



AN BILLE FÁN OMBUDSMAN UM SHEIRBHÍSÍ DLÍ 2008 LEGAL SERVICES OMBUDSMAN BILL 2008

EXPLANATORY AND FINANCIAL MEMORANDUM

Introduction

The purpose of the Bill is to establish on a statutory basis the office of the Legal Services Ombudsman to oversee the handling of complaints by the Bar Council and Law Society, review the procedures for same and report annually on the adequacy of the admissions policies of both professions.

Provisions of the Bill

Part 1: Preliminary and General (Sections 1 to 3)

Section 1 sets out the short title and provides that the Minister for Justice, Equality and Law Reform may make orders commencing its various provisions.

Section 2 of the Bill is a standard interpretation section defining the primary terms referred to throughout the Bill.

Section 3 is a standard provision that provides the authority for any expenses incurred by the Minister in the administration of the Act to be met out of funds provided by the Oireachtas.

Part 2: Establishment, Role and Accountability of Office of Legal Services Ombudsman (Sections 4 to 18)

Section 4 provides for the establishment of the office of Legal Services Ombudsman.

Section 5 stipulates that the Legal Services Ombudsman shall be appointed by the Government; the person appointed shall be suitably qualified and provides for the classes of person not eligible for appointment as Ombudsman.

Section 6 sets the period of office at a maximum of 6 years, allows re-appointment for a second or subsequent term and provides for the manner in which the Ombudsman may resign from office. It provides for the circumstances in which the Government may remove the Ombudsman from office as well as the circumstances in which a person ceases to hold the office of Legal Services Ombudsman.

Section 7 provides for terms and conditions relating to remuneration of the Ombudsman.

Section 8 restricts the Ombudsman from engaging in other paid employment unless approved by the Minister.

Section 9 provides that the functions of the Legal Services Ombudsman are to receive and investigate complaints about the handling by the Law Society and Bar Council of complaints made to them by clients of barristers and solicitors, to ensure that such complaints are dealt with fairly, effectively and efficiently by the two professional bodies, to assess the adequacy of their admissions policies and to promote public awareness of the complaints procedures of the two bodies.

Section 10 stipulates that the Ombudsman shall be independent in the performance of the functions of the office.

Section 11 provides for the Ombudsman to appoint staff and set their terms and conditions of employment, subject to the consent of the Minister and Minister for Finance and following consultation with the Bar Council and Law Society. The Ombudsman may, subject to the consent of the Minister, engage the services of advisers or consultants and may also authorise a member of the staff to perform certain functions.

Section 12 provides for the Minister to advance to the Ombudsman out of moneys provided by the Oireachtas amounts as the Minister may determine, with the consent of the Minister for Finance, for the purposes of performing his or her functions.

Section 13 provides for financial accounting and audit matters including presentation of audited accounts to the Minister and their laying before both Houses of the Oireachtas.

Sections 14 and 15 provide for various reports to be made by the Ombudsman, including an annual report to the Minister on the performance of the functions of the office, a report to the Minister within 2 years of being appointed on the effectiveness of the office and the adequacy of its functions, special reports on matters of particular gravity or in other exceptional circumstances and an annual report to the Minister on the adequacy of the admissions policies of the legal professions. Each of these reports shall be laid before the Houses of the Oireachtas and published.

Sections 16 provides for the appearance of the Ombudsman before a Committee of Dáil Éireann in relation to its accounts and such matters as its efficiency and any other matter raised in a report by the Comptroller and Auditor General.

Section 17 provides for the appearance of the Ombudsman before other committees of Houses of the Oireachtas when asked to do so. Standard provisions are made including that the Ombudsman is not required to account before an Oireachtas committee on a matter relating solely to an individual complaint or a matter that is or is likely to be the subject of proceedings before a court or tribunal.

Section 18 declares various publications to be privileged for the purposes of the law of defamation, namely any matter in a report of the Ombudsman laid before either House of the Oireachtas and publications by the Ombudsman directed to particular persons.

**Part 3: Imposition of Levy on Professional Bodies to Cover
Approved Expenses of Legal Services Ombudsman
(Sections 19 and 20)**

Section 19 makes provision for the payment each year of a levy to the Minister by the Bar Council and Law Society to meet the approved expenses of the Legal Services Ombudsman. The approved expenses equate to the operating costs and administrative expenses of the Ombudsman in the preceding year. The Bar Council and the Law Society will each be liable to pay 10% of the approved expenses and the remaining 80% will be paid *pro-rata* according to the number of complaints made to the Ombudsman in relation to barristers and the number of complaints made in relation to solicitors. Other matters related to the levy are provided for including late payment.

Section 20 empowers the Minister to make regulations to provide for various matters related to the levy.

**Part 4: Complaints and Reviews
(Sections 21 to 35)**

Sections 21 and *22* provide for the making and investigation of complaints. A complaint may be made to the Ombudsman concerning the handling by the Bar Council or the Law Society of a complaint against a barrister or solicitor. A complaint may also be made to the Ombudsman about a decision of the Law Society to make or refuse a grant from the Law Society's compensation fund. Complaints to the Ombudsman must be made within 6 months of the determination of the related complaint by the relevant body. The circumstances in which a person is not entitled to make a complaint are also provided for.

Section 23 enables the Ombudsman to establish procedures to be followed in relation to the receipt, resolution and investigation of complaints. Such procedures shall be published.

Section 24 provides that the complainant, the relevant professional body and the barrister or solicitor concerned may make submissions relating to complaints made to the Ombudsman.

Section 25 provides that the Ombudsman shall ensure that investigations are conducted in private.

Section 26 enables the Ombudsman to require the production of any information, document or thing of relevance to an investigation and the attendance of persons in possession of these before the Ombudsman.

Section 27 renders it an offence to obstruct the Ombudsman in the performance of his/her functions.

Section 28 empowers the Ombudsman to issue directions or make recommendations to the Bar Council and Law Society following investigations and to enforce directions and sets out the duty of the Ombudsman to notify results, directions and recommendations to particular classes of person. The Ombudsman may, if not satisfied that the related complaint was adequately investigated, direct the Bar Council to reinvestigate it under the Bar Council's Disciplinary Code, or in the case of the Law Society, direct the Law Society to either reinvestigate the complaint or refer it to the Solicitors Disciplinary Tribunal for an enquiry on the ground of alleged misconduct. The Ombudsman may make other directions and recommendations to both bodies including recommending that the Law Society make or increase a grant out of its Compensation Fund.

Where not satisfied with measures taken or proposed to be taken in relation to a direction or recommendation, the Ombudsman may make a special report to the Minister.

Section 29 provides that the Ombudsman shall send a written statement on the results of the investigation, any direction given or recommendation made to the complainant, the relevant professional body and the barrister or solicitor concerned.

Section 30 provides for High Court enforcement of directions of the Ombudsman.

Section 31 provides for referral of questions of law by the Ombudsman to the High Court for determination.

Section 32 provides for the Ombudsman to keep under review the procedures of the Bar Council and Law Society for dealing with complaints including; the compliance of barristers and solicitors with complaints procedures, such complaints as the Ombudsman considers appropriate, the effectiveness of the two professional bodies complaints procedures and the time taken to complete investigations, complaints relating to particular matters as the Ombudsman considers appropriate and statistical information relating to complaints. Arising from such review and examination, the Ombudsman may make written recommendations to the Bar Council and Law Society to improve their complaints investigation procedures and the cooperation of barristers and solicitors with these. The Ombudsman may, if not satisfied with the response of the Bar Council and Law Society to a recommendation, direct that the recommendation or amended recommendation be implemented. The High Court may, on application by the Bar Council or by the Law Society, revoke or vary a direction given by the Ombudsman where it considers that the direction is oppressive, unreasonable or unnecessary or it may confirm the direction.

Section 33 provides the Bar Council and Law Society keep complete records of matters related to their investigation of complaints and, on request, make them available to the Ombudsman.

Section 34 provides that legal proceedings may only be commenced against the Ombudsman with the leave of the High Court and on notice to the Ombudsman.

Sections 35 deals with confidentiality of information.

Part 5: Consequential Amendments and Transitional Provisions (Sections 36 to 38)

Section 36 provides for the amendment of the Freedom of Information Act 1997.

Section 37 provides for the repeal of Section 15 of the Solicitors (Amendment) Act 1994.

Section 38 revokes the Regulations which established the Law Society's Independent Adjudicator and makes provision to allow the transition of outstanding complaints from the Independent Adjudicator to the Legal Services Ombudsman.

An Roinn Dlí agus Cirt, Comhíonannais agus Athchóirithe Dlí, Máirtín, 2008.