



**Northern Ireland
Assembly**

COMMITTEE FOR FINANCE AND PERSONNEL

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Gearóid Cassidy
DFP Assembly Section
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13 November 2015

Dear Gearóid,

Legal Complaints and Regulation Bill

At its meeting on 11 November 2015, the Committee agreed that, in order to inform its deliberations on the Legal Complaints and Regulation Bill, it would forward any observations made by the Examiner of Statutory Rules (the Examiner) in respect of the delegated powers memorandum. The Examiner's advice has now been received and I would draw your attention to the following extract:

- 1. I have considered this Bill, in conjunction with the Delegated Powers Memorandum submitted by the Department of Finance and Personnel, in relation to powers to make subordinate legislation.*
- 2. I have also looked at the Third Report of the Delegated Powers and Regulatory Reform Committee of the House of Lords for Session 2006-07 on the Bill enacted as the Legal Services Act 2007 (the DPRR Committee report): that Bill was of course different from the Legal Complaints and Regulation Bill,*

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but there are some relevant and resonant threads in the report in relation to self-regulation. Paragraph 73 of the DPRR Committee report contains the following general statement:

- a. *“We do not consider it in principle inappropriate for regulatory bodies to have power to control those whom they regulate without direct parliamentary control. This is to varying degrees the position now with the regulators listed in Schedule 4... .” [including the General Council of the Bar England and Wales and the Law Society of England and Wales].*
3. *Self-regulation, without direct Assembly control, in the context of the Legal Complaints and Regulation Bill is found in much of Parts 2 (Barristers) and 3 (Solicitors), particularly, in relation to functions of a legislative character in clauses 11 and 17 (barristers) and clauses 29 and 36 (solicitors). In that context, given the overall scheme of the Bill where the Department is not directly involved in regulation as such, the delegated powers exercisable by the professional regulatory bodies seem to be appropriate and not something for me to comment on. (I note also in passing that there is a high degree of symmetry between the provisions in respect of barristers and solicitors, subject to any necessary divergences, reflected in many of the provisions referred to at paragraph 4 below.)*
4. *The Department is directly involved, in that it has powers to make subordinate legislation, in a number of places in the Bill. **These powers seem in general to be appropriate and subject to an appropriate degree of Assembly scrutiny and control; but I make one observation in relation to clause 51 (further provision) at paragraph 5 below, suggesting that that the Department may wish to consider a refinement.** Clause 4(6) gives the Department power by order (subject to draft affirmative procedure) to specify the maximum penalty payable to the Legal Services Oversight Commissioner by a professional body under clause 4(4) (in respect of failures relating to complaint handling plans required by the Commissioner). Clause 5(1) requires the Department to make regulations (subject to draft affirmative procedure) for the imposition of a levy on each professional body payable to the Commissioner for various purposes set out there (most notably for the purpose of raising an amount corresponding to the Commissioner’s expenditure. Clauses 15 and 33 allow the Department to make orders (subject to negative resolution) relating to complainants of various descriptions (on the recommendation of the professional bodies under clauses 16 and 34, which involves a consultation procedure on the part of the professional bodies). Clause 20(1) and 39(1) allow the Department to makes orders (subject to negative resolution) altering the compensation limit in clauses 19(7) and (8) and 38(7) and (8) (on the recommendations of the professional bodies under clauses 20(2) and 39(2), which involves a consultation procedure on the part of the professional bodies). And clauses 21 and 40 require the Department, with the concurrence of the Lord Chief Justice, to make regulations (subject to draft affirmative procedure) providing for appeals from determinations of the respective professional complaints committees.*

5. **Clause 51 allows the Department to make orders containing further provision** (supplementary, incidental, consequential, transitional and transitory). Orders modifying (including amending or repealing) a statutory provision (which term encompasses both primary and subordinate legislation) are subject to draft affirmative procedure; and in any other case orders under clause 51 are subject to negative resolution. **I merely make the observation that the Department might perhaps wish to refine this so that orders under the clause which modify primary legislation (provision of an Act of Parliament or Northern Ireland legislation) would be subject to draft affirmative procedure; and in any other case orders under this clause would be subject to negative resolution.**

I would be grateful if you could provide an urgent response on the points raised by the Examiner for consideration by the Committee at its meeting on 18 November 2015.

Yours sincerely,

Shane McAteer
Committee Clerk