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*Number 19 of 2002*

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**SOLICITORS (AMENDMENT) ACT, 2002**

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**SOLICITORS (AMENDMENT) ACT, 2002**

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AN ACT TO AMEND THE SOLICITORS ACTS, 1954 TO 1994,  
AND TO PROVIDE FOR FACILITATING THE PRACTICE OF THE PROFESSION OF LAWYER THROUGHOUT THE EUROPEAN ECONOMIC AREA AND THE SWISS CONFEDERATION. [13th April, 2002]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

**1.**—In this Act—

Interpretation.

“Act of 1960” means the Solicitors (Amendment) Act, 1960;

“Act of 1994” means the Solicitors (Amendment) Act, 1994;

“Disciplinary Tribunal” means the Solicitors Disciplinary Tribunal established by section 6(1) (as substituted by this Act) of the Act of 1960, and references to the Disciplinary Tribunal in the Acts of 1960 and 1994 shall be construed as references to the Solicitors Disciplinary Tribunal;

“Minister” means the Minister for Justice, Equality and Law Reform;

“Principal Act” means the Solicitors Act, 1954.

**2.**—Section 49(1) (as substituted by section 61 of the Act of 1994) of the Principal Act is hereby amended by the substitution of the following paragraph for paragraph (q):

Amendment of section 49(1) of Principal Act.

“(q) the solicitor has failed to satisfy the Society that he or she should be issued with a practising certificate or a practising certificate not subject to specified conditions, having regard to all the circumstances, including, where appropriate—

- (i) the financial state of the practice,
- (ii) the number and nature of complaints made to the Society, either alleging misconduct by the solicitor or under section 8 or 9 of the Solicitors (Amendment)

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S.2 Act, 1994, within the preceding two practice years,  
or

- (iii) the need adequately to protect or secure the interests of the solicitor's clients.”.

Amendment of  
section 66 of  
Principal Act.

**3.**—The Principal Act is hereby amended in section 66 (as substituted by section 76 of the Act of 1994) by the substitution of the following for subsection (11):

“(11) An authorised person who attends pursuant to subsection (10) of this section at a place of business of a solicitor shall inform the solicitor or any clerk or servant of the solicitor of the purpose of the attendance as specified in that subsection, except where the Society reasonably consider that to do so could prejudice the exercise of any of the Society's functions as so specified, and may in pursuance of that purpose require the solicitor or any such clerk or servant to do one or more than one of the following:

- (a) to make available for inspection all or any part of the solicitor's accounting records;
- (b) to furnish such copies of those records as the authorised person deems necessary to fulfil the said purpose;
- (c) to give such written authority addressed to such bank or banks as the authorised person requires to enable the authorised person to inspect any account or accounts opened, or caused to be opened, by the solicitor at such bank or banks (or any documents relating thereto) and to obtain from such bank or banks copies of such documents relating to such account or accounts for such period or periods as the authorised person deems necessary to fulfil the said purpose.”.

Amendment of  
section 71 of  
Principal Act.

**4.**—The Principal Act is hereby amended in section 71 (which relates to regulations with respect to the professional practice, conduct and discipline of solicitors) by the substitution, for subsections (2) to (7) (inserted by the Act of 1994), of the following subsections:

“(2) A solicitor shall not publish or cause to be published an advertisement which—

- (a) is likely to bring the solicitors' profession into disrepute,
- (b) is in bad taste,
- (c) reflects unfavourably on other solicitors,
- (d) without prejudice to any regulations under subsection (8) of this section, contains an express or implied assertion that the solicitor has specialist knowledge in any area of law or practice which is superior to that of other solicitors,
- (e) is false or misleading in any respect,
- (f) is published in an inappropriate location,
- (g) does not comply with subsection (3), or regulations under subsection (5) or (6), of this section,

(h) expressly or impliedly refers to—

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(i) claims or possible claims for damages for personal injuries,

(ii) the possible outcome of claims for damages for personal injuries, or

(iii) the provision of legal services by the solicitor in connection with such claims,

(i) expressly or impliedly solicits, encourages or offers any inducement to any person or group or class of persons to make the claims mentioned in paragraph (h) of this subsection or to contact the solicitor with a view to such claims being made, or

(j) is contrary to public policy.

(3) An advertisement published or caused to be published by a solicitor shall not include more than—

(a) the name, address (including any electronic address), telephone number, facsimile number, place or places of business of the solicitor and any reference to the location of information provided by the solicitor that is accessible electronically,

(b) particulars of the academic and professional qualifications and legal experience of the solicitor,

(c) subject to subsection (2) of this section, factual information on the legal services provided by the solicitor and on any areas of law to which those services relate,

(d) subject to any regulations under subsection (6) of this section, particulars of any charge or fee payable to the solicitor for the provision of any specified legal service, and

(e) any other information specified in regulations under subsection (5) of this section.

(4) Without prejudice to paragraphs (h) and (i) of subsection (2) of this section, a solicitor may, where appropriate, include the words 'personal injuries' in any advertisement which contains factual information, pursuant to paragraph (c) of subsection (3) of this section, on the legal services provided by the solicitor or on any areas of law to which those services relate.

(5) Without prejudice to the generality of section 5 of this Act and subsection (1) of this section, the Society shall, with the consent of the Minister, make regulations to give effect to subsections (2), (3) and (4) of this section and, in particular—

(a) to make provision, having regard to those subsections, in relation to advertisements that may be published or caused to be published by a solicitor, including provision in respect of the manner of their publication and their form, content and size,

(b) to specify advertisements which, having regard to the manner of their publication or their form, content or size,

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would be in contravention of subsection (2) of this section,

- (c) subject to subsection (2) of this section, to provide that an advertisement published or caused to be published by a solicitor may include specified information in addition and of a similar nature to the information provided for in paragraphs (a) to (d) of subsection (3) of this section,
- (d) to provide for restrictions on a solicitor making, or causing to be made, unsolicited approaches to any person or group or class of persons with a view to being instructed to provide legal services, and
- (e) to provide for the manner in which the Society is to determine whether any particular advertisement published or caused to be published by a solicitor is in contravention of any provision of, or regulations under, this section.

(6) The Society, where they consider it appropriate, may make regulations prohibiting the advertisement of any charge or fee payable to a solicitor for the provision of any specified legal service, provided that such regulations may be made only with the consent of the Minister and where the Minister is satisfied that such regulations are in the public interest.

(7) Without prejudice to the generality of section 5 of this Act and subsection (1) of this section, the Society shall not prohibit a solicitor from charging less for a legal service than any charge or fee specified for that legal service by or under any enactment for the time being in force.

(8) Notwithstanding paragraph (d) of subsection (2) and subsection (3) of this section, the Society may by regulations provide that a solicitor who in the prescribed manner satisfies the Society of having specialist knowledge in a prescribed area of law or practice may be permitted by the Society to be designated, whether in an advertisement or otherwise, as having specialist knowledge in that area.

(9) Regulations under section 5 and this section and in force immediately before the commencement of the *Solicitors (Amendment) Act, 2002*, shall, save in so far as they may be inconsistent with this section or regulations made thereunder after such commencement, continue in force until revoked as if they had been duly made under those sections.

(10) In this section—

‘advertisement’ means any communication (whether oral or in written or other visual form and whether produced by electronic or other means) which is intended to publicise or otherwise promote a solicitor in relation to the solicitor’s practice, including—

- (a) any brochure, notice, circular, leaflet, poster, placard, photograph, illustration, emblem, display, stationery, directory entry, article or statement for general publication,
- (b) any electronic address or any information provided by the solicitor that is accessible electronically,
- (c) any audio or video recording, or
- (d) any presentation, lecture, seminar or interview,

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which is so intended but excluding a communication which is primarily intended to give information on the law; S.4

‘claims for damages for personal injuries’ means claims, whether made in court proceedings or otherwise, for damages or compensation for personal injuries suffered, or alleged to have been suffered, by a person or persons owing to an act or omission, or alleged act or omission, of another person or persons;

‘inappropriate location’ means a hospital, clinic, doctor’s surgery, funeral home, cemetery, crematorium or other location of a similar character;

‘the Minister’ means the Minister for Justice, Equality and Law Reform;

‘personal injuries’ includes any disease and any impairment of a person’s physical or mental condition or death.”.

5.—(1) Without prejudice to sections 55 and 56 (which prohibit an unqualified person from acting as or pretending to be a solicitor) of the Principal Act, a person who is not a solicitor shall not publish or cause to be published an advertisement—

Prohibition of certain advertisements by unqualified persons.

- (a) which expressly or impliedly undertakes to provide a specified service, being a service of a legal nature that could otherwise be provided by a solicitor, for or in expectation of a fee, gain or reward that is directly related to the provision of that service, and
- (b) which, if published or caused to be published by a solicitor, would not be in compliance with paragraph (h) or (i) of subsection (2) or subsection (4) of section 71 (as amended by section 4 of this Act) of the Principal Act.

(2) In subsection (1) of this section “advertisement” has the meaning assigned to it by subsection (10) of section 71 (as so amended) of the Principal Act, with the substitution, where appropriate, of “a person who is not a solicitor” for “a solicitor in relation to that solicitor’s practice”.

6.—Sections 4 and 5 of this Act shall not apply to advertisements that are published not more than 3 months after the commencement of those provisions. Saver.

7.—The Act of 1960 is hereby amended in section 3 (as amended by section 24 of the Act of 1994) by the substitution, for paragraphs (c) and (d) of the definition of “misconduct”, of the following paragraphs: Amendment of section 3 of Act of 1960.

“(c) the contravention of a provision of the *Solicitors Acts, 1954 to 2002*, or any order or regulation made thereunder,

(d) in the course of practice as a solicitor—

- (i) having any direct or indirect connection, association or arrangement with any person (other than a client) whom the solicitor knows, or upon reasonable enquiry should have known, is a person who is acting or has acted in contravention of section 55 or 56 or

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section 58 (which prohibits an unqualified person from drawing or preparing certain documents), as amended by the Act of 1994, of the Principal Act, or section 5 of the *Solicitors (Amendment) Act, 2002*, or

- (ii) accepting instructions to provide legal services to a person from another person whom the solicitor knows, or upon reasonable enquiry should have known, is a person who is acting or has acted in contravention of those enactments,

(e) any other conduct tending to bring the solicitors' profession into disrepute.”.

Amendment of section 6 of Act of 1960.

**8.**—The Act of 1960 is hereby amended in section 6 (as substituted by section 16 of the Act of 1994)—

(a) by the substitution of the following subsection for subsection (1):

“(1) The President of the High Court shall, from time to time as occasion requires, appoint a tribunal which shall be known as the Solicitors Disciplinary Tribunal (in this Act referred to as the ‘Disciplinary Tribunal’) consisting of—

- (a) not more than twenty persons from among practising solicitors of not less than 10 years standing (to be known and referred to in this section as ‘solicitor members’), one of whom shall be appointed by the President of the High Court to be chairperson of the Disciplinary Tribunal and each of whom shall be appointed after consultation with the Society, and
- (b) not more than ten persons, who are not solicitors or barristers (to be known and referred to in this section as ‘lay members’), who shall be nominated by the Minister to represent the interests of the general public,

for such a period, not exceeding five years, as the President of the High Court may determine, and any such person so appointed shall be eligible for reappointment to the Disciplinary Tribunal for not more than one such period.”,

(b) by the insertion of the following subsection after subsection (1):

“(1A) At least 40 per cent of the solicitor members and of the lay members of the Disciplinary Tribunal, calculated by rounding to the nearest whole number, shall be men and at least 40 per cent, as so calculated, shall be women.”,

and

(c) by the substitution of the following subsection for subsection (6):



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“(6) The Society shall pay to each member of the Disciplinary Tribunal, out of funds at the disposal of the Society, either— S.8

- (a) the reasonable travelling and subsistence expenses incurred by the member in connection with attendance at meetings of the Disciplinary Tribunal, or
- (b) with the consent of the member concerned, an annual sum (the amount of which shall be determined by the Society from time to time and which shall be payable in arrear at the end of each year) in respect of those expenses.”.

9.—The Act of 1960 is hereby amended in section 7 (as substituted by section 17 of the Act of 1994) in the following respects: Amendment of section 7 of Act of 1960.

(a) by the substitution of the following subsections for subsections (2) and (3):

“(2) (a) Where an application in relation to a solicitor (in this section referred to as the ‘respondent solicitor’) is duly made under this section, the Disciplinary Tribunal shall—

- (i) where the Society is not the applicant, inform the Society as soon as practicable of the receipt of the application, and
- (ii) before deciding whether there is a *prima facie* case for inquiry:

(I) send a copy of the application and of any accompanying documents to the respondent solicitor, and

(II) request that any observations which he or she may wish to make on the application be supplied to the Disciplinary Tribunal within a specified period.

(b) If, after receipt of the respondent solicitor’s observations or on the expiration of the specified period, the Disciplinary Tribunal find that there is no *prima facie* case for inquiry, they shall so inform the applicant, the Society (where the Society is not the applicant) and the respondent solicitor and take no further action in relation to the application.

(3) If the Disciplinary Tribunal find that there is a *prima facie* case for inquiry, the following provisions shall have effect:

(a) they shall proceed to hold an inquiry and notify the respondent solicitor and the applicant (and, where the Society is not the applicant, the Society) of the date on which it is to be held;

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- (b) when holding the inquiry the Disciplinary Tribunal shall—
- (i) consider each allegation of misconduct made against the respondent solicitor, and
  - (ii) make a separate finding in respect of each such allegation;
- (c) on completion of the inquiry the Disciplinary Tribunal shall specify in a report (which shall include a verbatim note of the evidence given and submissions made) to the High Court—
- (i) the nature of the application and the evidence laid before them,
  - (ii) the finding made on each allegation of misconduct and the reasons therefor,
  - (iii) any other matters in relation to the respondent solicitor which they may think fit to report,
  - (iv) in case they find that there has been misconduct on the part of the respondent solicitor and they have not made, and do not intend to make, an order under subsection (9) of this section—
    - (I) their opinion as to the fitness or otherwise of the respondent solicitor to be a member of the solicitor's profession, having regard to their findings, and
    - (II) their recommendations as to the sanction which in their opinion should be imposed, having regard to their findings, to any finding of misconduct on the part of the respondent solicitor previously made by them (or by their predecessor, the Disciplinary Committee) and not rescinded by the Court, and to any order made by the Court under the *Solicitors Acts, 1954 to 2002*, in respect of the respondent solicitor,

and in that case the Society shall bring the report before the Court.”,

- (b) by the substitution of the following subsection for subsection (5):

“(5) The Disciplinary Tribunal shall, as soon as possible and not later than 21 days after their report has been prepared, serve a copy of it on—

- (a) the respondent solicitor either personally or by sending it by registered post to the respondent solicitor's last-known residence or place of business,

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(b) the Society by sending it to the Society by registered post, and

(c) any person other than the Society who has made an application under subsection (1) of this section either personally or by sending it by registered post to the person's last-known residence or place of business.”,

(c) by the substitution of the following subsection for subsection (6):

“(6) Where, on completion of an inquiry under subsection (3) of this section, the Disciplinary Tribunal find that there has been no misconduct on the part of the respondent solicitor, they shall inform the respondent solicitor and the applicant (and, where the Society is not the applicant, the Society) of their finding and the reasons therefor and take no further action in relation to the matter.”,

(d) in subsection (9)—

(i) by the substitution of “€15,000” for “£5,000” in paragraphs (b) and (c), and

(ii) by the substitution of the following for “solicitor.” in paragraph (d):

“solicitor,

and, in making any such order, the Disciplinary Tribunal shall take account of any finding of misconduct on the part of the respondent solicitor previously made by them (or by their predecessor, the Disciplinary Committee) and not rescinded by the Court, and of any order made by the Court under the *Solicitors Acts, 1954 to 2002*, in respect of the respondent solicitor.”,

(e) by the substitution of the following subsection for subsection (10):

“(10) On the making of an order under subsection (9) of this section, the Disciplinary Tribunal shall as soon as possible and not later than 28 days thereafter serve, in the manner provided for in subsection (5) (as substituted by the *Solicitors (Amendment) Act, 2002*) of this section in relation to service of their report, a copy of the order on the respondent solicitor, the Society and any person other than the Society who has made an application under subsection (1) of this section.”,

(f) by the substitution of the following subsection for subsection (11):

“(11) (a) A respondent solicitor in respect of whom an order has been made by the Disciplinary Tribunal under subsection (9) of this section, or

(b) without prejudice to subsection (12) of this section, the Society or any person other than the Society who has made an application under subsection (1) of this section,

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may, within the period of 21 days beginning on the date of the service of a copy of the order or of the report, whichever date is the later, appeal to the High Court to rescind or vary the order in whole or in part, and the Court, on hearing the appeal, may—

- (i) rescind or vary the order, or
- (ii) confirm that it was proper for the Disciplinary Tribunal to make the order.”,

and

(g) by the insertion of the following subsections after subsection (12):

“(12A) The Society or any person who has made an application under subsection (1) of this section may appeal to the High Court within the period specified in subsection (12B) of this section—

- (a) against a finding of the Disciplinary Tribunal that there is no *prima facie* case for inquiry into the conduct of the respondent solicitor, or
- (b) against a finding of the Disciplinary Tribunal that there has been no misconduct on the part of the respondent solicitor in relation to an allegation of misconduct (whether or not there has been a finding by the Disciplinary Tribunal of misconduct in relation to any other such allegation), and the Court may—
  - (i) confirm the finding concerned,
  - (ii) where the appeal is under paragraph (a) of this subsection, make a finding that there is a *prima facie* case in relation to the allegation of misconduct concerned or, as the case may be, one or more than one of such allegations and require the Disciplinary Tribunal to proceed to hold an inquiry under subsection (3) of this section in relation to such allegation or allegations, or
  - (iii) where the appeal is under paragraph (b) of this subsection, rescind or vary any finding of the Disciplinary Tribunal that there has been no misconduct on the part of the respondent solicitor in relation to an allegation of misconduct and, in relation to that solicitor, by order do one or more than one of the things specified in section 8(1)(a) (as substituted by the Act of 1994) of this Act.

(12B) An appeal against a finding of the Disciplinary Tribunal under subsection (12A) of this section shall be made within 21 days of the receipt by the appellant of notification in writing of the finding.”.

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**10.**—The Act of 1960 is hereby amended in section 8 (as substituted by section 18 of the Act of 1994)— Amendment of section 8 of Act of 1960.

(a) by the substitution of the following for “penalty;” in subsection (1)(a)(i)(V):

“penalty;

and, in making any such order, the Court shall take account of any finding of misconduct on the part of the respondent solicitor previously made by the Disciplinary Tribunal (or by their predecessor, the Disciplinary Committee) and not rescinded by the Court, and of any order made by the Court under the *Solicitors Acts, 1954 to 2002*, in respect of the respondent solicitor;”,

and

(b) by the substitution of the following for “Court.” in subsection (1)(c)(viii):

“Court;

and, in making any such order, the Court shall take account of any finding of misconduct on the part of the respondent solicitor previously made by the Disciplinary Tribunal (or by their predecessor, the Disciplinary Committee) and not rescinded by the Court and of any order made by the Court under the *Solicitors Acts, 1954 to 2002*, in respect of the respondent solicitor.”.

**11.**—The Act of 1960 is hereby amended in section 15 (as substituted by section 25 of the Act of 1994) by the insertion of the following subsections after subsection (1): Amendment of section 15 of Act of 1960.

“(1A) The Disciplinary Tribunal may require the applicant and the respondent solicitor to submit in writing an outline of the evidence expected to be given by each of the witnesses whom they propose to have summoned to attend the inquiry.

(1B) The Disciplinary Tribunal may, if of opinion that the evidence expected to be given by any such witness is irrelevant or does not add materially to that proposed to be given by other witnesses and that accordingly the attendance of the witness at the inquiry is likely to give rise to unnecessary delay or expense, so inform the applicant or respondent solicitor, as the case may be, and draw his or her attention to the provisions of subsection (1C) of this section.

(1C) On the completion of the inquiry the Disciplinary Tribunal, whether or not they have acted in accordance with subsection (1B) of this section, may, if of opinion that the attendance of any witness summoned at the request of the applicant or respondent solicitor was unnecessary and thereby involved the witness in avoidable expense, by order direct that the applicant or respondent solicitor, as the case may be, shall pay a sum or sums not exceeding €10,000 to the witness in respect of the expense, and the witness may recover the sum or sums from the applicant or respondent as a liquidated debt.

(1D) Before making an order under subsection (1C) of this section, the Disciplinary Tribunal shall notify the applicant or

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S.11 respondent solicitor that they propose to do so and to consider any representations that may be made to them in writing by the person affected within 14 days after the notification.

(1E) The applicant or respondent solicitor in respect of whom an order has been made under subsection (1C) of this section may appeal to the High Court against the order within 21 days of the receipt by him or her of notification in writing of it, and the Court may make such order on the appeal as it thinks fit.”.

Amendment of section 2 of Act of 1994.

**12.**—Section 2 of the Act of 1994 is hereby amended by the insertion of the following subsection:

“(2) References in sections 10, 10A (as inserted by *section 13* of the *Solicitors (Amendment) Act, 2002*), 12 (as substituted by *section 14* of that Act) and 22 of this Act to complaints made to or received by the Society include references to any complaints made to the Society by the registrar alleging a breach of any provision of the *Solicitors Acts, 1954 to 2002*, or any order or regulation made thereunder, and those provisions of this Act shall have effect accordingly.”.

Amendment of Act of 1994.

**13.**—The Act of 1994 is hereby amended by the insertion of the following section after section 10:

“10A.—(1) Where, in relation to a complaint made to the Society alleging misconduct by a solicitor or a complaint under section 8(1) or 9(1) of this Act, it appears to the Society that the solicitor concerned is obstructing the investigation of the complaint by the Society by refusing, neglecting or otherwise failing, without reasonable cause—

- (a) to respond appropriately in a timely manner, or at all, to correspondence from the Society in relation to the complaint, or
- (b) to attend a meeting convened by the Society at which the complaint would be considered,

the Society may apply to the High Court for an order compelling the solicitor to respond appropriately within a specified time to such correspondence or to attend such a meeting.

(2) An order under subsection (1) of this section may provide for censuring the solicitor and requiring the solicitor to pay a money penalty and for such matters of a consequential nature as the Court considers appropriate.

(3) Where an order under subsection (1) of this section requires a solicitor to pay a money penalty, the order shall operate as a judgment against the solicitor in favour of the Society, and the money penalty, when recovered, shall be paid into the Compensation Fund.

(4) In subsection (1) of this section, ‘meeting convened by the Society’ includes a meeting convened by a committee to which functions of the Society which may be performed by the Council have been delegated pursuant to section 73 (as amended by the Act of 1960 and this Act) of the Principal Act.”.

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**14.**—The Act of 1994 is hereby amended by the substitution of the following section for section 12: Amendment of section 12 of Act of 1994.

“Contribution by solicitor.

12.—(1) (a) Following an investigation of a complaint made to the Society against a solicitor under section 8(1) or 9(1) of this Act, the Society may—

(i) in case the Society have made a determination or given a direction under either of those sections, require payment by the solicitor of a sum not exceeding €3,000 to the Society by way of contribution towards the costs incurred by the Society in investigating the complaint, or

(ii) in any other case, if the Society have made a determination that the solicitor has in the course of the investigation refused, neglected or otherwise failed, without reasonable cause, to respond appropriately in a timely manner, or at all, to a written request from the Society and that the Society have incurred costs in consequence of the refusal, neglect or failure, require payment by the solicitor to the Society of a sum not exceeding €3,000 by way of contribution towards those costs,

and the solicitor shall comply with any such requirement.

(b) Paragraph (a) (other than subparagraph (i)) of this subsection shall apply in relation to a complaint made to the Society alleging misconduct by a solicitor as it applies in relation to a complaint referred to in that paragraph.

(c) Where, in relation to a complaint made to the Society alleging misconduct by a solicitor or a complaint under section 8(1) or 9(1) of this Act, the Society—

(i) are of opinion that the complaint is justified but is not of sufficient seriousness to warrant an application being made to the Disciplinary Tribunal under subsection (1)

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of section 7 (as substituted by section 17 of this Act) of the Act of 1960, or

- (ii) have made a determination that the solicitor has in the course of the investigation refused, neglected or otherwise failed, without reasonable cause, to respond appropriately in a timely manner, or at all, to a written request from the Society and that the Society have incurred costs in consequence of such refusal, neglect or failure,

the Society may, in addition to or in substitution (in whole or in part) for requiring payment by way of contribution towards the costs incurred by the Society as provided for in subparagraph (i) or (ii) of paragraph (a) of this subsection, issue to the solicitor a reprimand in writing in such terms as the Society deem appropriate and reasonable and so notify the person from whom the complaint was received.

(2) Subject to any order made under section 11(1) of this Act, the Society may recover any sum the payment of which has been required by the Society by way of contribution under subsection (1) of this section as a liquidated debt payable to the Society.”.

Amendment of section 14 of Act of 1994.

**15.**—The Act of 1994 is hereby amended in section 14 by the substitution of the following subsections for subsections (1) and (2):

“(1) Where it appears to the Society, whether as a result of a complaint or otherwise, that it is necessary for the purpose of investigating—

- (a) alleged misconduct by a solicitor,
- (b) a complaint against a solicitor under section 8(1) or 9(1) of this Act, or
- (c) the capacity of a solicitor engaged in the provision of legal services adequately to protect or secure the interests of the solicitor’s clients,

for an authorised person to attend with or without prior notice at the place or places of business of the solicitor, an authorised person may so attend at that place or places.

(2) An authorised person who attends under subsection (1) of this section at the place or places of business of a solicitor—



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- (a) shall inform the solicitor or any clerk or servant of the solicitor of the purpose of the attendance as specified in that subsection, except where the Society reasonably consider that to do so could prejudice the investigation, and
- (b) may in pursuance of that purpose require the solicitor or any such clerk or servant to make available to the authorised person for inspection such specified documents or categories of documents in the possession or under the control or within the procurement of the solicitor as the authorised person deems necessary to fulfil that purpose (whether or not such documents or any of them relate also to other matters).”

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**16.**—The Act of 1960 is hereby amended—

Amendment of sections 21(6) and 22(2) of Act of 1960.

- (a) in subsection (6) of section 21 (as substituted by section 29 of the Act of 1994) of the Act of 1960 by the substitution of “€700,000” for “£350,000”, and
- (b) in subsection (2) of section 22 (as substituted by section 30 of the Act of 1994) of the Act of 1960 by the substitution of “€2,000,000” for “£1,000,000”.

**17.**—The Act of 1994 is hereby amended in section 23—

Publication of outcome of disciplinary inquiry.

- (a) by the substitution of the following subsection for subsection (1):

“(1) Where, on the completion of an inquiry by the Disciplinary Tribunal held under section 7(3) of the Act of 1960, the Disciplinary Tribunal have—

- (a) made an order under section 7(9),
- (b) served on the Society a copy of the order pursuant to section 7(10), and
- (c) sent to the Society a copy of their report pursuant to section 7(5),

of that Act, then, subject to subsection (2) of this section, the Society may arrange to publish the order or notice of the making of the order and its effect, together with a summary of the report, in such a manner as the Society thinks fit.”,

- (b) by the substitution of the following subsection for subsection (2):

“(2) Where, on the completion of an inquiry by the Disciplinary Tribunal held under section 7(3) of the Act of 1960, the Disciplinary Tribunal have made an order under section 7(9) of that Act, the order, or notice of the making of the order and its effect, or any part of the report of the Disciplinary Tribunal or other detail of the inquiry, shall not be published by the Society until a period of at least 21 days beginning on the date of the service of a copy of the order or of the report, whichever date is the later, shall have elapsed or until any application made under subsection (11) or (12) of section 7 of the Act of

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1960 has been determined by the High Court, and thereafter the notice of the making of the order shall not be published if the Court rescinds the order of the Disciplinary Tribunal or, in the case of an application made under the said subsection (12), the Court orders that one or more of the aforementioned documents shall not be published.”,

and

(c) by the insertion of the following subsection after subsection (3):

“(4) References in subsections (1) and (2) of this section to provisions of section 7 of the Act of 1960 are to those provisions as substituted by this Act and, where appropriate, by the *Solicitors (Amendment) Act, 2002.*”.

Prohibition of contravention of *Solicitors Acts, 1954 to 2002.*

**18.—(1)** Where, on the application of the Society, it is shown to the satisfaction of the High Court—

(a) that a solicitor or any other person has contravened, is contravening or is likely to contravene any provision of the *Solicitors Acts, 1954 to 2002*, or

(b) that a solicitor has contravened, is contravening or is likely to contravene any provision of regulations under those Acts,

the Court may by order prohibit the solicitor or other person concerned from contravening that provision, notwithstanding that any such contravention may constitute an offence and notwithstanding section 77 of the Principal Act.

(2) An order under *subsection (1)* of this section may contain such provisions of a consequential nature as the Court considers appropriate.

Inquiry into alleged misconduct by apprentice.

**19.—(1)** The Society may make an application to the Disciplinary Tribunal to hold an inquiry into alleged misconduct by an apprentice.

(2) (a) On such an application the Disciplinary Tribunal, before deciding whether there is a *prima facie* case for inquiry, shall—

(i) send a copy of the application and of any accompanying documents to the apprentice, and

(ii) request that any observations which he or she may wish to make on the application be supplied within a specified period.

(b) If, after receipt of the apprentice’s observations or on the expiration of the specified period, the Disciplinary Tribunal find that there is no *prima facie* case for inquiry, they shall so inform the apprentice and the Society and take no further action in relation to the application.

(3) If the Disciplinary Tribunal find that there is a *prima facie* case for inquiry, the following provisions shall have effect:

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- (a) they shall proceed to hold an inquiry and notify the apprentice and the Society of the date on which it is to be held; S.19
- (b) when holding the inquiry under this section the Disciplinary Tribunal shall—
- (i) consider each allegation of misconduct made against the apprentice, and
  - (ii) make a separate finding in respect of each such allegation;
- (c) if the Disciplinary Tribunal find that there has been no misconduct on the part of the apprentice, they shall take no further action in relation to the matter and so inform the apprentice and the Society;
- (d) if the Disciplinary Tribunal find that there has been such misconduct, they shall notify the apprentice and the Society of their finding and shall specify in a report (which shall include a verbatim note of the evidence given and submissions made) to the High Court—
- (i) the nature of the application and the evidence laid before them,
  - (ii) the finding made on each allegation of misconduct and the reasons therefor,
  - (iii) any other matters in relation to the apprentice which they may think fit to report,
  - (iv) their opinion as to the fitness of the apprentice, having regard to their finding or findings, to be admitted as a solicitor either at any time or until the apprentice has satisfied the Society or the President of the High Court as to such fitness.
- (4) (a) The apprentice may appeal to the High Court against a finding of the Disciplinary Tribunal that there has been misconduct on his or her part within 21 days of the receipt by him or her of written notification of the finding.
- (b) The Society may appeal to the High Court—
- (i) against a finding of the Disciplinary Tribunal that there is no *prima facie* case for inquiry into the conduct of the apprentice, or
  - (ii) against a finding of the Disciplinary Tribunal that there has been no misconduct on the part of the apprentice in relation to an allegation of misconduct (whether or not there has been a finding of misconduct by the Disciplinary Tribunal in relation to any other such allegation),
- within 21 days of the receipt by the Society of written notification of the finding.
- (c) The High Court may make such order on an appeal under this subsection as it thinks fit.
- (5) The High Court, on consideration of the report of the Disciplinary Tribunal, may by order—

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- (a) declare that the apprentice is or is not a fit and proper person to be admitted as a solicitor, and
- (b) make such other provision in relation to the matter as it may think just, including provision for review of its order on application to the President of the High Court by the Society or the apprentice.

(6) The Disciplinary Tribunal shall have such of the powers given to them under the *Solicitors Acts, 1954 to 2002*, as are necessary to enable them to perform the functions conferred on them by this section.

(7) In this section, “misconduct” means—

- (a) the commission of an offence under section 55, 56 or 58 of the Principal Act or of an arrestable offence (within the meaning of the Criminal Law Act, 1997),
- (b) conduct outside the State which constitutes an offence under the law of the jurisdiction concerned and which, if that conduct took place within the State, would constitute an arrestable offence (within that meaning), or
- (c) any other conduct which, if engaged in by a solicitor, would tend to bring the solicitors’ profession into disrepute.

Implementation of Directive 98/5/EC and any corresponding measure.

**20.—(1)** In this section, unless the context otherwise requires—

“Compensation Fund” means the fund maintained by the Law Society of Ireland under sections 21 and 22 (as substituted by sections 29 and 30 of the Act of 1994) of the Act of 1960;

“corresponding EEA measure” means any measure or decision taken by the Joint Committee under the EEA Agreement and having an effect corresponding to that of the Directive;

“Directive” means Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a member state other than that in which the qualification was obtained and includes any corresponding EEA measure and a measure which is in force by virtue of the entry into force of the Swiss Confederation Agreement;

“EEA Agreement” means the Agreement on the European Economic Area signed in Oporto on 2 May 1992, as adjusted by the Protocol to that Agreement done at Brussels on 17 March 1993;

“member state” means a member state of the European Union (other than the State) and—

- (a) on the State being required to implement a corresponding EEA measure, includes a state (other than a member state of the European Union) which is a contracting party to the EEA Agreement, and
- (b) on the entry into force of the Swiss Confederation Agreement, includes the Swiss Confederation;

“member state lawyers” means individuals who—

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- (a) have the right to pursue professional activities in a member state, and S.20
- (b) are pursuing, or proposing to pursue, professional activities by virtue of the Directive in the State under their home-country professional title;

“Swiss Confederation Agreement” means the Agreement between the European Community and its member states, of the one part, and the Swiss Confederation, of the other, on the free movement of persons, done at Luxembourg on 21 June 1999.

(2) Regulations under section 3 of the European Communities Act, 1972, may—

- (a) authorise, subject to the Directive, a competent authority to require member state lawyers to take out professional indemnity insurance in accordance with its rules and, where their professional activities are those of a solicitor, to contribute also to the Compensation Fund, and
- (b) provide that the rules of a competent authority governing professional practice, conduct and discipline, including any of those rules containing sanctions for breaches thereof, shall have effect, with any necessary modifications, in relation to—
  - (i) member state lawyers who are pursuing their professional activities by virtue of the Directive in the State under their home-country professional title, and
  - (ii) lawyers (other than member state lawyers) who have acquired the right to practise the profession of lawyer in the State and are pursuing their professional activities in a member state by virtue of the Directive.

(3) (a) The reference in *subsection (2)* to regulations under section 3 of the European Communities Act, 1972, is to regulations under that section, as amended by section 4 of the European Communities (Amendment) Act, 1993, or any subsequent enactment, and as extended by that subsection.

(b) The reference in *subsection (2)(b)* to “rules”, in so far as it relates to solicitors or to member state lawyers pursuing the professional activities of a solicitor in the State, includes a reference to the provisions of enactments and regulations thereunder relating to solicitors.

(c) A word or expression used in both this section and the Directive has the same meaning in this section as it has in the Directive.

**21.**—For the removal of doubt, a report of a case made by a solicitor shall have the same authority as if it had been made by a barrister. Law Reports.

Amendment of maximum fines provided for in Solicitors Acts.

[No. 19.] *Solicitors (Amendment) Act, 2002.* [2002.]

**22.**—(1) The following provisions of the *Solicitors Acts, 1954 to 2002*, are hereby amended by the substitution of “€3,000” for “£1,500”:

- (a) paragraph (b) of section 55(2) (as amended by section 63 of the Act of 1994) of the Principal Act;
- (b) section 56(2) (as amended by section 64 of the Act of 1994) of the Principal Act;
- (c) paragraph (a) of section 58(2) (as substituted by section 77(a) of the Act of 1994) of the Principal Act;
- (d) subsection (3) of section 63 (as substituted by section 21 of the Act of 1994) of the Principal Act;
- (e) subsection (16)(a) of section 66 (as substituted by section 76 of the Act of 1994) of the Principal Act;
- (f) subsection (4) of section 8 (as substituted by section 18 of the Act of 1994) of the Act of 1960;
- (g) subsection (4)(a)(ii) of section 15 (as substituted by section 25 of the Act of 1994) of the Act of 1960;
- (h) subsection (2)(a) of section 19 (as substituted by section 27 of the Act of 1994) of the Act of 1960;
- (i) subsections (4) and (7) of section 20 (as substituted by section 28 of the Act of 1994) of the Act of 1960; and
- (j) sections 11(5), 15(14) and 78(15)(b) of the Act of 1994.

(2) The following provisions of those Acts are hereby amended by the substitution of “€30,000” for “£10,000”:

- (a) paragraph (a) of section 55(2) (as amended by section 63 of the Act of 1994) of the Principal Act;
- (b) paragraph (b) of section 58(2) (as substituted by section 77(a) of the Act of 1994) of the Principal Act;
- (c) subsection (16)(b) of section 66 (as substituted by section 76 of the Act of 1994) of the Principal Act;
- (d) subsection (4)(a)(i) of section 15 (as substituted by section 25 of the Act of 1994) of the Act of 1960; and
- (e) section 78(15)(a) of the Act of 1994.

(3) Section 64(2) of the Principal Act is hereby amended by the substitution of “€3,000” for “one hundred pounds” and for “twenty-five pounds”.

Short title, commencement, collective citation and construction.

**23.**—(1) This Act may be cited as the *Solicitors (Amendment) Act, 2002*.

(2) *Section 20* shall come into operation on the passing of this Act and the remaining provisions shall come into operation on such day or days as may be appointed by order or orders made by the Minister, either generally or with reference to any particular purpose or

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provision, and different days may be so appointed for different pur- S.23  
poses and different provisions of this Act.

(3) The Solicitors Acts, 1954 to 1994, and this Act may be cited together as the Solicitors Acts, 1954 to 2002, and shall be construed together as one, and references in any enactment, whether passed before or after this Act, to the Solicitors Acts, 1954 and 1960, the Solicitors Acts, 1954 to 1994, or the Solicitors Acts, 1954 to 2002, or to any of them shall be construed as references to those Acts, or as the case may be that Act, as amended or extended by or under any enactment, including this Act.