

SOLICITORS (ADVERTISING) REGULATIONS

The Solicitors (Advertising) Regulations, 2002 (*Statutory Instrument No.518 of 2002*) were introduced pursuant to S. 4 of the Solicitors (Amendment) Act 2002, which preserves the right of a solicitor to advertise, but severely restricts personal injuries advertising.

The 1996 Solicitors Advertising Regulations (S.I. 351 of 1996) are revoked by **Regulation 1** and **Regulation 2** defines the terms used in the Regulations. Most of the definitions follow the exact wording of the statutory definitions contained in the 1994 and 2002 Acts.

Regulation 3 provides specifically that solicitors may advertise.

Regulation 4(a) re-introduces the general prohibitions contained in the 1996 regulations, ie advertisements which:

- Are likely to bring the profession into disrepute,
- Are in bad taste,
- Reflect unfavourably on other solicitors,
- Assert that a solicitor has specialist knowledge superior to other solicitors,
- Are false or misleading,
- Are contrary to public policy

This section also prohibits for the first time advertising in an "inappropriate location". This is defined in S4.(10) of the 2002 Act as "a hospital, clinic, doctor's surgery, funeral home, crematorium, or other location of a similar character". These provisions apply to all types of advertising, not just personal injuries advertising.

Regulation (4)(a)(viii) then introduces for the first time a ban on advertisements which refer to claims or possible claims for damages for personal injuries, the outcome of such claims or the provision of services by solicitors in conjunction with such claims. Regulation 4(a) (ix) prohibits advertisements which "solicit, encourage or offer any inducement" to make such claims.

Regulation 4(b) specifies that all advertisement shall not include more than:

- The solicitor's name, address, telephone and fax numbers,
- Place of business and location of information provided by the solicitor that is accessible electronically;
- Particulars of the solicitor's qualifications and legal expertise;
- Factual information on the legal services and areas of law to which the services relate;
- Particulars of charges; and
- Any other information permitted by Regulation 5 of these regulations

Regulation 4(c) replicates S.4(4) of the 2002 Act – any advertisement which contains factual information on the legal services provided, may include the words "personal injuries". The regulations specifically allow an advertisement to include the words "personal injuries" in a list of services. [and see reg.8(b) below]

Regulation 5 contains a list of the "other information" permitted by the regulations, such as hours of business, job descriptions, membership of organisations, reference to other clients (with that client's consent) and other miscellaneous information.

The content of any advertisement must therefore be permissible either under Regulation 4(b) or Regulation 5. The inclusion of anything else in an advertisement will constitute a breach of the Regulations.

Regulations 6 and 7 deal with where advertisements may or may not be published. Henceforth advertisements may not appear on any form of transport so advertisements on the back of buses are no

longer permissible. Solicitors may not advertise immediately adjacent to death notices, or in any inappropriate location, as defined in S.4(10) of the 2002 Act.

If a solicitor decides to refer in an advertisement to personal injuries or other contentious business, **Regulation 8(a)** specifies that the advertisement must also clearly refer to the prohibition on percentage charging in connection with contentious business. **Regulation 8(b)** extends the limitation on the use of the words "personal injuries" to phrases such as "motor accidents", "workplace accidents" and other words or phrases of a similar nature.

Regulation 9(a) forbids the inclusion of any words or phrases which suggest that legal services relating to contentious business will be provided at no cost or at a reduced cost ie "no foal no fee", "most cases settle out of court" "insurance cover arranged to cover legal costs". This prohibition is in line with the statutory ban on advertisements which encourage or induce claims for damages for personal injuries. No advertisement can contain cartoons, dramatic or emotive words or pictures, nor can it refer to calamitous events such as a train or bus crash. This regulation also prohibits reference to the solicitor's willingness to make home or hospital visits. Obviously the willingness of a solicitor to make such visits is laudable, but the advertisement of such services can be (and has been) interpreted as a form of "ambulance chasing" and is therefore prohibited by the regulations pursuant to the general statutory restrictions contained in S.4(2) of the 2002 Act.

Billboard advertising is restricted to the solicitor's name, address, telephone and fax numbers, place of business and the location of information provided by the solicitor that is electronically accessible. [**Regulation 9(b)**].

Regulation 10 deals with websites and provides that solicitors will be responsible (for the purpose of compliance with the regulations) for the content of sites that are linked to the solicitor's site, where it is reasonable to conclude that the intention of the linked site is to publicise the solicitor's practice. For example, if a solicitor's website has a link to a site that contains information encouraging personal injury claims, it is reasonable to construe such a site as being intended to promote the solicitor's practice. This would mean that the solicitor is deemed to be responsible for the contents, and if they are in breach of the regulations, the solicitor will be accountable.

Advertisements must be of a size appropriate to the medium in which they appear [**Regulation 11(a)**], and where an advertisement contains factual information on services provided, no one category shall be given prominence. [**Regulation 11 (b)**]. Thus for example the following advertisement would not be permissible:

XYZ Solicitors
Blackhall Place
Dublin 7

Personal Injuries

Conveyancing
Probate
Matrimonial

Regulation 11(c) is similar in concept to Regulation 10 where the advertisement is in written form, as opposed to an advertisement on a website. If an advertisement for a solicitor appears in a newspaper and immediately under it, a second advertisement appears "which could reasonably be construed as relating to or elaborating on" the solicitor's advertisement, the second advertisement shall be deemed to have been published by the solicitor, until the contrary is proved. Similarly, if a solicitor's advertisement refers to the fact that the solicitor is a member of a particular organisation of solicitors, any advertisements published by that organisation shall be deemed to be published by the solicitor until the contrary is proven [**Regulation 11(d)**].

Regulation 12(a) removes certain forms of communications (those designed primarily to give information on the law) from the definition of advertisement. A book, or unpaid article or interview on a legal topic by a solicitor will not be regarded as an advertisement. Regulation 11(b) and (c) then provide for specific exceptions to this rule – a book that issues for free or at a reduced cost may be regarded as an advertisement, as may the repeated publication of an article or interview.

The 1994 Act provided in S.69 (4)(f) that no advertisement should "comprise or include unsolicited approaches to any person with a view to obtaining instructions in any legal matter". This express prohibition is not included in the 2002 Act, as it was a source of considerable confusion insofar as all advertisements could arguably be regarded as "unsolicited approaches". The 2002 Act now specifies that the Society shall make regulations "to provide for restrictions on a solicitor making, or causing to be made, unsolicited approaches to any person or group or class of persons with a view to being instructed to provide legal services". These restrictions are contained in **Regulation 13(a)** which simply states that an unsolicited approach may not be made where it is likely to bring the profession into disrepute. In particular, approaches at an "inappropriate location" (as defined), or at or adjacent to a calamitous event, a Garda station, courthouse or prison, shall not be made. [**Regulation 13(b)**].

If an advertisement does not otherwise make it clear on the face of it, that it is an advertisement for a solicitor (ie "Buying or selling your house? Contact the experts at 01-987654321"), it must state that it is published by a solicitor. The solicitor is responsible to ensure that all advertisements published or caused to be published by him/her comply with the regulations and any advertisement in which the solicitor's name appears shall be deemed to be published or caused to be published by him/her [**Regulation 14**].

Regulations 15 and 16 deal with investigation and enforcement of possible breaches.

Regulation 17 provides that if the solicitor obtained the Society's written approval of the advertisement, that shall be a defence to any allegation of breach of the regulations. It also provides that the Society can issue guidelines from time to time.

The statutory definition of "claims for damages for personal injuries" includes claims "whether made in court proceeding or otherwise" and therefore would include claims made before a tribunal. The 2002 Act also contains a section which prohibits a person who is not a solicitor publishing advertisements which undertake to provide "a service of a legal nature that could otherwise be provided by a solicitor" for reward and which if published by a solicitor would be in breach of the legislation.

The sections relating to advertising in the 2002 Act and the regulations made thereunder will apply to advertisements that are published on or after 1 February 2003.

View the full text of the *Solicitors (Advertising) Regulations, 2002*.