

Legal Profession (Amendment) Bill, 2017

ARRANGEMENT OF SECTIONS

Section

1. Section 8 of Act 32 amended
2. Section 13 of Act 32 amended
3. Section 13A of Act 32 inserted
4. Section 15A to 15C of Act 32 inserted
5. Section 16 of Act 32 amended
6. Section 16A of Act 32 amended
7. Section 16B of Act 32 inserted
8. Section 17 of Act 32 amended
9. Section 17A to 17D of Act 32 inserted
10. Section 18 of Act 32 amended
11. Section 19 of Act 32 amended
12. Section 19A of Act 32 inserted
13. Section 20 of Act 32 amended
14. Section 21 of Act 32 amended
15. Section 21A of Act 32 inserted
16. Section 23 of Act 32 amended
17. Section 56 of Act 32 amended
18. First Schedule to Act 32 amended

Legal Profession (Amendment) Bill, 2017

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BILL

ENTITLED

LEGAL PROFESSION (AMENDMENT) ACT, 2017

AN ACT to amend the Legal Profession Act, 1960 (Act 32) to provide for additional requirements for admission into the Ghana School of Law comprising passing an entrance examination and an interview conducted for that purpose; to provide for the training of lawyers with reference to pupillage and requirements for a solicitor's licence and to provide for the discipline of lawyers with respect to professional misconduct.

PASSED by Parliament and assented to by the President:

Section 8 of Act 32 amended

1. The Legal Profession Act, 1960 (Act 32) referred to in this Act as the principal enactment is amended in section 8

(a) by the substitution for subsection (3) of

“(3) A person who has not previously been entitled to practise as a solicitor in the Republic and who does not hold a qualifying certificate but has, after qualification, attended

Legal Profession (Amendment) Bill, 2017

and satisfactorily completed the Post-Call Law Course of the Ghana School of Law, shall not be issued with a solicitor's licence unless that person satisfies the Council that since qualifying as a lawyer, that person has read for a period of not less than one year in the chambers of another lawyer of not less than seven years' standing approved by the Council."

(b) by the substitution for subsection (4) of

"(4) A person who holds a qualifying certificate and who has been enrolled as a lawyer under section 3 may be issued with a solicitor's licence, but that person is not entitled to establish an office as a solicitor unless the Council is satisfied that that person has read for a period of not less than one year in the chambers of another lawyer of not less than seven years' standing approved by the Council."

(c) by the substitution for subsection (5) of

"(5) The Council may, before issuing an annual solicitor's licence to a person, require that person to produce evidence specified by the Council showing that, that person has

(a) not been found guilty of professional misconduct in the Republic or in any other country;

(b) not been sanctioned for professional misconduct;

(c) undertaken at least twelve hours of continuing legal education programmes; and

(d) provided legal aid service."; and

(d) by the insertion after subsection (5) of

"(5A) The Council may review the requirements for the issuance of a solicitor's licence."

Section 13 of Act 32 amended

2. The principal enactment is amended in section 13 by the insertion after subsection (2) of

"(2A) The Council may allocate quotas to universities that the Council has approved to run the Bachelor of Laws programme."

Legal Profession (Amendment) Bill, 2017

Section 13A of Act 32 inserted

3. The principal enactment is amended by the insertion after section 13 of

“Requirements for admission

13A. (1) A person is qualified for admission to the Ghana School of Law if that person has successfully passed an

- (a) entrance examination; and
- (b) interview

conducted for that purpose.”

Section 15A to 15C of Act 32 inserted

4. The principal enactment is amended by the insertion after section 15 of

“Independent Examinations Committee

15A. (1) The Council shall establish an Independent Examinations Committee.

(2) The Independent Examinations Committee shall

- (a) administer examinations for admission into the Ghana School of Law;
- (b) administer examinations for qualification for enrolment; and
- (c) administer any other examination mandated by the Council.

(3) The Independent Examinations Committee shall consist of a minimum of seven persons.

(4) A person is qualified to be appointed by the Council as a member of the Independent Examinations Committee if that person is

- (a) a Justice of the Superior Courts of Judicature or a retired Justice of the Superior Courts of Judicature;
- (b) a lawyer of not less than ten years’ standing at the Bar;
- (c) a legal academic who is at least of the level of a Senior Lecturer; or
- (d) a member of the Institute of Chartered Accountants, Ghana.

(5) The Council may reconstitute the Independent Examinations Committee.

Legal Profession (Amendment) Bill, 2017

Tenure of office of members of Independent Examinations Committee

15B. (1) A member of the Independent Examinations Committee shall hold office for a period of not more than four years and is on the expiration of that period eligible for re-appointment but a member shall not be appointed for more than two terms.

(2) The Council may

- (a) remove a member from the Independent Examinations Committee for a sufficient reason; and
- (b) fill a vacancy in the Independent Examinations Committee.

(3) Where a member of the Independent Examinations Committee is, for a sufficient reason, unable to act as a member, the chairperson shall determine whether the inability would result in the declaration of a vacancy.

(4) Where there is a vacancy

- (a) as a result of a declaration under subsection (3), or
- (b) by reason of the death of a member,

the chairperson shall notify the Council of the vacancy and the Council shall appoint a person to fill the vacancy.

Allowances

15C. A member of the Independent Examinations Committee shall be paid the allowances approved by the Council.”

Section 16 of Act 32 amended

5. The principal enactment is amended in section 16 by the substitution for subsection (1) of

“(1) A lawyer who is found guilty of professional misconduct is liable

- (a) to be issued with a reprimand letter from the Council;
- (b) to be prohibited from practising as a lawyer for a period specified in the order of suspension; or
- (c) to have the name of that lawyer struck off the Roll of Lawyers;

Section 16A of Act 32 amended

6. The principal enactment is amended in section 16A by the substitution for subsection (1) of

Legal Profession (Amendment) Bill, 2017

“(1) The Council may direct the Judicial Secretary to strike off the Roll of Lawyers, without holding a disciplinary inquiry, the name of a lawyer who

(a) is convicted of an offence involving dishonesty or moral turpitude,

(b) is sanctioned for an act of dishonesty or moral turpitude, or

(c) purports to practise while on suspension

and the Judicial Secretary shall comply with the directive.”

Section 16B of Act 32 inserted

7. The principal enactment is amended by the insertion after section 16A of

“Prohibition to practise pending the determination of criminal proceedings

16B. (1) Despite section 16A, where

(a) criminal proceedings involving dishonesty or moral turpitude are pending in a court against a lawyer; or

(b) an appeal against a conviction against a lawyer under paragraph (a) has not been determined,

that lawyer may be suspended from practising by the Disciplinary Committee subject to the right of appeal to the Supreme Court.

(2) An action pending in Court against a lawyer shall not preclude the Disciplinary Committee from making an inquiry into a matter involving that lawyer.

(3) Section 9 applies to a lawyer who is prohibited under subsection (1) from practising as it applies to a person who is not enrolled.”

Section 17 of Act 32 amended.

8. The principal enactment is amended by the substitution for section 17 of

“Disciplinary Committee

17. (1) The Council shall, for the discharge of its duties, establish a Disciplinary Committee to uphold the standards of professional conduct of lawyers.

(2) The Disciplinary Committee shall consist of not less than nine members.

Legal Profession (Amendment) Bill, 2017

- (3) The Council shall appoint
- (a) from among its members,
 - (b) from persons who hold or have held high judicial office or an equivalent office or are qualified to be appointed to that office, or
 - (c) former members of the Council, as persons to constitute the membership of the Disciplinary Committee.”

Section 17A to 17D of Act 32 inserted

9. The principal enactment is amended by the insertion after section 17 of

“Functions of Disciplinary Committee

17A. The functions of the Disciplinary Committee are to

- (a) receive complaints and reports;
- (b) investigate reports of professional misconduct of lawyers and recommend to the Council, appropriate sanctions; and
- (c) determine any other matter that the Council may refer to the Disciplinary Committee.

Tenure of office of members of Disciplinary Committee

17B. (1) A member of the Disciplinary Committee shall hold office for a period of not more than four years and is on the expiration of that period eligible for re-appointment but a member shall not be appointed for more than two terms.

(2) The Council may

- (a) remove a member from the Disciplinary Committee for a sufficient reason; and
- (b) fill a vacancy in the Disciplinary Committee.

(3) Where a member of the Disciplinary Committee is, for a sufficient reason, unable to act as a member, the chairperson shall determine whether the inability would result in the declaration of a vacancy.

(4) Where there is a vacancy

- (a) as a result of a declaration under subsection (3), or
- (b) by reason of the death of a member, the chairperson shall notify the Council of the vacancy and the Council shall appoint a person to fill the vacancy.

Meetings of the Disciplinary Committee

17C. (1) The Disciplinary Committee shall meet at least once in a month at the times determined by the chairperson.

(2) The chairperson shall communicate in writing, including by electronic mail, a notice to each member of the Disciplinary Committee, stating the time and place at which the meeting is to be held.

(3) The quorum at a meeting of the Disciplinary Committee is a simple majority of members of the Disciplinary Committee.

(4) The chairperson shall preside at meetings of the Disciplinary Committee and in the absence of the chairperson, a member of the Disciplinary Committee nominated by the members present shall preside.

(5) Matters before the Disciplinary Committee shall be decided by

(a) a majority of the members present and voting and in the event of an equality of votes, the person presiding shall have a casting vote, or

(b) a unanimous decision in prescribed cases.

(6) The Disciplinary Committee may co-opt a person to attend the formal inquiries of the Disciplinary Committee where necessary but the co-opted person shall not be a member of the Disciplinary Committee.

(7) The procedure for meetings shall be determined by the Disciplinary Committee.

Allowances

17D. A member of the Disciplinary Committee and a member of a disciplinary panel constituted by the Disciplinary Committee shall be paid the allowances approved by the Council.”.

Section 18 of Act 32 amended

10. The principal enactment is amended by the substitution for section 18 of

“Reference to Disciplinary Committee

18. (1) A complaint by a person relating to a matter of professional misconduct involving a practising lawyer shall be referred to the Disciplinary Committee established under section 17.

(2) If it appears to the Disciplinary Committee that an inquiry ought to be held into the complaint, the Disciplinary Committee shall proceed to hold the inquiry.”

Legal Profession (Amendment) Bill, 2017

Section 19 of Act 32 amended

11. The principal enactment is amended in section 19

(a) by the substitution for subsection (1) of

“(1) The Council may, by legislative instrument, make Rules to provide for

- (a) the times and places of the meetings of the Disciplinary Committee;
- (b) the manner of summoning members to the Disciplinary Committee;
- (c) the procedure to be followed by the Disciplinary Committee; and
- (d) the rules of evidence to be observed in an inquiry; and in particular
 - (i) for securing that a party to the inquiry, if that party so requires, is entitled to be heard by the Disciplinary Committee;
 - (ii) for enabling a party to the inquiry to be represented by a lawyer;
 - (iii) for allowances payable to witnesses of their expenses subject to the prescribed limits; and
 - (iv) for prescribing the number of members to hold an inquiry in a disciplinary case and the cases in which the decision must be unanimous.”;

(b) by the substitution for subsection (7) of

“(7) A person who at a sitting of the Disciplinary Committee engages in a misconduct or willfully interrupts the proceedings of the Disciplinary Committee, commits an offence and is liable on summary conviction to a fine of not less than one hundred penalty units and not more than two hundred penalty units or to a term of imprisonment of not less than six months and not more than twelve months or to both.”; and

(c) by the insertion after subsection (7) of

“(7A) Where the misconduct amounts to a criminal offence, the case shall be referred to the Attorney-General for prosecution.

Legal Profession (Amendment) Bill, 2017

(7B) Where the misconduct amounts to contempt, the Disciplinary Committee shall apply to the High Court for sentencing.”

Section 19A of Act 32 inserted

12. The principal enactment is amended by the insertion after section 19 of

“Medical assessment and report

19A. (1) Where a lawyer who appears before a Disciplinary Committee exhibits behaviour which presupposes that the lawyer has a mental disorder, the chairperson of the Disciplinary Committee shall

- (a) defer proceedings on the matter before the Disciplinary Committee;
- (b) suspend the solicitor’s licence of that lawyer; and
- (c) refer the lawyer concerned to a qualified mental health professional for assessment.

(2) If the lawyer refuses to submit to the mental health assessment within three months, the disciplinary proceedings shall take its normal course.

(3) The qualified mental health professional shall within one month submit a report, including a recommendation on the assessment to the chairperson of the Disciplinary Committee.

(4) Where the report from the qualified mental health professional to the Disciplinary Committee indicates that the lawyer has a mental disorder, the Disciplinary Committee shall suspend the disciplinary proceedings indefinitely and shall make recommendations to the Council.

(5) Where the report from the qualified mental health professional indicates that the lawyer does not have a mental disorder,

- (a) the solicitor’s licence of that lawyer shall be re-instated; and
- (b) the disciplinary proceedings against that lawyer shall continue.”

Section 20 of Act 32 amended

13. The principal enactment is amended in section 20 by the insertion after subsection (1) of

“(1A) Without limiting subsection (1), a disciplinary measure includes a pecuniary penalty.”

Legal Profession (Amendment) Bill, 2017

Section 21 of Act 32 amended

14. The principal enactment is amended by the substitution for section 21 of

“Right of appeal

21. Where the Disciplinary Committee on the conclusion of an inquiry into a disciplinary case directs the taking of a disciplinary measure or postpones the decision under section 20, the lawyer into whose conduct the inquiry was made or the complaint may, within twenty-one days from the date on which the decision of the Disciplinary Committee is communicated by the Disciplinary Committee, appeal to the Supreme Court

(a) on a question of law, or

(b) on a question of fact with the leave of the Disciplinary Committee or of the Supreme Court.”

Section 21A of Act 32 inserted

15. The principal enactment is amended by the insertion after section 21 of

“Bar in disciplinary proceedings

21A. An appeal under section 21 shall not operate as a stay of proceedings.”.

Section 23 of Act 32 amended

16. The principal enactment is amended by the substitution for section 23 of

“Rules of professional conduct

23. The Council may prescribe standards of professional etiquette and professional conduct for lawyers, and may by Rules made for this purpose direct that a specified breach of the Rules constitutes, for the purposes of this Act, a professional misconduct.”

Section 56 of Act 32 amended

17. The principal enactment is amended in section 56 by the insertion after “practise” of

“professional misconduct” includes instances where a lawyer

(a) violates or attempts to violate the rules of professional conduct, or knowingly assists or induces another lawyer to do so;

Legal Profession (Amendment) Bill, 2017

- (b) violates or attempts to violate the rules of professional conduct, or knowingly assists or induces another lawyer to do so through the acts of another person;
- (c) commits a criminal offence that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- (d) engages in a conduct which involves dishonesty, fraud, deceit or misrepresentation;
- (e) engages in a conduct that is prejudicial to the administration of justice;
- (f) states or implies an ability to improperly influence a government agency or official or to achieve results by means that violate the rules of professional conduct or other law; or
- (g) knowingly assists a judge or judicial officer in a manner that violates the applicable rules of judicial conduct or any other law."

First Schedule to Act 32 amended

18. The principal enactment is amended in paragraph 3 of the First Schedule by the substitution for subparagraph (4) of

"(4) The Council may establish committees and may delegate to a committee any of the functions of the Council other than a function in respect of professional misconduct."

Date of *Gazette* notification:

Legal Profession (Amendment) Bill, 2017

MEMORANDUM

The object of the Bill is to amend the Legal Profession Act, 1960 (Act 32) to provide for additional requirements for admission into the Ghana School of Law, the training of lawyers with reference to pupillage and requirements for a solicitor's licence, and the discipline of lawyers.

Clause 1 of the Bill amends section 8 of Act 32 to extend the period of pupillage from six months to one year. This is to enable a person who has satisfactorily completed the Post-Call Law Course of the Ghana School of Law to receive adequate training of not less than one year from the chambers of another lawyer of not less than seven years' standing approved by the General Legal Council before being issued with a solicitor's licence. It is also to enable a person who holds a qualifying certificate and who has been enrolled as a lawyer to receive adequate training of not less than one year from the chambers of another lawyer of not less than seven years' standing approved by the General Legal Council before being issued with a solicitor's licence. In addition, *clause 1* amends section 8 of the Act with reference to the requirements of the Council as regards the issue of a solicitor's licence. The Council may, before issuing an annual solicitor's licence to a person, require that person to produce evidence specified by the Council showing that, that person has not been found guilty of professional misconduct in the Republic or in any other country; has not been sanctioned for professional misconduct; has undertaken at least twelve hours of continuing legal education programmes and has provided legal aid service. The clause also inserts a new subsection to provide for the General Legal Council to review the requirements for the issuance of a solicitor's licence.

Clause 2 amends section 13 of the Act by the insertion of a new subsection (2A) to enable the General Legal Council allocate quotas to universities that the Council has approved to run the Bachelor of Laws programme.

Clause 3 inserts a new section 13A to introduce the requirements of an entrance examination and an interview before a person gains admission to the Ghana School of Law.

Legal Profession (Amendment) Bill, 2017

Clause 4 introduces sections 15A, 15B and 15C to provide for an Independent Examinations Committee to administer examinations in the Ghana School of Law; to provide for the tenure of office of members of the Independent Examinations Committee and to provide for allowances for members of the Independent Examinations Committee.

Clause 5 amends section 16 of the Act to provide for disciplinary matters of the legal profession. By *clause 5*, a lawyer who is found guilty of professional misconduct is liable to be issued with a reprimand letter from the Council, to be prohibited from practising as a lawyer for a period specified in the order of suspension or to have the name of the lawyer struck off the Roll of Lawyers.

Clause 6 amends section 16A of the Act by the substitution of subsection (1) to provide for the Council to direct the Judicial Secretary to strike off the Roll of Lawyers, without holding a disciplinary inquiry, the name of a lawyer who is convicted of an offence involving dishonesty or moral turpitude, who is sanctioned for an act of dishonesty or moral turpitude or who purports to practise while on suspension.

Clause 7 introduces section 16B which provides that despite section 16A which deals with erasure on conviction of certain offences, where criminal proceedings involving dishonesty or moral turpitude are pending in a court against a lawyer or an appeal against the conviction of a lawyer has not been determined, the lawyer may be suspended from practising by the Disciplinary Committee subject to the right of appeal to the Supreme Court. The clause also provides that an action pending in Court against a lawyer shall not preclude the Disciplinary Committee from making an inquiry into a matter involving that lawyer. The clause further provides for the application of section 9 of the Act, which deals with the penalty for unlawful practice, to a lawyer who is prohibited from practising as it applies to a person who is not enrolled.

Clause 8 amends section 17 of the Act by substitution, to provide for the establishment of a disciplinary committee to uphold the standards of professional conduct. Consequentially *clause 9* introduces new provisions namely sections 17A, 17B, 17C and 17D to provide respectively for the

Legal Profession (Amendment) Bill, 2017

functions, tenure of office of members, meetings and allowances for the Disciplinary Committee established under *clause 8*.

Clause 10 amends section 18 by substitution to introduce the expression “professional misconduct” in relation to the referral of matters to a Disciplinary Committee.

Clause 11 seeks to amend section 19 of the Act to empower the General Legal Council to make Rules instead of the Disciplinary Committee to make Rules. The clause further provides a lower and an upper penalty thresholds for a person at a sitting of the Disciplinary Committee who engages in a misconduct or willfully interrupts the proceedings of the Disciplinary Committee. Where the misconduct amounts to a criminal offence, the case shall be referred to the Attorney-General for prosecution and where the misconduct amounts to contempt, the Disciplinary Committee shall apply to the High Court for sentencing.

Clause 12 inserts section 19A to introduce a new provision on medical assessment and report. The import of the clause is to address cases where a lawyer who appears before the Disciplinary Committee exhibits behaviour which presupposes that that lawyer has a mental disorder. The clause outlines the procedure to be followed by the Disciplinary Committee and the General Legal Council.

Clause 13 amends section 20 of the Act by the insertion of a new subsection (1A) to provide for a pecuniary penalty to be included as part of the disciplinary measures that may be taken by the Disciplinary Committee.

Clause 14 amends section 21 of the Act to indicate that a decision of the Disciplinary Committee may be appealed against to the Supreme Court.

Clause 15 introduces a new section 21A to state that an appeal does not operate as a stay of proceedings. This means that disciplinary proceedings may continue despite the fact that an appeal may be pending.

Legal Profession (Amendment) Bill, 2017

Clause 16 amends section 23 of the Act to provide for the Council to make Rules to prescribe standards of professional etiquette and professional conduct for lawyers and for a specified breach of the Rules to constitute a professional misconduct.

Clause 17 amends section 56 of the Act which provides for the interpretation of words and expressions. The clause makes provision for an expansive definition for the expression “professional misconduct”.

Clause 18 seeks to amend subparagraph (4) of paragraph 3 of the First Schedule to the Act to empower the General Legal Council to establish committees and to delegate to a committee any of the functions of the Council other than a function in respect of professional misconduct.

GLORIA AFUA AKUFFO (MISS)
Attorney-General and Minister for Justice

Date: