



Relate

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The journal of developments in social services, policy and legislation in Ireland

Legal Services Regulation Act 2015

The Legal Services Regulation Act 2015 makes changes to the way in which solicitors and barristers are regulated in Ireland.

The new Act introduces the Legal Services Regulatory Authority, an independent body which will be responsible for regulating and overseeing the legal profession. The Act also establishes the Legal Practitioners Disciplinary Tribunal, which will hear complaints and disciplinary cases against solicitors and barristers. Both professionals are called "legal practitioners" under the new Act.

The Act will allow new legal practice structures where professionals delivering different services, such as legal, accounting and tax services, can form partnerships together. The Act will also allow legal professionals for the first time to operate their business with the benefit of limited liability, avoiding personal liability for the debts of the business. The Act will also provide for the regulation of legal costs and how solicitors and barristers may calculate and charge fees.

The Legal Services Regulation Act 2015 was enacted on 30 December 2015. Some parts of the Act were commenced on 19 July 2016 but the majority of the Act is not yet in force and is due to be commenced on days decided by the Minister for Justice and Equality.

The Legal Services Regulatory Authority will begin a review of the operation of the Act before 1 April 2018 and will present its findings to each House of the Oireachtas within 12 months.

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Legal Services Regulatory Authority

Role of the Authority

The main role of the Legal Services Regulatory Authority is to regulate the provision of legal services by legal practitioners and to ensure the maintenance and improvement of standards in the provision of those services. The legal professions will pay a levy to cover the cost of the new Authority.

In carrying out this role, the Authority is to have regard to:

- The public interest
- The proper administration of justice
- The interests of consumers of legal services
- Promoting competition in the provision of legal services
- Encouraging an independent, strong and effective legal profession, and
- The promotion and adherence to specified professional principles, which include:
 - Independence and integrity
 - Acting in the best interests of clients
 - Maintaining proper standards of work
 - Complying with duties to the court
 - Maintenance of client confidentiality

The Authority will have an extensive role in relation to professional codes, inspections of legal practices, complaints, costs and the advertising of legal services. The Authority will also be required to prepare reports on many aspects of legal services and will provide information to the public about obtaining legal services and the cost of legal services.

Functions of the Authority

In order to carry out its role, the Authority may do anything it considers necessary within the powers given to it under the new Act.

The Authority may issue codes of practice in relation to legal services which legal practitioners should follow. If a code issued by the Authority and a professional code issued by a professional body, such as the Law Society, conflict, the Authority's code will prevail. The Authority has powers to direct the professional bodies to amend their professional codes if necessary.

The Authority shall review and make recommendations on:

- The admission policies of the legal professions (barristers and solicitors)
- The availability and quality of education and training for legal practitioners (this review is to take place within two years of 1 October 2016)
- The policies of the Law Society and the Bar Council and the Honorable Society of King's Inns, including arrangements for accreditation of foreign legal practitioners
- Professional codes of practice

Following public consultation, the Authority will also report to the Minister on:

- The unification of the solicitors' and barristers' professions (this report is to be made within four years of 1 October 2016)
- The creation of a new profession of conveyancer (within a period specified by the Minister), and
- Other such matters as the Minister may request

Make-up of the Authority

The Legal Services Regulatory Authority consists of 11 members, the majority of which are lay people. Two members are nominated for appointment by the Law Society. One member is appointed from persons nominated by each of the following:

- Citizens Information Board
- Higher Education Authority
- Competition and Consumer Protection Commission
- Irish Human Rights and Equality Commission
- Institute of Legal Costs Accountants
- Consumers' Association of Ireland
- Bar Council
- Legal Aid Board
- Honorable Society of King's Inns

One of the lay members is appointed by the Government to be the Authority's chairperson.

Some of the functions currently held by professional bodies will be taken over by the Authority. For example, the Law Society of Ireland has been the professional body responsible for monitoring the conduct of solicitors. Among other functions, the Law Society will continue to issue practising certificates to solicitors, to regulate solicitors' professional indemnity insurance and to receive accountants' reports from firms of solicitors.

Inspections

Powers of inspectors

The Legal Services Regulatory Authority will have the power to carry out inspections of any place which is used to carry out the business of a legal practitioner or where documents relating to such a business are being kept. These inspectors may take copies of any books, records and accounts necessary and can require legal practitioners to produce such documents for inspection and to assist the inspectors generally.

Inspections may be carried out by the Authority during the investigation of complaints made about a legal practitioner (see below) or to ensure a legal practitioner's compliance with the new Act and any professional codes of practice. Inspections may be carried out with or without warning to the legal practitioner. Where a person fails, refuses or neglects to comply with a requirement of an inspector, the Authority can apply to the High Court for an order directing that person to comply.

Offences

A person commits a criminal offence if they:

- Obstruct or interfere with an inspector during the progress of an inspection
- Remove from the place of business or delete or conceal any relevant documents, records or accounts with the intention to prevent or interfere with an inspection
- Fail or refuse to comply with a request or requirement of an inspector or to answer a question asked by an inspector

A person who commits an offence is liable on summary conviction to a class A fine (€5,000) or imprisonment for a term not exceeding 12 months or both.

Client protection measures

Parts 4 and 5 of the Legal Services Regulation Act 2015 deal specifically with measures designed to protect clients of legal practitioners.

Only solicitors may hold a client's money in their client bank account. Barristers are not permitted to hold client money. However, the Minister for Justice and Equality may restrict the holding of clients' money by solicitors to certain classes of solicitors or place certain conditions on a solicitor.

All practising barristers and solicitors currently maintain a policy of insurance which will compensate a client if he or she suffers a loss due to negligence. Solicitors must continue to maintain this professional indemnity insurance under the Law Society's regulations. In due course the Authority will make regulations for barristers and for the insuring of the new forms of legal practices, for example, multi-disciplinary partnerships.

Complaints

Solicitors and barristers are regulated professionals. This means that clients, other practitioners and members of the public may complain against them to a professional body. The new Act creates a new complaints and disciplinary system for the legal profession. Under the 2015 Act, complaints against legal practitioners will be made to the Legal Services Regulatory Authority.

Types of misconduct

There will be an expanded definition of misconduct relating to legal practitioners once this part of the new Act is commenced.

An act or omission by a legal professional may be considered misconduct for a number of reasons, including where the act or omission:

- Involves fraud or dishonesty
- Relates to the provision of legal services which were of an inadequate standard
- Otherwise than in the provision of legal services would suggest the person is unfit to practice as a legal professional
- Is likely to bring their profession into disrepute
- Is in breach of the 2015 Act or the Solicitors Acts 1954 to 2015
- Consists of the commission of an arrestable offence
- Consists of seeking an amount of costs for their services which is grossly excessive

Making a complaint

Once this part of the new Act is commenced, complaints about legal practitioners will only be made to the Legal Services Regulatory Authority.

A client, or a person acting on behalf of that client, may make a complaint to the Authority about a legal practitioner where that client believes the legal practitioner provided an inadequate standard of service or sought to charge a fee which was excessive.

Any person may make a complaint to the Authority where he or she believes a legal practitioner is guilty of misconduct. An inspector may also make a complaint to the Authority following an inspection (see above). The Law Society, the Bar Council, the Honorable Society of King's Inns or an officer of the Authority may also make a complaint to the Authority about a legal practitioner.

Complaints must be made in writing and must be received by the Authority within three years of the act or omission constituting the alleged misconduct, or within three years of becoming aware of the act or omission. The Authority is likely to make regulations regarding the making of complaints and the specific investigative procedures to be followed.

Preliminary review of complaints

When a complaint is received by the Authority it will notify the legal practitioner involved, sending them a copy of the complaint and asking them to respond to the complaint. The Authority will conduct a preliminary review of every complaint it receives to see if the complaint is admissible.

A complaint will not be admissible if the complaint is:

- Frivolous or vexatious
- Without substance or foundation
- To do with an act or omission by a legal practitioner which has already been litigated in court and a determination was made in favour of the legal practitioner
- To do with an act or omission by a legal practitioner which has been or is currently being investigated by a separate entity, for example, the Law Society
- Made more than three years from the date on which the legal services were provided or the bill of costs issued or the client first became aware of the act or omission

In certain cases, where the matter is before the courts, the Authority may defer its own investigation until after that matter has been concluded.

Resolution of a complaint of inadequate services

When a complaint is admissible, the Authority will invite the client and the legal practitioner to resolve the matter in an informal manner first. If the parties agree to this informal process, the Authority will offer its assistance or recommend a third party to offer assistance to achieve a resolution, for example, a mediator.

If an agreement cannot be reached by the parties through this informal process, the Authority will give written notice to the parties that it will make a determination instead.

The Authority will invite both parties to make written statements setting out their respective positions in relation to the matter. The Authority will then carry out a formal consideration of the matter.

If the Authority determines that the legal services provided by the legal practitioner were of an inadequate standard, the Authority can make the following recommendations:

- The legal practitioner should rectify the issue at their own expense or at the expense of their firm
- Take such other action as the Authority may specify – the cost of which should not exceed €3,000
- Transfer any documents relating to the issue to another legal practitioner nominated by the client
- Pay to the client a sum not exceeding €3,000 in compensation for any financial or other loss suffered by the client

Any sum paid to a client by a legal practitioner shall not affect that client's legal right to compensation from any court proceedings.

Either party may seek a review of any decision made by the Authority. The request for a review must be made within 30 days of the determination being made by the Authority. This review will be carried out by a three-person Review Committee.

Following a determination by the Review Committee, either party may apply to the High Court for an order rescinding or varying the determination of the Review Committee. The application to the High Court must be made within 21 days of the determination being made by the Review Committee. If no application is made, the determination of the Review Committee will become absolutely binding on both parties. Once the determination is binding, it is an offence for a legal practitioner not to comply with it without reasonable excuse.

Complaints Committee

The Authority will establish a Complaints Committee. Complaints may be referred to the Complaints Committee by the Authority where the complaint relates to misconduct (see above) and the client and legal practitioner cannot resolve the matter through the Authority's processes.

The Complaints Committee will be made up of Divisions. The Divisional Committees will investigate complaints referred to the Complaints Committee by the Authority. Every Divisional Committee will be made up of an uneven number of members (three or five people) and will have a majority of lay people.

The Complaints Committee will operate a formal written procedure. It may require the complainant to provide information and verify information on sworn affidavit. The Committee may also require the complainant and the legal practitioner to appear before the Committee.

Where the Divisional Committee considers that a complaint is not one to be referred to the Legal Practitioners Disciplinary Tribunal (see below), but that it warrants the imposition of a sanction, the Committee itself may impose a sanction. The Divisional Committee has a wide range of powers and sanctions including:

- Powers to make directions to the legal practitioner in relation to completing the legal services
- Directing the legal practitioner to participate in a professional competence scheme
- Directing the legal practitioner to waive or refund fees
- Directing the legal practitioner to comply with undertaking(s)
- Directing the withdrawing or amending of advertisements made by the legal practitioner
- Imposing monetary sanctions on the legal practitioner
- With the consent of the legal practitioner, imposing conditions on the practising certificate of the legal practitioner

In making directions with financial implications, the Divisional Committee has an obligation to have regard to the means of the legal practitioner.

The legal practitioner (but not the complainant) has a right of appeal to the High Court. The Authority may also appeal a decision of the Divisional Committee to the High Court.

Legal Practitioners Disciplinary Tribunal

Where the Divisional Committee considers that the act or omission is of a kind that is more appropriate for consideration by the Legal Practitioners Disciplinary Tribunal, it may make an application to the Tribunal requesting an inquiry. The Law Society is the only other body which can refer a complaint to the Disciplinary Tribunal.

The Legal Practitioners Disciplinary Tribunal will also be made up of Divisions and each Division shall have a majority of lay members.

When a complaint is referred to the Disciplinary Tribunal, the body which referred the complaint will also present the evidence of the alleged misconduct to the Disciplinary Tribunal. The Disciplinary Tribunal may determine the matter by reviewing evidence from sworn affidavits

and supporting documents and records. The conduct of proceedings should be as informal as possible while still providing a fair hearing and should not be likely to cause the parties any undue expense.

The Legal Practitioners Disciplinary Tribunal has a wider range of sanctions available to it than the Complaints Committee. These include:

- Imposing an advice, admonishment or censure on the legal practitioner
- Directing the legal practitioner to participate in one or more professional competence schemes
- Directing the legal practitioner to waive or refund costs
- Directing the legal practitioner to complete certain legal services
- Imposing conditions on a legal practitioner's practising certificate
- A range of monetary sanctions, the aggregate amount of which cannot exceed €15,000
- Making a recommendation to the High Court that the legal practitioner be restricted in the type of work they can do or that the practitioner be prohibited from practising without supervision or that the practitioner be struck off and may no longer practice as a legal practitioner

A determination of the Disciplinary Tribunal may be appealed to the High Court by either the Authority or the Law Society, whichever body referred the complaint, or by the legal practitioner. Either party may appeal the order of the High Court to the Court of Appeal.

Determinations of the Disciplinary Tribunal and any orders of the High Court will be furnished to the registrar of solicitors or the Honorable Society of King's Inns, and where an order suspending or striking off a legal practitioner is made, that order may be published in Iris Oifigiúil.

Legal costs

The new Act makes a number of changes to the way legal practitioners' costs can be charged and how disputes over legal costs are addressed.

Duties of legal practitioners to their clients

Legal practitioners will continue to be obliged to notify clients of the legal costs that will be incurred as soon as possible after taking on new work. Where it is impossible to say how much the legal costs will be, legal practitioners must set out the basis on which the legal costs will be calculated.

If the work involves litigation, the legal practitioner will also have to set out the anticipated steps involved and the likely costs involved at each step; the financial consequences for the client of withdrawing from the case before it is concluded; and the client's possible exposure to the costs of the other parties to the litigation. If it is likely that a barrister will need to be engaged, this must also be notified to the client and where a barrister is engaged, that barrister must provide a notice of their fees as soon as possible.

A legal practitioner and a client may make a written agreement about legal costs and if this agreement contains the necessary details specified by the new Act there will be no need for any additional legal costs notice.

Duties of solicitors when closing a file

A legal practitioner must provide a bill of costs to a client as soon as possible after concluding the provision of legal services. A bill of costs should contain the following:

- A summary of the legal services provided
- The time spent in dealing with the matter if relevant
- The amount of compensation awarded to the client
- The amount of any costs awarded to the client which are to be paid by the other party
- The procedures available to the client if they wish to dispute the amount of the costs

A legal practitioner is prohibited from deducting any amount for legal costs from a client's compensation without the written consent of the client.

Legal Costs Adjudicator

The new Act contains detailed provisions relating to the adjudication of legal costs. Currently disputes over legal costs, known as taxation of costs, are decided by the Taxing Master in High Court matters and by the County Registrars in lower court matters.

Under the new Act, the Taxing Masters' Office will become known as the Office of the Legal Costs Adjudicators. The role of Chief Legal Costs Adjudicator will be created with management responsibilities for the entire office. There will be a register of legal costs adjudication decisions which will contain various details including the names of the parties, the outcome of the adjudication and the reasons for that outcome. The County Registrars will continue to hear disputes over legal costs incurred in lower court matters and this is unchanged from the old system.

Disputes over legal costs

Where a client disputes any aspect of a bill of costs received from a legal practitioner, they should write to the legal practitioner within 21 days of receiving the bill setting out the nature of the dispute.

When a legal practitioner receives a notice of dispute, they must make all reasonable attempts to resolve the dispute by informal means. Following these attempts, where either party is of the opinion that the attempts have failed, that party should write to the other stating this opinion.

Where the client disputes the bill of costs and the attempts to resolve the dispute have failed, the client may apply to the Chief Legal Costs Adjudicator to have the bill adjudicated. A client must refer a bill for adjudication within six months from the date the bill was provided or within three months from the date the bill was paid, whichever occurs first.

Where the legal practitioner has raised a bill and the bill goes unpaid for 30 days, the legal practitioner can apply to have the bill adjudicated. The legal practitioner must apply for adjudication within 12 months of issuing the bill. Once adjudicated the legal practitioner can treat the outstanding costs as a debt and collect them like any other debt.

If the amount of the costs as stated in the bill is reduced by 15% or more, the legal practitioner who raised the bill will have to pay the costs of the adjudication. Otherwise the party disputing the bill will be responsible for the costs of the adjudication.

The decision of the Legal Costs Adjudicator is final within 20 days of the decision being issued. If either party wishes to query a decision of the Adjudicator, they must do so within 14 days by writing to the Adjudicator setting out their issues. If either party is still not satisfied after the Legal Costs Adjudicator issues their response to the query, an appeal can be made to the High Court within 21 days for a review of the Adjudicator's decision.

Where a legal practitioner charges costs for their services which are grossly excessive, this may constitute misconduct and could be subject to the complaints procedure (see above). In deciding if the costs sought by a legal practitioner are excessive, consideration will be given to how much of the amount of costs are claimed to be excessive, whether the costs are unconscionable and whether or not a Legal Costs Adjudicator has found the costs charged to be grossly excessive.

Changes to the structure of legal practices

Currently solicitors are only permitted to form partnerships with other solicitors for the purposes of running a legal practice. Barristers must be self-employed sole traders and are not entitled to form partnerships either with other barristers or with solicitors. Under the Act this will no longer be the case.

New legal partnerships

The Act will introduce legal partnerships, which include partnerships of barristers, or partnerships of a solicitor or solicitors with at least one barrister. These new legal partnerships will be permitted once they have notified the Authority, which will maintain a register of legal partnerships.

Direct access to barristers in non-contentious matters will also be allowed. Currently barristers may only be engaged by solicitors acting on behalf of their client(s) or in certain circumstances by approved organisations. The Authority is to carry out a report with a view to allowing direct access to barristers, even in contentious matters.

Currently, only solicitors can hold client money. The Authority is also to carry out a report on the holding of clients' money by barristers.

The Act introduces "multi-disciplinary practices". These are partnerships which include at least one legal practitioner formed to provide both legal and non-legal services, for example, accounting or tax. The other partners within a multi-disciplinary partnership will not require a legal qualification.

Limited liability partnerships

Currently, solicitors who own their practice operate as either sole traders or as partners, and they are personally liable for the debts and liabilities of their practice.

The Act introduces limited liability partnerships for legal and multi-disciplinary partnerships for the first time in Ireland. Under a limited liability partnership, the partners will no longer be personally responsible for the debts and liabilities of the business. There are exceptions to this limited liability, including matters of fraud or dishonesty and criminal offences, or where the liability was incurred before the date of authorisation as a limited partnership.

Authorisation from the Authority is required before a partnership can operate as a limited liability partnership, and the Authority will maintain a register of such partnerships.

Other changes introduced by the Act

Reform of Senior Counsel title

The 2015 Act introduces reforms to the Senior Counsel title, a title that is presently exclusively available to barristers. The reforms allow duly qualified solicitors to be granted a Patent of Precedence. The Legal Services Regulatory Authority is to establish an Advisory Committee on the recommending and revoking of Patents of Precedence to legal practitioners by the Government. The Advisory Committee will establish criteria based on objectives set out in the legislation to ensure that a legal practitioner who wishes to be granted a Patent:

- Has, in their practice as a legal practitioner, displayed:
 - A degree of competence and a degree of probity appropriate to and consistent with the grant to them of a Patent
 - Professional independence
 - And one or more of the following:
 - A proven capacity for excellence in the practice of advocacy
 - A proven capacity for excellence in the practice of specialist litigation, or
 - Specialist knowledge of an area of law
- Is suitable on grounds of character and temperament
- Is in possession of a tax clearance certificate that is in force
- Is otherwise suitable to be granted a Patent

The Government may also, on a recommendation from the Committee, revoke the grant of a Patent.

Clinical negligence actions

Pre-action protocol

The Legal Services Regulatory Act 2015 introduces a statutory framework for a new pre-action protocol in clinical negligence actions. The purpose of the pre-action protocol is to encourage full disclosure of all available evidence in advance of formal litigation to facilitate early resolution or shorten litigation and reduce costs. The pre-action protocol will apply to all clinical negligence actions prior to the commencement of proceedings. The terms of the pre-action protocol have not yet been specified by the Minister but the regulations shall include provisions relating to:

- The disclosure of medical records

The Citizens Information Board provides independent information, advice and advocacy on public and social services through citizensinformation.ie, the Citizens Information Phone Service and the network of Citizens Information Services. It is responsible for the Money Advice and Budgeting Service and provides advocacy services for people with disabilities.

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- The giving of notifications of enquiries into, and allegations of, possible clinical negligence
- Timeframes for compliance, that is, the specification of the time at or within which records shall be disclosed or notifications given
- The form of, and particulars to be included with, requests for disclosure
- The disclosure of material relevant to allegations and responses, and
- Agreements to submit issues for resolution otherwise than by a court

The Act also specifies the sanctions which are available to the court for non-compliance with the pre-action protocol. This includes:

- That a party who has not complied pay the full costs or part of the costs of the other party or parties
- Not allowing the action to proceed until the steps required by the pre-action protocol have been taken
- Making an order depriving the plaintiff of interest on an award or damages made by the court, or
- Making an order compelling the defendant to pay interest on an award of damages

Changes to limitation periods

The Legal Services Regulatory Act 2015 also introduces a change to the statute of limitations time periods for clinical negligence actions from two years to three in the case of anything done or omitted to be done in the provision of a health service by a health service provider in circumstances which could give rise to liability for damages for negligence in respect of a personal or fatal injury.

It remains at two years for injuries caused by negligence, nuisance or a person's breach of duty, for example, most road traffic accidents.

The statute of limitations period runs from the date on which the injury occurred or the date of knowledge (if later) of the person injured that a cause of action arose, for example, where a person does not discover until some years after the injury that a form of negligence caused their injury.

You must bring your personal injuries action within the statute of limitations time periods. If you fail to do so your

claim is likely to become "statute barred" and you will no longer be entitled to bring a claim for the relevant injury.

Statutory provision for an apology

The Legal Services Regulatory Act 2015 provides a statutory footing for an apology made in a clinical negligence action for the first time. The Act provides that an apology shall not be an admission of fault or liability and it does not invalidate any insurance protection or cover.

Legal services advertising

Regulation of legal services advertising is also changed under the new Act. Regulation of advertising by both solicitors and barristers will be undertaken by the new Authority rather than the professional bodies, as is currently the case.

The information in *Relate* is intended as a general guide only and is not a legal interpretation

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