



STATUTORY INSTRUMENTS.

S.I. No. 644 of 2020

LEGAL SERVICES REGULATION ACT 2015 (ADVERTISING)
REGULATIONS 2020

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The LEGAL SERVICES REGULATORY AUTHORITY, in exercise of the powers conferred on it by section 218 of the Legal Services Regulation Act 2015 (No. 65 of 2015), hereby makes the following Regulations.

Citation and commencement

1. (a) These Regulations may be cited as the Legal Services Regulation Act 2015 (Advertising) Regulations 2020.
- (b) These Regulations shall come into operation on the 18th December 2020.

Definitions

2. (a) In these Regulations, unless the context otherwise requires -
 - “the Act of 2015” means the Legal Services Regulation Act, 2015;
 - “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 legal practitioner in relation to the provision by him or her of legal services, including any -
 - (i) brochure, notice, circular, leaflet, poster, placard, photograph, illustration, emblem, display, stationery, directory entry, article or statement for general publication,
 - (ii) electronic address or any information provided by the legal practitioner that is accessible electronically,
 - (iii) audio or video recording, or
 - (iv) presentation, lecture, seminar or interview,
 - which is so intended but excluding a communication which is primarily intended to give information on the law;
- “the Authority” means the Legal Services Regulatory Authority established by section 8 of the Act of 2015;
- “claims 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;
- “client” includes prospective client;
- “contentious business” means legal services provided by a legal

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practitioner for the purposes of, or in contemplation of, proceedings before a court, tribunal or other body, the Personal Injuries Assessment Board or an arbitrator appointed under the Arbitration Act 2010 or in connection with an arbitration, mediation or conciliation;

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

“legal practitioner” means a person who is a practising solicitor or a practising barrister or a person who formerly practised as a solicitor or as a barrister and a reference to a solicitor includes a reference to a firm of solicitors;

“legal services” means legal services provided by a person, whether as a solicitor or as a barrister;

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

“proceedings” means proceedings before a court, tribunal or other body, the Personal Injuries Assessment Board and includes arbitration proceedings;

“published”, in relation to an advertisement, means the communication or the intended communication of words (whether oral or in written or other visual form and whether produced by electronic or other means) to another person which are intended to publicise or otherwise promote a legal practitioner and “publication” shall be likewise construed;

“Regulation” means a regulation in these Regulations;

- (b) Other words and phrases in these Regulations shall, where applicable, have the meanings assigned to them in the Act of 2015.
- (c) In these Regulations, unless the context otherwise requires, the singular includes the plural and the plural includes the singular.
- (d) In construing the provisions of any Regulation in these Regulations, equal regard shall be had to the provisions of each Regulation that may be relevant thereto without regard to the order in which each Regulation appears.
- (e) The Interpretation Act 2005, shall apply for the purpose of the interpretation of these Regulations as it applies to the interpretation of an enactment, except insofar as it may be inconsistent with the Act of 2015 or these Regulations.

Lawful to advertise

3. Subject to these Regulations and to the Act of 2015, it shall be lawful for
 - (a) a legal practitioner to advertise his or her legal services, (b) a legal partnership, a multi-disciplinary practice or a limited liability partnership to

advertise their legal services, and (c) a group of legal practitioners, who share a facility, premises or cost of practice, to advertise themselves as such a group.

Limitations on right to advertise

4. (a) An advertisement intended to publicise or otherwise promote a legal practitioner shall be in such a form as shall not-
 - (i) be likely to bring the legal profession into disrepute;
 - (ii) be in bad taste;
 - (iii) reflect unfavourably on another legal practitioner;
 - (iv) be false or misleading in any material respect;
 - (v) be published in an inappropriate location; or
 - (vi) subject to clause (b) of this Regulation, expressly or impliedly solicit, encourage or offer any inducement to any person or group or class of persons to make claims for personal injuries or seek legal services in connection with such claims.
- (b) Without prejudice to the generality of subclause (vi) of clause (a) of this Regulation, an advertisement published by or on behalf of a legal practitioner may include the words "personal injuries" as part of the legal services provided by the legal practitioner.
- (c) Any reference to "personal injuries" in these Regulations shall extend to the use of any other word or words that may be more specifically descriptive of categories of cases where claims for personal injuries may arise such as "motor accidents", "workplace accidents", "public place accidents" or other words or phrases of a similar nature.

Other information that may be contained in an advertisement

5. (a) Subject to clause (b) of this Regulation, where a legal practitioner proposes to publish or cause to be published information in an advertisement relating to proceedings in which they provided legal services or a client to whom they provided legal services or a transaction in relation to which the legal practitioner has provided legal services, the legal practitioner may only do so –
 - (i) with the prior consent of each client concerned to whom the legal practitioner has provided legal services (whether in proceedings or otherwise or whose name or whose transaction is proposed to be so published) who has been made aware of the proposed form, content, manner and context of such publication; and
 - (ii) without exaggeration of the nature of the legal practitioner's involvement in the legal services provided to each such client to whom the legal practitioner has provided legal

services.

- (b) For the avoidance of any doubt the information referred to at clause (a) of this Regulation does not include, provided that it does not otherwise compromise any duty of confidentiality or right required by law to be protected -
 - (i) publicly available information; or
 - (ii) information conveying the fact that a legal practitioner acted in proceedings.

Advertisements in respect of contentious business/personal injuries

- 6. (a) An advertisement published or caused to be published by a legal practitioner, which contains a reference to “personal injuries” or other contentious business as one or more of the legal services being provided by the legal practitioner shall also include a clear reference to the prohibitions on charging costs in the circumstances contained in section 149 of the Act of 2015.
- (b) Without prejudice to the generality of Regulation 4, an advertisement published or caused to be published by a legal practitioner with a reference to “personal injuries” to the extent permitted by these Regulations shall not include words or phrases such as “no win no fee”, “no foal no fee”, “free first consultation”, or other words or phrases of a similar nature which could be construed as meaning that legal services in connection with claims for personal injuries would be provided by the legal practitioner at no cost to the client.
- (c) Further, without prejudice to the generality of Regulation 4, an advertisement published or caused to be published by a legal practitioner shall not refer to the quantum of a possible award of damages save insofar as by reference to the Personal Injuries Assessment Board *Book of Quantum* or other guidelines as may be published by the Personal Injuries Assessment Board or other statutory authority or statutory body.

Advertisements and costs relating to legal services in respect of contentious business

- 7. Without prejudice to the generality of Regulation 4, an advertisement published or caused to be published by a legal practitioner shall not, expressly or by implication, suggest that there are circumstances in which legal services involving contentious business may be provided without there being any risk that the client may be required to pay costs to any other party or parties, unless that actually represents the legal position.

Advertisements in respect of the success rates of legal practitioners

- 8. Without prejudice to the generality of Regulation 4, an advertisement

published or caused to be published by a legal practitioner shall not, expressly or by implication, make reference to the success rate of the legal practitioner or include statements about the legal practitioner's success rate.

Limitations in relation to electronically accessible advertisement

9. Where an advertisement published by or on behalf of a legal practitioner which is accessible electronically links to other information that is accessible electronically elsewhere, the legal practitioner shall be deemed for the purpose of compliance with these Regulations to be personally responsible for the publication of such other information insofar as such other information can reasonably be construed as intended to publicise or otherwise promote the legal practitioner.

Communication to give information on the law

10. (a) Without prejudice to the generality of Regulation 4 the following shall be deemed not to be an advertisement but to be a communication which is primarily intended to give information on the law-
 - (i) subject to clause (b) of this Regulation, a book on a legal topic written by a legal practitioner;
 - (ii) subject to clause (c) of this Regulation, an article on a legal topic written by a legal practitioner where no part of the space of which is paid for by or on behalf of the legal practitioner; or
 - (iii) subject to clause (c) of this Regulation, an oral presentation or media interview given by a legal practitioner relating to a legal topic where no part of it is paid for by or on behalf of the legal practitioner.
- (b) In relation to subclause (i) of clause (a) of this Regulation, the circulation by a legal practitioner to persons (whether or not on request) at no cost or reduced cost to such persons of a book on a legal topic written by the legal practitioner may be deemed by the Authority not to be a communication which is primarily intended to give information on the law but rather to be in fact a communication which is primarily intended to publicise or otherwise promote the legal practitioner.
- (c) In relation to subclauses (ii) and (iii) of clause (a) of this Regulation, a repeated publication of the same or a substantially similar article on a legal topic written by a legal practitioner or the repeated oral presentation or media interview given by a legal practitioner on the same or a substantially similar legal topic may be deemed by the Authority not to be a communication which is primarily intended to give information on the law but rather to be in fact a communication which is primarily intended to publicise or otherwise promote the legal practitioner.

- (d) For the avoidance of any doubt, a book, article, oral presentation or media interview referred to in this Regulation, shall include a book, article, oral presentation or media interview in any form, including electronic form, on the internet or social media or otherwise.

Ensuring compliance with these Regulations

- 11. (a) An advertisement published or caused to be published by a legal practitioner which does not otherwise make it clear on the face of it that it is so published shall state that it is published or caused to be published by the legal practitioner.
- (b) It shall be the responsibility of a legal practitioner to ensure that any advertisement published or caused to be published by him or her complies with the provisions of these Regulations.
- (c) Where a legal practitioner proposes to publish or cause to be published an advertisement intended to publicise or otherwise promote that legal practitioner and, in that advertisement, refers to another legal practitioner, the legal practitioner may do so only with prior consent of the other legal practitioner concerned.
- (d) An advertisement which includes the name of a legal practitioner shall be deemed for the purpose of compliance with these Regulations, in the absence of evidence to the contrary, to be an advertisement published or caused to be published by a legal practitioner, insofar as the advertisement is intended to publicise or otherwise promote the legal practitioner.
- (e) An advertisement by or on behalf of a legal partnership, a multi-disciplinary practice or a limited liability partnership, advertising their legal services, or a group of legal practitioners, who share a facility, premises or cost of practice, advertising themselves as such a group, shall be deemed for the purpose of compliance with these Regulations, in the absence of evidence to the contrary, to be an advertisement published or caused to be published by all or any legal practitioners being a partner in the legal partnership, multi-disciplinary practice or limited liability partnership concerned or all or any legal practitioners in the group concerned.
- (f) A legal practitioner shall keep a copy of any advertisement published or caused to be published by him or her, together with (where appropriate) the written instructions given by him or her for the publication of such advertisement and (where appropriate) evidence of a consent referred to at Regulation 5(a)(i) or Regulation 11(c), for a period of at least twelve calendar months from the latest date of its publication; and shall furnish to the Authority a copy of such advertisement and (where appropriate) such written instructions and (where appropriate) such consents when requested to do so by the Authority within that period.

Investigations by the Authority

12. (a) The Authority may, whether following receipt of a complaint or on the Authority's own initiative, carry out an investigation in relation to any matter referred to in these Regulations, and in carrying out such an investigation shall consider whether, in its opinion, any particular advertisement published or caused to be published by a legal practitioner is in contravention of section 218 of the Act of 2015 or these Regulations.
- (b) Subject to subclause (i) and (ii) below, in conducting an investigation pursuant to clause (a) of this Regulation the Authority shall first notify the legal practitioner by letter (or letters) of the particulars of the matter to be investigated and any possible contravention and invite the legal practitioner to respond in writing, with their observations, to such letter (or letters) -
 - (i) in cases which the Authority considers urgent within 3 working days or such further or other period as the Authority may determine as appropriate in the circumstances; and
 - (ii) in all other cases within ten working days or such further or other period as the Authority may determine as appropriate in the circumstances.
- (c) Following consideration of any response in writing by or on behalf of the legal practitioner concerned, or failing receipt of any such response within the timeframe specified or such further period as the Authority may allow, the Authority may decide to do one or more than one of the following:
 - (i) request further particulars from the legal practitioner;
 - (ii) give notification in writing to the legal practitioner requesting the production or delivery to any person appointed by the Authority, at a time and place to be fixed by the Authority, of the documents referred to in Regulation 11(f);
 - (iii) convene a meeting with the legal practitioner concerned to consider whether there has been a contravention of section 218 of the Act of 2015 or these Regulations;
 - (iv) proceed to determine whether, in the opinion of the Authority, there has been a contravention of section 218 of the Act of 2015 or these Regulations.
- (d) Where the Authority proceeds to determine whether there has been a contravention of section 218 of the Act of 2015 or these Regulations, the Authority shall have regard, in particular, to:
 - (i) the response or responses (if any) of the legal practitioner whether provided in writing or at a meeting convened by the Authority (or both); and
 - (ii) any guidelines published by the Authority pursuant to the

Regulations and which were in force at the time of publication.

- (e) The Authority shall notify a legal practitioner where it forms the opinion that an advertisement is in contravention of section 218 of the Act of 2015 or these Regulations.
- (f) The Authority shall give the legal practitioner such specified period of time as the Authority considers reasonable within which to restrict the publication of the advertisement or to take such further consequential or ancillary steps as the Authority may direct.
- (g) Nothing in this Regulation shall prevent a legal practitioner where appropriate and reasonable in the particular circumstances to mitigate any contravention or alleged contravention of section 218 of the Act of 2015 or these Regulations by giving an undertaking in writing to the Authority that he or she will forthwith desist from such contravention or alleged contravention and not repeat it in the future.
- (h) Where the Authority considers it necessary the Authority may make an application to the High Court as provided for by section 35 of the Act of 2015. In considering whether it is so necessary to apply the Authority may consider whether a legal practitioner:
 - (i) has complied with a notification given pursuant to clause (f) of this Regulation; or
 - (ii) has given an undertaking pursuant to clause (g) of this Regulation.
- (i) For the avoidance of doubt, the Authority shall have the right to exercise its powers to make an application to the High Court pursuant to section 35 of the Act of 2015 at any time it considers necessary, otherwise than in strict accordance with the procedures set out in this Regulation.
- (j) Where a letter or notification is required to be sent to a legal practitioner by or under these Regulations, it shall be in writing and shall be addressed to the legal practitioner concerned by name and, at the option of the Authority, shall be sent to the legal practitioner in one of the following ways:
 - (i) by sending it by means of electronic mail to the legal practitioner's electronic mail address, including an electronic mail address provided in the advertisement concerned; or
 - (ii) by sending it by ordinary pre-paid post to the address at which the legal practitioner ordinarily resides or carries on business or, in a case in which an address for correspondence has been provided, whether in the advertisement concerned or otherwise, to that address.

Other powers of the Authority

13. For the avoidance of any doubt a contravention of section 218 of the Act of 2015 or these Regulations may also be investigated, in accordance with Part 6 of the Act of 2015, as a complaint of misconduct on the part of a legal practitioner and the provisions of Part 6 of the Act of 2015 shall thereto apply.

14. Nothing in these Regulations shall prevent the Authority exercising any of its powers pursuant to statute.

15. The Authority may from time to time, as appropriate, publish guidelines for the guidance of legal practitioners in relation to the publication of advertisements.



GIVEN under the Official Seal of the Legal Services Regulatory Authority,

17 December 2020.

DR. DON THORNHILL
Chairperson of the Legal Services Regulatory Authority

DR. BRIAN J. DOHERTY
Chief Executive Officer of the Legal Services Regulatory Authority

EXPLANATORY NOTE

(This note is not part of the instrument and does not purport to be a legal interpretation).

The purpose of these Regulations is to set out rules in relation to the advertising of legal services by a legal practitioner, a legal partnership, a multi-disciplinary practice or a limited liability partnership advertising their legal services and a group of legal practitioners, who share a facility, premises or cost of practice, advertising themselves as such a group.

These Regulations also set out the procedure to be followed by the Authority where, following receipt of a complaint or on the Authority's own initiative, the Authority chooses to investigate any matter referred to in these Regulations and considers whether, in its opinion, any particular advertisement published or caused to be published is in contravention of section 218 of the Legal Services Regulation Act 2015 or these Regulations.

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