



An tÚdarás Rialála
Seirbhísi Dlí
Legal Services
Regulatory Authority

MINUTES FINAL

36th Meeting of Legal Services Regulatory Authority – Minutes (FINAL)

Date: 30 March 2023

Time: 16:30 to 18:30

Attendees:

Authority Members	Executive & Secretariat	Others
Angela Black	Brian Doherty (CEO)	
Eileen Barrington	Ultan Ryan (Secretary)	
Geraldine Clarke		
Joan Crawford		
Dermott Jewell		
Deirdre Malone		
Sara Moorhead		
Simon Murphy		
Síona Ryan		
Don Thornhill (Chairperson)		

Apologies: Shane Galligan

Section 1 – Administration

1.0 General

1.1 Agenda adopted.

AOB Item

Item under AOB taken at this point. Dr Don Thornhill reappointed as the lay member of the Advisory Committee on the grant of Patents of Precedence from 2 April 2023 to 30 September 2024. See Resolution at Annex I.

1.2 Declaration of Interests on agenda items. None raised.

1.3 Minutes of Authority meeting of 9 February 2023 approved.

Matters arising in Minutes dealt with in CEO Report.

Section 2 – Governance

2.0 CEO Report

2.0.1 CEO provided updates on matters arising from Minutes of 9 February 2023, highlighted activity and Risk Register dashboard since the last Authority meeting:

2.0.2 Conveyancing Report Update:

The latest draft of the report from Indecon is being reviewed by the CEO and following that review a draft will be provided to the Authority for consideration at its May meeting.

2.0.3 Barriers Report:

The LSRA had its biannual governance meeting with the Department of Justice on 28 March 2023 at which this was mentioned. A meeting between the LSRA executive and the Civil Policy Division at the Department of Justice is scheduled to take place on 3 April to discuss progress, in particular in relation to the Legal Practitioners Education & Training (LPET) Committee recommendations.

2.0.4 Recruitment and Staffing:

LSRA has finalised a Clerical Officer (CO) recruitment campaign with interviews in the past week. Appointments will be made with start dates after Easter. Campaign for IT Manager to be undertaken after Easter. Submission on staffing arising from Workforce Review is with DPENDR (Department of public Expenditure, NDP Delivery and Reform) and sanction is dependent on factors including the implementation of the new budgeted levy model in the Miscellaneous Provisions legislation.

2.0.5 Legislative Amendments to the 2015 Act:

Levy and Legal Partnerships

The Courts and Civil Law - Miscellaneous Provisions Bill passed through the reporting stage in the Dáil on 2 March 2023. The Bill is expected to move to the Seanad in early April.

Levy

The LSRA Executive is confident that the revisions once implemented will provide a solution to the existing funding model issues as well as provide for long term funding stability.

The LSRA Executive is liaising with the Department on the timeline both for the enactment of the Bill, but also on the timeline for collecting the levy under the new model in 2023.

The levy, under the new model will be calculated based on a budgeted expenditure for 2023 and into 2024 up until the subsequent levy issue date of mid-2024. In addition to the levy calculation and audit process itself, the LSRA will need to introduce new Levy Regulations to comply with the new model and will be undertaking a detailed analysis of budget for 2023/2024 to determine to budget on which the levy will be based.

Alternative scenarios will need to be in place if the LSRA is to levy based on the existing levy model in 2023, including engagement with the representative bodies and the Department of Justice (section 32 advance).

Legal Partnerships

It should also be noted that the amendment in relation to section 1 of Act of 2015, which is required to allow for the commencement of section 100 and allows for the introduction legal partnerships is also included in the Miscellaneous Provisions Bill. Extensive preparatory work is also underway in relation to the introduction of the framework for legal partnerships. This includes the drafting of Legal Partnership regulations and the revision of the existing Professional Indemnity Insurance Regulations, the Limited Liability Partnership regulations and the draft Code of Practise for Practising Barristers. It is intended to consult on the new draft regulations and code with the professional bodies and non-law library barristers prior to implementation of the new business model framework.

2.0.6 Solicitors Accounts Regulations:

The CEO signed the new Law Society Accounts Regulations on behalf of the Authority on 15 March 2023.

2.0.7 International Conference of Legal Regulators (ICLR):

The CEO provided a brief update on early activities around the Conference which will take place in October 2023 in Dun Laoghaire. It is intended that the Conference be self-funding through delegate registration fees.

2.0.8 Limited Liability Partnerships (LLPs):

The Authority noted that there were 430 LLP's on the LSRA register as of 22 March 2023.

2.0.9 Risk Management:

Risk Management update provided in CEO report. The following points were noted:

Risk 1 - Funding: The Authority noted that the Risk in relation to the funding of the LSRA has been changed to High and Red at this point due to the

continued reliance on the existing Levy model. Once the new levy provisions are in place and can be relied upon in 2023 for the levy, the status of the Risk will be reviewed.

Risk 2 – GDPR: Work is ongoing with the review of LSRA and LPDT data protection policies and procedures.

Risk 3 – The FAR Committee reviewed this risk and it has been reclassified from a COVID risk to a broader business continuity risk. The risk may not be removed but may instead be reworded to a broader business continuity risk for the LSRA.

Risk 4 – Cyber-Security: Assurances in place with ICT service provider. Recruitment of IT Manager a priority.

2.0.10 Patents of Precedence 2023 process:

The Patents of Precedence evaluation process for 2023 is underway with the Advisory Committee schedule to meet on 18 April to discuss evaluations.

2.0.11 Other matters dealt with under separate agenda items.

3.0 Duly Authorised Register.

Duly Authorised Register noted. Register is unchanged from the previous meeting.

4.0 FAR Committee Chairpersons Report

The LSRA's Finance, Audit & Risk (FAR) Committee met on 23 March 2023. At that meeting

- The Committee reviewed the LSRA's Draft Financial Statements 2023. This included a presentation by LSRA's accountants on the Statements.
- The Committee was updated on the Financial Position and on the progress of the levy and levy amendments for 2023.
- The Committee noted that a Budget for 2023 which will be developed in line with the new levy model provisions will be submitted for review and approval when analysis is complete.
- The Committee reviewed the LSRA Risk Register, amending the COVID risk to a broader business continuity risk.
- The Committee reviewed and was updated on the findings raised in the OCAg Management Letter for the 2021 Certification.
- The Committee noted that the Audit of 2022 Internal Controls was ongoing and that the Internal Audit report will be submitted to the FAR Committee and the Authority for review when available.

Section 3 – Finance

5.0 Financial Reports

The Authority noted the LSRA Management Accounts at end January 2022.

- One error on the budget line under legal advices to be flagged with accountants.
- The Authority queried the amount budgeted for Judicial Review contingency and how legal services, particularly in relation to judicial work was procured and assigned. The Executive will review its Legal Services needs profile in 2023 as part of a procurement review, including in respect of advisory vs litigation activity. LSRA's legal advice procurement is required to be undertaken using OGP Frameworks.
- The Authority discussed options for the LSRA's in-house legal team to minimise costs.
- The Authority discussed enforcement of costs orders and the intention to seek costs as a policy position.

Section 4 – LSRA Policy and Implementation

6.0 Update on the Performance of the Complaints and Resolutions Department and the LPDT

6.1 Update on Complaints and Resolutions Department and the LPDT

6.1.1 Complaints Reporting and Statistics:

The Authority Members were provided with a statistical report for the year from 1 January to 31 March, which outlined the processing of cases through the different stages of the Complaints process. The Authority discussed the statistical reports provided. The CEO set out the solutions being put in place to progress the volume of complaints at Complaints Committee stage. The CEO also updated the Authority on submission of project plan for a new Case Management System (CMS) which should improve case management efficiency. This is in addition to new CMS solutions for the Roll of Practising Barristers and the Legal Practitioners Disciplinary Tribunal (LPDT).

6.1.2 Update on the Legal Practitioners Disciplinary Tribunal:

The LPDT will be schedule files in April with a view to having its first Inquiries in May.

6.1.3 Advertising Regulation:

The executive to include updates on advertising regulation activities in future reports under this heading.

7.0 Draft Section 33 Admissions Report

Section 33 Report on the Admissions Policies of the Legal Professions being finalised and is due for submission to the Minister end April 2023. Report will be circulated to Authority Members when available.

8.0 Closed Session

The Secretary left the meeting for the closed session of the Authority.

9.0 AOB

Resolution on re-appointment of Dr Thornhill as lay member of the Advisory Committee on the grant of Patents of Precedence was dealt with at the start of the meeting.

Action Points – Meeting of 30 March 2023	
Agenda Item	Action
1.1	Dr Thornhill re-appointed as lay member to the Advisory Committee on the grant of Patents of Precedence at this meeting (30/03/2023)
1.3	<p style="text-align: center;"><u>Minutes:</u></p> <ul style="list-style-type: none"> • Minutes of 9 February 2023 approved. • Secretary to arrange upload to website.
2.0.	<p style="text-align: center;"><u>CEO Report:</u></p> <p><u>Updates for next meeting on:</u></p> <ul style="list-style-type: none"> • 2.0.2 Draft Indecon Report on Profession of Conveyancer to be submitted to Authority for meeting of 25 May 2023. • 2.0.3 Authority to be updated on Barriers Report and outcome of meeting with Department of Justice Civil Policy Division at next meeting. • 2.0.4 Authority to be updated on staffing (recruitment and DPER engagement) at next meeting. • 2.0.5 Update for Authority at next meeting on: <ul style="list-style-type: none"> ○ Miscellaneous Provisions legislation including: <ul style="list-style-type: none"> ▪ Levy Amendments ▪ Legal Partnerships ○ Financial position and Levy 2023 • 2.0.7 Update on International Conference of Legal Regulators (ICLR): Update on planning for 2023 ICLR Conference. • 2.0.8 Update on LLP registrations. • 2.0.10 Update on Risk Register • 2.0.11 General update on Patents of Precedence
3.0	<u>Duly Authorised Register:</u>

	<ul style="list-style-type: none"> Updated Duly Authorised Register will be circulated prior to next Authority Meeting to reflect staff changes.
4.0	<p><u>FAR Committee</u></p> <ul style="list-style-type: none"> FAR Committee Scheduled to meet 19 May 2023 or earlier to review <ul style="list-style-type: none"> Draft LSRA Budget 2023 IAU Audit Report on Internal Controls for 2022 FAR Committee Chairperson to Report to Authority at next meeting
5.0	<p><u>Financial Reports:</u></p> <ul style="list-style-type: none"> Update on Draft LSRA Financial Statements for 2023 and any OCAG audit activity for next meeting Update on LSRA Budget 2023 in line with levy position
6.1	<p><u>Update on performance of Complaints and Resolutions Department and LPDT:</u></p> <ul style="list-style-type: none"> Update Authority on Complaints statistics and processing; Update on performance activities for Complaints Department; Update Authority on Advertising Regulation activities; Update on operation of the LPDT.
7.0	<p><u>Annual Section 33 Admissions Report:</u></p> <ul style="list-style-type: none"> Report to be circulated to Authority members when available.

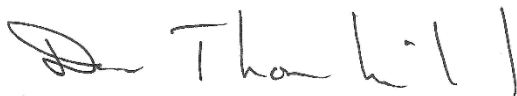
FINAL Minutes Signed



25 May 2023

Ultan Ryan, Secretary

Date



25 May 2023

Don Thornhill, Chairperson

Date

Annex I



Resolution of the Legal Services Regulatory Authority ('the Authority') re-appointing Authority lay member to the Advisory Committee on the grant of Patents of Precedence pursuant to Section 172 of the Legal Services Regulation Act 2015

Proposed by: Geraldine Clarke SC

Seconded by: Síona Ryan

Establishment of the Advisory Committee on the grant of Patents of Precedence

On 2 April 2020, by way of Resolution, the Authority established the Advisory Committee on the grant of Patents of Precedence ('the Committee') Pursuant to section 172(1) of the Legal Services Regulation Act 2015 ('the Act'). The Advisory Committee was established to perform the functions assigned to it under Part 12 of the Act. In accordance with Part 12 of the Act these functions include - establishing the criteria to be met by a legal practitioner in order for a recommendation to be made by the Committee to the Government that a Patent, within the meaning of Part 12 of the Act, be granted; considering applications from legal practitioners who wish to be granted a Patent; making recommendations to the Government that an applicant be granted a Patent; considering applications from the Authority that the grant of a Patent be revoked and making recommendations to Government to revoke the grant of a Patent. A copy of Part 12 is provided at Annex 1 to this resolution with an excerpt from the Courts Act 2019.

Membership of the Advisory Committee on the grant of Patents of Precedence

On 2 April 2020, by way of the same Resolution the Authority, pursuant to section 172(2) and 172(3) of the Act, duly appointed the following persons to be members of the Advisory Committee on the grant of Patents of Precedence:

- The Chief Justice, who shall be the chairperson of the Committee;
- The President of the Court of Appeal;
- The President of the High Court;
- The Attorney General;
- The Chairperson of the Bar Council;
- The President of the Law Society;
- Dr. Don Thornhill, a lay member of the Authority nominated by the Minister for Justice

In respect of the appointment of a lay member to the Committee, section 172(3) of the Act states that the term of appointment for the lay member is for a period not exceeding 3 years but that the lay member shall be eligible for re-appointment to the Committee provided, and for so long as, he or she remains a member of the Authority.

Nomination and Term:

The Executive wrote to the Department to seek clarification as to whether the Minister must nominate the lay member in respect of a re-appointment. The Department responded to state that, while the Minister makes the original nomination of the lay member, the lay member is appointed by the Authority and that function extends to any re-appointment arising, unless the lay member is to change.

In accordance with section 10(5) of the Act, members of the Authority may not hold office for more than an aggregate of 8 years. As Dr. Thornhill's term of office with the LSRA is due to end on 30 September 2024, the proposed term of re-appointment is to run until that date.

Resolution:

Pursuant to section 172(2) and 172(3) of the Legal Services Regulation Act 2015, the Authority has formally passed this resolution duly re-appointing Dr. Don Thornhill to be the lay member of the Authority to the Advisory Committee on the grant of Patents of Precedence from 2 April 2023 to 30 September 2024.



Signed by Ultan Ryan, Secretary

Resolution passed on 30 March 2023

Annex I

PART 12

Patents of Precedence

Definitions (*Part 12*)

170. In this Part—

“Committee” means the Advisory Committee on the grant of Patents of Precedence established under [section 172](#) ;

“Patent”, subject to [section 171 \(2\)](#), means—

(a) in relation to a barrister, a Patent of Precedence, the grant of which to the barrister entitles him or her to be called to the Inner Bar and to use the title of “Senior Counsel”, and

(b) in relation to a solicitor, a Patent of Precedence, the grant of which to a solicitor entitles him or her to use the title of “Senior Counsel”;

“tax clearance certificate” means a certificate issued under [section 1095](#) of the [Taxes Consolidation Act 1997](#) .

Power to grant, and to revoke grant of, Patent

171. (1) The Government may—

(a) on the recommendation of the Committee under [section 174](#) , grant a Patent to a legal practitioner, and

(b) on the recommendation of the Committee under [section 175](#) , revoke the grant of a Patent to a legal practitioner.

(2) For the purposes of *subsection (1)(b)*, [section 175](#) and [section 176](#) , “Patent” includes a Patent granted in the State before the commencement of this section.

Advisory Committee on the grant of Patents of Precedence

172. (1) The Authority shall establish an Advisory Committee on the grant of Patents of Precedence to perform the functions assigned to it under this Part.

(2) The Committee shall consist of:

(a) the Chief Justice, who shall be the chairperson of the Committee;

- (b) the President of the High Court;
 - (c) the Attorney General;
 - (d) the Chairperson of the Bar Council;
 - (e) the President of the Law Society; and
 - (f) a lay member of the Authority nominated by the Minister.
- (3) A person appointed under *paragraph (f) of subsection (2)* —
- (a) shall be a member of the Committee for a period not exceeding 3 years from the date of his or her appointment as such a member, and
 - (b) shall be eligible for re-appointment to the Committee provided, and for so long as, he or she remains a member of the Authority.
- (4) A member of the Committee, who is unable to attend a meeting of the Committee, may nominate a deputy to attend in his or her place.
- (5) The Committee may act notwithstanding a vacancy in its membership.
- (6) On the death or retirement of the Chief Justice, the senior ordinary judge of the Supreme Court who is for the time being available shall be a member of the Committee until the appointment of a Chief Justice.
- (7) On the death or retirement of the President of the High Court, the senior ordinary judge of the High Court who is for the time being available shall be a member of the Committee until the appointment of a President of the High Court.
- (8) Where a member of the Committee—
- (a) makes an application under [section 174 \(1\)](#), or
 - (b) is the subject of an application under [section 175 \(2\)](#),
- he or she shall take no part in any consideration by the Committee of that application.
- (9) All proceedings of the Committee and all communications by and to the Committee, including consultations by the Committee under [section 174 \(3\)](#), shall be confidential and shall not be disclosed except for the purposes of this Act.

Criteria for grant of Patent

- 173.** (1) The Committee shall establish the criteria, based on the objectives specified in *subsection (2)*, to be met by a legal practitioner in order for a recommendation to be made by it to the Government that a Patent be granted to him or her.
- (2) The objectives referred to in *subsection (1)* are those of ensuring, in relation to a legal practitioner seeking to have a Patent granted to him or her, that he or she:
- (a) has, in his or her practice as a legal practitioner, displayed—
 - (i) a degree of competence and a degree of probity appropriate to and consistent with the grant to him or her of a Patent,
 - (ii) professional independence, and
 - (iii) one or more of the following:
 - (I) a proven capacity for excellence in the practice of advocacy;
 - (II) a proven capacity for excellence in the practice of specialist litigation; or
 - (III) specialist knowledge of an area of law;
 - (b) is suitable on grounds of character and temperament;
 - (c) is in possession of a tax clearance certificate that is in force;
 - (d) is otherwise suitable to be granted a Patent.

Application for recommendation

- 174.** (1) A legal practitioner who wishes to be granted a Patent under [section 171](#) may apply to the Committee for—
- (a) its consideration, in accordance with this section, of whether he or she meets the criteria established under [section 173](#), and
 - (b) subject to *paragraph (a)*, its recommendation to the Government that he or she be granted a Patent.
- (2) An application under *subsection (1)* shall be accompanied by such information and such fee as may be prescribed.
- (3) Where the Committee receives an application under *subsection (1)*, it shall consider whether the applicant meets the criteria established under [section 173](#) and, for that purpose, may consult in confidence with such persons as it considers appropriate.

- (4) Following its consideration under *subsection (3)*, the Committee shall—
- (a) where it decides that an applicant meets the criteria established under *section 173*, recommend to the Government that the applicant be granted a Patent, and
 - (b) where it decides that the applicant does not meet those criteria, notify the applicant in writing of its decision and of the reasons for it.
- (5) The Minister may prescribe—
- (a) the form of application under this section,
 - (b) the information and fee (if any) that is to accompany an application for the grant of a Patent, and
 - (c) any other matters that the Minister considers necessary for purposes of this section.

Revocation of grant of Patent

- 175.** (1) The Government may, on a recommendation from the Committee made in accordance with this section, revoke the grant of a Patent.
- (2) Where the High Court makes an order referred to in *section 85 (7)(g)* in relation to a legal practitioner, the Authority shall apply to the Committee for—
- (a) its consideration, in accordance with this section, of whether the grant of a Patent to that legal practitioner should be revoked, and
 - (b) subject to *paragraph (a)*, its recommendation to the Government that that grant be revoked.
- (3) An application under *subsection (2)* shall be accompanied by—
- (a) a statement of the reasons for the application,
 - (b) copies of all documents that were before the Disciplinary Tribunal in the making of its determination under *section 81 (8)*, and
 - (c) such other information, and such fee, as may be prescribed.
- (4) The Committee, on receipt of an application under *subsection (2)*, shall notify the person concerned in writing of the application.
- (5) A notification under *subsection (4)* shall include—

- (a) a copy of all documents furnished to the Committee in the application under *subsection (2)*,
 - (b) a statement that the person concerned may, within 30 working days of the sending of the notification or such other period as the Committee, having regard to the requirements of justice, may specify, make representations in the prescribed manner to the Committee as to why the grant should not be revoked, and
 - (c) a statement that, where no representations are received within the period specified under *paragraph (b)*, the Committee will, without further notice, proceed to consider the application.
- (6) In considering an application under *subsection (2)*, the Committee shall take into account—
- (a) the information furnished in the application,
 - (b) any representations made pursuant to *subsection (5)(b)*, and
 - (c) any other matter the Committee considers relevant for the purpose of its decision.
- (7) The Committee shall decide to recommend to the Government that the grant of a Patent be revoked only where satisfied, on the basis of the representations and matters referred to in *subsection (6)*, that the person concerned no longer meets the criteria established under [section 173](#) .
- (8) Where the Committee makes a decision referred to in *subsection (7)*, it shall notify the person concerned in writing of its decision and of the reasons for it.
- (9) A person referred to in *subsection (8)* may, within 30 working days of the sending of the notification under that subsection, appeal to the High Court against the decision of the Committee.
- (10) On hearing an appeal under *subsection (9)*, the High Court may, as it thinks proper, either affirm or overturn the decision concerned.
- (11) The Committee shall recommend to the Government that the grant of a Patent to a person referred to in *subsection (8)* be revoked only—
- (a) where no appeal is made under *subsection (9)*, after the expiry of the period referred to in that subsection,
 - (b) where an appeal is made under *subsection (9)*, if the High Court affirms the decision concerned.

(12) The Minister may prescribe—

- (a) the form of application under *subsection (2)*,
- (b) the information and fee (if any) that is to accompany such an application, and
- (c) any other matters that the Minister considers necessary for the purposes of this section.

Solicitor granted Patent while barrister

176. A solicitor to whom, before the commencement of this section and while he or she was a barrister, a Patent was granted, shall be entitled to use the title of "Senior Counsel".

Courts Act 2019 – Section 3

Amendment of Legal Services Regulation Act 2015

3. The [Legal Services Regulation Act 2015](#) is amended—

(a) in section 141, by the insertion of the following subsection after subsection (5):

“(6) For the purposes of subsection (3)(f), a County Registrar need not publish the reasons for a determination where he or she is of the opinion that the taxation concerned does not involve a matter of legal importance.”,

(b) in section 154(10)—

(i) in paragraph (c), by the substitution of “adjudication,” for “adjudication, and”,

(ii) in paragraph (d), by the substitution of “attempt,” for “attempt.”, and

(iii) by the insertion of the following paragraphs after paragraph (d):

“(e) a procedure whereby a party to an adjudication may, upon notice to another party—

(i) pay into court a sum of money, or

(ii) make an offer by way of tender to the other party,

in satisfaction of the costs of the other party that are the subject of the adjudication, and

(f) the respective liability of the parties referred to in paragraph (e) for the costs of the adjudication where the amount of a payment or offer referred to in that paragraph is equal to or greater than the amount of the costs

concerned that, in the adjudication, are determined to be paid.”,

(c) in section 160(2)(a), by the substitution of “section 163” for “section 166”, and

(d) in section 172—

(i) in subsection (2), by the insertion of the following paragraph after paragraph (a):

“(aa) the President of the Court of Appeal;”,

and

(ii) by the insertion of the following subsection after subsection (6):

“(6A) On the death or retirement of the President of the Court of Appeal, the senior ordinary judge of the Court of Appeal who is for the time being available shall be a member of the Committee until the appointment of a President of the Court of Appeal.”.