



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

Mar a tionscnaíodh
As initiated

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ACTS REFERRED TO

Comptroller and Auditor General (Amendment) Act 1993	1993, No. 8
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 2006	
Solicitors (Amendment) Act 1960	1960, No. 37
Solicitors (Amendment) Act 1994	1994, No. 27
Solicitors (Amendment) Act 2002	2002, No. 19



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

BILL

entitled

5 AN ACT TO PROVIDE FOR THE APPOINTMENT AND
FUNCTIONS OF A LEGAL SERVICES OMBUDSMAN;
AND TO PROVIDE FOR RELATED MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

10 PRELIMINARY AND GENERAL

1.—(1) This Act may be cited as the Legal Services Ombudsman Act 2008. Short title and commencement.

15 (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;

20 “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
25 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;

30 “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; 5

“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— 10

(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; 15

“Law Society” means the Law Society of Ireland;

“levy assessment notice” shall be construed in accordance with *section 19*; 20

“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 25

(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, 30

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; 35

“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 40 45

(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;

5 “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

10 (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;

15 “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 Expenses.
of this Act shall, to such extent as may be sanctioned by the Minister
20 for Finance, be paid out of monies provided by the Oireachtas.

PART 2

ESTABLISHMENT, ROLE AND ACCOUNTABILITY OF OFFICE OF LEGAL SERVICES OMBUDSMAN

25 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. Appointment of Legal Services Ombudsman.

30 (2) In considering the appointment of a person to be the Legal Services Ombudsman, the Government shall satisfy itself 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—

35 (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,

40 (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.

Period of office,
resignation and
removal from
office.

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.

(2) Such a person is eligible for re-appointment for a second or subsequent term. 5

(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. 10

(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, 15

(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, 20

(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 25

(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. 30

(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, 35

(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.

Salary and
superannuation.

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. 40

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. 5

(8) A person appointed under *subsection (1)* is not a civil servant of the Government or a civil servant of the State.

Advances by
Minister to Legal
Services
Ombudsman.

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. 10

Accounts and audit.

13.—(1) The Legal Services Ombudsman shall in respect of each financial year keep in such form as may be approved by the Minister, 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. 15 20

(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. 25

(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 30

(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— 35

(a) to be laid before each House of the Oireachtas, and

(b) to be sent to the Bar Council and the Law Society.

Various reports by
Legal Services
Ombudsman.

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. 40

(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. 45

(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

5 (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.

10 (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
15 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.

20 (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.

25 (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.
30

35 (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
40 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.

45 (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.

Appearance before
Committee of Dáil
Éireann established
to examine, etc.,
appropriation
accounts, etc.

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— 5

- (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, 10
- (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 15
- (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 20
 - (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). 25

(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.

Appearance before
other committees of
Houses of
Oireachtas.

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. 30

(2) The Legal Services Ombudsman is not required to give an account before an Oireachtas Committee of any matter— 35

- (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. 40

(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. 45

(5) If, on being informed of the Legal Service 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—

5 (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.

10 (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.

15 (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—

20 (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

25 (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.

30 (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—

35 (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,

40 (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

Levy to be paid by
Bar Council and
Law Society.

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. 5

(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”). 10

(3) Approved expenses shall include—

(a) the remuneration (including allowances for expenses, benefits in kind and superannuation benefits) of the Legal Services Ombudsman, 15

(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, 20

(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: 25

(a) 10 per cent of that amount shall be paid by the Bar Council; 30

(b) 10 per cent of that amount shall be paid by the Law Society; and

(c) 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. 35

(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— 40

(a) the amount of money expended by the Legal Services Ombudsman in the preceding financial year in respect of approved expenses, 45

- 5 (b) the number (determined in accordance with regulations 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.

10 (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*.

15 (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.

20 (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
25 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
30 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.

- 35 (a) 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;
- 40 (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;
- 45 (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; 5
- (i) such other matters as are necessary for, or incidental to, the imposition, payment and collection of the levy.

(2) 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 10 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 15

COMPLAINTS AND REVIEWS

Making of
complaints.

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 to the Legal Services Ombudsman concerning the 20 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— 25

(a) made a complaint to the Law Society under section 8 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 30 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, 35

(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 40 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.

5 (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—

10 (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

15 (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

20 (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—

30 (a) in the case of—

35 (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

40 (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,

45 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.

Investigations of complaints.

22.—(1) Subject to *subsection (4)*, the Legal Services Ombudsman shall investigate a complaint made to the Ombudsman in accordance with this Act.

(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,
- 5 (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—
- 10 (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,
- 15 (e) the Law Society has failed to commence within a reasonable time an investigation of the related complaint under section 8 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,
- 20 (g) the Law Society has failed to complete within a reasonable time an investigation of the related complaint under section 8 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,
- 25 (i) the Law Society has not adequately investigated the related complaint under section 8 or 9 of the Solicitors (Amendment) Act 1994, or
- (j) the Law Society has not adequately investigated the related complaint of misconduct.
- 30
- (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.
- 35 (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 trivial or vexatious,
- 40 (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.
- 45
- (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. 5

(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. 10

Procedures for dealing with complaints to Legal Services Ombudsman.

23.—(1) Subject to this Act, the Legal Services Ombudsman may seek the resolution of complaints in such manner as the Ombudsman considers appropriate and reasonable.

(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. 15

Opportunity to make submissions.

24.—When investigating a complaint, the Legal Services Ombudsman shall provide— 20

- (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, 25

with an opportunity to make submissions relating to the complaint.

Investigations to be conducted in private.

25.—The Legal Services Ombudsman shall conduct investigations under this Act otherwise than in public.

Power to require provision of information.

26.—(1) For the purpose of investigating a complaint, the Legal Services Ombudsman may— 30

- (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 35
- (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. 40

(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.

5 (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.

10 (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.

15 (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.

20 **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.

25 (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.

30 **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—

35 (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,

40 (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,

45 (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, 5

- (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 10
 - (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, 15
 - (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. 20

(2) On completing an investigation of a complaint under *section 21(2)*, the Legal Services Ombudsman may, by a statement in writing— 25

- (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 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, 30
 - (iii) has failed to complete within a reasonable time an investigation of the related complaint under section 8 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, 35
 - (v) has not adequately investigated the related complaint under section 8 or 9 of the Solicitors (Amendment) Act 1994,
 - (vi) has not adequately investigated the related complaint of misconduct, 40

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 2006.

(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.

Enforcement of
directions of Legal
Services
Ombudsman.

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—

- (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.

Legal Services
Ombudsman may
refer question of
law to High Court.

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.

(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.

Review of
procedures of Bar
Council and Law
Society for dealing
with complaints.

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.

(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*.

Duties of Bar Council and Law Society to keep and produce records.

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— 5

(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— 10

(i) complaints made to it under section 8 or 9 of the Solicitors (Amendment) Act 1994 in relation to solicitors, and

(ii) complaints of misconduct made to it in relation to solicitors. 15

(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. 20

(3) *Subsection (2)* shall not operate to limit in any way the Legal Service Ombudsman's powers under *section 26*.

Legal proceedings against Legal Services Ombudsman.

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. 25

Confidentiality of information.

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— 30

(a) the investigation concerned,

(b) the making, in accordance with this Act, of any statement, report or notification on that investigation or review, or 35

(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. 40

CONSEQUENTIAL AMENDMENTS AND TRANSITIONAL PROVISIONS

36.—The Freedom of Information Act 1997 is amended—

Amendment of
Freedom of
Information Act
1997.

- (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 2008*,” 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 5
- (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. 10

(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), 15
- (b) on and after that commencement, the person who was, immediately before that commencement, the Adjudicator referred to in *paragraph (a)*. 20