be investment business firms for the purposes of this Act whenever they provide investment business services or investment advice.

Addendum

- (b) The Minister may make a regulation under *subsection (8) (a)* of this section only where he has formed the view that—
- (i) the regulatory regime enforced by the Law Society of Ireland in respect of practising solicitors providing investment business services or investment advice in an incidental manner does not provide sufficiently for the proper and orderly regulation and supervision of such solicitors and the protection of investors, or that the powers of the Law Society of Ireland under its rules or otherwise, or its practice in relation to the supervision of solicitors, are inadequate for this purpose, and
 - (ii) that it is in the interests of the proper and orderly regulation and supervision of investment business services and investment advice in general and the protection of investors, that such an order be made.
- (c) The Minister shall not make a regulation under this subsection unless he has first consulted the Law Society of Ireland, the Bank, the Minister for Justice and the Minister for Enterprise and Employment.
- (d) A regulation under this subsection may prescribe that upon the coming into operation of such a regulation, the Law Society of Ireland shall be an approved professional body for the purposes of this Act, whether on an interim basis for such period as the Minister may prescribe or otherwise.
- (e) For the purposes of forming a view, under this section, the Minister may appoint any person who the Minister believes is suitably qualified for the purpose to carry out such inquiries or make such inspections as the Minister may request in relation to the operations of the Law Society of Ireland, and the Law Society of Ireland shall co-operate with any such inspection or inquiries, and disclose such information as the person appointed may request.
- (f) Where the Law Society of Ireland refuses to co-operate with an inspection or inquiry or to disclose information requested under *paragraph (e)* of this subsection, the person appointed by the Minister may apply to the Court for an order and the Law Society of Ireland shall comply with any such order which the Court may make.
- (g) The Bank may be a person appointed by the Minister for the purposes of *paragraph (e)* of this subsection.

Addendum

(ii) Section 44 of the Act of 1998:

44.—Section 2 of the Act of 1995 is hereby amended by the substitution for subsection (7) of the following:

Amendment of
section 2(7) of the
Act of 1995.

"(7) Notwithstanding subsection (1) of this section, or any provision of Part VII of this Act, a solicitor in respect of whom a practising certificate (within the meaning of the Solicitors Acts, 1954 to 1994) is in force shall not be an investment business firm by virtue of the provision in a manner incidental to the provision of legal services of investment business services or investment advice, where—

- (a) he does not hold himself out as being an investment business firm, and
- (b) when acting as an investment product intermediary he does not hold an appointment in writing other than from—

- (i) an investment firm authorised in accordance with Directive 93/22/EEC of 10 May 1993ⁱ by a competent authority of another Member State, or an authorised investment business firm (not being a restricted activity investment product intermediary or a certified person), or a member firm within the meaning of the Stock Exchange Act, 1995, or

- (ii) a credit institution authorised in accordance with Directives 77/780/EEC of 12 December, 1977ⁱⁱ and 89/646/EEC of 15 December, 1989ⁱⁱⁱ, or

- (iii) a manager of a collective investment undertaking authorised to market units in collective investments to the public,

which is situate in the State or the relevant branch of which is situate in the State."

- i. J. No. L 141, 11.06.1993.
- ii. O.J. No. L 322, 17.12.1977.
- iii. O.J. No. L 386, 30.12.1989.

Addendum

(iii) Section 45 of the Act of 1998:

45.—Section 2 of the [Solicitors (Amendment) Act, 1994] is hereby amended by—

Amendment of section 2 of the Solicitors (Amendment) Act, 1994

(a) the insertion of the following definitions:

"authorised investment business firm' has the meaning assigned to it in *section 2* of the Investor Compensation Act, 1998;"

"investment business services' has the meaning assigned to it in *section 2* of the Investor Compensation Act, 1998;", and

(b) the substitution of the following definition for the definition of legal services:

"legal services' means services of a legal or financial nature provided by a solicitor arising from that solicitor's practice as a solicitor, and includes any part of such services; and, for the avoidance of doubt, includes any investment business services provided by a solicitor who is not an authorised investment business firm;"

(iv) Section 46 of the Act of 1998:

46.—The [Solicitors (Amendment) Act, 1994] is hereby amended by the insertion of the following section after section 30:

Insertion of new section in Solicitors (Amendment) Act, 1994

"30A.—(1) Where it appears to the Society, after consultation with the Minister, that it is necessary to do so for the purpose of ensuring the fair and reasonable implementation in the public interest of the provisions of section 26 of the Act of 1994 and the provisions of section 21 and 22 (as substituted by the Act of 1994) of the Act of 1960 (or regulations made by the Society relating thereto), the Society may make regulations, with the consent of the Minister, providing that a solicitor who—

(a) is an authorised investment business firm, or

(b) is, or who holds himself out as being, an insurance intermediary,

shall, as a condition of being issued with a practising certificate, effect and maintain, in respect of—

(i) the provision of investment business services as an authorised investment business firm, or

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(ii) activities as an insurance intermediary,

such form or forms of indemnity against losses suffered by a client in consequence of the default, howsoever arising, of the solicitor or any employee, agent or independent contractor of the solicitor as shall be equivalent to the indemnity that would be provided to a client of a solicitor in the provision of legal services by means of the Compensation Fund or by means of the indemnity cover maintained pursuant to section 26 of this Act (or regulations made by the Society relating thereto).

(2) The Society shall not amend regulations made pursuant to subsection (1) of this section without the consent of the Minister.

(3) The Minister may—

(a) direct the Society to make regulations under subsection (1) of this section or to amend regulations made under subsection (1) or (2) of this section;

(b) by regulations vary upwards the maximum amount of indemnity against losses specified in regulations made by the Society pursuant to subsection (1) or (2) of this section having regard to changes in the value of money generally in the State since the said maximum amount was first specified.

(4) In this section, 'insurance intermediary' has the meaning assigned to it in section 2 of the *Investor Compensation Act, 1998*."

(v) Section 47 of the Act of 1998:

47.—(1) (a) A solicitor in respect of whom a practising certificate (within the meaning of the Solicitors Acts, 1954 to 1994) is in force shall be an investment business firm—

Provisions relating to solicitors.

(i) where the solicitor provides investment business services or investment advice in a manner which is not incidental to the provision of legal services, or

(ii) where the solicitor holds himself or herself out as being an investment business firm, or

(iii) where, when acting as an investment product intermediary in a manner incidental to the provision of legal services, the solicitor holds an appointment in writing other than from—

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- (I) an investment firm authorised in accordance with the Investment Services Directive by a competent authority of another Member State, or an authorised investment business firm (not being a restricted activity investment product intermediary or a certified person), or a member firm within the meaning of the Stock Exchange Act, 1995, or
- (II) a credit institution authorised in accordance with Directives 77/780/EEC of 12 December, 1977, and 89/646/EEC of 15 December, 1989, or
- (III) a manager of a collective investment undertaking authorised to market units in collective investments to the public,

which is situate in the State or the relevant branch of which is situate in the State,

and shall be required to be authorised as an authorised investment business firm pursuant to the provisions of the Act of 1995.

- (b) A solicitor, in respect of whom a practising certificate (within the meaning of the Solicitors Acts, 1954 to 1994) is in force, who is an insurance intermediary or who holds himself out to be an insurance intermediary shall be an investment firm for the purposes of this Act and shall inform the supervisory authority and the Company that he or she is an investment firm for the purposes of this Act.

- (2) (a) Section 26 of the Act 1994 and sections 21 and 22 (as substituted by the Act of 1994) of the Act of 1960 (or regulations made by the Society relating thereto) shall not apply to a solicitor in respect of whom a practising certificate (within the meaning of the Solicitors Acts, 1954 to 1994) is in force in relation to the provision by the solicitor of investment business services (whether or not including the activities of an insurance intermediary) as an authorised investment business firm, or in relation to a solicitor who is an insurance intermediary and who has informed the supervisory authority and the Company pursuant to *subsection (1)(b)* that he or she is an investment firm.

- (b) No client of a solicitor in respect of whom a practising certificate (within the meaning of the Solicitors Acts, 1954 to

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1994) is in force and who is an authorised investment business firm, or who is an insurance intermediary and has informed the supervisory authority and the Company pursuant to *subsection (1)(b)* that he or she is an investment firm, shall, in respect of any loss suffered in consequence of the default, howsoever arising, of the solicitor, or any employee, agent or independent contractor of the solicitor in relation to the provision of investment business services as an authorised investment business firm or in relation to the solicitor acting as an insurance intermediary, be entitled to make a claim against the Compensation Fund (within the meaning of the Act of 1994) or against the indemnity cover maintained pursuant to section 26 of the Act of 1994 and regulations made thereunder.

- (c) Nothing in this section shall otherwise affect the obligations of a solicitor in respect of whom a practising certificate (within the meaning of the Solicitors Acts, 1954 to 1994) is in force or the rights of a client, arising under section 26 of the Act of 1994 or sections 21 of the Solicitors (Amendment) Act, 1960 (or regulations made by the Society relating thereto), in respect of the provision by the solicitor of legal services.

Section B

- (i) **Definitions of “authorised investment business firm”, “investment advice”, “investment business firm”, “investment business services”, and “restricted activity investment product intermediary” as contained in section 2 of the Act of 1995:**

"authorised investment business firm" means an investment business firm which has been authorised by a supervisory authority under *section 10* or *13* of this Act or which is deemed to be authorised under *Part IV* or *Part VII* of this Act;

"investment advice" means the giving, or offering or agreeing to give, to any person, advice on the purchasing, selling, subscribing for or underwriting of an investment instrument or on the making of a deposit or on the exercising of any right conferred by an investment instrument to acquire, dispose of, underwrite or convert an investment instrument or deposit or the giving, or offering or agreeing to give, to any person, advice on choice of a person providing investment business services, but does not include any of the following:

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(a) advice given in a newspaper, journal, magazine or other publication, including electronic publications, where the principal purpose of the publication taken as a whole is not to lead persons to invest in any particular investment instrument or deposit or to deal with any particular provider of investment business services,

(b) advice given in a lecture, seminar or similar event or series of such events, where the principal purpose of the event or events taken as a whole is not to lead persons to invest in any particular investment instrument or deposit or to deal with any particular provider of investment business services and where persons engaged in the organisation or presentation of such events will earn no remuneration, commission, fee or other reward as a result of any particular decision, by a person attending such event and arising out of such attendance, in relation to investment instruments or deposits or in relation to the choice of a person providing investment business services,

(c) advice given in sound or television broadcasts where the principal purpose of such broadcasts taken as a whole is not to lead persons to invest in any particular investment instrument or deposit or to deal with any particular provider of investment business services,

(d) advice to undertakings on capital structure, industrial strategy and related matters and advice relating to mergers and the purchase of undertakings,

(e) advice given by persons in the course of the carrying on of any profession or business not otherwise constituting the business of an investment business firm, where the giving of such advice is a necessary part of other advice or services given in the course of carrying on that profession or business, and where the giving of investment advice is not remunerated or rewarded separately from such other advice or services;

"investment business firm" means any person, other than a member firm within the meaning of the Stock Exchange Act, 1995, who provides one or more investment business services or investment advice to third parties on a professional basis and for this purpose where an individual provides an investment business service and where that service is carried on solely for the account of and under the full and unconditional responsibility of an investment business firm or an insurance undertaking or a credit institution that activity shall be regarded as the activity of the investment business firm, insurance undertaking or credit institution itself;

"investment business services" includes all or any of the following services:

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- (a) receiving and transmitting, on behalf of investors, of orders in relation to one or more investment instrument;
- (b) execution of orders in relation to one or more investment instrument, other than for own account;
- (c) dealing in one or more investment instrument for own account;
- (d) managing portfolios of investment instruments or deposits in accordance with mandates given by investors on a discretionary client-by-client basis where such portfolios include one or more investment instrument or one or more deposit;
- (e) underwriting in respect of issues of one or more investment instrument or the placing of such issues or both;
- (f) acting as a deposit agent or deposit broker;
- (g) the administration of collective investment schemes, including the performance of valuation services or fund accounting services or acting as transfer agents or registration agents for such funds;
- (h) custodial operations involving the safekeeping and administration of investment instruments;
- (i) acting as a manager of a designated investment fund within the meaning of the Designated Investment Funds Act, 1985;

"restricted activity investment product intermediary" has the meaning assigned to it by *section 26* of this Act;

.....

26.—(1) In this Act "restricted activity investment product intermediary" means a person whose only investment business service is receiving and transmitting orders in the instruments referred to in *section 4 (2) (a) to (c)* of this Act or receiving and transmitting—

- (a) orders in shares in a company which are listed on a stock exchange or bonds so listed, or
- (b) orders in prize bonds, or

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(c) acting as a deposit agent or as a deposit broker,

or engaging in any or all of these services and, in the course of engaging in any of these services transmits orders only to all or any of the following, namely—

(i) investment firms authorised in accordance with Directive 93/22/EEC of 10 May, 1993(1) by a competent authority of another Member State, or to an authorised investment business firm, not being a restricted activity investment product intermediary, or a certified person, or to a member firm, within the meaning of the Stock Exchange Act, 1995, in the State;

(ii) credit institutions authorised in accordance with Directives 77/780/EEC of 12 December, 1977(2) and 89/646/EEC of 15 December, 1989 ;

(iii) to such other branches of investment business firms or credit institutions authorised in a third country as the supervisory authority may approve from time to time;

(iv) collective investment undertakings authorised under the law of a Member State of the European Union to market units in collective investments to the public, and to the managers of such undertakings;

(v) investment companies with fixed capital as defined in Article 15 (4) of Council Directive 77/91/EEC of 13 December, 1976(4) the securities of which are listed or dealt in on a regulated market in a Member State;

(vi) the Prize Bond Company Ltd. or any successor to it as operator of the Prize Bond scheme,

and which does not hold clients' funds or securities, so that in its dealings with clients it does not become a debtor to its clients, but this shall not prevent it from—

(I) taking non-negotiable cheques or similar instruments made out to one of the undertakings mentioned at *subparagraphs (i) to (vi)* of this subsection, for the purposes of the receipt and transmission of orders, or

(II) when acting as a deposit agent, taking cash from a client for the client's account with a credit institution.

Addendum

- (ii) **Definitions of “authorised investment business firm”, “investment business firm”, “investment business services”, “investment product intermediary”, and “restricted activity investment product intermediary” as contained in section 2 of the Act of 1998:**

"authorised investment business firm" has the meaning assigned to it by *subsection (4)*;

.....

(4) In this Act, "authorised investment business firm" has the meaning assigned to it by the Act of 1995 and, where the Minister has not made regulations under section 2(8)(a) of the Act of 1995, this definition excludes a restricted activity investment product intermediary who is a solicitor in respect of whom a practising certificate (within the meaning of the Solicitors Acts, 1954 to 1994) is in force unless that restricted activity investment product intermediary has informed the supervisory authority and the Company that he or she is a restricted activity investment product intermediary.

"investment business firm" has the meaning assigned to it by the Act of 1995;

"investment business services" has the meaning assigned to it by the Act of 1995 and includes the activities of an insurance intermediary

“investment product intermediary” has the meaning assigned to it by the Act of 1995;

“restricted activity investment product intermediary” has the meaning assigned to it by the Act of 1995;

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Section C

S.I. No. 439 of 1998

THE SOLICITORS ACTS, 1954 TO 1994 (INVESTMENT BUSINESS & INVESTOR COMPENSATION) REGULATIONS, 1998:

The Law Society of Ireland, in exercise of the powers conferred on them by section 71 of the Solicitors Act, 1954 (as amended by section 69 of the Solicitors (Amendment) Act, 1994) and section 30A of the Solicitors (Amendment) Act, 1994 (as inserted by section 46 of the Investor Compensation Act, 1998) HEREBY MAKE the following Regulations:—

1. (a) These Regulations may be cited as The Solicitors Acts, 1954 to 1994 (Investment Business and Investor Compensation) Regulations, 1998.
- (b) These Regulations shall come into operation on 1st December, 1998.
2. (a) In these Regulations—

"the Act of 1954" means the Solicitors Act, 1954 (No. 36 of 1954);

"the Act of 1960" means the Solicitors (Amendment) Act, 1960 (No. 37 of 1960);

"the Act of 1994" means the Solicitors (Amendment) Act, 1994 (No. 27 of 1994);

"the Act of 1995" means the Investment Intermediaries Act, 1995 (No. 11 of 1995);

"the Act of 1998" means the Investor Compensation Act, 1998 (No. 37 of 1998);

"the Bank" means the Central Bank of Ireland;

"the Company" means The Investor Compensation Company Limited formed and registered pursuant to section 10 of the Act of 1998;

"the Compensation Fund" means the fund maintained by the Society pursuant to sections 21 and 22 of the Act of 1960 (as substituted by sections 29 and 30 of the Act of 1994);

"authorised investment business firm" has the meaning assigned to it in section 2(4) of the Act of 1998;

"certified person" has the meaning assigned to it in section 2 of the Act of 1998;

"he" and other cognate words denoting the masculine include "she" and

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other cognate words denoting the feminine;

"insurance intermediary" has the meaning assigned to it in section 2 of the Act of 1998;

"investment advice" has the meaning assigned to it in section 2 of the Act of 1995;

"investment business firm" has the meaning assigned to it in section 2 of the Act of 1995;

"investment business services" has the meaning assigned to it in section 2 of the Act of 1998;

"investment firm" has the meaning assigned to it in section 2 of the Act of 1998;

"investment product intermediary" has the meaning assigned to it in section 25 of the Act of 1995;

Definition of
"legal services" in
section 2 of the
Solicitors
(Amendment)
Act, 1994 as
amended by
section 45 (b) of
the Act of 1998,
see addendum at
page 253
extending this
definition

"legal services" has the meaning assigned to it in section 2 of the Act of 1994, as substituted by section 45 (b) of the Act of 1998;

"Minister" means the Minister for Justice, Equality and Law Reform;

"Regulation" means a regulation in these Regulations;

"restricted activity investment product intermediary" has the meaning assigned to it in section 2 of the Act of 1998;

"the Society" means the Law Society of Ireland.

(b) Other words and phrases in these Regulations shall have the meanings assigned to them by the Solicitors Acts, 1954 to 1994, or by the Act of 1995 or the Act of 1998.

(c) The Interpretation Act, 1937 shall apply for the purpose of the interpretation of these Regulations as it applies for the purpose of the interpretation of an Act of the Oireachtas, except insofar as it may be inconsistent with the Solicitors Acts, 1954 to 1994 or the Act of 1995 or the Act of 1998 or these Regulations.

3. A solicitor, who is not an authorised investment business firm, who applies to the Society for a practising certificate in respect of a practice year commencing after the 31st day of December, 1998, shall, as a condition precedent to being issued by the Society with a practising certificate, undertake to the Society that:

- (a) he will only provide investment business services or investment advice to clients incidental to the provision of legal services to such clients,
- (b) he will not hold himself out as being an investment business firm, and
- (c) in providing investment business services or investment advice to

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clients in a manner incidental to the provision of legal services to such clients and when acting as an investment product intermediary, he will not hold an appointment in writing other than from—

- (i) an investment firm authorised in accordance with Directive 93/22/EEC of 10 May 1993 by a competent authority of another Member State, or an authorised investment business firm (not being a restricted activity investment product intermediary or a certified person), or a member firm within the meaning of the Stock Exchange Act, 1995, or
- (ii) a credit institution authorised in accordance with Directives 77/780/EEC of 12 December, 1977 and 89/646/EEC of 15 December, 1989, or
- (iii) a manager of a collective investment undertaking authorised to market units in collective investments to the public

which is situate in the State or the relevant branch of which is situate in the State.

4. A solicitor, who is not an authorised investment business firm, who applies to the Society for a practising certificate in respect of a practice year commencing after the 31st day of December, 1999 and who is or last was the holder of a practising certificate in respect of all or any part of a preceding practice year which commenced after the 31st day of December, 1998 shall, as a condition precedent to being issued by the Society with the practising certificate so applied for, warrant to the Society that he has complied with the undertakings to the Society provided for in clauses (a), (b) and (c) of Regulation 3 during that preceding practice year.

5. A solicitor in respect of whom a practising certificate is in force, who is not an authorised investment business firm, who provides investment business services or investment advice to a client incidental to the provision of legal services within the terms of his undertakings given to the Society pursuant to the requirements of clauses (a), (b) and (c) of Regulation 3 and who receives a fee, commission or other reward therefor other than from that client which is in excess of the amount or value of £75 (seventy-five pounds) shall, as soon as practicable after such receipt, disclose that fact in writing to such client.

6. A solicitor, who is an investment business firm or who is an insurance intermediary in one or more of the circumstances set forth in section 47(1)(a) or (b) of the Act of 1998 and who applies to the Society for a practising certificate in respect of a practice year commencing after the 31st day of December, 1998, shall not be issued with such practising certificate unless the solicitor provides to the Society due evidence in writing of-

- (a) (i) having been authorised by the Bank, in accordance with section 10 of the Act of 1995, as an authorised investment business firm, or

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- (ii) having informed the Bank and the Company that he is an investment firm for the purposes of section 47(1)(b) of the Act of 1998;

(b) payment by him of such contribution to the fund established and maintained pursuant to section 19 of the Act of 1998 as may be required by the Company under section 21 of the Act of 1998;

(c) having in place, valid and irrevocable for at least the duration of the practice year in question, a bond or bank guarantee and a policy of insurance, each acceptable to the Society, by way of providing indemnity against losses that may be suffered by a client in respect of default (whether arising from dishonesty or from breach of contract, negligence or other civil wrong) on the part of the solicitor, or any employee, agent or independent contractor of the solicitor, as shall, in the opinion of the Society (taking into account the maximum amount of compensation for default that would be payable to a client secured by reason of the payment made by the solicitor referred to in clause (b) of this Regulation), be equivalent to the indemnity against losses that would be provided to a client of a solicitor in the provision of legal services by means of-

- (i) the Compensation Fund as provided for in accordance with section 21 (as substituted by section 29 of the Act of 1994) of the Act of 1960, and
- (ii) the minimum level of cover as provided for in accordance with The Solicitors Acts, 1954 to 1994 (Professional Indemnity Insurance) Regulations, 1995 (S.I. No. 312 of 1995) made by the Society under section 26 of the Act of 1994.

7. (a) Where, in the course of a practice year, a solicitor, in respect of whom a practising certificate is in force, proposes to become an investment business firm or an investment firm in one or more of the circumstances set forth in section 47(1)(a) or (b) of the Act of 1998, the solicitor shall notify the Society in writing of that fact at least seven days before such proposed event and shall, within fourteen days of such notification, comply with the provisions of Regulation 6 as if he was then applying to the Society to be issued with a practising certificate for that practice year.

(b) Where the Society are of opinion that a solicitor to whom clause (a) of this Regulation applies has failed to comply with the requirements of that clause, the Society shall deem such failure as serious and as warranting the making of an application by the Society to the President of the High Court for an order pursuant to section 58 of the Act of 1994.

8. Where an authorised person attends at a place of business of a solicitor pursuant to section 66 of the Act of 1954 (as substituted by section 76 of the Act of 1994), the authorised person may require the solicitor to make available to him such accounting records as the authorised person deems reasonable and appropriate to show that there has been compliance by the solicitor with the requirements of these Regulations.

Addendum

Dated this fourth day of November, 1998

Signed on behalf of the Law Society of Ireland pursuant to section 79 of the Solicitors Act, 1954:

LAURENCE K SHIELDS
PRESIDENT OF THE LAW SOCIETY OF IRELAND

I hereby consent, as required by section 30A(1) of the Solicitors (Amendment) Act, 1994 (as inserted by section 46 of the Investor Compensation Act, 1998), to the making of the above Regulations.

Dated this 16th day of November, 1998
JOHN O'DONOGHUE, T.D.
MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

Addendum

EXPLANATORY NOTE

The principal purpose of the Instrument is to provide that-

- a solicitor, who is not an authorised investment business firm or who does not hold himself out as a provider of investment business services or investment advice, who applies to the Law Society of Ireland for an annual practising certificate will undertake: (a) only to provide investment business services (which include the activities of an insurance intermediary) or investment advice to clients incidental to the provision of legal services to such clients; (b) not to hold himself out as being an investment business firm; and, (c) when providing such incidental services and acting as an investment product intermediary, not to hold an appointment in writing other than from Central Bank of Ireland-authorised financial firms, institutions or persons situate in the State;
 - a solicitor, in respect of whom a practising certificate is in force who also chooses to operate as an authorised investment business firm providing investment business services (which includes the activities of an insurance intermediary) or investment advice not incidental to the provision of legal services, or who holds himself out as providing such services or advice, will be required to provide forms of indemnity against losses due to his default, that may be suffered by clients to whom he provides such non-legal services, of an equivalent level to that provided (under the Solicitors Acts, 1954 to 1994) by law to clients who are in receipt of legal services from a solicitor in respect of whom a practising certificate is in force but who is not so operating;
 - other incidental matters.
-