

IN THE KEYS

**ADVOCATES (AMENDMENT)
BILL 2008**

Explanatory Memorandum

1. This Bill, which is promoted by the Attorney General on behalf of the Isle of Man Law Society, is to confer additional powers on the Society in relation to the investigation of professional misconduct, breaches of practice rules and other contraventions.
2. *Clause 1* and the Schedule enable the Council of the Society to require information to be provided or documents to be produced for the purpose of such an investigation. *Clause 2* is supplemental.
3. It is not expected that the Bill will have any effect on public revenue, expenditure or personnel.
4. In the view of the member moving the Bill its provisions are compatible with the Convention rights within the meaning of the Human Rights Act 2001.

Arrangement of Sections

Section

1. Provision of information and documents by advocates etc
2. Short title

Schedule — New Schedule 1A inserted in 1976 Act

A BILL

to confer powers on the Isle of Man Law Society in relation to the investigation of professional misconduct and other contraventions.

BE IT ENACTED by the Queen’s Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

1. (1) The Advocates Act 1976 is amended as follows.

Provision of information and documents by advocates etc

(2) After section 26 insert —

5 **26A.** (1) Schedule 1A has effect for enabling the Council to obtain information or documents for the purpose of investigating —

[c.27]

“Provision of information and documents by advocates etc

(a) whether there has been professional misconduct by an advocate;

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(b) whether an advocate, or an employee of an advocate, has failed to comply with any requirement imposed by or by virtue of this Act or any instrument to which this paragraph applies; or

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(c) whether a recognised body or any of its directors or employees has failed to comply with any requirement imposed by or by virtue of the Advocates Act 1995 or any rules made by the Deemsters and applicable to the body, director or employee by virtue of section 26 of that Act.

[c.17]

2 *Advocates (Amendment) Bill 2008*

(2) Subsection (1)(b) applies to —

(a) rules made by the Council under sections 4, 6 and 16;

(b) byelaws made by the Council under section 13(3) and (4) of the Advocates Act 1995; and **5**

(c) a code made under section 157 (money laundering) of the Proceeds of Crime Act 2008.”.

[c.13]

(3) After Schedule 1 insert (as Schedule 1A) the provisions set out in the Schedule to this Act. **10**

(4) Until the coming into operation of section 157 of the Proceeds of Crime Act 2008, the reference to that section in section 26A above shall be construed as a reference to section 17F of the Criminal Justice Act 1990.

[c.1]

(5) This section applies in relation to any act or omission occurring, and any investigation begun, before as well as after the passing of this Act. **15**

Short title

2. This Act may be cited as the Advocates (Amendment) Act 2009.

Section 1(3).

SCHEDULE

NEW SCHEDULE 1A INSERTED IN 1976 ACT

“SCHEDULE 1A

PROVISION OF INFORMATION AND DOCUMENTS

Provision of information and documents by advocates etc

1. (1) If the Council is satisfied that it is necessary to do so for a purpose mentioned in section 26A, it may by notice require a person to whom this paragraph applies —

(a) to provide information, or information of a description, specified in the notice, or

(b) produce documents, or documents of a description, specified in the notice.

(2) This paragraph applies to —

(a) an advocate;

(b) an employee of an advocate;

(c) a recognised body;

(d) an employee or director of a recognised body.

(3) A notice under this paragraph —

(a) may specify the time and place at which, and manner and form in which, the information is to be provided or document is to be produced;

(b) must specify the period within which the information is to be provided or the document produced;

(c) may require the information to be provided or document to be produced to the Society or to a person specified in the notice.

(4) A person specified under sub-paragraph (3)(c) may take possession on behalf of the Society of any documents to which a notice under this paragraph applies.

Failure to provide information or produce documents

2. Except in a case where an application has been made to the High Court under paragraph 5(1) or (2), as the case may be, if any person having possession or control of any information or documents to which a notice given to him or her under paragraph 1 applies refuses, neglects or otherwise fails to comply with a requirement under the notice, he or she is guilty of an offence and liable on summary conviction to a fine not exceeding £1,000.

Power to require explanation of information or document

3. The Council may by notice require a person to whom a notice is given under paragraph 1, or a representative of that person, to attend at a time and place specified in the notice to provide an explanation of any information provided or document produced pursuant to the notice.

Failure to provide explanation

4. Except in a case where an application has been made to the High Court under paragraph 5(5), if any person refuses, neglects or otherwise fails to comply with a requirement under paragraph 3, he or she is guilty of an offence and liable on summary conviction to a fine not exceeding £1,000.

Powers of High Court

5. (1) The High Court, on the application of the Society, may order a person required to provide information pursuant to a notice under paragraph 1(1)(a) to provide the information to any person appointed by the Society at such time and place as may be specified in the order.

(2) The High Court, on the application of the Society, may order a person required to produce documents by a notice given to him or her under paragraph 1(1)(b) to produce or deliver them to any person appointed by the Society at such time and place as may be specified in the order, and authorise that person to take possession of them on behalf of the Society.

(3) If, on an application by the Society, the High Court is satisfied that there is reason to suspect that documents in relation to which the powers conferred by paragraph 1(1)(b) are exercisable have come into the possession or under the control of some person other than the person to whom a notice was given under that paragraph, the High Court may order that person to produce or deliver the documents to any person appointed by the Society at such time and place as may be specified in the order and authorise him or her to take possession of them on behalf of the Society.

(4) On making an order under sub-paragraph (2) or (3), or at any later time, the High Court, on the application of the Society, may authorise a person appointed by the Society to enter any premises (using such force as is reasonably necessary) to search for and take possession of —

(a) any documents to which the order relates;

(b) any property —

(i) in the possession of or under the control of the person to whom the notice was given under paragraph 1, or

(ii) in the case of an order under sub-paragraph (3), which was in the possession or under the control of that person and has come into the possession or under the control of the person in respect of whom the order is made,

which the Society reasonably requires for the purpose of accessing information contained in such documents,

and to use property obtained under paragraph (b) for that purpose.

(5) The High Court, on the application of the Society, may order a person required to provide an explanation of any information provided or document produced pursuant to a notice under paragraph 3, or a representative of that person, to attend at a time and place specified in the order to provide an explanation of any information so provided or document so produced.

Provision of information and documents by other persons

6. (1) The High Court, on the application of the Society, may order a person to whom paragraph 1 does not apply —

(a) to provide information, or information of a description, specified in the order, or

(b) to produce documents, or documents of a description, specified in the order.

(2) The High Court may make an order under this paragraph only if it is satisfied —

(a) that it is likely that the information or document is in the possession or custody of, or under the control of, the person, and

(b) that there is reasonable cause to believe that the information or document is likely to be of material significance to an investigation into any of the matters mentioned in section 26A.

(3) An order under this paragraph may direct the Society to pay to a person specified in the order such reasonable costs as may be incurred by that person in connection with the provision of any information, or production of any document, by that person pursuant to the order.

(4) Paragraph 1(3) applies in relation to an order under this paragraph as it applies in relation to a notice under paragraph 1.

Electronic documents

7. In the case of a document which consists of information which is stored in electronic form, a requirement imposed by a notice under paragraph 1(b) or an order under paragraph 5(2) or (3) or paragraph 6, is a requirement to produce or deliver the information in a form in which it is legible or from which it can readily be produced in a legible form.

Notification of seizure

8. Upon taking possession of any documents or other property under this Schedule, the Society shall serve upon —

(a) the person to whom the notice was given under paragraph 1, or the person in respect of whom the order under paragraph 6 is made, as the case may be, and

- (b) any other person from whom they were received on the Society's behalf or from whose premises they were taken,

a notice that possession has been taken on the date specified in the notice.

Order for delivery or disposal of documents etc

9. (1) Subject to sub-paragraph (2), a person upon whom a notice under paragraph 8 is served, on giving not less than 48 hours' notice to the Society and (if the notice gives the name of the advocate instructed by the Society) to that advocate, may apply to the High Court for an order directing the Society to deliver the documents or other property to such person as the applicant may require.

(2) A notice under sub-paragraph (1) shall be given within 8 days of the service of the Society's notice under paragraph 8.

(3) Without prejudice to the foregoing provisions of this Schedule, the Society may apply to the High Court for an order as to the disposal or destruction of any documents or other property in its possession by virtue of this Schedule.

(4) On an application under sub-paragraph (1) or (3), the Court may make such order as it thinks fit.

Copies of documents

10. Except so far as their right to do so may be restricted by an order on an application under paragraph 9(1) or (3), —

- (a) the Society, and
- (b) a person specified under paragraph 1(3)(c) (including that provision as applied by paragraph 6(4)),

may take copies of, or extracts from, any documents in their possession by virtue of this Schedule and require any person to whom it is proposed that such documents shall be delivered, as a condition precedent to delivery, to give a reasonable undertaking to supply copies or extracts to the Society.

Information offences

11. (1) It is an offence for a person who knows or suspects an investigation into any of the matters mentioned in section 26A is being or is likely to be conducted —

- (a) to falsify, conceal, destroy or otherwise dispose of a document which he or she knows or suspects is or would be relevant to the investigation, or
- (b) to cause or permit the falsification, concealment, destruction or disposal of such a document.

(2) In proceedings for an offence under sub-paragraph (1) it is a defence for the accused to show that he or she had no intention of concealing facts disclosed by the documents from the person conducting the investigation.

(3) It is an offence for a person, in purported compliance with a requirement imposed on him or her under this Schedule —

- (a) to provide information which he or she knows to be false or misleading in a material particular, or
- (b) recklessly to provide information which is false or misleading in a material particular.

(4) A person guilty of an offence under sub-paragraph (1) or (3) is liable —

- (a) on summary conviction, to custody for a term not exceeding 6 months or a fine not exceeding £5,000, or both;
- (b) on conviction on information, to custody for a term not exceeding 2 years or a fine, or both.

Supplemental

12. (1) The powers in relation to documents and other property conferred by this Schedule shall be exercisable notwithstanding any lien on them or right to their possession.

(2) Where powers conferred by this Schedule are exercisable in relation to a person within paragraph 1(2)(a), (b), (c) or (d), they continue to be so exercisable after the person has ceased to be within that provision.

(3) The Society may pay to any person such reasonable costs as may be incurred by that person in connection with —

- (a) the provision of any information, or production of any document, by that person pursuant to a notice under paragraph 1, or
- (b) that person's compliance with a requirement imposed under paragraph 3.

(4) Subject to any order for the payment of costs that may be made on an application to the High Court under this Schedule, any costs incurred by the Society for the purposes of this Schedule, including (without prejudice to the generality of this sub-paragraph) the costs of any person exercising powers under this Schedule on behalf of the Society, shall be paid by —

- (a) the person to whom the notice was given under paragraph 1 or 3, or
- (b) the person in respect of whom the order was made under paragraph 6 was made,

as the case may be, and shall be recoverable from that person as a debt owing to the Society.

(5) Any application to the High Court under this Schedule may be disposed of in chambers.

(6) The Society may do all things which are reasonably necessary for the purpose of facilitating the exercise of its powers under this Schedule.

(7) In section 26A and this Schedule —

“director”, in relation to a recognised body whose affairs are managed by its members, means a member of that body;

“recognised body” has the same meaning as in the Advocates Act 1995.”.

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to confer powers on the Isle of Man Law Society in relation to the investigation of professional misconduct and other contraventions.

Approved by the Council of Ministers for introduction in the House of Keys.

MR. EARNSHAW

DECEMBER 2008
