

THIRD SCHEDULE
within referred to

Law Society of Ireland
Practising Certificate Application
for the practice year ending 31 December 2012

GUIDANCE NOTES

General

Why you need a practising certificate

It is misconduct and a criminal offence for a solicitor (other than a solicitor in the full-time service of the state) to practise without a practising certificate. Any solicitor found to be practising without a practising certificate is liable to be referred to the Solicitors Disciplinary Tribunal.

Practising certificate application forms

Application forms will be issued during the week commencing 12 December 2011. Application forms for solicitors in private practice will be forwarded to the principal or the managing partner in each practice, rather than to each solicitor.

When you must apply

A practising certificate must be applied for on or before 1 February in each year in order to be dated 1 January of that year and thereby operate as a qualification to practise from the commencement of the year. It is therefore a legal requirement for a practising solicitor to deliver or cause to be delivered to the Registrar of Solicitors, on or before 1 February 2012, an application in the prescribed form duly completed and signed by the applicant solicitor personally, together with the appropriate fee. The onus is on each solicitor to ensure that his or her application form and fee is delivered by 1 February 2012. Applications should be delivered to: Regulation Department, Law Society of Ireland, George's Court, George's Lane, Dublin 7; DX 1025 Four Courts.

What happens if you apply late?

Any applications for practising certificates that are received after 1 February 2012 will result in the practising certificates being dated the date of actual receipt by the Registrar of Solicitors, rather than 1 January 2012. There is no legal power to allow any period of grace under any circumstances whatsoever.

Please note that, again during 2011, a number of solicitors went to the trouble and expense of making an application to the High Court for their practising certificate to be backdated to 1 January because their practising certificate application was received after 1 February.

The Regulation of Practice Committee is the committee of the Society that has responsibility for supervising compliance with practising certificate requirements. A special meeting of this committee will be held on a date after 1 February 2012, to be decided, to consider any late or unresolved applications for practising certificates. At this meeting, any practising solicitors who have not applied by then for a practising certificate will be considered for referral forthwith to the Solicitors Disciplinary Tribunal and will be informed that the Society reserves the right to take proceedings for an order under section 18 of the *Solicitors (Amendment) Act 2002* to prohibit them from practising illegally.

If you are an employed solicitor

Solicitors who are employed should note that it is the statutory obligation of every solicitor who requires a practising certificate to ensure that he or she has a practising certificate in force. Employed solicitors cannot absolve themselves from this responsibility by relying on their employers to procure their practising certificates. However, it is the Society's recommendation that all employers should pay for the practising certificate of solicitors employed by them.

If you are a solicitor in the full-time service of the State

There is a specially adapted form for solicitors in the full-time service of the State.

Some of your details are already on the application form

The practising certificate application form will be issued with certain information relating to each solicitor's practice already completed. Such information will include the relevant fees due by each solicitor and where applicable, provided date of birth has been notified to the Society, will include an adjustment for those solicitors of 70 years or over, to take account of the fact that they will not be covered under the provisions of the Solicitors' Group Life Cover Scheme.

Law Directory 2012

It is intended that the Law Directory 2012 will note all solicitors who have been issued with a practising certificate by 10 February 2012 (not those who have applied by 10 February 2012). Therefore, in order to ensure that your practising certificate issues by 10 February 2012, you should ensure that the application form you return to the Society is completed correctly. If it is not completed correctly, it will be necessary to return the form, which may result in delaying the issue of your practising certificate, despite the fact that you had applied for it prior to 10 February 2012.

What you can access on the website (www.lawsociety.ie)

Your individual pre-populated application form will also become available on the members' area of the Law Society website during the week commencing 12 December 2011, which you can complete online prior to printing a copy for signing and returning to the Society with the appropriate fee. This area is accessible by using your username and password: for assistance, please visit www.lawsociety.ie/help. Blank forms will also be available for you to download, if required. In addition, you may request a form to be emailed to you by emailing: pcrenewals@lawsociety.ie.

If you are ceasing practice

If you have recently ceased practice or are intending to cease practice in the coming year, please notify the Society accordingly.

Acknowledgement of application forms

Please note that it is not the Society's policy to acknowledge receipt of application forms as received.

Duplicate practising certificate

A fee of €50 will be payable in respect of each duplicate practising certificate issued for any purpose.

Completion of the application form

The application form must be properly completed and dated and signed personally by the applicant. If any details are omitted from the application form, it may be returned to the applicant for proper completion and re-submission, which could result in delay in issuing a practising certificate to the applicant.

The application form must be properly completed by a solicitor engaged (or intending to engage) during the practice year ending 31 December 2012 in the provision of legal services, whether as a sole practitioner or as a partner in a solicitor's practice or as an employee (whether of a solicitor(s) or of any other person or body), including a solicitor who does not require a practising certificate by reason of being a solicitor in the full-time service of the State [*within the meaning of section 54 of the Solicitors Act, 1954, as substituted by section 62 of the Solicitors (Amendment) Act 1994*] (in such cases by completing the special application form for such cases) or by reason of being a solicitor employed full-time in the State to provide conveyancing services only to and for his/her non-solicitor employer [*section 56, Solicitors (Amendment) Act 1994*].

The practice year coincides with the calendar year. The application form must be received by the Registrar at the Society's premises, George's Court, George's Lane, Dublin 7, on or before 1 February 2012 in order for the practising certificate to be dated 1 January 2012 and thereby to operate as a qualification to practise from the commencement of the practice year 2012. A practising certificate issued after 1 February 2012 must *[under Section 48 (as amended by Section 55 of the Solicitors (Amendment) Act 1994), of the Solicitors Act 1954]* bear the date on which the application is actually received by the Registrar.

Section A – Personal Details

If any details in this section are incorrect, please either amend the form or enclose an explanatory letter with the form.

Section B – Status

Please complete this Section as indicated on the application form.

Notes in relation to particular parts of this Section.

- 1(h) For the purposes of this option “independent law centre” has the meaning provided for in The Solicitors Acts 1954 to 2002 (Independent Law Centres) Regulations 2006 (S.I. No. 103 of 2006), as amended.
- 1(j) A solicitor to whom this option applies is not required to hold a practising certificate, but should complete the form as if applying for a practising certificate. No fee will be charged for a practising certificate and no practising certificate will be issued.
5. The questions of the Registrar of Solicitors are to be answered by each applicant, including a solicitor in the full-time service of the State and a conveyancing-only solicitor employed by a non-solicitor.

Section C – Investment Business Services or Investment Advice

This Section is required to comply with The Solicitors Acts 1954 to 1994 (Investment Business and Investor Compensation) Regulations 1998 (S.I. No. 439 of 1998) as amended. Part I of this Section applies to a solicitor who is an investment business firm or an investment firm within the terms of Section 47(1)(a) or (b) of the Investor Compensation Act 1998. Part II of this Section applies to all other solicitors. In the form for solicitors in the full-time service of the State this Section is not divided into parts.

Text of Investor Compensation Act 1998 Section 47(1)(a) and (b)

- (a) *A solicitor in respect of whom a practising certificate (within the meaning of the Solicitors Acts 1954 to [1994]) is in force shall be an investment business firm —*
- (i) *where the solicitor provides investment business services or investment advice in a manner which is not incidental to the provision of legal services, or*
- (ii) *where the solicitor holds himself or herself out as being an investment business firm, or*
- (iii) *where, when acting as an investment product intermediary in a manner incidental to the provision of legal services, the solicitor holds an appointment in writing other than from-*

- (I) *an investment firm authorised in accordance with the Investment Services Directive by a competent authority of another Member State, or an authorised investment business firm (not being a restricted activity investment product intermediary or a certified person), or a member firm within the meaning of the Stock Exchange Act 1995, or*
- (II) *a credit institution authorised in accordance with Directives 77/780/EEC of 12 December 1977 and 89/646/EEC of 15 December 1989, or*
- (III) *a manager of a collective investment undertaking authorised to market units in collective investments to the public,*
which is situate in the State or the relevant branch of which is situate in the State,

and shall be required to be authorised as an authorised investment business firm pursuant to the provisions of the [Investment Intermediaries Act] 1995.

- (b) *A solicitor, in respect of whom a practising certificate (within the meaning of the Solicitors Acts 1954 to [1994]) is in force, who is an insurance intermediary or who holds himself [or herself] out to be an insurance intermediary shall be an investment firm for the purposes of this Act and shall inform the [Irish Financial Services Regulatory Authority] and [The Investor Compensation Company Limited] that he or she is an investment firm for the purposes of this Act.*

Part I

The terms of the description referred to in Part I of this Section and the terms of the evidence in writing referred to in Part I of this Section are as follows:

1. I am a solicitor who —
 - (a) provides investment business services (including acting as an insurance intermediary) or investment advice in a manner which is not incidental to the provision of legal services, or
 - (b) holds himself/herself out as being an investment business firm, or
 - (c) when acting as an investment product intermediary in a manner incidental to the provision of legal services, holds an appointment in writing other than from
 - (i) an investment firm authorised in accordance with the Investment Services Directive by a competent authority of another Member State, or an authorised investment business firm (not being a restricted activity investment product intermediary or a certified person), or a member firm within the meaning of the Stock Exchange Act 1995, or
 - (ii) a credit institution authorised in accordance with Directives 77/780/EEC of 12 December 1977 and 89/646/EEC of 15 December 1989, or
 - (iii) a manager of a collective investment undertaking authorised to market units in collective investments to the public,

which is situate in the State or the relevant branch of which is situate in the State,

and am therefore an investment business firm required to be authorised as an authorised investment business firm pursuant to the provisions of the Investment Intermediaries Act 1995 (as amended by the Investor Compensation Act 1998), or am an insurance intermediary and/or have held myself out as an insurance intermediary who is required to inform the Central Bank of Ireland and The Investor Compensation Company Limited of that fact.

2. I attach to my application form evidence in writing:
- (a) either –
 - (i) of having been authorised by the Central Bank of Ireland as an authorised investment business firm; or
 - (ii) of having informed the Central Bank of Ireland and The Investor Compensation Company Limited that I am an insurance intermediary and/or that I have held myself out as an insurance intermediary;
 - (b) of the fact of the payment by me (or on my behalf) of such contribution to the fund established and maintained pursuant to section 19 of the Investor Compensation Act 1998 as may be required by The Investor Compensation Company Limited under section 21 of that Act;
 - (c) of having in place, valid and irrevocable for at least the duration of the practice year ending on 31 December 2011, a bond or bank guarantee and a policy of insurance, each acceptable to the Society, by way of providing indemnity against losses that may be suffered by a client in respect of default (whether arising from dishonesty or from breach of contract, negligence or other civil wrong) on my part, or any employee, agent or independent contractor engaged by me, as shall, in the opinion of the Society (taking into account the maximum amount of compensation for default that would be payable to a client secured by reason of the payment made by me referred to in (b) above), be equivalent to the indemnity against losses that would be provided to a client of a solicitor (in respect of whom a practising certificate is in force) in the provision of legal services by means of -
 - (i) the Compensation Fund as provided for in accordance with section 21 (as substituted by section 29 of the Solicitors (Amendment Act 1994) of the Solicitors (Amendment) Act 1960, and
 - (ii) the minimum level of cover as provided for in accordance with The Solicitors Acts 1954 to 2002 (Professional Indemnity Insurance) Regulations 2007 (S.I. No. 617 of 2007), as amended.

Part II

The terms of the undertaking referred in Part II of this Section are as follows:

I hereby undertake that:

- (a) I will not provide investment business services (including acting as an insurance intermediary) or investment advice to clients or, if I do so, I will do so only when incidental to the provision of legal services to such clients;
- (b) I will not hold myself out as being an investment business firm or an insurance intermediary;

- (c) If I provide investment business services or investment advice to clients incidental to the provision of legal services to such clients and when acting as an investment product intermediary, I will not hold an appointment in writing other than from:
- (i) an investment firm authorised in accordance with *Directive 93/22/EEC* of 10 May 1993 by a competent authority of another Member State, or an authorised investment business firm (not being a restricted activity investment product intermediary or a certified person), or a member firm within the meaning of the *Stock Exchange Act 1995*, or
 - (ii) a credit institution authorised in accordance with Directives *77/780/EEC* of 12 December 1977 and *89/646/EEC* of 15 December 1989, or
 - (iii) a manager of a collective investment undertaking authorised to market units in collective investments to the public, which is situated in the State or the relevant branch of which is situated in the State; and
- (d) if at any time during the course of the practice year ending on 31 December 2011 I propose to become an investment business firm or an investment firm in one or more of the circumstances set forth in Section 47(1)(a) or (b) of the Investor Compensation Act 1998, I will notify the Society in writing of that fact at least seven days before such proposed event and shall, within fourteen days of such notification, comply with the provisions of Regulation 6 of The Solicitors Acts 1954 to 1994 (Investment Business and Investor Compensation) Regulations 1998 (S.I. No. 439 of 1998), as amended.

Section D – Solicitors Accounts Regulations 2001 to 2006

This Section should be completed only by an employed solicitor in private practice or by a solicitor employed by a non-solicitor (e.g. financial institution, commercial entity, statutory body), in either case who has not handled clients' moneys during the practice year 2010 other than on behalf of your employer.

Section E – Professional Indemnity Insurance

This Section should be completed only by a solicitor who provides legal services for a non-solicitor (e.g. financial institution, commercial entity, statutory body) or a solicitor who provides legal services from an establishment outside the State. If either status applies to you, please complete either Part I or Part II, as appropriate. In the form for solicitors in the full-time service of the State this Section is not divided into parts.

For the purposes of this Section words and phrases which are assigned meanings by The Solicitors Acts 1954 to 2008 (Professional Indemnity Insurance) Regulations 2011 (S.I. No. 409 of 2011) shall have the meanings so assigned.

Section F – Continuing Professional Development (CPD)

Completion of Section F of this application is the initial means of verifying compliance with the 2011 minimum CPD requirement. The CPD requirement for 2011 applies to a solicitor who held a practising certificate, and/or a solicitor in the full-time service of the State, and/or a European lawyer registered with the Society holding a qualifying certificate, at any time during 2011. A solicitor who does not fall into any of these categories should tick option (d).

Solicitors who have completed the 2011 minimum CPD requirement in accordance with the Scheme should tick option (a). The 2011 CPD Scheme allows for the minimum CPD requirement to be modified in certain limited circumstances, including for (i) a newly admitted solicitor, (ii) a senior practitioner, (iii) maternity/parental/carers/adoptive leave, (iv) part-year practice, (v) unemployment, (vi) part-time practice. The limited circumstances in which these modifications may be claimed and the method of calculating the modified CPD

requirement are set out in the current CPD Scheme booklet. No application to the Education Committee is required to claim such a modification. A solicitor who is entitled to modify his/her minimum CPD requirement under the Scheme and who completed that modified CPD requirement should tick option (a). A solicitor who is entitled to modify his/her minimum CPD requirement under the Scheme but who failed to complete that modified CPD requirement should tick option (c).

A solicitor who was admitted to the Roll of Solicitors on or after 1 December 2010 is exempt from the full 2011 minimum CPD requirement and should tick option (a). A solicitor who was admitted to the Roll of Solicitors between January 2010 and November 2010 is entitled to modify his/her minimum CPD requirement in accordance with the Scheme (see above). Any such solicitor should tick option (a) if they completed that modified CPD requirement or option (c) if they failed to do so.

A solicitor may make an individual application to the Education Committee for special dispensation from the minimum CPD requirement (whether by way of full or partial exemption or for an extension of time to complete the necessary CPD hours) in cases of certified long-term illness or other personal circumstances. Only a solicitor who has made such an application to the Education Committee which **has already been granted** should tick option (b).

A solicitor who has failed to complete the 2011 minimum CPD requirement (in full or as may be modified under the Scheme) and who has not made an application to the Education Committee for special dispensation should tick option (c). A solicitor to whom option (c) applies and who now wishes to make an application to the Education Committee for special dispensation should **separately** write to the CPD Scheme Unit.

The current CPD Scheme booklet and S.I. No. 452 of 2009 are available to download from the CPD Scheme section in the Members' Area of the Society's website (www.lawsociety.ie). For further information, contact the CPD Scheme Unit (tel: 01 6724802, post: CPD Scheme Unit, Law Society of Ireland, Blackhall Place, Dublin 7 or email: cpdscheme@lawsociety.ie).

An applicant should **not** return his/her CPD record card with this practising certificate application. The Society may subsequently request sight of an applicant's record card and proof of completion of the CPD during the 2011 CPD cycle as part of the Society's CPD audit review process.

Section G – Data Protection Statement

Examples of the actual or possible uses of personal data relating to a solicitor include the following:

- the provision of data to insurers providing professional indemnity insurance cover and brokers arranging such cover and to the SPF manager;
- the circulation of the Society's Gazette to a solicitor member of the Society, which may include or be accompanied by commercially-related material;
- publication in the annual Law Directory;
- the reference to a solicitor on the Roll of Solicitors and/or on the Register of Practising Solicitors and/or in the records of professional indemnity insurance cover of solicitors maintained by the Society;
- the reference to a solicitor on the Society's website;
- the provision by the Society to a solicitor candidate for the Society's annual elections or a solicitor candidate for a Dáil or Seanad election of the practice address and/or e-mail address of a solicitor;
- the furnishing of information relating to the good standing of a solicitor, including information recorded on the Roll of Solicitors and on the Register of Practising Solicitors or in the records of professional indemnity insurance cover maintained by the Society, when requested, to Irish governmental agencies (e.g. Judicial Appointments Advisory Board) or to foreign governmental agencies (including

- governmental agencies outside the European Union) or to commercial entities or to individual members of the public;
- the provision by the Society to a specific commercial entity of the practice address and/or e-mail address pursuant to an expressly recorded decision of the Society that it is beneficial to do so for defined marketing or professional or practice development purposes;
 - the provision by the Society of the practice address and/or e-mail address of a solicitor to third party non-commercial entities, e.g. Bar Associations, Courts Service etc which provide useful information to the profession.
 - the provision by the Society to a firm of solicitors or another body employing solicitors of information both electronically and in hard copy form, as to the attendance record of individual solicitors within the firm or body relating to Continuing Professional Development.

Declaration

Please sign and date as indicated on the application form.

Membership of the Society

Please tick the box if you wish to be a member of the Society for the year ending 31 December 2012.

Fees

1. The registration fee and the Compensation Fund contribution are required to be paid by each applicant for a practising certificate.
2. A solicitor admitted during the practice year commencing 1 January 2012, if applying for his/her first practising certificate during the practice year 2012, may calculate the registration fee and the Compensation Fund contribution payable by him/her on the basis of the number of full calendar months remaining in that practice year following the month of his/her admission; and the solicitor's membership subscription in respect of the year (or part thereof) of his/her admission shall be at the reduced rate of €20.

A solicitor admitted to the Roll for at least 50 years on 1 January 2012 is entitled to be a member of the Society without payment of a membership subscription. Therefore it is not necessary for such a solicitor to pay the €85 membership subscription when applying for a practising certificate.

3. Payment of the annual membership subscription and/or the Solicitors Benevolent Association contribution and/or the Free Legal Advice Centres contribution and/or Community Law Centres contribution is/are not a condition(s) precedent to the issuing to a solicitor of a Practising Certificate. However, unless a solicitor pays the annual membership subscription, he/she cannot enjoy the benefits of being a member of the Society as provided for in the Society's Bye-Laws, including the right to vote in annual and provincial elections and the right to receive the Society's Gazette. The voluntary contribution to Community Law Centres will be allocated to the Ballymun Community Law Centre and the Northside Community Law Centre.

Payment Methods

Please pay the fees due by cheque or electronic funds transfer as indicated on the application form.

If paying by electronic funds transfer, it is mandatory to enclose a remittance advice with the application; until the remittance advice is received, your application will be treated in the same way as an application form without a cheque (that is as an incomplete application) notwithstanding that the fees due may have actually been received by the Society. There is no discretion to waive this requirement in any case. In this regard attention is drawn to the deadline of 10th February 2012 for inclusion in the Law Directory 2012 which is more fully described in the general section of these guidance notes.