

LEGAL COMPLAINTS AND REGULATION BILL

EXPLANATORY AND FINANCIAL MEMORANDUM

INTRODUCTION

1. This Explanatory and Financial Memorandum has been prepared by the Department of Finance and Personnel (“the Department”) in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.
2. The Memorandum needs to be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause or schedule does not seem to require an explanation or comment, none is given.

BACKGROUND AND POLICY OBJECTIVES

3. In November 2006, a Legal Services Review Group (“The Review Group”) chaired by Professor Sir George Bain, issued a report to Government entitled “Legal Services in Northern Ireland: Complaints, Regulation, Competition”. The Report contained 42 recommendations aimed at improving the existing system, primarily in the context of complaints handling by professional bodies. The Group reached its conclusions following a lengthy investigation which involved consultation with interested parties and taking evidence. The report was submitted to the then Minister of Finance and Personnel, David Hanson MP, and has since been considered by subsequent devolved Ministers.
4. The existing law relating to the regulation of solicitors is contained in the Solicitors (NI) Order 1976, as amended. In general terms, the Law Society is the regulatory body for solicitors, although its actions are subject to a certain level of oversight from the Department of Finance and Personnel, the Lord Chief Justice, and the Lay Observer for Northern Ireland. The Bar is not subject to any statutory framework or oversight. Rules and regulations are made by various organs of the Bar. The regulatory body is the Honourable Society of the Inn of Court of Northern Ireland, with responsibility for various aspects of regulation divided between the Executive Council of the Inn, the Benchers of the Inn, and the General Council of the Bar of Northern Ireland, which is autonomous from the Inn.
5. In terms of complaints, the existing framework features complaints against solicitors being considered by client complaints committees within the Law Society which are made up of professional majorities, with a solicitor in the chair. A complainant who is unhappy with how a complaint has been handled can refer their case to the Lay

Observer, but the postholder has limited powers. Complaints against barristers are dealt with by a panel appointed by the Bar Council, again with limited lay involvement. The Bar is not subject to any oversight from the Lay Observer.

6. The Review Group found that in general terms the existing system of regulation of lawyers had worked reasonably well, and that problems and solutions identified and implemented in other jurisdictions were not appropriate for Northern Ireland. However, it did identify certain areas, principally relating to complaints handling, where change could assist the consumer and improve the existing regulatory framework. It therefore made a number of recommendations on complaints handling designed to move the procedures away from professionally-led consideration to a system where functionally separate and lay-led complaints committees would determine cases. Such committees would have greater powers, including the power to award compensation. The Review Group also recommended enhanced oversight of the system by way of a Legal Services Oversight Commissioner (“LSOC”) and recommended tougher powers for such an office holder.
7. The general policy recommendations outlined by the Group have been translated into concrete legislative provisions in the draft Bill. The policy of the draft Bill is to create the position of LSOC as recommended, and the Bill sets out the powers that office holder should have. Those powers are strategic – the LSOC will not have operational responsibilities in terms of specific complaints – and will be concentrated on oversight of the complaints-handling systems of the Law Society and, for the first time, the Bar. Those powers include the power to investigate how complaints are handled by the relevant professional body, the power to set targets in relation to complaints handling, the power to require a professional body to submit plans relating to complaints handling, and the power to penalise the professional body in certain circumstances. The LSOC will also have the power to gather information relating to complaints at the first tier – those complaints that are made to individual solicitors’ practices, or about individual barristers through the scheme administered on behalf of barristers by the Bar Council. The postholder must include statistical information on first tier complaints in the Annual Report, in order to help inform the overall complaints-handling process.
8. As well as the specific powers relating to oversight of the complaints systems of solicitors and barristers, there is also broader provision included for the LSOC to have a consultative role in relation to other aspects of regulation. All new rules or regulations made by the Law Society or the various organs of the Bar will now be subject to additional transparency by way of consultation with the LSOC. In addition, the Department may request the LSOC to examine any matter relating to the regulation or organisation of the professions, and this could include matters relating to general regulation, such as entry to the profession, training, and codes of conduct.
9. It is intended that the office will be funded by way of a levy on the professional bodies, as envisaged by the Review Group, and the draft Bill makes provision accordingly. The precise nature of the levy will be a matter for secondary legislation and protocols.
10. New complaints-handling systems are provided for in the Bill. The Review Group recommended that Complaints Committees should be administered and maintained by the relevant professional bodies, and be constituted of a majority of lay people, with a lay person in the Chair.

11. It is envisaged that in the majority of cases, a complaint made against a lawyer will be dealt with in-house in order to attempt a speedy and satisfactory resolution. For solicitors, this will mean the complaints being considered by the firm's in-house process first. For barristers, it will mean the complaint being dealt with by the body set up by the Bar to assist with early resolution of complaints. Irrespective of the model for formal resolution in other jurisdictions, this first step is common throughout all jurisdictions that examine complaints.
12. Should this step not prove successful, or be deemed unsatisfactory by the complainant, the complaint will, providing it meets the statutory criteria, be eligible for formal consideration by the relevant Complaints Committee. This Committee will be armed with enhanced powers and will be able to consider a broader range of cases. As per the recommendation of Bain, this will include the power to consider negligence cases with a maximum value of £5,000. Appeals to the High Court will be available against determinations of the Complaints Committee in specified cases, such cases to be outlined in regulations.

CONSULTATION

13. There has been considerable consultation in relation to this subject. The Department initially carried out a consultation in 2005 as part of the wider review being undertaken in England and Wales at the time. The Review Group benefitted from the responses to this consultation and carried out its own work during 2006, which included taking evidence from interested parties, meetings with stakeholders and regional roadshows. The Department, in re-examining this issue in 2013, carried out a detailed consultation on a draft Bill between November 2013 and March 2014, and continued liaison with key stakeholders thereafter. The formal consultation on the draft Bill was circulated extensively and elicited 15 formal responses. Those responses have been considered in an analysis document that has been published on the Department's website.
14. There was a favourable response to the proposals contained in the draft Bill. Nearly all of those who responded were of the view that the model for reform was the correct approach in this jurisdiction. There was consensus from those coming from a consumer perspective and those from a legal background that a proportionate response to the issues raised at each stage of the process was required and that the draft Bill provided that level of proportionality.

OPTIONS CONSIDERED

15. In deciding how best to take forward this project the Department was guided by the Review Group's recommendations and the subsequent views of consultees in response to the draft Bill. It was clear that to do nothing, option 1, would not address the issues that had been raised at all stages of the process.
16. Similarly, it considered the root and branch reform that has been witnessed in other jurisdictions, most notably in England and Wales following implementation of the Legal Services Act 2007. However, the Department shares the views of the Review Group, subsequently endorsed by consultees in their consideration of the draft Bill, that an approach of this nature, which could lead to independent structures in relation to complaints and regulation, would not represent a proportionate reaction to the issues

raised. The different nature of the legal profession in Northern Ireland, coupled with the absence of regulatory failure or a regulatory maze (as identified in England and Wales), and the relatively good regulatory record of the professional bodies, pointed to the need for a different approach.

17. The third, and preferred, option is to legislate for reform along the lines outlined by the Review Group and the subsequent work undertaken by the Department. A copper-bottoming of the existing complaints-handling process of both professional bodies, with the move away from professionally-led control to a system of lay Chair, lay majorities with enhanced powers, given suitable strengthened oversight by way of a LSOC with greater authority and power, will, in the view of the Department, achieve the aims outlined by the Review Group.

OVERVIEW

18. The Bill consists of 56 clauses and 5 Schedules.

COMMENTARY ON CLAUSES

Clause 1: The Legal Services Oversight Commissioner

Clause 1 sets out the establishment of the post of Legal Services Oversight Commissioner for Northern Ireland, *Subsection (2)* providing that the Commissioner must be appointed by the Department of Finance and Personnel, and that, at *Subsection (3)* the Department must consult the Lord Chief Justice before making the appointment.

Subsection (4) provides that the Commissioner must not be a solicitor or barrister, and must never have been so.

Clause 2: General Powers of the Commissioner

Clause 2 sets out the general powers of the Commissioner relating to oversight of the complaints-handling processes of solicitors and barristers. The post is a strategic one, with the postholder able to form an overview of how complaints systems are operating. For example, the LSOC will not have the power to re-open investigations relating to specific complaints.

Subsection (1) provides the Commissioner with a range of powers relating to complaints. The postholder can require a professional body (defined as the Law Society or the Inn of Court of Northern Ireland) to provide information or make reports on how they handle complaints against their members. He or she may investigate the handling of complaints about solicitors or barristers, and can make recommendations on how members of the respective complaints committees are trained. Targets may be set and recommendations made, and the professional bodies may be required to submit plans about how they handle complaints against their members. In addition, the postholder will be able to require a professional body to provide information relating to the numbers of first-tier complaints, those complaints received “in-house”.

Subsections (2) and (3) provide that the Commissioner can access all documents from the professional body that may be reasonably required to carry out an investigation.

Subsection (4) provides that the Commissioner may penalise a professional body in circumstances where they have failed to submit adequate plans to ensure that complaints are dealt with effectively and efficiently, or where a professional body fails to handle complaints in line with a submitted plan.

Subsection (5) requires the Commissioner to consult with a professional body and give it a reasonable opportunity to make representations before requiring it to pay a penalty.

Subsection (6) requires the Department to specify by order the maximum amount of the penalty and *Subsection (7)* requires that such an order must be laid in draft and approved by the Assembly. *Subsection (8)* requires the Commissioner to have regard to a number of factors before determining the amount of any penalty and *Subsection (9)* requires any penalty imposed on a professional body to be paid to the Commissioner, who must then pay it to the Department of Finance and Personnel.

Clause 3: Duty of certain bodies to consult Commissioner

Subsection (1) places a requirement on the various organs of the Bar responsible for the regulation of barristers to consult the Commissioner before making any rules or regulations. Rules or regulations that relate to the representation of barristers are exempt from this requirement.

Subsection (2) lists the various organs of the Bar.

Subsections (3) to (6) place the same requirement of consultation with the Commissioner upon the Law Society. The Solicitors (NI) Order 1976 sets out the main regulatory functions of the Law Society, and the requirement to consult the Commissioner is written in to the Order at its relevant parts.

Clause 4: Duty of Commissioner to review certain matters

Clause 4 requires the Commissioner to review and report on any matter relating to the regulation or organisation of the Law Society, or the Bar, that may be directed for consideration by the Department of Finance and Personnel, and that such reports must be published by the Commissioner in such manner as the Commissioner determines.

Clause 5: The Levy

Clause 5 sets out the requirement for a levy to be applied to the relevant professional bodies in order to fund the office of the Legal Services Oversight Commissioner. The apportionment of the levy will be a matter for further discussion with the professional bodies and the detail of the levy will be met by subsequent regulations.

Subsection (1) requires the Department of Finance and Personnel to make regulations providing for the levy and *Subsection (2)* provides that the levy is payable to the Commissioner.

Subsection (3) requires the Department to ensure that the levy is fairly apportioned between the professional bodies and *Subsection (4)* requires any regulations made in relation to the levy to be laid before and approved by the Assembly.

Clause 6: The levy: supplementary provisions

Clause 6 sets out conditions relating to the levy, which will be supplemented by regulations relating to the rate and when the levy is payable.

Subsection (3) provides that any amount owed to the Commissioner under the levy may be recovered as a debt.

Subsection (4) requires the Department to include in the levy regulations provisions to calculate the amount of the levy owed by each professional body, to consult with them on that amount, and to notify them of their liability to pay an amount of levy at the relevant time.

Subsection (5) provides that the levy regulations may make provision about the collection and recovery of the levy, when an amount of it may be waived, and may set out interest charges where the levy is not paid on time.

Clause 7: Payments by Department

Clause 7 gives a power to the Department of Finance and Personnel to pay to the Commissioner such sums as it may determine as appropriate, and gives the Department the power to determine those circumstances, and the manner in which payment is made.

Clause 8: Privilege for certain publications

Clause 8 provides that any publication of the Commissioner is to be considered to be privileged for the purposes of the law of defamation, unless it is proved to be made with malice.

Clause 9: Lay Observer

Clause 9 abolishes the office of Lay Observer for Northern Ireland and repeals Article 42 of the Solicitors (NI) Order 1976. It also transfers the existing powers of the Lay Observer to the LSOC where the Lay Observer has not concluded an examination of an allegation made before the abolition of the post, and saves the provisions of the Order for this purpose.

Clause 10: Interpretation of Part 1

Clause 10 defines certain terms used in Part 1 of the draft Bill.

Clause 11: Complaints procedures of barristers

Clause 11 relates to the regulatory arrangements for the handling of complaints against barristers. Barristers, under the prevailing model, are all self-employed and therefore it would be anachronistic for each one to have an “in-house” complaints-handling system. Clause 11 permits the Bar Council in providing an alternative model for informal resolution of complaints. A complainant will therefore first engage with the Bar Council who will attempt to resolve the matter for the complainant in conjunction with the individual barrister. A

complaint may include something the barrister did, or something the barrister didn't do, but should have done.

Subsection (1) provides that the General Council of the Bar must make provision requiring each barrister to participate in, or be subject to, procedures for the resolution of complaints. It also requires the Bar Council to make provision specifying a person or body to establish and maintain such procedures.

Subsection (2) requires the Bar Council to consult the LSOC before making such provisions, and *Subsection (3)* defines a relevant complaint in relation to a barrister as one that relates to professional services and which may be made to the Bar Complaints Committee established under clause 12.

Clause 12: Bar Complaints Committee

Clause 12 provides that the Benchers of the Inn of Court must establish and maintain a Bar Complaints Committee to deal with any complaint made in relation to the professional services provided by a barrister.

Clause 13: Jurisdiction of the Complaints Committees

Clause 13 broadly defines what types of person are eligible to bring complaints to the Bar Complaints Committee and who may be the subject of a complaint.

Subsection (1) provides that a complaint will fall within the jurisdiction of the Complaints Committee if it is not excluded under clause 14 (because the respondent's in-house procedures have not been used) or if the complainant falls within clause 15 and wishes to have the complaint dealt with by the Bar Complaints Committee.

Subsection (2) provides that the right of a person to make a complaint and for the Bar Complaints Committee to investigate may not be limited or excluded by any contract term.

Clause 14: Excluded complaints

Clause 14 provides that a complaint does not fall within the jurisdiction of the Bar Complaints Committee unless the complainant has first used the respondent's in-house complaints procedure (as defined in *subsection (2)*).

Subsection (3) requires the Bar Complaints Committee to make rules outlining circumstances where a complainant may proceed directly to the Bar Complaints Committee without firstly using the in-house procedure. It will be a matter for the Complaints Committee to determine such circumstances, which could be, for example, where the relationship with the barrister has completely broken down that would render this type of process unworkable.

Clause 15: Complainants

Clause 15 sets out further conditions relating to the eligibility of a complainant to have a complaint handled by the Bar Complaints Committee. The scheme is designed in the first instance for use by individual complainants (and the provisions of the Interpretation Act (NI) 1954 would extend this to include individuals) although the relevant stakeholders can examine further classes of complainant and recommend those groups are included in the

scheme. *Subsection (2)(b)* provides scope for the Department to include in the future additional classes of complainant, based on recommendations by the Complaints Committee and/or the LSOC.

Clause 16: Orders under section 15

Clause 16 empowers the Department to make an order, on the recommendation of an interested body (defined in *Subsection (6)* as either the Bar Complaints Committee or the LSOC), the effect of which is for new categories of complainants to be included in or excluded from the scope of the Bar Complaints Committee.

Subsection (3) sets out the process that must be undertaken by an interested body before it makes a recommendation. *Subsections (4) and (5)* provide that if the Department considers the recommendation, and decides not to follow it, it must publish reasons for doing so.

Clause 17: Procedure for complaints

Clause 17 provides for the detailed framework for the Bar Complaints Committee scheme to be determined by rules to be made by the Committee. It allows the Committee the flexibility to adapt its procedures if required.

Subsection (1) provides that the rules made by the Committee under this clause will determine how complaints are to be made and how they are to be investigated, considered and determined by the Committee. Procedures for making rules, including requirements as to prior consultation, are set out in clause 27.

Subsection (2) requires Committee rules to establish time limits for the making of complaints and allows for the possibility of extension in circumstances specified in the rules. *Subsection (3)* provides for the continuation of a complaint by persons specified in Committee rules where a complainant dies or becomes unable to act.

Subsection (4) lists areas in which the Committee may wish to make rules. This list is intended to be indicative, and does not limit the breadth of the Committee's power to make rules in other areas or to require it to make rules in the areas specified. Complaints may be more appropriately dealt with by another person or body where this is considered necessary under *subsection (4)(b)* examples of which may be that the complaint raises issues of professional misconduct that may be more appropriately addressed by the disciplinary processes of the Bar, or where the complaint raises issues that may be criminal in nature, and a referral to the PSNI may be appropriate. *Subsections 4(e) and (f)* set out the circumstances where costs and expenses can be awarded in relation to hearings of the Complaints Committee. It is intended that making a complaint itself should be free, but the Committee will have the power to award costs against the complainant where they have acted in so unreasonably that it would be appropriate to do so. This clause should not deter genuine complainants.

Subsection (5) provides further detail about the circumstances in which rules may provide for complaints to be summarily dismissed (one of the matters listed in subsection (4)).

Subsection (6) prevents the power to make Committee rules from being used to compel disclosure where a person could not be so compelled in civil proceedings before the High Court.

Subsection (7) provides that where an award of costs has been made in favour of the Bar Complaints Committee, any amount due shall be payable to the Executive Council of the Inn of Court. *Subsection (8)* gives a rule-making power to authorise the Committee to provide for awards of costs to bear interest at such rate as specified in or determined in accordance with the rules. *Subsection (9)* provides that awards of costs may be recoverable as debts.

Clause 18: Notification requirements

Subsections (1) and (2) make provision to the effect that if a complaint is excluded, dismissed, referred to another body, settled, withdrawn or abandoned, then the Bar Complaints Committee must inform the complainant and the respondent. If a complaint is dismissed, referred to another body or excluded, the Complaints Committee must give reasons for doing so.

Subsections (3) and (4) provide that if the Complaint Committee has determined a complaint, it must prepare a written statement of the determination giving reasons for it, and copy the statement to the parties and to the Benchers, the Bar Council and the Legal Services Oversight Commissioner.

Clause 19: Determination of complaints

Clause 19 makes provision for the Bar Complaints Committee powers in making a determination.

Subsection (1) allows the Committee to uphold a complaint, or part of it, or dismiss a complaint, or part of it.

Subsection (2) sets out directions which the Committee may make in a determination, namely that the barrister make an apology to the complainant, or that the barrister's fees for the services to which the complaint relates are limited to a specified amount (if any) and further, under *subsection (3)*, any other action be taken, such as a refund, which may be necessary to give effect to this. Any apology made by a barrister shall not, of itself, amount to an admission of negligence for the purpose of any civil proceedings. Additional directions that can be made by the committee are that the barrister pay compensation for inconvenience, distress or loss (which is not categorised by the committee as negligence), the barrister pay compensation for any loss suffered, in the opinion of the committee as a result of a barrister's negligence, that the barrister secure rectification (at their own expense) of any specified error, omission or other deficiency in connection with the matter under complaint, that the barrister takes such steps to complete the matter within a reasonable time, or that the barrister, at their own expense, take such other action in the interests of the complainant as the direction may specify.

Subsection (4) allows for any amount payable pursuant to a determination to bear interest. *Subsections (5) and (6)* relate to the limitation of fees where the fees of a barrister are subject to taxation.

Subsection (7) sets out the maximum amount of compensation the Committee may award in respect of any loss suffered by the complainant as a result of negligence at £5000. *Subsection (8)* sets the maximum amount of compensation payable for any other loss, inconvenience and distress at £5000.

Subsection (9) provides that the failure of a barrister to comply with a direction made by the Complaints Committee is a disciplinary matter and can be complained about to the General Council of the Bar.

Clause 20: Alteration of compensation limit

Subsections (1) and (2) provide that the Department may amend the figures of £5000 in clause 19 in accordance with a recommendation made by an interested body. Such an order will be subject to negative resolution.

Subsection (3) provides that an interested body (defined in *Subsection (7)*) must consider whether it is appropriate to make a recommendation if asked by the Department, and before making such a recommendation it must follow the procedures set out in *subsection (4)*. *Subsections (5) and (6)* provide that if the Department considers the recommendation, and decides not to follow it, it must publish reasons for doing so.

Clause 21: Appeals

Clause 21 compels the Department to make regulations providing for appeals to the High Court against specified determinations of the Bar Complaints Committee. Such regulations must be agreed by the Lord Chief Justice and must be laid before and approved by resolution of the Assembly.

Clause 22: Information and documents

Clause 22 empowers the Bar Complaints Committee to require such information and/or documents from parties to a complaint as the Committee may specify before the end of such period (and it must be a reasonable period) as the Committee may specify, and in such manner of form as the Committee may specify. *Subsection (4)* allows the Committee, in the absence of a document, to require the person asked to produce it to state to the best of that person's knowledge and belief where it is.

Subsection (5) means that none of these powers may be used to compel disclosure which could not be compelled in civil proceedings before the High Court.

Clause 23: Reporting failures to provide information or produce documents

Clause 23 provides that where the Bar Complaints Committee considers that a barrister has failed to co-operate with it as required by clause 22, the Committee can notify the General Council of the Bar, which can be required to report to the Committee what action it takes (and may do so even if the complaint is subsequently withdrawn).

Clause 24: Enforcement of requirements to provide information or produce documents

Clause 24 applies if a party, other than the barrister, has failed to co-operate with the Bar Complaints Committee as required by clause 22. In such a case, the Committee may inform the court (which in this case means the High Court by virtue of *subsection (7)*) of the person's failure to comply with the request for information.

However, by virtue of *subsections (5) and (6)*, where the defaulter is a barrister, the Committee must first be satisfied that the General Council of the Bar to which a report was

made under clause 23 has been given a reasonable opportunity to take action, and that the defaulter has continued to be in default.

Under *subsection (4)* the High Court may thereupon enquire into the case, and if satisfied that the defaulter has failed without reasonable excuse to comply with the requirement, it may deal with the defaulter as if the defaulter were in contempt.

Clause 25: Reports of investigations

Clause 25 provides that the Bar Complaints Committee may publish a report about the investigation, consideration and determination of any particular case if it considers it appropriate. Under *subsection (2)* the report may not contain the complainant's name or any other identifying information, unless the complainant consents to the inclusion of that information.

Clause 26: Protection from defamation claims

Clause 26 makes provision placing Bar Complaints Committee proceedings and publications on a par with court proceedings for the purposes of the law of defamation.

Clause 27: Consultation requirements for Bar Complaints Committee rules

Clause 27 requires the Bar Complaints Committee to publish a draft of any rules it proposes to make, to take account of any representations made to it, to consult with the Legal Services Oversight Commissioner before making rules, and to publish the rules. The Committee may make a reasonable charge for supplying persons with a copy of draft rules or published rules.

Clause 28: Interpretation of Part 2

Clause 28 defines certain terms used in Part 2 of the Bill.

Clause 29: Complaints procedures for solicitors

Clause 29 relates to the regulatory arrangements for the handling of complaints against solicitors. It will place on a statutory footing that all solicitors must have an in-house complaints-handling process. It will also permit the Law Society to seek information relating to the numbers of complaints made in-house to individual solicitors' practices.

Subsection (1) provides that the Law Society for Northern Ireland must make provision requiring each solicitor to participate in, or be subject to, procedures for the resolution of complaints. It also requires solicitors to establish and maintain such procedures.

Subsection (2) provides that the Law Society must make regulations requiring every solicitor to provide the Law Society with information relating to relevant complaints made in-house.

Subsection (3) and (4) require the Law Society to consult the Commissioner before making such provisions, and for the Lord Chief Justice to concur with any regulations made by the Society in relation to complaints procedures for solicitors

Subsection (4) defines a relevant complaint in relation to a solicitor, as being one which relates to the professional services provided by a solicitor and which may be made to the Law Society Complaints Committee established under clause 30.

Clause 30: Solicitors Complaints Committee

Clause 30 provides that the Law Society must establish and maintain a Solicitors Complaints Committee to deal with any complaint made in relation to the professional services provided by a solicitor. A complaint may be about something the solicitor has done, or has not done, but should have done. Article 73A of the Solicitors (Northern Ireland) Order 1976, which sets conditions relating to committees of the Law Society, including voting conditions, is disapplied in relation to the Solicitors Complaints Committee.

Clause 31: Jurisdiction of the Solicitors Complaints Committee

Clause 31 broadly defines what types of person are eligible to bring complaints to the Solicitors Complaints Committee and who may be the subject of a complaint. In relation to a solicitor, the respondent may also be, where appropriate, his or her firm.

Subsection (1) provides that a complaint will fall within the jurisdiction of the complaints committee if it is not excluded under clause 31 (because the respondent's in-house complaints procedures have not been used) or if the complainant falls within clause 32 and wishes to have the complaint dealt with by the Complaints Committee.

Subsection (2) provides that the right of a person to make a complaint and for the Complaints Committee to investigate may not be limited or excluded by any contract term.

Clause 32: Excluded complaints

Subsection (1) provides that a complaint does not fall within the jurisdiction of the Solicitors Complaints Committee unless the complainant has first used the respondent's in-house complaints procedure (defined in *subsection (2)*).

Subsection (3) requires that the Solicitors Complaints Committee must make rules outlining circumstances where a complainant may proceed directly to the Solicitors Complaints Committee without firstly using the in-house procedure. It will be a matter for the Complaints Committee to determine such circumstances, which could be, for example, where the relationship with the solicitor has completely broken down that would render this type of process unworkable.

Clause 33: Complainants

Clause 33 sets out further conditions as to the eligibility of a complainant to have a complaint handled by the Solicitors Complaints Committee. The scheme is designed in the first instance for use by individual complainants (and the provisions of the Interpretation Act (NI) 1954 would extend this to include individuals) although the relevant stakeholders can examine further classes of complainant and recommend those groups are included in the scheme. *Subsection (2)(b)* provides scope for the Department to include in the future additional classes of complainant, based on recommendations by the Complaints Committee and/or the LSOC.

Clause 34: Orders under section 33

Clause 34 empowers the Department to make an order on the recommendation of an interested body (as defined in *Subsection (6)*), the effect of which is for new categories of complainants to be included in or excluded from the scope of the Complaints Committee.

Subsection (3) sets out the process that must be undertaken by an interested body before it makes a recommendation. *Subsections (4) and (5)* provide that if the Department considers the recommendation, and decides not to follow it, it must publish reasons for doing so.

Clause 35: Continuity of complaints

Clause 35 makes provision to ensure that a complaint does not fail simply because of change in membership of the partnership or body against which the complaint is made.

Clause 36: Procedure for complaints

Clause 36 provides for the detailed framework for the Solicitors Complaints Committee scheme to be determined by rules to be made by the Committee. It allows the Committee the flexibility to adapt its procedures if required.

Subsection (1) provides that the rules made by the Committee under this clause will determine how complaints are to be made and how they are to be investigated, considered and determined by the Committee. Procedures for making rules, including requirements as to prior consultation, are set out in clause 46.

Subsection (2) requires Committee rules to establish time limits for the making of complaints and allows for the possibility of extension in circumstances specified in the rules. *Subsection (3)* provides for the continuation of a complaint by persons specified in Committee rules where a complainant dies or becomes unable to act.

Subsection (4) lists areas in which the Committee may wish to make rules. This list is intended to be indicative, and does not limit the breadth of the Committee's power to make rules in other areas or to require it to make rules in the areas specified. Complaints may be more appropriately dealt with by another person or body where this is considered necessary under *subsection (4)(b)* examples of which may be that the complaint raises issues of professional misconduct that may be more appropriately addressed by the disciplinary processes of the Law Society, or where the complaint raises issues that may be criminal in nature, and a referral to the PSNI may be appropriate. *Subsections 4(e) and (f)* set out the circumstances where costs and expenses can be awarded in relation to hearings of the Complaints Committee. It is intended that making a complaint itself should be free, but the Committee will have the power to award costs against the complainant where they have acted in so unreasonably that it would be appropriate to do so. This clause should not deter genuine complainants.

Subsection (5) provides further detail about the circumstances in which rules may provide for complaints to be summarily dismissed (one of the matters listed in subsection (5)).

Subsection (6) prevents the power to make Committee rules from being used to compel disclosure which could not be compelled in civil proceedings before the High Court.

Subsection (7) provides that where an award of costs has been made in favour of the Committee, any amount due shall be payable to the Law Society. *Subsection (8)* gives a rule making power to authorise the Committee to provide for awards of costs to bear interest at such rate as specified in or determined in accordance with the rules. *Subsection (9)* provides that awards of costs may be recoverable as debts.

Clause 37: Notification requirements

Subsections (1) and (2) make provision to the effect that if a complaint is excluded, dismissed, referred to another body, settled, withdrawn or abandoned, then the Solicitors Complaints Committee must inform the complainant and the respondent. If a complaint is dismissed, referred to another body or excluded, the Committee must give reasons for doing so.

Subsections (3) and (4) provide that if the Committee has determined a complaint, it must prepare a written statement of the determination giving reasons for it, and copy the statement to the parties and to the Law Society and Legal Services Oversight Commissioner.

Clause 38: Determination of complaints

Clause 38 makes provision for the Solicitors Complaints Committee powers in making a determination.

Subsection (1) allows the Committee to uphold a complaint, or part of it, or dismiss a complaint, or part of it.

Subsection (2) sets out directions which the Committee may make in a determination, namely that the solicitor make an apology to the complainant, or that the solicitor's costs for the services to which the complaint relates are limited to a specified amount (if any) and further, under *subsection (3)*, any other action be taken, such as a refund, which may be necessary to give effect to this. Where an apology is directed, the making of the apology will not, of itself, amount to an admission of negligence by the solicitor for the purpose of any civil proceedings. Additional directions that can be made by the committee are that the solicitor pay compensation for inconvenience, distress or loss that is not judged to fall into the category of negligence, the solicitor pay compensation for any loss suffered as a result of, in the opinion of the committee, the solicitor's negligence, that the solicitor secure rectification (at their own expense) of any specified error, omission or other deficiency in connection with the matter under complaint, that the solicitor takes such steps to complete the matter within a reasonable time, or that the solicitor, at their own expense, take such other action in the interests of the complainant as the direction may specify. In all the above matters, reference to a solicitor can also include his or her firm.

Subsection (4) allows for any amount payable pursuant to a determination to bear interest. *Subsections (5) and (6)* relate to the limitation of fees where the costs of a solicitor are subject to taxation.

Subsection (7) sets out the maximum amount of compensation the Committee may award in respect of any loss suffered by the complainant as a result of negligence at £5000. *Subsection (8)* sets the maximum amount of compensation payable for inconvenience and distress at £5000.

Subsection (9) provides that the failure of a solicitor to comply with a direction made by the Committee is a disciplinary matter and can be complained about to the Solicitors' Disciplinary Tribunal.

Clause 39: Alteration of compensation limits

Subsections (1) and (2) provide that the Department may amend the figures of £5000 in clause 38 in accordance with a recommendation made by an interested body (as defined in *Subsection (7)*). Such an order will be subject to negative resolution.

Subsection (3) provides that an interested body must consider whether it is appropriate to make a recommendation if asked by the Department, and before making such a recommendation it must follow the procedures set out in *subsection (4)*.

Subsections (5) and (6) provide that if the Department considers the recommendation, and decides not to follow it, it must publish reasons for doing so.

Clause 40: Appeals

Clause 40 compels the Department to make regulations providing for appeals to the High Court against specified determinations of the Solicitors Complaints Committee. Such regulations must be agreed by the Lord Chief Justice and must be laid before and approved by resolution of the Assembly.

Clause 41: Information and documents

Clause 41 empowers the Solicitors Complaints Committee to require such information and/or documents from parties to a complaint as the Committee may specify before the end of such period (and it must be a reasonable period) as the Committee may specify, and in such manner of form as the Committee may specify.

Subsection (4) allows the Committee, in the absence of a document, to require the person asked to produce it to state to the best of that person's knowledge and belief where it is.

Subsection (5) means that none of these powers may be used to compel disclosure which could not be compelled in civil proceedings before the High Court.

Clause 42: Reporting failures to provide information or produce documents

Clause 42 provides that where the Solicitors Complaints Committee considers that a solicitor has failed to co-operate with it as required by clause 42, the Committee can notify the Law Society, which can be required to report to the Committee what action it takes (and may do so even if the complaint is subsequently withdrawn).

Clause 43: Enforcement of requirements to provide information or produce documents

Clause 43 applies if a party, other than the solicitor, has failed to co-operate with the Solicitors Complaints Committee as required by clause 43. In such a case, the Committee may inform the court (which in this case means the High Court by virtue of *subsection (7)*) of the person's failure to comply with the request for information.

However, by virtue of *subsections (5) and (6)*, where the defaulter is a solicitor, the Committee must first be satisfied that the Law Society to which a report was made under clause 42 has been given a reasonable opportunity to take action, and that the defaulter has continued to be in default.

Under *subsection (4)* the High Court may thereupon enquire into the case, and if satisfied that the defaulter has failed without reasonable excuse to comply with the requirement, it may deal with the defaulter as if the defaulter were in contempt.

Clause 44: Reports of investigations

Clause 44 provides that the Solicitors Complaints Committee may publish a report about the investigation, consideration and determination of any particular case if it considers it appropriate. Under *subsection (2)* the report may not contain the complainant's name or any other identifying information, unless the complainant consents to the inclusion of that information.

Clause 45: Protection from defamation claims

Clause 45 makes provision placing Solicitors Complaints Committee proceedings and publications on a par with court proceedings for the purposes of the law of defamation.

Clause 46: Consultation requirements for Solicitors Complaints Committee rules

Clause 46 requires the Solicitors Complaints Committee to publish a draft of any rules it proposes to make, to take account of any representations made to it, to consult with the Legal Services Oversight Commissioner before making rules, and to publish any rules. The Committee may make a reasonable charge for supplying persons with a copy of draft rules or published rules.

Clause 47: The Solicitors Disciplinary Tribunal

Clause 47 varies the membership of the Solicitors' Disciplinary Tribunal. It is currently constituted with a professional chair and a professional majority. This provision changes the membership to a professional chair and a lay majority.

Clause 48: Recognised bodies

Clause 48 provides that a number of references to recognised bodies in the Chapter relating to complaints procedures of solicitors are references to bodies corporate under Article 26A of the Solicitors (Northern Ireland) Order 1976.

Clause 49: Interpretation of Part 3

Clause 49 defines certain terms used in part 3 of the draft Bill.

Clause 50: Interpretation

Clause 50 defines certain terms used throughout the Bill

Clause 51: Review

Clause 51 provides that the Department must, within 3 years of the commencement of the Act, appoint an independent person to review and publish a report on the implementation of the Act. The Department must set out the terms of the review by way of order, subject to negative resolution.

Clause 52: Further provision

Subsections (1) and (2) allow the Department of Finance and Personnel to make transitional and savings provisions in connection with the coming into force of the draft Bill. *Subsections (3) and (4)* provide that any order made by the Department under this clause may amend, repeal or modify other legislation.

Subsection (5) provides that orders of this nature are subject to negative resolution, except where an order modifies any Act of Parliament or Northern Ireland legislation, in which case it cannot be made unless a draft has been laid before, and approved by resolution of, the Assembly.

Clause 53: Minor and consequential amendments

Clause 53 introduces Schedule 4 which contains amendments to other legislation in consequence of the provisions of the draft Bill.

Clause 54: Repeals

Clause 54 introduces Schedule 5 which contains repeals of other legislation in consequence of the provisions of the draft Bill.

Clause 55: Commencement

Clause 55 outlines the commencement provisions relating to the draft Bill.

Clause 56: Short title

Clause 56 provides that the short title for the legislation.

Schedule 1: The Legal Services Oversight Commissioner for Northern Ireland

Schedule 1 provides for the status, general powers, tenure of office and general staffing and procedural arrangements of the Commissioner. It provides for a Commissioner to have tenure for 3 years with eligibility for one further term of 3 years and provides for accountability to the Department of Finance and Personnel and the Assembly in relation to Accounts and in relation to an Annual Report. It also permits the Department to appoint an acting Commissioner where the Commissioner's office becomes vacant or if the Commissioner becomes incapable of exercising the functions of the office, or where it would be inappropriate to do so.

Schedule 2: The Bar Complaints Committee

Schedule 2 sets out the membership, terms of office, remuneration arrangements and procedural arrangements of the Bar Complaints Committee.

Paragraphs 1-4 of Schedule 2 requires the Bar Complaints Committee to be chaired by a lay person and to consist of a majority of lay persons, appointed by the Benchers, after consultation with the Legal Services Oversight Commissioner on the manner of the appointments, and after consultation on the making of any appointments. No members of the Bar's representative body, the General Council of the Bar, may sit on the Complaints Committee.

Paragraph 5 of Schedule 2 sets out the terms of office of members of the Committee. Members may be appointed for 5 years, and be re-appointed for a further 5 year period. Provisions setting out how members may resign or be removed from office are set out.

Paragraph 6 sets out the remuneration arrangements for members of the Committee and *paragraph 7* allows it to make arrangements for assistance.

Paragraphs 8 and 9 outline procedural arrangements, including sub-committees and quorum.

Schedule 3: The Solicitors Complaints Committee

Schedule 3 sets out the membership, terms of office, remuneration arrangements and procedural arrangements of the Solicitors Complaints Committee.

Paragraphs 1-4 of Schedule 2 requires the Complaint Committee to be chaired by a lay person and to consist of a majority of lay persons, appointed by the Law Society, after consultation with the Legal Services Oversight Commissioner on the manner of the appointments, and after consultation with the Commissioner on the making of the appointments. No members of the Law Society Council may sit on the Complaints Committee.

Paragraphs 5 of Schedule 2 sets out the terms of office of members of the Committee. Members may be appointed for 5 years, and be re-appointed for a further 5 year period. Provisions setting out how members may resign or be removed from office are set out.

Paragraph 6 sets out the remuneration arrangements for members of the Committee and *paragraph 7* allows it to make arrangements for assistance.

Paragraphs 8 and 9 outline procedural arrangements, including sub-committees and quorum.

Schedule 4: Minor and Consequential Amendments

Schedule 4 contains amendments to other statutory provisions consequential upon the draft Bill.

Schedule 5: Repeals

Schedule 5 contains repeals to various statutory provisions.

FINANCIAL EFFECTS OF THE BILL

19. With the costs of the proposed new systems to be paid for by the professional bodies, there is no direct financial cost to government. There may be a modest cost in terms of effecting the statutory review of the Act. There are a number of solicitors employed by

Government Departments who currently have in force a practising certificate issued by the Law Society. If the Society increases the cost of a practising certificate to meet the additional costs of operating and complying with the new system, there may be an indirect cost to certain Government organisations (for example, the Public Prosecution Service, Departmental Solicitors Office).

HUMAN RIGHTS ISSUES

20. The provisions of the Bill are considered to be compatible with the Convention on Human Rights.

EQUALITY IMPACT ASSESSMENT

21. As a result of equality impact screening which has been carried out it is not considered that the Bill will have any adverse or negative impact on any of the sections of the community specified in section 75 of the Northern Ireland Act 1998. The existing legislation may have some adverse impact on people with disabilities and younger persons, but these effects should be improved by the provisions contained in the draft Bill.

SUMMARY OF THE REGULATORY IMPACT ASSESSMENT

22. A Regulatory Impact Assessment has shown that the Bill's objectives can only be achieved by legislative change and has shown that the additional costs to lawyers in this jurisdiction should be relatively modest. The Regulatory Impact Assessment was consulted on by the Department and an updated version is available from the Department.

LEGISLATIVE COMPETENCE

The Minister of Finance and Personnel had made the following statement under section 9 of the Northern Ireland Act 1998:

“In my view the Legal Complaints and Regulation Bill would be within the legislative competence of the Northern Ireland Assembly.”