

## **Guidance in Respect of the Roll of Practising Barristers**

### **1 Introduction**

- 1.1 The purpose of this Guidance note is to summarise the key information in relation to the establishment of the Roll of Practising Barristers.
- 1.2 The Legal Services Regulatory Authority (hereinafter “the LSRA”) is required under Part 9 of the Legal Services Regulation Act, 2015 (hereinafter “the Act”) to establish and maintain the Roll of Practising Barristers.
- 1.3 The provisions in Part 9 of the Act relating to the Roll of Practising Barristers were commenced on 29 June 2018.
- 1.4 The Roll of Practising Barristers is a dynamic public-facing register of all barristers entitled to provide legal services in the State.
- 1.5 The Honorable Society of King’s Inns (hereinafter “the King’s Inns”) will continue to maintain the roll of qualified barristers, but the Roll of Practising Barristers maintained by the LSRA will provide the definitive listing of barristers who are currently practising.

### **2 The Roll**

- 2.1 Under section 133(1) of the Act, the LSRA is required to set up and maintain the Roll of Practising Barristers and within six months of the commencement date (“the establishment phase”) to enter on the Roll of Practising Barristers the name of every person who is, on the commencement date, a practising barrister.
- 2.1 Under the 2015 Act, the LSRA may prescribe by regulations additional information that may be contained in the Roll including information relating to professional qualifications and areas of expertise. The LSRA has decided not to include such additional information at this time but this will be kept under review.
- 2.2 Under section 134(1) of the Act, every person who has been called to the Bar of Ireland and who intends to provide legal services as a barrister must apply

to the Authority to have his or her name entered on the Roll of Practising Barristers.

- 2.3 The Authority, when it is satisfied that the applicant is a qualified barrister and the information provided is in order, shall enter that barrister's name on the Roll of Practising Barristers.
- 2.4 Any person who has been admitted to the degree of Barrister-at-Law by the King's Inns is required to have his or her name on the Roll of Practising Barristers if he or she is providing or intends to provide legal services as a barrister irrespective of whether or not he or she has been called to the Bar of Ireland.
- 2.5 The statutory definitions of "practising barrister" and "providing legal services as a barrister" are very broad.
- 2.6 Every person who has been admitted to the degree of Barrister-at-Law by the King's Inns should consider whether he or she falls within the definition of "practising barrister" i.e. whether his or her activities amount to "providing legal services as a barrister" under the relevant definitions which appear at section 2 of the Act (See Appendix).
- 2.7 Particular note should be taken of the following:
- (a) Whether a person is a practising barrister is not determined by whether he or she holds him-/herself out as a barrister;
  - (b) The payment of a fee is not determinative of whether an activity constitutes the provision of legal services as a barrister;
  - (c) Whether a person is acting under a contract of service or a contract for services is not determinative of whether an activity constitutes the provision of legal services as a barrister;
  - (d) The provision of legal advice to another person is an activity that, when undertaken by a qualified barrister, constitutes the provision of legal services as a barrister. The definition of 'legal advice' in the Act is very broad and the exceptions very limited (*See Appendix*).
- 2.8 A qualified barrister who has been engaged in activity that falls within the definition of "providing legal services as a barrister", whether under a contract of service, or a contract for services or otherwise, and who intends continuing to provide such services, is a practising barrister for the purposes of the Act and should apply for entry on the Roll of Practising Barristers.

2.9 A qualified barrister who has not provided legal services as a barrister, but who now intends to do so, should also apply for entry on the Roll of Practising Barristers.

### **3 Criminal Offences**

3.1 Under section 136 of the Act, providing legal services as a barrister when one's name is not on the Roll of Practising Barristers, after the six-month establishment phase referred to above, is an offence.

3.2 A person found guilty of an offence under section 136 of the Act shall be liable on conviction on indictment to a term of imprisonment of up to two years, a fine of up to €30,000 or both, with lesser sanctions available on summary conviction. A person who contravenes the Act in this manner in relation to a court of justice shall also be guilty of contempt of that court and shall be punishable accordingly.

3.3 A further offence exists under section 137 of the Act for a person who is not a "qualified barrister" to pretend to be a qualified barrister.

### **4 The Levy**

4.1 The provisions of Part 7 of the Act which is entitled "*Imposition of Levy on Professional Bodies and Certain Barristers to Cover Expenses of Authority and Disciplinary Tribunal*" have not yet been commenced.

4.2 When the relevant provisions relating to the levy have been commenced, all practising barristers, unless exempt, will be liable for payment of a levy contribution.

4.3 If a practising barrister is a member of the Law Library, his or her levy contribution will be collected by the Bar of Ireland, which body will pay a cumulative levy contribution to the LSRA on behalf of such barristers.

4.4 If a practising barrister is not a member of the Law Library, and is not exempt from payment of the levy, he or she shall receive an individual levy assessment notification from the LSRA.

4.5 Under section 96(3) of the Act, the consequences of non-payment of the levy contribution may include removal from the Roll of Practising Barristers.

4.6 Under section 97 of the Act, practising barristers who are 'in the full time service of the State' are obliged to be on the Roll of Practising Barristers, but will be exempt from any levy payments.

## **5 Insurance**

- 5.1 Under section 46 of the Act, when commenced, every practising barrister will be required to establish and maintain a policy of professional indemnity insurance force in respect of his or her activities.
- 5.2 Under section 47 of the Act, when commenced, the LSRA will make regulations in relation to the professional indemnity insurance required to be maintained by practising barristers. Such regulations may specify circumstances in which certain practising barristers may be exempted from the requirement to have a professional indemnity insurance policy in place.

## **6 Paid Employment**

- 6.1 Under section 212 of the Act, when commenced, a barrister whose name is entered on the Roll of Practising Barristers may take up paid employment (including part-time employment) and, as part of that employment, provide legal services to his or her employer, including by appearing on behalf of that employer in a court, tribunal or forum for arbitration.

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## APPENDIX:

### Section 2, Legal Services (Regulation) Act, 2015 – Relevant Definitions

*“practising barrister” means a person who—*

- (a) is a qualified barrister, and*
- (b) provides, or holds himself or herself out as providing, legal services as a barrister—*
  - (i) whether or not for a fee,*
  - (ii) whether or not under a contract of service or a contract for services, and*
  - (iii) whether or not, in so doing, he or she describes himself or herself as a, or otherwise uses the title of, “barrister”, “barrister-at-law” or “counsel”;*

*“qualified barrister” means a person who—*

- (a) has been admitted by the Honorable Society of King’s Inns to the degree of Barrister-at-Law or has been called to the Bar of Ireland, other than where, subsequent to his or her being admitted to that degree or being so called—*
  - (i) he or she has been admitted as a solicitor,*
  - (ii) he or she, before the date on which Part 6 comes into operation, has been disbarred by the Benchers of the Honorable Society of King’s Inns, where that disbarment remains in effect, or*
  - (iii) his or her name has been struck off the roll of practising barristers or the roll of solicitors by the High Court, which order remains in effect,*
- or,*
- (b) is a registered lawyer, having the same right of audience as a practising barrister or a solicitor qualified to practise by virtue of Regulation 10 of the European Communities (Lawyers’ Establishment) Regulations 2003 ( S.I. No. 732 of 2003 );*

*A person provides legal services as a barrister where he or she does one or more of the following*

- (i) In relation to proceedings before a court, tribunal or forum for arbitration, whether in the State or in another jurisdiction, or the Personal Injuries Assessment Board-*
- (ii) represents another person before that court, tribunal, forum or Board in those proceedings,*
- (iii) prosecutes or defends such proceedings on behalf of another person,*
- (iv) advises another person in relation to the conduct of the proceedings,*
- (v) represents and advises another person for the purposes of arriving at or giving effect to any settlement in the proceedings, or*
- (vi) draws or drafts documents for another person in contemplation of, ancillary to or in connection with, those proceedings;*
- (vii) Provides legal advice to another person;*
- (viii) Draws or drafts legal documents for another person that have the purpose of securing or transferring for a person a legal right or entitlement;*
- (ix) Represents or acts for another person in a situation where legal rights or obligations of a person are being, or are likely to be, created or such rights or obligations are, or are likely to be, in dispute.*

*“legal advice” means any oral or written advice-*

- (a) on the application of the law (whether the law of the State, another state or the European Union, international law, or a combination of these) to any particular circumstances that have arisen or may arise in relation to a person, and*
- (b) as to any actions that might appropriately be taken by or on behalf of a person (whether the person referred to in paragraph (a) or another person) having regard to the application of the law to those circumstances,*

*but does not include an opinion on the application of the law provided by the person to another person in the course of-*

- (i) lecturing in or teaching an area of law, as part of a course of education or training,*
- (ii) writing or editing a book, report or article, or*
- (iii) carrying out research in an area of the law, for the purpose of enhancing the other person’s knowledge of the area concerned.*