



## **Submission on behalf of the Irish Institute of Legal Executives CLG**

The Irish Institute of Legal Executives welcomes the invitation to submit to the Legal Services Regulatory Authority as part of its public consultation process under Section 6.

The Irish Institute of Legal Executives is the professional body representing Legal Executives in Ireland. The Institute aims to provide a system of training and examination so that Legal Executives obtain a recognised legal professional qualification. The Institute, in conjunction with Griffith College, has developed a course specifically for the Legal Executive. The Diploma in Professional Legal Studies and Practice (HETAC Level 7) is a two-year course which is designed to give the Legal Executive the necessary academic and practical skills for the legal office. However, many of our members proceed further with education to obtain Degrees and Masters in Law from Third Level Universities nationwide.

The Institute offers different levels of membership to accurately reflect the academic achievement and level of experience of each member from Fellowship Member, Honorary Fellowship Member, Life Member, Senior Member, Full Member, Associate Member and Student Member. These different categories can be found on our Website [www.iilex.ie](http://www.iilex.ie) or in our Directory. Members of the Institute can be identified in their employment by the initials after their name and their level of expertise.

As the Board of Directors of the Irish Institute of Legal Executives, we welcome this submission on behalf of all Members of the Irish Institute of Legal Executives. The Irish Institute of Legal Executives has been diligent to have Legal Executives regulated/recognised under the Legal Services Regulation Act 2015.

## **Legal Executives request further statutory recognition.**

Legal Executives have some statutory recognition. S.I. No. 698/2004 - Ethics in Public Office (Designated Positions in S.I. No. 145/2008 - Ethics in Public office (Designated Positions in Public Bodies) (Amendment) Regulations 2008 <http://www.irishstatutebook.ie/eli/2004/si/698/made/en/print> are two pieces of delegated legislation which recognise that Legal Executives must follow ethical guidelines.

Legal Executives are currently regulated by section 3(g) **Solicitors Act, 1954 (as amended)**

*(g) an act done by a person in the employment of a practising barrister or a solicitor qualified to practice and while acting in the course of such employment by the direction and under the supervision of his employer.*

The Solicitors Acts thus group legal executives into the same category as other employees of solicitors such as secretaries and clerks. It is inconsistent with the requirement that Legal Executives follow ethical guidelines in their own right.

During the Dail debate on the 22<sup>nd</sup> April 2015 of the Legal Services Regulation Bill report stage (resumed) and final stage. The then Minister for Justice Frances Fitzgerald responding to questions in regards the Legal Executives made the following statements.

*“I am conscious that there are potential benefits and efficiencies to be found for consumers and for the legal services sector in a possibly more developed role for legal executives and other potentially more competitive providers of legal services in the future.*

### **The minister further states:**

*“The regulation of Legal Executives and other potentially more competitive providers of legal services is something I would consider appropriate for consideration by the new Legal Services Regulatory Authority at the appropriate time.*

Legal Executives in Ireland are employees, (some are self-employed), in private practice providing legal services to Solicitors and Barristers and other institutions. Legal Executives are the third tier - Barristers, Solicitors and Legal Executives. We are recognised by the Courts Service.

Legal Executives are employed in the Offices of the Director of Public Prosecutions, Chief State Solicitor, Revenue Commissioners, Government Departments, Semi-State Companies, Banks, and Private Law Firms.

## **Promoting competition in the provision of legal services in the State**

Two recent cases illustrate the status of the Legal Executive in such cases. The first is an Irish case.

### **Elliot –v- Stamp {2006} IEHC 336.**

In this case, inter alia, that a Will, the subject of the litigation was procured by acts of undue influence brought to bear on the relevant deceased. Mr Justice Roderick Murphy HELD, inter alia, that the deceased had the benefit of independent advice from a Legal Executive and in the circumstances, the High Court determined that the Will in question was not procured by duress or undue influence.

The second case

### **Barclays Bank Plc v Coleman {2001} 1QB20.**

Barclays Bank had granted the husband loan facilities to finance the purchase of commercial investment properties. The loan was to be secured by a second legal mortgage over the marital home which was owned jointly by the husband and the wife. The wife was advised by a Legal Executive. It was argued that the legal advice by a Legal Executive was not sufficient.

**The Court of Appeal HELD** in the case that matters such as the legal advice in question was

**‘Frequently and properly delegated to Legal Executives’ ‘advice given by a Legal Executive was legal advice and provided that it was independent, then in the circumstances of the case there was no sound reason for holding the legal advice by the Legal Executive to be inadequate’.**

The Lord Chief Justice Igor Judge at the 50th anniversary of CILEx UK spoke about the high esteem he holds Legal Executives and that he had always respected them from early on in his career, when Legal Executives were then the equivalent of Managing Clerks, and who he found had so much invaluable knowledge of legal practice and procedure.

[http://www.iilex.ie/images/pdfs/briefs/the\\_brief\\_2014.pdf](http://www.iilex.ie/images/pdfs/briefs/the_brief_2014.pdf)

## **Protecting and promoting the public interest**

PT.2 S.13 [No. 65.] *Legal Services Regulation Act 2015*. [2015] Part 4(a).

*Part 4(a) protecting and promoting the public interest*

<http://www.irishstatutebook.ie/eli/2015/act/65/enacted/en/html>

In Ireland, there is an increase in self-representation in various courts. Legal Executives could provide several levels of assistance to such persons who cannot afford the cost of a solicitor and in consequence, consume a great deal of court time, and resources as matters of procedure and practice have to be explained to them by Judges and court services staff.

### **Cost-effectiveness**

In Ireland, solicitors are the only professionals authorised to provide conveyancing services for the transfer of land or property. Legal Executives are assistants whose role often includes the performance of primary functions in the court. In other common law jurisdictions, such as Australia, Britain, New Zealand and South Africa, professionals – known as conveyancers or licensed conveyancers – provide legalised conveyancing services.

The Competition Authority indicated that a legal profession is not required to perform tasks that do not by definition require extensive and broad legal professional training.

*The establishment of an independent, transparent and accountable regulatory authority for legal services markets merits serious consideration. Among others, it could ensure that: i) entry restrictions are eased or eliminated where they are not related to quality; ii) a legal profession has no exclusive right to perform tasks that do not necessarily require extensive and broad legal professional training.* <https://www.oecd.org/regreform/sectors/40080343.pdf>

### **See Section 2.2.1 Competitive Restrictions in Legal Professions 2007**

<https://www.oecd.org/regreform/sectors/40080343.pdf>

*2.2.1 Possible and Pending Reforms In its Final Report, the Competition Authority recommended that suitably qualified persons other than solicitors should be allowed to provide conveyancing services. Implementation of this recommendation would effectively mean the introduction of a new profession of conveyancers, as has been done in other OECD countries such as the UK and Australia.*

The Competition Authority approved the establishment of a similar profession of conveyancers in Ireland. It said this would lead to “downward pressure on conveyancing fees and more consumer-focused and innovative ways of providing these services, such as the use of the internet and offering services outside normal business hours”.

Restrictions overwhelmingly affect people of limited means, who are unable to afford the cost of a solicitor and more cost-effective measures could be made for the public if Legal Executives were billable in their own right.

**Most Legal Executives specialise in a particular sector of law such as:**

- Criminal Litigation (Defence and Prosecution)
- Civil Litigation (such as personal injury, debt recovery and other such actions in the Civil Courts)
- Family Law
- Conveyancing
- Public Law/Constitutional Law (such as legal work proper to a Government Department and a Local Authority)
- Corporate Law (Company and Commercial Law)
- Private Client (such as banking)
- Probate
- Legal Practice (such as legal practice management, legal costs, court matters and registration matters)
- Mediation
- Trademark Law

The status of the Legal Executive is becoming more significant as a consequence of the growing legal duties and obligations on each person in our society.

Almost everyone in Ireland requires legal services at some time in their lives. Legal services may be required for the purposes of buying a home, managing an aspect of business, to resolve a dispute, to collect a debt or to make a Will/Enduring Power of Attorney and deal with Probate. Access to legal services is thus of major significance in society.

Irish Consumers of any legal services should have a choice. Choice, Competition and the concept of facilitating the availability of competent providers of legal services should be the cornerstones of Government policy in the legal services sector.

The demand for legal services has grown considerably in Ireland in recent years. Legal services make a significant contribution to the Irish economy. Affordable law is a contributor to a healthy and vibrant economy.

In the context of this submission, a core principle of the Irish Institute of Legal Executives which is shared with stakeholders is support for the “rule of law”. The “rule of law” has been defined as meaning that the law is above everyone and applies to everyone. The “rule of law” - both an ancient ideal and a modern concept of governance - is stated to apply to the governors and the governed, rulers and the ruled by the adherence to the concepts that no one is above the law, no one is exempted from the law, and no one can grant exemption to the application of the law.

The “rule of law” lies at the heart of the concept that it is a fundamental tenet of our society and democracy that all members of society have access to justice. The concepts of the “rule of law” and the right of all to access to justice are informed by the principle of protecting and promoting the best interest of Consumers of legal services. The manner in which the foregoing principles are implemented is inspired by a philosophy which favours competition. In effect, the regulation of legal services must ensure the objective that there are no unnecessary or unjustified restrictions on the supply of legal services. Irish competition policy, in general, is based on the principle that a competitive market is best for the economic well-being of the nation and its people. A satisfactory well-functioning market modelled on policies promoting competition should provide incentives for increased productivity. This should result in lower prices for consumers and a wider choice.

We are seeking to have the work of the Legal Executives and the work they have been doing for many years recognised nationwide.

One of the benefits of Legal Executives would provide a *greater choice to the Consumer and more competitive legal costs.*

If Legal Executives have greater rights under Legislation and more recognition it would free up Solicitors and Barristers to do other legal work of a more substantial nature. Legal Executives do very similar work to Solicitors and work alongside them on a daily basis. Legal Executives have enormous experience, knowledge and qualification in their chosen field.

Legal Executives have a great relationship with the Bar Council, the Law Society of Ireland and the Property Registration Authority.

Legal Executives attend on Barristers; they move Motions. They have a right of Audience in Courts. We have Security Access Cards to both the Four Courts and The Criminal Courts.

Many Legal Executives are Commissioner for Oaths.

Legal Executives are recognised within the Irish Law Awards.

**Generally:**

- Regulation offers protection for consumers of legal services and Legal Executives. Legal Executives are doing legal work on a daily basis, and it needs regulation/recognition.
- The high and perceived high cost of legal services is preventing people on lower income levels from equal access to justice.
- 90% of our fully qualified legal executive members (MIILEX) are educated in legal disciplines to HETAC Level 7 and above, many holding Degrees, Masters and PhDs.

- Regulating/Recognition of the Legal Executives offers more choice to the Consumer. Access to cheaper legal advice is necessary as Free Legal Aid is not accessible to many due to means testing or lengthy waiting lists.
- The Legal Services Regulation Act 2015 addresses many issues in respect of cost. However, it offers no dramatic change to the way legal services are delivered. The regulation of Legal Executives would offer a fresh and modern approach to legal services.
- The Irish Institute of Legal Executives represents over one thousand Legal Executives on their database.
- Our background is identical to that of Legal Executives in England and Wales coming from Legal Secretaries, Managing Clerks and Articled Clerks.
- Legal Executives in England and Wales can become Judges, Coroners, Conveyancers and Partners in Law Firms.
- Legal Executives work in many places like Solicitors Offices, Revenue Solicitors Office, Banks, Public Service, Local Authorities, Chief State Solicitors Office as well as Private Legal Practices etc.
- Legal Executives do very similar work as Solicitors and work alongside them on a daily basis (drafting documents, attending Court, Closing sale/purchases, they meet with the customer, they deal with customer files from beginning to conclusion). Legal Executives have enormous experience and knowledge in their chosen field.

Having considered the Irish Institute of Legal Executives Submission and having Legal Executives recognised by the Legal Services Regulatory Authority as enacted by the Legal Services Regulation Act 2015 would be another step forward not only for us, Legal Executives but the Consumer and the Legal Service in Ireland.

We do hope that the LSRA will consider our submission to them and consider us.




---

***Gabriel J Canning FIILEX, Commissioner for Oaths  
Chairman of the Irish Institute of Legal Executives***