
How Will New Legal Services Regulation Bill Affect Solicitors?



Former DSBA President Keith Walsh considers the revised bill and highlights the seven big ticket items that will concern practitioners

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At the time of writing the Legal Services Regulation bill has just been passed by the Seanad and only needs to be formally passed by the Dail [at this stage no more substantive amendments can be made], before it is signed into law by the President. The final Act will look nothing like the initial bill presented in 2011. The fundamental changes to the bill came about not so much due to the alleged success of the legal professions in their lobbying campaign, but because the initial bill was drafted in a hurry due to the pressure imposed by the Troika and was simply not fit for purpose. The DSBA, Law Society and the Bar Council lobbied for a more independent legal services regulatory authority, a fairer system of complaints handling and the introduction of limited liability partnerships for lawyers. The other major change since 2011 is that the Law Society will retain control of the solicitors' compensation fund and its regulation of practice committee will not be abolished. What follows is the briefest of guides to the new Legal Services Regulation bill/Act (with consequent health warning) and a more detailed guide will follow in the spring issue of *the Parchment*.

Seven ways the Legal Services Regulation Act will affect solicitors

1. The end of self-regulation

This bill is not the end of solicitors. It is not even the beginning of the end. But it is, perhaps the end of the beginning (to paraphrase Churchill). It is the beginning of the end of self-regulation and to some extent, the end of self-determination of the legal profession. Something important has been lost and while it may

only prove to be a symbolic loss, it is still a loss. This loss may be balanced by the gain of limited liability partnerships or by the introduction of an independent complaints system or a more transparent system of legal costs adjudication. The Legal Services Regulatory Authority will determine most important policy matters, but our independence can still be maintained by a strong input from the DSBA and other bar associations and the Law Society in debates on legal profession issues to the Authority, to the public debate and to Government.

2. More expense - we will pay for all the running costs associated with the new Legal Services Regulatory Authority- Quango alert

The Legal Services Regulatory Authority will be funded entirely by a levy on legal practitioners – both solicitors and barristers. The legal profession has been refused any veto or say on how much money is spent by the Authority or how it is spent. This will be a matter entirely for the Authority to decide and we will have no say, save through the nominees on the board of the Legal Services Authority. It is likely that solicitors will have to pay a levy to the new Authority in addition to their practising certificate fee to the Law Society which will be the body responsible for paying the levy on behalf of its members. The Authority has recently advertised for a CEO and will need to fund a board, staff, premises, IT infrastructure, the new complaints structure, the new disciplinary tribunal and a host of other expenses associated with a quasi-autonomous non-governmental organisation [QUANGO].

3. Introduction of limited liability partnerships is a good thing and also likely to increase



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consolidation of law firms

Limited liability partnerships will be introduced for solicitors and for 'legal practices' which are partnerships of barristers and solicitors or barristers and barristers. In order to operate as an LLP, the firm will have to be authorised by the Authority to do so. The DSBA lobbied for a separate category for sole practitioners but they were not included, so it's likely that the introduction of LLPs as well as the changes to the run-off cover aspect of professional indemnity insurance will act as an inducement for an increased amalgamation of sole practitioners who wish to get the benefit of limited liability.

4. New and independent system for complaints against solicitors not to be cause of concern for practitioners as the system must be fair

There will be an independent body dealing with complaints made against solicitors. Over 80% of complaints currently made against solicitors are resolved at a very early stage and the new system envisages a similar sensible method of examining whether complaints are admissible or vexatious before setting out a means of resolving complaints – and before the process becomes adversarial. The single biggest source of complaints against solicitors in the past five years which have resulted in findings of misconduct relate to breach of undertakings. There's no reason to believe that the introduction of the new complaints handling system will result in an increase in the volume of these complaints [which in 2014/15 fell to 36% of the 2012/13 level, source – annual report of the Independent Adjudicator of the Law Society of Ireland, year ended September 30th 2015]. The Law Society retains its financial regulatory function. The compensation fund which is funded by solicitors will remain in place and payments out will be managed by the Law Society.

5. The Authority's board decides the Authority's policy and will have a majority of non lawyers

The board of the new Authority will include 11 people, five of whom will be lawyers, one will be nominated by the Institute of Legal Costs Accountants and the other five will be non-lawyers. The DSBA lobbied in favour of the inclusion of a cost accountant on the board of the new Authority. The Law Society nominates two people to the Authority, the Kings Inns one, Bar Council one, the Legal Aid Board must nominate one solicitor. The non-lawyers are nominated by the Citizens Information Board, the Higher Education Authority, the Competition and Consumer Protection Commission, the Irish Human Rights and Equality Commission. The Government will appoint one of the lay members to act as chairperson of the Authority.

6. More rigorous rules in relation to estimating legal fees, especially in litigation matters

The office of the Taxing Master will be replaced by the office of the Legal Costs Adjudicator. New and more onerous Section 68 type duties are placed on solicitors to set out clearly in writing (called a notice) as soon as reasonably practicable the legal costs that are likely to be incurred in relation to the matter concerned. Where the matter involves



litigation then a much more detailed estimate is required – comprised of both the work to be done and the estimate for each element of the work to be done – narrative and estimate. If the solicitor has not included a matter or item in the written notice of costs, then the legal costs adjudicator cannot allow the charge on taxation or adjudication, unless to disallow it would cause an injustice between the parties. Unlike the current position, a solicitor will be able to apply for adjudication of a bill of costs. Currently the client must sign a requisition to tax before the taxation can proceed.

7. The bill is only a work in progress, it is not the finished article

Sections 17 and 19 of the bill dealing with non-disclosure of confidential information need to be strengthened as they are inadequate. The DSBA has been calling for changes to these sections since they were published in 2011 and we understood they would be amended some time ago. We await details from the Department of Justice and if these sections are not amended prior to the commencement of the work of the Authority, it is likely the Act will be subject to challenge as these sections appear to breach solicitor/client confidentiality or legal privilege. There are a number of other matters that need to be tidied up in the bill and it's to be hoped this will be done in early 2016. The bill is not a final version but rather a work in progress. The bill also makes provision for consultations/studies into the advisability of multi-disciplinary partnerships, education of lawyers, the introduction of licensed conveyancers and the unification of the profession – so more change is likely following the setting up of the Authority. 