



## 2016 CHAPTER 14

PROSPECTIVE

### **PART 1**

#### **THE LEGAL SERVICES OVERSIGHT COMMISSIONER FOR NORTHERN IRELAND**

##### **The Legal Services Oversight Commissioner for Northern Ireland**

**1.—**(1) There is to be an officer known as the Legal Services Oversight Commissioner for Northern Ireland.

(2) The Commissioner must be appointed by the Department of Finance and Personnel.

(3) The Department of Finance and Personnel must consult the Lord Chief Justice before appointing the Commissioner.

(4) The Commissioner must not be, and must never have been, a solicitor or barrister.

(5) Schedule 1 has effect in relation to the Commissioner.

##### **General powers of the Commissioner**

**2.—**(1) The Commissioner may—

- (a) require a professional body to provide information to, or make reports to, the Commissioner about the handling of complaints about its members;

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- (b) require a professional body to provide the Commissioner with such information in relation to the number of complaints made against the members of that body as the Commissioner may specify;
- (c) investigate the manner in which complaints about the members of a professional body are handled by that body;
- (d) make recommendations in relation to the training of members of—
  - (i) the Bar Complaints Committee;
  - (ii) the Solicitors Complaints Committee;
- (e) set targets in relation to the handling of complaints about the members of a professional body;
- (f) make recommendations in relation to the handling of complaints about the members of a professional body;
- (g) require a professional body to submit to the Commissioner a plan for the handling of complaints about its members; and
- (h) do any other thing which the Commissioner has power to do by virtue of this Act or any other statutory provision.

(2) For the purposes of an investigation under subsection (1)(c), the Commissioner shall have a right of access at all reasonable times to all such documents as the Commissioner may reasonably require for carrying out the investigation.

(3) Subsection (2) only applies to documents in the custody of or under the control of the professional body to which the investigation relates.

(4) Where the Commissioner requires a professional body to submit a plan for the handling of complaints about its members but the body—

- (a) fails to submit a plan which the Commissioner considers adequate for securing that such complaints are handled effectively and efficiently; or
- (b) submits such a plan but fails to handle complaints in accordance with it,

the Commissioner may require the body to pay a penalty.

(5) Before requiring a professional body to pay a penalty under subsection (4) the Commissioner must consult with the body and afford it a reasonable opportunity of appearing before the Commissioner to make representations.

(6) The Department must by order specify the maximum amount of any penalty under subsection (4).

(7) No order shall be made under subsection (6) unless a draft of the order has been laid before, and approved by resolution of, the Assembly.

(8) In determining the amount of any penalty which a professional body is to be required to pay under subsection (4) the Commissioner must have regard to all the circumstances of the case, including in particular—

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- (a) the total number of complaints about members of the body and, where the penalty is imposed in respect of a failure to handle complaints in accordance with a plan, the number of complaints not so handled; and
- (b) the assets of the body and the number of its members.

(9) A penalty under subsection (4) must be paid to the Commissioner who must pay it to the Department.

### **Duty of certain bodies to consult Commissioner**

3.—(1) Where any body listed in subsection (2) has power to make any rules or regulations (however they may be described) which apply to or in relation to barristers, other than those made for the purposes of any functions that that body has to represent or promote the interests of barristers, that body must consult the Commissioner before making those rules or, as the case may be, those regulations.

(2) The bodies referred to in subsection (1) are—

- (a) the Benchers of the Honorable Society of the Inn of Court of Northern Ireland;
- (b) the Executive Council of the Inn of Court of Northern Ireland;
- (c) the General Council of the Bar of Northern Ireland.

(3) In Article 43 of the 1976 Order (Solicitors Disciplinary Tribunal), in paragraph (8), after “The Tribunal may,” insert “ after consultation with the Legal Services Oversight Commissioner and ”.

(4) In Article 51 of the 1976 Order (orders of Solicitors Disciplinary Tribunal on inquiry), after paragraph (11) insert—

“(11A) Before making an order under paragraph (11), the Department of Finance and Personnel shall consult the Legal Services Oversight Commissioner.”.

(5) In Article 71 of the 1976 Order (orders as to remuneration of solicitors for non-contentious business), in paragraph (6)—

- (a) in sub-paragraph (a), for “the Council” substitute “ the Legal Services Oversight Commissioner and the Council ”;
- (b) in sub-paragraph (b), for “the Council” substitute “ the Commissioner or the Council ”.

(6) In Article 75 of the 1976 Order (regulations and rules) after paragraph (1) insert—

“(1A) Before making regulations the Society shall consult the Legal Services Oversight Commissioner.”.

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### **Duty of Commissioner to review certain matters**

4.—(1) At the request of the Department, and within such time as the Department may specify, the Commissioner must review, and submit a report to the Department on, such matter or matters relating to the organisation or regulation of the professional bodies as the Department may specify.

(2) Each report published by the Commissioner under subsection (1) must be published by the Commissioner in such manner as the Commissioner may determine.

### **The levy**

5.—(1) The Department must make regulations providing for the imposition of a levy on each professional body for the purpose of raising an amount corresponding to the expenditure of the Legal Services Oversight Commissioner incurred under or for the purposes of this Act or any other statutory provision.

(2) A levy imposed under this section is payable to the Commissioner.

(3) Before making regulations under this section, the Department must satisfy itself that the apportionment of the levy as between each professional body will be in accordance with fair principles.

(4) No regulations shall be made under this section unless a draft of the regulations has been laid before, and approved by resolution of, the Assembly.

### **The levy: supplementary provisions**

6.—(1) In this section—

“the levy” means the levy payable by virtue of section 5;

“the levy regulations” means the regulations made in accordance with that section.

(2) The levy is to be payable at such rate and at such times as may be specified in the levy regulations.

(3) Any amount which is owed to the Commissioner in accordance with the levy regulations may be recovered as a debt due to the Commissioner.

(4) The levy regulations must include provisions requiring the Department—

(a) to calculate the amount of the levy payable by each professional body;

(b) to consult each professional body on the amount of the levy payable by that body;

(c) to notify each professional body of its liability to pay an amount of levy and the time or times at which it becomes payable.

(5) Without prejudice to subsections (2) to (4), the levy regulations may—

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- (a) make provision about the collection and recovery of the levy;
- (b) make provision about the circumstances in which any amount of the levy payable may be waived;
- (c) provide that if the whole or any part of an amount of the levy payable under the levy regulations is not paid by the time when it is required to be paid under the regulations, the unpaid balance carries interest at the rate determined by or in accordance with the levy regulations.

### **Payments by Department**

7.—(1) The Department may pay to the Commissioner such sums as the Department may determine as appropriate for the purpose of meeting any expenditure of the Commissioner incurred under or for the purposes of this Act or any other statutory provision.

(2) The Department may—

- (a) determine the circumstances in which the sums mentioned in subsection (1) are to be paid;
- (b) determine the manner in which and times at which those sums are to be paid; and
- (c) impose conditions on the payment of those sums.

### **Privilege for certain publications**

8 For the purposes of the law of defamation, publication by the Commissioner of any matter which the Commissioner is required or authorised to publish under this Act shall be absolutely privileged unless the publication is proved to be made with malice.

### **Lay observer**

9.—(1) The office of lay observer (within the meaning of the 1976 Order) is abolished.

(2) Article 42 of that Order is repealed.

(3) Where any allegation has been duly made to a lay observer under Article 42 of the 1976 Order but the lay observer has not concluded his or her examination of the allegation before the repeal of that Article has effect, the Commissioner may exercise the functions of a lay observer under the 1976 Order in relation to that allegation.

(4) Where the Commissioner exercises the functions of a lay observer by virtue of subsection (3), the 1976 Order shall have effect in relation to the Commissioner's examination as if this Act had not been passed.

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## **Interpretation of Part 1**

### **10** In this Part—

“the Bar Complaints Committee” means the committee established under section 12;

“the professional bodies” are—

- (a) the Honorable Society of the Inn of Court of Northern Ireland;
- (b) the Law Society;

“the Solicitors Complaints Committee” means the committee established under section 30.

**Status:**

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**Changes to legislation:**

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