

Working document for consultation purposes

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Property Services Regulatory Authority Bill 2006**

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Property Services Regulatory Authority Bill 2006

An Act to provide for the establishment of a body to be known as the Property Services Regulatory Authority [or in the Irish Language] to control and supervise individuals and firms providing property services and to investigate and adjudicate on any complaints against them; for the establishment of a body to be known as the Property Services Appeal Board [or in the Irish Language] to hear and determine appeals against decisions of the Authority; to make provision for the protection of client accounts and for sales of land; and for related matters.

PART 1 Preliminary and General

Head 1 - Short title and commencement

Provide that:

1.—(1) This Act may be cited as the Property Services Regulatory Authority Act 2006.

(2) This Act shall come into operation on such day or days as may be fixed by order or orders made by the Minister, either generally or by reference to any particular purpose or provision, and different days may be so fixed for different provisions and different purposes of this Act.

Explanatory note:

This is a standard provision regarding the short title and the commencement of the Bill.

Head 2 – Interpretation

Provide that:

2.—In this Act—

“advisory committee” means a committee appointed by the Authority under section ([Head 13]);

“Appeal Board” means the Property Services Appeal Board established under section ([Head 44]);

“Authority” means the Property Services Regulatory Authority established under section ([Head 7]);

“bank” means a bank in which it is for the time being lawful for a trustee (unless expressly forbidden) to invest trust funds by placing them in an interest bearing deposit account;

“client” includes—

- (a) a person for whom a property service is provided by a licensee,
- (b) the personal representative of a client and a beneficiary under a will, intestacy or trust,
- (c) a person to whom a refund of a deposit is due;

“client account” means a current or deposit account in the name of a licensee in the title of which the word “client” appears and which is kept in a bank at a branch in the State;

“Chief Executive” means the person appointed under section ([Head 19]) as the chief executive officer of the Authority;

“company” means a company registered under the Companies Acts;

“Compensation Fund” has the meaning given to it by section ([Head 52]);

“corresponding authority” has the meaning given to it by section ([Head 54]);

“director” in relation to a body corporate, includes—

- (a) any person occupying the position of director, by whatever name called,
- (b) any person who effectively directs or has a material influence over the business of the body corporate,
- (c) any person in accordance with whose directions or instructions the directors of the body corporate are accustomed to act, unless the directors are

accustomed so to act by reason only that they do so on advice given by the person in a professional capacity, and

(d) where the affairs of the body corporate are managed by its members, any of the members who exercises the functions of such management;

“inspector” has the meaning given to it by section ([Head 26]);

“land” includes –

- (a) any estate or interest in or over land, whether corporeal or incorporeal;
- (b) mines, minerals and other substances in the substratum below the surface, whether or not owned in horizontal, vertical or other layers apart from the surface of the land;
- (c) land covered by water;
- (d) buildings or structures (other than structures not permanently attached to the ground) of any kind on land and any part of them, whether divided horizontally, vertically or in any other way;
- (e) the airspace above the surface of land or above any building or structure on land which is capable of being or was previously occupied by a building or structure and any part of such airspace, whether divided horizontally, vertically or in any other way;
- (f) any part of land;

“licence” means a licence to provide a particular category of property service specified by the Authority and in relation to a licensee means the licence of the licensee; cognate words shall be construed accordingly;

“licensee” means the holder of a licence under this Act;

“local authority” means a county council, city council or town council;

“management company” in relation to an apartment complex, housing estate, or any other estate containing housing means the company comprising owners of land in the complex or estate, in which functions are vested with respect to the management of the complex or estate;

“Minister” means the Minister for Justice, Equality and Law Reform;

“the Official Assignee” means the person who is for the time being the Official Assignee in Bankruptcy;

“prescribed” means prescribed by regulations made by the Authority with the consent of the Minister;

“professional indemnity insurance” means a policy of indemnity insurance against losses arising from claims in respect of any description of civil liability incurred—

(a) by a licensee arising from the provision of property services by that person, or

(b) by a partner, agent or employee of a licensee arising from such provision;

“property management services” means services related to the management of an apartment complex, housing estate or other estate containing housing carried out on behalf of a management company, including administrative services and the procurement of the maintenance, repair, improvement and insurance of the areas of the complex or estate in relation to which responsibility for maintenance, repair, improvement and insurance has been vested in the management company;

“property services employer” means a person who employs persons whose principal function is the provision of property services for persons other than that person;

“property service” means any of the following services provided in the State by a property services employer or in the course of an employment or as an independent contractor:

(a) auction of private property other than land;

(b) purchase or sale, by whatever means, of any estate or interest in land wherever situated;

(c) letting of any estate or interest in land wherever situated;

(d) provision of property management services;

but does not include a local authority providing property services as part of its statutory functions;

“Register” means the Property Services Register established under section ([Head 39]);

“relevant person” has the meaning given to it by section ([Head 54]);

Explanatory Note

This Head is a standard provision containing definitions of various terms used in the Bill.

Head 3 – Exemptions

Provide that:

3.—(1) Without prejudice to sections ([Head 55] (in relation to relevant persons) and ([Head 73] (in relation to transitional provisions), this Act does not apply to relevant persons or to—

- (a) an auction conducted by an officer of the Revenue Commissioners while performing the duties of his or her office or employment,
- (b) an auction conducted by, or by an officer of, a sheriff, under-sheriff, or county registrar,
- (c) an auction, under any enactment relating to distress in respect of rates, conducted by a rate collector,
- (d) an auction conducted under a power of sale conferred by section 8 of the Pounds (Provisions and Maintenance) Act 1935, or section 5 of the Animals Act 1985,
- (e) all sale of wreck conducted by a receiver of wreck appointed under section 41 of the Merchant Shipping (Salvage and Wreck) Act 1993,
- (f) an auction of fresh fish,
- (g) an auction of State property conducted by an officer of the State,
- (h) an auction conducted by a person authorised by or under any enactment to do so without being licensed,
- (i) an auction of property other than land for charitable purposes,
- (j) an auction by any individual of property other than land (goods) belonging solely to that individual,
- (k) a person who acts as agent for a Minister of State, the Commissioners for Public Works in Ireland or any person authorised to acquire land compulsorily.

(2) The Authority may by order exempt from any or all of the provisions of this Act persons providing property services, or property services of a particular class, at a specified place, event or function or specified class of place, event or function.

(3) Notice of any such exemption shall be published in Iris Oifigiúil.

Explanatory Note

This Head contains exemptions from licensing requirements.

Head 4 – Laying of orders and regulations before Houses of the Oireachtas

Provide that:

4.—Every order (other than an order under *section 1*) and regulation made under this Act by the Minister or, as the case may be, the Authority shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order or regulation is passed by either such House within the next 21 days on which that House has sat after the order or regulation is laid before it, the order or regulation shall be annulled accordingly but without prejudice to the validity of anything previously done under it.

Explanatory Note

This is a standard provision in relation to laying regulations before the Houses of the Oireachtas.

Head 5 – Expenses of the Minister

Provide that:

5.—The expenses incurred by the Minister and the Authority in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

Explanatory Note

This is a standard provision.

Head 6 – Repeals

Provide that:

6.—The enactments specified in *Schedule 1* to this Act are repealed to the extent specified in the third column thereof.

Explanatory Note

This is a standard provision. All previous legislation relating to auctioneers and estate agents is being repealed, as well as the old statutory provisions relating to auctions.

PART 2
Property Services Regulatory Authority

Head 7 - Property Services Regulatory Authority

Provide that:

7.—(1) There stands established a body to be known as the Property Service Regulatory Authority, [or in the Irish language An] to perform the functions conferred on it by this Act.

(2) The Authority—

- (a) is a body corporate with perpetual succession and an official seal,
- (b) may sue, and be sued, in its corporate name, and
- (c) may, with the consent of the Minister, acquire, hold and dispose of land or an interest in land or any other property.

(3) Subject to this Act, the Authority is independent in the performance of its functions.

(4) The seal of the Authority may be authenticated by—

- (a) the signature of the chairperson or another member authorised by the Authority to act in that behalf, and
- (b) the signature of the Chief Executive or another member of the staff of the Authority so authorised.

(5) Judicial notice shall be taken of the seal.

(6) In any proceedings a document purporting to be a document made or issued by, and to be sealed with the seal of, the Authority and any copy so sealed of such a document is admissible, without further proof, as evidence of the document and the matters mentioned in it.

(7) Any contract or instrument which, if entered into or executed by an individual, would not require to be under seal may be entered into or executed on behalf of the Authority by any person generally or specially authorised by it for that purpose.

Explanatory Note

The establishment of a Regulatory Authority to operate a licensing system for the property services sector in place of the current Courts-based system is a key recommendation of the Auctioneering/Estate Agency Review Group.

Head 8 - Membership.

Provide that:

- 8.—(1) The Authority shall consist of not more than [9] members.
- (2) The members of the Authority shall be appointed by the Minister, who shall designate one of them as its chairperson.
- (3) In appointing persons to be members of the Authority the Minister shall have regard to the desirability of their having knowledge or experience of business, finance, management, administration, consumer affairs or any other subject which would, in his or her opinion, be of assistance to the Authority in performing its functions.
- (4) Members of the Authority shall hold office for a term of 4 years from the date of their appointment and a person may not be appointed to be a member for more than 2 consecutive terms.
- (5) A member may resign from the Authority by letter addressed to the Minister.
- (6) The resignation takes effect on the day on which the Minister receives the letter.
- (7) A member holds office as such member until his or her term of office expires, unless he or she sooner dies, resigns, is removed from office or otherwise ceases to be a member.
- (8) The Minister may for stated reasons at any time remove from office a member of the Authority for misbehaviour or where the Minister considers that either—
- (a) the member has become incapable through ill health of performing his or her functions as a member, or
 - (b) the member's removal is necessary for the effective performance by the Authority of its functions.
- (9) A member of the Authority ceases to be a member on—
- (a) being adjudicated bankrupt,
 - (b) making a composition or arrangement with creditors,
 - (c) being sentenced to imprisonment on conviction on indictment,
 - (d) being convicted of an offence involving fraud or dishonesty,
 - (e) being disqualified or restricted from being a director of any company, or
 - (d) ceasing to be ordinarily resident in the State.

(10) The chairperson holds office as such chairperson until his or her term of office as a member of the Authority expires, unless he or she sooner dies, resigns or is removed from office or otherwise ceases to be a member but, if re-appointed as a member, he or she is eligible to be designated by the Minister as chairperson.

(11) In making appointments to the Authority, the Minister shall have regard to the extent to which each sex is represented in its membership and shall ensure that an appropriate balance in this respect is maintained.

(12) Each member of the Authority shall act on a part-time basis and shall be paid such remuneration (if any) and allowances for expenses as the Minister, with the consent of the Minister for Finance, may determine.

Explanatory Note

This is a standard provision in legislation establishing statutory bodies.

Head 9 – Functions of Authority

Provide that:

9.—(1) The Authority shall, subject to this Act, control and supervise persons providing property services and maintain and improve standards in the provision by them of those services.

(2) Without prejudice to the generality of *subsection (1)*, the Authority may, and where required by this Act shall—

- (a) grant and renew licences,
 - (b) where appropriate, suspend or revoke licences,
 - (c) establish and maintain a register of licensees,
 - (d) specify and enforce standards, including appropriate ethical standards, to be observed in the provision of property services by licensees, or particular categories of licensees,
 - (e) specify and enforce—
 - (i) qualification requirements, including educational and training levels, and
 - (ii) any other requirements, including prescribed minimum levels of professional indemnity insurance,
- for the grant and renewal of licences,
- (f) to such extent and in such manner as it considers appropriate, disseminate information in relation to such standards, qualifications and requirements,
 - (g) take such action as it considers appropriate to increase public awareness of property services and the cost to consumers of such services (including management companies) as well as the risks and benefits associated with the provision of those services,
 - (h) undertake or commission, or collaborate or assist in, research projects and other activities relating to property services in order to promote and improve standards for the provision of those services and public awareness of them,
 - (i) investigate any property service being provided by any person,
 - (j) establish and administer a system of investigation and adjudication of complaints against licensees,
 - (k) promote the development and adoption of Codes of Practice,

(l) keep the Minister informed of developments in relation to the provision of property services by licensees, or particular categories of licensees, and advise and assist him or her in coordinating and developing policy in that regard,

(m) establish, maintain and administer the Compensation Fund.

(3) In performing its functions and exercising its powers under this Act, the Authority shall promote the best interests of consumers generally and users of property services in a manner that is consistent with the orderly and proper functioning of property services markets and the orderly control and supervision of providers of those services.

(4) The Minister may, with the consent of the Minister for Finance, by order—

(a) confer on the Authority such additional functions relating to property services and connected with the functions conferred on it by *subsections (1), (2) and (3)* or any order under this subsection as the Minister considers appropriate, and

(b) make such provision as the Minister considers necessary or expedient in relation to matters ancillary to or arising out of any of the functions mentioned in paragraph (a).

(5) The Minister may by order amend or revoke an order under this section, including an order under this subsection.

(6) The Authority may, subject to this Act, do anything that it considers necessary or expedient for enabling it to perform its functions, including liaison and co-operation with other statutory bodies and with relevant professional and consumer bodies.

(7) Any function of the Authority may, without prejudice to its general responsibilities under this Act, be performed through or by the Chief Executive or any member of its staff duly authorised in that behalf.

(8) The Chief Executive or a member of the staff of the Authority who performs any of its functions is presumed in any proceedings to have been authorised by it to do so on its behalf, unless the contrary is shown.

Explanatory Note

This is a key provision dealing with the Authority's functions. Its principal tasks will be to operate a licensing system; set entry qualifications and delivery standards; disseminate information for the protection of consumers; carry out investigations (in response to complaints or at its own initiative); manage the Compensation Fund; and impose sanctions where appropriate.

Head 10 – Meetings

Provide that:

10.—(1) The Authority shall hold such and so many meetings as may be necessary for the due fulfilment of its functions but in each year it shall hold not less than one meeting in each period of 3 months.

(2) The quorum of a meeting of the Authority is 4 or such other number (not being less than 4) as the Authority may from time to time determine.

(3) The Minister shall fix the date, time and place of the first meeting of the Authority.

(4) At a meeting of the Authority—

(a) the chairperson of the Authority shall, if present, be chairperson of the meeting,

(b) if and so long as the chairperson of the Authority is not present or if the office of chairperson is vacant, the members of the Authority present shall choose one of their members to be chairperson of the meeting, and

(c) every question is determined by a majority of the votes of the members present and voting on the question and, if there is an equal division of votes, the chairperson of the meeting shall have a second or casting vote.

(5) Subject to this Part, the Authority may regulate its own procedures.

Explanatory Note

This is a standard procedural provision.

Head 11 – Vacancies

Provide that:

11.—(1) Subject to section [Head 10(2)], the Authority may act notwithstanding any vacancy or vacancies in its membership.

(2) If a member of the Authority dies, resigns, ceases to hold office or is removed from office, the Minister may appoint a person to fill the vacancy.

(3) A person so appointed holds office for the remainder of the term of office of the member whom he or she replaces and is eligible for reappointment for one further term.

(4) Where a vacancy occurs, the Minister shall take steps to fill it as soon as practicable.

Explanatory Note

This is a standard procedural provision.

Head 12 – Membership etc. of Dáil, Seanad or European Parliament

Provide that:

12.—(1) A member of the Authority ceases to be a member on—

- (a) accepting nomination as a member of Seanad Éireann,
- (b) being elected as a member of either House of the Oireachtas or to be a representative in the European Parliament, or
- (c) being regarded under Part XIII of the Second Schedule to the European Parliament Elections Act 1997 as having been elected to that Parliament.

(2) A person who is for the time being entitled under the Standing Orders of either House of the Oireachtas to sit therein or who is a representative in the European Parliament is, while so entitled or such a representative, disqualified for appointment as a member of the Authority or for employment by it in any capacity.

Explanatory Note

This is a standard provision in this type of legislation.

Head 13 – Advisory committees, consultants and advisers to Authority

Provide that:

13.—(1) Subject to the approval of the Minister, the Authority may from time to time appoint such and so many advisory committees and such and so many consultants or advisers as it may consider necessary to assist it in the performance of its functions.

(2) The appointment of a person to an advisory committee or as a consultant or adviser is for such period and subject to such terms and conditions as the Authority may consider appropriate.

(3) Any fees or expenses payable to a member of an advisory committee or to a consultant or an adviser must be agreed by the Minister with the prior consent of the Minister for Finance.

(4) An advisory committee must include persons who have special knowledge and experience related to the purposes of the committee concerned.

(5) The Authority may at any time dissolve an advisory committee.

(6) The Authority shall ensure the maintenance of an appropriate balance as between men and women in an advisory committee's membership.

Explanatory Note

This is a standard provision which will enable the Authority to secure, where necessary, the necessary expertise to develop its policies and procedures.

Head 14 – Disclosure of interests

Provide that:

14.—(1) Where a member of the Authority, the Chief Executive, a member of staff of the Authority or a member of an advisory committee, a consultant or an adviser appointed by the Authority has (otherwise than in that capacity) a pecuniary interest or other beneficial interest in, or material to, any matter to be considered by the Authority or advisory committee, he or she shall—

- (a) in advance of any consideration of the matter, disclose that interest and its nature to the Authority or advisory committee, as the case may be,
- (b) neither influence nor seek to influence any decision to be made in relation to it,
- (c) not make any recommendation in relation to it,
- (d) not take part in any consideration of it,
- (e) absent himself or herself from any meeting, or part of a meeting, at which it is being considered or discussed,
- (f) not be counted towards a quorum during any such consideration or discussion, and
- (g) not vote on any decision relating to the matter.

(2) Without prejudice to the generality of subsection (1), a person is regarded for the purposes of this section as having beneficial interest if—

- (a) he or she or any connected relative, any nominee of his or hers or any connected relative of the nominee is a member of a company or any other entity which has a beneficial interest in, or material to, a matter to be considered by the Authority or advisory committee,
- (b) he or she or any connected relative is in partnership with or in the employment of a person who has a beneficial interest in, or material to, such a matter,
- (c) he or she or any connected relative is a party to any arrangement or agreement (whether or not enforceable) concerning land to which such a matter relates, or
- (d) any connected relative has a beneficial interest in, or material to, such a matter.

(3) For the purposes of this section a person is not regarded as having a beneficial interest in, or material to, any matter by reason only of an interest of the person, or of

any company or other entity or person mentioned in subsection (2), which is so remote or insignificant that it could not reasonably be regarded as likely to influence a person in considering, discussing or voting on any question with respect to the matter or in performing any function in relation to it.

(4) Where a question arises as to whether or not a course of conduct, if pursued by a person, would be a failure by the person to comply with subsection (1), it shall be determined by the Authority or advisory committee, and particulars of the determination shall be recorded in the minutes of the meeting concerned.

(5) Where a disclosure under subsection (1) is made to the Authority or an advisory committee, particulars of the disclosure shall be recorded in the minutes of the meeting concerned.

(6) Where a member of the Authority does not make a disclosure in accordance with this section, the Minister shall determine the appropriate action (including removal from office) to be taken.

(7) Where a person, other than such a member, does not make a disclosure in accordance with this section, the Authority shall determine the appropriate action (including removal from office or termination of contract) to be taken.

(8) In this section “connected relative” means, in relation to a person, the person’s spouse or partner or the parent, brother, sister or child of the person or of the person’s spouse or partner.

Explanatory Note

The need for this provision arises principally because the Authority will operate a licensing system for individuals and companies in the property services sectors. The Authority itself may include individuals, or persons connected with such individuals, who are drawn from the sectors being licensed. The Chief Executive and staff are also included.

Head 15 – Non-disclosure of confidential information

Provide that:

15.—(1) Unless otherwise provided for by law, a person shall not, without the consent of the Authority, disclose any confidential information obtained while performing, or as a result of having performed, duties as a member of the Authority, the Chief Executive, a member of the staff of the Authority or a member of advisory committee, a consultant or an adviser appointed by it.

(2) A person who contravenes subsection (1) is guilty of an offence and liable on summary conviction to a fine not exceeding €2,500.

(3) In this section, “confidential information” includes information that is expressed by the Authority to be confidential as regards either particular information or information of a particular class or description.

Explanatory Note

This is a standard provision in legislation of this nature.

Head 16 – Strategic plans

Provide that:

16.—(1) The Authority shall, as soon as practicable after it is established and thereafter within 6 months before each third anniversary of its establishment, prepare and submit to the Minister, for approval by the Minister with or without amendment, a strategic plan for the ensuing 3-year period.

(2) A strategic plan shall—

- (a) set out the key objectives, outputs and related strategies of the Authority, including its use of resources,
- (b) comply with any directions issued from time to time by the Minister in relation to the form and manner of the plan's preparation, and
- (c) have regard to the need to ensure the most beneficial and efficient use of the Authority's resources.

(3) The Minister shall, as soon as practicable after a strategic plan has been so approved, cause a copy of it to be laid before each House of the Oireachtas.

Explanatory Note

This is a standard provision in this type of legislation.

Head 17 – Reports to Minister

Provide that:

17.—(1) The Authority shall, not later than 30 June in each year, make a report to the Minister on the performance of its functions and on its activities during the preceding year.

(2) The Minister shall cause copies of the report to be laid before each House of the Oireachtas.

(3) The report shall be in such form and include information regarding such matters as the Authority considers appropriate or the Minister may from time to time direct.

(4) The Authority may from time to time make other reports to the Minister on the performance of its functions.

(5) The Authority shall give the Minister such information as he or she may require relating to—

(a) any matter concerning the policies and activities of the Authority,

(b) any specific document or account prepared by it, or

(c) any report referred to in subsection (1) or (4).

(6) For the purposes of subsection (1), the period between the date of establishment of the Authority and the following 31 December shall be deemed to be the preceding year referred to in that subsection.

Explanatory Note

This is a standard reporting provision in this type of legislation.

Head 18 – Codes of practice

Provide that:

18.—(1) The Authority may and, at the request of the Minister, shall—

- (a) prepare and publish codes of practice, or
- (b) approve of a code of practice or any part of a code of practice drawn up by any other body

for the purpose of setting standards for the provision of property services and practical guidance with respect to such provision.

(2) The Authority shall, before publishing or approving of a code of practice, consult with the Minister and any person or body that appears to it to have an interest in the matter, or that may be prescribed.

(3) Where the Authority publishes or approves of a code of practice or approves of any part of a code of practice, it shall publish a notice to that effect in the *Iris Oifigiúil*, specifying the property service in relation to which the code is published or approved of and the date from which the code shall have effect.

(4) The Authority may, after consultation with the Minister and any person or body that appears to the Authority to be appropriate, or that may be prescribed—

- (a) amend or revoke a code of practice prepared and published by it under this section, or
- (b) withdraw its approval of any code of practice or part of a code of practice approved of by it under this section.

(5) Where the Authority amends or revokes, or withdraws its approval of a code of practice or any part of a code of practice published or approved of under this section, it shall publish a notice to that effect in the *Iris Oifigiúil*.

(6) The Authority shall encourage licensees, or categories of such licensees, as appropriate, to comply with codes of practice published or approved of under this section.

(7) A failure by a licensee to observe a code of practice or any part of a code of practice published or approved of under this section shall not of itself render that person liable to any civil or criminal proceedings.

(8) A document bearing the seal of the Authority and purporting to be a code of practice or part of a code of practice published or approved of by the Authority under this section shall be admissible in evidence in any proceedings under this Act.

Explanatory Note

This Head makes provision for the development of codes of practice and their adoption by licensees. Such codes would be voluntary (unlike standards set out in regulations under Heads 67 and 72) and go beyond the prescribed minimum standards in such regulations. It is intended that publication or approval of a code would be preceded by wide consultation of interested parties.

Head 19 – Chief Executive

Provide that:

19.—(1) There shall be a chief executive officer of the Authority (in this Act referred to as the “Chief Executive”).

(2) The Chief Executive shall, subject to subsection (3)(b), be appointed by the Minister on the recommendation of the Chief Executive of the Public Appointments Service.

(3) The appointment shall either—

(a) be on such terms as the Minister may, with the consent of the Minister for Finance, determine and be subject to the Public Service Management (Recruitment and Appointments) Act 2004, or

(b) be on such other terms and conditions as may be determined by the Authority and approved by the Minister with the consent of the Minister for Finance.

(4) The Chief Executive shall—

(a) implement the policies and decisions of the Authority,

(b) manage and control generally its staff, administration and business, and

(c) perform such other functions as may be conferred on him or her by or under this Act or as may be authorised by the Authority.

(5) The Chief Executive is responsible to the Authority—

(a) for performing his or her functions and implementing its functions, and

(b) for providing to the Authority such information (including financial information) in relation to the performance of those functions as the Authority may from time to time require.

(6) Such of the functions of the Chief Executive as he or she may specify from time to time may, with the consent of the Authority, be performed by such member of the staff of the Authority as may be authorised in that behalf by the Chief Executive.

(7) The functions of the Chief Executive may be performed during his or her absence, or when the post of Chief Executive is vacant, by such member or members of the staff of the Authority as it may from time to time designate for that purpose.

(8) Notwithstanding *subsection (2)*, the person who is the Chief Executive designate immediately before the establishment day shall be the first Chief Executive of the Authority.

Explanatory Note

This Head provides for the recruitment and appointment of a Chief Executive and outlines his or her responsibilities.

Head 20 – Attendance of Chief Executive before Oireachtas Committee

Provide that:

20.—(1) The Chief Executive shall, whenever so required by the Committee of Dáil Éireann established under the Standing Orders of Dáil Éireann to examine and report to Dáil Éireann on the appropriation accounts and reports of the Comptroller and Auditor General, give evidence to the Committee on—

(a) the regularity and propriety of the transactions recorded or required to be recorded in the accounts kept under *section 22(2)*,

(b) the economy and efficiency of the Authority in the use of its resources,

(c) the systems, procedures and practices employed by it for the purpose of evaluating the effectiveness of its operations, and

(d) any matter affecting it which is referred to in a special report of the Comptroller and Auditor General under section 11(2) of the Comptroller and Auditor General (Amendment) Act 1993 or in any other report by him or her (in so far as it relates to a matter specified in *clause (a), (b) or (c)*) that is laid before Dáil Éireann.

(2) In giving evidence to the Committee, the Chief Executive shall not question or express an opinion on the merits of any policy of the Government or a Minister of the Government or on the merits of the objectives of any such policy.

(3) The Chief Executive shall, whenever required to do so by—

(a) a committee appointed by either House of the Oireachtas, the business of which committee includes examination of policy relating to the provision of property services, or

(b) a committee appointed jointly by both Houses of the Oireachtas, the business of which committee includes examination of such policy,

attend before such committee to discuss the general activities of the

Explanatory Note

This provision will permit the attendance of the Chief Executive before the Public Accounts Committee and any other Oireachtas committee examining policy in relation to property services at the request of such a committee. It is a common provision in this type of legislation.

Head 21 – Staff of Authority

Provide that:

21.—(1) The Authority may appoint such and so many persons to be members of its staff as may be approved from time to time by the Minister with the consent of the Minister for Finance.

(2) The grades of staff of the Authority and the number in each grade shall be determined by the Authority with the consent of the Minister and the Minister for Finance.

(3) Section [Head 19(3)(a)] shall apply to an appointment under this section.

Explanatory Note

This is based on corresponding provisions in legislation establishing similar statutory bodies.

Head 22 - Accounts and audits

Provide that:

22.—(1) The Chief Executive, with the agreement of the Authority, shall—

(a) submit estimates of income and expenditure to the Minister in such form, in respect of such periods and at such times as may be specified by the Minister, and

(b) supply to the Minister any information which the Minister may require regarding those estimates and also regarding the proposals and plans of the Authority in respect of a period specified by the Minister.

(2) The Chief Executive, under the direction of the Authority, shall keep, in such form and in respect of such accounting periods as may be approved of by the Minister with the consent of the Minister for Finance, all proper and usual accounts of moneys received and spent by the Authority, including an income and expenditure account and a balance sheet.

(3) (a) The Authority, the Chief Executive and any relevant member of the staff shall, whenever so requested by the Minister, permit any person appointed by the Minister to examine the accounts of the Authority in respect of any financial year or other period and shall facilitate any such examination, and the Authority shall pay to the Minister such fee for it as may be fixed by the Minister.

(b) In this subsection, “relevant member of the staff” means a member of the staff of the Authority to whom duties relating to those accounts have been duly assigned.

(4) (a) The accounts of the Authority shall be approved by it as soon as practicable (but not later than 3 months after the end of the accounting period to which they relate) and submitted by it to the Comptroller and Auditor General for audit.

(b) A copy of the accounts and the report of the Comptroller and Auditor General on them shall be presented to the members of the Authority and the Minister as soon as practicable, and the Minister shall cause a copy of the accounts and report to be laid before each House of the Oireachtas.

Explanatory Note

This is a standard financial and accounting provision in this type of legislation.

Head 23 – Fees

Provide that:

23.—(1) Any provision of this Act requiring or authorising anything to be done or any document to be issued by the Authority is to be construed as requiring or authorising it to be done or the document to be so issued on payment of the prescribed fee.

(2) Such fees shall be collected and taken in such manner as the Minister for Finance may from time to time direct and shall be paid into and disposed of for the benefit of the Exchequer in accordance with the directions of that Minister.

(3) The total amount of the fees charged annually under this Act shall, as nearly as may be, taking one year with another, be equal to the total expenditure incurred annually in the administration of this Act.

(4) The Public Offices Fees Act 1879 shall not apply to fees payable under this section.

Explanatory Note

This is a standard financial provision that applies to the fee income of statutory bodies such as the Authority.

Head 24 – Superannuation.

Provide that:

24.—(1) The Authority shall, with the approval of the Minister and the consent of the Minister for Finance, make a scheme or schemes for the granting of superannuation benefits to or in respect of the members of staff of the Authority, including the Chief Executive.

(2) Every such scheme shall fix the time and conditions of retirement of all persons to or in respect of whom superannuation benefits are payable under the scheme or schemes, and different times and conditions may be fixed in respect of different classes of persons.

(3) Every such scheme may be amended or revoked by a subsequent scheme under this section.

(4) Any scheme submitted by the Authority under this section shall, if approved by the Minister with the consent of the Minister for Finance, be carried out by the Authority in accordance with its terms.

(5) (a) Any dispute arising as to the claim of any person to, or the amount of, any superannuation benefit payable in pursuance of a scheme or schemes under this section shall be submitted to the Minister.

(b) The Minister shall refer the dispute to the Minister for Finance, whose decision shall be final.

(6) No superannuation benefit shall be granted by the Authority nor shall any other arrangements be entered into by the Authority for the provision of such a benefit to or in respect of a member of the staff of the Authority, including the Chief Executive, otherwise than in accordance with a scheme under this section.

(7) A scheme under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the scheme is passed by either such House within the next 21 days on which that House has sat after the scheme is laid before it, the scheme shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

(8) In this section, “superannuation benefit” means any pension, gratuity or other allowance payable to or in respect of a member or former member of the staff of the Authority, including the Chief Executive.

Explanatory Note

This is a standard superannuation provision in this type of legislation.

Head 25 – Investigations by Authority

Provide that:

25.—(1) Without prejudice to section ([Head 43]), the Authority may of its own motion investigate, or cause to be investigated—

(a) any property service being provided by any person, and

(b) compliance by a licensee with Parts 6 and 9.

(2) For the purposes of such an investigation the Authority—

(a) may by notice in writing require any person who in its opinion is in possession of information, or has any record or thing in the person's possession or under the person's control, that is relevant to the investigation to supply that information, record or thing to the Authority within a period specified in the notice, and

(b) where appropriate, may require the person to attend before it for those purposes within that period.

(3) The person shall be entitled to the same immunities and privileges in relation to compliance with any requirement mentioned in *subsection (2)* as if the person were a witness before a court.

(4) If the person does not comply or comply fully with the requirement within the specified period, the Authority may apply to the District Court, on notice to the person, for an order requiring the person to comply or comply fully with the requirement within a period to be specified by the Court.

(5) If it appears to the Court, on application by the Authority, that the person has failed, without reasonable excuse (proof of which shall lie on the person), to comply or comply fully with the order, the Court may treat the failure for all purposes as if it were a contempt in the face of the Court.

(6) The jurisdiction conferred on the District Court by this section may be exercised by the judge of that Court for the time being assigned to the district court district in which the person concerned ordinarily resides or carries on any profession, business or occupation.

Explanatory Note

The investigation of property services will be an important function of the new Authority. This Head will enable the Authority to investigate licensed and unlicensed property services and also to satisfy itself that the standards it has set are being adhered to in the delivery of services by licensees.

Head 26 – Inspectors

Provide that:

26.—(1) For the purposes of this Act, the Authority shall appoint members of its staff to be inspectors for such period and subject to such terms and conditions as the Authority may determine.

(2) Where it appears to the Authority that it is necessary to do so for the purposes of investigating compliance by a licensee with Part 6, it may authorise a person who is not a member of its staff to be an inspector for such period and subject to such terms and conditions as the Authority may determine.

(3) Each inspector shall be given a warrant of his or her appointment and, when exercising any power conferred by this Act, shall, on request by any person affected, produce the warrant or a copy thereof, together with a form of personal identification.

Explanatory Note

An inspectorate will be required to investigate licensed and unlicensed services [Head 25] and complaints from the public [Head 43].

Since the investigation of compliance with client account provisions in Part 6 may require specialist expertise from outside the Authority, this is provided for in subsection (2).

Head 27 – Power of entry and inspection.

Provide that:

27.—(1) An inspector may, for the purposes of obtaining any information in relation to a matter under investigation by the Authority or of otherwise enabling the Authority to exercise its functions under this Act—

(a) at all reasonable times enter, inspect, examine and search any place where the inspector has reasonable cause to believe that a property service is being provided,

(b) make such examination and inquiry as may be necessary to establish whether the relevant provisions of this Act or regulations thereunder are being complied with,

(c) require the production of any records, books or accounts (whether kept in manual form or otherwise) or any other documents or information which it is necessary for the inspector to see for those purposes and inspect, examine and copy them or require that a copy of them or of any entries in them be provided to him or her,

(d) require any person to afford him or her such facilities and assistance within the person's control or responsibilities as are reasonably necessary to enable the exercise of any of the powers conferred on him or her under *paragraphs (a), (b) or (c)*.

(e) require any person by or on whose behalf data equipment is or has been used or any person having charge of, or otherwise concerned with the operation of, the data equipment of any associated apparatus or material, to afford the inspector all reasonable assistance in relation to it,

(f) take with him or her a member of the Garda Síochána if he or she has reasonable cause to apprehend any serious obstruction in the execution of his or her duty,

(g) require a licensee, or any employee or agent of such licensee, to authorise inspection of any account opened by the licensee in any bank, and any documents relating to it, and to obtain from that bank copies of any documents relating to such an account for the purposes of ensuring compliance with Part 6 of this Act.

(2) An inspector shall not, other than with the consent of the occupier, enter a private dwelling unless he or she has obtained a warrant under *subsection (3)* authorising the entry.

(3) A judge of the District Court, if satisfied on the sworn information of an inspector that—

(a) there are reasonable grounds for suspecting that information required by an inspector under this section is held on any premises or any part of any premises, and

(b) an inspector in the exercise of his or her powers under this section has been prevented from entering the premises or any part thereof,

may issue a warrant authorising the inspector, accompanied if necessary by other persons, at any time or times within one month from the date of issue of the warrant and on production if so requested of the warrant, to enter, if need be by reasonable force, the premises or part of the premises concerned and exercise all or any of the powers conferred on an inspector by *subsection (1)*.

(4) A person who—

(a) withholds, destroys, conceals or refuses to furnish any information or thing required for the purposes of an investigation by the Authority,

(b) fails or refuses to comply with any requirement of an inspector under this section, or

(c) otherwise obstructs or hinders him or her in the performance of duties under this Act,

is guilty of an offence and liable on summary conviction to a fine not exceeding €3,000 or imprisonment for a term not exceeding 12 months or both.

Explanatory Note

This Head gives the Authority strong powers of entry and inspection to enable it to carry out its functions effectively.

PART 3
Licences to provide property services

Head 28 – Application for licence

Provide that:

28.—(1) An application to the Authority for a licence to provide a category of property service shall be in the prescribed form and be accompanied by—

- (a) such references as to the applicant’s character and competence (including required education/training qualifications) as the Authority may require,
- (b) certification by a suitably qualified person that proper financial and control systems are in place for the protection of clients’ money,
- (c) evidence of the availability to the applicant of the required level of professional indemnity insurance, and
- (d) the prescribed fee,

and shall contain such other information as may be required by the Authority.

(2) The Authority may require that the applicant’s signature be witnessed by a person from within a prescribed category of persons.

(3) Without prejudice to sections [Head 31 (tax clearance)] and [Head 40 (notification of offences/proceedings)], the Authority may—

- (a) require an applicant to furnish such additional information in respect of the applicant’s character, financial position and competence, and make such investigations and conduct such examinations in that regard, as it considers necessary,
- (b) require verification by affidavit or otherwise of any information provided by the applicant, and
- (c) require the applicant to supply a certificate by a member of the Garda Síochána not below the rank of superintendent in such form and containing such particulars in relation to the applicant as the Authority may prescribe.

(4) In this section references to the applicant’s character, financial position and competence include references to the character, financial position and competence of—

- (a) in the case of a body corporate, the directors, and
- (b) in the case of a partnership, the partners,

and, in either case, any manager, secretary or other officer of the entity concerned.

Explanatory Note

The licensing system will be a key function of the Authority.

Instead of the existing court-based licensing system, a person who wants to provide property services will apply to the Authority for a licence to provide a category or categories of property service. Such applications must be accompanied by—

- ⇒ references as to the applicant's character and competence, including required education and training qualifications,
- ⇒ certification that proper financial and control systems are in place for the protection of clients' money,
- ⇒ evidence of the availability to the applicant of the required level of professional indemnity insurance,
- ⇒ the prescribed fee, and
- ⇒ evidence of tax clearance.

Head 29 – Grant or refusal of licence

Provide that:

29.—(1) Subject to *subsection (3)* and sections [Heads 31 (tax clearance) and 32 (documents to accompany certain applications)], the Authority may grant a licence to a person to provide the property service specified in the licence.

(2) When deciding whether to grant a licence the Authority shall take into account any information supplied to it under sections [Heads 28 (application for licence), 40 (notification of convictions) and 41 (information provided by the Gardaí)]

(3) The Authority shall refuse to grant a licence if satisfied—

(a) if the applicant is an individual, that he or she:

- (i) is not a fit and proper person to provide a property service,
- (ii) is under 18,
- (iii) does not comply with any requirement of this Act or regulations thereunder,
- (iv) has not has furnished the Authority with written evidence of there being available to the applicant the prescribed minimum level of professional indemnity insurance,
- (v) has not paid the prescribed fee or the prescribed contribution to the Compensation Fund,

(b) if the applicant is a body corporate:

- (i) that any director, manager, secretary or other similar officer of the body corporate or any person purporting to act in that capacity is not a fit and proper person to hold such a position in a body corporate which is providing a property service,
- (j) that subparagraph (iii), (iv) or (v) of paragraph (a) applies in respect of the body corporate,

and

- (c) if the applicant is a partnership, that one or more than one of subparagraphs (i) to (v) of paragraph (a) applies or apply in respect of any of the partners.

(4) A licence, unless sooner surrendered or revoked or otherwise ceasing to be in force, shall remain in force for a period of one year from the date on which it is issued or for such longer period as may be prescribed.

(5) A licence—

- (a) does not confer any right of property, and

(b) may not be transferred or assigned or be mortgaged, charged or otherwise encumbered.

(6) (a) A licence does not authorise the holder thereof to deal in or sell, either on his or her own behalf or on behalf of any other person, a commodity for the dealing in or selling of which an excise licence is required except at a place in respect of which the owner of the commodity has taken out and has in force an excise licence for the sale of the commodity.

(b) The Revenue Commissioners may authorise a licensee to sell by auction on behalf of an individual a commodity of a kind to which paragraph (a) relates if they are satisfied that the commodity is the property of that individual and is not being sold in connection with that individual's trade.

Explanatory Notes

This Head provides for the grant or refusal of licences by the Authority

The Authority must take into account information supplied to it under Heads 28 (application for licence), 40 (notification of convictions) and 41 (information provided by the Gardaí) in deciding whether to grant a licence.

The Authority must refuse to issue a licence in certain circumstances. These include where the applicant—

- ⇒ is not a fit and proper person to provide a property service,
- ⇒ is under 18,
- ⇒ does not comply with the requirements of the Bill,
- ⇒ has not provided evidence of the availability of the required level of professional indemnity insurance, or
- ⇒ has not paid the prescribed fee for the application or the required contribution to the Compensation Fund.

A licence will remain in force for a period of one year, or such longer period as the Authority may prescribe, from the date on which it is issued, unless surrendered or revoked.

Head 30 – Renewal of licence

Provide that:

30.—(1) A licence, unless it has been revoked, may, subject to sections [Head 31 (tax clearance), 32 (documents to accompany certain applications) and 33 (refusal to renew)], be renewed from time to time by the Authority in the prescribed manner.

(2) An application for renewal of a licence shall be made within the prescribed time.

(3) If the application is not determined by the Authority before the licence expires, the licence shall continue in force until the application has been so determined.

(4) Sections [Heads 28 (application for licence) and 29 (grant or refusal of licence)] shall apply, with the necessary modifications, in relation to an application under this section.

Explanatory Note

This Head provides for the renewal of licences by the Authority.

Head 31 – Tax clearance

Provide that:

31.—(1) In this section—

“Act of 1997” means the Taxes Consolidation Act 1997;

“Collector-General” means the Collector-General appointed under section 851 of the Act of 1997;

“person” does not include an individual who provides a property service in the course of an employment but includes—

(a) in the case of a body corporate, the directors, and

(b) in the case of a partnership, the partners;

“tax clearance certificate” means a certificate under section 1095 (as substituted by section 127(b) of the Finance Act 2002) of the Act of 1997.

(2) The Authority shall refuse to grant or renew a licence to or in respect of a person in relation to whom a tax clearance certificate is not in force.

(3) The Authority may nevertheless grant or renew a licence to or in respect of such a person if—

(a) the person has, at least four months before applying for the grant or renewal, applied for a tax clearance certificate and either—

(i) that application has not been determined, or

(ii) it has been refused and an appeal against the refusal has been made under section 1094(7) of the Act of 1997 but not determined,

and

(b) the Authority would, but for subsection (2), have granted or renewed the licence.

(4) Such a licence shall expire—

(a) if the application for a tax clearance certificate is granted or is granted on appeal, on the day on which it would expire if the certificate had been in force when the licence was granted or renewed,

(b) if the application is refused and—

(i) an appeal against the refusal under the said section 1094(7) is not made within the period of 30 days after the refusal, on the expiration of that period, or

(ii) such an appeal is so made but is not successful, 7 days after the appeal has been determined or finally determined.

(5) The Collector-General shall notify the Authority of the determination of any such application for a tax clearance certificate, of any appeal against a refusal of such an application and of the final determination of any such appeal.

(6) The reference in *subsection (3)(a)(ii)* to section 1094(7) is to that provision as applied by subsection (6) of section 1095 (as substituted by section 127(b) of the Finance Act 2002) of the Act of 1997.

(7) Delete—

(a) paragraphs (e), (f) and (g) of the definition of “licence” in section 1094 of the 1997 Act, and

(b) from the definition of “beneficial holder of a licence” the words “and, in relation to a licence issued under the Auctioneers and House Agents Act 1947, includes the authorised individual referred to in section 8(4), or the nominated individual referred to in section 9(1), of that Act”.

Explanatory Note

This Head is a standard provision in this type of legislation.

Head 32 – Documents to accompany certain applications

Provide that:

32.—The Authority shall refuse to grant an application for a licence or for renewal of a licence—

(a) by or on behalf of a company, unless the application is accompanied by a certificate of the incorporation of the company, certified by the registrar of companies under the Companies Acts and dated not earlier than 4 weeks before the date of the application, or

(b) by or on behalf of a person carrying on business under a name that is not that of the beneficial owner of the business, unless the application is accompanied by a copy of a certificate of registration of the person under the Registration of Business Names Act 1963, certified in accordance with section 16(1)(b) of that Act.

Explanatory Note

This Head requires companies applying for licences (or renewal) to supply a certificate of incorporation certified by the registrar of companies under the Companies Acts, and dated not earlier than 4 weeks before the date of application. This ensures that a companies seeking licence or renewal of licences have filed proper returns and are in good standing with the Companies Registration Office.

Secondly, if a person is carrying on business under a name that is not that of the beneficial owner of the business, a certified copy of registration of the person under the Registration of Business Names Act 1963 must be submitted to the Authority with the application for a licence (or renewal).

These provisions will help to ensure that only *bona fide* companies and businesses are granted licences by the Authority.

Head 33 – Refusal to renew, suspension etc of licence.

Provide that

33.—(1) Subject to section [Head 34 (notification to applicant of refusal)], the Authority may—

- (a) refuse to renew a licence, or
- (b) at any time suspend a licence for a specified period or revoke it,

if it is satisfied on reasonable grounds that the licensee—

- (i) has supplied information in or in connection with the application for the licence or its renewal that was false or misleading in a material particular,
- (ii) has contravened any provision of this Act or regulations thereunder (whether or not the licensee has been convicted of an offence in relation to the contravention), or
- (iii) is no longer a fit and proper person to provide a property service,

or if the Authority would not have granted the licence or renewed it if information obtained subsequent to the date of its grant or renewal had been available at that date.

(2) Without prejudice to *subsection (1)*, if the Authority is satisfied on reasonable grounds that the licensee—

- (a) has been guilty of misconduct in the course of providing a property service, or
- (b) has contravened any provision of this Act or regulations thereunder (whether or not the licensee has been convicted of an offence in relation to the contravention),

it may take whichever of the following actions in relation to the licence or licensee is in its opinion appropriate in the circumstances of the case:

- (i) revocation of the licence,
- (ii) suspension of the licence for a specified period,
- (iii) reprimand,
- (iv) warning,
- (v) caution,
- (vi) advice.

(3) A licence which is suspended shall not be in force during the period of its suspension.

(4) A person whose licence has been suspended or revoked shall comply with any directions of the Authority in relation to delivering up the licence concerned.

Explanatory Note

This Head contains important disciplinary powers for the Authority as recommended by the Auctioneering/Estate Agency Review Group. It provides for a range of sanctions ranging in severity from revocation of the licence at one end of the spectrum to issuing advice to the licensee at the lower end.

Head 34 – Notification to applicant of refusal etc.

Provide that:

34.—(1) If the Authority proposes to—

- (a) refuse to grant or renew a licence,
- (b) suspend it for a specified period, or
- (c) revoke it,

it shall notify the applicant or licensee of its proposal and consider any representations that are made to it in writing by the applicant or licensee within 14 days after the notification.

(2) If the Authority, having considered any such representations, decides to refuse to grant or renew a licence or to suspend or revoke it, it shall notify the applicant or licensee of the decision and the grounds for it and of the procedure for appealing against it.

Explanatory Note

This Head provides for notification of the applicant or licensee in cases where the Authority proposes to refuse an application for a licence or to revoke or suspend an existing licence.

Head 35 – Variation of licensed property service.

Provide that:

35.—(1) A licensee may apply to the Authority for a variation in the category or categories of property service to which the licence relates.

(2) Sections [28 (application for licence) and 29 (grant or refusal of licence)] shall apply, with the necessary modifications, in relation to the application.

Explanatory Note

This is a standard procedural provision in this type of legislation.

Head 36 – Production and display of licences

Provide that:

36.—(1) The Authority shall issue a registration number and licence to each licensee.

(2) Where the licensee is an individual—

(a) he or she shall have the licence in his or her possession when providing the property service authorised by the licence, and

(b) shall, on request, produce it there and then for inspection by any person for whom the licensee is providing a property service and permit such a person to inspect it.

(3) An inspector may require an individual who in the inspector's opinion is providing a property service to produce the licence issued to that individual there and then for inspection by the inspector.

(4) An individual who produces a licence in accordance with *subsection (3)* shall permit the inspector to whom it is produced to inspect it.

(5) An individual who—

(a) contravenes *subsection (2)(a)* or *(4)*, or

(b) does not comply with a request under *subsection (2)(b)* or a requirement under *subsection (3)*,

is guilty of an offence and liable on summary conviction to a fine not exceeding €2,000.

(6) It is a defence in proceedings for an offence under *subsection (2)* or *(3)* for the defendant to prove that he or she had a reasonable excuse for not complying with the subsection concerned.

(7)(a) In this subsection “licence” includes a licence or other form of authorisation issued by a corresponding authority.

(b) An individual shall not—

(i) produce for inspection a licence issued to another individual, or

(ii) with intent to deceive, make or use a document purporting to be a licence, alter a licence or use an altered licence.

(c) An individual who contravenes *paragraph (b)* is liable on summary conviction to a fine not exceeding €3,000 or imprisonment for a term not exceeding 12 months or both.

(7)(a) Where the licensee is a company, the licence shall be—

- (i) kept in the company's registered office,
- (ii) displayed in a conspicuous place there, and
- (iii) made available for inspection on request by an inspector or any person for whom the licensee is providing a property service.

(b) A company that contravenes *paragraph (a)* is guilty of an offence and liable on summary conviction to a fine not exceeding €2,000.

Explanatory Note

This provision will enable the Authority to monitor and enforce its licensing function and enable users of property services to ensure that the provider of any such service holds an appropriate licence from the Authority.

Head 37 – Issue of duplicate licence

Provide that:

37.—The Authority, if satisfied that a licence has been lost or destroyed, may issue a duplicate thereof on payment of the prescribed fee.

Explanatory Note

This is a standard procedural provision in this type of legislation.

Head 38 – Surrender of licence

Provide that:

38.—(1) Where—

- (a) a licence is suspended or revoked or it expires, or
- (b) a licensee ceases to provide a property service,

the licensee shall forthwith surrender the licence to the Authority in the prescribed manner.

(2) On the suspension, revocation or expiration of a licence, an inspector may seize and retain the licence so issued.

(3) A person who contravenes *subsection (1)* is guilty of an offence and liable on summary conviction to a fine not exceeding €2,000.

Explanatory Note

This is a standard enforcement provision in this type of legislation.

Head 39 – Register of licensees

Provide that:

39—(1) The Authority shall, as soon as may be after the commencement of this section, establish for the purposes of this Act a register of licensees to be known as the Property Services Register and which is referred to in this Act as “the Register”.

(2) The Register shall be in such form, and contain such entries, as may be prescribed from time to time.

(3) The Register shall be maintained by the Authority, published by electronic and not less than one other means, and be made available for inspection by any person free of charge.

(4) A copy of an entry in the Register shall, on request, be issued by the Authority on payment of the appropriate fee.

(5) In any proceedings a document purporting to be a copy of such an entry and to be certified by an officer of the Authority to be a true copy of the entry shall, without proof of the signature of the person purporting so to certify the document or that he or she was such an officer, be received in evidence and shall, unless the contrary is shown, be deemed to be a true copy of the entry and to be evidence of the matters stated in it.

Explanatory Note

Establishing and maintaining the Register will be an important function for the Authority. The form and content of the Register will be prescribed in regulations.

Head 40 – Notification of conviction or proceedings

Provide that:

40.—(1) An applicant for a licence, or a licensee, who has been convicted of an offence (other than a prescribed offence), or against whom proceedings for such an offence are pending, under the law of the State or another state shall notify the Authority of the conviction or proceedings in the prescribed manner within the prescribed period and supply the Authority with the prescribed particulars thereof.

(2) A licensee shall, within the prescribed period, report to the Authority such other matters as may be prescribed.

(3) A person who contravenes *subsection (1)* or (2) is guilty of an offence and liable on summary conviction to a fine not exceeding €3,000 or imprisonment for a term not exceeding 12 months or both.

(4) A person shall not be convicted of an offence under this section if the court is satisfied that, in the case of an applicant for a licence or a licensee who has been convicted of an offence, or against whom proceedings for an offence are pending, in a place other than the State, the offence does not correspond with any offence under the law of the State.

Explanatory Note

This Head requires applicants for licences and licensees to inform the Authority of any convictions or proceedings pending. This information will be used by the Authority in deciding whether or not to issue a licence or to revoke or suspend an existing licence. It is intended that the reporting requirement will not apply to minor offences.

Head 41 – Provision of information by Garda Síochána

Provide that:

41.—(1) The Authority may request the Commissioner of the Garda Síochána to provide any information requisite for the due performance of its functions in relation to any applicant for a licence or any licensee.

(2) Notwithstanding anything contained in any enactment, the Commissioner shall comply with any such request.

Explanatory Note

This Head allows the Authority to request information on applicants or to check data in relation to offences with the Gardaí.

Head 42 – Prohibition of unlicensed property service.

Provide that:

42.—(1) A property service employer or an individual referred to in any of the paragraphs of the definition of “property service” in *section 2(1)* shall not, on or after the commencement of the paragraph concerned, provide a property service or hold himself or herself out or represent himself or herself by—

- (a) advertisement,
- (b) displaying any card or other object purporting to indicate that he or she is a licensee, or
- (c) otherwise,

as available to provide such a service unless the individual is the holder of a licence under this Act authorising him or her to provide that particular service.

(2) *Subsection (1)* applies, with the necessary modifications, in relation to a body corporate and an unincorporated body of persons as it applies in relation to an individual.

(3) A person who contravenes *subsection (1)* is guilty of an offence and liable—

- (a) on summary conviction, to a fine not exceeding €3,000 or imprisonment for a term not exceeding 12 months or both, or
- (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years or both.

Explanatory Note

This Head prohibits the provision of property services by unlicensed persons as recommended by the Auctioneering/Estate Agency Review Group and provides for appropriate sanctions.

PART 4
Complaints against Licensees

Head 43 – Investigation of complaints

Provide that:

43.—(1) Any person may make a complaint in writing to the Authority against a licensee in relation to the provision of a property service or the conduct of the licensee in the course of providing that service, including an alleged contravention by the licensee of any provision of this Act or regulations made under it.

(2) On receipt of such a complaint, the Authority, if satisfied that it is—

- (a) made in good faith and is not frivolous or vexatious, and
- (b) unlikely to be resolved amicably within a reasonable time by the parties concerned,

shall investigate it, giving the licensee and the complainant an opportunity to be heard during the investigation.

(3) On completion of the investigation—

- (a) the Authority may decide not to uphold the complaint;
- (b) if the Authority is satisfied on reasonable grounds that the licensee—
 - (i) has been guilty of misconduct in the course of providing a property service, or
 - (ii) has contravened any provision of this Act or regulations thereunder (whether or not the licensee has been convicted of an offence in relation to the contravention),

it may take whichever of the following actions in relation to the licence or licensee is in its opinion appropriate in the circumstances of the case:

- (I) revocation of the licence,
- (II) suspension of the licence for a specified period,
- (III) reprimand,
- (IV) warning,
- (V) caution,
- (VI) advice,

and shall notify the complainant and licensee of its decision.

(3) For the purposes of investigating a complaint, an inspector may enter the premises of a person providing a property service and inspect the books, documents and records of the person, and section [Head 27] shall apply, with any necessary modifications, in relation to such entry and inspection.

Explanatory Note

This Head makes provision for the investigation by the Authority of complaints against licensees. This will complement the investigation function set out in Head 25.

Any person will be able to make a complaint in writing to the Authority against a licensee in relation to the provision of a property service or the conduct of the licensee in the course of providing that service.

If the Authority is satisfied that a complaint is made in good faith and is not frivolous or vexatious, and is unlikely to be resolved amicably within a reasonable time by the parties concerned, the Authority must investigate the complaint and give the licensee and the complainant an opportunity to be heard during the investigation.

On completion of the investigation, if the Authority is satisfied that the licensee has been guilty of misconduct in the course of providing a property service, or has contravened any provision of the Bill or regulations, it may impose a sanction on the licensee.

PART 5
Appeals against Decisions of Authority

Head 44 – Property Services Appeals Board

Provide that:

44.—(1) There stands established a body to be known as the Property Services Appeal Board (in this Act referred to as “the Appeal Board”), or in the Irish language [An Bord] to hear and determine appeals against decisions of the Authority.

(2) The Appeal Board shall be independent in the performance of its functions.

(3) The provisions of *Schedule 2* shall have effect in relation to the Appeal Board.

Explanatory Note

An appellate body is required in order to deal with any appeals against the Authority’s decisions. This body must be independent of the Authority in order to ensure fair procedures.

Head 45 – Appeal to High Court on question of law

Provide that:

45.—(1) Within 3 months after the date on which an appeal is determined by the Appeal Board any party to the appeal may appeal to the High Court on any question of law arising from the determination.

(2) The Court may affirm the determination or set it aside and make any other determination the Appeal Board could have made or remit the case to the Appeal Board for further consideration.

(3) An appeal may not be brought from a decision of the Court under this section except by its leave.

Explanatory Note

Appeal to the High Court on a point of law is provided for under this Head.

PART 6
Client accounts and related matters

Head 46 – Keeping and preservation of client accounts and records.

Provide that:

46.—The following matters shall be prescribed:

- (a) the type or types of accounts at banks which may be opened and kept by licensees, or categories of licensees, for the keeping of client accounts in connection with the provision of property services;
- (b) the opening and keeping of such accounts by licensees;
- (c) the rights, duties and responsibilities of licensees in relation to moneys received, held, controlled or paid in connection with the provision of property services, including the lodgment to and withdrawal from a client account of clients' moneys;
- (d) the acknowledgements or statements to be issued by licensees in respect of clients' money received, held, controlled or paid by them in connection with the provision of property services;
- (e) the circumstances in which money other than clients' money may be paid into accounts containing clients' money and the circumstances in which, and the persons for whom, money held in such accounts may be paid out;
- (f) the accounting records to be maintained by licensees arising from the provision of property services by them, including the minimum period or periods for which accounting records shall be retained by licensees during the period of, and following the conclusion of, the provision of property services;
- (g) the keeping by licensees of accounting records containing particulars of and information as to moneys received, held, controlled or paid by them in connection with the provision of property services, for or on account of a client or any other person or themselves;
- (h) client entitlements, including the treatment or retention of interest, income or profit arising from any clients' money in such cases as may be prescribed;
- (i) circumstances in which a licensee who is required to pay money into a client account shall either—
 - (i) pay the money into an interest bearing client account and pay the interest to the client or other person to whom the money belongs, or

(ii) pay to the client or other person to whom the money belongs the sum equivalent to the interest that would have been earned if the money had been paid into such an account.

(j) the circumstances and manner in which a licensee (or a duly qualified person on behalf of the licensee) verifies compliance with any requirement prescribed under this section, including the frequency of doing so;

(j) the examination by an auditor, at prescribed intervals, of accounting records maintained and kept by licensees under paragraphs (f) and (g).

Explanatory Note

This Head provides that the Authority may prescribe by regulations certain matters relating to the keeping and preservation of client accounts and records.

Head 47 – Offences relating to client accounts and accounting records

Provide that:

47.—(1) A licensee who, having received any clients' money, fails, without reasonable cause, to lodge (or to cause to be lodged) in the prescribed manner the clients' money to the appropriate client account is guilty of an offence.

(2) A licensee who fails, without reasonable cause, to maintain and keep (or to cause to be maintained and kept) accounting records in the prescribed manner is guilty of an offence.

(3) A licensee who, having received clients' money, fails, without reasonable cause, to record (or to cause to be recorded) in the prescribed manner such receipt in accounting records is guilty of an offence.

(4) A licensee who, having received any clients' money and having duly lodged (or caused to be lodged) in the prescribed manner such clients' money to the appropriate client account (or client accounts) fails, without reasonable cause, to record (or to cause to be recorded) in the prescribed manner such lodgment in accounting records, is guilty of an offence.

(5) A licensee who makes knowingly (or causes so to be made) a false or misleading entry or record in accounting records is guilty of an offence.

(6) A licensee who does not ensure that the accounting records maintained and kept by the licensee are examined by an auditor at the prescribed intervals is guilty of an offence.

(7) It shall not be a defence to a charge under subsection (4) or (5) to show that an entry or record of a receipt or lodgment of clients' money was recorded in accounting records, if it is established that such entry or record is false or misleading.

(8) Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act 1851, summary proceedings for an offence under any of the provisions of this section may be instituted within 12 months from the date the offence came to the knowledge of the Authority.

(9) A person guilty of an offence under this section is liable —

(a) on summary conviction, to a fine not exceeding €3,000 or imprisonment for a term not exceeding 12 months or both.

(b) on conviction on indictment, to a fine not exceeding €30,000.

Explanatory Note

This Head provides for offences relating to client accounts and accounting records.

Head 48 – Priority of claims to clients' money.

Provide that:

48.—Where a licensee keeps a client account, neither the State nor any person shall have or obtain any recourse or right against moneys standing to the credit of that account in respect of a claim or right against the licensee until all proper claims of the licensee's clients against those moneys have been fully satisfied.

Explanatory Note

This Head updates section 6 of the Auctioneers and House Agents Act 1967 as recommended by the Auctioneering/Estate Agency Review Group.

Head 49 – Preservation of lien and other rights.

Provide that:

49.—Nothing in this Act shall so operate as to deprive a licensee of any recourse or right (whether by way of lien, set-off, counter-claim, charge or otherwise) against moneys standing to the credit of a client account.

Explanatory Note

This Head updates section 9 of the Auctioneers and House Agents Act 1967 as recommended by the Auctioneering/Estate Agency Review Group.

Head 50 Provisions regarding banks.

Provide that:

50.—(1) A bank shall not, in connection with any transaction on an account of a licensee kept with them or with another bank, incur a liability or be under an obligation to make inquiry or be deemed to have knowledge of a right to money paid or credited to the account which they would not incur, be under or be deemed to have in the case of an account kept by a person entitled absolutely to the money paid or credited thereto.

(2) Nothing in subsection (1) shall relieve a bank from any liability or obligation which they would be under apart from this Act.

(3) Notwithstanding subsection (1), a bank which keeps an account of a licensee for moneys of clients, shall not, in respect of a liability of the licensee to the bank, not being a liability in connection with that account, have or obtain any recourse or right (whether by way of lien, set-off, counter-claim, charge or otherwise) against moneys standing to the credit of that account.

(4) Nothing in subsection (3) shall deprive a bank of a right existing at the commencement of this section in respect of moneys previously deposited with that bank.

Explanatory Note

This Head seeks to update the provisions of section 10 of the Auctioneers and House Agents Act 1967 as recommended by the Auctioneering/Estate Agency Review Group.

Head 51 Vesting in Official Assignee of sums to credit of certain client accounts.

Provide that:

51.—(1)(a) Where a licensee is adjudicated bankrupt or where, being an arranging debtor, the licensee vests the estate in the Official Assignee for realisation and distribution amongst creditors, then, notwithstanding anything in section [Head 49 (priority of claims to clients' money)] or in any other enactment, there shall vest in the Official Assignee the sum to the credit of every client account kept by that licensee.

(b) Where a licensee files a petition for arrangement but does not vest the estate in the Official Assignee, the creditors who are clients, or a section thereof (being at least three-fifths in number and value of those who, as clients, have proved debts to the amount of €_ [currently £20]) may apply to the High Court for an order vesting in the Official Assignee the sum to the credit of every client account kept by the licensee, and the Court may, if it thinks it proper to do so and the Official Assignee consents, make such an order, which shall have effect accordingly.

(2) Upon a vesting under subsection (1) (whether by virtue of paragraph (a) or of an order under paragraph (b)) in the Official Assignee he or she shall proceed to administer the client account or accounts for the benefit of the clients and the law of bankruptcy (including this Act) shall apply to such administration.

(3) The administration under subsection (2) of a client account by the Official Assignee shall for all purposes be deemed to be business assigned to the Office of the Official Assignee in Bankruptcy and transacted therein.

Explanatory Note

This Head updates section 7 of the Auctioneers and House Agents Act 1967 (as recommended by the Auctioneering/Estate Agency Review Group).

PART 7

Compensation Fund

Head 52 – Compensation Fund.

Provide that:

52.—(1) The Authority shall establish a Compensation Fund (in this Part referred to as “the Fund”).

(2) The provisions of *Schedule 3* shall apply to the management and administration of the Fund.

(3) The Authority shall not grant a licence or renewal under Part 2 unless and until the applicant or licensee, as the case may be, has paid the prescribed contribution to the Fund.

(4) In exercising the powers conferred on it under this section, the Authority shall have regard to the principle that the total amount standing to the credit of the Fund (including the value of all investments forming part of the Fund) should be not less than [€-], or such greater sum as may be prescribed from time to time.

Explanatory Note

The Auctioneering/Estate Agency Review Group recommended that the Authority be empowered to compensate parties who can prove that they lost money as a direct consequence of the dishonesty (misappropriation of client funds) of a licensee and for reasonable costs incurred in attempting to recover the money in question.

A Compensation Fund, along the lines of the Solicitors Compensation Fund, will be established which will empower the Authority to compensate parties who can prove that they lost money as a direct consequence of the dishonesty (misappropriation of client funds) of a licensee and for reasonable costs incurred in attempting to recover the money in question. All licensees will be required to contribute to the Fund.

Clients of property service providers will have two layers of protection as professional indemnity insurance will cover cases of professional negligence by licensees while the Compensation Fund will provide compensation in cases of dishonesty.

Head 53 – Compensation for loss due to dishonesty.

Provide that:

53.—(1) Subject to subsection (6), where the Authority is satisfied that a client of a licensee has sustained loss in consequence of dishonesty on the part of that licensee (or any employee or agent of that licensee) arising from the provision of property services by the licensee, then, subject to the provisions of this section, the Authority shall make a grant to that client out of the Fund.

(2) The amount of the grant shall be such as represents in the opinion of the Authority reimbursement of the amount or value of the loss sustained and the reasonable costs incurred by the client in seeking to recover it with, where appropriate in the opinion of the Authority, interest (at the rate per annum standing specified for the time being in section 26 of the Debtors (Ireland) Act 1840, as varied from time to time pursuant to section 20 of the Courts Act 1981) on the whole or any part of the amount or value of the loss in respect of the whole or any part of the period between the date when the loss was sustained and the date of the making of a grant, but excluding damages or any other form of loss consequent on the client of a licensee being deprived of the amount or value of the loss sustained.

(3) The amount of a grant made to any client of a licensee (including any body or bodies corporate beneficially owned or controlled by that client) shall not exceed [€-] in respect of matters arising from the relationship between the client and that licensee.

(4) The Minister may, after consulting with the Authority, from time to time vary by regulations the amount specified in subsection (3) having regard to changes in the value of money generally in the State since the amount was first specified.

(5) Notwithstanding subsection (3), a grant of a larger amount may, at the discretion of the Authority, be made to a client of a licensee where the Authority is satisfied that the particular circumstances giving rise to the making of a grant are such that none of the provisions of subsection (6) apply and that grave hardship would be caused if the grant of a larger amount was not made (whether in one sum or in such instalments as the Authority may determine).

(6) The Authority shall have discretion to make or refuse to make a grant in any case in which it considers that—

(a) the licensee did not have a licence in force at the time when the loss was sustained,

(b) there has been dishonesty or negligence on the part of the client, or of any person for whom that client is responsible, which has contributed to the loss,

(b) the client of the licensee has assisted (whether by act or omission) in the commission of misconduct by the licensee,

(c) the loss sustained has arisen otherwise than as a result of dishonesty on the part of that licensee (or any employee or agent of that licensee),

(d) having regard to all the circumstances, the loss sustained by the client did not arise from, or was not directly related to, the provision of property services to the client by the licensee,

and, where the Authority decides to make a grant in any such case, it shall have discretion to make it only to a limited extent.

(7) A grant may be made notwithstanding that the licensee concerned has, after the act of dishonesty died or ceased to be a licensee

(8) No grant may be made in respect of a loss made good otherwise.

(9)(a) On the making of any grant to any client of a licensee in respect of any loss—

(i) the Authority shall, to the amount of the grant, be subrogated—

(I) to any rights or remedies to which that client was entitled on account of the loss against the licensee or any other person or against the estate of such licensee or other person,

(II) to any rights or remedies to which the licensee (or any agent or employee) was entitled on account of the loss against any other person or against the estate of such other person, and

(III) to all other rights and remedies (if any) of that client or such licensee (or agent or employee) in respect of the loss; and

(ii) the client shall have no right under bankruptcy or other legal proceedings or otherwise to receive any sum out of the assets of the licensee (or agent or employee) in respect of the loss until the Authority has been reimbursed the full amount of the grant.

(b) In paragraph (a), references to the client of the licensee or the licensee (or agent or employee) include, in the event of his, her or their death, insolvency or other disability, references to his, her or their personal representative or any other person having authority to administer his, her or their estate or estates.

(10) No grant shall be made unless notice of the loss is received by the Authority—

(a) in the prescribed manner, and

(b) within the prescribed period after the loss comes to the knowledge of the client concerned.

(11) The Authority, for the purposes of inquiry into any matters which may affect the making or refusal of a grant, may take evidence on oath, and the administration of such oath is hereby authorised.

(12)(a) A grant may, at the discretion of the Authority, be paid either in one sum or in such instalments as the Authority may determine.

(b) The Authority, if satisfied that the financial stability of the Fund requires it, may postpone payment of any grant or any instalment of any grant.

(13) For the purposes of this section, a licensee, or a body corporate beneficially owned or controlled by that licensee, shall not—

- (a) be a client of that licensee where he or she is an independent contractor;
- (b) be a client of a licensee which is a partnership in which he or she is a partner;
- (c) be a client of a licensee which is a body corporate of which he or she is a director.

Explanatory Note

This Head provides that where the Authority is satisfied that a client of a licensee has sustained loss in consequence of dishonesty on the part of that licensee arising from the provision of property services by the licensee, the Authority shall make a grant to that client out of the Compensation Fund.

Part 8

Property Services provided by Certain Persons from EU Member States

Head 54 – Interpretation

Provide that:

54.—In this Part—

“corresponding authority” means an authority in a member state of the European Communities which—

- (a) has functions that substantially correspond to those of the Authority, and
- (b) is designated by the Authority as such an authority;

“relevant person” means a person who or which—

- (a) holds from a corresponding authority a licence or other form of authorisation that is in force and that authorises the person to provide a property service that corresponds to a property service provided by one of the persons mentioned in the definition of “property service” in section [Head 2],
- (b) proposes to provide or is providing that property service in the State, and
- (c) is not prohibited by the Authority from providing such a property service.

Explanatory Note:

Part 8 makes provision for the provision of property services within the State by providers established in other EU Member States.

Under the EC Treaty, a person holding a licence from a comparable regulatory authority in another EU Member State has a right to provide services in this jurisdiction without having to obtain an additional licence here. This principle has been upheld by the Court of Justice in several cases over the years. If such a right is accepted, it requires that such licensees must be made subject to the investigative and disciplinary procedures of the Authority in respect of their activities in this jurisdiction since not to do so could put domestic licensees at a competitive disadvantage.

The purpose of Part 8 is to ensure application of the Authority’s disciplinary code by according official recognition to a licence issued to a ‘relevant person’ by a ‘corresponding authority’.

A ‘corresponding authority’ is an authority in an EU member state which has functions that substantially correspond to those of the Property Services Regulatory Authority, and is designated by the Authority as a corresponding authority.

A ‘relevant person’ means a person who holds a licence or authorisation from a corresponding authority to provide a property service and which is in force. The

authorised property service must correspond to a property service provided by one of the persons mentioned in the definition of ‘property service’ in Head 2. The person must be proposing to provide or be providing that property service in the State, and must not be prohibited by Property Services Regulatory Authority from providing such a property service.

Head 55 – Application of Act to relevant persons

Provide that:

55.—For the purposes of controlling and supervising relevant persons in the interests of protecting consumers and investigating and adjudicating on any complaints against them this Act shall have effect in relation to such persons with the modifications specified in *Schedule 4* and with any other necessary modifications.

Explanatory Note

This Head will make ‘relevant persons’, i.e. persons already holding a licence from a comparable authority in another Member State, subject to certain provisions of the Bill with a view to protecting consumers.

Head 56 – Prior notification by relevant person of conviction or criminal proceedings

Provide that:

56.—(1) A relevant person who has been convicted of an offence (other than a prescribed offence), or against whom proceedings for such an offence are pending, under the law of the State or another state shall, before providing a property service in the State, notify the Authority in the prescribed manner of the conviction or proceedings and supply the Authority with prescribed particulars thereof.

(2) Subject to section [Head 34 (notification to applicant of refusal, etc.)], on receiving the notification or becoming otherwise aware of the conviction or proceedings the Authority may, if in its opinion the relevant person is not a fit and proper person to provide a property service in the State, prohibit the person from providing such a service or so prohibit the person for a specified period.

(3) A relevant person who contravenes *subsection (1)* or who provides a property service in contravention of a prohibition under *subsection (2)* is guilty of an offence and liable on summary conviction to a fine not exceeding €3,000 or imprisonment for a term not exceeding 12 months or both.

(4) A person shall not be convicted of an offence under this section if the court is satisfied that, in the case of a person who has been convicted of an offence, or against whom proceedings for an offence are pending, in a place other than the State, the offence does not correspond with any offence under the law of the State.

(5) This section is without prejudice to section ([Head 40]), as modified by paragraph - of *Schedule 4*.

Explanatory Note

This Head requires advance notification of offences or proceedings by relevant persons so that the Authority may decide whether they are fit and proper persons to provide property services in the State.

Head 57 – Prohibition of relevant person from providing property service

Provide that:

57.—Subject to section [Head 34 (notification to applicant of refusal, etc.)], the Authority may at any time, if satisfied on reasonable grounds that a relevant person is not or no longer a fit and proper person to provide a property service in the State, prohibit the person from providing such a property service or so prohibit the person for a specified period.

Explanatory Note

This Head will allow the Authority to decide, notwithstanding there being no offences or proceedings pending, that a relevant person is no longer a fit and proper person to provide property services in the State.

Head 58 – Relations with corresponding authorities

Provide that:

58.—(1) The Authority shall notify the corresponding authority concerned of—

(a) any action taken by the Authority under sections [Heads 33 (refusal to renew, suspension etc. of licence), 43 (complaints against licensees), 56 or 57 in relation to a relevant person,

(b) the taking of any appeal by such a person and the result of any such appeal or any subsequent proceedings, and

(c) any offence under this Act committed by a relevant person.

(2) The Authority shall collaborate with and assist corresponding authorities with a view to promoting the effective performance by the Authority and those authorities of their functions in relation to relevant persons.

(3) The Authority shall publish in *Iris Oifigiúil* a list of corresponding authorities designated for the time being by it.

Explanatory Note

This Head provides that the Authority shall inform a corresponding authority if it takes disciplinary action against a relevant person holding a licence from that authority.

Head 59 – Effect of revocation or suspension of relevant person’s licence or other authorisation

Provide that:

59.—If a licence or other form of authorisation issued by a corresponding authority to a relevant person is revoked or suspended by it—

(a) this Part and *Schedule 4* shall cease to have effect in relation to that person, and

(b) the relevant person shall be treated as a person who is not the holder of a licence,

with effect from the date of revocation or during the period of suspension.

Explanatory Note

This Head contains provisions relating to the revocation or suspension of a relevant person’s licence by the corresponding authority concerned.

Part 9
Sales of land and provisions relating to sales.

Head 60 - Advised value

Provide that-

60.—(1) A licensee shall, within 7 days of its valuation for sale, provide the vendor or prospective vendor with a statement in the prescribed form of the advised value of the land.

(2) In this section, “advised value” is the licensee's reasonable estimate at the time the land is valued for sale, on the basis of his or her experience, skills and knowledge, of the amount that a willing but not anxious buyer would pay for the land, or in the case of a price range, the range within which that amount is likely to fall, with the difference between the upper and lower limits of the range not exceeding 10% of the amount of the lower limit of the range.

Explanatory Note

Head 60 provides that a licensee must provide a vendor with a statement of the ‘advised value’ of the property within 7 days of its valuation for sale. This will be either a single price or a price range and its purpose is to give a more realistic estimate of the likely value of a house to potential purchasers.

The ‘advised value’ will be defined as the licensee's reasonable estimate – at the time the land is valued for sale – on the basis of his or her experience, skills and knowledge, of the amount that a willing but not anxious buyer would pay for the land. In the case of a price range, the difference between the upper and lower limits of the range may not exceeding 10% of the amount of the lower limit of the range, e.g. an advised value of €500,000 – €550,000.

Head 61 - Estimate of selling price not to be less than advised value

Provide that-

61.—(1) A licensee shall not state as his or her estimate of the selling price, whether orally or in writing-

- (a) in any advertisement in respect of land;
- (b) to a person as a prospective purchaser of such land;
- (c) in the particulars or conditions of its sale, or
- (d) at the time of the auction of land

a price that is less than the advised value of the land provided to the vendor under section [Head 60], or where the advised value was expressed as a price range, less than the lower limit of that range.

(2) A person who contravenes subsection (1) is guilty of an offence and liable on summary conviction to a fine not exceeding €3,000 or imprisonment for a term not exceeding 12 months or both.

Explanatory Note

This Head prohibits use of any price lower than the advised value in the marketing of a property for sale.

Head 62 - Evidence of reasonableness of advised value

Provide that-

62.—(1) The Authority may of its own motion or in its investigation of a complaint under section ([Head 43]) by written notice require a licensee to provide to it, on or before a date specified in the notice, evidence of the reasonableness of any advised value stated by the licensee—

- (a) to a vendor or prospective vendor of land;
- (b) to any person as a prospective purchaser;
- (c) in any advertisement in respect of its sale;
- (d) in the particulars or conditions of sale; or
- (e) at the time of the auction of land.

(2) Where, having considered the evidence provided by the licensee in response to its request, the Authority is satisfied that the advised value provided in any particular case was not reasonable, it may take whichever of the following actions in relation to the licence or licensee is in its opinion appropriate in the circumstances—

- (i) reprimand;
- (ii) warning;
- (iii) caution, or
- (iv) advice.

(3) A licensee who fails to comply with a requirement under subsection (1) is guilty of an offence and liable on summary conviction to a fine not exceeding €3,000 or imprisonment for a term not exceeding 12 months or both.

Explanatory Note

This Head gives the Authority the power to investigate the reasonableness of any advised value provided by a licensee, and to act on the findings of such an investigation.

Head 63 - Letter of engagement

Provide that:

63.—(1) A licensee shall provide a letter of engagement, the form and content of which shall be prescribed, to any person for whom the licensee provides, or intends to provide, a property service.

(2) A person who contravenes *subsection (1)* is guilty of an offence and liable on summary conviction to a fine not exceeding €3,000 or imprisonment for a term not exceeding 12 months or both.

Explanatory Note

This Head gives effect to the Auctioneering/Estate Agency Review Group's recommendation that the Authority should require all licence holders to issue an appropriate letter of engagement to clients.

Head 64 - Sale by auction

Provide that:

64.—(1) Where land is offered for sale by auction—

- (a) the vendor shall not bid, or employ any person to bid, at the auction,
- (b) the licensee shall not knowingly take any bid from the vendor or any person employed by the vendor,
- (c) if the vendor or a person employed by the vendor bids at the sale, the sale is voidable by the purchaser.

(2) A person who contravenes *paragraphs (a) or (b) of subsection (1)* is guilty of an offence and liable on summary conviction to a fine not exceeding €3,000 or imprisonment for a term not exceeding 12 months or both.

(3) In this section “employ” means engage as an agent with or without reward, and cognate words shall be read accordingly.

Explanatory Note

This Head will prohibit the practice of bidding up to the reserve price at an auction.

Head 65 - Retention of records in sales other than by auction

Provide that:

65.—(1) Where land is offered for sale other than by auction, the licensee shall retain records relating to all offers received by the licensee, including conditional acceptances, in the prescribed form for the prescribed period.

(2) A person who contravenes subsection (1) is guilty of an offence and liable on summary conviction to a fine not exceeding €3,000 or imprisonment for a term not exceeding 12 months or both.

(3) In this section, “record” includes any book, index or document and any information in electronic or other non-legible form which is capable of being converted into a permanent legible form.

Explanatory Note

This Head provides that where land is offered for sale other than by auction, licensees will be required to retain records relating to all offers received by them, including conditional acceptances. It will be an offence for a licensee not to do this. This provision will facilitate investigations by the Authority where a complaint is made regarding offers for a property.

Head 66 – Certain provisions in agreements relating to sales, etc., of land to be void.

Provide that:

66.—(1) Subject to *subsection (2)*, any provision (whether express or implied) in an agreement relating to the sale, lease or letting of land, whereby the purchaser, lessee or tenant is required to pay or bear the cost of the licensee's fees or expenses in respect of the sale, lease or letting, shall be void, and any moneys paid under or on foot of such a provision shall be recoverable as a simple contract debt in a court of competent jurisdiction.

(2) Nothing in *subsection (1)* shall affect the liability of a person to pay fees or expenses to a licensee in respect of the acquisition of any land in a case where the licensee had been retained by the person to acquire such land and does not also act, in relation to such acquisition, on behalf of the person from whom the land is acquired.

Explanatory Note

This Head retains the substance of section 2 of the Auctioneers and House Agents Act 1973, which prohibits an auctioneer or house agent from charging a buyer/lessee/tenant a fee or expenses in respect of a sale/lease/letting, except in a situation where an auctioneer or house agent is specifically retained to act as agent for a buyer/lessee/tenant in such a transaction.

Head 67 – Regulations for Part 7

Provide that:

67.—The Authority may, after consulting with the relevant Minister, make regulations to protect the interests of purchasers and vendors, or intending purchasers and vendors, of land in relation to the following—

- (a) the content of advertisements for the sale of land,
- (b) booking deposits for the purchase of land, the form and content of receipts for such deposits and conditions relating to refunds of such deposits,
- (c) terms of contracts for the sale of land and building contracts, including stage payments under such contracts;
- (d) standards for the measurement of residential property offered for sale;
- (e) terms of sales by auction or by tender,
- (f) costs of, or other matters relating to, surveys of land for sale.

(2) A person who contravenes a provision of any regulation under this section is guilty of an offence and is liable on summary conviction to a fine not exceeding €3,000 or such lesser amount as may be specified in the regulation in respect of such contravention.

(3) If the contravention of a provision of a regulation is continued after conviction, the person causing the contravention is guilty of an offence on each day on which that contravention continues and is liable on summary conviction for each such offence to a fine not exceeding €100 or such lesser amount as may be specified in the regulation in respect of such contravention.

Explanatory Note

This Head provides that the Authority may make detailed regulations in relation to certain matters to further protect the interests of purchasers and vendors.

Part 10
Miscellaneous

Head 68 – Offences

Provide that:

68.—(1) Any person who—

- (a) makes any false or misleading statement in any application or notice of appeal under this Act or in any document required thereunder or otherwise gives false or misleading information to the Authority or Appeal Board,
- (b) being a licensee who has been notified of the suspension or revocation of the licence, produces the licence to any other person with a view to providing a property service for that person,
- (c) being a licensee, fails or refuses to keep any prescribed accounts or records or to furnish to the Authority any prescribed information or returns, or
- (d) contravenes the provisions of a regulation under section [Head 72])

is guilty of an offence and liable on summary conviction to a fine not exceeding €3,000 or imprisonment for a term not exceeding 12 months or both.

(2) Where—

- (a) an offence under this Act is committed by a body corporate, and
- (b) the offence is proved to have been committed with the consent, connivance or approval of, or to have been attributable to any neglect on the part of, a person who was either—
 - (i) a director, manager, secretary or other similar officer of the body corporate, or
 - (ii) a person purporting to act in any such capacity,

that person is also guilty of an offence and liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

(3) Where the affairs of a body corporate are managed by its members, subsection (2) shall apply in relation to the acts or defaults of a member in connection with the member's functions of management as if he or she were a director or manager of the body corporate.

(4) Subsections (2) and (3) shall apply, with the necessary modifications, in relation to offences under this Act committed by an unincorporated body.

(5) The Authority may bring and prosecute summary proceedings for an offence under this Act.

Explanatory Note:

This Head provides for offences under the Bill. The Authority will have the power to prosecute summary offences.

Head 69 - Publication of sanctions.

Provide that-

69.—(1) The Authority shall publish details, in such form and manner as it thinks appropriate, of—

(a) any decision of the Authority—

(i) refusing to renew a licence, or

(ii) revoking or suspending a licence,

(b) any conviction of a person of an offence under this Act,

and

(c) any action taken by the Authority under section [Head 62(2)].

(2) The Authority may publish details, in such form and manner as it thinks appropriate, of any decision of the Authority issuing a reprimand, warning or caution or an advice under section [Head 33(2) or 43(3)(b)].

Explanatory Note

The Authority will be required to publish details of certain sanctions such as a refusal to renew a licence; revocation or suspension of a licence; any convictions for an offence under the Bill; and any sanction imposed on a licensee for non-compliance with the provisions relating to advised value.

It is likely that publication of sanctions will assist in ensuring that standards will be effectively enforced and consumer protection will be enhanced. The prospect of publication and adverse consumer reaction will have a deterrent effect and help to prevent abuses.

Head 70 – Receipt of notification or notice

Provide that:

70.—(1) A notification or notice to be given to a person by the Authority or Appeal Board under this Act shall be given to the person in one of the following ways:

- (a) by delivering it to the person;
- (b) by leaving it at the address at which the person ordinarily resides or carries on business;
- (c) by sending it by prepaid registered post in an envelope addressed to the person at that address;
- (d) where the person has given an address for service of notices, by leaving it at the address for such service or sending it by prepaid registered post in an envelope addressed to the person at that address;
- (e) where—
 - (i) the Authority or Appeal Board considers that notice should be given immediately, and
 - (ii) a fax machine is located at an address mentioned in paragraph (b) or (d),by sending it by fax to that machine.

(2) (a) When a notification or notice is sent by prepaid registered post, it is deemed to be received by the person on the third working day after the day on which it was so sent.

(b) When sent by fax, it is deemed to be received by the person when the sender's fax machine generates a message confirming successful transmission of the notice.

(3) For the purposes of this section a company registered under the Companies Acts is deemed to be ordinarily resident at its registered office and every other body corporate or unincorporated body to be so resident at its principal office or place of business.

Explanatory Note

This is a standard procedural provision.

Head 71 – Taking effect of decision of Authority

Provide that:

71.—(1) This section applies to a decision of the Authority—

- (a) refusing to renew a licence,
- (b) suspending or revoking a licence, or
- (c) issuing a reprimand, warning or caution or an advice.

(2) A decision of the Authority to which this section applies takes effect on the expiration of the period within which an appeal against it may be brought, unless an appeal is duly brought, in which case the decision stands suspended pending the outcome of the appeal proceedings (including proceedings under section [Head 45 (Appeal to High Court on question of law)]).

Explanatory Note

This is a standard procedural provision which specifies conditions in relation to the entry into force of Authority decisions.

Head 72 – Regulations

Provide that:

72.—(1) The Minister may by regulations make such incidental or consequential provision as he or she considers necessary or expedient for the purposes of giving this Act full effect.

(2) The Authority, following consultation with any person or body that appears to it to have an interest in the matter and with the consent of the Minister, may by regulations provide for any matter referred to in this Act as prescribed and for—

- (a) categories of licences which may be issued by the Authority, and the form of such licences,
- (b) procedures governing—
 - (i) the grant and renewal of licences (including time limits in respect thereof),
 - (ii) the surrender of licences, and
 - (iii) the processing of complaints under section ([Head 43]),
- (c) standards to be observed in the provision of property services by licensees or particular categories of licensees,
- (d) qualifications (including educational and training levels) or any other requirements (including required minimum levels of professional indemnity insurance) for the grant and renewal of licences, or particular categories of licences,
- (e) terms and conditions on which indemnity against losses is to be available to licensees under any policy of indemnity insurance and the circumstances in which the right to such indemnity is to be excluded or modified.
- (f) records to be kept and the information and returns to be furnished to the Authority by licensees,
- (g) licence fees, or exemptions from the payment of fees, or waiving, remitting or refunding fees (in whole or in part), in different circumstances (or classes of circumstances) or in different cases (or classes of cases),
- (h) contributions to the Compensation Fund, or exemptions from the payment of contributions, or waiving, remitting or refunding contributions (in whole or in part), in different circumstances (or classes of circumstances) or in different cases or (classes of cases), and
- (i) procedures for applications for grants from the Compensation Fund.

(3) The Authority shall submit a draft of any proposed regulations to the Minister for his or her consideration.

Explanatory Note

Detailed provisions relating to standards, qualifications, indemnity cover levels, fees, contributions to the Compensation Fund, etc., will be set out in regulations to be by the Authority with the consent of the Minister. Such regulations will be laid before both Houses of the Oireachtas under Head 4.

Head 73 – Transitional provision

Provide that:

73.—(1) In this section, “critical date” means, in relation to a person who is providing a property service, the date on which the person is required by this Act to hold a licence.

(2) This Act does not apply in relation to a person—

- (a) who, immediately before the critical date, was providing a property service,
- (b) who intends to continue to provide the service after that date,
- (c) who has applied by that date to the Authority for a licence, and
- (d) whose application has not been determined.

(3) For the purposes of subsection (2) an application for a licence is to be taken as not to have been determined—

- (a) if the applicant has not been notified that the Authority has decided to refuse to grant the licence, or
- (b) where the applicant has been so notified, until—
 - (i) one month has elapsed after the notification and the decision has not been appealed, or
 - (ii) any appeal against the decision has been finally determined.

Explanatory Note

Transitional provisions are required because many of those requiring licences under the new legislation are already in business. This Head will allow existing operators who apply for licences to continue in business pending a determination by the Authority on their applications.

Schedule 1

Part 1

Repeals

Session and Chapter or Number and Year	Short Title	Extent of Repeal
30 & 31 Vict., c. 48	Sale of Land by Auction Act 1867	The whole Act so far as unrepealed
No. 10 of 1947	Auctioneers and House Agents Act 1947	The whole Act
No. 9 of 1967	Auctioneers and House Agents Act 1967	The whole Act
No. 23 of 1973	Auctioneers and House Agents Act 1973	The whole Act

Part 2

[Amendments to various statutes].

SCHEDULE 2
Property Services Appeal Board

PART 1
General

Membership

1.—The Appeal Board shall consist of a chairperson and such and so many other members as the Minister, with the consent of the Minister for Finance, considers necessary from time to time for the expeditious discharge of its functions.

Appointment

2.—The chairperson and other members of the Appeal Board shall be appointed by the Government and, subject to this Schedule, shall hold office on such terms and conditions as the Government may determine.

Chairperson

3.—(1) (a) The chairperson shall be a practising barrister, or a practising solicitor, of not less than 7 years' standing.

(b) A chairperson who ceases to be such a barrister or solicitor during his or her term of office as chairperson shall thereupon cease to be chairperson and a member of the Appeal Board.

(2) It shall be the function of the chairperson to ensure the effective performance by the Appeal Board of its functions.

(3) The chairperson, if of opinion that the conduct of a member has been such as to bring the Appeal Board into disrepute or has been otherwise prejudicial to the effective performance of the Appeal Board's functions, may—

(a) require the member to attend for interview and, on the member so attending, inform the member privately of that opinion, or

(b) otherwise investigate the matter,

and report to the Minister the outcome of the interview or investigation if the chairperson considers it appropriate to do so.

Term of office

4.—(1) Subject to this paragraph—

(a) the chairperson shall hold office for a period of 4 years, and

(b) any other member of the Board shall hold office for such period, not exceeding 4 years, as shall be specified by the Government when appointing the member,

and may in each case be reappointed by the Government for a second or subsequent term of office.

(2) A member may resign from the Appeal Board by letter addressed to the Secretary General to the Government, and the resignation shall take effect on the date of receipt of the letter.

(3) A member shall, unless he or she sooner dies, resigns or otherwise ceases to be a member, hold office as such member until the expiration of his or her term of office.

(4) Where a member—

(a) accepts nomination as a member of Seanad Eireann,

(b) is nominated as a candidate for election as a member of either House of the Oireachtas or to be a representative in the European Parliament, or

(c) is regarded, under Part XIII of the Second Schedule to the European Parliament Elections Act 1997, as having been elected to that Parliament,

he or she shall thereupon cease to be a member of the Appeal Board.

(5) The Government may for stated reasons at any time remove a member from office for misbehaviour or where it considers that—

(a) the member has become incapable through ill health of effectively performing his or her functions as a member, or

(b) the member's removal is necessary for the effective performance by the Appeal Board of its functions.

(7) A member shall cease to be a member on—

(a) being adjudicated bankrupt,

(b) making a composition or arrangement with creditors,

(c) being sentenced to imprisonment on conviction on indictment, or

(d) ceasing to be ordinarily resident in the State.

Remuneration, etc. of members

5.—Members of the Appeal Board shall be paid such remuneration (if any) and allowances for expenses as the Minister, with the consent of the Minister for Finance, may determine.

Procedure of Board

6.—(1) The Appeal Board shall hold such and so many meetings as may be necessary for the effective performance of its functions.

(2) At a meeting of the Appeal Board—

(a) the quorum shall be 3,

- (b) the chairperson shall, if present, be chairperson of the meeting,
- (c) if and so long as the chairperson is not present or the office of chairperson is vacant, the members present shall appoint one of their number to be chairperson of the meeting,
- (d) each member present shall have one vote,
- (e) every question shall be determined by a majority of the votes of the members present and voting on the question, and
- (f) if there is an equal division of votes, the chairperson of the meeting shall have a second or casting vote.

(3) Subject to this Act and regulations thereunder, the Appeal Board may regulate its own procedure.

(4) Subject to subparagraphs (5) and (6), the Appeal Board may perform any of its functions through or by the chairperson or any other member or other person who has been duly authorised by the Appeal Board in that behalf.

(5) A member of the Appeal Board may finally determine a particular case only if it has been considered at a meeting of the Board before the relevant authorisation is given.

(6) The Appeal Board may not authorise a person who is not a member to determine finally a particular case.

(7) A decision of the Appeal Board on an appeal may be by a majority of its members.

Vacancies in membership

7.—(1) Subject to paragraph 6(2)(a), the Appeal Board may act notwithstanding a vacancy or vacancies in its membership.

(2) Where a vacancy occurs, the Minister shall take steps to fill the vacancy as soon as practicable.

Secretary of Board

8.—An officer of the Minister who is an established civil servant for the purposes of the Civil Service Regulation Acts 1956 to 2005 and who is seconded to the Appeal Board on a whole-time or part-time basis shall act as its secretary.

Non-disclosure of information

9.—(1) Save as otherwise provided by law, a person shall not, without the consent of the Appeal Board, disclose information obtained by the person in his or her capacity as a member or the secretary of the Appeal Board.

(2) A person who contravenes subparagraph (1) is guilty of an offence and liable on summary conviction to a fine not exceeding €2,000.

Prohibition of improper influence

10.—(1) A person who communicates with a member or the secretary of the Appeal Board for the purpose of influencing improperly either consideration by it of an appeal or any decision of the Appeal Board in relation to an appeal is guilty of an offence and liable on summary conviction to a fine not exceeding €2,000.

(2) If the member or secretary is of opinion that any communication is in contravention of subparagraph (1), he or she shall not entertain it further and shall immediately inform the Appeal Board in writing of its substance, and the Appeal Board shall acknowledge in writing the receipt of such information.

Reports to Minister

11.—Section 17 shall apply, with the necessary modifications, in relation to the Appeal Board as it applies to the Authority.

Disclosure of Interests

12.—Section 14 shall apply, with the necessary modifications, in relation to a member and the secretary of the Appeal Board as it applies in relation to a member of the Authority.

PART 2 Appeals

General

13.—The Appeal Board shall, as far as practicable, ensure that appeals are dealt with and determined expeditiously.

Notice of appeal

14.—(1) A person aggrieved by a decision of the Authority—

- (a) refusing to grant a licence or renewal of a licence,
- (b) suspending or revoking a licence,
- (c) issuing a reprimand, warning or caution or an advice,
- (d) refusing a variation in the kind or kinds of property services to which a licence relates,
- (e) not to uphold a complaint under section [Head 43 (complaints against licensees)], or
- (f) refusing to make a grant out of the Compensation Fund under section [Head 53 (Compensation for loss due to dishonesty of licensee)].

may, within one month after the date of receipt of notification of the decision, appeal to the Appeal Board against it by serving on the Appeal Board a notice of appeal which complies with paragraph 15(1).

(2) The notice of appeal may be served—

- (a) by sending it by registered post to the Appeal Board,
- (b) by leaving it during normal office hours at the office of the Appeal Board with a person who is apparently its employee, or
- (c) by such other means as may be prescribed.

(3) The Appeal Board shall not consider an appeal if the relevant notice of appeal is received by it later than the expiration of the period of one month referred to in subparagraph (1) or if or so long as the notice does not comply with the requirements of paragraph 15(1).

(4) An appeal shall be grounded on the record of the decision to which the appeal relates, on the information contained in the notice of appeal, on any observations of the Authority given at the request of the Board on any matter arising on the decision or that information and on any other information received by the Board on the hearing of the appeal.

(5) The appeal, if not withdrawn, shall be determined by the Board—

- (a) by affirming the decision of the Authority to which the appeal relates, or
- (b) by substituting its determination for that decision, which shall thereupon stand annulled.

(6) The Authority shall be a party to an appeal.

(7) The Appeal Board shall serve notice of its determination on each party to the appeal.

Notice of appeal requirements

15.—(1) The notice of appeal shall be in writing and state—

- (a) the name and address of the appellant,
- (b) the subject matter of the appeal,
- (c) the appellant's interest in its outcome,
- (d) the grounds of the appeal and the reasons, considerations and arguments on which they are based,

and shall be accompanied by such fee, if any, as may be specified by the Appeal Board and by such documents relating to the appeal as the appellant considers necessary or appropriate.

(2) The requirement under subparagraph (1)(d) shall apply whether or not the appellant requests, or proposes to request in accordance with paragraph 21(2), an oral hearing of the appeal.

(3) Unless requested to do so by the Appeal Board, an appellant shall not be entitled to elaborate in writing on, or make further submissions in writing in relation to, the grounds of appeal stated in the notice of appeal or to submit further grounds of appeal, and any such elaboration, submissions or further grounds received by the Appeal Board shall not be considered by it.

(4) Without prejudice to paragraph 20, the Appeal Board shall not consider any documents submitted by an appellant at the appeal other than those which accompanied the notice of appeal.

Documents to be supplied to Appeal Board by Authority

16.—(1) The Appeal Board shall, as soon as practicable after receiving a notice of appeal, send a copy of the notice to the Authority by post.

(2) The Authority shall, within 14 days after receiving the copy of the notice, submit to the Appeal Board a copy of—

(a) the application for the licence, or renewal of the licence, concerned and any other information received or obtained from the applicant in that regard,

(b) any report prepared for the Authority or other relevant documents or information in its possession in relation to its dealing with the matter which is the subject of the appeal,

(c) the record of the decision of the Authority which is the subject of the appeal, and

(d) the notification of the decision to the applicant.

Submissions by Authority on appeal

17.—(1) The Authority may make submissions or observations in writing to the Appeal Board in relation to the appeal within one month after receiving the copy of the notice of appeal from the Appeal Board, and any such submissions or observations received by the Appeal Board after the expiration of that period shall not be considered by it.

(2) Where no submissions or observations have been received within the period referred to in subparagraph (1), the Appeal Board may, without further notice to the Authority, determine the appeal.

(3) Unless requested to do so by the Appeal Board, the Authority shall not be entitled to elaborate in writing on any submissions or observations made in accordance with subparagraph (1) or make any further submissions or observations in writing in relation to the appeal, and any such elaboration or further submissions or observations shall not be considered by the Appeal Board.

Appeals against decisions on complaints under section [Head 43]

18.—(1) Where an appeal is brought by a licensee or complainant against a decision by the Authority on a complaint against the licensee under section [Head 43], the complainant or licensee (the “other person”) shall be a party to the appeal.

(2) The Appeal Board shall, as soon as practicable after receiving the notice of appeal, send a copy of the notice to the other person.

(3) Paragraph 17 shall apply in relation to the other person as if references in that paragraph to the Authority were references to that person.

Submissions by person not party to appeal

19.—(1) A person who is not a party to an appeal may make submissions or observations in writing to the Appeal Board in relation to it.

(2) Such submissions or observations may be made within one month after receipt of the notice of appeal by the Appeal Board, and any such submissions or observations received by it after the expiration of that period shall not be considered by it.

(3) Unless requested to do so by the Appeal Board, the person making such submissions or observations shall not be entitled to elaborate in writing on them or to make further submissions or observations in writing in relation to the appeal, and any such elaboration or further submissions or observations shall not be considered by the Appeal Board.

Further information required by Appeal Board

20.—(1) Where the Appeal Board is of the opinion that any document or information is necessary for the purpose of enabling it to determine an appeal, it shall serve on any party to the appeal or other person who has made submissions or observations to the Appeal Board in relation to it a notice—

(a) requiring the party or person concerned, within a period specified in the notice (being not less than 14 days beginning on the date of service of the notice) to submit to it such documents or information as are specified in the notice, and

(b) stating that, if the documents or information are not received by it before the expiration of the specified period, it may determine the appeal after the expiration of that period without further notice to the party or person concerned.

(2) A person who refuses or fails to comply with a requirement under subparagraph (1)(a) is guilty of an offence and liable on summary conviction to a fine not exceeding €2,000.

(3) Where a notice has been served on a person under this paragraph, the Appeal Board, at any time after the expiration of the period specified in the notice, may, whether or not the notice has been complied with, determine the appeal without further notice to the person.

Hearing of appeal

21.—(1) Sittings of the Appeal Board shall normally be held in private.

(2) Subject to subparagraphs (3) and (4), the Appeal Board, of its own motion or at the request of a party, may in its absolute discretion conduct an oral hearing of an appeal.

(3) The Appeal Board in conducting an oral hearing—

(a) may take evidence on oath and for that purpose may administer oaths, and

(b) may by notice in writing require any person to attend at such time and place as is specified in the notice to give evidence in relation to any matter in issue at the hearing or to produce any relevant documents in his or her possession or under his or her control.

(4) A person referred to in subparagraph (3)(b) shall be entitled to the same immunities and privileges as if he or she were a witness before a court.

(5) An oral hearing may be conducted on behalf of the Appeal Board by one or more than one of its members.

(6) A request by a party for an oral hearing—

(a) shall be made in writing to the Appeal Board,

(b) subject to clause (c), shall be made within the period of one month referred to in paragraph 14(1),

(c) (i) where the request is by the Authority, shall be made within the period of one month referred to in paragraph 17(1), or

(ii) where the request is by the person referred to in paragraph 18(1) as the “other person”, shall be made within one month of the notice of appeal being received by that person.

(7) The Appeal Board shall not consider a request for an oral hearing made later than the expiry of the relevant period referred to in subparagraph (6).

(8) Where the Appeal Board is requested to conduct an oral hearing and decides to determine the appeal without such a hearing, it shall serve notice of its decision on each party to the appeal and on any person who, in accordance with paragraph 20, made submissions or observations to the Board in relation to it.

Expenses of persons attending before Appeal Board

22.—The reasonable travelling and subsistence expenses of any person attending before the Appeal Board in accordance with paragraph 21(3)(b) shall be paid out of moneys provided by the Oireachtas.

Dismissal of frivolous, etc. appeals

23.—The Appeal Board shall dismiss any appeal which in its opinion is frivolous, vexatious or without substance or foundation.

Withdrawal of appeal

24.—An appellant may withdraw an appeal by notice in writing to the Appeal Board at any time before the appeal is determined.

Delayed or abandoned appeals

25.—(1) Where the Appeal Board is of opinion—

- (a) that proceedings on an appeal have been unnecessarily delayed by the conduct of the appellant, or
- (b) that an application for a licence, or the renewal of a licence, to which the appeal relates has been abandoned,

it may serve on the appellant a notice stating that it is of that opinion and requiring the appellant, within a period specified in the notice (being not less than 14 or more than 28 days after the date of service of the notice) to make a submission in writing to it as to why the appeal should not be treated as having been withdrawn.

(2) At any time after the expiration of the period specified in a notice which has been served under subparagraph (1), the Appeal Board may, after considering any submissions made to it pursuant to that subparagraph—

- (a) declare that the appeal and, where appropriate, the application is to be treated as having been withdrawn, or
- (b) determine the appeal.

(3) Where under subparagraph (2)(a) the Appeal Board declares that an appeal or application is to be treated as having been withdrawn, then as the case may be—

- (a) the appeal is deemed to have been withdrawn and accordingly shall not be determined by the Appeal Board, or
- (b) notwithstanding any previous decision relating to the application, a licence shall not be granted or renewed as a result of it.

Date of receipt of certain notices, etc.

26.—Appeals, notices of appeal, submissions, observations, requests, documents or information, which are required by or under this Act to be made or submitted to the Appeal Board within a specified period shall, if its offices are closed on the last day of the period, be regarded as having been received before the expiration of the period if received by it on the next following day on which its offices are open.

Explanatory Note

Part 1 of Schedule 2 provides for the establishment of the Property Services Appeal Board and related matters including appointment of the Chairperson, term of office, procedure of the Board, non-disclosure of information, prohibition of improper influence, reports and declaration and disclosure of interests.

Part 2 of Schedule 2 details matters relating to the appeal process including notice of appeal, notice of appeal requirements, documents to be supplied to the Appeal Board by the Authority, submissions by the Authority on appeal, submissions by persons who are not a party to the appeal, further information required by the Appeal Board and the hearing of the Appeal.

SCHEDULE 3

Head 52

Provisions in relation to the Compensation Fund

1. In this Schedule “the Fund” means the Compensation Fund.
2. The Authority is deemed to hold on trust all moneys paid to the Fund and shall deposit that money in an account that is separate from any other moneys of the Authority.
3. The Authority may invest moneys of the Fund in securities in which trustees are authorised by law to invest trust funds.
4. The Authority may borrow for the Fund and, for the purpose of giving security with respect to such borrowing, may charge investments of the Fund.
5. The Authority may insure against any risk relating to the Fund.
6. The following shall be paid into the Fund—
 - (a) all contributions to the Fund under section [Head 52(3)],
 - (b) all interest, dividends and other income and accretions of capital arising from the investment of the Fund or any part of it,
 - (c) the proceeds of any realisation of any investments of the Fund,
 - (d) all moneys borrowed for the purposes of the Fund,
 - (e) all moneys received by the Authority under any insurance effected by the Authority under paragraph 5 of this Schedule,
 - (f) any other moneys which may belong to or accrue to the Fund or be received by the Authority in respect of it.
6. The following shall be paid out of the Fund—
 - (a) costs, charges and expenses incurred in maintaining, protecting, administering and applying the Fund,
 - (b) premiums on any insurance effected by the Authority under paragraph 5,
 - (c) repayments of moneys borrowed by the Authority for the Fund and payments of interest on such moneys,
 - (d) payments of any grants which the Authority may make under section [Head 53],

(e) costs, charges and expenses incurred by the Authority under Part 7 or under this Schedule,

(f) costs, charges and expenses incurred by the Authority in enforcing compliance with the regulations prescribing contributions to the Fund and ascertaining whether those regulations have been complied with,

(g) other sums properly payable out of the Fund.

Explanatory Note

Schedule 3 makes detailed provision in relation to the Compensation Fund.

SCHEDULE 4

Modifications of Act in its application to relevant persons

- 1.—Except as provided otherwise in this Schedule, sections [Heads 28 to 32, 33 (except subsection (2)), 35, 36(1), 37 to 39 and 73] and paragraphs 14(1) (except subparagraphs (b), (c) and (e)) and 16(2)(a) of Schedule 2 shall not have effect in relation to relevant persons.
- 2.—References in paragraphs (d), (j), (k) and (l) of section [Head 9(2)] to licensees are references to relevant persons.
- 3.—References in section ([Head 18 (codes of practice)]) to licensees are references to relevant persons.
- 4.—In section [Head 33(2)]—
 - (i) the references to a licensee are references to a relevant person, and
 - (ii) the reference to the revocation or suspension of a licence is a reference to a prohibition of the relevant person by the Authority from providing a property service in the State or to such a prohibition for a specified period.
- 5.—The references in section [Head 34(1)] to the revocation or suspension of a licence are references to a prohibition, or a prohibition for a specified period, of a relevant person from providing a property service in the State and the section applies accordingly with the necessary modifications.
- 6.—The references in section [Head 36] to a licensee are references to a relevant person and the references to a licence are references to the licence or other form of authorisation issued to such a person by the corresponding authority concerned.
- 7.—References in section [Head 40] to a licensee are references to a relevant person.
- 8.—The reference in section [Head 41(1)] to a licensee is a reference to a relevant person.
- 9.—Section [Head 42(1)] is amended by the insertion of “or is a relevant person authorised by a corresponding authority to provide such a service” after “that particular service”.
- 10.—In section [Head 43]—
 - (a) references to a licensee are references to a relevant person, and
 - (b) references to the revocation and suspension of a licence are references to the prohibition of the relevant person by the Authority from providing a property service in the State and to such a prohibition for a specified period.
- 11.—In sections ([Heads 46 to 50]), references to licensees are references to relevant persons.

12.—In Part 9 (sales of land and provisions relating to sales), references to licensees are references to relevant persons.

13.—In section [Head 68 (Offences)]—

(a) references to a licensee are references to a relevant person,

(b) references to the revocation or suspension of a licence are references to a prohibition, or a prohibition for a specified period, of a relevant person from providing a property service in the State, and

(c) the reference to a licence is a reference to the licence or other form of authorisation issued to such a person by the corresponding authority concerned.

14.—References in section [Head 69 (Publication of sanctions)] to the revocation or suspension of a licence are references to a prohibition, or a prohibition for a specified period, of a relevant person from providing a property service in the State,

15.—References in section [Head 71 (taking effect of decisions of Authority)] to the revocation or suspension of a licence are references to a prohibition, or a prohibition for a specified period, of a relevant person from providing a property service in the State,

16.—The references in subsections (2)(c) and (2)(f) of section [Head 72 (regulations)] to licensees are references to relevant persons.

17.—References in paragraph 14 of Schedule 2 to revoking and suspending a licence are references to prohibiting the relevant person from providing a property service in the State and to so prohibiting the relevant person for a specified period.

18.—References in paragraph 18(1) of Schedule 2 to a licensee are references to a relevant person.

Explanatory Note

Schedule 4 sets out how the provisions of the Bill apply to ‘relevant persons’, i.e. persons licensed by other EU member states to provide property services.