



Department for Constitutional Affairs

**Draft Legal Services Bill,
Explanatory Notes and
Regulatory Impact Assessment**

Presented to Parliament by the Secretary of State for
Constitutional Affairs and Lord Chancellor
by Command of Her Majesty

May 2006

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Legal Services Bill

CONTENTS

PART 1

THE REGULATORY OBJECTIVES

- 1 The regulatory objectives

PART 2

THE LEGAL SERVICES BOARD

Constitution

- 2 The Legal Services Board

General functions

- 3 Board's duty to promote the regulatory objectives etc
- 4 Corporate governance
- 5 Annual report
- 6 Supplementary powers

Consumer Panel

- 7 The Consumer Panel
- 8 Representations by the Consumer Panel

PART 3

RESERVED LEGAL ACTIVITIES

Reserved legal activities

- 9 Meaning of "reserved legal activity" and "legal activity"

Carrying on the activities

- 10 Entitlement to carry on a reserved legal activity

Offences

- 11 Offence to carry on a reserved legal activity if not entitled
- 12 Offence to pretend to be entitled

Interpretation

- 13 Authorised persons
- 14 Exempt persons
- 15 Approved regulators and relevant approved regulators
- 16 Regulatory arrangements

Continuity of existing rights and transitional protection

- 17 Continuity of existing rights to carry on reserved legal activities
- 18 Transitional protection for not for profit bodies

Alteration of reserved legal activities

- 19 Extension of the reserved legal activities
- 20 Provisional designation as approved regulators and licensing authorities
- 21 Recommendations that activities should cease to be reserved legal activities

PART 4

REGULATION OF APPROVED REGULATORS

Introductory

- 22 Regulatory functions of approved regulators

General duties of approved regulators

- 23 Approved regulator's duty to promote the regulatory objectives etc

Performance targets

- 24 Performance targets and monitoring

Directions

- 25 Directions
- 26 Directions: procedure
- 27 Enforcement of directions

Censure

- 28 Public censure
- 29 Public censure: procedure

Financial penalties

- 30 Financial penalties
- 31 Financial penalties: procedure
- 32 Appeals against financial penalties

33 Recovery of financial penalties

Intervention

- 34 Intervention directions
- 35 Intervention directions: further provision
- 36 Intervention directions: enforcement
- 37 Revocation of an intervention direction

Cancellation of approval

- 38 Cancellation of designation as approved regulator
- 39 Supplementary provision relating to cancellation of a designation
- 40 The Board's power to recommend orders made under section 39

Policy statements

- 41 The Board's policy statements
- 42 Policy statement: procedure

Practising fees

- 43 Control of practising fees charged by approved regulators

Information

- 44 Provision of information to the Board
- 45 Enforcement of notices under section 44

Competition

- 46 Reports by the OFT
- 47 The Board's response to OFT report
- 48 Referral of report by the Secretary of State to the Competition Commission
- 49 Duties of the Competition Commission
- 50 Secretary of State's power to give directions

The Board as approved regulator

- 51 The Board as an approved regulator
- 52 The Board's designation under section 51(1)(a)
- 53 Modification of the Board's functions under section 51(1)(b)
- 54 Cancellation of the Board's designation under section 51(1)(c)
- 55 The Board's power to recommend orders made under section 51
- 56 Effect of the Board's designation as an approved regulator

Functions of approved regulators

- 57 Modification of the functions of approved regulators
- 58 The Board's power to recommend orders made under section 57

PART 5

ALTERNATIVE BUSINESS STRUCTURES

Introductory

- 59 Carrying on of activities by licensed bodies

Licensing authorities

- 60 Licensing authorities and relevant licensing authorities
61 Designation of approved regulator as licensing authority
62 Automatic cancellation of designation as licensing authority
63 Cancellation of designation as licensing authority by order
64 Supplementary provision relating to cancellation of a designation
65 The Board's power to recommend orders made under section 64

Licensing rules

- 66 Licensing rules

Licensing

- 67 Application for licence
68 Terms of licence
69 Modification of licence
70 Registers of licensed bodies
71 Evidence of status
72 Offence to pretend to be a licensed body

Ownership of licensed bodies

- 73 Disclosure of ownership
74 Change of ownership

Regulation of licensed bodies

- 75 Duties of Head of Legal Practice
76 Duties of Head of Finance and Administration
77 Information
78 Enforcement of notices under section 77
79 Financial penalties
80 Financial penalties: procedure
81 Appeals against financial penalties
82 Recovery of financial penalties
83 Referral of employees etc to appropriate regulator
84 Disqualification lists
85 Suspension and revocation of licence
86 Prevention of regulatory conflict: accounts rules
87 Resolution of regulatory conflict

Special kinds of body

- 88 Not for profit bodies

89 Foreign bodies

Interpretation

90 “Interest” and “material interest”

91 Interpretation of Part 5

PART 6

LEGAL COMPLAINTS

The Office for Legal Complaints and the scheme

92 The Office for Legal Complaints and the ombudsman scheme

93 Promotion of the regulatory objectives etc

94 Corporate governance

95 Annual report

96 Supplementary powers

Accountability of the OLC to the Board

97 Reporting to the Board

98 Performance targets and monitoring

The ombudsman

99 Appointment of the Chief Ombudsman and assistant ombudsmen

100 The Chief Ombudsman’s report

101 Delegation of an ombudsman’s functions

Operation of the ombudsman scheme

102 Jurisdiction of the ombudsman scheme

103 Acts and omissions by employees etc

104 Continuity of complaints

105 Scheme rules

106 Charges payable by respondents

107 Consent requirements for rules

108 The Board’s powers in respect of rules

Determinations under the scheme

109 Determination of complaints

110 Limitation on value of directions under the ombudsman scheme

111 Alteration of limit

112 Acceptance or rejection of determination

113 Enforcement of directions under section 109

114 Reporting court orders made against authorised persons

Complaints procedures of authorised persons

115 Complaints procedures of authorised persons

Co-operation with investigations

- 116 Duties to co-operate with investigations and share information
- 117 Reporting failures to co-operate with an investigation to approved regulators

Information

- 118 Information and documents
- 119 Reporting failures to provide information or produce documents
- 120 Enforcement of requirements to provide information or produce documents
- 121 Reports of investigations
- 122 Restricted information
- 123 Disclosure of restricted information
- 124 Data protection

Reporting misconduct

- 125 Reporting possible misconduct to approved regulators

Defamation

- 126 Protection from defamation claims

Effect on existing arrangements for redress etc

- 127 Approved regulators not to make provision for redress
- 128 Legal Services Complaints Commissioner and Legal Services Ombudsman

Interpretation

- 129 Interpretation of Part 6

PART 7**FINANCIAL PROVISIONS***Payments by Secretary of State*

- 130 Funding

The levy

- 131 The levy
- 132 The levy: supplementary provisions

Payments into the Consolidated Fund

- 133 Amounts payable into the Consolidated Fund

PART 8

MISCELLANEOUS AND GENERAL PROVISIONS

Guidance

134 Guidance

Voluntary arrangements

135 Voluntary arrangements

Solicitors Disciplinary Tribunal

136 The Solicitors Disciplinary Tribunal

Use of information

137 Use of information

Representative functions

138 The Board not to interfere with approved regulators' representative functions

Legal professional privilege

139 Legal professional privilege

Immigration advice and immigration services

140 Immigration advisers and immigration service providers

Advocates and litigators

141 Duties of advocates and litigators

142 Employed advocates

Savings

143 Powers of court in respect of rights of audience and conduct of litigation

144 Savings for solicitors to public departments and the City of London

Offences

145 Offences committed by bodies corporate and unincorporated bodies

146 Local weights and measures authorities

Notices etc

147 Notices and directions

148 Documents

149 The giving of notices, directions and other documents

150 The giving of notices, directions and other documents in electronic form

Orders, rules etc

- 151 Orders, rules etc
- 152 Consultation requirements for rules
- 153 Parliamentary control of orders

Interpretation

- 154 Interpretation
- 155 Index of defined expressions

Miscellaneous and supplementary

- 156 Power to make consequential provision etc
- 157 Commencement
- 158 Extent
- 159 Short title

-
- Schedule 1 – The Legal Services Board
 - Schedule 2 – The reserved legal activities
 - Schedule 3 – Exempt persons
 - Schedule 4 – Authorised persons
 - Part 1 – Continuity of rights
 - Part 2 – Rights during transitional period
 - Part 3 – Interpretation
 - Schedule 5 – Approved regulators
 - Part 1 – Existing regulators
 - Part 2 – Designation of bodies by order
 - Part 3 – Alteration of approved regulator’s regulatory arrangements
 - Schedule 6 – Alteration of reserved legal activities
 - Schedule 7 – Directions: procedure
 - Schedule 8 – Intervention directions: procedure
 - Part 1 – Giving intervention directions
 - Part 2 – Revoking intervention directions
 - Schedule 9 – Cancellation of designation as approved regulator
 - Schedule 10 – Designation of approved regulators as licensing authorities
 - Part 1 – Designation of approved regulators by order
 - Part 2 – Cancellation of designation by order
 - Schedule 11 – Licensing rules
 - Part 1 – Licensing procedure
 - Part 2 – Structural requirements
 - Part 3 – Practice requirements
 - Part 4 – Regulation
 - Schedule 12 – Licensing authority’s powers of intervention
 - Schedule 13 – The Office for Legal Complaints
 - Schedule 14 – Immigration advice and immigration services
 - Part 1 – Qualifying regulators
 - Part 2 – Amendments of the Immigration and Asylum Act 1999 (c. 33)
 - Part 3 – Transitional provision
 - Schedule 15 – Index of defined expressions

A
B I L L

TO

Make provision for the establishment of the Legal Services Board and in respect of its functions; to make provision for, and in connection with, the regulation of persons who carry on certain legal activities; to make provision for the establishment of the Office for Legal Complaints and for a scheme to consider and determine legal complaints; and for connected purposes.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART 1

THE REGULATORY OBJECTIVES

1 The regulatory objectives

- (1) In this Act a reference to “the regulatory objectives” is a reference to the objectives of— 5
- (a) supporting the constitutional principle of the rule of law;
 - (b) improving access to justice;
 - (c) protecting and promoting the interests of consumers;
 - (d) promoting competition in the provision of services within subsection (2); 10
 - (e) encouraging a strong, diverse and effective legal profession;
 - (f) increasing public understanding of the citizen’s legal rights and duties;
 - (g) promoting and maintaining adherence to the professional principles.
- (2) The services mentioned in subsection (1)(d) are services provided by persons who are authorised persons in relation to activities which are reserved legal activities (see sections 9 and 13). 15
- (3) The “professional principles” are—
- (a) that persons who are authorised persons in relation to activities which are reserved legal activities should act with independence and integrity, 20

- (b) that such persons should act in the best interests of their clients, and
- (c) that the affairs of clients should be kept confidential.

PART 2

THE LEGAL SERVICES BOARD

Constitution

5

2 The Legal Services Board

- (1) There is to be a body corporate called the Legal Services Board (“the Board”).
- (2) Schedule 1 is about the Board.

General functions

3 Board’s duty to promote the regulatory objectives etc 10

- (1) In discharging its functions the Board must comply with the requirements of this section.
- (2) The Board must, so far as is reasonably practicable, act in a way –
 - (a) which is compatible with the regulatory objectives, and
 - (b) which the Board considers most appropriate for the purpose of meeting those objectives. 15
- (3) The Board must have regard to –
 - (a) the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, and 20
 - (b) any other principle appearing to it to represent the best regulatory practice.

4 Corporate governance

In managing its affairs, the Board must have regard to such generally accepted principles of good corporate governance as it is reasonable to regard as applicable to it. 25

5 Annual report

- (1) The Board must prepare a report (“the annual report”) for each financial year.
- (2) The annual report must deal with –
 - (a) the discharge of the Board’s functions, 30
 - (b) the extent to which, in the Board’s opinion, the Board has met the regulatory objectives, and
 - (c) such other matters as the Secretary of State may from time to time direct.
- (3) As soon as reasonably practicable after the end of each financial year, the Board must give to the Secretary of State a copy of the annual report prepared for that year. 35

- (4) The Secretary of State must lay a copy of the annual report before Parliament.
- (5) In this section “financial year” means—
 - (a) the period beginning with the day on which the Board is established and ending with the next following 31 March, and
 - (b) each successive period of 12 months.

5

6 Supplementary powers

The Board may do anything calculated to facilitate, or incidental or conducive to, the carrying out of any of its functions.

Consumer Panel

7 The Consumer Panel 10

- (1) The Board must establish and maintain a panel of persons (to be known as “the Consumer Panel”) to represent the interests of consumers.
- (2) The Board must appoint to the Consumer Panel such consumers, or persons representing the interests of consumers, as the Board considers appropriate.
- (3) The Board must appoint one of the members of the Consumer Panel to be the chairman of the Panel. 15
- (4) The Board must secure that the membership of the Consumer Panel is such as to give a fair degree of representation to both—
 - (a) those who are using (or are or may be contemplating using), in connection with businesses carried on by them, services provided by persons who are authorised persons in relation to activities which are reserved legal activities, and 20
 - (b) those who are using (or are or may be contemplating using) such services otherwise than in connection with businesses carried on by them. 25
- (5) The Panel must not include any person who is—
 - (a) a member of the Board or of its staff,
 - (b) a member of the Office for Legal Complaints (see Part 6), an ombudsman appointed by it or a member of its staff appointed under paragraph 11 of Schedule 13, 30
 - (c) a member of the governing body, or of the staff, of an approved regulator, or
 - (d) an authorised person in relation to an activity which is a reserved legal activity.

8 Representations by the Consumer Panel 35

- (1) The Board must consider any representations made to it by the Consumer Panel.
- (2) If the Board disagrees with a view expressed, or proposal made, in the representations, it must give the Consumer Panel a notice to that effect stating its reasons for disagreeing. 40

PART 3

RESERVED LEGAL ACTIVITIES

*Reserved legal activities***9 Meaning of “reserved legal activity” and “legal activity”**

- (1) In this Act “reserved legal activity” means – 5
- (a) the exercise of a right of audience;
 - (b) the conduct of litigation;
 - (c) reserved instrument activities;
 - (d) probate activities;
 - (e) notarial activities; 10
 - (f) the administration of oaths.
- (2) Schedule 2 makes provision about what constitutes each of those activities.
- (3) In this Act “legal activity” means – 15
- (a) an activity which is a reserved legal activity within the meaning of this Act as originally enacted, and
 - (b) any other activity which consists of one or both of the following – 20
 - (i) the provision of legal advice or assistance in connection with the application of the law or with any form of resolution of legal disputes;
 - (ii) the provision of representation in connection with any matter concerning the application of the law or any form of resolution of legal disputes. 25
- (4) But “legal activity” does not include any activity of a judicial or quasi-judicial nature (including acting as a mediator).
- (5) For the purposes of subsection (3) “legal dispute” includes a dispute as to any matter of fact, the resolution of which is relevant to determining the nature of any person’s legal rights or liabilities. 30
- (6) Section 19 makes provision for adding legal activities to the reserved legal activities.

Carrying on the activities 30**10 Entitlement to carry on a reserved legal activity**

- (1) The question whether a person is entitled to carry on an activity which is a reserved legal activity is to be determined solely in accordance with the provisions of this Act.
- (2) A person is entitled to carry on an activity (“the relevant activity”) which is a reserved legal activity where – 35
- (a) the person is an authorised person in relation to the relevant activity, or
 - (b) the person is an exempt person in relation to that activity.
- (3) Subsection (2) is subject to section 18 (transitional protection for not for profit bodies). 40

Offences

11 Offence to carry on a reserved legal activity if not entitled

- (1) It is an offence for a person to carry on an activity (“the relevant activity”) which is a reserved legal activity unless that person is entitled to carry on the relevant activity. 5
- (2) In subsection (1) the reference to a person carrying on an activity includes a person (“P”) who carries on an activity in P’s capacity as—
 - (a) an employee of a body or other person, or
 - (b) an officer of a body.

For this purpose it is irrelevant whether the body or other person of which P is an employee or officer is entitled to carry on the activity. 10
- (3) In proceedings for an offence under subsection (1), it is a defence for the accused to show that the accused did not know, and could not reasonably have been expected to know, that the offence was being committed.
- (4) A person who is guilty of an offence under subsection (1) is liable— 15
 - (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both), and
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both).
- (5) A person who is guilty of an offence under subsection (1) by reason of an act done in the purported exercise of a right of audience, or a right to conduct litigation, in relation to any proceedings or contemplated proceedings is also guilty of contempt of the court concerned and may be punished accordingly. 20

12 Offence to pretend to be entitled

- (1) It is an offence for a person— 25
 - (a) wilfully to pretend to be entitled to carry on any activity which is a reserved legal activity when that person is not so entitled, or
 - (b) with the intention of implying falsely that that person is so entitled, to take or use any name, title or description.
- (2) A person who is guilty of an offence under subsection (1) is liable— 30
 - (a) on summary conviction, to a fine not exceeding level 4 on the standard scale, and
 - (b) on conviction on indictment, to a fine.

Interpretation

13 Authorised persons

- (1) For the purposes of this Act “authorised person”, in relation to an activity (“the relevant activity”) which is a reserved legal activity, means —
 - (a) a person who is authorised to carry on the relevant activity by a relevant approved regulator in relation to the relevant activity (other than by virtue of a licence under Part 5), or 40
 - (b) a body which, by virtue of such a licence, is authorised to carry on the relevant activity by the Board or by an approved regulator which is a

licensing authority designated under Part 1 of Schedule 10 in relation to the reserved legal activity.

- (2) But, for those purposes –
 - (a) a licensable body, or
 - (b) a not for profit body, 5
 may be an authorised person, in relation to the relevant activity, only if it is authorised to carry on the activity by virtue of a licence, as mentioned in subsection (1)(b).
- (3) Subsection (2) is subject to Part 2 of Schedule 4 and provision made under section 20(3)(b) (by virtue of which licensable bodies may be deemed to be authorised as mentioned in subsection (1)(a) in relation to certain activities during a transitional period). 10
- (4) Section 18 makes transitional provision in respect of not for profit bodies.
- (5) For the purposes of this section a body is a “licensable body” if at least one of the persons within subsection (6) is a person who is not an authorised person in relation to any activity which is a reserved legal activity. 15
- (6) The persons within this subsection are –
 - (a) any individual who is a manager of the body, and
 - (b) any person who has an interest in the body.
- (7) For the purposes of subsection (6) – 20
 - (a) “manager” has the meaning given by section 91(2), and
 - (b) subsections (2), (4) and (5) of section 90 apply to determine whether a person has an interest in a body.

14 Exempt persons

- (1) In this Act, “exempt person”, in relation to an activity (“the relevant activity”) which is a reserved legal activity, means a person who is, by virtue of Schedule 3, an exempt person for the purposes of carrying on the relevant activity. 25
- (2) But a not-for-profit body cannot be an exempt person for the purposes of this Act.

15 Approved regulators and relevant approved regulators 30

- (1) In this Act, the following expressions have the meaning given by this section –
 - “approved regulator”;
 - “relevant approved regulator”.
- (2) “Approved regulator” means – 35
 - (a) a body which is designated as an approved regulator and whose regulatory arrangements are approved for the purposes of this Act, or
 - (b) if an order under section 51(1)(a) has effect, the Board.
- (3) A body is designated as an approved regulator if – 40
 - (a) it is so designated by Part 1 of Schedule 5,
 - (b) it is so designated by an order under Part 2 of that Schedule, or
 - (c) it is within both paragraph (a) and paragraph (b).

- (4) An approved regulator is a “relevant approved regulator” in relation to an activity which is a reserved legal activity if –
 - (a) the approved regulator is designated as mentioned in subsection (3)(a) or (b) in relation to that reserved legal activity, or
 - (b) if the approved regulator is the Board, it is designated in relation to that reserved legal activity by an order under section 51(1)(a). 5
- (5) An approved regulator is a “relevant approved regulator” in relation to a person if the person is authorised by the approved regulator to carry on an activity which is a reserved legal activity.
- (6) Schedule 5 makes provision with respect to approved regulators other than the Board. 10
In that Schedule –
 - (a) Part 1 designates certain bodies as approved regulators in relation to certain reserved legal activities,
 - (b) Part 2 makes provision for bodies to be designated, by order, as approved regulators in relation to one or more reserved legal activities, 15
 - (c) Part 3 makes provision relating to the approval of changes to an approved regulator’s regulatory arrangements.

16 Regulatory arrangements

- (1) In this Act references to the “regulatory arrangements” of a body are to – 20
 - (a) its arrangements for authorising persons to carry on reserved legal activities,
 - (b) its arrangements (if any) for authorising persons to provide immigration advice or immigration services,
 - (c) its practice rules, 25
 - (d) its conduct rules,
 - (e) its disciplinary arrangements in relation to regulated persons (including its discipline rules),
 - (f) its qualification regulations,
 - (g) its licensing rules (if any), and 30
 - (h) any of its other rules or regulations (however they may be described), and any other arrangements, which apply to or in relation to regulated persons, other than those made for the purposes of any function the body has to represent or promote the interests of persons regulated by it. 35
- (2) In this section –

“conduct rules”, in relation to a body, means any rules (however they may be described) as to the conduct required of regulated persons;

“discipline rules”, in relation to a body, means any rules (however they may be described) as to the disciplining of regulated persons; 40

“practice rules”, in relation to a body, means any rules (however they may be described) which govern the practice of regulated persons;

“qualification regulations”, in relation to a body, means –

 - (a) any regulations relating to –
 - (i) the education and training which persons must receive, 45
 - or

- (ii) any other requirements which must be met by or in respect of them,
in order for them to be authorised by the body to carry on an activity which is a reserved legal activity,
 - (b) any regulations relating to – 5
 - (i) the education and training which persons must receive, or
 - (ii) any other requirements which must be met by or in respect of them,
in order for them to be authorised by the body to provide immigration advice or immigration services, and 10
 - (c) any other regulations relating to the education and training which regulated persons must receive or any other requirements which must be met by or in respect of them, 15
(however they may be described);
- “regulated persons”, in relation to a body, means any class of persons which consists of or includes persons who are authorised by the body to carry on an activity which is a reserved legal activity.

Continuity of existing rights and transitional protection

17 Continuity of existing rights to carry on reserved legal activities 20

Schedule 4 makes provision for the continuity of existing rights and for certain persons to be deemed, during a transitional period, to be authorised by approved regulators to carry on certain activities.

18 Transitional protection for not for profit bodies

- (1) During the transitional period, a not for profit body is entitled to carry on any activity which is a reserved legal activity. 25
- (2) The transitional period is the period which –
 - (a) begins with the day appointed for the coming into force of section 10, and
 - (b) ends with the day appointed by the Secretary of State for the purposes of this paragraph. 30
- (3) Different days may be appointed under subsection (2)(b) for different purposes.
- (4) An order may be made under subsection (2)(b) only on the recommendation of the Board. 35

Alteration of reserved legal activities

19 Extension of the reserved legal activities

- (1) The Secretary of State may, by order, amend section 9 or Schedule 2 (reserved legal activities) so as to add any legal activity to the activities which are reserved legal activities for the purposes of this Act. 40

- (2) An order under subsection (1) may only be made on the recommendation of the Board.
- (3) Schedule 6 makes provision about the making of recommendations for the purposes of this section.
- (4) Where a recommendation is made in relation to an activity, the Secretary of State must –
 - (a) consider the report containing the recommendation given to the Secretary of State under paragraph 16(3)(a) of that Schedule,
 - (b) decide whether or not to make an order under this section in respect of the activity, and
 - (c) publish a notice of that decision,
 within the period of 90 days beginning with the day on which the report was given to the Secretary of State.
- (5) Where the Secretary of State decides not to make an order under this section in respect of an activity, the notice under subsection (4)(c) must state the reasons for that decision.

20 Provisional designation as approved regulators and licensing authorities

- (1) The Secretary of State may, by order, make provision –
 - (a) enabling applications to be made, considered and determined under Part 2 of Schedule 5 or Part 1 of Schedule 10 in relation to a provisional reserved activity, as if the activity were a reserved legal activity;
 - (b) enabling provisional designation orders to be made by the Secretary of State in respect of a provisional reserved activity, as if the activity were a reserved legal activity.
- (2) An order under subsection (1) may, in particular, provide that Part 2 of Schedule 5 or Part 1 of Schedule 10 is to apply, in relation to such cases as may be specified by the order, with such modifications as may be so specified.
- (3) The Secretary of State may also, by order, make provision –
 - (a) for the purpose of enabling applications for authorisation to carry on an activity which is a provisional reserved activity to be made to and considered and determined by –
 - (i) a body in respect of which a provisional designation order is made, or
 - (ii) the Board in its capacity as a licensing authority;
 - (b) for the purpose of enabling persons to be deemed to be authorised to carry on an activity which is a new reserved legal activity by a relevant approved regulator in relation to the activity, or by the Board in its capacity as a licensing authority, for a period specified in the order.
- (4) For this purpose –

“provisional reserved activity” means an activity in respect of which a provisional report under paragraph 10 of Schedule 6 states that the Board is minded to make a recommendation for the purposes of section 19;

“provisional designation order” means an order made by the Secretary of State under Part 2 of Schedule 5 or Part 1 of Schedule 10 which is conditional upon the Secretary of State making an order under section

19 in respect of the provisional reserved activity, pursuant to a recommendation made by the Board following the provisional report;
“new reserved legal activity” means a legal activity which has become a reserved legal activity by virtue of an order under section 19.

21 Recommendations that activities should cease to be reserved legal activities 5

- (1) The Board may recommend that an activity should cease to be a reserved legal activity.
- (2) Schedule 6 makes provision about the making of recommendations for the purposes of this section.
- (3) The Secretary of State must consider any recommendation made by the Board for the purposes of this section. 10
- (4) Where the Secretary of State disagrees with a recommendation (or any part of it), the Secretary of State must publish a notice to that effect which must include the Secretary of State’s reasons for disagreeing.

PART 4 15

REGULATION OF APPROVED REGULATORS

Introductory

22 Regulatory functions of approved regulators

In this Act references to the “regulatory functions” of an approved regulator are to any functions the approved regulator has – 20

- (a) under or in relation to its regulatory arrangements, or
- (b) in connection with the making or alteration of those arrangements.

General duties of approved regulators

23 Approved regulator’s duty to promote the regulatory objectives etc

- (1) In discharging its regulatory functions (whether in connection with a reserved legal activity or otherwise) an approved regulator must comply with the requirements of this section. 25
- (2) The approved regulator must, so far as is reasonably practicable, act in a way –
 - (a) which is compatible with the regulatory objectives, and
 - (b) which the approved regulator considers most appropriate for the purpose of meeting those objectives. 30
- (3) The approved regulator must have regard to –
 - (a) the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, and 35
 - (b) any other principle appearing to it to represent the best regulatory practice.

Performance targets

24 Performance targets and monitoring

- (1) The Board may –
 - (a) set one or more performance targets relating to the performance by a particular approved regulator of any of its regulatory functions, or 5
 - (b) direct an approved regulator to set one or more performance targets relating to the performance by the approved regulator of any of its regulatory functions.
- (2) A direction under subsection (1)(b) may impose conditions with which the performance targets must conform. 10
- (3) In exercising its regulatory functions, an approved regulator must seek to meet any performance target set for or by it under this section.
- (4) The Board must publish any target set or direction given by it under this section.
- (5) An approved regulator must publish any target set by it pursuant to a direction under subsection (1)(b). 15
- (6) The Board may take such steps as it regards as appropriate to monitor the extent to which any performance target set under this section is being, or has been, met.

Directions 20

25 Directions

- (1) Where the Board is of the opinion that an approved regulator has failed –
 - (a) to perform any of its regulatory functions to an adequate standard (or at all),
 - (b) to meet any performance target set under section 24(1)(a) or (b), 25
 - (c) to comply with any requirement imposed on it by or under this Act or any other enactment,
 - (d) to ensure that the exercise of its regulatory functions is not prejudiced by any functions it has in connection with the representation, or promotion, of the interests of persons regulated by it, 30

the Board may direct the approved regulator to take such steps as the Board considers will remedy the failure, mitigate its effect or prevent its recurrence.
- (2) A direction –
 - (a) may only require an approved regulator to take steps which it has power to take; 35
 - (b) may require an approved regulator to take steps with a view to the modification of any part of its regulatory arrangements.
- (3) The Board may not exercise its powers under this section to give a direction requiring an approved regulator to take steps in respect of a specific disciplinary case or other specific regulatory proceedings (as opposed to all, or a specified class of, such cases or proceedings). 40

- (4) For the purposes of this section a direction to take steps includes a direction which requires an approved regulator to refrain from taking a particular course of action.
- (5) The power to give a direction is subject to any provision made by any other enactment. 5
- (6) The Board may take such steps as it regards as appropriate to monitor the extent to which a direction is being, or has been, complied with.
- (7) Where the Board revokes a direction, it must –
 - (a) give the approved regulator to whom the direction was given notice of the revocation, and 10
 - (b) publish that notice.

26 Directions: procedure

Schedule 7 makes provision about the procedure which must be complied with before a direction is given under section 25.

27 Enforcement of directions 15

- (1) If at any time it appears to the Board that an approved regulator has failed to comply with a direction given under section 25, the Board may make an application to the High Court under this section.
- (2) If, on an application under this section, the High Court decides that the approved regulator has failed to comply with the direction in question, it may order the approved regulator to take such steps as the High Court directs for securing that the direction is complied with. 20
- (3) This section is without prejudice to the powers conferred on the Board by section 28 or 30 (powers to censure or impose financial penalties).

Censure 25

28 Public censure

- (1) This section applies if the Board is satisfied that an approved regulator has failed –
 - (a) to perform any of its regulatory functions to an adequate standard (or at all), 30
 - (b) to meet any performance target set under section 24(1)(a) or (b),
 - (c) to comply with any direction given by the Board under this Act, or
 - (d) to comply with any other requirement imposed on the approved regulator by or under this Act or any other enactment.
- (2) The Board may publish a statement censuring the approved regulator for that failure. 35

29 Public censure: procedure

- (1) If the Board proposes to publish a statement under section 28 in respect of an approved regulator it must give notice to the approved regulator –

- (a) stating that the Board proposes to publish such a statement and setting out the terms of the proposed statement,
 - (b) specifying the acts or omissions which, in the Board’s opinion, constitute the failure in respect of which the statement is published, and
 - (c) specifying the time (not being earlier than the end of the period of 28 days beginning with the day on which the notice is given to the approved regulator) before which representations with respect to the proposed statement may be made. 5
- (2) Before publishing the statement, the Board must consider any representations which are duly made. 10
- (3) Before varying any proposed statement set out in a notice under subsection (1)(a), the Board must give notice to the approved regulator –
 - (a) setting out the proposed variation and the reasons for it, and
 - (b) specifying the time (not being earlier than the end of the period of 28 days beginning with the day on which the notice is given to the approved regulator) before which representations with respect to the proposed variation may be made. 15
- (4) Before varying the proposal, the Board must consider any representations which are duly made.

Financial penalties 20

30 Financial penalties

- (1) This section applies if the Board is satisfied that an approved regulator has failed –
 - (a) to perform any of its regulatory functions to an adequate standard (or at all), 25
 - (b) to meet any performance target set under section 24(1)(a) or (b),
 - (c) to comply with any direction given by the Board under this Act, or
 - (d) to comply with any other requirement imposed on the approved regulator by or under this Act.
- (2) The Board may impose on the approved regulator a penalty, in respect of the failure, of such amount as it considers appropriate, but not exceeding the maximum amount prescribed under subsection (3). 30
- (3) The Board must make rules prescribing the maximum amount of a penalty which may be imposed under this section.
- (4) Rules may only be made under subsection (3) with the consent of the Secretary of State. 35
- (5) A penalty under this section is payable to the Board.
- (6) For the purposes of this section and sections 31 to 33, references to an approved regulator are to a body which was an approved regulator at the time the failure within subsection (1)(a) to (d) occurred (whether or not the body subsequently ceased to be an approved regulator). 40
- (7) In sections 31 to 33 references to a “penalty” are to a penalty under this section.

31 Financial penalties: procedure

- (1) If the Board proposes to impose a penalty on an approved regulator, it must give notice to the approved regulator –
 - (a) stating that the Board proposes to impose a penalty and the amount of the penalty proposed to be imposed, 5
 - (b) specifying the acts or omissions which, in the Board’s opinion, constitute the failure in question,
 - (c) specifying the other facts which, in the Board’s opinion, justify the imposition of a penalty and the amount of the penalty, and
 - (d) specifying the time (not being earlier than the end of the period of 21 days beginning with the day on which the notice is published under subsection (8)) before which representations with respect to the proposed penalty may be made. 10
- (2) Before imposing a penalty on an approved regulator, the Board must consider any representations which are duly made. 15
- (3) Where the Board proposes to vary the amount of a proposed penalty stated in a notice under subsection (1)(a), the Board must give notice to the approved regulator –
 - (a) setting out the proposed variation and the reasons for it, and
 - (b) specifying the time (not being earlier than the end of the period of 21 days beginning with the day on which the notice is published under subsection (8)) before which representations with respect to the proposed variation may be made. 20
- (4) Before varying the proposal, the Board must consider any representations which are duly made. 25
- (5) As soon as practicable after imposing a penalty, the Board must give notice to the approved regulator –
 - (a) stating that it has imposed a penalty on the approved regulator and its amount,
 - (b) specifying the acts or omissions which, in the Board’s opinion, constitute the failure in question, 30
 - (c) specifying the other facts which, in the Board’s opinion, justify the imposition of the penalty and its amount, and
 - (d) specifying a time (not being earlier than the end of the period of 42 days beginning with the day on which the notice is given to the approved regulator), before which the penalty is required to be paid. 35
- (6) The approved regulator may, within the period of 21 days beginning with the day on which it is given the notice under subsection (5), make an application to the Board for it to specify different times by which different portions of the penalty are to be paid. 40
- (7) If an application is made under subsection (6) in relation to a penalty, the penalty is not required to be paid until the application has been determined.
- (8) The Board must publish any notice given under this section.

32 Appeals against financial penalties

- (1) If the approved regulator on whom a penalty is imposed is aggrieved by – 45
 - (a) the imposition of the penalty,

- (b) the amount of the penalty, or
 - (c) the time by which the penalty is required to be paid, or the different times by which different portions of the penalty are required to be paid,

the approved regulator may make an application to the court under this section. 5
- (2) An application under subsection (1) must be made—
 - (a) within the period of 42 days beginning with the day on which the notice under section 31(5) is given to the approved regulator in respect of the penalty, or
 - (b) where the application relates to a decision of the Board on an application by the approved regulator under section 31(6), within the period of 42 days beginning with the day on which the approved regulator is notified of the decision. 10
- (3) On any such application, where the court considers it appropriate to do so in all the circumstances of the case and is satisfied of one or more of the appeal grounds, the court may— 15
 - (a) quash the penalty,
 - (b) substitute a penalty of such lesser amount as the court considers appropriate, or
 - (c) in the case of an application under subsection (1)(c), substitute for the time or times imposed by the Board an alternative time or times. 20
- (4) The appeal grounds are—
 - (a) that the imposition of the penalty was not within the power of the Board under section 30;
 - (b) that any of the requirements of section 31 have not been complied with in relation to the imposition of the penalty and the interests of the approved regulator have been substantially prejudiced by the non-compliance; 25
 - (c) that it was unreasonable of the Board to require the penalty imposed or any portion of it to be paid by the time or times by which it was required to be paid. 30
- (5) Where the court substitutes a penalty of a lesser amount it may require the payment of interest on the substituted penalty at such rate, and from such time, as it considers just and equitable.
- (6) Where the court specifies as a time by which the penalty, or a portion of the penalty, is to be paid a time before the determination of the application under this section it may require the payment of interest on the penalty, or portion, from that time at such rate as it considers just and equitable. 35
- (7) Except as provided by this section, the validity of a penalty is not to be questioned by any legal proceedings whatever. 40
- (8) In this section “the court” means the High Court.

33 Recovery of financial penalties

- (1) If the whole or any part of a penalty is not paid by the time by which it is required to be paid, the unpaid balance from time to time carries interest at the rate for the time being specified in section 17 of the Judgments Act 1838 (c. 110). 45

- (2) If an application is made under section 32 in relation to a penalty, the penalty is not required to be paid until the application has been determined or withdrawn.
- (3) If the Board grants an application under subsection (6) of section 31 in relation to a penalty but any portion of the penalty is not paid by the time specified in relation to it by the Board under that subsection, the Board may where it considers it appropriate require so much of the penalty as has not already been paid to be paid immediately. 5
- (4) Where a penalty, or any portion of it, has not been paid by the time when it is required to be paid and – 10
- (a) no application relating to the penalty has been made under section 32 during the period within which such an application can be made, or
- (b) an application has been made under that section and determined or withdrawn,
- the Board may recover from the approved regulator, as a debt due to the Board, any of the penalty and any interest which has not been paid. 15

Intervention

34 Intervention directions

- (1) The Board may give an approved regulator an intervention direction in relation to any of the approved regulator's regulatory functions if the Board is satisfied – 20
- (a) that one or more of the intervention conditions are met in respect of the approved regulator, and
- (b) that, in all the circumstances of the case, it is appropriate to give the intervention direction. 25
- (2) An intervention direction, in relation to a regulatory function of an approved regulator, is a direction –
- (a) that the regulatory function is to be exercised by the Board or a person nominated by it, and
- (b) that the approved regulator must comply with any instructions of the Board or its nominee in relation to the exercise of the function. 30
- (3) The intervention conditions are –
- (a) that the approved regulator has failed to perform any of its regulatory functions to an adequate standard (or at all);
- (b) that the approved regulator has failed to comply with any requirement imposed on the approved regulator by or under this Act or any other enactment; 35
- (c) that the circumstances are such that, if the body were now to make an application under Part 2 of Schedule 5 (application for designation as approved regulator) in respect of the designated activities, or any of them, its application would be rejected; 40
- (d) that the approved regulator is a licensing authority and the circumstances are such that, if the body were now to make an application under Part 1 of Schedule 10 (application for designation as a licensing authority) in respect of the designated activities, or any of them, its application would be rejected. 45

- (4) The Board may not determine that it is appropriate to give the intervention direction unless it is satisfied that the approved regulator’s failures cannot be adequately addressed by the Board exercising the powers available to it under sections 24 to 33.
 - (5) In this section “the designated activities” –
 - (a) in subsection (3)(c) means the reserved legal activity or activities in relation to which the approved regulator is designated as an approved regulator, and
 - (b) in subsection (3)(d) means the reserved legal activity or activities in relation to which the approved regulator is designated as a licensing authority.
 - (6) Part 1 of Schedule 8 makes provision about the procedure which must be complied with before an intervention direction is given and the manner in which such a direction is to be given.
- 35 Intervention directions: further provision**
- (1) This section applies where an intervention direction has effect in respect of a function of an approved regulator.
 - (2) The approved regulator must give the specified person all such assistance, in connection with the proposed exercise of the function by the specified person in pursuance of the direction, as the approved regulator is reasonably able to give.
 - (3) The specified person is, in the exercise of the function to which the direction relates, entitled to exercise the powers conferred by subsections (4) and (5).
 - (4) The specified person has at all reasonable times –
 - (a) a right of entry to the premises of the approved regulator, and
 - (b) a right to inspect, and take copies of, any records or other documents kept by the approved regulator, and any other documents containing information relating to the approved regulator, which the specified person considers relevant to the exercise of the function.
 - (5) In exercising the right to inspect records or other documents under subsection (4), the specified person –
 - (a) is entitled at any reasonable time to have access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the records or other documents in question, and
 - (b) may require –
 - (i) the person by whom or on whose behalf the computer is or has been so used, or
 - (ii) any person having charge of, or otherwise concerned with the operation of, the computer apparatus or material,to afford the specified person such assistance as the specified person may reasonably require (including, in particular, the making of information available for inspection or copying in a legible form).
 - (6) In this section “the specified person” means the Board or, where a person was nominated by it as mentioned in section 34(2), that person.

- (7) In this section references to the specified person include a reference to any person assisting the specified person in the performance of the function.

36 Intervention directions: enforcement

- (1) If at any time it appears to the Board –
- (a) that an approved regulator has failed to comply with an obligation imposed on it by, or by virtue of, an intervention direction or by section 35, or
 - (b) a person has failed to comply with a requirement imposed under section 35(5)(b),
- the Board may make an application to the High Court under this section.
- (2) If, on an application under subsection (1)(a) or (b), the High Court decides that the approved regulator or person has failed to comply with the obligation or requirement in question, it may order the approved regulator or person to take such steps as the High Court directs for securing that the obligation or requirement is complied with.

37 Revocation of an intervention direction

- (1) An intervention direction has effect until such time as it is revoked by the Board (whether on the application of the approved regulator or otherwise).
- (2) Part 2 of Schedule 8 makes provision about the procedure which must be complied with before an intervention direction is revoked and the manner in which notice of the revocation is to be given.

Cancellation of approval

38 Cancellation of designation as approved regulator

- (1) The Secretary of State may by order cancel a body's designation as an approved regulator –
- (a) in relation to all the reserved legal activities in relation to which it is an approved regulator, or
 - (b) in relation to one or more, but not all, of those reserved legal activities, with effect from a date specified in the order.
- (2) But the Secretary of State may only make an order under subsection (1) in accordance with a recommendation made by the Board under subsection (3) or (5).
- (3) The Board must recommend that an order is made cancelling a body's designation as an approved regulator in relation to one or more reserved legal activities, if –
- (a) the body applies to the Board for such a recommendation to be made,
 - (b) the application is made in such form and manner as may be prescribed by rules made by the Board, and is accompanied by the prescribed fee, and
 - (c) the body publishes a notice giving details of the application in accordance with such requirements as may be specified in rules made by the Board.

- (4) In this section “the prescribed fee”, in relation to an application, means the fee specified in, or determined in accordance with, rules made by the Board, with the consent of the Secretary of State.
- (5) The Board may recommend that an order is made cancelling a body’s designation as an approved regulator in relation to one or more reserved legal activities if it is satisfied –
 - (a) that one or more of the cancellation conditions are met in respect of the approved regulator, and
 - (b) that, in all the circumstances of the case, it is appropriate to cancel the body’s designation in relation to the activity or activities in question.
- (6) The cancellation conditions are –
 - (a) that the approved regulator has failed to perform any of its regulatory functions to an adequate standard (or at all);
 - (b) that the approved regulator has failed to comply with any requirement imposed on the approved regulator by or under this Act or any other enactment;
 - (c) that the circumstances are such that, if the body were now to make an application under Part 2 of Schedule 5 (application for designation as approved regulator) in respect of the activity or activities in question, its application would be rejected.
- (7) The Board may not determine that it is appropriate to cancel a body’s designation in relation to an activity or activities unless it is satisfied that the approved regulator’s failures cannot be adequately addressed by the Board exercising the powers available to it under sections 24 to 36.
- (8) Schedule 9 makes further provision about the making of recommendations under subsection (5).
- (9) If the Secretary of State decides not to make an order in response to a recommendation made under subsection (3) or (5), the Secretary of State must give to the Board notice of the decision and the reasons for it.
- (10) The Secretary of State must publish a notice given under subsection (9).
- (11) The Board may not make a recommendation under subsection (5) in respect of a body’s designation as an approved regulator in relation to a reserved legal activity at any time when, by virtue of Part 2 of Schedule 4 (protection of rights during a transitional period), any person is being treated as authorised by the body to carry on that activity.

39 Supplementary provision relating to cancellation of a designation

- (1) This section applies where a body (“the old regulator”) has its designation in relation to one or more reserved legal activities cancelled by an order under section 38.
- (2) The Secretary of State may by order make –
 - (a) such modifications of provisions made by or under any enactment (including this Act or any enactment passed or made after this Act), prerogative instrument or other instrument or document, and
 - (b) such transitional or consequential provision,as the Secretary of State considers necessary or expedient in consequence of the cancellation.

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- (3) The Secretary of State may, by order, make transfer arrangements.
- (4) “Transfer arrangements” are arrangements in accordance with which each person authorised by the old regulator who consents to the arrangements is, from the time the cancellation takes effect, treated as being authorised to carry on each protected activity by either – 5
- (a) a relevant approved regulator, in relation to the protected activity, who consents to the transfer arrangements, or
 - (b) if there is no such approved regulator, the Board acting in its capacity as a relevant approved regulator in relation to the protected activity by virtue of an order made under section 51. 10
- (5) The transfer arrangements –
- (a) must make such provision as is necessary to ensure that, where a person is treated under those arrangements as being authorised to carry on a protected activity by the new regulator, that person is subject to the regulatory arrangements of the new regulator; 15
 - (b) may make provision requiring amounts held by the old regulator which represent amounts paid to it by way of practising fees by the persons to whom the transfer arrangements apply (or a part of the amounts so held) to be paid to the new regulator and treated as if they were amounts paid by those persons by way of practising fees to the new regulator. 20
- (6) Subsection (5)(a) is subject to any transitional provision which may be made by the transfer arrangements, including provision modifying the regulatory arrangements of the new regulator as they apply to persons to whom the transfer arrangements apply. 25
- (7) The Secretary of State may make an order under this section only if –
- (a) the Board has made a recommendation in accordance with section 40, and
 - (b) the order is in the same form as, or in a form which is not materially different from, the draft order annexed to that recommendation. 30
- (8) For the purposes of this section –
- (a) a person is “authorised by the old regulator” if immediately before the time the cancellation takes effect the person is authorised by the old regulator (other than by virtue of a licence under Part 5) to carry on an activity which is a reserved legal activity to which the cancellation relates, 35
 - (b) in relation to that person, that activity is a “protected activity”, and
 - (c) in relation to that person, “the new regulator” means the approved regulator within paragraph (a) or (b) of subsection (4).
- (9) In this section “practising fee”, in relation to an approved regulator, means a fee payable by a person under the approved regulator’s regulatory arrangements in circumstances where the payment of the fee is a condition which must be satisfied for that person to be authorised by the approved regulator to carry on one or more activities which are reserved legal activities. 40
- (10) But “practising fee” does not include a fee payable by a licensed body to its licensing authority under licensing rules. 45

40 The Board’s power to recommend orders made under section 39

- (1) The Board may recommend to the Secretary of State that the Secretary of State make an order under section 39 in the form of a draft order prepared by the Board and annexed to the recommendation.
- (2) Before making a recommendation under this section, the Board must publish a draft of –
 - (a) the proposed recommendation, and
 - (b) the proposed draft order.
- (3) The draft must be accompanied by a notice which states that representations about the proposals may be made to the Board within a specified period.
- (4) Before making the recommendation, the Board must have regard to any representations duly made.
- (5) If the draft order to be annexed to the recommendation differs from the draft published under subsection (2)(b) in a way which is, in the opinion of the Board, material, the Board must, before making the recommendation, publish the draft order along with a statement detailing the changes made and the reasons for those changes.

Policy statements

41 The Board’s policy statements

- (1) The Board must prepare and issue a statement of policy with respect to the exercise of its functions under –
 - (a) section 24 (performance targets and monitoring);
 - (b) section 25 (directions);
 - (c) section 28 (public censure);
 - (d) section 30 (financial penalties);
 - (e) sections 34 and 35 (intervention directions);
 - (f) section 38 (cancellation of designation as approved regulator);
 - (g) section 63 (cancellation of designation as licensing authority by order).
- (2) The Board may prepare and issue a statement of policy with respect to any other matter.
- (3) The Board’s policy in determining what the amount of a penalty under section 30 should be must include having regard to –
 - (a) the seriousness of the failure in question in relation to the nature of the requirement to which the failure relates, and
 - (b) the extent to which that failure was deliberate or reckless.
- (4) The Board may at any time alter or replace any statement issued under this section.
- (5) If a statement is altered or replaced, the Board must issue the altered or replacement statement.
- (6) In exercising or deciding whether to exercise any of its functions, the Board must have regard to any relevant policy statement published under this section.

- (7) The Board must publish a statement issued under this section.
- (8) The Board may make a reasonable charge for providing a person with a copy of a statement.

42 Policy statement: procedure

- (1) Before issuing a statement under section 41, the Board must publish a draft of the proposed statement. 5
- (2) The draft must be accompanied by a notice which states that representations about the proposals may be made to the Board within a specified period.
- (3) Before issuing the statement, the Board must have regard to any representations duly made. 10
- (4) If the statement differs from the draft published under subsection (1) in a way which is, in the opinion of the Board, material, the Board must publish details of the differences.
- (5) The Board may make a reasonable charge for providing a person with a copy of a draft published under subsection (1). 15

Practising fees

43 Control of practising fees charged by approved regulators

- (1) In this section “practising fee”, in relation to an approved regulator, means a fee payable by a person under the approved regulator’s regulatory arrangements in circumstances where the payment of the fee is a condition which must be satisfied for that person to be authorised by the approved regulator to carry on one or more activities which are reserved legal activities. 20
- (2) An approved regulator may only apply amounts raised by practising fees for one or more of the permitted purposes.
- (3) The Board must make rules specifying the permitted purposes. 25
- (4) Those rules must, in particular, provide that the following are permitted purposes—
 - (a) the regulation, accreditation, education and training of relevant authorised persons and those wishing to become such persons, including— 30
 - (i) the maintaining and raising of their professional standards, and
 - (ii) the giving of practical support, and advice about practice management, in relation to practices carried on by such persons;
 - (b) the participation by the approved regulator in law reform and the legislative process; 35
 - (c) the provision by relevant authorised persons, and those wishing to become relevant authorised persons, of reserved legal services, immigration advice or immigration services to the public free of charge;
 - (d) the promotion of the protection by law of human rights and fundamental freedoms; 40

- (e) the promotion of relations between the approved regulator and bodies representing the members of legal professions in jurisdictions other than England and Wales.
- (5) A practising fee is payable under the regulatory arrangements of an approved regulator only if the Board has approved the level of the fee. 5
- (6) The Board must make rules containing provision –
 - (a) about the form and manner in which applications for approval for the purposes of subsection (5) must be made and the material which must accompany such applications;
 - (b) requiring applicants to have consulted such persons as may be prescribed by the rules in such manner as may be so prescribed before such an application is made; 10
 - (c) about the procedures and criteria that will be applied by the Board when determining whether to approve the level of a fee for the purposes of subsection (5), including the time limit for the determining of an application. 15
- (7) In this section “relevant authorised persons”, in relation to an approved regulator, means persons who are authorised by the approved regulator to carry on activities which are reserved legal activities.

Information 20

44 Provision of information to the Board

- (1) The Board may, by notice, require an approved regulator –
 - (a) to provide any specified information, or
 - (b) to produce any specified document.
- (2) A notice under subsection (1) – 25
 - (a) may specify the manner and form in which any information is to be provided;
 - (b) must specify the period within which any information is to be provided or document is to be produced;
 - (c) may require any information to be provided, or document to be produced, to the Board or to a person specified in the notice. 30
- (3) The Board may, by notice, require a person representing the approved regulator to attend at a time and place specified in the notice to provide an explanation of any information provided or document produced under this section. 35
- (4) The Board may pay to any person such reasonable costs as may be incurred by that person in connection with –
 - (a) the provision of any information, or the production of any document, by that person pursuant to a notice under subsection (1), or
 - (b) that person’s compliance with a requirement imposed under subsection (3). 40
- (5) The Board, or a person specified under subsection (2)(c) in a notice, may take copies of or extracts from a document produced pursuant to a notice under subsection (1).

- (6) In this section –
 “specified document” means a document specified or of a description specified in the notice;
 “specified information” means information specified or of a description specified in the notice. 5
- (7) For the purposes of this section and section 45, references to an approved regulator include a body which was, but is no longer, an approved regulator.

45 Enforcement of notices under section 44

- (1) Where an approved regulator is unable to comply with a notice given to it under section 44(1), it must give the Board a notice to that effect stating the reasons why it cannot comply. 10
- (2) If an approved regulator refuses, or otherwise fails, to comply with a notice under section 44(1), the Board may apply to the High Court for an order requiring the approved regulator to comply with the notice or with such directions for the like purpose as may be contained in the order. 15
- (3) No person may be required under this section –
 (a) to provide any information or give any evidence which that person could not be compelled to supply in evidence in civil proceedings before the High Court, or
 (b) to produce any document which that person could not be compelled to produce in such proceedings. 20
- (4) This section applies in relation to a person to whom a notice is given under section 44(3) as it applies in relation to an approved regulator to whom a notice is given under section 44(1).

Competition 25

46 Reports by the OFT

- (1) If the OFT is of the opinion that the regulatory arrangements of an approved regulator (or any part of them) restrict, distort or prevent competition within the market for reserved legal services to any significant extent, or are likely to do so, the OFT may prepare a report to that effect. 30
- (2) A report under subsection (1) –
 (a) must state what, in the OFT’s opinion, is the effect, or likely effect, on competition of the regulatory arrangements or part of them to which the report relates, and
 (b) may contain recommendations as to the action which the Board should take for the purpose of ensuring that the regulatory arrangements of the approved regulator do not prevent, restrict or distort competition. 35
- (3) Where the OFT makes a report under subsection (1), it must –
 (a) give a copy of the report to the Board, the Consumer Panel and the approved regulator, and
 (b) publish the report. 40
- (4) Before publishing a report under subsection (3)(b), the OFT must, so far as practicable, exclude any matter which relates to the private affairs of a

particular individual the publication of which, in the opinion of the OFT, would or might seriously and prejudicially affect the interests of that individual.

- (5) The OFT may exercise any of the powers conferred on it by section 174(3) to (5) of the Enterprise Act 2002 (c. 40) (investigation powers) for the purpose of assisting it in exercising its functions under this section. 5
- (6) For the purposes of the law of defamation, absolute privilege attaches to any report of the OFT under this section.

47 The Board’s response to OFT report

- (1) This section applies where a report is made by the OFT under section 46 in respect of an approved regulator. 10
- (2) The Board must allow the approved regulator a period of 28 days beginning with the day on which the copy of the report is given to the approved regulator under section 46, or such longer period as the Board may specify in a particular case, to make representations to the Board about the OFT’s report. 15
- (3) The Consumer Panel may give to the Board such advice as the Consumer Panel thinks fit regarding the OFT’s report.
- (4) Having considered any representations made under subsection (2) and any advice given under subsection (3), the Board must notify the OFT of the action (if any) it proposes to take in response to the report. 20

48 Referral of report by the Secretary of State to the Competition Commission

- (1) This section applies where the OFT is satisfied that the Board has failed to give full and proper consideration to a report made by the OFT, in respect of an approved regulator, under section 46.
- (2) The OFT may give a copy of its report to the Secretary of State. 25
- (3) The OFT must notify the Board and the approved regulator if it gives a copy of its report to the Secretary of State.
- (4) On receiving a report under subsection (2), the Secretary of State must –
 - (a) give the Competition Commission a copy of the report, and
 - (b) seek its advice on what action (if any) should be taken by the Secretary of State under section 50. 30

49 Duties of the Competition Commission

- (1) Where the Secretary of State seeks the advice of the Competition Commission under section 48, the Commission must investigate the matter.
- (2) The Commission must then make its own report on the matter unless it considers that, as a result of any change of circumstances, no useful purpose would be served by a report. 35
- (3) If the Commission decides in accordance with subsection (2) not to make a report, it must make a statement setting out the change of circumstances which resulted in that decision. 40

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- (4) The Commission must comply with subsection (2) or (3) within the period of 3 months beginning with the day on which it receives a copy of the OFT's report under section 48(4)(a).
- (5) A report made under this section must state the Commission's conclusion as to whether any of the matters which is the subject of the report has or is likely to have the effect of preventing, restricting or distorting competition within the market for reserved legal services to a significant extent. 5
- (6) A report under this section stating the Commission's conclusion that there is, or is likely to be, such an effect must also – 10
- (a) state whether or not the Commission considers that that effect is justified, and
- (b) if it states that the Commission considers that it is not justified, state its conclusion as to what action, if any, ought to be taken by the Board.
- (7) When determining any action to be taken by the Board under subsection (6)(b), the Commission must ensure, so far as reasonably possible, that the action stated is compatible with the functions conferred, and obligations imposed, on the Board by or under this Act. 15
- (8) A report under this section must contain such an account of the Commission's reasons for its conclusions as is expedient, in the opinion of the Commission, for facilitating proper understanding of them. 20
- (9) Sections 109 to 115 of the Enterprise Act 2002 (c. 40) (investigation powers) apply in relation to an investigation under this section as they apply in relation to an investigation made on a reference made to the Commission under Part 3 of that Act (mergers), but as if – 25
- (a) in section 110(4) of that Act, the reference to the publication of the report of the Commission on the reference concerned were a reference to the Commission making a report under subsection (2) or a statement under subsection (3), and
- (b) in section 111(5)(b)(ii) of that Act the day referred to were the day on which the Commission makes that report or statement. 30
- (10) If the Commission makes a report or a statement under this section it must –
- (a) give a copy to the Secretary of State, the Board, the Consumer Panel and the approved regulator to which the OFT's report relates, and
- (b) publish the report or statement.
- 50 Secretary of State's power to give directions 35**
- (1) The Secretary of State may direct the Board to take such action as the Secretary of State considers appropriate in connection with any matter raised in a report made by the OFT under section 46.
- (2) Before giving a direction under subsection (1), the Secretary of State must consider any report from the Competition Commission under section 49 on that matter. 40
- (3) When exercising the power to give a direction under subsection (1), the Secretary of State must ensure, so far as reasonably possible, that the action stated in any direction is compatible with the functions conferred, and obligations imposed, on the Board by or under this Act. 45
- (4) The Secretary of State must publish a direction given under this section.

The Board as approved regulator

51 The Board as an approved regulator

- (1) The Secretary of State may by order –
 - (a) designate the Board as an approved regulator in relation to one or more reserved legal activities; 5
 - (b) modify the functions of the Board, and make such other provision relating to those functions as the Secretary of State considers necessary or expedient, with a view to enabling the Board to discharge its functions as an approved regulator effectively and efficiently;
 - (c) cancel the Board’s designation as an approved regulator in relation to one or more reserved legal activities. 10
- (2) But the Secretary of State may make an order under subsection (1) only if –
 - (a) the Board has made a recommendation in accordance with section 55, and
 - (b) the order is in the same form as, or in a form which is not materially different from, the draft order annexed to that recommendation. 15
- (3) If the Secretary of State decides not to make an order pursuant to a recommendation made under section 55, the Secretary of State must –
 - (a) give the Board a notice stating the reasons for that decision, and
 - (b) publish the notice. 20
- (4) In discharging its functions as an approved regulator the Board must take such steps as are necessary to ensure an appropriate financial and organisational separation between the activities of the Board that relate to the carrying out of those functions and the other activities of the Board.
- (5) An order under this section may make such modifications of enactments (including this Act or any enactment passed or made after this Act was passed) as the Secretary of State considers necessary or expedient. 25

52 The Board’s designation under section 51(1)(a)

- (1) This section applies in relation to an order under section 51(1)(a) (an order designating the Board as an approved regulator). 30
- (2) Subject to subsection (3), the order may designate the Board as an approved regulator in relation to a reserved legal activity only where –
 - (a) a body’s designation as an approved regulator in relation to the activity is cancelled under section 38, or
 - (b) the activity becomes a reserved legal activity by virtue of an order under section 19. 35
- (3) Subsection (2) does not prevent the order having effect in advance of an event within paragraph (a) or (b) of that subsection for the purpose of enabling the Board to authorise persons to carry on activities which constitute the reserved legal activity in question with effect from the occurrence of the event. 40
- (4) The order must ensure that the Board, acting as an approved regulator, may make regulatory arrangements or modify its regulatory arrangements only with the approval of the Board (acting otherwise than in its capacity as an approved regulator or as a licensing authority under Part 5).

53 Modification of the Board’s functions under section 51(1)(b)

- (1) This section applies in relation to an order under section 51(1)(b) (an order modifying the functions of the Board).
- (2) The order may include (among other things) provision conferring on the Board powers to do any of the following –
 - (a) to authorise (otherwise than by the grant of a licence under Part 5) persons to carry on one or more activities which are reserved legal activities in relation to which the Board is designated as an approved regulator; 5
 - (b) to make conduct rules, discipline rules, practice rules and qualification regulations in relation to persons whom it authorises to carry on such activities (“relevant authorised persons”); 10
 - (c) to make rules as regards the payment of fees by relevant authorised persons;
 - (d) to delegate any of the functions exercisable by the Board in its capacity as an approved regulator to such persons as it considers appropriate; 15
 - (e) to make rules in relation to the control of employees of relevant authorised persons;
 - (f) to make rules for the purpose of ensuring the indemnification of relevant authorised persons and former relevant authorised persons against losses arising from claims in relation to any description of civil liability incurred by them, or by employees or former employees of theirs, in connection with their activities as relevant authorised persons; 20
 - (g) to make rules about the making of grants or other payments for the purpose of relieving or mitigating losses suffered by persons in consequence of – 25
 - (i) negligence or fraud or other dishonesty on the part of relevant authorised persons, or of employees of theirs, in connection with their activities as relevant authorised persons; 30
 - (ii) failure on the part of relevant authorised persons to account for money received by them in connection with their activities as relevant authorised persons;
 - (h) to make rules as to the treatment of clients’ money, and money comprised in trusts, held by relevant authorised persons and the keeping by such persons of accounts in respect of such money; 35
 - (i) to take steps for the purpose of ascertaining whether or not the provisions of rules or regulations made, or any code or guidance issued, by the Board in its capacity as an approved regulator are being complied with, and to make rules requiring relevant authorised persons to produce documents and provide information for that purpose. 40
- (3) The order may –
 - (a) provide for any provision of Schedule 12 (licensing authority’s powers of intervention) – 45
 - (i) to apply in relation to the Board (in its capacity as an approved regulator) and relevant authorised persons as it applies in relation to a licensing authority and licensed bodies, or
 - (ii) to so apply with such modifications as are prescribed by the order, or 50

- (b) make provision, in relation to the Board (in that capacity) and relevant authorised persons, corresponding to any of the provisions made, in relation to licensing authorities and licensed bodies, by that Schedule.
- (4) For the purposes of providing such indemnity, and enabling such grants or other payments to be made, as are mentioned in subsection (2)(f) and (g), the order may authorise the Board to make rules – 5
 - (a) authorising or requiring the Board to establish and maintain a fund or funds;
 - (b) authorising or requiring the Board to take out and maintain insurance with authorised insurers; 10
 - (c) requiring relevant authorised persons or relevant authorised persons of any specific description to take out and maintain insurance with authorised insurers.
- (5) In this section – 15
 - “authorised insurer” means a person within any of the following paragraphs –
 - (a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 (c. 8) to effect or carry out contracts of insurance of a relevant class;
 - (b) an EEA firm (within the meaning of that Act) of the kind mentioned in paragraph 5(d) of Schedule 3 to that Act, which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to effect or carry out contracts of a relevant class; 20
 - (c) a person who does not fall within paragraph (a) or (b) and who may lawfully effect or carry out contracts of insurance of a relevant class in a member State other than the United Kingdom; 25
 - “conduct rules” means any rules (however they may be described) as to the conduct required of relevant authorised persons (whether in exercising any right to carry on a reserved legal activity or otherwise); 30
 - “discipline rules” means any rules (however they may be described) as to the disciplining of relevant authorised persons;
 - “practice rules” means any rules (however they may be described) which govern the professional practice of relevant authorised persons; 35
 - “qualification regulations” means –
 - (a) any regulations relating to –
 - (i) the education and training which persons must receive, or
 - (ii) any other requirements which must be met by or in respect of them, 40
 in order for them to be authorised by the Board to carry on an activity which is a reserved legal activity, and
 - (b) any other regulations relating to the education and training which relevant authorised persons must receive or any other requirements which must be met by or in respect of them, 45
 (however they may be described).
- (6) For the purposes of this section –

- (a) a contract of insurance is of a relevant class if it insures against a risk arising from accident, credit, legal expenses, general liability to third parties, sickness, suretyship or miscellaneous financial loss, and
 - (b) the definition of “authorised insurer” in subsection (5) must be read with section 22 of the Financial Services and Markets Act 2000 (c. 8), and any relevant order under that section, and with Schedule 2 to that Act. 5
- 54 Cancellation of the Board’s designation under section 51(1)(c)**
 - (1) This section applies in relation to an order under section 51(1)(c) (cancellation of Board’s designation as an approved regulator). 10
 - (2) Where such an order is made, section 39 (other than subsection (4)(b)) and section 40 (transfer arrangements etc on cancellation of approved regulator’s designation) apply in relation to the Board and relevant authorised persons as they apply to an approved regulator whose designation is cancelled under section 38 and persons authorised by that approved regulator to carry on activities which are reserved legal activities. 15
 - (3) In this section “relevant authorised persons” has the same meaning as in section 53.
- 55 The Board’s power to recommend orders made under section 51**
 - (1) The Board may recommend to the Secretary of State that the Secretary of State make an order under section 51 in the form of a draft order prepared by the Board and annexed to the recommendation. 20
 - (2) Before making a recommendation under this section, the Board must give to each of the persons listed in subsection (3) a notice containing—
 - (a) a copy of the proposed recommendation, 25
 - (b) a copy of the proposed draft order, and
 - (c) a statement specifying a period within which representations may be made about the proposals.
 - (3) Those persons are—
 - (a) the Secretary of State, 30
 - (b) the OFT,
 - (c) the Consumer Panel,
 - (d) each of the senior judges, and
 - (e) such other persons as the Board considers it reasonable to consult regarding the proposals. 35
 - (4) The Board must publish a notice given under subsection (2).
 - (5) Before making the recommendation, the Board must have regard to any representations duly made (whether by persons within subsection (3) or otherwise).
 - (6) If the draft order to be annexed to the recommendation differs from the draft contained in the notice under subsection (2) in a way which is, in the opinion of the Board, material, the Board must, before making the recommendation, publish the draft order along with a statement detailing the changes made and the reasons for those changes. 40

56 Effect of the Board’s designation as an approved regulator

In this Part –

- (a) the powers of the Board under sections 24 to 44 (regulatory powers in respect of approved regulators) are not exercisable by it in relation to the Board in its capacity as an approved regulator, and
- (b) sections 46 to 50 (reports by OFT etc) do not apply in relation to the Board in its capacity as an approved regulator.

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Functions of approved regulators

57 Modification of the functions of approved regulators

- (1) The Secretary of State may by order – 10
 - (a) modify the functions of an approved regulator or any other body (other than the Board), and
 - (b) make such other provision relating to those functions as the Secretary of State considers necessary or expedient.
- (2) The Secretary of State may make an order under subsection (1) only if – 15
 - (a) the Board has made a recommendation in accordance with section 58, and
 - (b) the order is in the same form as, or a form not materially different from, the draft order annexed to that recommendation.
- (3) An order under subsection (1) may be made only for the purpose of enabling the body to which it relates – 20
 - (a) to carry out its role as an approved regulator (including its role, if any, as a licensing authority) more effectively or efficiently,
 - (b) to authorise persons to carry on any additional activity which is a reserved legal activity in relation to which it is an approved regulator, 25
 - (c) to become designated by an order under Part 2 of Schedule 5 as an approved regulator, or designated by an order under Part 1 of Schedule 10 as a licensing authority, in relation to one or more reserved legal activities, or
 - (d) to become a qualifying regulator under Part 1 of Schedule 14 or, if it is a designated qualifying regulator under section 86A of the Immigration and Asylum Act 1999 (c. 33), to authorise persons to provide any additional advice or services the provision of which amounts to the provision of immigration advice or immigration services. 30
- (4) Subsections (2) to (4) of section 53 apply in relation to an order in relation to a body under this section as they apply in relation to an order under section 51(1)(b) in relation to the Board. 35
- (5) An order under this section also may make provision in relation to –
 - (a) the provision of immigration advice or immigration services, and
 - (b) persons authorised to provide such advice and services by the body to which the order relates, 40
 corresponding to the provision which may be made by virtue of section 53(2) to (4) in relation to reserved legal activities and persons authorised to carry on those activities.

- (6) An order under subsection (1) may make such modifications of provisions made by or under any enactment (including this Act or any Act passed after this Act), prerogative instrument or other instrument or document, as the Secretary of State considers necessary or expedient.
- (7) Any provision made by an order under subsection (1) (“the modifying order”) may be conditional upon –
 - (a) the body to which the order relates being designated by an order under Part 2 of Schedule 5 as an approved regulator, or by an order under Part 1 of Schedule 10 as a licensing authority, in relation to one or more reserved legal activities specified in the modifying order, or
 - (b) the body to which the order relates becoming a designated qualifying regulator under section 86A of the Immigration and Asylum Act 1999 (c. 33).

58 The Board’s power to recommend orders made under section 57

- (1) The Board may recommend to the Secretary of State that the Secretary of State make an order under section 57 in the form of a draft order prepared by the Board and annexed to the recommendation.
- (2) A recommendation may be made under this section only with the consent of the approved regulator or other body to which the draft order relates.
- (3) Before making a recommendation under this section, the Board must publish a draft of –
 - (a) the proposed recommendation, and
 - (b) the proposed draft order.
- (4) The draft must be accompanied by a notice which states that representations about the proposals may be made to the Board within a specified period.
- (5) Before making the recommendation, the Board must have regard to any representations duly made.
- (6) If the draft order to be annexed to the recommendation differs from the draft published under subsection (3)(b) in a way which is, in the opinion of the Board, material, the Board must, before making the recommendation, publish the draft order along with a statement detailing the changes made and the reasons for those changes.

PART 5

ALTERNATIVE BUSINESS STRUCTURES

Introductory

59 Carrying on of activities by licensed bodies

- (1) The provisions of this Part have effect for the purpose of regulating the carrying on of reserved legal activities and other activities by licensed bodies.
- (2) In this Act “licensed body” means a body which holds a licence in force under this Part.

Licensing authorities

60 Licensing authorities and relevant licensing authorities

- (1) In this Act “licensing authority” means –
 - (a) the Board, or
 - (b) an approved regulator which is designated as a licensing authority under Part 1 of Schedule 10 and whose licensing rules are approved for the purposes of this Act. 5
- (2) For the purposes of this Act –
 - (a) the Board is a licensing authority in relation to all reserved legal activities, and 10
 - (b) an approved regulator within subsection (1)(b) is a licensing authority in relation to any reserved legal activity in relation to which the designation is made.
- (3) The Board –
 - (a) may delegate any of its functions as a licensing authority to such persons as it considers appropriate; 15
 - (b) must take such steps as are necessary to ensure an appropriate financial and organisational separation between the activities of the Board that relate to the carrying out of its functions as a licensing authority and the other activities of the Board. 20
- (4) A licensing authority is a “relevant licensing authority” in relation to a licensed body if the licensed body is authorised by the licensing authority to carry on an activity which is a reserved legal activity.

61 Designation of approved regulator as licensing authority

Part 1 of Schedule 10 makes provision for approved regulators to be designated, by order, as licensing authorities in relation to one or more reserved legal activities. 25

62 Automatic cancellation of designation as licensing authority

- (1) This section applies where a body is designated –
 - (a) as an approved regulator in relation to a reserved legal activity (“the activity”), and 30
 - (b) as a licensing authority in relation to the activity.
- (2) If the Secretary of State makes an order under section 38 cancelling the body’s designation as an approved regulator in relation to the activity, the body’s designation as a licensing authority in relation to the activity is also cancelled. 35
- (3) The cancellation takes effect at the same time as cancellation of the body’s designation as an approved regulator.

63 Cancellation of designation as licensing authority by order

- (1) The Secretary of State may by order cancel an approved regulator’s designation as a licensing authority – 40
 - (a) in relation to all the reserved legal activities in relation to which it was designated, or

- (b) in relation to one or more, but not all, of those reserved legal activities, with effect from a date specified in the order.
- (2) But the Secretary of State may only make an order under subsection (1) in accordance with a recommendation made by the Board under subsection (3) or (5). 5
- (3) The Board must recommend that an order is made cancelling an approved regulator's designation as a licensing authority in relation to one or more reserved legal activities, if—
- (a) the approved regulator applies to the Board for such a recommendation to be made, 10
 - (b) the application is made in such form and manner as may be prescribed by rules made by the Board, and is accompanied by the prescribed fee, and
 - (c) the approved regulator publishes a notice giving details of the application in accordance with such requirements as may be specified in rules made by the Board. 15
- (4) In this section “the prescribed fee”, in relation to an application, means the fee specified in, or determined in accordance with, rules made by the Board, with the consent of the Secretary of State.
- (5) The Board may recommend that an order is made cancelling an approved regulator's designation as a licensing authority in relation to one or more reserved legal activities if it is satisfied— 20
- (a) that one or more of the cancellation conditions are met in relation to the licensing authority, and
 - (b) that, in all the circumstances of the case, it is appropriate to cancel the approved regulator's designation in relation to the activity or activities in question. 25
- (6) The cancellation conditions are—
- (a) that the licensing authority has failed to perform any of its licensing functions to an adequate standard (or at all); 30
 - (b) that the licensing authority has failed to comply with any requirement imposed on it by or under this Act or any other enactment;
 - (c) that the circumstances are such that, if the approved regulator were now to make an application under Part 1 of Schedule 10 (application for designation as licensing authority) in respect of the activity or activities in question, its application would be rejected. 35
- (7) The licensing functions of a licensing authority are any functions the licensing authority has—
- (a) under or in relation to its licensing rules,
 - (b) in connection with the making or alteration of those rules. 40
- (8) The Board may not determine that it is appropriate to cancel an approved regulator's designation as a licensing authority in relation to an activity or activities unless it is satisfied that the licensing authority's failures cannot be adequately addressed by the Board exercising the powers available to it under sections 24 to 36. 45
- (9) Part 2 of Schedule 10 makes further provision about the making of recommendations under subsection (5).

- (10) If the Secretary of State decides not to make an order in response to a recommendation made under subsection (3) or (5), the Secretary of State must give to the Board notice of the decision and the reasons for it.
- (11) The Secretary of State must publish a notice given under subsection (10).

64 Supplementary provision relating to cancellation of a designation 5

- (1) This section applies where an approved regulator (“the old authority”) has its designation as a licensing authority in relation to one or more reserved legal activities cancelled –
 - (a) by virtue of section 62, or
 - (b) by an order under section 63. 10
- (2) The Secretary of State may by order make –
 - (a) such modifications of provisions made by or under any enactment (including this Act or any enactment passed or made after this Act), prerogative instrument or other instrument or document, and
 - (b) such transitional or consequential provision, 15as the Secretary of State considers necessary or expedient in consequence of the cancellation.
- (3) The Secretary of State may, by order, make transfer arrangements.
- (4) “Transfer arrangements” are arrangements in accordance with which each consenting licensed body is, from the time the cancellation takes effect, treated as being authorised to carry on each protected activity by virtue of a licence issued under this Part by a licensing authority, in relation to the protected activity, which consents to the transfer arrangements. 20
- (5) “Consenting licensed body” means a licensed body authorised by the old authority which consents to the transfer arrangements. 25
- (6) The transfer arrangements –
 - (a) must make such provision as is necessary to ensure that, where a licensed body is treated under those arrangements as being authorised to carry on a protected activity by the new authority, that licensed body is subject to the licensing rules of the new authority; 30
 - (b) may make provision requiring amounts held by the old authority which represent amounts paid to it by way of licensing fees by the consenting licensed bodies (or a part of the amounts so held) to be paid to the new authority and treated as if they were amounts paid by those licensed bodies by way of licensing fees to the new authority. 35
- (7) Subsection (6)(a) is subject to any transitional provision which may be made by the transfer arrangements, including provision modifying the licensing rules of the new authority as they apply to the bodies to whom the transfer arrangements apply.
- (8) The Secretary of State may make an order under this section only if – 40
 - (a) the Board has made a recommendation in accordance with section 65, and
 - (b) the order is in the same form as, or in a form which is not materially different from, the draft order annexed to that recommendation.
- (9) For the purposes of this section – 45

- (a) a licensed body is “authorised by the old authority” if immediately before the time the cancellation takes effect the body is, by virtue of a licence under this Part, authorised by the old authority to carry on an activity which is a reserved legal activity to which the cancellation relates, 5
 - (b) in relation to that body, that activity is a “protected activity”, and
 - (c) in relation to that body, “the new authority” means the licensing authority by which (in accordance with transfer arrangements under subsection (4)) the body is treated as authorised to carry on a protected activity. 10
- (10) In this section “licensing fee”, in relation to a licensing authority, means a fee payable by a licensed body under the authority’s licensing rules made in accordance with paragraph 22 of Schedule 11.

65 The Board’s power to recommend orders made under section 64

- (1) The Board may recommend to the Secretary of State that the Secretary of State make an order under section 64 in the form of a draft order prepared by the Board and annexed to the recommendation. 15
- (2) Before making a recommendation under this section, the Board must publish a draft of –
 - (a) the proposed recommendation, and 20
 - (b) the proposed draft order.
- (3) The draft must be accompanied by a notice which states that representations about the proposals may be made to the Board within a specified period.
- (4) Before making the recommendation, the Board must have regard to any representations duly made. 25
- (5) If the draft order to be annexed to the recommendation differs from the draft published under subsection (2)(b) in a way which is, in the opinion of the Board, material, the Board must, before making the recommendation, publish the draft order along with a statement detailing the changes made and the reasons for those changes. 30

Licensing rules

66 Licensing rules

- (1) The Board (acting in its capacity as a licensing authority) –
 - (a) must make licensing rules before the end of the period of 12 months beginning with the day appointed by the Secretary of State, by order, for the purposes of this paragraph; 35
 - (b) may make or modify its licensing rules only with the approval of the Board (acting otherwise than in its capacity as a licensing authority or as an approved regulator).
- (2) An approved regulator may make licensing rules at any time, but they have effect only at a time when the approved regulator is a licensing authority. 40
- (3) Licensing rules of a licensing authority are rules which –

- (a) prescribe the circumstances in which bodies proposing to provide services which include reserved legal services may be licensed by the licensing authority;
 - (b) prescribe the conditions which (subject to any exceptions provided by the rules) must at all times be satisfied by bodies so licensed, if they are to remain so licensed; and
 - (c) regulate the conduct of the affairs of such bodies.
- (4) Licensing rules of a licensing authority –
 - (a) must make the provision required by Schedule 11 and sections 115 and 116, and
 - (b) without prejudice to the generality of subsection (3), may make any provision authorised by this Act.
- (5) But licensing rules –
 - (a) need not make the provision required by Schedule 11 in relation to not for profit bodies, and
 - (b) may make provision in relation to not for profit bodies different to that made in relation to other bodies.

Licensing

67 Application for licence

- (1) A licensing authority must determine any application for a licence which –
 - (a) is made in accordance with its licensing rules, and
 - (b) is accompanied by the required application fee.
- (2) The licensing authority may not grant the application unless it is satisfied that if the licence is granted the applicant will comply with its licensing rules made under –
 - (a) paragraphs 6 and 7 of Schedule 11 (management),
 - (b) paragraphs 8 to 10 of that Schedule (ownership),
 - (c) paragraph 13 of that Schedule (Head of Legal Practice), and
 - (d) paragraph 15 of that Schedule (Head of Finance and Administration),and it is satisfied that the applicant has made adequate arrangements to ensure compliance with its other licensing rules.
- (3) If the licensing authority grants an application for a licence, it must issue the licence as soon as reasonably practicable.

68 Terms of licence

- (1) A licence issued under section 67 must specify –
 - (a) the activities which are reserved legal activities and which the licensed body is authorised to carry on by virtue of the licence, and
 - (b) any conditions subject to which the licence is granted.
- (2) If the licensing authority is an approved regulator designated as a licensing authority under Part 1 of Schedule 10, the licence may authorise the licensed body to carry on activities which are reserved legal activities only if the licensing authority is designated in relation to them.

- (3) A licence must be granted subject to the condition that the licensed body complies with—
 - (a) any obligation which may from time to time be imposed by or under the licensing authority's licensing rules,
 - (b) any other obligations imposed by or under this or any other enactment. 5
- (4) A licence may be granted subject to such other conditions as the licensing authority considers appropriate.
- (5) Those conditions may include conditions as to the non-reserved activities which the licensed body may or may not carry on.
- (6) In this Part references to the terms of the licence are to the matters listed in subsection (1). 10

69 Modification of licence

- (1) A licensing authority may modify the terms of a licence granted by it—
 - (a) if the licensed body applies to the licensing authority, in accordance with its licensing rules, for the modification to be made; 15
 - (b) in such other circumstances as may be specified in its licensing rules.
- (2) It may do so by giving the licensed body notice in writing of the modifications; and the modifications have effect from the time the licensing authority gives the licensed body the notice.
- (3) The licensing authority's power under this section is subject to section 68(2) and (3) and licensing rules made under paragraph 5 of Schedule 11. 20

70 Registers of licensed bodies

- (1) Each licensing authority must keep a register containing the names and places of business of all bodies which hold or have held licences granted by the licensing authority. 25
- (2) Where any licence held by a body is for the time being suspended, the licensing authority shall cause that fact to be noted in the register in the entry for that body.
- (3) A licensing authority must provide facilities for making the information contained in the entries in its register available for inspection by any person during office hours and without payment. 30
- (4) The Board may make rules about—
 - (a) the register to be kept by the Board under this section, and
 - (b) the register to be kept by each licensing authority designated under Part 1 of Schedule 10. 35
- (5) Rules under subsection (4) may in particular prescribe any further information which must be contained in an entry in the register in relation to a licensed body or former licensed body.

71 Evidence of status

- (1) A certificate signed by an officer of a licensing authority appointed for the purpose and stating one of the matters within subsection (2) is, unless the contrary is proved, evidence of the facts stated in the certificate. 40

- (2) The matters are—
 - (a) that any person does or does not, or did or did not at any time, hold a licence granted by the licensing authority under this Part, or
 - (b) that a licence granted to any person by the licensing authority is or was at any time suspended or subject to any particular conditions. 5
- (3) A certificate purporting to be so signed is to be taken to have been so signed unless the contrary is proved.

72 Offence to pretend to be a licensed body

- (1) It is an offence for a person—
 - (a) wilfully to pretend to be a licensed body when it is not such a body, or 10
 - (b) with the intention of implying falsely that the person is a licensed body, to take or use any name, title or description.
- (2) A person who is guilty of an offence under subsection (1) is liable—
 - (a) on summary conviction, to a fine not exceeding level 4 on the standard scale, and 15
 - (b) on conviction on indictment, to a fine.

Ownership of licensed bodies

73 Disclosure of ownership

- (1) Where a company with a share capital applies for a licence under section 67, it must identify in its application any non-authorised person who holds a material interest in the applicant (or, if the licence is granted, will hold such an interest at the time of the grant). 20
- (2) Where any other body applies for a licence under section 67, it must identify in its application any non-authorised person who holds an interest in the applicant (or, if the licence is granted, will hold an interest at the time of the grant). 25
- (3) It is an offence for an applicant for a licence to fail to comply with a requirement imposed by subsection (1) or (2).
- (4) A person who is guilty of an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale. 30
- (5) It is an offence for a non-authorised person who—
 - (a) is identified in an application for a licence in accordance with subsection (1) or (2), and
 - (b) is required to provide information or documents by relevant licensing rules made under paragraph 11 of Schedule 11, 35
 knowingly to provide false or misleading information or documents.
- (6) Relevant licensing rules are licensing rules made by the licensing authority to which the application for a licence is made.
- (7) A person who is guilty of an offence under subsection (5) is liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum, and 40

- (b) on conviction on indictment, to a term of imprisonment not exceeding two years or a fine (or both).

74 Change of ownership

- (1) A non-authorised person (“the investor”) who –
 - (a) proposes to take a step which would result in the investor acquiring an interest in a licensed body, or 5
 - (b) acquires an interest in a licensed body without taking such a step, must, if the notification condition is met, notify the licensed body and the relevant licensing authority of the proposal or acquisition.
- (2) In a case within subsection (1)(b) the investor must notify them as soon as reasonably practicable after the investor knows, or ought reasonably to know, of the acquisition. 10
- (3) The notification condition is met, in relation to a licensed body which is a company with a share capital, if as a result of the acquisition the investor will acquire (or has acquired) – 15
 - (a) where the relevant licensing authority has made rules under paragraph 9(3) of Schedule 11, a material interest or a controlled interest in the licensed body, and
 - (b) in any other case, a material interest in the licensed body.
- (4) The notification condition is met in relation to any other licensed body if the investor does not have an interest in the licensed body (or did not have an interest before the acquisition). 20
- (5) It is an offence for a person to fail to comply with a requirement imposed by subsection (1) or (2).
- (6) A person who is guilty of an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 5 on the standard scale. 25
- (7) It is an offence for a non-authorised person (“the investor”) who –
 - (a) proposes to take a step which would result in the investor acquiring an interest in a licensed body, and
 - (b) under subsection (1) is required to notify the licensed body and the relevant licensing authority of the proposal, 30
 to take the step, unless the relevant licensing authority gives the required approval in writing.
- (8) The required approval is –
 - (a) in the case of a company with a share capital, approval of the investor’s holding of a material interest or (as the case may be) a controlled interest in the licensed body; 35
 - (b) in the case of any other licensed body, approval of the investor’s holding of an interest in the licensed body.
- (9) A person who is guilty of an offence under subsection (7) is liable – 40
 - (a) on summary conviction, to a fine not exceeding the statutory maximum, and
 - (b) on conviction on indictment, to a term of imprisonment not exceeding two years or a fine (or both).

- (10) In this section “controlled interest” has the meaning given by paragraph 9(4) of Schedule 11.

Regulation of licensed bodies

75 Duties of Head of Legal Practice

- (1) The Head of Legal Practice of a licensed body must take all reasonable steps to ensure that the body complies with the terms of its licence. 5
- (2) The Head of Legal Practice must take all reasonable steps to ensure that any person to whom subsection (3) applies complies with the regulatory arrangements of any relevant approved regulator in relation to that person.
- (3) This subsection applies to any person – 10
- (a) through whom the licensed body carries on a licensed activity, or
 - (b) who supervises any other person through whom that body carries on such an activity,
- and who is an authorised person in relation to that activity.
- (4) The Head of Legal Practice must, as soon as reasonably practicable, report to the licensing authority – 15
- (a) any failure by the licensed body to comply with the terms of its licence;
 - (b) any instance of a person through whom the licensed body carries on its activities carrying on a reserved legal activity when not entitled to do so. 20
- (5) Subsection (1) does not apply to the terms of the licence so far as they require the licensed body to adhere to licensing rules made under paragraph 21 of Schedule 11 (accounts) (as to which see section 76).

76 Duties of Head of Finance and Administration

- (1) The Head of Finance and Administration of a licensed body must take all reasonable steps to ensure that the licensed body adheres to licensing rules made under paragraph 21 of Schedule 11 (accounts). 25
- (2) The Head of Finance and Administration must report any breach of those rules to the licensing authority as soon as reasonably practicable.

77 Information

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- (1) The relevant licensing authority in relation to a licensed body may by notice require a person within subsection (2) –
- (a) to provide any specified information, or
 - (b) produce any specified document,
- for the purpose of enabling the licensing authority to ascertain whether the licensed body is complying or has complied with the terms of its licence. 35
- (2) The persons are –
- (a) the licensed body;
 - (b) any manager, employee, or officer of the licensed body;

(c)	any non-authorised person who holds an interest (or, if the licensed body is a company with a share capital, a material interest) in the licensed body.	
(3)	A notice under subsection (1) –	
(a)	may specify the manner and form in which any information is to be provided;	5
(b)	must specify the period within which the information is to be provided or the document produced;	
(c)	may require the information to be provided, or the document to be produced, to the licensing authority or to a person specified in the notice.	10
(4)	The licensing authority may, by notice, require a person within subsection (2) (or a representative of such a person) to attend at a time and place specified in the notice to provide an explanation of any information provided or document produced under this section.	15
(5)	The licensing authority may pay to any person such reasonable costs as may be incurred by that person in connection with –	
(a)	the provision of any information, or production of any document, by that person pursuant to a notice under subsection (1), or	
(b)	that person’s compliance with a requirement imposed under subsection (4).	20
(6)	The licensing authority, or a person specified under subsection (3)(c) in a notice, may take copies of or extracts from a document produced pursuant to a notice under subsection (1).	
(7)	In this section –	25
	“specified document” means a document specified or of a description specified in the notice;	
	“specified information” means information specified or of a description specified in the notice.	
(8)	For the purposes of this section and section 78, references to a licensed body include a body which was, but is no longer, a licensed body.	30
78	Enforcement of notices under section 77	
(1)	Where a person is unable to comply with a notice given to the person under section 77, the person must give the licensing authority a notice to that effect stating the reasons why the person cannot comply.	35
(2)	If a person refuses, or otherwise fails to comply with a notice under section 77, the licensing authority may apply to the High Court for an order requiring the person to comply with the notice or with such directions for the like purpose as may be contained in the order.	
(3)	No person may be required under this section –	40
(a)	to provide any information or give any evidence which that person could not be compelled to supply in evidence in civil proceedings before the High Court, or	
(b)	to produce any document which that person could not be compelled to produce in such proceedings.	45

79 Financial penalties

- (1) This section applies if the relevant licensing authority is satisfied that a licensed body has breached the terms of its licence.
- (2) The licensing authority may impose on the licensed body a penalty in respect of the breach of such amount as it considers appropriate, but not exceeding the maximum amount prescribed under subsection (3). 5
- (3) The Board must make rules prescribing the maximum amount of a penalty which may be imposed under this section.
- (4) Rules may only be made under subsection (3) with the consent of the Secretary of State. 10
- (5) A penalty under this section is payable to the licensing authority.
- (6) For the purposes of this section and sections 80 to 82, references to a licensed body are to a body which was a licensed body at the time the breach occurred (whether or not the body subsequently ceased to be a licensed body).
- (7) In sections 80 to 82 references to a “penalty” are to a penalty under this section. 15

80 Financial penalties: procedure

- (1) If the relevant licensing authority proposes to impose a penalty on a licensed body, it must give notice to the licensed body –
 - (a) stating that it proposes to impose a penalty and the amount of the penalty proposed to be imposed, 20
 - (b) specifying the acts or omissions which, in the licensing authority’s opinion, constitute the breach of the licence in question,
 - (c) specifying the other facts which, in the licensing authority’s opinion, justify the imposition of a penalty and the amount of the penalty, and
 - (d) specifying the time (not being earlier than the end of the period of 21 days beginning with the day on which the notice is published under subsection (8)) before which representations with respect to the proposed penalty may be made. 25
- (2) Before imposing a penalty on a licensed body, the licensing authority must consider any representations which are duly made. 30
- (3) Where the licensing authority proposes to vary the amount of a proposed penalty stated in a notice under subsection (1)(a), the licensing authority must give notice to the licensed body –
 - (a) setting out the proposed variation and the reasons for it, and
 - (b) specifying the time (not being earlier than the end of the period of 21 days beginning with the day on which the notice is published under subsection (8)) before which representations with respect to the proposed variation may be made. 35
- (4) Before varying the proposal, the licensing authority must consider any representations which are duly made. 40
- (5) As soon as practicable after imposing a penalty, the licensing authority must give notice to the licensed body –
 - (a) stating that it has imposed a penalty on the licensed body and its amount,

- (b) specifying the acts or omissions which, in the licensing authority's opinion, constitute the breach of the licence in question,
 - (c) specifying the other facts which in the licensing authority's opinion justify the imposition of the penalty and its amount, and
 - (d) specifying a time (not being earlier than the end of the period of 42 days beginning with the day the notice is given to the licensed body), before which the penalty is required to be paid. 5
- (6) The licensed body may, within the period of 21 days beginning with the day on which it is given the notice under subsection (5), make an application to the licensing authority for it to specify different times by which different portions of the penalty are to be paid. 10
- (7) If an application is made under subsection (6) in relation to a penalty, the penalty is not required to be paid until the application has been determined.
- (8) The licensing authority must publish any notice given under this section.
- 81 Appeals against financial penalties 15**
 - (1) If the licensed body on whom a penalty is imposed is aggrieved by –
 - (a) the imposition of the penalty,
 - (b) the amount of the penalty, or
 - (c) the time by which the penalty is required to be paid, or the different times by which different portions of the penalty are required to be paid, 20
 the licensed body may make an application to the court under this section.
 - (2) An application under subsection (1) must be made –
 - (a) within the period of 42 days beginning with the day on which the notice under section 80(5) is given to the licensed body in respect of the penalty, or 25
 - (b) where the application relates to a decision of the licensing authority on an application by the licensed body under section 80(6), within the period of 42 days beginning with the day the licensed body is notified of the decision.
 - (3) On any such application, where the court considers it appropriate to do so in all the circumstances of the case and is satisfied of one or more of the appeal grounds, the court may – 30
 - (a) quash the penalty,
 - (b) substitute a penalty of such lesser amount as the court considers appropriate, or 35
 - (c) in the case of an application under subsection (1)(c), substitute for the time or times imposed by the licensing authority an alternative time or times.
 - (4) The appeal grounds are –
 - (a) that the imposition of the penalty was not within the power of the licensing authority under section 79; 40
 - (b) that any of the requirements of section 80 have not been complied with in relation to the imposition of the penalty and the interests of the licensed body have been substantially prejudiced by the non-compliance; 45

- (c) that it was unreasonable of the licensing authority to require the penalty imposed or any portion of it to be paid by the time or times by which it was required to be paid.
- (5) Where the court substitutes a penalty of a lesser amount it may require the payment of interest on the substituted penalty at such rate, and from such time, as it considers just and equitable. 5
- (6) Where the court specifies as a time by which the penalty, or a portion of the penalty, is to be paid a time before the determination of the application under this section it may require the payment of interest on the penalty, or portion, from that time at such rate as it considers just and equitable. 10
- (7) Except as provided by this section, the validity of a penalty is not to be questioned by any legal proceedings whatever.
- (8) In this section “the court” means the High Court.

82 Recovery of financial penalties

- (1) If the whole or any part of a penalty is not paid by the time by which it is required to be paid, the unpaid balance from time to time carries interest at the rate for the time being specified in section 17 of the Judgments Act 1838 (c. 110). 15
- (2) If an application is made under section 81 in relation to a penalty, the penalty is not required to be paid until the application has been determined or withdrawn. 20
- (3) If the licensing authority grants an application under subsection (6) of section 80 in relation to a penalty but any portion of the penalty is not paid by the time specified in relation to it by the licensing authority under that subsection, the licensing authority may where it considers it appropriate require so much of the penalty as has not already been paid to be paid immediately. 25
- (4) Where a penalty, or any portion of it, has not been paid by the time when it is required to be paid and—
 - (a) no application relating to the penalty has been made under section 81 during the period within which such an application can be made, or
 - (b) an application has been made under that section and determined or withdrawn, 30
 the licensing authority may recover from the licensed body, as a debt due to the licensing authority, any of the penalty and any interest which has not been paid.

83 Referral of employees etc to appropriate regulator 35

- (1) The relevant licensing authority may refer to an appropriate regulator any matter relating to the conduct of—
 - (a) an employee, officer or manager of a licensed body;
 - (b) a person designated as a licensed body’s Head of Legal Practice or Head of Finance and Administration. 40
- (2) The licensing authority may also refer any matter relating to the conduct of such a person to the Board.
- (3) Appropriate regulators are—

- (a) if the person is an authorised person in relation to a reserved legal activity, any relevant approved regulator in relation to that person, and
- (b) if the person carries on non-reserved activities, any body which regulates the carrying on of such activities by the person.

84 Disqualification lists

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- (1) The Board must keep –
 - (a) a list of persons who are disqualified from acting as a Head of Legal Practice (“the HOLP list”);
 - (b) a list of persons who are disqualified from acting as a Head of Finance and Administration (“the HOFA list”); 10
 - (c) a list of persons who are disqualified from being employed by a licensed body or from being officers of a licensed body (“the employment list”).
- (2) The Board may add a person to the HOLP list if the person is (or was) a Head of Legal Practice, and the Board is satisfied that – 15
 - (a) the person has breached a duty imposed by section 75, and
 - (b) it is undesirable for that person to act as a Head of Legal Practice.
- (3) The Board may add a person to the HOFA list if the person is (or was) a Head of Finance and Administration, and the Board is satisfied that – 20
 - (a) the person has breached a duty imposed by section 76, and
 - (b) it is undesirable for that person to act as a Head of Finance and Administration.
- (4) The Board may add a person to the employment list if the person is (or was) employed by, or an officer of, a licensed body, and the Board is satisfied that – 25
 - (a) in the course of that employment or office the person (whether intentionally or through neglect) caused or substantially contributed to a significant breach by the licensed body of the terms of its licence, and
 - (b) it is undesirable for that person to be employed by, or be an officer of, a licensed body.
- (5) The Board must make rules – 30
 - (a) as to the procedures and criteria that will be applied by the Board when determining whether a person should be added to, or removed from, a list kept by it under subsection (1);
 - (b) providing for a review by the Board of a determination by the Board that a person should be added to such a list; 35
 - (c) as to the details about a person to be entered on such a list.
- (6) The Board must publish the lists kept by it under subsection (1).

85 Suspension and revocation of licence

- (1) A licensing authority may, in accordance with its licensing rules, suspend or revoke any licence granted by it under this Part. 40
- (2) Where a licence is suspended or has been revoked under this section, the licensing authority may exercise the powers set out in Schedule 12.
- (3) References in that Schedule to a licensed body include a body whose licence has been suspended or revoked.

- (4) A licence is to be treated as not being in force at any time while it is suspended under this section.

86 Prevention of regulatory conflict: accounts rules

- (1) Where a licensed body carries on an activity through a solicitor, the rules made under paragraph 21 of Schedule 11 apply instead of those made under sections 32 to 34 of the Solicitors Act 1974 (c. 47). 5
- (2) Where a licensed body carries on an activity through a licensed conveyancer, the rules made under paragraph 21 of Schedule 11 apply instead of those made under sections 22 and 23 of the Administration of Justice Act 1985 (c. 61).

87 Resolution of regulatory conflict 10

- (1) This section applies where, in relation to any licensed activity carried on by a licensed body, there is a conflict between—
 - (a) licensing rules made by the relevant licensing authority, and
 - (b) the requirements of a relevant approved regulator in relation to a person through whom the licensed body carries on the activity. 15
- (2) If the licensing authority and the approved regulator are unable to agree how to resolve the conflict, the licensing authority must refer the matter to the Board.
- (3) Subsection (2) applies even if the Board is the licensing authority or the approved regulator. 20
- (4) The Board must decide how the conflict should be resolved within 6 months of the matter being referred to the Board.
- (5) Before making its decision, the Board—
 - (a) must give the licensing authority and the approved regulator an opportunity to make representations, and 25
 - (b) may consult any persons it considers appropriate.
- (6) The Board must give notice of its decision to the licensing authority and the approved regulator.
- (7) A notice under subsection (6) must state the Board’s reasons for its decision.

Special kinds of body 30

88 Not for profit bodies

- (1) In the case of a body which is a not for profit body, a licensing authority may, if it considers it appropriate to do so in all the circumstances of the case, waive or modify any requirement imposed—
 - (a) by or under this Part, or 35
 - (b) by its licensing rules (subject to subsection (2)).
- (2) A licensing authority may not—
 - (a) waive or modify licensing rules made under section 115(1) in such a way as to exempt the not for profit body from establishing and maintaining, or participating in, procedures for the resolution of relevant complaints (within the meaning of that section); 40

- (b) waive or modify licensing rules made under section 116.
- (3) Where under subsection (1) a licensing authority waives or modifies a requirement in relation to a not for profit body, it must notify the not for profit body of the waiver or modification.

89 Foreign bodies 5

The Secretary of State may by order make provision for the modification of any provision of this Part in its application to a body of persons formed under, or in so far as the body is recognised by, law having effect outside the United Kingdom.

Interpretation 10

90 “Interest” and “material interest”

- (1) This section applies for the interpretation of this Part.
- (2) A person has an interest in a body at any time when –
 - (a) if the body is a company with a share capital, the person has an interest in the company’s ordinary share capital, 15
 - (b) if the body is a body corporate (other than such a company), the person is a member of the body,
 - (c) if the body is a partnership, the person is a partner, and
 - (d) if the body is an unincorporated body (other than a partnership), the person is a member of the body. 20
- (3) In relation to a body which is a company with a share capital, a material interest is an interest in at least –
 - (a) 10% of the company’s ordinary share capital, or
 - (b) any lesser percentage of the company’s ordinary share capital specified for the purposes of this paragraph by the licensing rules made by the relevant licensing authority. 25
- (4) Whether a person has an interest in a company’s ordinary share capital is (subject to any order made under subsection (5)) to be determined in accordance with section 208 of the Companies Act 1985 (c. 6).
- (5) The Secretary of State may make an order which – 30
 - (a) provides that a person has an interest in shares in which anyone connected with the person has an interest, and
 - (b) makes provision as to who is connected with the person for that purpose.
- (6) The Secretary of State may make an order under subsection (5) only on the recommendation of the Board. 35
- (7) In this section “ordinary share capital” has the same meaning as in the Income and Corporation Taxes Act 1988 (c. 1).

91 Interpretation of Part 5

- (1) In this Part – 40
 - “licensed activity”, in relation to a licensed body, means an activity –

- (a) which is a reserved legal activity, and
 - (b) which the licensed body is authorised to carry on by virtue of its licence;
- “non-authorised person” means a person who is not an authorised person in relation to any activity which is a reserved legal activity; 5
- “non-reserved activity” means an activity which is not a reserved legal activity.
- (2) In this Part “manager”, in relation to a body, means a person who –
 - (a) if the body is a body corporate whose affairs are managed by its members, is a member of the body, 10
 - (b) if the body is a body corporate and paragraph (a) does not apply, is a director of the body,
 - (c) if the body is a partnership, is a partner, and
 - (d) if the body is an unincorporated body (other than a partnership), is a member of its governing body. 15

PART 6

LEGAL COMPLAINTS

The Office for Legal Complaints and the scheme

92 The Office for Legal Complaints and the ombudsman scheme

- (1) This Part provides for a scheme under which certain disputes may be resolved quickly and with minimum formality by an independent person. 20
- (2) There is to be a body corporate called the Office for Legal Complaints (in this Act referred to as “the OLC”).
- (3) The scheme is to be administered by the OLC.
- (4) The scheme is to be operated under a name chosen by the OLC but is referred to in this Act as “the ombudsman scheme”. 25
- (5) Schedule 13 is about the OLC.

93 Promotion of the regulatory objectives etc

- (1) In discharging its functions the OLC must comply with the requirements of this section. 30
- (2) The OLC must, so far as is reasonably practicable, act in a way –
 - (a) which is compatible with the regulatory objectives, and
 - (b) which it considers most appropriate for the purpose of meeting those objectives.
- (3) The OLC must have regard to any principles appearing to it to represent the best practice of those who administer ombudsman schemes. 35

94 Corporate governance

In managing its affairs, the OLC must have regard to such generally accepted principles of good corporate governance as it is reasonable to regard as applicable to it.

95 Annual report

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- (1) The OLC must prepare a report (“the annual report”) for each financial year.
- (2) The annual report must deal with—
 - (a) the discharge of the functions of the OLC,
 - (b) the extent to which, in the OLC’s opinion, the OLC has met the regulatory objectives, and
 - (c) such other matters as the Board may from time to time direct.
- (3) The OLC must include in the annual report a copy of the report prepared by the Chief Ombudsman under section 100 for the financial year in question.
- (4) As soon as reasonably practicable after the end of each financial year, the OLC must give to the Board a copy of the annual report prepared for that year.
- (5) The Board must give a copy of the annual report to the Secretary of State.
- (6) The Secretary of State must lay a copy of the annual report before Parliament.
- (7) In this section “financial year” means—
 - (a) the period beginning with the day on which the OLC is established and ending with the next following 31 March, and
 - (b) each successive period of 12 months.

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96 Supplementary powers

The OLC may do anything calculated to facilitate, or incidental or conducive to, the carrying out of any of its functions.

Accountability of the OLC to the Board

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97 Reporting to the Board

- (1) The Board may require the OLC to prepare and give to the Board, within a specified period, a report in respect of any specified matter relating to the functions of the OLC.
- (2) In subsection (1) “specified” means specified in the requirement.
- (3) The Board must publish any report given to it by the OLC under this section.

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98 Performance targets and monitoring

- (1) The Board may—
 - (a) set one or more performance targets relating to the performance by the OLC of any of its functions, or
 - (b) direct the OLC to set one or more performance targets relating to the performance by the OLC of any of its functions.

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- (2) A direction under subsection (1)(b) may impose conditions with which the performance targets must conform.
- (3) The Board must publish any target set or direction given by it under this section.
- (4) The OLC must publish any target set by it pursuant to a direction under subsection (1)(b). 5
- (5) The Board may take such steps as it regards as appropriate to monitor the extent to which any performance target set under this section is being, or has been, met.

The ombudsman 10

99 Appointment of the Chief Ombudsman and assistant ombudsmen

- (1) The OLC –
 - (a) must appoint a person to act as Chief Ombudsman for the purposes of the ombudsman scheme, and
 - (b) may, with the consent of the Chief Ombudsman, appoint one or more other persons to act as assistant ombudsmen for those purposes. 15
- (2) Each person appointed under subsection (1)(a) or (b) must be –
 - (a) a lay person, and
 - (b) a person appearing to the OLC to have appropriate qualifications and experience to act as an ombudsman for the purposes of the ombudsman scheme. 20
- (3) In this Act a reference to an “ombudsman” (except in the phrases “Chief Ombudsman” and “assistant ombudsman”) is a reference to the Chief Ombudsman or an assistant ombudsman.
- (4) A person’s appointment as an ombudsman ceases if that person ceases to be a lay person. 25
- (5) Subject to that, a person’s appointment as an ombudsman is to be on such terms and conditions (including terms as to the duration and termination of the person’s appointment and as to remuneration) as the OLC considers –
 - (a) consistent with ensuring the independence of the person appointed, and
 - (b) otherwise appropriate. 30
- (6) Appointment as an ombudsman does not confer the status of Crown servant.
- (7) In this section “lay person” has the same meaning as in Schedule 13.

100 The Chief Ombudsman’s report 35

- (1) The Chief Ombudsman must prepare a report for each financial year on the discharge of the functions of the ombudsmen.
- (2) A report under this section must comply with any requirements specified by the OLC.
- (3) The OLC must publish any requirements specified for the purposes of subsection (2). 40

- (4) As soon as reasonably practicable after the end of each financial year, the Chief Ombudsman must give to the OLC a copy of the report prepared under this section for the year.
- (5) In this section “financial year” has the meaning given by section 95(7).

101 Delegation of an ombudsman’s functions

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- (1) An ombudsman may delegate to a member of the OLC’s staff appointed under paragraph 11 of Schedule 13—
 - (a) any function of the ombudsman in relation to the making, investigation or consideration (but not determination) of a complaint;
 - (b) any other function conferred on the ombudsman by or by virtue of this Part, other than the functions of the Chief Ombudsman within subsection (2). 10
- (2) Those functions are—
 - (a) the Chief Ombudsman’s power to consent to the appointment of an assistant ombudsman under section 99, and 15
 - (b) the duties imposed on the Chief Ombudsman by section 100 (Chief Ombudsman’s report).

Operation of the ombudsman scheme

102 Jurisdiction of the ombudsman scheme

- (1) A complaint which relates to an act or omission of a person (“the respondent”) in carrying on an activity is to be dealt with under the ombudsman scheme if—
 - (a) the respondent is within the jurisdiction of the scheme,
 - (b) the complainant wishes to have the complaint dealt with under the scheme and is not ineligible, and
 - (c) the complaint is not excluded from the jurisdiction of the ombudsman scheme by scheme rules (see section 105). 20 25
- (2) The respondent is within the jurisdiction of the scheme if, at the relevant time, the respondent was an authorised person in relation to an activity which was a reserved legal activity (whether or not the act or omission relates to a reserved legal activity). 30
- (3) The complainant (“C”) is ineligible if, at the relevant time—
 - (a) C was an authorised person in relation to an activity which was a reserved legal activity and the services to which the complaint relates were procured by C on behalf of another person,
 - (b) C was a public body or was acting on behalf of such a body in relation to the services to which the complaint relates, or 35
 - (c) C was a person prescribed, or of a description prescribed, by the Secretary of State by order as ineligible.
- (4) The right of a person to make a complaint under the ombudsman scheme, and the jurisdiction of an ombudsman to investigate, consider and determine a complaint, may not be limited or excluded by any contract term or by notice. 40
- (5) In this section references to an act or omission include an act or omission which occurs before the coming into force of this section (“a pre-commencement act or omission”), and a person is to be regarded as an authorised person, in

relation to an activity which is a reserved legal activity, at the time a pre-commencement act or omission occurs, if the person at that time was –

- (a) a person of the kind mentioned in paragraph 2(4) of Schedule 13,
- (b) a body recognised under section 9 or 32 of the Administration of Justice Act 1985 (c. 61) (recognised bodies),
- (c) a legal partnership, a conveyancing partnership, a mixed conveyancing partnership, a patent agent body or a trade mark body.

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(6) In this section –

“conveyancing partnership” has the meaning given by paragraph 3(6) of Schedule 4;

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“legal partnership” has the meaning given by paragraph 3(6) of that Schedule;

“mixed conveyancing partnership” has the meaning given by paragraph 8(5) of that Schedule;

“patent agent body” has the meaning given by paragraph 10(7) of that Schedule;

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“public body” means any government department, local authority or other body constituted for purposes of the public services, local government or the administration of justice;

“relevant time”, in relation to a complaint, means the time when the act or omission to which the complaint relates took place;

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“trade mark body” has the meaning given by paragraph 11(7) of Schedule 4.

103 Acts and omissions by employees etc

- (1) For the purposes of this Part and the ombudsman scheme, any act or omission by a person in the course of the person’s employment is to be treated as also an act or omission by the person’s employer, whether or not it was done with the employer’s knowledge or approval.

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- (2) But subsection (1) does not apply if the employer shows that the employer took such steps as were reasonable –

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- (a) to prevent the employee’s act or omission, or
- (b) to prevent acts or omissions of that description, in the course of the employee’s employment.

- (3) For the purposes of this Part and the ombudsman scheme any act or omission by a partner in a partnership in the course of carrying on, in the usual way, business of the kind carried on by the partnership is to be treated as also an act or omission by the partnership.

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- (4) But subsection (3) does not apply if the partner had no authority to act for the partnership and the person purporting to rely on that subsection knew, at the time of the act or omission, that the partner had no such authority.

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104 Continuity of complaints

- (1) The ability of a person to make a complaint about an act or omission of a partnership or other unincorporated body is not affected by any change in the membership of the partnership or body.

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- (2) The OLC must make rules determining the circumstances in which, for the purposes of the ombudsman scheme, an act or omission of a person (“A”) is, where A ceases to exist and another person (“B”) succeeds to the whole or substantially the whole of the business of A, to be treated as an act or omission of B. 5
- (3) Rules under subsection (2) must, in relation to cases where an act or omission of A is treated as an act or omission of B, make provision about the treatment of complaints under the ombudsman scheme which are outstanding against A at the time A ceases to exist.
- 105 Scheme rules** 10
- (1) The OLC must make rules (in this Part referred to as “scheme rules”) setting out the procedure for –
- (a) the making of complaints under the ombudsman scheme, and
 - (b) the investigation, consideration and determination of complaints by an ombudsman. 15
- (2) Scheme rules –
- (a) must provide that a complaint is to be entertained under the ombudsman scheme only if the complainant has made the complaint under that scheme before the applicable time limit (determined in accordance with the scheme rules) has expired, and 20
 - (b) may provide that an ombudsman may extend that time limit in specified circumstances.
- (3) Scheme rules must provide that, except in specified circumstances, a complaint is to be entertained under the ombudsman scheme only if the complainant has first used the respondent’s complaints procedures. 25
- (4) The respondent’s complaints procedures are the procedures established by the respondent, or in which the respondent participates, in accordance with regulatory arrangements or licensing rules made under section 115.
- (5) The scheme rules may (among other things) also make provision –
- (a) excluding complaints of a specified description from the jurisdiction of the ombudsman scheme; 30
 - (b) about the manner in which a complaint must be made;
 - (c) for the whole or part of a complaint, in specified circumstances, to be dismissed, without consideration of its merits;
 - (d) about the matters which are to be taken into account in determining whether an act or omission was fair and reasonable; 35
 - (e) for the reference of a complaint, in specified circumstances and with the consent of the complainant, to another body, with a view to its being determined by that body instead of by an ombudsman;
 - (f) for specified persons to be notified of complaints made under the ombudsman scheme; 40
 - (g) for specified persons to be notified of determinations and directions under that scheme;
 - (h) for a person who was an authorised person in relation to an activity at the relevant time (within the meaning of section 102(6)) to be treated, in specified circumstances, for the purposes of the scheme and this Part, as if that person were a co-respondent in relation to a complaint; 45

- (i) about the evidence which may be required or admitted and the extent to which it should be oral or written;
 - (j) for requiring parties to the complaint to attend to give evidence and produce documents, and for authorising the administration of oaths by ombudsmen; 5
 - (k) as to the persons who may appear on behalf of the complainant or respondent and the circumstances in which a person may so appear;
 - (l) for an ombudsman, in such circumstances as may be specified, to award expenses to persons in connection with attendance at a hearing before an ombudsman; 10
 - (m) for an ombudsman to award costs against the respondent in favour of the complainant;
 - (n) for an ombudsman to award costs against the complainant or the respondent in favour of the OLC for the purpose of providing a contribution to resources deployed in dealing with the complaint, if in the ombudsman’s opinion – 15
 - (i) the person against whom the costs are awarded acted improperly or unreasonably in relation to the complaint, or
 - (ii) that person was responsible for an unreasonable delay;
 - (o) about the circumstances in which information is to be disclosed by the OLC to an approved regulator, or to the Board in its capacity as a licensing authority, for the purpose of ensuring that duplication of investigations is avoided so far as practicable; 20
 - (p) conferring rights on specified persons to continue a complaint made by a person who has died or is otherwise unable to act; 25
 - (q) for a complaint to be treated as withdrawn or abandoned in specified circumstances;
 - (r) for the purpose of facilitating the settlement of a complaint with the agreement of the parties to it.
- (6) The circumstances specified under subsection (5)(c) may include the following – 30
 - (a) the ombudsman considers the complaint or part to be frivolous or vexatious or totally without merit;
 - (b) the ombudsman considers that the complaint or part would be better dealt with under another ombudsman scheme, by arbitration or by other legal proceedings; 35
 - (c) the ombudsman considers that there has been undue delay in the making of the complaint or part, or the provision of evidence to support it;
 - (d) the ombudsman is satisfied that the matter which is the subject of the complaint or part has previously been dealt with under another ombudsman scheme, by arbitration or by other legal proceedings; 40
 - (e) the ombudsman considers that there are other compelling reasons why it is inappropriate for the complaint or part to be dealt with under the ombudsman scheme. 45
- (7) Subsection (8) applies where a complaint is –
 - (a) excluded or dismissed by virtue of rules within subsection (2), (3), (5)(a) or (5)(c);
 - (b) referred to another body by virtue of rules within subsection (5)(e);
 - (c) settled, withdrawn or abandoned (or treated as withdrawn or abandoned by virtue of rules within subsection (5)(q)). 50

- (8) The ombudsman must notify –
- (a) the complainant;
 - (b) the respondent;
 - (c) any relevant authorising body, in relation to the respondent, notified of the complaint in accordance with rules within subsection (5)(f),
and, in a case within subsection (7)(a) or (b), must give reasons for the exclusion, dismissal or referral. 5
- (9) No person may be required by scheme rules –
- (a) to provide any information or give any evidence which that person could not be compelled to supply in evidence in civil proceedings before the High Court, or 10
 - (b) to produce any document which that person could not be compelled to produce in such proceedings.
- (10) Scheme rules may authorise an ombudsman making an award of costs in accordance with rules within subsection (5)(m) or (n) to order that the amount payable under the award bears interest at a rate and from a time specified in the order. 15
- (11) An amount due under an award made in favour of a person by virtue of provision made under subsection (5)(l), (m) or (n) is recoverable as a debt due to that person. 20
- (12) In this section –
- “party”, in relation to a complaint, means –
 - (a) the complainant,
 - (b) the respondent, and
 - (c) any other person who in accordance with scheme rules is to be regarded as a party to the complaint; 25
 - “specified” means specified in scheme rules.

106 Charges payable by respondents

- (1) The OLC must make rules requiring respondents, in relation to complaints under the ombudsman scheme, to pay to the OLC such charges as may be specified in the rules. 30
- (2) The rules may, among other things –
- (a) provide for the OLC to reduce or waive a charge in a particular case;
 - (b) set different charges for different stages of the proceedings on a complaint; 35
 - (c) provide for charges to be refunded in specified circumstances;
 - (d) provide that if the whole or any part of a charge is not paid by the time by which it is required to be paid under the rules, the unpaid balance from time to time carries interest at the rate specified in, or determined in accordance with, the rules. 40
- (3) Any charge which is owed to the OLC by virtue of rules made under this section may be recovered as a debt due to the OLC.

107 Consent requirements for rules

- (1) Before making rules under this Part, the OLC must obtain –

- (a) the consent of the Board, and
 - (b) in the case of rules under section 106 (charges payable by respondents), the consent of the Secretary of State.
- (2) In subsection (1) the reference to making rules includes a reference to modifying rules.

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108 The Board’s powers in respect of rules

- (1) The Board may direct the OLC to take such steps as are necessary –
 - (a) to modify its rules in accordance with such general requirements as are specified in the direction, or
 - (b) to make a specified modification to its rules.
- (2) Before giving a direction under subsection (1)(b), the Board must –
 - (a) give the OLC a notice giving details of the proposed modification and containing a statement that representations about the proposal may be made to the Board within a period specified in the notice,
 - (b) publish a copy of that notice, and
 - (c) have regard to any representations duly made.
- (3) The following provisions do not apply in relation to any modification made by the OLC to its rules in compliance with a direction under subsection (1)(b) –
 - (a) section 107(1)(a) (requirement to obtain the Board’s consent to rules);
 - (b) section 152 (requirement to consult before making rules).
- (4) Where the Board revokes a direction, it must –
 - (a) give the OLC notice of the revocation, and
 - (b) publish that notice.
- (5) For the purposes of this section “rules” means any rules made under this Part.

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Determinations under the scheme

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109 Determination of complaints

- (1) A complaint is to be determined under the ombudsman scheme by reference to what is, in the opinion of the ombudsman making the determination, fair and reasonable in all the circumstances of the case.
- (2) The determination may contain one or more of the following –
 - (a) a direction that the respondent make an apology to the complainant;
 - (b) a direction that the respondent secure the rectification, at the expense of the respondent, of any such error, omission or other deficiency arising in connection with the matter in question as the direction may specify;
 - (c) a direction that –
 - (i) the fees to which the respondent is entitled in respect of the services to which the complaint relates (“the fees”) are limited to such amount as may be specified in the direction, and
 - (ii) the respondent comply, or secure compliance, with such one or more of the permitted requirements as appear to the ombudsman to be necessary in order for effect to be given to the direction under sub-paragraph (i);

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- (d) a direction that the respondent pay compensation to the complainant of such an amount as is specified in the direction in respect of any loss which has been suffered by, or any inconvenience or distress which has been caused to, the complainant as a result of any matter connected with the complaint; 5
 - (e) a direction that the respondent take, at the expense of the respondent, such other action in the interests of the complainant as the direction may specify.
 - (3) For the purposes of subsection (2)(c) “the permitted requirements” are—
 - (a) that the whole or part of any amount already paid by or on behalf of the complainant in respect of the fees be refunded; 10
 - (b) that the whole or part of the fees be remitted;
 - (c) that the right to recover the fees be waived, whether wholly or to any specified extent.
 - (4) Where— 15
 - (a) a direction is made under subsection (2)(c) which requires that the whole or part of any amount already paid by or on behalf of the complainant in respect of the fees be refunded, or
 - (b) a direction is made under subsection (2)(d),
 the direction may also provide for the amount payable under the direction to bear interest at a rate and as from a time specified in the direction. 20
 - (5) The power of the ombudsman to make a direction under subsection (2) is not confined to cases where the complainant may have a cause of action against the respondent for negligence.
- 110 Limitation on value of directions under the ombudsman scheme** 25
- (1) Where a determination is made under the ombudsman scheme in respect of a complaint, the total value of directions under section 109(2) contained in the determination must not exceed £20,000.
 - (2) For this purpose the total value of such directions is the aggregate of—
 - (a) the amount of any expenses reasonably incurred by the respondent when complying with a direction under subsection (2)(b) or (e) of section 109, 30
 - (b) the amount of any fees which are required to be refunded, remitted or waived in accordance with a direction under subsection (2)(c)(ii) of that section, and 35
 - (c) the amount of any compensation specified in a direction under subsection (2)(d) of that section.
 - (3) For the purposes of determining that total value, any interest payable on an amount within subsection (2)(b) or (c) above, by virtue of section 109(4), is to be ignored. 40
- 111 Alteration of limit**
- (1) The Secretary of State may by order amend section 110(1) in accordance with a recommendation made by an interested body under subsection (2).
 - (2) An interested body may, at any time, recommend to the Secretary of State that section 110(1) should be amended so as to substitute the amount specified in 45

- the recommendation for the amount for the time being specified in that provision.
- (3) An interested body must, if requested to do so by the Secretary of State, consider whether or not it is appropriate to make a recommendation under subsection (2). 5
- (4) An interested body must, before making a recommendation under subsection (2) –
- (a) publish a draft of the proposed recommendation,
 - (b) invite representations regarding the proposed recommendation, and
 - (c) consider any such representations which are made. 10
- (5) Where the Secretary of State receives a recommendation under subsection (2), the Secretary of State must consider whether to exercise the power conferred by subsection (1).
- (6) If the Secretary of State decides not to exercise that power, the Secretary of State must publish a notice to that effect which includes the Secretary of State’s reasons for the decision. 15
- (7) In this section “interested body” means –
- (a) the OLC,
 - (b) the Board, or
 - (c) the Consumer Panel. 20

112 Acceptance or rejection of determination

- (1) When an ombudsman has determined a complaint the ombudsman must prepare a written statement of the determination.
- (2) The statement must –
- (a) give the ombudsman’s reasons for the determination, 25
 - (b) be signed by the ombudsman, and
 - (c) require the complainant to notify the ombudsman, before a time specified in the statement, whether the complainant accepts or rejects the determination.
- (3) The ombudsman must give a copy of the statement to – 30
- (a) the complainant,
 - (b) the respondent, and
 - (c) any relevant authorising body in relation to the respondent.
- (4) If the complainant notifies the ombudsman that the determination is accepted by the complainant, it is binding on the respondent and the complainant and is final. 35
- (5) If, by the specified time, the complainant has not notified the ombudsman of the complainant’s acceptance or rejection of the determination, the complainant is to be treated as having rejected it.
- (6) The ombudsman must give notice of the outcome to – 40
- (a) the complainant,
 - (b) the respondent, and
 - (c) any relevant authorising body in relation to the respondent.

- (7) A copy of the determination on which appears a certificate signed by an ombudsman is evidence that the determination was made under the scheme.
- (8) Such a certificate purporting to be signed by an ombudsman is to be taken to have been duly signed unless the contrary is shown.
- (9) Neither the complainant nor the respondent, in relation to a complaint, may institute or continue legal proceedings in respect of a matter which was the subject of a complaint, after the time when a determination by an ombudsman of the complaint becomes binding and final in accordance with this section. 5

113 Enforcement of directions under section 109

- (1) This section applies where – 10
 - (a) a determination is made in respect of a complaint under the ombudsman scheme,
 - (b) one or more directions are made under section 109(2), and
 - (c) the determination is final by virtue of section 112(4).
- (2) An amount payable in accordance with – 15
 - (a) a direction under subsection (2)(c) of section 109 which requires that the whole or part of any amount already paid by or on behalf of the complainant in respect of the fees be refunded, or
 - (b) a direction under subsection (2)(d) of that section, including any interest payable by virtue of subsection (4) of that section, is recoverable if a court so orders as if it were payable under an order of that court. 20
- (3) If the respondent fails to comply with any other direction under section 109(2), the complainant may make an application to the court under this subsection.
- (4) If, on an application under subsection (3), the court decides that the respondent has failed to comply with the direction in question, it may order the respondent to take such steps as the court directs for securing that the direction is complied with. 25
- (5) In this section “court” means the High Court or the county court.

114 Reporting court orders made against authorised persons 30

- (1) Where a court makes an order under section 113, it must give the OLC notice to that effect.
- (2) Where the order is made against an authorised person, the OLC must make arrangements to ensure that an ombudsman gives to each relevant authorising body, in relation to that person, a report which states that the order has been made. 35
- (3) A report under subsection (2) may require the relevant authorising body to report to the ombudsman the action which has been or is to be taken by it in response to the report under subsection (2) and the reasons for that action being taken. 40
- (4) If an ombudsman, having regard to any report produced by the relevant authorising body in compliance with a requirement imposed under subsection (3), or any failure to comply with such a requirement, considers –

- (a) that there has been a serious failure by the relevant authorising body to discharge its regulatory functions, or
 - (b) if such a requirement has been imposed on the body on more than one occasion, that the relevant authorising body has persistently failed adequately to discharge its regulatory functions,
- the ombudsman may make a report to that effect to the Board. 5

Complaints procedures of authorised persons

115 Complaints procedures of authorised persons

- (1) The regulatory arrangements of an approved regulator must make provision requiring each relevant authorised person – 10
 - (a) to establish and maintain procedures for the resolution of relevant complaints, or
 - (b) to participate in such procedures established and maintained by another person,
 and provision for the enforcement of that requirement. 15
- (2) The provision made for the purposes of subsection (1) must satisfy such requirements as the Board may, from time to time, specify for the purposes of that subsection.
- (3) In this section –
 - “relevant authorised person”, in relation to an approved regulator, means a person in relation to whom the approved regulator is a relevant approved regulator; 20
 - “relevant complaint”, in relation to a relevant authorised person, means a complaint which –
 - (a) relates to an act or omission of that person, and 25
 - (b) may be made under the ombudsman scheme.
- (4) The Board must publish any requirements specified by it for the purposes of subsection (2).
- (5) This section applies in relation to the licensing rules of the Board as it applies in relation to the regulatory arrangements of an approved regulator except that subsection (3) has effect as if for the definition of “relevant authorised person” there were substituted – 30
 - ““relevant authorised person”, in relation to the Board, means a person licensed by the Board under Part 5;”.

Co-operation with investigations 35

116 Duties to co-operate with investigations and share information

- (1) The regulatory arrangements of an approved regulator must make –
 - (a) provision requiring each relevant authorised person to give ombudsmen all such assistance requested by them, in connection with the investigation, consideration or determination of complaints under the ombudsman scheme, as that person is reasonably able to give, and 40
 - (b) provision for the enforcement of that requirement.

- (2) The provision made for the purposes of subsection (1) must satisfy such requirements as the Board may, from time to time, specify for the purposes of that subsection.
- (3) The regulatory arrangements of an approved regulator must also include provision which requires the approved regulator to disclose to the OLC, an ombudsman or a member of staff appointed under paragraph 11 of Schedule 13 information of such descriptions as may be specified in the arrangements, in such circumstances as may be so specified. 5
- (4) The OLC must make rules requiring the OLC, an ombudsman or a member of staff appointed under paragraph 11 of Schedule 13 to disclose to an approved regulator information of such descriptions as may be specified in the rules, in such circumstances as may be so specified. 10
- (5) The provision made for the purposes of subsection (3), and the rules made for the purposes of subsection (4), must satisfy such requirements as the Board may, from time to time, specify for the purpose of ensuring that duplication of investigations is avoided so far as practicable. 15
- (6) The Board must publish any requirements specified by it under subsection (2) or (5).
- (7) In this section “relevant authorised person”, in relation to an approved regulator, has the same meaning as in section 115. 20
- (8) This section applies in relation to the licensing rules of the Board as it applies in relation to the regulatory arrangements of an approved regulator except that subsection (7) has effect as if it read –
 - “(7) In this section “relevant authorised person”, in relation to the Board, means a person licensed by the Board under Part 5.” 25

117 Reporting failures to co-operate with an investigation to approved regulators

- (1) This section applies where an ombudsman is of the opinion that an authorised person in relation to an activity which is a reserved legal activity has failed to give an ombudsman all such assistance requested by the ombudsman, in connection with the investigation, consideration or determination of a complaint under the ombudsman scheme, as that person is reasonably able to give. 30
- (2) The ombudsman must give to each relevant authorising body, in relation to that person, a report which –
 - (a) states that the ombudsman is of that opinion, and 35
 - (b) gives details of the failure.
- (3) A report under subsection (2) may require the relevant authorising body to report to the ombudsman the action which has been or is to be taken by it in response to the report under that subsection and the reasons for that action being taken. 40
- (4) The duty imposed by subsection (2) is not affected by the withdrawal or abandonment of the complaint.
- (5) If an ombudsman, having regard to any report produced by the relevant authorising body in compliance with a requirement imposed under subsection (3), or any failure to comply with such a requirement, considers – 45

- (a) that there has been a serious failure by the relevant authorising body to discharge its regulatory functions, or
 - (b) if such a requirement has been imposed on the body on more than one occasion, that the relevant authorising body has persistently failed adequately to discharge its regulatory functions,
- the ombudsman may make a report to that effect to the Board.

Information

118 Information and documents

- (1) An ombudsman may, by notice, require a party to a complaint under the ombudsman scheme – 10
 - (a) to provide specified information or information of a specified description, or
 - (b) to produce specified documents or documents of a specified description.
- (2) A notice under subsection (1) may require the information or documents to be provided or produced – 15
 - (a) before the end of such reasonable period as may be specified, and
 - (b) in the case of information, in such manner or form as may be specified.
- (3) This section applies only to information and documents the provision or production of which the ombudsman considers necessary for the determination of the complaint. 20
- (4) An ombudsman may –
 - (a) take copies of or extracts from a document produced under this section, and
 - (b) require the person producing the document to provide an explanation of it. 25
- (5) If a person who is required under this section to produce a document fails to do so, an ombudsman may require that person to state, to the best of that person’s knowledge and belief, where the document is.
- (6) No person may be required under this section – 30
 - (a) to provide any information which that person could not be compelled to supply in evidence in civil proceedings before the High Court, or
 - (b) to produce any document which that person could not be compelled to produce in such proceedings.
- (7) In this section – 35
 - “party”, in relation to a complaint, means –
 - (a) the complainant;
 - (b) the respondent;
 - (c) any other person who in accordance with the scheme rules is to be regarded as a party to the complaint; 40
 - “specified” means specified in the notice given under subsection (1).

119 Reporting failures to provide information or produce documents

- (1) This section applies where an ombudsman is of the opinion that an authorised person in relation to an activity which is a reserved legal activity has failed to comply with a requirement imposed under section 118(1).
- (2) The ombudsman must give to each relevant authorising body, in relation to that person, a report which –
 - (a) states that the ombudsman is of that opinion,
 - (b) gives details of the failure, and
 - (c) requires the relevant authorising body to report to the ombudsman the action which has been or is to be taken by it in response to the report and the reasons for that action being taken.
- (3) The duty imposed by subsection (2) is not affected by the withdrawal or abandonment of the complaint in relation to which the requirement was imposed under section 118(1).
- (4) If an ombudsman, having regard to any report produced by the relevant authorising body in compliance with a requirement imposed under subsection (2)(c), or any failure to comply with such a requirement, considers –
 - (a) that there has been a serious failure by the relevant authorising body to discharge its regulatory functions, or
 - (b) if such a requirement has been imposed on the body on more than one occasion, that the relevant authorising body has persistently failed adequately to discharge its regulatory functions,
 the ombudsman may make a report to that effect to the Board.

120 Enforcement of requirements to provide information or produce documents

- (1) This section applies where an ombudsman is of the opinion that a person (“the defaulter”) has failed to comply with a requirement imposed under section 118(1).
- (2) The ombudsman may certify the defaulter’s failure to comply with the requirement to the court.
- (3) Where an ombudsman certifies a failure to the court under subsection (2), the court may enquire into the case.
- (4) If the court is satisfied that the defaulter has failed without reasonable excuse to comply with the requirement, it may deal with the defaulter and –
 - (a) in the case of a body corporate, any director or other officer,
 - (b) in the case of a partnership, any partner, and
 - (c) in the case of any other unincorporated body, any officer of the body or member of its governing body,
 as if that person were in contempt.
- (5) In a case where the defaulter is an authorised person, the ombudsman (“the enforcing ombudsman”) may not certify the defaulter’s failure to the court until a report by that or another ombudsman has been made as required by section 119(2) and the enforcing ombudsman is satisfied –
 - (a) that each relevant authorising body to whom such a report was made has been given a reasonable opportunity to take action in respect of the defaulter’s failure, and

- (b) that the defaulter has continued to fail to provide the information or produce the documents to which the requirement under section 118 related.

- (6) In this section “court” means the High Court.

121 Reports of investigations

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- (1) The OLC may, if it considers it appropriate to do so in any particular case, publish a report of the investigation, consideration and determination of a complaint made under the ombudsman scheme.
- (2) A report under subsection (1) must not (unless the complainant consents) –
 - (a) mention the name of the complainant, or
 - (b) include any particulars which, in the opinion of the OLC, are likely to identify the complainant.

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122 Restricted information

- (1) Except as provided by section 123, restricted information must not be disclosed –
 - (a) by a restricted person, or
 - (b) by any person who receives the information directly or indirectly from a restricted person.
- (2) In this section and section 123 –
 - “restricted information” means information (other than excluded information) which is obtained by a restricted person in the course of, or for the purposes of, an investigation into a complaint made under the ombudsman scheme (including information obtained for the purposes of deciding whether to begin such an investigation or in connection with the settlement of a complaint);
 - “restricted person” means –
 - (a) the OLC,
 - (b) an ombudsman, or
 - (c) a member of the OLC’s staff appointed under paragraph 11 of Schedule 13.
- (3) For the purposes of subsection (2) “excluded information” means –
 - (a) information which is in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it;
 - (b) information which at the time of the disclosure is or has already been made available to the public from other sources;
 - (c) information which was obtained more than 70 years before the date of the disclosure.

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123 Disclosure of restricted information

- (1) A restricted person may disclose restricted information to another restricted person.
- (2) Restricted information may be disclosed for the purposes of the investigation in the course of which, or for the purposes of which, it was obtained.

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- (3) Section 122 also does not preclude the disclosure of restricted information –
- (a) in a report made under –
 - (i) section 117(2) (report of failure to co-operate with investigation),
 - (ii) section 119 (reporting failures to provide information or produce documents), 5
 - (iii) section 125(2) (report of possible misconduct to approved regulators),
 - (b) for the purposes of enabling or assisting the Board to exercise any of its functions, 10
 - (c) to an approved regulator for the purposes of enabling or assisting the approved regulator to exercise any of its regulatory functions,
 - (d) with the consent of the person to whom it relates and (if different) the person from whom the restricted person obtained it,
 - (e) for the purposes of an inquiry with a view to the taking of any criminal proceedings or for the purposes of any such proceedings, or 15
 - (f) where the disclosure is required by or by virtue of any provision made by or under this Act or by any other enactment or other rule of law.

124 Data protection

In section 31 of the Data Protection Act 1998 (c. 29) (regulatory activity), after subsection (6) insert – 20

- “(7) Personal data processed for the purposes of the function of considering a complaint under the scheme established under Part 6 of the Legal Services Act 2006 (legal complaints) are exempt from the subject information provisions in any case to the extent to which the application of those provisions to the data would be likely to prejudice the proper discharge of the function.” 25

Reporting misconduct

125 Reporting possible misconduct to approved regulators

- (1) This section applies where – 30
 - (a) an ombudsman is dealing, or has dealt, with a complaint under the ombudsman scheme, and
 - (b) the ombudsman is of the opinion that the conduct of the respondent or any other person in relation to any matter connected with the complaint is such that a relevant authorising body in relation to that person should consider whether to take action against that person. 35
- (2) The ombudsman must give the relevant authorising body a report which –
 - (a) states that the ombudsman is of that opinion, and
 - (b) gives details of that conduct.
- (3) A report under subsection (2) may require the relevant authorising body to report to the ombudsman the action which has been or is to be taken by it in response to the report and the reasons for that action being taken. 40
- (4) The duty imposed by subsection (2) is not affected by the withdrawal or abandonment of the complaint.

- (5) If an ombudsman, having regard to any report produced by the relevant authorising body in compliance with a requirement imposed under subsection (3), or any failure to comply with such a requirement, considers –
 - (a) that there has been a serious failure by the relevant authorising body to discharge its regulatory functions, or 5
 - (b) if such a requirement has been imposed on the body on more than one occasion, that the relevant authorising body has persistently failed adequately to discharge its regulatory functions,
 the ombudsman may make a report to that effect to the Board.

Defamation 10

126 Protection from defamation claims

For the purposes of the law of defamation –

- (a) proceedings in relation to a complaint under the ombudsman scheme are to be treated as if they were proceedings before a court, and
- (b) the publication of any matter by the OLC under this Part is absolutely privileged. 15

Effect on existing arrangements for redress etc

127 Approved regulators not to make provision for redress

- (1) The regulatory arrangements of an approved regulator must not include any provision relating to redress. 20
- (2) If at the time this section comes into force the regulatory arrangements of an approved regulator contravene subsection (1), any provision relating to redress included in those regulatory arrangements ceases to have effect at that time, subject to subsection (3).
- (3) An order under section 157 which appoints a day for the coming into force of subsection (2) may include transitional provision in respect of any proceedings which, immediately before that day are awaiting determination under any provision relating to redress made by an approved regulator. 25
This subsection is without prejudice to any other transitional provision which may be made by or under this Act. 30
- (4) For the purposes of this section “provision relating to redress” means any provision (whether it is statutory or non-statutory) for redress in respect of acts or omissions of authorised persons and any provision connected with such provision.
- (5) Nothing in this section affects the requirements imposed by section 115 (complaints procedures of authorised persons). 35

128 Legal Services Complaints Commissioner and Legal Services Ombudsman

- (1) The offices of Legal Services Complaints Commissioner and Legal Services Ombudsman are abolished.
- (2) Accordingly – 40

- (a) sections 51 and 52 of, and Schedule 8 to, the Access to Justice Act 1999 (c. 22), and
 - (b) sections 21 to 26 of, and Schedule 3 to, the Courts and Legal Services Act 1990 (c. 41),
- are repealed. 5

Interpretation

129 Interpretation of Part 6

In this Part –

- “complainant”, in relation to a complaint, means the person who makes the complaint; 10
- “relevant authorising body”, in relation to a person, means –
 - (a) an approved regulator by which the person is authorised to carry on an activity which is a reserved legal activity, or
 - (b) where the person is authorised to carry on such an activity by the Board in its capacity as a licensing authority, the Board; 15
- “respondent”, in relation to a complaint, is to be construed in accordance with section 102 (except that where scheme rules of the kind mentioned in section 105(5)(h) have effect references to the “respondent” include a person treated as a co-respondent under those rules). 20

PART 7

FINANCIAL PROVISIONS

Payments by Secretary of State

130 Funding

- (1) The Secretary of State may –
 - (a) pay to the Board such sums as the Secretary of State may determine as appropriate for the purpose of meeting the expenditure of the Board incurred under or for the purposes of this Act (including any expenditure incurred by it in its capacity as an approved regulator or its capacity as a licensing authority), and 25
 - (b) pay to the OLC such sums as the Secretary of State may determine as appropriate for the purposes of meeting the expenditure of the OLC incurred under or for the purposes of this Act. 30
- (2) The Secretary of State may –
 - (a) determine the manner in which and times at which the sums mentioned in subsection (1) are to be paid, and 35
 - (b) impose conditions on the payment of those sums.

The levy

131 The levy

- (1) The Board must make rules providing for a levy on approved regulators for the purpose of raising an amount corresponding to the aggregate of – 40

- (a) the leviable Board expenditure, and
 - (b) the leviable OLC expenditure.
- (2) The Board may not make rules under this section except with the consent of the Secretary of State.
- (3) The “leviable Board expenditure” means the difference between – 5
 - (a) the expenditure of the Board incurred under or for the purposes of this Act (including any expenditure incurred by it in its capacity as an approved regulator or its capacity as a licensing authority), and
 - (b) the aggregate of the amounts which the Board pays into the Consolidated Fund under section 133(1)(a), (c) to (e) and (j) to (l). 10
- (4) The “leviable OLC expenditure” means the difference between – 15
 - (a) the expenditure of the OLC incurred under or for the purposes of this Act, and
 - (b) the aggregate of the amounts which the OLC pays into the Consolidated Fund under section 133(1)(g), (h) or (m). 15
- (5) In subsection (1) the reference to “approved regulators” does not include the Board where it is designated as an approved regulator under section 51.

132 The levy: supplementary provisions

- (1) In this section – 20
 - “the levy” means the levy payable by virtue of section 131;
 - “the levy rules” means the rules made in accordance with that section.
- (2) The levy is to be payable at such rate and at such times as may be specified in the levy rules.
- (3) The provision made in the levy rules for determining the amount of the levy payable in respect of a particular period – 25
 - (a) may require account to be taken of estimated as well as actual expenditure and receipts, and
 - (b) must require the Board to obtain the Secretary of State’s agreement to the amount payable in respect of a particular period.
- (4) The levy rules may provide for different parts of the levy to be payable at different rates. 30
- (5) Any amount which is owed to the Board in accordance with the levy rules may be recovered as a debt due to the Board.
- (6) The levy rules must require the Board – 35
 - (a) to calculate the amount of the levy payable by each approved regulator,
 - (b) to notify each approved regulator of its liability to pay an amount of levy and the time or times at which it becomes payable.
- (7) Without prejudice to this section, the levy rules may – 40
 - (a) make provision about the collection and recovery of the levy;
 - (b) make provision about the circumstances in which any amount of the levy payable may be waived;
 - (c) provide that if the whole or any part of an amount of the levy payable under the levy rules is not paid by the time when it is required to be

paid under the rules, the unpaid balance from time to time carries interest at the rate determined by or in accordance with the levy rules.

Payments into the Consolidated Fund

133 Amounts payable into the Consolidated Fund

- | | |
|---|----|
| (1) The following must be paid into the Consolidated Fund – | 5 |
| (a) any application fee received by the Board; | |
| (b) any sums received by the Board under sections 30 to 33 (financial penalties and interest); | |
| (c) amounts paid to the Board under section 41(8) or 42(5) (charges for providing draft and final policy statements); | 10 |
| (d) any sums received by the Board in its capacity as an approved regulator by virtue of rules within section 53(2)(c) (practising fees etc); | |
| (e) any sums received by the Board in its capacity as a licensing authority by virtue of its licensing rules within paragraph 1, 4, 5 or 22 of Schedule 11 or by virtue of paragraph 15 of Schedule 12; | 15 |
| (f) any sums received by the Board in its capacity as a licensing authority under sections 79 to 82 (financial penalties and interest); | |
| (g) any charge received by the OLC by virtue of rules under section 106 (charges payable by respondents), together with any interest payable in accordance with those rules; | 20 |
| (h) any amount payable to the OLC in accordance with scheme rules within subsection (5)(n) of section 105 (costs of OLC payable by the complainant or the respondent in relation to a complaint), together with any interest payable on such an amount under subsection (10) of that section; | 25 |
| (i) any sum received by the Board in accordance with rules under section 131 (the levy); | |
| (j) amounts paid to the Board under section 134(4)(c) (charges for providing copies of guidance); | |
| (k) any amount payable to the Board under arrangements entered under section 135 (voluntary arrangements); | 30 |
| (l) amounts paid to the Board under subsection (7) of section 152 (charges for providing copies of rules and draft rules); | |
| (m) amounts paid to the OLC under that subsection. | |
| (2) In this section “application fee” means a fee within – | 35 |
| (a) paragraph 3(3)(d) of Schedule 5 (application fees in respect of designation as approved regulator); | |
| (b) section 38(3)(b) (application fees in respect of cancellation of designation as approved regulator); | |
| (c) paragraph 1(4)(d) of Schedule 10 (application fees in respect of designation as licensing authority); | 40 |
| (d) section 63(3)(b) (application fees in respect of cancellation of designation as licensing authority); | |
| (e) paragraph 2(4)(c) of Schedule 14 (application fees in respect of designation as qualifying regulator for the purposes of Part 5 of the Immigration and Asylum Act 1999 (c. 33)). | 45 |

PART 8

MISCELLANEOUS AND GENERAL PROVISIONS

Guidance

134 Guidance

- (1) The Board may give guidance – 5
 - (a) about the operation of this Act and of any order made under it;
 - (b) about the operation of any rules made by the Board under this Act;
 - (c) about any matter relating to the Board’s functions;
 - (d) for the purpose of meeting the regulatory objectives;
 - (e) about the content of licensing rules; 10
 - (f) about any other matters about which it appears to the Board to be desirable to give guidance.
- (2) Guidance under this section may consist of such information and advice as the Board considers appropriate.
- (3) The Board may give financial or other assistance to persons giving information or advice of a kind which the Board could give under this section. 15
- (4) The Board may –
 - (a) publish its guidance,
 - (b) offer copies of its published guidance for sale at a reasonable price, and
 - (c) if it gives guidance in response to a request made by any person, make a reasonable charge for that guidance. 20
- (5) When exercising its functions, the Board may have regard to the extent to which an approved regulator has complied with any guidance issued under this section which is applicable to the approved regulator.
- (6) When exercising its functions – 25
 - (a) in its capacity as an approved regulator by virtue of an order under section 51(1)(a), or
 - (b) in its capacity as a licensing authority under Part 5,the Board must have regard to any guidance it has issued under this section.

Voluntary arrangements 30

135 Voluntary arrangements

- (1) The Board may enter into arrangements with any person under which the Board is to provide assistance for the purpose of improving standards of service and promoting best practice in connection with the carrying on of any legal activity. 35
- (2) These arrangements may (among other things) provide for the Board to give advice on –
 - (a) the best regulatory practice, or
 - (b) the contents of codes of practice or other voluntary arrangements.

- (3) Arrangements under this section may include provision as to the terms on which assistance is to be provided by the Board (including provision as to payment).
- (4) Where the Board enters into arrangements under this section, it must publish a statement giving details of the arrangements and explaining what they are intended to achieve. 5

Solicitors Disciplinary Tribunal

136 The Solicitors Disciplinary Tribunal

- (1) If the Solicitors Disciplinary Tribunal (“the Tribunal”) makes an alteration of its rules under section 46(9)(b) of the Solicitors Act 1974 (c. 47) (“the tribunal rules”), the alteration does not have effect unless it is approved for the purposes of this Act. 10
- (2) An alteration is approved for the purposes of this Act if –
 - (a) it is approved by the Board under Part 3 of Schedule 5 (alteration of approved regulator’s regulatory arrangements), 15
 - (b) it is an exempt alteration, or
 - (c) it is an alteration made in compliance with a direction under section 25 (given by virtue of subsection (6) below).
- (3) For the purposes of subsection (2)(a), paragraphs 22 to 29 of Schedule 5 (procedure for approval of alterations to regulatory arrangements) apply in relation to an application by the Tribunal for approval of an alteration or alterations of the tribunal rules as they apply in relation to an application by an approved regulator for approval of an alteration or alterations of its regulatory arrangements, but as if – 20
 - (a) paragraph 25 of that Schedule applied in relation to the Law Society as well as the Tribunal, 25
 - (b) in paragraph 27(3) (grounds for refusal of application), paragraphs (c) and (d) were omitted, and
 - (c) in paragraph 29(3) the reference to section 25 were a reference to that section as applied (with modifications) by this section. 30
- (4) For the purposes of subsection (2)(b) an exempt alteration is an alteration which the Board has directed is to be treated as exempt for the purposes of this section.
- (5) A direction under subsection (4) may be specific or general, and must be published by the Board. 35
- (6) Sections 25 to 27 and Schedule 7 (Board’s powers to give directions) apply in relation to the Tribunal as they apply in relation to an approved regulator, but as if –
 - (a) in subsection (1) of section 25 –
 - (i) in paragraph (a) for “its regulatory functions” there were substituted “its functions”, and 40
 - (ii) paragraphs (b) and (d) were omitted,
 - (b) in subsection (2)(b) of that section for “regulatory arrangements” there were substituted “rules under section 46(9)(b) of the Solicitors Act 1974”, 45
 - (c) section 27(3) were omitted, and

- (d) paragraphs 2 and 10 of Schedule 7 applied in relation to the Law Society, as well as the Tribunal, where it is proposed to give the Tribunal a direction under section 25.
- (7) Sections 57 and 58 (modification of functions of approved regulators) apply in relation to the Tribunal as they apply in relation to an approved regulator, but as if –
 - (a) for section 57(3) (purpose for which modifying order may be made) there were substituted –
 - “(3) An order under subsection (1) may be made only for the purpose of enabling the Tribunal to carry out its role more effectively or efficiently.”; and
 - (b) subsections (4), (5) and (7) of that section were omitted.
- (8) In this section references to an “alteration” of the tribunal rules include the making of such rules and the modification of such rules.

Use of information 15

137 Use of information

Information obtained by the Board (whether in its capacity as an approved regulator or licensing authority or otherwise) may be used by the Board for the purposes of, or for any purpose connected with or incidental to, the exercise of its functions. 20

Representative functions

138 The Board not to interfere with approved regulators’ representative functions

- (1) Nothing in this Act authorises the Board to exercise its functions in relation to any representative function of an approved regulator.
- (2) But subsection (1) does not prevent the Board taking action for the purpose of ensuring that an approved regulator’s regulatory functions are not prejudiced by its representative functions. 25
- (3) In this section “representative function”, in relation to an approved regulator, means any function the approved regulator has to represent or promote the interests of persons regulated by it. 30

Legal professional privilege

139 Legal professional privilege

- (1) This section applies to any communication made to or by an individual (“P”) who is not a barrister or solicitor at any time when P is providing advocacy services, litigation services, conveyancing services or probate services, in P’s capacity as an authorised person in relation to an activity. 35
- (2) Any such communication is, in any legal proceedings, to be privileged from disclosure in like manner as if P had at all material times been acting as P’s client’s solicitor.

- (3) In this section –
- “advocacy services” means any services which it would be reasonable to expect a person who is exercising, or contemplating exercising, a right of audience in relation to any proceedings, or contemplated proceedings, to provide; 5
 - “litigation services” means any services which it would be reasonable to expect a person who is exercising, or contemplating exercising, a right to conduct litigation in relation to any proceedings, or contemplated proceedings, to provide;
 - “conveyancing services” means the preparation of transfers, conveyances, contracts and other documents in connection with, and other services ancillary to, the disposition or acquisition of estates or interests in land; 10
 - “probate services” means the preparation of any papers on which to found or oppose a grant of probate or a grant of letters of administration and the administration of the estate of a deceased person. 15

Immigration advice and immigration services

140 Immigration advisers and immigration service providers

- (1) Schedule 14 makes provision relating to Part 5 of the Immigration and Asylum Act 1999 (c. 33) (immigration advisers and immigration service providers). 20
- (2) In that Schedule –
 - (a) Part 1 makes provision for approved regulators to become qualifying regulators for the purposes of Part 5 of the Immigration and Asylum Act 1999,
 - (b) Part 2 contains amendments of that Act (which amongst other things enable persons authorised by qualifying regulators to provide immigration advice and immigration services in England and Wales), and 25
 - (c) Part 3 makes provision for certain persons to be treated, during a transitional period, as authorised by qualifying regulators to provide such advice and services. 30

Advocates and litigators

141 Duties of advocates and litigators

- (1) This section applies to every individual who –
 - (a) exercises before any court a right of audience, or 35
 - (b) conducts litigation in relation to proceedings in any court, by virtue of being an authorised person in relation to the activity in question.
- (2) An individual to whom this section applies has a duty to the court in question to act with independence in the interests of justice.
- (3) An individual to whom this section applies has a duty to comply with the conduct rules of the approved regulator by which the individual is authorised to carry on the activity in question which relate to the carrying on of that activity. 40

- (4) The duties imposed on an individual by subsections (2) and (3) override any obligations which the individual may have (otherwise than under the criminal law) if they are inconsistent with them.

142 Employed advocates

- (1) This section applies where an authorised person in relation to the exercise of a right of audience is employed as a Crown Prosecutor or in any other description of employment. 5
- (2) Qualification regulations or conduct rules of the approved regulator by whom the person is authorised to carry on that activity which relate to the right of audience do not have effect in relation to the person if – 10
- (a) they –
- (i) limit the courts before which, or proceedings in which, that activity may be carried on by persons who are employed, or
- (ii) limit the circumstances in which that activity may be carried on by persons who are employed by requiring such persons to be accompanied by some other person when carrying on that activity, and 15
- (b) they do not impose the same limitation on persons who are authorised persons in relation to the activity in question but are not employed.
- (3) In this section, in relation to an approved regulator, “conduct rules” and “qualification regulations” have the meaning given by section 16(2). 20

Savings

143 Powers of court in respect of rights of audience and conduct of litigation

- (1) Nothing in this Act affects the power of any court in any proceedings to refuse to hear a person (for reasons which apply to that person as an individual) who would otherwise have a right of audience before the court in relation to those proceedings. 25
- (2) Where a court refuses to hear a person as mentioned in subsection (1), it must give its reasons for refusing.
- (3) Where – 30
- (a) immediately before the commencement of section 10 (entitlement to carry on reserved legal activities), or
- (b) by virtue of any provision made by or under an enactment passed subsequently,
- a court does not permit the appearance of advocates, or permits the appearance of advocates only with leave, no person may exercise a right of audience before the court, in relation to any proceedings, solely by virtue of being entitled to do so under this Act. 35
- (4) But a court may not limit the right to appear before the court in any proceedings to only some of those who are entitled to exercise that right by virtue of this Act. 40
- (5) A court may not limit the right to conduct litigation in relation to proceedings before the court to only some of those who are entitled to exercise that right by virtue of this Act.

- (6) In this section “advocate”, in relation to any proceedings, means a person exercising a right of audience as a representative of, or on behalf of, any party to the proceedings.

144 Savings for solicitors to public departments and the City of London

- (1) Nothing in this Act is to prejudice or affect any rights or privileges of— 5
 (a) the Treasury Solicitor,
 (b) the solicitor to any other public department,
 (c) the solicitor to the Church Commissioners, or
 (d) the solicitor to the Duchy of Cornwall.
- (2) Nothing in this Act requires a person to whom subsection (1) applies, or any clerk or officer appointed to act for such a person, to be an authorised person in relation to an activity which is a reserved legal activity in any case where, by virtue of section 88(1) of the Solicitors Act 1974 (c. 47), it would not have been necessary for that person to be admitted and enrolled and to hold a practising certificate under that Act if this Act had not been passed. 10
15
- (3) Nothing in this Act is to prejudice or affect any rights or privileges which immediately before the commencement of this Act attached to the office of Solicitor of the City of London.

Offences

145 Offences committed by bodies corporate and unincorporated bodies 20

- (1) Where an offence is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of an officer of the body corporate, that officer (as well as the body corporate) is guilty of the offence and is liable to be proceeded against and punished accordingly.
- (2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with the member’s functions of management as it applies to an officer of the body corporate. 25
- (3) Proceedings for an offence alleged to have been committed by an unincorporated body are to be brought in the name of that body (and not in that of any of its members) and, for the purposes of any such proceedings, any rules of court relating to the service of documents have effect as if that body were a corporation. 30
- (4) A fine imposed on an unincorporated body on its conviction of an offence is to be paid out of the funds of that body. 35
- (5) If an unincorporated body is charged with an offence, section 33 of the Criminal Justice Act 1925 (c. 86) and Schedule 3 to the Magistrates’ Courts Act 1980 (c. 43) (procedure on charge of an offence against a corporation) have effect in like manner as in the case of a corporation so charged.
- (6) Where an offence committed by an unincorporated body (other than a partnership) is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any officer of the body or any member of its governing body, that officer or member as well as the 40

unincorporated body is guilty of the offence and liable to be proceeded against and punished accordingly.

- (7) Where an offence committed by a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, that partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly. 5
- (8) In this section –
“offence” means an offence under this Act;
“officer”, in relation to a body corporate, means –
(a) any director, secretary or other similar officer of the body corporate, or
(b) any person who was purporting to act in any such capacity. 10

146 Local weights and measures authorities

- (1) A local weights and measures authority may institute proceedings for an offence under section 11 if the activity which it is alleged that the accused was not entitled to carry on constitutes reserved instrument activities. 15
- (2) In this section –
“relevant offence” means an offence in relation to which proceedings may be instituted by virtue of subsection (1);
“weights and measures officer” means an officer of a local weights and measures authority who is authorised by the authority to exercise the powers conferred by subsection (3). 20
- (3) A weights and measures officer who has reasonable cause to suspect that a relevant offence may have been committed may, at any reasonable time –
(a) enter any premises which are not used solely as a dwelling; 25
(b) require any officer, agent or other competent person on the premises who is, or may be, in possession of information relevant to an investigation of the suspected offence, to provide such information;
(c) require the production of any document which may be relevant to such an investigation; 30
(d) take copies, or extracts, of any such documents;
(e) seize and retain any document which the weights and measures officer has reason to believe may be required as evidence in proceedings for a relevant offence.
- (4) Any person exercising a power given by subsection (3) must, if asked to do so, produce evidence that that person is a weights and measures officer. 35
- (5) A justice of the peace may issue a warrant under this section if satisfied on information on oath given by a weights and measures officer, that there is reasonable cause to believe that a relevant offence may have been committed and that – 40
(a) entry to the premises concerned, or production of any documents which may be relevant to an investigation of the relevant offence, has been or is likely to be refused to a weights and measures officer, or
(b) there is reasonable cause to believe that, if production of any such document were to be required by the weights and measures officer without a warrant having been issued under this section, the document 45

- would not be produced but would be removed from the premises or hidden, tampered with or destroyed.
- (6) A warrant issued under this section must authorise the weights and measures officer accompanied, where that officer considers it appropriate, by a constable or other person – 5
- (a) to enter the premises specified in the information, using such force as is reasonably necessary, and
 - (b) to exercise any of the powers given to the weights and measures officer by subsection (3).
- (7) It is an offence for a person (“P”) – 10
- (a) intentionally to obstruct a weights and measures officer in the exercise of any power under this section;
 - (b) intentionally to fail to comply with any requirement properly imposed on P by a weights and measures officer in the exercise of any such power; 15
 - (c) to fail, without reasonable excuse, to give to a weights and measures officer any assistance or information which the weights and measures officer may reasonably require of P for the purpose of exercising any such power; or
 - (d) in giving to a weights and measures officer any information which P has been required to give to a weights and measures officer exercising any such power, to make any statement which P knows to be false or misleading in a material particular. 20
- (8) A person who is guilty of an offence under subsection (7) is liable on summary conviction to a fine not exceeding level 3 on the standard scale. 25
- (9) Nothing in this section is to be taken to require any person to answer any question put to that person by a weights and measures officer, or to give any information to such an officer, if to do so might incriminate that person.

Notices etc

147 Notices and directions 30

- (1) A requirement or power under this Act to give a notice (or to notify) is a requirement or power to give notice in writing.
- (2) A requirement or power under this Act to give a direction (or to direct) is a requirement or power to give a direction in writing.
- (3) Any power conferred by this Act to give a direction includes power to revoke the direction. 35
- (4) Subsection (3) does not apply to the power conferred on an ombudsman to give a direction under section 109 (directions on a determination of a complaint).

148 Documents

- (1) In this Act “document” includes a document in electronic form and, in relation to such a document, any reference to the production of the document is a reference to the production of a hard copy of the document. 40
- (2) For this purpose –

- (a) a document is produced in hard copy form if it is produced in a paper copy, or similar form, capable of being read (and references to a hard copy have a corresponding meaning), and
- (b) a document can be read only if it can be read with the naked eye or, to the extent that it consists of images, it can be seen with the naked eye. 5

149 The giving of notices, directions and other documents

- (1) This section applies where provision made (in whatever terms) by or under this Act authorises or requires a notice, direction or any other document (including a copy of a document) to be given to a person.
- (2) The notice, direction or document may be given to the person – 10
 - (a) by delivering it to the person,
 - (b) by leaving it at the person's proper address, or
 - (c) by sending it by post to the person at that address.
- (3) The notice, direction or document may be given to a body corporate by being given to the secretary or clerk of that body. 15
- (4) The notice, direction or document may be given to a partnership by being given to –
 - (a) a partner in the partnership, or
 - (b) a person having the control or management of the partnership business. 20
- (5) The notice, direction or document may be given to any other unincorporated body by being given to a member of the governing body of the unincorporated body.
- (6) For the purposes of this section, and section 7 of the Interpretation Act 1978 (c. 30) (service of documents by post) in its application to this section, the proper address of a person is – 25
 - (a) in the case of a body corporate, the address of the registered or principal office of the body;
 - (b) in the case of a partnership, or any other unincorporated body, the address of the principal office of the partnership or body; 30
 - (c) in the case of a person to whom the notice or other document is given in reliance on any of subsections (3) to (5), the proper address of the body corporate, partnership or other unincorporated body in question;
 - (d) in any other case, the last known address of the person in question.
- (7) In the case of – 35
 - (a) a company registered outside the United Kingdom,
 - (b) a partnership carrying on business outside the United Kingdom, or
 - (c) any other unincorporated body with offices outside the United Kingdom,
 the references in subsection (6) to its principal office include references to its principal office within the United Kingdom (if any). 40
- (8) This section has effect subject to section 150 (notices, directions and documents in electronic form).

150 The giving of notices, directions and other documents in electronic form

- (1) This section applies where –
 - (a) section 149 authorises the giving of a notice, direction or other document by its delivery to a particular person (“the recipient”), and
 - (b) the notice, direction or other document is transmitted to the recipient – 5
 - (i) by means of an electronic communications network, or
 - (ii) by other means but in a form that nevertheless requires the use of apparatus by the recipient to render it intelligible.
- (2) The transmission has effect for the purposes of this Act as a delivery of the notice, direction or other document to the recipient, but only if the requirements imposed by or under this section are complied with. 10
- (3) Where the recipient is the Board, the OLC or an ombudsman –
 - (a) the recipient must have indicated its willingness to receive the notice, direction or other document in a manner mentioned in subsection (1)(b), 15
 - (b) the transmission must be made in such manner, and satisfy such other conditions as the recipient may require, and
 - (c) the notice, direction or other document must take such form as the recipient may require.
- (4) Where the person making the transmission is the Board, the OLC or an ombudsman, that person may (subject to subsection (5)) determine – 20
 - (a) the manner in which the transmission is made, and
 - (b) the form in which the notice, direction or other document is transmitted.
- (5) Where the recipient is a person other than the Board, the OLC or an ombudsman – 25
 - (a) the recipient, or
 - (b) the person on whose behalf the recipient receives the notice, direction or other document,

must have indicated to the person making the transmission the recipient’s willingness to receive notices, directions or other documents transmitted in the form and manner used. 30
- (6) An indication to any person for the purposes of subsection (5) –
 - (a) must be given to that person in such manner as that person may require; 35
 - (b) may be a general indication or one that is limited to notices or documents of particular descriptions;
 - (c) must state the address to be used and must be accompanied by such other information as that person requires for the making of the transmission; 40
 - (d) may be modified or withdrawn at any time by a notice given to that person in such manner as that person may require.
- (7) An indication, requirement or determination given, imposed or made by the Board, the OLC or an ombudsman for the purposes of this section is to be given, imposed or made by being published by that person. 45
- (8) In this section “electronic communications network” has the same meaning as in the Communications Act 2003 (c. 21).

Orders, rules etc

151 Orders, rules etc

- (1) Any order made by the Secretary of State under this Act must be made by statutory instrument.
- (2) An instrument to which this subsection applies may – 5
 - (a) provide for a person to exercise a discretion in dealing with any matter;
 - (b) include incidental, supplementary and consequential provision;
 - (c) make transitory or transitional provision and savings;
 - (d) make provision generally or only in relation to specified cases;
 - (e) make different provision for different cases or circumstances or for different purposes. 10
- (3) Subsection (2) applies to –
 - (a) any order made by the Secretary of State,
 - (b) any rules or regulations made by the Board, and
 - (c) any rules made by the OLC, 15under or by virtue of this Act.

152 Consultation requirements for rules

- (1) This section applies in relation to –
 - (a) rules made by the Board under this Act, and
 - (b) rules made by the OLC under Part 6, 20other than excluded rules.
- (2) If the Board or the OLC (“the rule-making body”) proposes to make any rules, it must publish a draft of the proposed rules.
- (3) The draft must be accompanied by a notice which states that representations about the proposals may be made to the rule-making body within the period specified in the notice. 25
- (4) Before making the rules, the rule-making body must have regard to any representations duly made.
- (5) If the rules differ from the draft published under subsection (2) in a way which is, in the opinion of the rule-making body, material, it must publish details of the differences. 30
- (6) The rule-making body must publish any rules it makes, and rules may not take effect before the time they are published.
- (7) The rule-making body may make a reasonable charge for providing a person with a copy of – 35
 - (a) a draft published under subsection (2), or
 - (b) rules published under subsection (6).
- (8) In this section “excluded rules” means –
 - (a) rules of procedure made by the Board for the purposes of paragraph 18 of Schedule 1 40
 - (b) rules made by the Board in its capacity as an approved regulator or a licensing authority, and

- (c) rules of procedure made by the OLC for the purposes of paragraph 17 of Schedule 13;
and references to making rules include references to modifying the rules and, in relation to any modifications of rules, references to the proposed rules are to be read as references to the proposed modifications. 5
- (9) This section is subject to section 108(3) (which disapplies section 152 to OLC rules made in response to a Board direction under section 108(1)(b)).

153 Parliamentary control of orders

- (1) Any order made by the Secretary of State under any provision of this Act is subject to annulment in pursuance of a resolution of either House of Parliament. 10
- (2) Subsection (1) does not apply to—
- (a) an order to which subsection (3) applies, or
 - (b) an order which contains only provision made under one or more of—
 - (i) section 18(2)(b) (day appointed as end of transitional period relating to not for profit bodies); 15
 - (ii) section 66(1)(a) (day appointed as beginning of 12 month period during which Board must make licensing rules);
 - (iii) section 157 (commencement);
 - (iv) paragraph 4(1)(b) of Schedule 4 (day appointed as end of transitional period during which rights conferred by virtue of Part 2 of that Schedule); 20
 - (v) paragraph 17(1)(b) of Schedule 14 (day appointed as end of transitional period during which rights conferred by virtue of Part 3 of that Schedule). 25
- (3) An order which contains provision made under any of the following provisions may not be made unless a draft of the order has been laid before, and approved by a resolution of, each House of Parliament—
- (a) section 19(1) (orders adding to reserved legal activities);
 - (b) section 20(1) or (3) (provisional designation of approved regulators); 30
 - (c) section 38(1) (cancellation of designation as approved regulator);
 - (d) section 39 (transitional arrangements following cancellation under section 38);
 - (e) section 51(1) (power to designate Board as an approved regulator, modify its functions or cancel its designation); 35
 - (f) section 57(1) (modification of functions of approved regulators);
 - (g) section 63(1) (cancellation of designation as licensing authority);
 - (h) section 64 (transitional arrangements following cancellation under section 63);
 - (i) section 156(2) (power to make consequential provision etc by amending enactments); 40
 - (j) paragraph 6(1) of Schedule 3 (modification of exempt persons);
 - (k) paragraph 19 of Schedule 5 (designation of approved regulators).

Interpretation

154 Interpretation

- (1) In this Act, except where the context otherwise requires –
- “consumers” means (subject to subsection (3)) persons –
- (a) who use, have used or are or may be contemplating using, 5
services within subsection (2),
 - (b) who have rights or interests which are derived from, or are
otherwise attributable to, the use of such services by other
persons, or
 - (c) who have rights or interests which may be adversely affected by 10
the use of such services by persons acting on their behalf or in a
fiduciary capacity in relation to them;
- “conveyancing services” has the same meaning as in Part 2 of the
Administration of Justice Act 1985 (c. 61) (licensed conveyancing) (see 15
section 11(3) of that Act);
- “court” includes –
- (a) any tribunal which the Council on Tribunals is under a duty to
keep under review,
 - (b) any court-martial, and
 - (c) a statutory inquiry within the meaning of section 16(1) of the 20
Tribunals and Inquiries Act 1992 (c. 53);
- “enactment” means –
- (a) a provision of an Act (whether passed before or after this Act),
or
 - (b) a provision of subordinate legislation (whenever made). 25
- “functions” includes powers and duties;
- “immigration advice” and “immigration services” have the meaning
given by section 82 of the Immigration and Asylum Act 1999 (c. 33)
(interpretation of Part 5) (see also subsection (4) below);
- “modify” includes amend, add to or revoke, and references to 30
“modifications” are to be construed accordingly;
- “not for profit body” means any body that by or under its constitution –
- (a) is required to apply the whole of its net income after payment
of outgoings for charitable or public purposes, and
 - (b) is prohibited from distributing, directly or indirectly, any part 35
of its net income by way of profits, or its assets, amongst any of
its members;
- “not for profit legal services” means –
- (a) legal services carried on otherwise than with a view to profit;
 - (b) legal services carried on by a not for profit body; 40
- “officer”, in relation to a body corporate the affairs of which are managed
by its members, means a member of the body corporate;
- “the OFT” means the Office of Fair Trading;
- “reserved legal services” means services provided by a person which
consist of or include reserved legal activities carried on by, or on behalf 45
of, that person;
- “solicitor” means solicitor of the Senior Courts;
- “the senior judges” means –

- (a) the Lord Chief Justice;
 - (b) the Master of the Rolls;
 - (c) the President of the Queen’s Bench Division;
 - (d) the President of the Family Division;
 - (e) the Chancellor of the High Court. 5
- (2) The services within this subsection are –
 - (a) any services provided by a person who is an authorised person in relation to an activity which is a reserved legal activity, and
 - (b) any other services provided by a person which consist of or include a legal activity carried on by, or on behalf of, that person. 10
- (3) For the purposes of the definition of “consumers” in subsection (1) –
 - (a) if a person (“A”) is carrying on an activity in A’s capacity as a trustee, the persons who are, have been or may be beneficiaries of the trust are to be treated as persons who use, have used or are or may be contemplating using services provided by A in A’s carrying on of that activity, and 15
 - (b) a person (“B”) who deals with a person in the course of B’s carrying on of an activity is to be treated as using services provided by B in carrying on that activity.
- (4) The references in this Act to the provision of immigration advice or immigration services are to the provision of such advice or services by a person – 20
 - (a) in England and Wales (regardless of whether the persons to whom they are provided are in England and Wales or elsewhere), and
 - (b) in the course of a business carried on (whether or not for profit) by the person or another person. 25

155 Index of defined expressions

Schedule 15 lists the places where expressions used in this Act are defined or otherwise explained.

Miscellaneous and supplementary 30

156 Power to make consequential provision etc

- (1) The Secretary of State may by order make any supplementary, incidental or consequential provision and any transitory, transitional or saving provision which the Secretary of State considers necessary or expedient – 35
 - (a) for the general purposes, or any particular purpose, of this Act, or
 - (b) in consequence of any provision made by or under it or for giving full effect to it.
- (2) An order under this section may make provision amending, repealing or revoking (with or without savings) any provision of – 40
 - (a) an Act passed before or in the same session as this Act, or
 - (b) an instrument made under an Act before the passing of this Act.
- (3) An order under this section may make such adaptations of provisions of this Act brought into force as appear to be necessary or expedient in consequence of other provisions of this Act not yet having come into force.

- (4) Provision made under this section is additional, and without prejudice, to that made by or under any other provision of this Act.

157 Commencement

- (1) This section and sections 156, 158 and 159 come into force on the day this Act is passed. 5
- (2) Subject to that, the provisions of this Act come into force on such day as may be appointed by order of the Secretary of State.

158 Extent

- (1) Subject to subsection (2), this Act extends to England and Wales only.
- (2) An amendment or repeal contained in this Act has the same extent as the enactment (or relevant part of the enactment) to which it relates and section 140 has effect accordingly. 10

159 Short title

This Act may be cited as the Legal Services Act 2006.

SCHEDULE 1

THE LEGAL SERVICES BOARD

Membership

- | | | |
|---|---|----|
| 1 | (1) The Board is to consist of the following members— | 5 |
| | (a) a chairman appointed by the Secretary of State, | |
| | (b) the Chief Executive of the Board (see paragraph 11), and | |
| | (c) at least 7, but not more than 10, other persons appointed by the Secretary of State. | |
| | (2) In this Schedule a reference to an “ordinary member” is a reference to a member of the Board other than the Chief Executive. | 10 |
| | (3) The Secretary of State may by order amend sub-paragraph (1) by substituting for the limit on the maximum number of persons for the time being specified in paragraph (c) of that sub-paragraph a different limit. | |
| 2 | (1) In appointing persons as ordinary members the Secretary of State must ensure that a majority of the members of the Board are lay persons. | 15 |
| | (2) The first chairman must be a lay person. | |
| | (3) In this Schedule a reference to a “lay person” is a reference to a person who has never been an authorised person in relation to an activity which is a reserved legal activity. | 20 |
| | (4) For the purposes of sub-paragraph (3), a person is deemed to have been an authorised person in relation to an activity which is a reserved legal activity if that person has before the appointed day been— | |
| | (a) a barrister; | 25 |
| | (b) a solicitor; | |
| | (c) a public notary; | |
| | (d) a licensed conveyancer; or | |
| | (e) granted a right of audience or a right to conduct litigation in relation to any proceedings by virtue of section 27(2)(a) or section 28(2)(a) of the Courts and Legal Services Act 1990 (c. 41)(rights of audience and rights to conduct litigation). | 30 |
| | (5) For the purpose of sub-paragraph (4)— | |
| | “appointed day” means the day appointed by the Secretary of State by order under section 157 for the coming into force of section 10; | |
| | “licensed conveyancer” has the meaning given by section 11(2) of the Administration of Justice Act 1985 (c. 61). | 35 |

- | | | |
|---|--|----|
| 3 | In appointing persons to be ordinary members, the Secretary of State must have regard to the desirability of securing that the Board includes members who (between them) have experience in or knowledge of— | |
| | (a) the provision of legal services; | 5 |
| | (b) legal education and legal training; | |
| | (c) consumer affairs; | |
| | (d) civil or criminal proceedings and the working of the courts; | |
| | (e) competition matters; | |
| | (f) the maintenance of the professional standards of persons who provide legal services; | 10 |
| | (g) the maintenance of standards in professions other than the legal profession; | |
| | (h) the handling of complaints; | |
| | (i) commercial affairs; | |
| | (j) not for profit legal services; | 15 |
| | (k) the differing needs of consumers. | |

Terms of appointment and tenure of members

- | | | |
|---|--|-------------------------------|
| 4 | An ordinary member is to hold and vacate office in accordance with the terms and conditions of that member's appointment (subject to this Schedule). | 20 |
| 5 | <p>(1) An ordinary member must be appointed for a fixed period.</p> <p>(2) The period for which an ordinary member is appointed must not exceed 5 years.</p> <p>(3) A person who has held office as an ordinary member may be re-appointed, once only, for a further period (whether consecutive or not) not exceeding 5 years.</p> | 25 |
| 6 | If an ordinary member who is a lay person becomes an authorised person in relation to an activity which is a reserved legal activity, that person ceases to be a member of the Board. | |
| 7 | <p>(1) An ordinary member may at any time—</p> <p style="padding-left: 20px;">(a) resign from office by giving notice to the Secretary of State;</p> <p style="padding-left: 20px;">(b) be removed from office by the Secretary of State.</p> <p>(2) The Secretary of State may not under sub-paragraph (1)(b) remove an ordinary member from office unless the Secretary of State is satisfied that the member—</p> <p style="padding-left: 20px;">(a) has failed without reasonable excuse to discharge the functions of the office for a continuous period of at least 6 months,</p> <p style="padding-left: 20px;">(b) has been convicted of an offence,</p> <p style="padding-left: 20px;">(c) is an undischarged bankrupt, or</p> <p style="padding-left: 20px;">(d) is otherwise unfit to hold the office or unable to discharge its functions.</p> <p>(3) In the case of an ordinary member (other than the chairman), the Secretary of State must consult the chairman before removing the member under sub-paragraph (1)(b).</p> | <p>30</p> <p>35</p> <p>40</p> |

- (4) The Secretary of State may not remove an ordinary member on the ground mentioned in paragraph (a) of sub-paragraph (2) more than 3 months after the end of the period mentioned in that paragraph.

8 The chairman ceases to be chairman upon ceasing to be a member of the Board. 5

9 Where a person ceases to be employed as Chief Executive, that person ceases to be a member of the Board.

Remuneration etc of members

10 The chairman and other ordinary members are to be paid by the Board in accordance with provision made by or under their terms of appointment. 10

Staff

11 The Board must appoint a person as its Chief Executive.

12 The Board may appoint such other staff as it considers appropriate to assist in the performance of its functions.

13 The Chief Executive and other staff are to be— 15
(a) appointed on terms and conditions determined by the Board, and
(b) paid by the Board in accordance with provision made by or under the terms of appointment.

14 The terms and conditions on which the Chief Executive or any other member of staff is appointed may provide for the Board to pay, or make payments towards the provision of, a pension, allowance or gratuity to or in respect of that person. 20

15 A member of staff appointed under paragraph 12 may be a member (but not chairman) of the Board.

Arrangements for assistance 25

16 (1) The Board may make arrangements with such persons as it considers appropriate for assistance to be provided to it.

(2) Arrangements may include the paying of fees to such persons.

Committees

17 (1) The Board may establish committees. 30

(2) Any committee so established may establish sub-committees.

(3) Only members of the Board may be members of a committee or sub-committee.

(4) A majority of the members of a committee or sub-committee must be lay persons. 35

Proceedings

18 (1) The Board may regulate its own procedure, and the procedure of its committees and sub-committees, including quorum.

	(2) But the quorum of a committee or sub-committee must not be less than 3.	
	(3) The Board must publish any rules of procedure made under this paragraph.	
	(4) This paragraph is without prejudice to any other power the Board has under this Act to make rules.	
19	The validity of any act of the Board is not affected –	5
	(a) by a vacancy in the office of chairman or amongst the other members, or	
	(b) by a defect in the appointment or any disqualification of a person as chairman or another member of the Board.	
	<i>Delegation of functions</i>	10
20	(1) The Board may authorise –	
	(a) the chairman, the Chief Executive or any other member of the Board,	
	(b) a committee or sub-committee of the Board, or	
	(c) a member of staff appointed under paragraph 12,	
	to exercise, on behalf of the Board, such of its functions, in such circumstances, as it may determine.	15
	(2) A committee may delegate functions (including functions delegated to the committee) to –	
	(a) a sub-committee,	
	(b) the chairman, the Chief Executive or any other member of the Board, or	20
	(c) a member of staff appointed under paragraph 12.	
	(3) This paragraph is subject to –	
	(a) any provision made by an order under section 51 by virtue of section 53(2)(d) (powers to authorise the Board to delegate to any person functions conferred on it in its capacity as an approved regulator), and	25
	(b) section 60(3)(a) (power to delegate to any person functions conferred on the Board in its capacity as a licensing authority).	
	<i>Borrowing</i>	30
21	The Board is not to borrow money, except –	
	(a) with the consent of the Secretary of State, or	
	(b) in accordance with a general authorisation given by the Secretary of State.	
	<i>Accounts</i>	35
22	(1) The Board must –	
	(a) keep proper accounts and proper records in relation to the accounts, and	
	(b) prepare in respect of each financial year a statement of accounts.	
	(2) Each statement of accounts must comply with any directions given by the Secretary of State, with the approval of the Treasury, as to –	40

- (a) the information to be contained in it and the manner in which it is to be presented;
 - (b) the methods and principles according to which the statement is to be prepared;
 - (c) the additional information (if any) which is to be provided for the information of Parliament. 5
- (3) The Board must give a copy of each statement of accounts –
 - (a) to the Secretary of State, and
 - (b) to the Comptroller and Auditor General,
 before the end of the month of August next following the financial year to which the statement relates. 10
- (4) The Comptroller and Auditor General must –
 - (a) examine, certify and report on each statement of accounts which is received under sub-paragraph (3), and
 - (b) lay a copy of each statement and of the Comptroller and Auditor General’s report before Parliament. 15
- (5) “Financial year” means –
 - (a) the period beginning with the day on which the Board is established and ending with the following 31 March, and
 - (b) each successive period of 12 months. 20

Status

- 23 (1) The Board is not to be regarded –
 - (a) as the servant or agent of the Crown, or
 - (b) as enjoying any status, immunity or privilege of the Crown.
- (2) Accordingly, the Board’s property is not to be regarded as property of or held on behalf of the Crown. 25

Application of seal and proof of instruments

- 24 The application of the seal of the Board is to be authenticated by the signature of any member of the Board, or of its staff, who has been authorised (whether generally or specifically) by the Board for the purpose. 30
- 25 Any contract or instrument which, if entered into or executed by an individual, would not need to be under seal may be entered into or executed on behalf of the Board by any person who has been authorised (whether generally or specifically) by the Board for the purpose.
- 26 A document purporting to be duly executed under the seal of the Board, or signed on its behalf – 35
 - (a) is to be received in evidence, and
 - (b) is to be taken to be executed or signed in that way, unless the contrary is proved.

Disqualification

- 27 (1) In Part 2 of Schedule 1 to the House of Commons Disqualification Act 1975 (c. 24) (bodies of which all members are disqualified) at the appropriate

place insert –

“The Legal Services Board.”

- (2) In Part 2 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (c. 25) (bodies of which all members are disqualified) at the appropriate place insert –

5

“The Legal Services Board.”

Freedom of information

- 28 In Part 6 of Schedule 1 to the Freedom of Information Act 2000 (c. 36) (other public bodies and offices which are public authorities) at the appropriate place insert –

10

“The Legal Services Board.”

Public records

- 29 In Schedule 1 to the Public Records Act 1958 (c. 51) (definition of public records) at the appropriate place in Part 2 of the Table at the end of paragraph 3 insert –

15

“The Legal Services Board.”

Exemption from liability in damages

- 30 (1) This paragraph applies to –

- (a) the Board,
- (b) a member of the Board,
- (c) a member of the Board’s staff appointed under paragraph 12,
- (d) a person to whom the Board (in its capacity as an approved regulator) delegates any of its functions by virtue of provision made under section 53(2)(d), and
- (e) a person to whom the Board (in its capacity as a licensing authority) delegates any of its functions by virtue of section 60(3)(a).

20

25

- (2) A person to whom this paragraph applies is not liable in damages for anything done or omitted in the exercise or purported exercise of the functions of the Board conferred by or by virtue of this or any other enactment.

30

- (3) But sub-paragraph (1) does not apply –

- (a) if it is shown that the act or omission was in bad faith, or
- (b) so as to prevent an award of damages made in respect of an act or omission on the ground that the act or omission was unlawful as a result of section 6(1) of the Human Rights Act 1998 (c. 42).

35

SCHEDULE 2

Section 9

THE RESERVED LEGAL ACTIVITIES

Introduction

- 1 This Schedule makes provision about the reserved legal activities.

Rights of audience

- 2 (1) A “right of audience” means the right to appear before and address a court, including the right to call and examine witnesses.
- (2) But a “right of audience” does not include a right to appear before or address a court, or to call or examine witnesses, in relation to any particular court or in relation to particular proceedings, if immediately before the appointed day no restriction was placed on the persons entitled to exercise that right. 5
- (3) In this paragraph “appointed day” is the day appointed under section 157 for the coming into force of section 10 (entitlement to carry on reserved legal activities). 10

Conduct of litigation

- 3 (1) The “conduct of litigation” means –
- (a) the issuing of proceedings before any court in England and Wales, and
 - (b) the performance of any ancillary functions in relation to such proceedings (such as entering appearances to actions). 15
- (2) But the “conduct of litigation” does not include any activity within paragraph (a) or (b) of sub-paragraph (1), in relation to any particular court or in relation to any particular proceedings, if immediately before the appointed day no restriction was placed on the persons entitled to carry on that activity. 20
- (3) In this paragraph “appointed day” has the same meaning as in paragraph 2.

Reserved instrument activities

- 4 (1) “Reserved instrument activities” means –
- (a) preparing any instrument of transfer or charge for the purposes of the Land Registration Act 2002 (c. 9), 25
 - (b) making an application or lodging a document for registration under that Act,
 - (c) preparing any other instrument relating to real or personal estate for the purposes of the law of England and Wales or instrument relating to legal proceedings in England and Wales. 30
- (2) In this paragraph “instrument” includes a contract for the sale or other disposition of land (except a contract to grant a short lease), but does not include –
- (a) a will or other testamentary instrument, 35
 - (b) an agreement not intended to be executed as a deed, other than a contract that is included by virtue of the preceding provisions of this sub-paragraph,
 - (c) a letter or power of attorney, or
 - (d) a transfer of stock containing no trust or limitation of the transfer. 40
- (3) In this paragraph a “short lease” means a lease such as is referred to in section 54(2) of the Law of Property Act 1925 (c. 20) (short leases).

Probate activities

- 5 (1) “Probate activities” means preparing any probate papers for the purposes of the law of England and Wales or in relation to any proceedings in England and Wales.
- (2) In this paragraph “probate papers” means papers on which to found or oppose—
- (a) a grant of probate, or
 - (b) a grant of letters of administration.
- 5

Notarial activities

- 6 (1) “Notarial activities” means activities which, immediately before the appointed day, were customarily carried on by virtue of enrolment as a notary in accordance with section 1 of the Public Notaries Act 1801 (c. 79).
- (2) Sub-paragraph (1) does not include activities carried on—
- (a) by virtue of section 22 or 23 of the Solicitors Act 1974 (c. 47) (reserved instrument activities and probate activities), or
 - (b) by virtue of section 113 of the Courts and Legal Services Act 1990 (c. 41)(administration of oaths).
- (3) In this paragraph “appointed day” has the same meaning as in paragraph 2.
- 10
15

Administration of oaths

- 7 The “administration of oaths” means the exercise of the rights conferred on a commissioner of oaths by—
- (a) the Commissioners for Oaths Act 1889 (c. 10),
 - (b) the Commissioners for Oaths Act 1891 (c. 50), and
 - (c) section 24 of the Stamp Duties Management Act 1891 (c. 38).
- 20

SCHEDULE 3

Section 14 25

EXEMPT PERSONS

Rights of audience

- 1 (1) This paragraph applies to determine whether a person is an exempt person for the purpose of exercising a right of audience before a court in relation to any proceedings.
- (2) The person is exempt if the person—
- (a) is not an authorised person in relation to that activity, but
 - (b) has a right of audience granted by that court in relation to those proceedings.
- (3) The person is exempt if the person—
- (a) is not an authorised person in relation to that activity, but
 - (b) has a right of audience before that court in relation to those proceedings granted by or under any enactment.
- 30
35

(4) The person is exempt if the person –	
(a) is a party to those proceedings, and	
(b) would have a right of audience, in the person’s capacity as such a party, if this Act had not been passed.	
(5) The person is exempt if –	5
(a) the person is an individual employed (whether wholly or in part), or otherwise engaged, to assist in the conduct of litigation and is doing so under instructions given (either generally or in relation to the proceedings) by a person to whom sub-paragraph (6) applies, and	
(b) the proceedings are being heard in chambers in the High Court or a county court and are not reserved family proceedings.	10
(6) This sub-paragraph applies to –	
(a) any authorised person in relation to an activity which constitutes the conduct of litigation;	
(b) any person who is exempt from the requirement to be an authorised person in relation to such an activity by virtue of section 144(2) (saving for solicitors to public departments).	15
(7) A person is an exempt person to the extent that the exercise of the right of audience also constitutes the provision of immigration advice or immigration services by the person and –	20
(a) the person is a qualified person for the purposes of section 84 of the Immigration and Asylum Act 1999 (c. 33) (provision of immigration advice or immigration services), or	
(b) subsection (1) of that section (requirement to be a qualified person to provide immigration advice or immigration services) does not apply to the person by virtue of subsection (4) or (6) of that section.	25
(8) For the purposes of this paragraph –	
“family proceedings” has the same meaning as in the Matrimonial and Family Proceedings Act 1984 (c. 42) and also includes any other proceedings which are family proceedings for the purposes of the Children Act 1989 (c. 41);	30
“reserved family proceedings” means such category of family proceedings as the Secretary of State may, after consulting the President of the Law Society and with the concurrence of the President of the Family Division, by order prescribe;	35
and any order made under section 27(9) of the Courts and Legal Services Act 1990 (c. 41) before the day appointed for the coming into force of this paragraph is to have effect on and after that day as if it were an order made under this sub-paragraph.	
<i>Conduct of litigation</i>	40
2 (1) This paragraph applies to determine whether a person is an exempt person for the purpose of carrying on any activity which constitutes the conduct of litigation in relation to any proceedings.	
(2) The person is exempt if the person –	
(a) is not an authorised person in relation to that activity, but	45
(b) has a right to conduct litigation granted by a court in relation to those proceedings.	

- (3) The person is exempt if the person –
 - (a) is not an authorised person in relation to that activity, but
 - (b) has a right to conduct litigation in relation to those proceedings granted by or under any enactment.
- (4) The person is exempt if the person – 5
 - (a) is a party to those proceedings, and
 - (b) would have a right to conduct the litigation, in the person’s capacity as such a party, if this Act had not been passed.
- (5) A person is an exempt person to the extent that the carrying on of the activity also constitutes the provision of immigration advice or immigration services by the person and – 10
 - (a) the person is a qualified person for the purposes of section 84 of the Immigration and Asylum Act 1999 (c. 33) (provision of immigration advice or immigration services), or
 - (b) subsection (1) of that section (requirement to be a qualified person to provide immigration advice or immigration services) does not apply to the person by virtue of subsection (4) or (6) of that section. 15

Reserved instrument activities

- 3 (1) This paragraph applies to determine whether a person is an exempt person for the purpose of carrying on any activity which constitutes reserved instrument activities. 20
- (2) A person is exempt if the person prepares the instruments or applications in the course of the person’s duty as a public officer.
- (3) A person (“E”) is exempt if – 25
 - (a) E is an individual,
 - (b) E carries on the activity at the direction and under the supervision of another individual (“P”),
 - (c) when E does so, P and E are connected, and
 - (d) P is entitled to carry on the activity, otherwise than by virtue of sub-paragraph (11). 30
- (4) For the purposes of sub-paragraph (3), P and E are connected if – 35
 - (a) P is E’s employer,
 - (b) P is a partner of E’s employer,
 - (c) P is a fellow employee of E,
 - (d) P is an officer or employee of a body corporate recognised under section 9 of the Administration of Justice Act 1985 (c. 61) and E is also such an officer or employee, 40
 - (e) the following conditions are satisfied –
 - (i) P is an officer or employee of a body corporate recognised under section 32 of the Administration of Justice Act 1985,
 - (ii) E is also such an officer or employee, and
 - (iii) the activity was carried on in the course of the provision of conveyancing services which the body corporate was not precluded from undertaking to provide as a recognised body by any restrictions imposed by virtue of rules within subsection (3)(d) of that section, or 45
 - (f) the following conditions are satisfied –

-
- (i) P is a partner in or an officer or employee of a licensed body,
 - (ii) E is also such a partner, officer or employee, and
 - (iii) the licensed body is authorised by its licence under Part 5 to carry on the activity.
 - (5) If a person is an accredited person, the person is exempt to the extent that the activity consists of the preparation of any instrument— 5
 - (a) which creates, or which the person believes on reasonable grounds will create, a farm business tenancy (within the meaning of the Agricultural Tenancies Act 1995 (c. 8)), or
 - (b) which relates to an existing tenancy which is, or which the person believes on reasonable grounds to be, such a tenancy. 10
 - (6) In sub-paragraph (5) “accredited person” means a person who is—
 - (a) a Fellow of the Central Association of Agricultural Valuers, or
 - (b) an Associate or Fellow of the Royal Institution of Chartered Surveyors. 15
 - (7) A person is an exempt person to the extent that the activity carried on by the person is also a reserved legal activity within sub-paragraph (8) and the person is—
 - (a) authorised to carry on the activity (other than under Part 5) by a relevant approved regulator in relation to the activity, 20
 - (b) authorised to carry on the activity by a licence under Part 5, or
 - (c) an exempt person in relation to the activity by virtue of paragraph 1 or 2 of this Schedule.
 - (8) The activities are—
 - (a) the exercise of a right of audience; 25
 - (b) the conduct of litigation.
 - (9) A person is an exempt person to the extent that the carrying on of the activity also constitutes the provision of immigration advice or immigration services by the person and—
 - (a) the person is a qualified person for the purposes of section 84 of the Immigration and Asylum Act 1999 (c. 33) (provision of immigration advice or immigration services), or 30
 - (b) subsection (1) of that section (requirement to be a qualified person to provide immigration advice or immigration services) does not apply to the person by virtue of subsection (4) or (6) of that section. 35
 - (10) A person is exempt if the person is employed merely to engross the instrument, application or proceedings.
 - (11) A person is exempt if the person is an individual who carries on the activity otherwise than for, or in expectation of, any fee, gain or reward.
 - (12) A person is exempt if— 40
 - (a) the person is a person qualified to practise as a solicitor in Scotland in accordance with section 4 of the Solicitors (Scotland) Act 1980 (c. 46), and
 - (b) the reserved instrument activities fall within paragraph 4(1)(c) of Schedule 2 (preparation of certain instruments relating to real or personal property or legal proceedings). 45

Probate activities

- 4 (1) This paragraph applies to determine whether a person is an exempt person for the purpose of carrying on any activity which constitutes probate activities.
- (2) A person (“E”) is an exempt person if – 5
- (a) E is an individual,
 - (b) E provides the probate activities at the direction and under the supervision of another individual (“P”),
 - (c) when E does so, P and E are connected, and
 - (d) P is entitled to carry on the activity, otherwise than by virtue of sub-paragraph (4). 10
- (3) For the purposes of sub-paragraph (2), P and E are connected if –
- (a) P is E’s employer,
 - (b) P is a partner of E’s employer,
 - (c) P is a fellow employee of E, 15
 - (d) P is an officer or employee of a body corporate recognised under section 9 of the Administration of Justice Act 1985 (c. 61) and E is also such an officer or employee, or
 - (e) the following conditions are satisfied –
 - (i) P is a partner in or an officer or employee of a licensed body, 20
 - (ii) E is also such a partner, officer or employee, and
 - (iii) the licensed body is authorised by its licence under Part 5 to carry on the activity.
- (4) A person is an exempt person if the person is an individual who carries on the activity otherwise than for, or in expectation of, any fee, gain or reward. 25

Notarial activities

- 5 (1) This paragraph applies to determine whether a person is an exempt person for the purpose of carrying on any activity which constitutes notarial activities.
- (2) A person is an exempt person if the person is an individual who carries on the notarial activities otherwise than for or in expectation of a fee, gain or reward. 30

Further exempt persons

- 6 (1) The Secretary of State may, by order, amend this Schedule so as to provide –
- (a) for persons to be exempt persons in relation to any activity which is a reserved legal activity (including any activity which is a reserved legal activity by virtue of an order under section 19 (extension of reserved legal activities)), 35
 - (b) for persons to cease to be such persons, or
 - (c) for the amendment of any existing provision in respect of an exempt person. 40
- (2) The Secretary of State may make an order under sub-paragraph (1) only on the recommendation of the Board.

SCHEDULE 4

Section 17

AUTHORISED PERSONS

PART 1

CONTINUITY OF RIGHTS

Rights of audience and conduct of litigation 5

- 1 (1) For the purposes of section 13 (authorised persons), in the case of a person who is authorised by a listed body –
 - (a) to exercise a right of audience before a court in relation to any proceedings, or
 - (b) to conduct litigation in relation to any proceedings, 10
 it is irrelevant whether the person’s authorisation was granted before or on or after the appointed day.
- (2) The “listed bodies” are –
 - (a) The Law Society,
 - (b) The General Council of the Bar, 15
 - (c) The Chartered Institute of Patent Agents,
 - (d) The Institute of Trade Mark Attorneys, and
 - (e) for the purposes of sub-paragraph (1)(a) only, The Institute of Legal Executives.
- (3) For the purposes of sub-paragraph (1), any authority conferred by section 31 of the Courts and Legal Services Act 1990 (c. 41) (barristers and solicitors deemed to have rights of audience and rights to conduct litigation) is to be disregarded (see paragraphs 5 and 6 below). 20

Conveyancing services

- 2 (1) For the purposes of section 13, in the case of a licensed conveyancer who is authorised to carry on an activity which is a reserved instrument activity by a conveyancing licence, it is irrelevant whether the licence was granted before or on or after the appointed day. 25
- (2) For the purposes of this paragraph “conveyancing licence” means a licence to practise as a licensed conveyancer granted under Part 2 of the Administration of Justice Act 1985 (c. 61). 30

Legal partnerships and conveyancing partnerships

- 3 (1) A legal partnership is to be treated as authorised by the Law Society to carry on the activities in sub-paragraph (2).
- (2) Those activities are – 35
 - (a) the exercise of a right of audience before every court in relation to all proceedings;
 - (b) the conduct of litigation;
 - (c) reserved instrument activities;
 - (d) probate activities; 40
 - (e) the administration of oaths.

- (3) The authority conferred by sub-paragraph (1) is exercisable in accordance with and subject to the regulatory arrangements of the Law Society.
- (4) A conveyancing partnership is to be treated as authorised by the Council for Licensed Conveyancers –
 - (a) to carry on conveyancing services, and 5
 - (b) to administer oaths.
- (5) The authority conferred by sub-paragraph (4) is exercisable in accordance with and subject to the regulatory arrangements of the Council for Licensed Conveyancers.
- (6) In this paragraph – 10
 - “conveyancing partnership” means a partnership all of the members of which are licensed conveyancers;
 - “legal partnership” means a partnership in which a qualified solicitor, a registered European Lawyer or a body established under section 9 of the Administration of Justice Act 1985 (c. 61) is permitted to practise by virtue of rules made under that section or section 31 of the Solicitors Act 1974 (c. 47); 15
 - “registered European lawyer” has the same meaning as in the European Communities (Lawyer’s Practice) Regulations 2000 (S.I. 2000/1119).

PART 2 20

RIGHTS DURING TRANSITIONAL PERIOD

The transitional period

- 4 (1) In this Part of this Schedule references to “the transitional period” are to the period which –
 - (a) begins with the appointed day (within the meaning given by paragraph 12), and 25
 - (b) ends with the day appointed by the Secretary of State by order for the purposes of this paragraph.
- (2) Different days may be appointed under sub-paragraph (1)(b) for different purposes. 30
- (3) An order may be made under sub-paragraph (1)(b) only on the recommendation of the Board.

Barristers

- 5 (1) During the transitional period, every barrister is deemed to be authorised by the General Council of the Bar to carry on the activities in sub-paragraph (2). 35
- (2) Those activities are –
 - (a) the exercise of a right of audience before every court in relation to all proceedings;
 - (b) reserved instrument activities;
 - (c) probate activities; 40
 - (d) the administration of oaths.

- (3) The authority conferred on a barrister by this paragraph is exercisable in accordance with, and subject to, the regulatory arrangements of the General Council of the Bar.
- (4) A person is not authorised under sub-paragraph (1) unless the person has in force a certificate issued by the General Council of the Bar authorising the person to practise as a barrister. 5

Solicitors etc

- 6 (1) During the transitional period –
 - (a) every qualified solicitor, and
 - (b) every body recognised under section 9 of the Administration of Justice Act 1985 (c. 61) (incorporated practices) (“a recognised body”),
 is deemed to be authorised by the Law Society to carry on the activities in sub-paragraph (2). 10
- (2) Those activities are – 15
 - (a) the exercise of a right of audience before every court in relation to all proceedings;
 - (b) the conduct of litigation in relation to every court and all proceedings;
 - (c) reserved instrument activities; 20
 - (d) probate activities;
 - (e) the administration of oaths.
- (3) The authority conferred on a qualified solicitor or recognised body by this paragraph is exercisable in accordance with, and subject to, the regulatory arrangements of the Law Society. 25
- (4) “Qualified solicitor” means a person who is qualified under section 1 of the Solicitors Act 1974 (c. 47) to act as a solicitor.

Legal Executives

- 7 (1) During the transitional period, a person authorised by the Institute of Legal Executives to practise as a member of the profession of legal executives is deemed to be authorised by that Institute to administer oaths. 30
- (2) The authority conferred by sub-paragraph (1) is exercisable in accordance with and subject to the regulatory arrangements of the Institute of Legal Executives.

Licensed conveyancers 35

- 8 (1) During the transitional period, every individual who holds a conveyancing licence is deemed to be authorised by the Council for Licensed Conveyancers to administer oaths.
- (2) The authority conferred by sub-paragraph (1) is exercisable in accordance with and subject to the regulatory arrangements of the Council. 40
- (3) During that period, every body recognised under section 32 of the Administration of Justice Act 1985 (bodies corporate entitled to provide

conveyancing services) and every mixed conveyancing partnership is deemed to be authorised by the Council –

- (a) to carry on conveyancing services, and
- (b) to administer oaths.

- (4) The authority conferred by sub-paragraph (3) is exercisable in accordance with and subject to –
 - (a) in the case of a body recognised under section 32 of the Administration of Justice Act 1985, any restriction imposed by virtue of rules within section 32(3)(d) of that Act (rules restricting conveyancing services carried on by recognised bodies), and
 - (b) the regulatory arrangements of the Council.
- (5) In this section “mixed conveyancing partnership” means a partnership some, but not all, of the members of which are licensed conveyancers.
- (6) For the purposes of this paragraph a conveyancing licence is to be treated as not in force during any period when it is suspended.

Notaries public

- 9 (1) During the transitional period, every duly certificated notary is deemed to be authorised by the Master of the Faculties to carry on the activities in sub-paragraph (2).
- (2) Those activities are –
 - (a) reserved instrument activities;
 - (b) probate activities;
 - (c) notarial activities;
 - (d) the administration of oaths.
- (3) The authority conferred by sub-paragraph (1) is exercisable in accordance with and subject to the regulatory arrangements of the Master of the Faculties.
- (4) In this paragraph “duly certificated notary” means a notary who either –
 - (a) has in force a practising certificate as a solicitor issued under the Solicitors Act 1974 (c. 47), and is duly entered in the Court of Faculties of the Archbishop of Canterbury in accordance with rules made by the Master of the Faculties, or
 - (b) has in force a practising certificate as a notary public issued by the said Court of Faculties in accordance with rules so made.

Patent agents

- 10 (1) During the transitional period, every registered patent agent is deemed to be authorised by the Chartered Institute of Patent Agents to carry on reserved instrument activities.
- (2) During that period, every authorised patent agent is deemed to be authorised by the Chartered Institute of Patent Agents to administer oaths.
- (3) During that period, every patent agent body is deemed to be authorised by the Chartered Institute of Patent Agents to carry on the activities in sub-paragraph (4).

-
- (4) Those activities are any activities which are reserved legal activities within sub-paragraph (5) and which –
- (a) if the body is a partnership, any partner who is a registered patent agent is authorised to carry on,
 - (b) if the body is a body corporate, any director who is a registered patent agent is authorised to carry on. 5
- (5) Those activities are –
- (a) the exercise of a right of audience;
 - (b) the conduct of litigation;
 - (c) reserved instrument activities; 10
 - (d) the administration of oaths.
- (6) The authority conferred by any of sub-paragraphs (1) to (3) is exercisable in accordance with and subject to the regulatory arrangements of the Chartered Institute of Patent Agents.
- (7) In this paragraph – 15
- “authorised patent agent” means a registered patent agent who is authorised by the Chartered Institute of Patent Agents to carry on one or both of the following activities –
- (a) the exercise of a right of audience;
 - (b) the conduct of litigation; 20
- “patent agent body” means –
- (a) a partnership all the partners of which are registered patent agents,
 - (b) a body corporate all the directors of which are registered patent agents, 25
 - (c) a partnership or body corporate which satisfies the conditions prescribed under section 279 of the Copyright, Designs and Patents Act 1988 (c. 48),
 - (d) a body corporate to which section 276(4) of that Act applies;
- “registered patent agent” has the meaning given by section 275(1) of that Act; 30
- and, in the case of a patent agent body to which section 276(4) of that Act applies, the reference in sub-paragraph (4)(b) to a director includes a reference to a manager.
- Trade mark attorneys* 35
- 11 (1) During the transitional period, every registered trade mark agent is deemed to be authorised by the Institute of Trade Mark Attorneys to carry on reserved instrument activities.
- (2) During that period, every authorised trade mark agent is deemed to be authorised by the Institute of Trade Mark Attorneys to administer oaths. 40
- (3) During that period, every trade mark body is deemed to be authorised by the Institute of Trade Mark Attorneys to carry on the activities in sub-paragraph (4).
- (4) Those activities are any activities which are reserved legal activities within sub-paragraph (5) and which – 45

- (a) if the body is a partnership, any partner who is a registered trade mark agent is authorised to carry on, or
 - (b) if the body is a body corporate, any director who is a registered trade mark agent is authorised to carry on.
 - (5) Those activities are – 5
 - (a) the exercise of a right of audience;
 - (b) the conduct of litigation;
 - (c) reserved instrument activities;
 - (d) the administration of oaths.
 - (6) The authority conferred by any of sub-paragraphs (1) to (3) is exercisable in accordance with and subject to the regulatory arrangements of the Institute of Trade Mark Attorneys. 10
 - (7) In this paragraph –
 - “authorised trade mark agent” means a registered trade mark agent who is authorised by the Institute of Trade Mark Attorneys to carry on one or both of the following activities – 15
 - (a) the exercise of a right of audience;
 - (b) the conduct of litigation;
 - “trade mark body” means –
 - (a) a partnership all the partners of which are registered trade mark agents, 20
 - (b) a body corporate all the directors of which are registered trade mark agents, or
 - (c) a partnership or body corporate which satisfies the conditions prescribed under section 85 of the Trade Marks Act 1994 (c. 26); 25
 - “registered trade mark agent” has the same meaning as in the Trade Marks Act 1994.
- 12 In this Schedule –
 - “the appointed day” means the day appointed by the Secretary of State under section 157 for the coming into force of section 10 (entitlement to carry on a reserved legal activity);
 - “conveyancing licence” has the meaning given by paragraph 2. 35

SCHEDULE 5

Section 15

APPROVED REGULATORS

PART 1

EXISTING REGULATORS

- 1 (1) Each body listed in the first column of the table in this paragraph is an approved regulator. 40

- (2) Each body so listed is an approved regulator in relation to the reserved legal activities listed in relation to it in the second column of the table.

Table

<i>Approved regulator</i>	<i>Reserved legal activities</i>	
The Law Society	The exercise of a right of audience. The conduct of litigation. Reserved instrument activities. Probate activities. The administration of oaths.	5
The General Council of the Bar	The exercise of a right of audience. The conduct of litigation. Reserved instrument activities. Probate activities. The administration of oaths.	10
The Master of the Faculties	Reserved instrument activities. Probate activities. Notarial activities. The administration of oaths.	15
The Institute of Legal Executives	The exercise of a right of audience. The administration of oaths.	20
The Council for Licensed Conveyancers	Reserved instrument activities. The administration of oaths.	
The Chartered Institute of Patent Agents	The exercise of a right of audience. The conduct of litigation. Reserved instrument activities. The administration of oaths.	25
The Institute of Trade Mark Attorneys	The exercise of a right of audience. The conduct of litigation. Reserved instrument activities. The administration of oaths.	30

- 2 (1) The regulatory arrangements of a listed body, as they have effect immediately before paragraph 1 comes into force, are to be treated as having been approved by the Board for the purposes of this Act at the time that paragraph comes into force.
- (2) “Listed body” means a body listed in the first column of the Table in paragraph 1 as that Table was originally enacted. 35
- (3) Sub-paragraph (1) is without prejudice to the Board’s power to give directions under section 25 (powers to direct an approved regulator to take steps in certain circumstances, including steps to amend its regulatory arrangements). 40

PART 2

DESIGNATION OF BODIES BY ORDER

Application to the Board

- 3 (1) This paragraph applies where a body wishes to authorise persons to carry on one or more activities which constitute one or more reserved legal activities. 5
- (2) The body may apply to the Board for the Board –
 - (a) to recommend that an order be made by the Secretary of State designating the body as an approved regulator in relation to the reserved legal activity or activities in question, and 10
 - (b) to approve what the body proposes as its regulatory arrangements if such an order is made (“the proposed regulatory arrangements”).
- (3) An application under this paragraph must be made in such form and manner as the Board may specify in rules and must be accompanied by –
 - (a) a statement of the reserved legal activity or activities to which it relates, 15
 - (b) details of the applicant’s proposed regulatory arrangements,
 - (c) such explanatory material (including material about the applicant’s constitution and activities) as the applicant considers is likely to be needed for the purposes of this Part of this Schedule, and 20
 - (d) the prescribed fee.
- (4) The prescribed fee is the fee specified in, or determined in accordance with, rules made by the Board with the consent of the Secretary of State.
- (5) The proposed regulatory arrangements must, in particular, include –
 - (a) details of the authority which the applicant proposes to give persons to carry on activities which are reserved legal activities, 25
 - (b) regulations (however they may be described) as to the education and training which persons must receive, and any other requirements which must be met by or in respect of them, in order for them to be authorised, and 30
 - (c) rules (however they may be described) as to the conduct required of persons in carrying on any activity by virtue of the authority.
- (6) An applicant may, at any time, withdraw the application by giving notice to that effect to the Board.

Dismissal of application 35

- 4 (1) The Board may refuse to consider, or to continue its consideration, of an application.
- (2) The Board must make rules about the procedures and criteria that it will apply when determining whether to refuse to consider, or to continue its consideration of, an application under sub-paragraph (1). 40
- (3) Where the Board decides to refuse to consider, or to continue its consideration, of an application it must give the applicant notice of that decision and of its reasons for it.

- (4) The Board must publish a notice given under sub-paragraph (3).

Board's duty to seek advice

- 5 (1) The Board must give to each of the persons listed in sub-paragraph (2) –
- (a) a copy of the application and accompanying material, and
 - (b) a notice specifying a period within which any advice given under paragraphs 6 to 9 must be given. 5
- (2) Those persons are –
- (a) the Secretary of State,
 - (b) the OFT,
 - (c) the Consumer Panel, 10
 - (d) each of the senior judges, and
 - (e) such other persons as the Board considers it reasonable to consult regarding the application.
- (3) In this Part of this Schedule, in relation to an application, “selected consultee” means a person within sub-paragraph (2)(e). 15

Advice of the Secretary of State

- 6 The Secretary of State must give the Board such advice as the Secretary of State thinks fit in respect of the application.

Advice of Office of Fair Trading

- 7 (1) The OFT must give the Board such advice as the OFT thinks fit regarding whether the application should be granted. 20
- (2) In deciding what advice to give, the OFT must, in particular, have regard to whether making an order under paragraph 19 in accordance with the recommendation applied for would (or would be likely to) restrict, distort or prevent competition within the market for reserved legal services to any significant extent. 25

Advice of the Consumer Panel

- 8 (1) The Consumer Panel must give the Board such advice as the Consumer Panel thinks fit regarding whether the application should be granted.
- (2) In deciding what advice to give, the Consumer Panel must, in particular, have regard to the likely impact on consumers of the making of an order under paragraph 19 in accordance with the recommendation applied for. 30

Advice of selected consultees

- 9 A selected consultee may give the Board such advice as the selected consultee thinks fit in respect of the application. 35

Advice of senior judges

- 10 (1) The Board must give to each of the senior judges –
- (a) a copy of any advice duly given under paragraphs 6 to 9, and

- (b) a notice specifying a period within which any advice under this paragraph must be given.
- (2) Each of the senior judges must then give such advice to the Board as that judge thinks fit regarding whether the application should be granted.
- (3) In deciding what advice to give, a senior judge must, in particular, have regard to the likely impact on the courts in England and Wales of the making of an order under paragraph 19 in accordance with the recommendation applied for. 5

Information obtained by consultees

- 11 A person (“the consultee”) to whom a copy of the application is given under paragraph 5(1) may, for the purposes of giving advice under paragraphs 6 to 10, request the applicant or any other person to provide the consultee with such additional information as may be specified by the consultee. 10

Representations by applicant

- 12 (1) The Board must give to the applicant a copy of any advice duly given under paragraphs 6 to 10. 15
- (2) The applicant may make to the Board –
 - (a) written representations, and
 - (b) if the Board authorises it to do so, oral representations, about the advice. 20
- (3) The Board must make rules governing the making of oral and written representations.
- (4) Representations under this paragraph must be made within –
 - (a) the period of 28 days beginning with the day on which the copy of the advice is given to the applicant, or 25
 - (b) such longer period as the Board may specify in a particular case.
- (5) Where oral representations are made, the Board must prepare a report of those representations.
- (6) Before preparing that report, the Board must –
 - (a) give the applicant a reasonable opportunity to comment on a draft of the report, and 30
 - (b) have regard to any comments duly made.

Publication of advice and representations etc

- 13 (1) The Board must, as soon as practicable after the end of the period within which representations under paragraph 12 may be made, publish – 35
 - (a) any advice duly given under paragraphs 6 to 10,
 - (b) any written representations duly made under paragraph 12 and the report (if any) prepared under that paragraph.
- (2) Nothing in sub-paragraph (1) operates –
 - (a) to prevent a person who gives advice under paragraphs 6 to 10 from publishing that advice, or 40

- (b) to prevent a person who makes representations under paragraph 12 from publishing those representations.
- (3) A person (“the publisher”) publishing any such material (whether under sub-paragraph (1) or otherwise) must, so far as practicable, exclude any matter which relates to the private affairs of a particular individual the publication of which, in the opinion of the publisher, would or might seriously and prejudicially affect the interests of that individual. 5

Rules governing decisions by the Board

- 14 (1) The Board must make rules specifying how it will determine applications.
- (2) Rules under sub-paragraph (1) must, in particular, provide that the Board may grant an application in relation to a particular reserved legal activity only if it is satisfied – 10
 - (a) that, if an order were to be made under paragraph 19 designating the body in relation to that activity, the applicant would have appropriate internal governance arrangements in place at the time the order takes effect, 15
 - (b) that the applicant’s proposed regulatory arrangements include appropriate rules relating to the qualification and training of, and other requirements which must be met by or in respect of, persons whom the applicant proposes to authorise to carry on activities which constitute the reserved legal activity, 20
 - (c) that the applicant’s proposed regulatory arrangements include appropriate arrangements (including disciplinary arrangements) under which the applicant will be able to regulate the conduct of persons whom it proposes to so authorise, 25
 - (d) that the applicant’s proposed regulatory arrangements comply with the requirements imposed by sections 115 and 116 (requirements imposed in relation to the handling of complaints),
 - (e) that the applicant’s proposed regulatory arrangements make appropriate arrangements for the purposes of ensuring the indemnification of those who are or were persons authorised by it to carry on activities which constitute the reserved legal activity against losses arising from claims in relation to any description of civil liability incurred by them, or by employees or former employees of theirs, in connection with their activities as such authorised persons, 30
 - (f) that the applicant’s proposed regulatory arrangements make appropriate arrangements to provide for grants or other payments for the purpose of relieving or mitigating losses suffered by persons in consequence of – 35
 - (i) negligence or fraud or other dishonesty on the part of any persons whom the applicant has authorised to carry on activities which constitute the reserved legal activity, or of employees of theirs, in connection with their activities as such authorised persons, and 40
 - (ii) failure, on the part of persons whom the applicant has authorised to carry on activities which constitute the reserved legal activity, to account for money received by them in connection with their activities as such authorised persons, 45

- (g) that, if an order were made under paragraph 19 designating the body in relation to the reserved legal activity, the applicant would be competent to perform the role of approved regulator in relation to the reserved legal activity at the time the order takes effect.
- (3) The rules made for the purposes of sub-paragraph (2)(a) must in particular require the Board to be satisfied that the exercise of the applicant’s regulatory functions would not be prejudiced by any functions the applicant may have in connection with the representation, or promotion, of the interests of persons regulated by the applicant.

Determination of applications 10

- 15 (1) After considering –
 - (a) the application and accompanying material,
 - (b) any other information provided by the applicant,
 - (c) any advice duly given under paragraphs 6 to 10,
 - (d) any representations duly made under paragraph 12, and
 - (e) any other information which the Board considers relevant to the application,
the Board must decide whether to grant the application.
- (2) Where the application relates to more than one reserved legal activity, the Board may grant the application in relation to all or any of them.
- (3) The Board must give notice of its decision to the applicant (“the decision notice”).
- (4) Where the Board decides to refuse the application (in whole or in part), the decision notice must specify the reasons for that decision.
- (5) The Board must publish the decision notice.
- 16 (1) Where an application is made under this Part, the Board must give the decision notice under paragraph 15 within the decision period.
- (2) The “decision period” is the period of 12 months beginning with the day on which the application is made to the Board.
- (3) The Board may, before the end of the decision period, issue a notice extending that period by a period specified in the notice.
- (4) More than one notice may be issued under sub-paragraph (3), but the decision period must not exceed 16 months.
- (5) The Board may issue a notice under sub-paragraph (3) only after it has –
 - (a) consulted the OFT, the Consumer Panel and the senior judges, and
 - (b) obtained the Secretary of State’s consent to the extension.
- (6) A notice under sub-paragraph (3) must state the Board’s reasons for extending the decision period.
- (7) The Board must publish any notice issued under sub-paragraph (3).

Effect of grant of application 40

- 17 (1) This paragraph applies where an application is granted in relation to a reserved legal activity or activities.

(2) The Board must recommend to the Secretary of State that an order be made designating the applicant as an approved regulator in relation to the reserved legal activity or activities in question.	
(3) The Board must publish any recommendation made under sub-paragraph (2).	5
(4) The Board must make available to the Secretary of State –	
(a) any advice duly given under paragraphs 6 to 10, and	
(b) any written representations duly made under paragraph 12 and the report (if any) prepared under that paragraph.	
<i>Power of Secretary of State to obtain further information</i>	10
18 (1) Where the Board makes a recommendation to the Secretary of State under paragraph 17, the Secretary of State may, for the purpose of making a decision under paragraph 19, by notice request the Board to provide the Secretary of State with such further information as is specified in the notice within such period as is so specified.	15
(2) The Secretary of State must publish any notice given under sub-paragraph (1).	
(3) If the Board is unable to comply with a request under sub-paragraph (1), it must give the Secretary of State a notice to that effect specifying the reasons for it being unable to comply.	20
<i>Secretary of State’s decision to make an order</i>	
19 (1) Where a recommendation is made to the Secretary of State under paragraph 17, the Secretary of State may –	
(a) make an order in accordance with the recommendation, or	
(b) refuse to make such an order.	25
(2) Where the recommendation relates to more than one reserved legal activity, the Secretary of State may make an order under sub-paragraph (1)(a) in relation to all or any of them.	
(3) The Secretary of State must –	
(a) decide whether to make an order under this paragraph, and	30
(b) give notice of that decision (“the decision notice”) to the applicant, within the period of 90 days beginning with the day on which the recommendation was made.	
(4) If the Secretary of State decides not to make an order in accordance with the whole or part of the recommendation, the decision notice must state the reasons for the decision.	35
(5) The Secretary of State must publish the decision notice.	
<i>Approval of regulatory arrangements</i>	
20 (1) Where an order is made by the Secretary of State under paragraph 19, the applicant’s proposed regulatory arrangements are at the same time treated as having been approved by the Board.	40

- (2) But where the order relates to one or more (but not all) of the reserved legal activities to which the application related, sub-paragraph (1) has effect as if the reference to the applicant’s proposed regulatory arrangements were a reference to those arrangements excluding any provision made in respect of any activities excluded from the order. 5
- (3) Sub-paragraph (1) is without prejudice to the Board’s power to give directions under section 25 (powers to direct an approved regulator to take steps in certain circumstances, including steps to amend its regulatory arrangements).

PART 3 10

ALTERATION OF APPROVED REGULATOR’S REGULATORY ARRANGEMENTS

Requirement for approval

- 21 (1) If an approved regulator makes an alteration of its regulatory arrangements, the alteration does not have effect unless it is approved for the purposes of this Act. 15
- (2) An alteration is approved for the purposes of this Act if—
 - (a) it is approved by virtue of paragraph 20 (approval of proposed regulatory arrangements on designation by order as approved regulator),
 - (b) it is approved by the Board under this Part of this Schedule, 20
 - (c) it is an exempt alteration,
 - (d) it is an alteration made in compliance with a direction under section 25,
 - (e) it is approved by virtue of paragraph 18 of Schedule 10 (approval of licensing rules on designation by order as licensing authority), or 25
 - (f) it is approved by virtue of paragraph 6 of Schedule 14 (approval of proposed regulatory arrangements when granting “qualifying regulator” status for the purposes of Part 5 of the Immigration and Asylum Act 1999 (c. 33)).
- (3) An exempt alteration is an alteration which the Board has directed is to be treated as exempt for the purposes of this paragraph. 30
- (4) A direction under sub-paragraph (3) may be specific or general and must be published by the Board.
- (5) In this Part of this Schedule, references to an “alteration” of regulatory arrangements include an addition to, or the revocation of any part of, the arrangements. 35
- (6) If a question arises whether approval is required by virtue of this Part of this Schedule, it is for the Board to decide.
- (7) Nothing in this Part of this Schedule applies in relation to any alteration of the regulatory arrangements of the Board in its capacity as an approved regulator (or of its licensing rules). 40

Application to Board

- 22 (1) An application by an approved regulator for the Board to approve an alteration or alterations of its regulatory arrangements must be made in such form and manner as the Board may specify in rules.
- (2) The application must be accompanied by – 5
- (a) details of the approved regulator’s regulatory arrangements,
 - (b) details of the alteration or alterations, and
 - (c) such explanatory material as the approved regulator considers is likely to be needed for the purposes of this Part of this Schedule.

Initial determination 10

- 23 (1) Where the Board has received an application under paragraph 22 it may –
- (a) grant the application and give the approved regulator a notice to that effect, or
 - (b) give the approved regulator a notice stating that the Board is considering whether to refuse the application (a “warning notice”). 15
- (2) The Board must publish any notice given by it under sub-paragraph (1)(a) or (b).
- (3) If the Board does not give the approved regulator a notice under sub-paragraph (1)(a) or (b) within the initial decision period, the application is deemed to have been granted by the Board. 20
- (4) The “initial decision period” means the period of 28 days beginning with the day on which the application was received by the Board.

Advice

- 24 (1) Where the Board has given the approved regulator a warning notice, the Board may invite such persons as it considers appropriate to give to it advice regarding whether the application should be granted. 25
- (2) A person (“the consultee”) to whom an invitation is given under sub-paragraph (1) may, for the purposes of giving advice to the Board under this paragraph, request the approved regulator or any other person to provide the consultee with such additional information as may be specified by the consultee. 30

Representations by applicant

- 25 (1) The Board must give to the approved regulator a copy of any advice obtained under paragraph 24.
- (2) The approved regulator may make to the Board – 35
- (a) written representations, and
 - (b) if the Board authorises it to do so, oral representations, about the advice.
- (3) The Board must make rules governing the making of oral and written representations. 40
- (4) Representations under this paragraph must be made within –

- (a) the period of 28 days beginning with the day on which the copy of the advice is given to the approved regulator, or
 - (b) such longer period as the Board may specify in a particular case.
- (5) Where oral representations are made, the Board must prepare a report of those representations. 5
- (6) Before preparing that report, the Board must –
 - (a) give the approved regulator a reasonable opportunity to comment on a draft of the report, and
 - (b) have regard to any comments duly made.

Publication of advice and representations etc 10

- 26 (1) The Board must, as soon as practicable after the end of the period within which representations under paragraph 25 may be made, publish –
- (a) any advice given under paragraph 24,
 - (b) any written representations duly made under paragraph 25 and the report (if any) prepared under that paragraph. 15
- (2) Nothing in sub-paragraph (1) operates –
- (a) to prevent a person who gives advice under paragraph 24 from publishing that advice, or
 - (b) to prevent a person who makes representations under paragraph 25 from publishing those representations. 20
- (3) A person (“the publisher”) publishing any such material (whether under sub-paragraph (1) or otherwise) must, so far as practicable, exclude any matter which relates to the private affairs of a particular individual the publication of which, in the opinion of the publisher, would or might seriously and prejudicially affect the interests of that individual. 25

Decision by the Board

- 27 (1) After considering –
- (a) the application and any accompanying material,
 - (b) any other information provided by the approved regulator,
 - (c) any advice obtained under paragraph 24,
 - (d) any representations duly made under paragraph 25, and
 - (e) any other information which the Board considers relevant to the application,
- the Board must decide whether to grant the application. 30
- (2) The Board may grant the application in whole or in part. 35
- (3) The Board may refuse the application only if it is satisfied that –
- (a) granting the application would be prejudicial to the regulatory objectives,
 - (b) granting the application would be contrary to any provision made by or by virtue of this Act or any other enactment or would result in the requirements of paragraph 14(2) ceasing to be satisfied in relation to the approved regulator, 40

(c) the alteration would enable the approved regulator to authorise persons to carry on activities which are reserved legal activities in relation to which it is not a relevant approved regulator,	
(d) the alteration would enable the approved regulator to license persons under Part 5 to carry on activities which are reserved legal activities in relation to which it is not a licensing authority;	5
(e) the alteration has been or is likely to be made otherwise than in accordance with the procedures (whether statutory or otherwise) which apply in relation to the making of the alteration.	
(4) Sub-paragraph (3) applies in relation to any part of an application as if references to the application were to the part.	10
(5) The Board must give notice of its decision (“the decision notice”) to the approved regulator.	
(6) Where the Board decides to refuse the application (in whole or in part), the decision notice must specify the reasons for that decision.	15
(7) The Board must publish the decision notice.	
(8) The Secretary of State may, on the recommendation of the Board, by order modify the grounds specified in sub-paragraph (3) on which the Board may refuse an application.	
<i>Failure to decide application during decision period</i>	20
28 (1) This paragraph applies where the Board gives an approved regulator a warning notice under paragraph 23 in respect of the approved regulator’s application.	
(2) If the Board does not, within the decision period, give the approved regulator notice of its decision under paragraph 27, the application is deemed to have been granted by the Board at the end of that period.	25
(3) Subject to sub-paragraphs (4) and (5), “the decision period” means the period of 12 months beginning with the day on which the approved regulator received the warning notice.	
(4) The Board may, on one or more occasions, give the approved regulator a notice (an “extension notice”) extending the decision period.	30
(5) But—	
(a) an extension notice may only be given with the consent of the Secretary of State,	
(b) an extension notice may only be given before the time when the decision period would end, but for the extension notice, and	35
(c) the total decision period must not exceed 18 months.	
(6) The Board must publish any extension notice given by it.	
<i>Effect of grant of application</i>	
29 (1) Where an application is granted under paragraph 23(1)(a) or (3), 27(1) or 28(2), the alteration or alterations of the regulatory arrangements to which the application relates are approved.	40

- (2) Where a part of an application is granted under paragraph 27(1), the alteration or alterations of the regulatory arrangements to which the part relates are approved.
- (3) Sub-paragraphs (1) and (2) are without prejudice to the Board’s power to give directions under section 25 (power to direct an approved regulator to take steps in certain circumstances, including steps to amend its regulatory arrangements). 5

SCHEDULE 6

Sections 19 and 21

ALTERATION OF RESERVED LEGAL ACTIVITIES

Introductory 10

- 1 In this Schedule, in relation to an activity –
 - “section 19 investigation” means an investigation held with a view to determining whether or not the Board should make a recommendation in respect of the activity for the purposes of section 19 (recommendations and orders to extend the reserved legal activities); 15
 - “section 21 investigation” means an investigation held with a view to determining whether or not the Board should make a recommendation in respect of the activity for the purposes of section 21 (recommendations that an activity should cease to be a reserved legal activity). 20

Requests for Board to hold a full investigation

- 2 (1) A person may –
 - (a) request the Board to hold a section 19 investigation in respect of an activity, or 25
 - (b) request the Board to hold a section 21 investigation in respect of an activity.
- (2) A request under sub-paragraph (1) must be in writing and specify the activity to which it relates.
- (3) In the case of a request for a section 19 investigation, the activity in respect of which the request is made must be a legal activity. 30

Board’s duty to hold preliminary inquiries in certain cases

- 3 (1) This paragraph applies where the Board receives a request under paragraph 2, in respect of an activity, from –
 - (a) the Secretary of State, 35
 - (b) the OFT,
 - (c) the Consumer Panel, or
 - (d) the senior judges acting jointly.
- (2) The Board must –
 - (a) carry out such inquiries as it considers appropriate to enable it to determine whether it is appropriate to hold a section 19 investigation 40

- or, as the case may be, a section 21 investigation in respect of the activity, and
- (b) make that determination within the preliminary inquiry period.
- (3) “The preliminary inquiry period” means the period of 3 months beginning with the day on which the request under paragraph 2 was received by the Board. 5
- (4) The Board may, before the end of the preliminary inquiry period in relation to a request, issue a notice extending that period by a period specified in the notice.
- (5) More than one notice may be issued under sub-paragraph (4), but the total preliminary inquiry period must not exceed 4 months. 10
- (6) A notice under sub-paragraph (4) must state the Board’s reasons for extending the preliminary inquiry period.
- (7) The Board must publish a notice issued under sub-paragraph (4).
- Board’s power to hold preliminary inquiries in other cases* 15
- 4 (1) The Board may –
- (a) where it receives a request under paragraph 2 to which paragraph 3 does not apply, or
- (b) in any other case where it considers it appropriate to do so, carry out such inquiries as it considers appropriate to enable it to determine whether it is appropriate to hold a section 19 investigation or a section 21 investigation in respect of an activity. 20
- (2) In the case of a section 19 investigation, that activity must be a legal activity.
- Advice*
- 5 (1) Before determining whether it is appropriate to hold a section 19 investigation or a section 21 investigation in respect of an activity, the Board may seek the advice of one or both of the following bodies – 25
- (a) the OFT;
- (b) the Consumer Panel.
- (2) The OFT or the Consumer Panel must, if its advice is sought, give the Board such advice as it thinks fit, within such reasonable period as the Board may specify. 30
- (3) In deciding what advice to give –
- (a) the OFT must, in particular, consider whether making an order under section 19 or (as the case may be) provision in accordance with a recommendation under section 21, in respect of the activity, would (or would be likely to) restrict, distort or prevent competition within the market for reserved legal services to any significant extent, and 35
- (b) the Consumer Panel must have regard to the likely impact which making that order or (as the case may be) provision would have on consumers. 40
- (4) The OFT or the Consumer Panel may, for the purposes of giving advice under this paragraph request any person to provide it with such information as may be specified by it.

- 6 (1) Before determining whether it is appropriate to hold a section 19 investigation or a section 21 investigation in respect of an activity the Board may also seek the advice of each of the senior judges.
- (2) If the Board has sought advice under paragraph 5, the Board may not seek advice from the senior judges until –
 - (a) the period for giving advice under paragraph 5 has ended, and
 - (b) it has given each of the senior judges a copy of any advice duly given under that paragraph.
- (3) A senior judge whose advice is sought under sub-paragraph (1) –
 - (a) must give the Board such advice as the judge thinks fit, within such reasonable period as may be specified by the Board, and
 - (b) may, for the purposes of giving that advice, request any person to provide the judge with such information as may be specified by the judge.
- (4) In deciding what advice to give, a senior judge must, in particular, have regard to the likely impact on the courts in England and Wales of the making of an order under section 19 or (as the case may be) provision in accordance with a recommendation under section 21, in respect of the activity in question.
- 7 (1) The Board must consider, and publish, any advice given under paragraph 5 or 6.
- (2) Nothing in this paragraph operates to prevent a person who gives such advice from publishing it.

Restrictions on refusing a paragraph 2 request

- 8 (1) This paragraph applies where –
 - (a) a request has been made under paragraph 2, and
 - (b) paragraph 3 applies to that request.
- (2) The Board may refuse the request only if –
 - (a) the consultation requirements are satisfied, and
 - (b) either the consent requirement is satisfied or the request was made by the Secretary of State.
- (3) The consultation requirements are –
 - (a) that the Board has consulted the OFT, the Consumer Panel and the senior judges under paragraphs 5 and 6, and
 - (b) that –
 - (i) the Board has obtained advice from the OFT and the Consumer Panel or the period within which that advice is required to be given has expired, and
 - (ii) the Board has obtained advice from each of the senior judges or the period within which that advice is required to be given has expired.
- (4) The consent requirement is that –
 - (a) the Board has given the Secretary of State a copy of any advice given under paragraph 5 or 6, and

- (b) the Secretary of State has consented to the Board’s refusal of the request.

Decision to hold investigation

- 9 (1) This paragraph applies where the Board has decided, following inquiries under paragraph 3 or 4, to hold a section 19 investigation or a section 21 investigation in respect of an activity. 5
- (2) The Board must, as soon as reasonably practicable, give notice of its decision to –
- (a) the Secretary of State,
 - (b) the OFT, 10
 - (c) the Consumer Panel, and
 - (d) the senior judges,
- and publish the notice.
- (3) The notice must –
- (a) state the Board’s reasons for its decision to hold the investigation, and 15
 - (b) contain a description (in general terms) of the procedure set out in paragraphs 10 to 17 and in rules under this Schedule, including any relevant time limits.

Duty to investigate and produce a provisional report within the investigation period 20

- 10 (1) This paragraph applies where the Board has given notice under paragraph 9(2) of –
- (a) a decision to hold a section 19 investigation, or
 - (b) a decision to hold a section 21 investigation, 25
- in respect of an activity.
- (2) The Board must within the investigation period –
- (a) carry out such investigations as it considers appropriate for the purposes of enabling it to produce a provisional report in respect of the activity, and
 - (b) produce and publish such a report. 30
- (3) A provisional report is a report stating –
- (a) in a case within sub-paragraph (1)(a), whether or not the Board is minded to make a recommendation for the purposes of section 19 (recommendation that activity should become a reserved legal activity), and 35
 - (b) in a case within sub-paragraph (1)(b), whether or not the Board is minded to make a recommendation for the purposes of section 21 (recommendation that activity should cease to be a reserved legal activity).
- (4) A provisional report must also state the Board’s reasons for it being, or not being, minded to make the recommendation in question. 40

“The investigation period”

- 11 (1) “The investigation period” means the period of 12 months beginning with the day on which the notice was given under paragraph 9(2).
- (2) The Board may, before the end of the investigation period, issue a notice extending that period by a period specified in the notice. 5
- (3) More than one notice may be issued under sub-paragraph (2) but the total investigation period must not exceed 16 months.
- (4) The Board may issue a notice under sub-paragraph (2) only after it has –
 - (a) consulted the OFT, the Consumer Panel and the senior judges about the proposed extension, and 10
 - (b) obtained the Secretary of State’s consent to the extension.
- (5) A notice under sub-paragraph (2) must state the Board’s reasons for extending the investigation period.
- (6) The Board must publish any notice issued under sub-paragraph (2).

Supplementary provisions about the investigation 15

- 12 (1) This paragraph applies for the purposes of investigations under paragraph 10(2)(a).
- (2) The Board may make rules governing the making of oral and written representations, and the giving of oral and written evidence, to the Board.
- (3) Rules under sub-paragraph (2) may (among other things) include – 20
 - (a) provision about the time and place at which any oral evidence is to be given or oral representations are to be heard;
 - (b) provision about the period within which any written evidence is to be given or written representations are to be made.
- (4) In relation to each investigation, the Board must determine if, and to what extent – 25
 - (a) oral evidence or representations should be heard, and
 - (b) written evidence or representations should be received.
- (5) The Board must, so far as is reasonably practicable, consider any written or oral representations duly made under this paragraph. 30

Consideration of the provisional report

- 13 (1) The Board may make rules governing the making to the Board of oral and written representations in respect of provisional reports.
- (2) Rules under sub-paragraph (1) may (among other things) include – 35
 - (a) provision about the time and place at which any oral representations are to be heard;
 - (b) provision about the period within which any written representations are to be made.
- (3) The Board must exercise the power conferred by sub-paragraph (1) to make provision – 40

- (a) enabling written representations and, so far as is reasonably practicable, oral representations to be made by affected practitioners, and
 - (b) enabling written or oral representations to be made by bodies which represent affected practitioners. 5
- (4) An “affected practitioner” is a person carrying on the activity in respect of which the investigation is being held.
- 14 (1) For the purpose of making a decision under paragraph 16(1)(a) or (b), the Board must, after publication of a provisional report, determine if, and to what extent further evidence should be heard or received. 10
- (2) The Board may make rules governing the giving of such evidence.
- (3) Rules under sub-paragraph (2) may (among other things) include—
 - (a) provision about the time and place at which any oral evidence is to be given;
 - (b) provision about the period within which any written evidence is to be given. 15
- 15 The Board must, so far as is reasonably practicable, consider—
 - (a) any written or oral representations made in accordance with rules to which paragraph 13(3) applies, and
 - (b) any other representations made in accordance with rules under paragraph 13(1), and any written or oral evidence given in accordance with rules under paragraph 14(2), which the Board considers relevant. 20

Duty to prepare final report within the final reporting period

- 16 (1) After complying with paragraph 15, the Board must decide— 25
 - (a) in the case of a section 19 investigation, whether or not to make a recommendation for the purposes of that section, and
 - (b) in the case of a section 21 investigation, whether or not to make a recommendation for the purposes of that section.
- (2) The Board must prepare a report (“the final report”) which sets out— 30
 - (a) its decision and the reasons for it,
 - (b) where it decides to make a recommendation for the purposes of section 19 or 21, that recommendation, and
 - (c) where it decides to make a recommendation for the purposes of section 19, a statement of the provision which, in the Board’s opinion, will need to be made in an order under section 156 or by virtue of section 151(2) (power to make consequential provision, transitional provision etc) if an order is made under section 19 in accordance with that recommendation. 35
- (3) The Board must— 40
 - (a) give a copy of the final report to the Secretary of State, and
 - (b) publish that report.
- (4) The Board must comply with the obligations imposed by this paragraph within the final reporting period.

“The final reporting period”

- 17 (1) “The final reporting period” means the period of 3 months beginning with the date on which the provisional report was published under paragraph 10(2).
- (2) The Board may, before the end of the final reporting period, issue a notice extending that period by a period specified in the notice. 5
- (3) More than one notice may be issued under sub-paragraph (2), but the total final reporting period must not exceed 5 months.
- (4) The Board may issue a notice under sub-paragraph (2) only after it has – 10
- (a) consulted the OFT, the Consumer Panel and the senior judges about the proposed extension, and
- (b) obtained the Secretary of State’s consent to the extension.
- (5) A notice under sub-paragraph (2) must state the Board’s reasons for extending the final reporting period.
- (6) The Board must publish a notice issued under sub-paragraph (2). 15

Costs

- 18 The Board may pay such costs of a person as the Board considers reasonable for the purpose of facilitating the giving of oral evidence or the making of oral representations, by or on behalf of that person, in accordance with rules made under this Schedule. 20

SCHEDULE 7

Section 26

DIRECTIONS: PROCEDURE

Introductory

- 1 This Schedule applies where the Board proposes giving a direction to an approved regulator under section 25. 25

Notification of the approved regulator

- 2 (1) The Board must give the approved regulator a notice (“a warning notice”) accompanied by a copy of the proposed direction.
- (2) The warning notice must – 30
- (a) state that the Board proposes to give the approved regulator a direction in the form of the accompanying draft,
- (b) specify the acts or omissions which, in the Board’s opinion, constitute the failure to which the proposed direction relates, and
- (c) specify a period within which the approved regulator may make representations with respect to the proposal. 35
- (3) The period specified under sub-paragraph (2)(c) –
- (a) must begin with the date on which the warning notice is given to the approved regulator, and

- (b) must not be less than 14 days.
- (4) The approved regulator may make to the Board –
 - (a) written representations, and
 - (b) if the Board authorises it to do so, oral representations, about the proposed direction. 5
- (5) The Board must make rules governing the making of oral and written representations.
- (6) The Board must consider any representations duly made by the approved regulator.
- (7) Where oral representations are duly made, the Board must prepare a report of those representations. 10
- (8) Before preparing that report, the Board must –
 - (a) give the approved regulator a reasonable opportunity to comment on a draft of the report, and
 - (b) have regard to any comments duly made. 15

Board's duty to seek advice

- 3 (1) After complying with paragraph 2, the Board must give to each of the persons listed in sub-paragraph (2) –
 - (a) a copy of the warning notice and the accompanying draft direction,
 - (b) a copy of any written representations duly made under paragraph 2 and a copy of the report (if any) prepared under that paragraph, and 20
 - (c) a notice specifying a period within which any advice under paragraphs 4 to 7 must be given.
- (2) Those persons are –
 - (a) the Secretary of State, 25
 - (b) the OFT,
 - (c) the Consumer Panel,
 - (d) each of the senior judges, and
 - (e) such other persons as the Board considers it reasonable to consult in respect of the proposed direction. 30
- (3) In this Schedule, in relation to a proposed direction, “selected consultee” means a person within sub-paragraph (2)(e).

Advice of the Secretary of State

- 4 The Secretary of State must give the Board such advice as the Secretary of State thinks fit in respect of the proposed direction. 35

Advice of Office of Fair Trading

- 5 (1) The OFT must give the Board such advice as it thinks fit regarding whether the proposed direction should be given.
- (2) In deciding what advice to give, the OFT must, in particular, have regard to whether giving the proposed direction would (or would be likely to) restrict, distort or prevent competition within the market for reserved legal services to any significant extent. 40

Advice of the Consumer Panel

- 6 (1) The Consumer Panel must give the Board such advice as it thinks fit regarding whether the proposed direction should be given.
- (2) In deciding what advice to give, the Consumer Panel must, in particular, have regard to the likely impact of the proposed direction on consumers. 5

Advice of selected consultees

- 7 A selected consultee may give the Board such advice as the selected consultee thinks fit in respect of the proposed direction.

Advice of senior judges

- 8 (1) The Board must give to each of the senior judges – 10
- (a) a copy of any advice duly given under paragraphs 4 to 7, and
- (b) a notice specifying a period within which any advice under this paragraph must be given.
- (2) Each of the senior judges must then give such advice as the judge thinks fit regarding whether the proposed direction should be given. 15
- (3) In deciding what advice to give, a senior judge must, in particular, have regard to the likely impact of the proposed direction on the courts in England and Wales.

Consultees' powers to request information

- 9 A person ("the consultee") to whom a copy of the warning notice is given under paragraph 3(1) may, for the purposes of giving advice under paragraphs 4 to 8, request the approved regulator or any other person to provide the consultee with such additional information as may be specified by the consultee. 20

Representations by approved regulator 25

- 10 (1) The Board must give to the approved regulator a copy of any advice duly given under paragraphs 4 to 8.
- (2) The approved regulator may make to the Board –
- (a) written representations, and
- (b) if the Board authorises it to do so, oral representations, 30
- about the advice.
- (3) The Board must make rules governing the making of oral and written representations.
- (4) Representations under this paragraph must be made within –
- (a) the period of 28 days beginning with the day on which the copy of the advice is given to the approved regulator, or
- (b) such longer period as the Board may specify in a particular case. 35
- (5) Where oral representations are made, the Board must prepare a report of those representations.
- (6) Before preparing that report, the Board must – 40

- (a) give the approved regulator a reasonable opportunity to comment on a draft of the report, and
- (b) have regard to any comments duly made.

Publication of advice etc

- 11 (1) The Board must, as soon as practicable after the end of the period within which representations under paragraph 10 may be made, publish— 5
- (a) any advice duly given under paragraphs 4 to 8, and
 - (b) any written representations duly made under paragraph 10 and the report (if any) prepared under that paragraph.
- (2) Nothing in sub-paragraph (1) operates— 10
- (a) to prevent a person who gives advice under paragraphs 4 to 8 from publishing that advice, or
 - (b) to prevent a person who makes representations under paragraph 10 from publishing those representations.
- (3) A person (“the publisher”) publishing any such material (whether under sub-paragraph (1) or otherwise) must, so far as practicable, exclude any matter which relates to the private affairs of a particular individual the publication of which, in the opinion of the publisher, would or might seriously and prejudicially affect the interests of that individual. 15

Decision by the Board 20

- 12 (1) After considering—
- (a) any advice duly given under paragraphs 4 to 8,
 - (b) any representations duly made under paragraph 10, and
 - (c) any other information which the Board considers relevant,
- the Board must decide whether to give the approved regulator the proposed direction. 25
- (2) The Board must give notice of its decision (“the decision notice”) to the approved regulator.
- (3) Where the Board decides to give the proposed direction, the decision notice must— 30
- (a) contain the direction,
 - (b) state the time at which the direction is to take effect, and
 - (c) specify the Board’s reasons for the decision to give the direction.
- (4) The Board must publish the decision notice.

SCHEDULE 8

Sections 34 and 37

INTERVENTION DIRECTIONS: PROCEDURE

PART 1

GIVING INTERVENTION DIRECTIONS

<i>Introductory</i>	5
1 (1) This Part of this Schedule applies where the Board proposes giving an intervention direction to an approved regulator in respect of a regulatory function.	
(2) In this Schedule “intervention condition” has the same meaning as in section 34.	10
<i>Notification of the approved regulator</i>	
2 (1) The Board must give the approved regulator a notice (“a warning notice”) accompanied by a draft of the proposed intervention direction.	
(2) The warning notice must –	
(a) state that the Board proposes to give the approved regulator an intervention direction in the form of the accompanying draft and the time when it is proposed that direction should take effect, and	15
(b) state the reasons why the Board is satisfied of the matters mentioned in section 34(1)(a) and (b).	
(3) The Board must publish a copy of the warning notice.	20
(4) The approved regulator may make to the Board –	
(a) written representations, and	
(b) if the Board authorises it to do so, oral representations, about the proposed intervention direction.	
(5) The Board must make rules governing the making of written and oral representations.	25
(6) Any representations under sub-paragraph (4) must be made before the end of –	
(a) the period of 28 days beginning with the day on which the warning notice is given to the approved regulator, or	30
(b) such longer period as the Board may specify in a particular case.	
(7) Where oral representations are duly made under this paragraph, the Board must prepare a report of those representations.	
(8) Before preparing that report, the Board must –	
(a) give the approved regulator a reasonable opportunity to comment on a draft of the report, and	35
(b) have regard to any comments duly made.	

Board’s duty to seek advice

- 3 (1) After complying with paragraph 2, the Board must give to each of the persons listed in sub-paragraph (2) –
- (a) a copy of the warning notice and the accompanying draft,
 - (b) a copy of any written representations duly made under paragraph 2 and a copy of the report (if any) prepared under that paragraph, and
 - (c) a notice specifying a period within which any advice under paragraphs 4 to 7 must be given.
- 5
- (2) Those persons are –
- (a) the Secretary of State,
 - (b) the OFT,
 - (c) the Consumer Panel,
 - (d) each of the senior judges, and
 - (e) such other persons as the Board considers it reasonable to consult in respect of the proposed intervention direction.
- 10
- (3) In this Part of this Schedule, in relation to a proposed intervention direction, “selected consultee” means a person within sub-paragraph (2)(e).
- 15

Advice of the Secretary of State

- 4 The Secretary of State must give to the Board such advice as the Secretary of State thinks fit in respect of the proposed intervention direction.
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Advice of Office of Fair Trading

- 5 (1) The OFT must give the Board such advice as it thinks fit regarding whether the proposed intervention direction should be given.
- (2) In deciding what advice to give, the OFT must, in particular, have regard to whether giving the proposed intervention direction would (or would be likely to) restrict, distort or prevent competition within the market for reserved legal services to any significant extent.
- 25

Advice of the Consumer Panel

- 6 (1) The Consumer Panel must give the Board such advice as it thinks fit regarding whether the proposed intervention direction should be given.
- 30
- (2) In deciding what advice to give, the Consumer Panel must, in particular, have regard to the likely impact of the proposed direction on consumers.

Advice of selected consultees

- 7 A selected consultee may give the Board such advice as the selected consultee thinks fit in respect of the proposed intervention direction.
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Advice of senior judges

- 8 (1) The Board must give to each of the senior judges –
- (a) a copy of any advice duly given under paragraphs 4 to 7, and
 - (b) a notice specifying a period within which any advice under this paragraph must be given.
- 40

- (2) Each of the senior judges must then give such advice as the judge thinks fit regarding whether the proposed intervention direction should be given.
- (3) In deciding what advice to give, a senior judge must, in particular, have regard to the likely impact of the proposed intervention direction on the courts in England and Wales.

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Consultees' powers to request information

- 9 A person ("the consultee") to whom a copy of the warning notice is given under paragraph 3(1) may, for the purposes of giving advice under paragraphs 4 to 8, request the approved regulator or any other person to provide the consultee with such additional information as may be specified by the consultee.

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Representations by the approved regulator etc

- 10 (1) The Board must—
 - (a) give to the approved regulator a copy of any advice duly given under paragraphs 4 to 8, and
 - (b) publish that advice together with any written representations duly made by the approved regulator under paragraph 2 and the report (if any) prepared under that paragraph.
- (2) The approved regulator and any body within sub-paragraph (3) may make to the Board—
 - (a) written representations, and
 - (b) if the Board authorises it to do so, oral representations, about the advice.
- (3) A body is within this sub-paragraph if it represents persons authorised by the approved regulator to carry on activities which are reserved legal activities.
- (4) The Board may allow any other person to make written or oral representations about the advice.
- (5) The Board must make rules governing the making of oral and written representations.
- (6) Representations under this paragraph must be made within—
 - (a) the period of 28 days beginning with the day on which the representations and advice are published under sub-paragraph (1)(b), or
 - (b) such longer period as the Board may specify in a particular case.
- (7) Where oral representations are made, the Board must prepare a report of those representations.
- (8) Before preparing that report, the Board must—
 - (a) give each person who made oral representations a reasonable opportunity to comment on a draft of the report of those representations, and
 - (b) have regard to any comments duly made.
- (9) The Board must, as soon as reasonably practicable after the end of the period within which representations may be made under this paragraph, publish

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any written representations duly made and the report (if any) prepared under sub-paragraph (7).

Further provision about publishing of advice and representations

- | | | |
|----|--|----|
| 11 | (1) Nothing in paragraph 10 operates – | 5 |
| | (a) to prevent a person who gives advice under paragraphs 4 to 8 from publishing that advice, or | |
| | (b) to prevent a person who makes representations under paragraph 2 or 10 from publishing those representations. | |
| | (2) A person (“the publisher”) publishing any such material (whether under paragraph 10 or otherwise) must, so far as practicable, exclude any matter which relates to the private affairs of a particular individual the publication of which, in the opinion of the publisher, would or might seriously and prejudicially affect the interests of that individual. | 10 |

Decision by the Board

- | | | |
|----|--|----|
| 12 | (1) After considering – | 15 |
| | (a) any advice duly given under paragraphs 4 to 8, | |
| | (b) any representations duly made under paragraph 2 or 10, and | |
| | (c) any other information which the Board considers relevant, | |
| | the Board must decide whether to give an intervention direction. | |
| | (2) Where it decides to give an intervention direction, it may decide – | 20 |
| | (a) to give an intervention direction in the form of the proposed intervention direction, or | |
| | (b) to amend the form of the proposed intervention direction and give an intervention direction in that amended form. | |
| | (3) The Board must give notice of its decision (“the decision notice”) to the approved regulator. | 25 |
| | (4) Where the Board decides to give an intervention direction, the decision notice must – | |
| | (a) contain the intervention direction, | |
| | (b) state the time at which the intervention direction is to take effect, | 30 |
| | (c) specify the reasons why the Board is satisfied of the matters mentioned in section 34(1)(a) and (b), and | |
| | (d) if the decision is under sub-paragraph (2)(b), set out the nature of any amendments made and the reasons for them. | |
| | (5) The time specified under sub-paragraph (4)(b) must not be before – | 35 |
| | (a) the time specified in the warning notice in accordance with paragraph 2(2)(a), or | |
| | (b) the time the decision notice is given to the approved regulator. | |
| | (6) The Board must publish the decision notice. | |

PART 2

REVOKING INTERVENTION DIRECTIONS

Introductory

- 13 (1) Where an intervention direction has effect in respect of a regulatory function of an approved regulator – 5
- (a) the approved regulator may apply to the Board for the Board to revoke the direction;
 - (b) the Board may give to the approved regulator a notice stating the Board’s intention to revoke the direction.
- (2) An application under sub-paragraph (1)(a) must – 10
- (a) be made in the form and manner specified by the Board, and
 - (b) be accompanied by such material as the applicant considers is likely to be needed for the purposes of this Part of this Schedule.

Board’s duty to seek advice

- 14 (1) Where the Board has received an application under paragraph 13(1)(a), it must give to each of the persons listed in sub-paragraph (3) – 15
- (a) a copy of the application,
 - (b) a copy of any material which accompanied it, and
 - (c) a notice specifying a period within which any advice under paragraphs 15 to 18 must be given. 20
- (2) Where the Board has given a notice under paragraph 13(1)(b), it must give to each of the persons listed in sub-paragraph (3) –
- (a) a copy of the notice, and
 - (b) a notice specifying a period within which any advice under paragraphs 15 to 18 must be given. 25
- (3) The persons are –
- (a) the Secretary of State,
 - (b) the OFT,
 - (c) the Consumer Panel,
 - (d) each of the senior judges, and 30
 - (e) such other persons as the Board considers it reasonable to consult in respect of the proposed revocation.
- (4) In this Part of this Schedule, in relation to an application or notice, “selected consultee” means a person within sub-paragraph (3)(e).

Advice of the Secretary of State 35

- 15 The Secretary of State must give the Board such advice as the Secretary of State thinks fit in respect of the proposed revocation.

Advice of Office of Fair Trading

- 16 (1) The OFT must give the Board such advice as it thinks fit regarding the proposed revocation. 40

- (2) In deciding what advice to give, the OFT must, in particular, have regard to whether revoking the intervention direction would (or would be likely to) restrict, distort or prevent competition within the market for reserved legal services to any significant extent.

Advice of the Consumer Panel

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- 17 (1) The Consumer Panel must give the Board such advice as it thinks fit regarding the proposed revocation.
- (2) In deciding what advice to give, the Consumer Panel must, in particular, have regard to the likely impact which revoking the intervention direction would have on consumers.

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Advice of the selected consultees

- 18 A selected consultee may give the Board such advice as the selected consultee thinks fit in respect of the proposed revocation.

Advice of senior judges

- 19 (1) The Board must give to each of the senior judges –
- (a) a copy of any advice duly given under paragraphs 15 to 18, and
 - (b) a notice specifying a period within which any advice under this paragraph must be given.
- (2) Each of the senior judges must then give the Board such advice as that judge thinks fit in respect of the proposed revocation.
- (3) In deciding what advice to give, a senior judge must, in particular, have regard to the likely impact which revoking the intervention direction would have on the courts in England and Wales.

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Information obtained by consultees

- 20 A person to whom a copy of the application or notice is given under paragraph 14(1) or (2) may, for the purposes of giving advice under paragraphs 15 to 19, request the approved regulator or any other person to provide that person with such additional information as may be specified by that person.

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Representations by approved regulator etc

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- 21 (1) The Board must –
- (a) give to the approved regulator a copy of any advice duly given under paragraphs 15 to 19, and
 - (b) publish that advice.
- (2) The approved regulator and any body within sub-paragraph (3) may make to the Board –
- (a) written representations, and
 - (b) if the Board authorises it to do so, oral representations, about the advice.

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- (3) A body is within this sub-paragraph if it represents persons authorised by the approved regulator to carry on activities which are reserved legal activities.
- (4) The Board may allow any other person to make written or oral representations about the advice. 5
- (5) The Board must make rules governing the making of oral and written representations.
- (6) Representations under this paragraph must be made within –
 - (a) the period of 28 days beginning with the day on which the advice is published under sub-paragraph (1), or 10
 - (b) such longer period as the Board may specify in a particular case.
- (7) Where oral representations are made, the Board must prepare a report of those representations.
- (8) Before preparing that report, the Board must –
 - (a) give each person who made oral representations a reasonable opportunity to comment on a draft of the report of those representations, and 15
 - (b) have regard to any comments duly made.
- (9) The Board must, as soon as practicable after the end of the period within which representations may be made under this paragraph, publish any written representations duly made and the report (if any) prepared under sub-paragraph (7). 20

Further provision about publishing advice and representations

- 22 (1) Nothing in paragraph 21 operates –
 - (a) to prevent a person who gives advice under paragraphs 15 to 19 from publishing that advice, or 25
 - (b) to prevent a person who makes representations under paragraph 21 from publishing those representations.
- (2) A person (“the publisher”) publishing any such material (whether under paragraph 21 or otherwise) must, so far as practicable, exclude any matter which relates to the private affairs of a particular individual the publication of which, in the opinion of the publisher, would or might seriously and prejudicially affect the interests of that individual. 30

Decision by the Board

- 23 (1) After considering –
 - (a) in a case within paragraph 13(1)(a), the application and any accompanying material, 35
 - (b) any advice duly given under paragraphs 15 to 19,
 - (c) any representations duly made under paragraph 21, and
 - (d) any other information which the Board considers relevant to the application or notice, 40
- the Board must decide whether to revoke the intervention direction in accordance with the application or notice.

- (2) The Board must give notice of its decision (“the decision notice”) to the approved regulator.
- (3) Where the Board decides to revoke the intervention direction, the decision notice must state the time the revocation is to take effect.
- (4) Where the Board decides not to revoke the intervention direction, the decision notice must specify the reasons for that decision. 5
- (5) The Board must publish the decision notice.

SCHEDULE 9

Section 38

CANCELLATION OF DESIGNATION AS APPROVED REGULATOR

Introductory 10

- 1 This Schedule applies where the Board considers that it may be appropriate for it to make a recommendation under section 38(5).

Notification of the approved regulator

- 2 (1) The Board must give the approved regulator a notice (“a warning notice”) accompanied by a draft of the proposed recommendation. 15
- (2) The warning notice must –
 - (a) state that the Board proposes to make a recommendation under subsection (5) of section 38 in the form of the accompanying draft,
 - (b) state the reasons why the Board is satisfied of the matters mentioned in paragraphs (a) and (b) of that subsection. 20
- (3) The Board must publish a copy of the warning notice.
- (4) The approved regulator may make to the Board –
 - (a) written representations, and
 - (b) if the Board authorises it to do so, oral representations, about the proposed recommendation. 25
- (5) The Board must make rules governing the making of oral and written representations.
- (6) Representations under this paragraph must be made within –
 - (a) the period of 28 days beginning with the day on which the warning notice is given to the approved regulator, or
 - (b) such longer period as the Board may specify in a particular case. 30
- (7) The Board must consider any representations duly made by the approved regulator.
- (8) Where oral representations are duly made, the Board must prepare a report of those representations. 35
- (9) Before preparing that report, the Board must –
 - (a) give the approved regulator a reasonable opportunity to comment on a draft of the report, and

- (b) have regard to any comments duly made.

Board's duty to seek advice

- 3 (1) After complying with paragraph 2, the Board must give to each of the persons listed in sub-paragraph (2) –
- (a) a copy of the warning notice and the accompanying draft, 5
 - (b) a copy of any written representations duly made by the approved regulator under paragraph 2 and a copy of the report (if any) prepared under that paragraph, and
 - (c) a notice specifying a period within which any advice under paragraphs 4 to 7 must be given. 10
- (2) Those persons are –
- (a) the Secretary of State,
 - (b) the OFT,
 - (c) the Consumer Panel,
 - (d) each of the senior judges, and 15
 - (e) such other persons as the Board considers it reasonable to consult in respect of the proposed recommendation.
- (3) In this Schedule, in relation to a proposed recommendation, “selected consultee” means a person within sub-paragraph (2)(e).

Advice of the Secretary of State 20

- 4 The Secretary of State must give to the Board such advice as the Secretary of State thinks fit in respect of the proposed recommendation.

Advice of Office of Fair Trading

- 5 (1) The OFT must give the Board such advice as it thinks fit regarding whether the proposed recommendation should be made. 25
- (2) In deciding what advice to give, the OFT must, in particular, have regard to whether making an order under section 38 in accordance with the proposed recommendation would (or would be likely to) restrict, distort or prevent competition within the market for reserved legal services to any significant extent. 30

Advice of the Consumer Panel

- 6 (1) The Consumer Panel must give the Board such advice as it thinks fit regarding whether the proposed recommendation should be made.
- (2) In deciding what advice to give, the Consumer Panel must, in particular, have regard to the likely impact on consumers of making an order under section 38 in accordance with the proposed recommendation. 35

Advice of selected consultees

- 7 A selected consultee may give the Board such advice as the selected consultee thinks fit in respect of the proposed recommendation.

Advice of senior judges

- 8 (1) The Board must give to each of the senior judges –
- (a) a copy of any advice duly given under paragraphs 4 to 7, and
 - (b) a notice specifying a period within which advice under this paragraph must be given. 5
- (2) Each of the senior judges must then give such advice as that judge thinks fit in respect of the proposed recommendation.
- (3) In deciding what advice to give, a senior judge must, in particular, have regard to the likely impact on the courts in England and Wales of making an order under section 38 in accordance with the proposed recommendation. 10

Information obtained by consultees

- 9 A person (“the consultee”) to whom a copy of the warning notice is given under paragraph 3(1) may, for the purposes of giving advice under paragraphs 4 to 8, request the approved regulator or any other person to provide the consultee with such additional information as may be specified by the consultee. 15

Representations by the approved regulator etc

- 10 (1) The Board must –
- (a) give to the approved regulator a copy of any advice duly given under paragraphs 4 to 8, and 20
 - (b) publish that advice together with any written representations duly made by the approved regulator under paragraph 2 and the report (if any) prepared under that paragraph.
- (2) The approved regulator and any body within sub-paragraph (3) may make to the Board – 25
- (a) written representations, and
 - (b) if authorised to do so by the Board, oral representations, about the advice.
- (3) A body is within this sub-paragraph if it represents persons authorised by the approved regulator to carry on activities which are reserved legal activities. 30
- (4) The Board may allow any other person to make written or oral representations about the advice.
- (5) The Board may make rules governing the making to the Board of written or oral representations. 35
- (6) Representations under this paragraph must be made within –
- (a) the period of 28 days beginning with the day on which the representations and advice are published under sub-paragraph (1)(b), or
 - (b) such longer period as the Board may specify in a particular case. 40
- (7) Where oral representations are made, the Board must prepare a report of those representations.
- (8) Before preparing that report, the Board must –

- (a) give each person who made oral representations a reasonable opportunity to comment on a draft of the report of those representations, and
 - (b) have regard to any comments duly made.
- (9) The Board must, as soon as reasonably practicable after the end of the period within which representations under this paragraph may be made, publish any written representations duly made and the report (if any) prepared under sub-paragraph (7). 5

Publication of advice etc

- 11 (1) Nothing in paragraph 10 operates – 10
 - (a) to prevent a person who gives advice under paragraphs 4 to 8 from publishing that advice, or
 - (b) to prevent a person who makes representations under paragraph 2 or 10 from publishing those representations.
- (2) A person (“the publisher”) publishing any such material (whether under paragraph 10 or otherwise) must, so far as practicable, exclude any matter which relates to the private affairs of a particular individual the publication of which, in the opinion of the publisher, would or might seriously and prejudicially affect the interests of that individual. 15

Decision by the Board 20

- 12 (1) After considering –
 - (a) any advice duly given under paragraphs 4 to 8,
 - (b) any representations duly made under paragraph 2 or 10, and
 - (c) any other information which the Board considers relevant,the Board must decide whether to make the proposed recommendation. 25
- (2) The Board must give notice of its decision (“the decision notice”) to the approved regulator and to the Secretary of State.
- (3) If the Board decides to make the proposed recommendation, the decision notice must –
 - (a) contain the recommendation, and
 - (b) state why the Board is satisfied of the matters mentioned in section 38(5)(a) and (b). 30
- (4) The Board must publish the decision notice.

SCHEDULE 10

Sections 61 and 63

DESIGNATION OF APPROVED REGULATORS AS LICENSING AUTHORITIES

PART 1

DESIGNATION OF APPROVED REGULATORS BY ORDER

- Application to the Board* 5
- 1 (1) This paragraph applies where a body wishes to become a licensing authority in relation to one or more activities which constitute one or more reserved legal activities.
 - (2) A body may apply to the Board for the Board –
 - (a) to recommend that an order be made by the Secretary of State designating the applicant as a licensing authority in relation to the reserved legal activity or activities in question, and 10
 - (b) to approve what the applicant proposes as its licensing rules if such an order is made (“the proposed licensing rules”).
 - (3) But a body may make an application under this paragraph in relation to a reserved legal activity only if – 15
 - (a) it is a relevant approved regulator in relation to the activity, or
 - (b) it has made an application under Part 2 of Schedule 5 (designation of approved regulators) for the Board to recommend that an order be made by the Secretary of State designating the body as an approved regulator in relation to the activity. 20
 - (4) An application under this paragraph must be made in such form and manner as the Board may specify in rules and must be accompanied by –
 - (a) a statement of the reserved legal activity or activities to which it relates, 25
 - (b) details of the applicant’s proposed licensing rules,
 - (c) such explanatory material as the applicant considers is likely to be needed for the purposes of this Part of this Schedule, and
 - (d) the prescribed fee.
 - (5) The prescribed fee is the fee specified in, or determined in accordance with, rules made by the Board with the consent of the Secretary of State. 30
 - (6) An applicant may, at any time, withdraw the application by giving notice to that effect to the Board.
- Dismissal of application*
- 2 (1) The Board may refuse to consider, or to continue its consideration, of an application. 35
 - (2) The Board must make rules about the procedures and criteria that it will apply when determining whether to refuse to consider, or to continue its consideration of, an application under sub-paragraph (1).
 - (3) Where the Board decides to refuse to consider, or to continue its consideration, of an application it must give the applicant notice of that decision and of its reasons for it. 40

- (4) The Board must publish a notice given under sub-paragraph (3).

Board's duty to seek advice

- 3 (1) The Board must give to each of the persons listed in sub-paragraph (2) –
- (a) a copy of the application and accompanying material, and
 - (b) a notice specifying a period within which any advice given under paragraphs 4 to 7 must be given. 5
- (2) Those persons are –
- (a) the Secretary of State,
 - (b) the OFT,
 - (c) the Consumer Panel, 10
 - (d) each of the senior judges, and
 - (e) such other persons as the Board considers it reasonable to consult regarding the application.
- (3) In this Part of this Schedule, in relation to an application, “selected consultee” means a person within sub-paragraph (2)(e). 15

Advice of the Secretary of State

- 4 The Secretary of State must give the Board such advice as the Secretary of State thinks fit in respect of the application.

Advice of Office of Fair Trading

- 5 (1) The OFT must give the Board such advice as the OFT thinks fit regarding whether the application should be granted. 20
- (2) In deciding what advice to give, the OFT must, in particular, have regard to whether making an order under paragraph 17 in accordance with the recommendation applied for would (or would be likely to) restrict, distort or prevent competition within the market for reserved legal services to any significant extent. 25

Advice of the Consumer Panel

- 6 (1) The Consumer Panel must give the Board such advice as the Consumer Panel thinks fit regarding whether the application should be granted.
- (2) In deciding what advice to give, the Consumer Panel must, in particular, have regard to the likely impact on consumers of the making of an order under paragraph 17 in accordance with the recommendation applied for. 30

Advice of selected consultees

- 7 A selected consultee may give the Board such advice as the selected consultee thinks fit in respect of the application. 35

Advice of senior judges

- 8 (1) The Board must give to each of the senior judges –
- (a) a copy of any advice duly given under paragraphs 4 to 7, and

- (b) a notice specifying a period within which any advice under this paragraph must be given.
- (2) Each of the senior judges must then give such advice to the Board as that judge thinks fit regarding whether the application should be granted.
- (3) In deciding what advice to give, a senior judge must, in particular, have regard to the likely impact on the courts in England and Wales of the making of an order under paragraph 17 in accordance with the recommendation applied for. 5

Information obtained by consultees

- 9 A person (“the consultee”) to whom a copy of the application is given under paragraph 3(1) may, for the purposes of giving advice under paragraphs 4 to 8, request the applicant or any other person to provide the consultee with such additional information as may be specified by the consultee. 10

Representations by applicant

- 10 (1) The Board must give to the applicant a copy of any advice duly given under paragraphs 4 to 8. 15
- (2) The applicant may make to the Board –
 - (a) written representations, and
 - (b) if the Board authorises it to do so, oral representations, about the advice. 20
- (3) The Board must make rules governing the making of oral and written representations.
- (4) Representations under this paragraph must be made within –
 - (a) the period of 28 days beginning with the day on which the copy of the advice is given to the applicant, or
 - (b) such longer period as the Board may specify in a particular case. 25
- (5) Where oral representations are made, the Board must prepare a report of those representations.
- (6) Before preparing that report, the Board must –
 - (a) give the applicant a reasonable opportunity to comment on a draft of the report, and
 - (b) have regard to any comments duly made. 30

Publication of advice and representations etc

- 11 (1) The Board must, as soon as practicable after the end of the period within which representations under paragraph 10 may be made, publish – 35
 - (a) any advice duly given under paragraphs 4 to 8,
 - (b) any written representations duly made under paragraph 10 and the report (if any) prepared under that paragraph.
- (2) Nothing in sub-paragraph (1) operates –
 - (a) to prevent a person who gives advice under paragraphs 4 to 8 from publishing that advice, or 40

- (b) to prevent a person who makes representations under paragraph 10 from publishing those representations.
- (3) A person (“the publisher”) publishing any such material (whether under sub-paragraph (1) or otherwise) must, so far as practicable, exclude any matter which relates to the private affairs of a particular individual the publication of which, in the opinion of the publisher, would or might seriously and prejudicially affect the interests of that individual. 5

Rules governing decisions by the Board

- 12 (1) The Board must make rules specifying how it will determine applications.
- (2) Rules under sub-paragraph (1) must, in particular, provide that the Board must grant an application in relation to a particular reserved legal activity if it is satisfied – 10
 - (a) that the applicant’s proposed licensing rules in relation to the activity meet the conditions in sub-paragraph (3), and
 - (b) that the applicant is competent, and will have sufficient resources, to act as a licensing authority in relation to the activity. 15
- (3) The conditions are that the licensing rules –
 - (a) comply with the requirements of section 66, and
 - (b) are appropriate for the purpose of regulating the carrying on of the activity by licensed bodies. 20

Determination of applications

- 13 (1) After considering –
 - (a) the application and accompanying material,
 - (b) any other information provided by the applicant,
 - (c) any advice duly given under paragraphs 4 to 8, 25
 - (d) any representations duly made under paragraph 10, and
 - (e) any other information which the Board considers relevant to the application,
the Board must decide whether to grant the application.
- (2) Where the application relates to more than one reserved legal activity, the Board may grant the application in relation to all or any of them. 30
- (3) The Board must give notice of its decision to the applicant (“the decision notice”).
- (4) Where the Board decides to refuse the application (in whole or in part), the decision notice must specify the reasons for that decision. 35
- (5) The Board must publish the decision notice.
- 14 (1) Where an application is made under this Part, the Board must give the decision notice under paragraph 13 within the decision period.
- (2) The “decision period” is the period of 12 months beginning with the day on which the application is made to the Board. 40
- (3) The Board may, before the end of the decision period, issue a notice extending that period by a period specified in the notice.

- (4) More than one notice may be issued under sub-paragraph (3), but the decision period must not exceed 16 months.
- (5) The Board may issue a notice under sub-paragraph (3) only after it has –
 - (a) consulted the OFT, the Consumer Panel and the senior judges, and
 - (b) obtained the Secretary of State’s consent to the extension. 5
- (6) A notice under sub-paragraph (3) must state the Board’s reasons for extending the decision period.
- (7) The Board must publish any notice issued under sub-paragraph (3).

Effect of grant of application

- 15 (1) This paragraph applies where an application is granted in relation to a reserved legal activity or activities. 10
- (2) The Board must recommend to the Secretary of State that an order be made designating the applicant as a licensing authority in relation to the reserved legal activity or activities in question.
- (3) The Board must publish any recommendation made under sub-paragraph (2). 15
- (4) The Board must make available to the Secretary of State –
 - (a) any advice duly given under paragraphs 4 to 8, and
 - (b) any written representations duly made under paragraph 10 and the report (if any) prepared under that paragraph. 20

Power of Secretary of State to obtain further information

- 16 (1) Where the Board makes a recommendation to the Secretary of State under paragraph 15, the Secretary of State may, for the purpose of making a decision under paragraph 17, by notice request the Board to provide the Secretary of State with such further information as is specified in the notice within such period as is so specified. 25
- (2) The Secretary of State must publish any notice given under sub-paragraph (1).
- (3) If the Board is unable to comply with a request under sub-paragraph (1), it must give the Secretary of State a notice to that effect specifying the reasons for it being unable to comply. 30

Secretary of State’s decision to make an order

- 17 (1) Where a recommendation is made to the Secretary of State under paragraph 15, the Secretary of State may –
 - (a) make an order in accordance with the recommendation, or
 - (b) refuse to make such an order. 35
- (2) Where the recommendation relates to more than one reserved legal activity, the Secretary of State may make an order under sub-paragraph (1)(a) in relation to all or any of them.
- (3) But if the application, in relation to a particular reserved legal activity, was made in reliance on paragraph 1(3)(b), the Secretary of State must not make 40

an order in relation to that activity unless the Secretary of State has made an order under Part 2 of Schedule 5 designating the body as an approved regulator in relation to that activity.

- (4) The Secretary of State must –
 - (a) decide whether to make an order under this paragraph, and 5
 - (b) give notice of that decision (“the decision notice”) to the applicant, within the period of 90 days beginning with the day on which the recommendation was made.
- (5) If the Secretary of State decides not to make an order in accordance with the whole or part of the recommendation, the decision notice must state the reasons for the decision. 10
- (6) The Secretary of State must publish the decision notice.

Approval of licensing rules

- 18 (1) Where an order is made by the Secretary of State under paragraph 17, the applicant’s proposed licensing rules are at the same time treated as having been approved by the Board. 15
- (2) But where the order relates to one or more (but not all) of the reserved legal activities to which the application related, sub-paragraph (1) has effect as if the reference to the applicant’s proposed licensing rules were a reference to those rules excluding any provision made in respect of any activities excluded from the order. 20
- (3) Sub-paragraph (1) is without prejudice to the Board’s power to give directions under section 25 (powers to direct an approved regulator to take steps in certain circumstances, including steps to amend its regulatory arrangements). 25

PART 2

CANCELLATION OF DESIGNATION BY ORDER

Introductory

- 19 This Schedule applies where the Board considers that it may be appropriate for it to make a recommendation under section 63(5). 30

Notification of the licensing authority

- 20 (1) The Board must give the licensing authority a notice (“a warning notice”) accompanied by a draft of the proposed recommendation.
- (2) The warning notice must –
 - (a) state that the Board proposes to make a recommendation under subsection (5) of section 63 in the form of the accompanying draft, 35
 - (b) state the reasons why the Board is satisfied of the matters mentioned in paragraphs (a) and (b) of that subsection.
- (3) The Board must publish a copy of the warning notice.
- (4) The licensing authority may make to the Board – 40
 - (a) written representations, and

- (b) if the Board authorises it to do so, oral representations, about the proposed recommendation.
- (5) The Board must make rules governing the making of oral and written representations.
- (6) Representations under this paragraph must be made within – 5
 - (a) the period of 28 days beginning with the day on which the warning notice is given to the licensing authority, or
 - (b) such longer period as the Board may specify in a particular case.
- (7) The Board must consider any representations duly made by the licensing authority. 10
- (8) Where oral representations are duly made, the Board must prepare a report of those representations.
- (9) Before preparing that report, the Board must – 15
 - (a) give the licensing authority a reasonable opportunity to comment on a draft of the report, and
 - (b) have regard to any comments duly made.

Board's duty to seek advice

- 21 (1) After complying with paragraph 20, the Board must give to each of the persons listed in sub-paragraph (2) – 20
 - (a) a copy of the warning notice and the accompanying draft,
 - (b) a copy of any written representations duly made by the licensing authority under paragraph 20 and a copy of the report (if any) prepared under that paragraph, and
 - (c) a notice specifying a period within which any advice under paragraphs 22 to 25 must be given. 25
- (2) Those persons are – 30
 - (a) the Secretary of State,
 - (b) the OFT,
 - (c) the Consumer Panel,
 - (d) each of the senior judges, and
 - (e) such other persons as the Board considers it reasonable to consult in respect of the proposed recommendation.
- (3) In this Part of this Schedule, in relation to a proposed recommendation, “selected consultee” means a person within sub-paragraph (2)(e).

Advice of the Secretary of State 35

- 22 The Secretary of State must give to the Board such advice as the Secretary of State thinks fit in respect of the proposed recommendation.

Advice of Office of Fair Trading

- 23 (1) The OFT must give the Board such advice as it thinks fit regarding whether the proposed recommendation should be made. 40
- (2) In deciding what advice to give, the OFT must, in particular, have regard to whether making an order under section 63 in accordance with the proposed

recommendation would (or would be likely to) restrict, distort or prevent competition within the market for reserved legal services to any significant extent.

Advice of the Consumer Panel

- 24 (1) The Consumer Panel must give the Board such advice as it thinks fit regarding whether the proposed recommendation should be made. 5
- (2) In deciding what advice to give, the Consumer Panel must, in particular, have regard to the likely impact on consumers of making an order under section 63 in accordance with the proposed recommendation.

Advice of selected consultees 10

- 25 A selected consultee may give the Board such advice as the selected consultee thinks fit in respect of the proposed recommendation.

Advice of senior judges

- 26 (1) The Board must give to each of the senior judges – 15
- (a) a copy of any advice duly given under paragraphs 22 to 25, and
 - (b) a notice specifying a period within which advice under this paragraph must be given.
- (2) Each of the senior judges must then give such advice as that judge thinks fit in respect of the proposed recommendation.
- (3) In deciding what advice to give, a senior judge must, in particular, have regard to the likely impact on the courts in England and Wales of making an order under section 63 in accordance with the proposed recommendation. 20

Information obtained by consultees

- 27 A person (“the consultee”) to whom a copy of the warning notice is given under paragraph 21(1) may, for the purposes of giving advice under paragraphs 22 to 26, request the licensing authority or any other person to provide the consultee with such additional information as may be specified by the consultee. 25

Representations by the approved regulator etc

- 28 (1) The Board must – 30
- (a) give to the licensing authority a copy of any advice duly given under paragraphs 22 to 26, and
 - (b) publish that advice together with any written representations duly made by the licensing authority under paragraph 20 and the report (if any) prepared under that paragraph. 35
- (2) The licensing authority and any body within sub-paragraph (3) may make to the Board –
- (a) written representations, and
 - (b) if authorised to do so by the Board, oral representations, about the advice. 40

- (3) A body is within this sub-paragraph if it represents licensed bodies authorised by the licensing authority to carry on activities which are reserved legal activities.
- (4) The Board may allow any other person to make written or oral representations about the advice. 5
- (5) The Board may make rules governing the making to the Board of written or oral representations.
- (6) Representations under this paragraph must be made within – 10
- (a) the period of 28 days beginning with the day on which the representations and advice are published under sub-paragraph (1)(b), or
 - (b) such longer period as the Board may specify in a particular case.
- (7) Where oral representations are made, the Board must prepare a report of those representations.
- (8) Before preparing that report, the Board must – 15
- (a) give each person who made oral representations a reasonable opportunity to comment on a draft of the report of those representations, and
 - (b) have regard to any comments duly made.
- (9) The Board must, as soon as reasonably practicable after the end of the period within which representations under this paragraph may be made, publish any written representations duly made and the report (if any) prepared under sub-paragraph (7). 20

Publication of advice etc

- 29 (1) Nothing in paragraph 28 operates – 25
- (a) to prevent a person who gives advice under paragraphs 22 to 26 from publishing that advice, or
 - (b) to prevent a person who makes representations under paragraph 20 or 28 from publishing those representations.
- (2) A person (“the publisher”) publishing any such material (whether under paragraph 28 or otherwise) must, so far as practicable, exclude any matter which relates to the private affairs of a particular individual the publication of which, in the opinion of the publisher, would or might seriously and prejudicially affect the interests of that individual. 30

Decision by the Board 35

- 30 (1) After considering –
- (a) any advice duly given under paragraphs 22 to 26,
 - (b) any representations duly made under paragraph 20 or 28, and
 - (c) any other information which the Board considers relevant,
- the Board must decide whether to make the proposed recommendation. 40
- (2) The Board must give notice of its decision (“the decision notice”) to the licensing authority and to the Secretary of State.

- (3) If the Board decides to make the proposed recommendation, the decision notice must –
 - (a) contain the recommendation, and
 - (b) state why the Board is satisfied of the matters mentioned in section 63(5)(a) and (b).
- (4) The Board must publish the decision notice.

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SCHEDULE 11

Section 66

LICENSING RULES

PART 1

LICENSING PROCEDURE

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Applications for licences

- 1 (1) Licensing rules must make provision about the form and manner in which applications for licences are to be made, and the fee which is to accompany an application.
- (2) They may make provision about –
 - (a) the information which applications must contain, and
 - (b) the documents which must accompany applications.

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Determination of applications

- 2 (1) Licensing rules must make the following provision about the determination of applications for licences.
- (2) Before the end of the decision period the licensing authority must –
 - (a) decide the application,
 - (b) notify the applicant of its decision, and
 - (c) if it decides to refuse the application, set out in the notice the reasons for the refusal.
- (3) The decision period is the period of 6 months beginning with the day on which the application is made to the licensing authority.
- (4) The licensing authority may, on one or more occasions, give the applicant a notice (an “extension notice”) extending the decision period by a period specified in the notice.
- (5) But –
 - (a) an extension notice may only be given before the time when the decision period would end, but for the extension notice, and
 - (b) the total decision period must not exceed 9 months.
- (6) An extension notice must set out the reasons for the extension.

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Review of determination

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| 3 | Licensing rules must make provision for review by the licensing authority of – | |
| | (a) a decision to refuse an application for a licence; | |
| | (b) if a licence is granted subject to conditions under section 68(4), any or all of the conditions. | 5 |

Period of licence and renewal

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|---|--|----|
| 4 | (1) The licensing rules may make provision – | |
| | (a) limiting the period for which any licence is (subject to the provision of this Part of this Schedule and of the licensing rules) to remain in force; | 10 |
| | (b) about the renewal of licences including provision about the form and manner in which an application for the renewal is to be made, and the fee which is to accompany an application. | |
| | (2) The licensing rules may make provision about – | 15 |
| | (a) the information which applications for renewal must contain, and | |
| | (b) the documents which must accompany applications. | |

Modification of licences

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|---|---|----|
| 5 | (1) Licensing rules must make provision about the form and manner in which applications are to be made for modification of the terms of a licence, and the fee which is to accompany the application. | 20 |
| | (2) They may make provision as to the circumstances in which the licensing authority may modify the terms of a licence without an application being made. | |
| | (3) They must make provision for review by the licensing authority of – | 25 |
| | (a) a decision to refuse an application for modification of the terms of a licence; | |
| | (b) if the licensing authority makes licensing rules under sub-paragraph (2), a decision to modify the terms of a licence. | |

PART 2 30

STRUCTURAL REQUIREMENTS

Management

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| 6 | (1) Licensing rules must require a licensed body to comply with the following requirements at all times. | |
| | (2) At least one of the licensed body's managers must be an individual who is an authorised person in relation to a licensed activity. | 35 |
| | (3) At least one of the persons within sub-paragraph (4) must be a non-authorised person. | |
| | (4) The persons within this sub-paragraph are – | |
| | (a) any individual who is a manager of the licensed body, | 40 |

- (b) any person who has an interest in the licensed body.
- 7 (1) Licensing rules may make further provision as to –
 - (a) the managers of licensed bodies, and
 - (b) the arrangements for the management by them of the licensed body and its activities. 5
- (2) They must not require all the managers of a licensed body which satisfies sub-paragraph (3) of paragraph 6 by virtue of sub-paragraph (4)(b) of that paragraph to be authorised persons in relation to a reserved legal activity.

Ownership

- 8 (1) Licensing rules must include the following requirements. 10
 - (2) A non-authorised person may not hold a material interest in a licensed body which is a company with a share capital unless the person’s holding of a material interest is approved in writing by the licensing authority.
 - (3) A non-authorised person may not hold an interest in any other licensed body unless the person’s holding of an interest is approved in writing by the licensing authority. 15
- 9 (1) Licensing rules may include the following requirements.
 - (2) A non-authorised person may not hold an interest in a licensed body which exceeds a limit specified in the rules.
 - (3) A non-authorised person may not hold a controlled interest in a licensed body which is a company with a share capital unless the person’s holding of a controlled interest is approved in writing by the licensing authority. 20
 - (4) A controlled interest is an interest in such proportion of the company’s ordinary share capital as may be specified in the licensing rules.
 - (5) Licensing rules made under sub-paragraph (4) may specify more than one proportion; but any proportion specified must be greater than the proportion of the company’s ordinary share capital an interest in which constitutes a material interest. 25
- 10 (1) Licensing rules must make the following provision in relation to any requirement that a person may not hold an interest (or an interest of a particular description) in a licensed body unless the person’s holding of an interest (or an interest of that description) is approved by the licensing authority. 30
 - (2) The person’s holding of the interest may be approved by the licensing authority – 35
 - (a) in the course of determining an application for a licence under section 67, or
 - (b) under paragraph 12.
 - (3) Before giving its approval the licensing authority must be satisfied that – 40
 - (a) the person is a fit and proper person to hold the interest, and
 - (b) the person’s interest does not compromise adherence to the professional principles by the licensed body or those through whom the licensed body carries on any licensed activities.

(4) The licensing authority may give its approval subject to conditions.	
(5) If the licensing authority refuses to give its approval, it must give written reasons for the refusal.	
(6) Licensing rules must make provision about the procedures and criteria that will be applied by the licensing authority when determining whether it is satisfied of the matters mentioned in sub-paragraph (3).	5
(7) The licensing rules must provide for review by the licensing authority of –	
(a) a refusal;	
(b) if approval is given subject to conditions, the conditions.	
<i>Ownership: applications for licences</i>	10
11 Licensing rules may require a non-authorised person, identified in accordance with section 73(1) or (2) in an application for a licence, to provide the licensing authority with such documents and information as it may require.	
<i>Approval of change of ownership</i>	15
12 (1) Licensing rules must include the following requirements.	
(2) If a person gives the licensing authority notification under section 74 (requirement to give notice of acquisition or intended acquisition of interest), the licensing authority must give or refuse the required approval in writing within 6 months of the notification.	20
(3) If the notification is under section 74(1)(b) and the licensing authority gives the required approval, the person’s holding is to be treated as having been approved by the licensing authority before the person acquired the interest.	
(4) “Required approval” has the same meaning as in section 74(8).	
<i>Head of Legal Practice</i>	25
13 (1) Licensing rules must include the following requirements.	
(2) A licensed body must at all times have an individual –	
(a) who is designated as Head of Legal Practice, and	
(b) whose designation is approved by the licensing authority.	
(3) A designation of an individual as Head of Legal Practice has effect only while the individual –	30
(a) consents to the designation,	
(b) is an authorised person in relation to one or more of the licensed activities, and	
(c) is not on the list of disqualified persons maintained by the Board under section 84(1)(a).	35
(4) The licensing authority may approve a person’s designation only if it is satisfied that the person is a fit and proper person to carry out the duties imposed by section 75 in relation to that body.	
(5) The licensing authority may approve a person’s designation in the course of determining an application for a licence under section 67.	40

- (6) If the licensing authority is satisfied that the person designated as a licensed body’s Head of Legal Practice has breached a duty imposed by section 75, it may withdraw its approval of that person’s designation.
- 14 (1) Licensing rules must make provision about—
- (a) the procedures and criteria that will be applied by the licensing authority when determining under paragraph 13(4) whether an individual is a fit and proper person; 5
 - (b) the procedures and criteria that will be applied by the licensing authority in determining under paragraph 13(6) whether to withdraw its approval; 10
 - (c) the procedure which is to apply where a licensed body ceases to comply with the requirement imposed by virtue of paragraph 13(2).
- (2) Rules made in accordance with sub-paragraph (1)(c) may in particular provide that the requirement imposed by virtue of paragraph 13(2) is suspended until such time as may be specified by the licensing authority if the licensed body complies with such other requirements as may be specified in the rules. 15

Head of Finance and Administration

- 15 (1) Licensing rules must include the following requirements.
- (2) A licensed body must at all times have an individual— 20
- (a) who is designated as Head of Finance and Administration, and
 - (b) whose designation is approved by the licensing authority.
- (3) A designation of an individual as Head of Finance and Administration has effect only while the individual— 25
- (a) consents to the designation, and
 - (b) is not on the list of disqualified persons maintained by the Board under section 84(1)(b).
- (4) The licensing authority may approve a person’s designation only if it is satisfied that the person is a fit and proper person to carry out the duties imposed by section 76 in relation to that body. 30
- (5) The licensing authority may approve a person’s designation in the course of determining an application for a licence under section 67.
- (6) If the licensing authority is satisfied that the person designated as a licensed body’s Head of Finance and Administration has breached a duty imposed by section 76, it may withdraw its approval of that person’s designation. 35
- 16 (1) Licensing rules must make provision about—
- (a) the procedures and criteria that will be applied by the licensing authority when determining under paragraph 15(4) whether an individual is a fit and proper person;
 - (b) the procedures and criteria that will be applied by the licensing authority in determining under paragraph 15(6) whether to withdraw its approval; 40
 - (c) the procedure which is to apply where a licensed body ceases to comply with the requirement imposed by virtue of paragraph 15(2).

- (2) The rules made in accordance with sub-paragraph (1)(c) may in particular provide that the requirement imposed by virtue of sub-paragraph 15(2) is suspended until such time as may be specified by the licensing authority if the licensed body complies with such other requirements as may be specified in the rules.

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PART 3

PRACTICE REQUIREMENTS

Practising address

- 17 (1) The licensing rules must require a licensed body, at all times –
- (a) if it is a company incorporated in England and Wales, to have its registered office in England or Wales, and
 - (b) in any other case, to have a practising address in England or Wales.
- (2) For this purpose a “practising address”, in relation to a licensed body, means an address from which the body provides services which consist of or include the carrying on of reserved legal activities.

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Licensed activities must be carried on through entitled persons

- 18 (1) Licensing rules must include the following requirements.
- (2) A licensed body may carry on a licensed activity only through a person who is entitled to carry on the activity.
- (3) A licensed body must at all times have suitable arrangements in place to ensure that it and the persons through whom the body carries on any licensed activity maintain the professional principles set out in section 1(3).

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Disqualified employees and officers

- 19 (1) The licensing rules must make the following requirements.
- (2) A licensed body may not employ a person who is included in the list kept by the Board under section 84(1)(c) (disqualified employees and officers).
- (3) A person who is included in that list may not be an officer of a licensed body.

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Indemnity cover and compensation

- 20 (1) The licensing rules must make provision for indemnifying licensed bodies and former licensed bodies against losses arising from claims in relation to any description of civil liability incurred by them, or by employees or former employees of theirs, in connection with their activities as licensed bodies.
- (2) The licensing rules must also make provision for the making of grants or other payments for the purpose of relieving or mitigating losses suffered by persons in consequence of –
- (a) negligence or fraud or other dishonesty on the part of licensed bodies, or of employees of theirs, in connection with their activities as licensed bodies;
 - (b) failure on the part of licensed bodies to account for money received by them in connection with their activities as licensed bodies.

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- (3) For the purposes of providing such indemnity and enabling such grants or other payments to be made, licensing rules may –
 - (a) authorise or require the licensing authority to establish and maintain a fund or funds;
 - (b) authorise or require the licensing authority to take out and maintain insurance with authorised insurers; 5
 - (c) require licensed bodies or licensed bodies of any specific description to take out and maintain insurance with authorised insurers.
- (4) In this paragraph “authorised insurer” has the same meaning as in section 53. 10

Accounts

- 21 The licensing rules must make provision as to the treatment of client’s money, and money comprised in trusts, held by licensed bodies and the keeping by licensed bodies of accounts in respect of such money.

PART 4 15

REGULATION

Fees

- 22 (1) The licensing rules must require licensed bodies to pay periodical fees to the licensing authority.
- (2) The rules may provide for the payment of different fees by different descriptions of licensed body. 20

Financial penalties

- 23 The licensing rules must make provision requiring the licensing authority, in determining the amount of any penalty imposed under section 79 (penalty for breach of licence terms), to have regard to – 25
 - (a) the seriousness of the breach in question in relation to the nature of the terms of the licence to which the breach relates, and
 - (b) the extent to which the breach was deliberate or reckless.

Suspension or revocation of licence under section 85

- 24 (1) The licensing rules must make the following provision. 30
- (2) The licensing authority may suspend or revoke a licensed body’s licence under section 85 if a non-authorised person holds –
 - (a) a material interest in a licensed body which is a company with a share capital, or
 - (b) an interest in a licensed body which is not a company with a share capital, 35without the approval required by licensing rules made under paragraph 8.
- (3) The licensing authority may revoke a licensed body’s licence under section 85 if the licensed body is unable to comply with licensing rules made under – 40
 - (a) paragraph 13 (requirement for Head of Legal Practice), or

-
- (b) paragraph 15 (requirement for Head of Finance and Administration).
- (4) Before suspending or revoking a licence in accordance with sub-paragraph (2) or revoking a licence in accordance with sub-paragraph (3) the licensing authority must give the licensed body notice of its intention. 5
- (5) The licensing authority may not suspend or revoke the licence before the end of the period of 28 days beginning with the day on which the notice is given to the licensed body (or any longer period specified in the notice).
- 25 Licensing rules may make provision about other circumstances in which the licensing authority may exercise its power under section 85 to suspend or revoke a licence. 10
- 26 (1) Licensing rules must make provision about the criteria and procedure the licensing authority will apply in deciding whether to suspend or revoke a licence, or to end the suspension of a licence, under section 85 in accordance with— 15
- (a) licensing rules made under paragraph 24, and
- (b) any licensing rules made under paragraph 25.
- (2) They must make provision for review by the licensing authority of a decision by the licensing authority to suspend or revoke a licence.

SCHEDULE 12

Section 85 20

LICENSING AUTHORITY'S POWERS OF INTERVENTION

Introductory

- 1 This Schedule applies where under section 85 a licensing authority suspends or revokes a licence granted by it under this Part.

Money: prohibition on payment 25

- 2 (1) The licensing authority may apply to the High Court for an order under sub-paragraph (2), and the High Court may make the order if it thinks fit.
- (2) The order is that a person holding money on behalf of the licensed body may not make any payment of the money, except with the leave of the court.
- (3) An order under sub-paragraph (2) may take effect in relation to a person— 30
- (a) whether or not the person is named in the order;
- (b) however the money is held;
- (c) whether the money was received before or after the order was made.
- (4) But an order under sub-paragraph (2) does not take effect in relation to a person until the licensing authority— 35
- (a) has given the person a copy of the order, and
- (b) (in the case of a bank or other financial institution) has indicated the branches at which it believes money to which the order relates is held.

- (5) A person is not to be treated as having disobeyed an order under sub-paragraph (2) by making a payment of money if the court is satisfied that the person –
 - (a) exercised due diligence to ascertain whether it was money to which the order related, and 5
 - (b) failed to ascertain that the order related to it.

Money: vesting in licensing authority

- 3 (1) The sums of money to which this paragraph applies, and the right to recover or receive them, vest in the licensing authority if the licensing authority decides that they should do so. 10
- (2) Sub-paragraph (1) applies whether the sums were received by the person holding them before or after the licensing authority’s decision.
- (3) Those sums and that right are held by the licensing authority –
 - (a) on trust to exercise the powers conferred by this Schedule in relation to them, and 15
 - (b) subject to that, on trust for the persons beneficially entitled.
- (4) This paragraph applies to all sums of money held by or on behalf of the licensed body in connection with –
 - (a) its activities as a licensed body, or
 - (b) any trust of which it is or was a trustee. 20
- (5) The licensing authority must give to the licensed body, and any other person in possession of sums of money to which this paragraph applies –
 - (a) a copy of the licensing authority’s decision, and
 - (b) a notice prohibiting the payment out of those sums.
- (6) A person to whom a notice under sub-paragraph (5) is given may apply to the High Court for an order directing the licensing authority to withdraw the notice. 25
- (7) An application under sub-paragraph (6) must be made within 8 days of the licensing authority giving the person notice under sub-paragraph (5).
- (8) The person must give not less than 48 hours’ notice of any application under sub-paragraph (6) – 30
 - (a) to the licensing authority, and
 - (b) if the notice under sub-paragraph (5) gives the name of a solicitor instructed by the licensing authority, to that solicitor.
- (9) If the court makes the order, it may make any other order it thinks fit with respect to the matter. 35
- (10) It is an offence for a person to whom a notice has been given under sub-paragraph (5) to pay out sums of money at a time when such payment is prohibited by the notice.
- (11) A person who is guilty of an offence under sub-paragraph (10) is liable on summary conviction to a fine not exceeding level 3 on the standard scale. 40
- 4 (1) If the licensing authority takes possession of any sum of money to which paragraph 3 applies, it must pay it into –

- (a) a special account in the name of the licensing authority or a person nominated on its behalf, or
 - (b) a client account (within the meaning of the Solicitors Act 1974 (c. 47)) of a solicitor nominated on its behalf.
- (2) A person or solicitor nominated under sub-paragraph (1) holds that sum – 5
 - (a) on trust to permit the licensing authority to exercise the powers conferred by this Schedule in relation to it, and
 - (b) subject to that, on trust for the persons beneficially entitled.
- (3) A bank or other financial institution at which a special account is kept is under no obligation to ascertain whether it is being dealt with properly. 10

Money: information

- 5 (1) The licensing authority may apply to the High Court for an order requiring a person to give the licensing authority information about –
 - (a) any money held by the person on behalf of the licensed body, and
 - (b) the accounts in which it is held. 15
- (2) The High Court may make the order if it is satisfied that there is reason to suspect that the person holds money on behalf of the licensed body.
- (3) This paragraph is without prejudice to paragraphs 2 to 4.

Notice to produce or deliver documents

- 6 (1) The licensing authority may give notice to the licensed body requiring it to produce or deliver all documents in its possession in connection with – 20
 - (a) its activities as a licensed body, or
 - (b) any trust of which it is the sole trustee, or co-trustee only with one or more of its employees.
- (2) The notice may require the documents to be produced – 25
 - (a) to any person appointed by the licensing authority,
 - (b) at a time and place to be fixed by the licensing authority.
- (3) The person appointed by the licensing authority may take possession of any such documents on behalf of the licensing authority.
- (4) It is an offence for a person having possession of such documents to refuse, neglect or otherwise fail to comply with a notice under sub-paragraph (1). 30
- (5) Sub-paragraph (4) does not apply where an application has been made to the High Court under paragraph 7.
- (6) A person who is guilty of an offence under sub-paragraph (4) is liable on summary conviction to a fine not exceeding level 3 on the standard scale. 35

Order to produce or deliver documents

- 7 (1) The High Court may, on the application of the licensing authority, make an order for production or delivery –
 - (a) in relation to a person required to produce documents under paragraph 6 and the documents the person was required to produce; 40

- (b) if it is satisfied that there is reason to suspect that documents in relation to which the powers in paragraph 6 are exercisable have come into the possession of some person other than the licensed body, in relation to that person and those documents.
- (2) An order for production or delivery is an order – 5
 - (a) requiring a person to produce or deliver documents to any person appointed by the licensing authority, at a time and place specified in the order, and
 - (b) authorising the appointed person to take possession of the documents on behalf of the licensing authority. 10
- (3) The court may, on the application of the licensing authority, authorise a person appointed by the licensing authority to enter any premises (using such force as is reasonably necessary) to search for and take possession of any documents to which an order for production or delivery relates.
- (4) It may do so on making the order for production or delivery, or at any later time. 15

Taking possession of documents under notice or order

- 8 (1) This paragraph applies where the licensing authority takes possession of documents under paragraph 6 or 7.
- (2) On taking possession, it must give a notice to – 20
 - (a) the licensed body, and
 - (b) any other person from whom the documents were received or from whose possession they were taken.
- (3) The notice must state that possession has been taken and specify the date on which possession was taken. 25
- (4) A person to whom a notice under sub-paragraph (2) is given may apply to the High Court for an order directing the licensing authority to deliver the documents to such person as the applicant requires.
- (5) An application under sub-paragraph (4) must be made within 8 days of the licensing authority giving the person notice under sub-paragraph (2). 30
- (6) The person must give not less than 48 hours' notice of the application –
 - (a) to the licensing authority, and
 - (b) if the notice under sub-paragraph (2) gives the name of a solicitor instructed by the licensing authority, to that solicitor.
- (7) The court may make any order it thinks fit. 35

Taking possession of documents by redirecting mail

- 9 (1) The High Court, on the application of the licensing authority, may from time to time make a postal redirection order for a period not exceeding 18 months.
- (2) A postal redirection order is an order that postal packets addressed to the licensed body at any place or places specified in the order are to be redirected to – 40
 - (a) the licensing authority, or

- (b) any person appointed by the licensing authority,
at any address specified in the order.
- (3) The licensing authority or person appointed by it may take possession of any such postal packets received at the specified address.
- (4) The licensing authority must pay to the postal operator any charges which would have been payable for redirection of the postal packets if the addressee—
 - (a) had permanently ceased to occupy the premises to which they were addressed, and
 - (b) had applied to the postal operator to redirect them to it at the specified address.
- (5) In this paragraph “postal operator” and “postal packet” have the meaning given by section 125(1) of the Postal Services Act 2000 (c. 26).

Use of documents in licensing authority’s possession

- 10 (1) The licensing authority may apply to the High Court for an order as to the disposal or destruction of any document in its possession by virtue of paragraph 6, 7 or 9. 15
- (2) The court may make any order it thinks fit.
- 11 (1) The licensing authority may take copies of or extracts from any documents in its possession by virtue of paragraph 6, 7 or 9. 20
- (2) If the licensing authority proposes to deliver such documents to any person, it may make the delivery conditional on the person giving a reasonable undertaking to supply copies or extracts to the licensing authority.
- (3) Sub-paragraphs (1) and (2) are subject to any order made by the court under paragraph 8 or 10. 25

Trusts

- 12 (1) If the licensed body is the sole trustee of any trust, or co-trustee only with one or more of its employees, the licensing authority may apply to the High Court for an order for the appointment of a new trustee in substitution for it.
- (2) The Trustee Act 1925 (c. 19) has effect in relation to an appointment of a new trustee under this paragraph as it has effect in relation to an appointment under section 41 of that Act. 30

General powers of licensing authority

- 13 The powers conferred by this Schedule in relation to sums of money and documents may be exercised despite any lien on them or right to their possession. 35
- 14 The licensing authority may do all things which are reasonably necessary to facilitate the exercise of its powers under this Schedule.

Licensing authority’s costs

- 15 (1) Any costs incurred by the licensing authority for the purposes of this Schedule (including the costs of any person exercising powers under this Schedule on behalf of the licensing authority) –
 - (a) are to be paid by the licensed body, and 5
 - (b) may be recovered from the licensed body as a debt owing to the licensing authority.
- (2) Sub-paragraph (1) is subject to any order for payment of costs that may be made on an application to the court under this Schedule.

SCHEDULE 13

Section 92 10

THE OFFICE FOR LEGAL COMPLAINTS

Membership

- 1 (1) The OLC is to consist of the following members –
 - (a) a chairman appointed by the Board with the approval of the Secretary of State, and 15
 - (b) at least 6, but not more than 8, other persons appointed by the Board after consultation with the chairman.
- (2) The Secretary of State may by order amend sub-paragraph (1) by substituting for the limit on the maximum number of persons for the time being specified in paragraph (b) of that sub-paragraph a different limit. 20
- 2 (1) In appointing members of the OLC the Board must ensure that a majority of the members of the OLC are lay persons.
- (2) The chairman must be a lay person.
- (3) In this Schedule a reference to a “lay person” is a reference to a person who has never been an authorised person in relation to an activity which is a reserved legal activity. 25
- (4) For the purposes of sub-paragraph (3), a person is deemed to have been an authorised person in relation to an activity which is a reserved legal activity if that person has before the appointed day been –
 - (a) a barrister; 30
 - (b) a solicitor;
 - (c) a public notary;
 - (d) a licensed conveyancer; or
 - (e) granted a right of audience or right to conduct litigation in relation to any proceedings by virtue of section 27(2)(a) or section 28(2)(a) of the Courts and Legal Services Act 1990 (c. 41) (rights of audience and rights to conduct litigation). 35
- (5) For the purpose of sub-paragraph (4) –
 - “appointed day” means the day appointed by the Secretary of State by order under section 157 for the coming into force of section 10; 40
 - “licensed conveyancer” has the meaning given by section 11(2) of the Administration of Justice Act 1985 (c. 61).

- 3 (1) An ombudsman may be a member (but not chairman) of the OLC.
- (2) In appointing members of the OLC, the Board must ensure that a majority of the members of the OLC are not ombudsmen.
- 4 In appointing members of the OLC, the Board must have regard to the desirability of securing that the OLC includes members who (between them) have experience in or knowledge of – 5
- (a) the handling of complaints;
 - (b) the provision of legal services;
 - (c) legal education and legal training;
 - (d) consumer affairs; 10
 - (e) civil or criminal proceedings and the working of the courts;
 - (f) the maintenance of the professional standards of persons who provide legal services;
 - (g) not for profit legal services; and
 - (h) the differing needs of consumers. 15

Terms of appointment and tenure of members

- 5 A member of the OLC is to hold and vacate office in accordance with the terms and conditions of the member's appointment (subject to this Schedule).
- 6 (1) A member of the OLC must be appointed for a fixed period. 20
- (2) The period for which a member is appointed must not exceed 5 years.
- (3) A person who has held office as a member may be re-appointed once only, for a further period (whether consecutive or not) not exceeding 5 years.
- 7 If a member of the OLC who is a lay person becomes an authorised person in relation to an activity which is a reserved legal activity, that person ceases to be a member of the OLC. 25
- 8 (1) A member may at any time –
- (a) resign from office by giving notice to the Board;
 - (b) be removed from office by the Board.
- (2) The Board may not under sub-paragraph (1)(b) remove a member (including the chairman) from office unless the Board is satisfied that the member – 30
- (a) has failed without reasonable excuse to discharge the functions of the office for a continuous period of at least 6 months,
 - (b) has been convicted of an offence,
 - (c) is an undischarged bankrupt, or 35
 - (d) is otherwise unfit to hold the office or unable to discharge its functions.
- (3) The chairman may be removed from office under sub-paragraph (1)(b) only with the consent of the Secretary of State.
- (4) The Board must consult the chairman before removing a member (other than the chairman) under sub-paragraph (1)(b). 40

- (5) The Board may not remove an ordinary member on the ground mentioned in paragraph (a) of sub-paragraph (2) more than 3 months after the end of the period mentioned in that paragraph.

- 9 The chairman ceases to be chairman upon ceasing to be a member of the OLC. 5

Remuneration etc of members

- 10 The chairman and other members of the OLC are to be paid by the Board in accordance with provision made by or under their terms of appointment.

Staff

- 11 The OLC may appoint such staff as it considers appropriate to assist in the performance of its functions. 10

- 12 Staff appointed under paragraph 11 are to be –
(a) appointed on terms and conditions determined by the OLC, and
(b) paid by the OLC in accordance with provision made by or under the terms of appointment. 15

- 13 A member of staff appointed under paragraph 11 may be a member (but not chairman) of the OLC.

- 14 The terms and conditions on which an ombudsman, or any member of staff appointed under paragraph 11, is appointed may provide for the OLC to pay, or make payments towards the provision of, a pension, allowance or gratuity to or in respect of that person. 20

Arrangements for assistance

- 15 (1) The OLC may make arrangements with such persons as it considers appropriate for assistance to be provided to it or to an ombudsman.
(2) Arrangements may include the paying of fees to such persons. 25

Committees

- 16 (1) The OLC may establish committees.
(2) Any committee so established may establish sub-committees.
(3) Only members of the OLC may be members of a committee or sub-committee. 30
(4) A majority of the members of a committee or sub-committee must be lay persons.

Proceedings

- 17 (1) The OLC may regulate its own procedure, and the procedure of its committees and sub-committees, including quorum. 35
(2) But the quorum of a committee or sub-committee must not be less than 3.
(3) The OLC must publish any rules of procedure made under this paragraph.

- (4) This paragraph is without prejudice to any other power the OLC has under this Act to make rules.

- 18 The validity of any act of the OLC is not affected –
- (a) by a vacancy in the office of chairman or amongst the other members, or 5
 - (b) by a defect in the appointment or any disqualification of a person as chairman or another member of the OLC.

Delegation of functions

- 19 (1) The OLC may authorise –
- (a) the chairman or any other member of the OLC, 10
 - (b) a committee or sub-committee of the OLC,
 - (c) an ombudsman, or
 - (d) a member of the OLC's staff appointed under paragraph 11,
- to exercise, on behalf of the OLC, such of its functions, in such circumstances, as it may determine. 15
- (2) Sub-paragraph (1) does not apply to –
- (a) the OLC's functions under section 95(1) (annual report),
 - (b) the OLC's functions under section 99 (appointment of Chief ombudsman and assistant ombudsmen),
 - (c) the OLC's functions under paragraph 17 or 20 of this Schedule, or 20
 - (d) any power or duty the OLC has to make rules under this Part of this Act.
- (3) A committee may delegate functions (including functions delegated to the committee) to –
- (a) a sub-committee, 25
 - (b) the chairman or any other member of the OLC,
 - (c) an ombudsman, or
 - (d) a member of the OLC's staff appointed under paragraph 11.

Budget

- 20 (1) The OLC must, before the start of each financial year, adopt an annual budget which has been approved by the Board. 30
- (2) The OLC may, with the approval of the Board, vary the budget for a financial year at any time after its adoption.
- (3) The annual budget must include an indication of –
- (a) the distribution of resources deployed in the operation of the ombudsman scheme, and 35
 - (b) the amounts of income of the OLC arising or expected to arise from the operation of the scheme.

Borrowing

- 21 (1) The OLC is not to borrow money, except – 40
- (a) with the consent of the Board, or
 - (b) in accordance with a general authorisation given by the Board.

- (2) The Board may not consent or give a general authorisation for the purposes of sub-paragraph (1), except with the consent of the Secretary of State.

Accounts

- 22 (1) The OLC must—
- (a) keep proper accounts and proper records in relation to the accounts, and 5
 - (b) prepare in respect of each financial year a statement of accounts.
- (2) Each statement of accounts must comply with any directions given by the Secretary of State, with the approval of the Treasury, as to—
- (a) the information to be contained in it and the manner in which it is to be presented; 10
 - (b) the methods and principles according to which the statement is to be prepared;
 - (c) the additional information (if any) which is to be provided for the information of Parliament. 15
- (3) The OLC must give a copy of each statement of accounts to the Board before the end of the month of August next following the financial year to which the statement relates.
- (4) The Board must give a copy of each statement received under sub-paragraph (3)— 20
- (a) to the Secretary of State, and
 - (b) to the Comptroller and Auditor General.
- (5) The Comptroller and Auditor General must—
- (a) examine, certify and report on each statement of accounts which is received under sub-paragraph (4), and 25
 - (b) lay a copy of each statement and of the Comptroller and Auditor General’s report before Parliament.
- (6) “Financial year” means—
- (a) the period beginning with the day on which the OLC is established and ending with the following 31 March, and 30
 - (b) each successive period of 12 months.

Status

- 23 (1) The OLC is not to be regarded—
- (a) as the servant or agent of the Crown, or
 - (b) as enjoying any status, immunity or privilege of the Crown. 35
- (2) Accordingly, the OLC’s property is not to be regarded as property of or held on behalf of the Crown.

Application of seal and proof of instruments

- 24 The application of the seal of the OLC is to be authenticated by the signature of any member of the OLC, or of its staff, who has been authorised (whether generally or specifically) by the OLC for the purpose. 40

- 25 Any contract or instrument which, if entered into or executed by an individual, would not need to be under seal, may be entered into or executed on behalf of the OLC by any person who has been authorised (whether generally or specifically) by the OLC for the purpose.
- 26 A document purporting to be duly executed under the seal of the OLC, or signed on its behalf – 5
- (a) is to be received in evidence, and
 - (b) is to be taken to be executed or signed in that way, unless the contrary is proved.

Disqualification 10

- 27 (1) In Part 2 of Schedule 1 to the House of Commons Disqualification Act 1975 (c. 24) (bodies of which all members are disqualified) at the appropriate place insert –
- “The Office for Legal Complaints.”
- (2) In Part 3 of that Schedule (other disqualifying offices) at the appropriate place insert – 15
- “The Chief Ombudsman or an assistant ombudsman appointed under section 99 of the Legal Services Act 2006 (Chief Ombudsman and assistant ombudsmen appointed for the purposes of the ombudsman scheme).” 20
- (3) In Part 2 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (c. 25) (bodies of which all members are disqualified) at the appropriate place insert –
- “The Office for Legal Complaints.”
- (4) In Part 3 of that Schedule (other disqualifying offices) at the appropriate place insert – 25
- “The Chief Ombudsman or an assistant ombudsman appointed under section 99 of the Legal Services Act 2006 (Chief Ombudsman and assistant ombudsmen appointed for the purposes of the ombudsman scheme).” 30

Freedom of information

- 28 In Part 6 of Schedule 1 to the Freedom of Information Act 2000 (c. 36) (other public bodies and offices which are public authorities) at the appropriate place insert –
- “The Office for Legal Complaints.” 35

Public records

- 29 In Schedule 1 to the Public Records Act 1958 (c. 51) (definition of public records) at the appropriate place in Part 2 of the Table at the end of paragraph 3 insert –
- “The Office for Legal Complaints.” 40

Exemption from liability in damages

- 30 (1) This paragraph applies to –
- (a) the OLC,

- (b) a member of the OLC,
 - (c) an ombudsman, and
 - (d) a member of the OLC’s staff appointed under paragraph 11.
- (2) A person to whom this paragraph applies is not liable in damages for anything done or omitted in the exercise or purported exercise of the functions conferred on the person concerned by or by virtue of this or any other enactment. 5
- (3) But sub-paragraph (2) does not apply –
 - (a) if it is shown that the act or omission was in bad faith, or
 - (b) so as to prevent an award of damages made in respect of an act or omission on the ground that the act or omission was unlawful as a result of section 6(1) of the Human Rights Act 1998 (c. 42). 10

SCHEDULE 14

Section 140

IMMIGRATION ADVICE AND IMMIGRATION SERVICES

PART 1 15

QUALIFYING REGULATORS

Designation orders

- 1 In this Part of this Schedule “designation order” means an order made under section 86A(6) of the Immigration and Asylum Act 1999 (designated qualifying regulators entitled to authorise persons to provide immigration advice and immigration services). 20

Application to become a qualifying regulator

- 2 (1) This paragraph applies where a body wishes to become a qualifying regulator for the purposes of Part 5 of the Immigration and Asylum Act 1999. 25
- (2) A body may apply to the Board for the Board –
 - (a) to designate the body as a qualifying regulator for those purposes, and
 - (b) to approve what the applicant proposes as its regulatory arrangements if a designation order is made (“the proposed regulatory arrangements”). 30
- (3) But a body may make an application under this paragraph only if –
 - (a) it is an approved regulator (other than the Board), or
 - (b) it has made an application under Part 2 of Schedule 5 (designation of approved regulators). 35
- (4) An application under this paragraph must be made in such form and manner as the Board may specify in rules and must be accompanied by –
 - (a) details of the applicant’s proposed regulatory arrangements,
 - (b) such explanatory material as the applicant considers is likely to be needed for the purposes of this Part of this Schedule, and 40

- (c) the prescribed fee.
- (5) The prescribed fee is the fee prescribed in, or determined in accordance with, rules made by the Board with the consent of the Secretary of State.
- (6) An applicant may, at any time, withdraw the application by giving notice to that effect to the Board. 5

Consultation and representations

- 3 (1) Paragraphs 4 to 13 of Schedule 5 (consultation requirements etc in relation to applications for designation as approved regulator) apply in relation to an application under paragraph 2 as they apply in relation to an application under paragraph 3 of that Schedule, but as if – 10
 - (a) in paragraphs 7(2), 8(2) and 10(3) of that Schedule the references to making an order under paragraph 19 in accordance with the recommendation were references to making a designation order in respect of the applicant, and
 - (b) in paragraph 7(2) of that Schedule the reference to the market for reserved legal services were a reference to the market for immigration advice and immigration services. 15

Determination of application

- 4 (1) The Board must make rules specifying how it will determine applications under paragraph 2. 20
- (2) Rules under sub-paragraph (1) must, in particular, provide that the Board may grant an application only if it is satisfied – 25
 - (a) that, if a designation order were to be made in relation to the applicant, the applicant would have appropriate internal governance arrangements in place at the time the order takes effect, 30
 - (b) that the arrangements made by the applicant for authorising persons to provide immigration advice or immigration services provide that persons may not be so authorised unless they are individuals who are also authorised by the applicant to carry on activities which are reserved legal activities, 35
 - (c) that the applicant's proposed regulatory arrangements include appropriate rules relating to the qualification and training of, and other requirements which must be met by or in respect of, persons whom the applicant proposes to authorise to provide immigration advice or immigration services, 40
 - (d) that the applicant's proposed regulatory arrangements include appropriate arrangements (including disciplinary arrangements) under which the applicant will be able to regulate the conduct of persons whom it proposes to so authorise, 45
 - (e) that the applicant's proposed regulatory arrangements comply with the requirements imposed by sections 115 and 116 (requirements imposed in relation to the handling of complaints),
 - (f) that the applicant's proposed regulatory arrangements make appropriate arrangements for the purposes of ensuring the indemnification of those who are or were persons authorised by it to provide immigration advice or immigration services against losses arising from claims in relation to any description of civil liability

- incurred by them, or by employees or former employees of theirs, in connection with their activities as such authorised persons,
- (g) that the applicant’s proposed regulatory arrangements make appropriate arrangements to provide for grants or other payments for the purpose of relieving or mitigating losses suffered by persons in consequence of – 5
- (i) negligence or fraud or other dishonesty on the part of any persons whom the applicant has authorised to provide immigration advice or immigration services, or of employees of theirs, in connection with their activities as such authorised persons, and 10
- (ii) failure, on the part of persons whom the applicant has authorised to provide such advice or services, to account for money received by them in connection with their activities as such authorised persons, and 15
- (h) that, if a designation order were made in relation to the applicant, the applicant would be competent to perform the role of designated qualifying regulator (within the meaning of section 86A of the Immigration and Asylum Act 1999 (c. 33)) at the time the order takes effect. 20
- (3) The rules made for the purposes of sub-paragraph (2)(a) must in particular require the Board to be satisfied that the exercise of the applicant’s regulatory functions would not be prejudiced by any functions the applicant may have in connection with the representation, or promotion, of the interests of persons regulated by it. 25
- 5 (1) After considering –
- (a) the application and accompanying material,
- (b) any other information provided by the applicant,
- (c) any advice duly given and representations duly made by virtue of paragraph 3, and 30
- (d) any other information which the Board considers relevant to the application,
- the Board must decide whether to grant the application.
- (2) The Board must give notice of its decision to the applicant (“the decision notice”). 35
- (3) Where the Board decides to refuse the application, the decision notice must specify the reasons for that decision.
- (4) The Board must publish the decision notice.
- (5) Paragraph 16 of Schedule 5 (period within which decision must be made) applies in relation to a decision notice under this paragraph as it applies in relation to a decision notice under paragraph 15 of that Schedule. 40

Effect of application

- 6 (1) Where an application is granted under paragraph 5, the decision notice must specify that the applicant is a qualifying regulator for the purposes of Part 5 of the Immigration and Asylum Act 1999. 45

-
- (2) Where an application is granted under paragraph 5, the proposed regulatory arrangements are at the same treated as having been approved by the Board.
- (3) But if the application was made in reliance upon paragraph 2(3)(b), the applicant’s status as such a qualifying regulator and the approval of its proposed regulatory arrangements under sub-paragraph (2) are conditional upon the Secretary of State making an order under Part 2 of Schedule 5 designating the body as an approved regulator in relation to one or more reserved legal activities. 5
- Loss of qualifying regulator status* 10
- 7 (1) Where a qualifying regulator –
- (a) ceases to be an approved regulator, or
- (b) ceases to be a designated qualifying regulator within the meaning of section 86A of the Immigration and Asylum Act 1999 (c. 33) by virtue of an order under subsection (3) or (4) of that section, 15
- it also ceases to be a qualifying regulator.
- (2) But sub-paragraph (1) is without prejudice to a body’s ability to make a further application under paragraph 2.
- PART 2
- AMENDMENTS OF THE IMMIGRATION AND ASYLUM ACT 1999 (c. 33) 20
- 8 Part 5 of the Immigration and Asylum Act 1999 (immigration advisers and immigration service providers) is amended in accordance with this Part of this Schedule.
- 9 In section 82(1) (interpretation of Part 5), after the definition of “designated professional body” insert – 25
- ““designated qualifying regulator” has the meaning given by section 86A;”.
- 10 In section 83 (the Immigration Services Commissioner), after subsection (6) insert –
- “(6A) The duties imposed on the Commissioner by subsections (3) and (5) apply in relation to persons within section 84(2)(ba) only to the extent that those duties have effect in relation to the Commissioner’s functions under section 92 or 92A.” 30
- 11 (1) Section 84 (provision of immigration services) is amended as follows.
- (2) In subsection (2) – 35
- (a) after paragraph (b) insert –
- “(ba) a person authorised to provide immigration advice or immigration services by a designated qualifying regulator;”, and
- (b) in paragraph (c)(ii) after “(b)” insert “or (ba)”. 40
- (3) After subsection (3) insert –
- “(3A) A person’s entitlement to provide immigration advice or immigration services by virtue of subsection (2)(ba) –

-
- (a) is subject to any limitation on that person’s authorisation imposed by the regulatory arrangements of the designated qualifying regulator in question, and
- (b) does not extend to the provision of such advice or services by the person other than in England and Wales (regardless of whether the persons to whom they are provided are in England and Wales or elsewhere). 5
- (3B) In subsection (3A) “regulatory arrangements” has the same meaning as in the Legal Services Act 2006 (see section 16 of that Act).”
- 12 (1) Section 86 (designated professional bodies) is amended as follows. 10
- (2) Omit subsections (1)(a), (d) and (e) and (4)(b).
- (3) In subsection (5)(a) omit “England and Wales or”.
- (4) Omit subsection (6)(a).
- (5) In subsection (8) after “that a body” insert “(other than a body in England and Wales)”. 15
- 13 After section 86 insert—
- “86A Designated qualifying regulators**
- (1) “Designated qualifying regulator” means a body which is a qualifying regulator and is listed in subsection (2).
- (2) The listed bodies are— 20
- (a) The Law Society;
- (b) The Institute of Legal Executives;
- (c) The General Council of the Bar.
- (3) The Secretary of State may by order remove a body from the list in subsection (2) if the Secretary of State considers that the body has failed to provide effective regulation of relevant authorised persons in their provision of immigration advice or immigration services. 25
- (4) If a designated qualifying regulator asks the Secretary of State to amend subsection (2) so as to remove its name, the Secretary of State may by order do so. 30
- (5) Where, at a time when a body is listed in subsection (2), the body ceases to be a qualifying regulator by virtue of paragraph 7(1)(a) of Schedule 14 to the Legal Services Act 2006 (loss of approved regulator status), the Secretary of State must, by order, remove it from the list. 35
- (6) If the Secretary of State considers that a body which—
- (a) is a qualifying regulator,
- (b) is not a designated qualifying regulator, and
- (c) is capable of providing effective regulation of relevant authorised persons in their provision of immigration advice or immigration services, 40
- ought to be designated, the Secretary of State may by order amend the list in subsection (2) to include the name of that body.

-
- (7) If the Secretary of State is proposing to act under subsection (3) or (6), the Secretary of State must, before doing so, consult the Commissioner.
- (8) If the Secretary of State is proposing to act under subsection (3), the Secretary of State must, before doing so, also – 5
- (a) notify the body concerned of the proposal and give it a reasonable period within which to make representations, and
- (b) consider any representations so made.
- (9) An order under subsection (3) or (6) requires the approval of the Lord Chancellor. 10
- (10) If the Legal Services Board considers that a designated qualifying regulator is failing to provide effective regulation of relevant authorised persons in their provision of immigration advice or immigration services, the Legal Services Board must make a report to this effect to – 15
- (a) the Secretary of State, and
- (b) the Lord Chancellor.
- (11) In this section –
- “qualifying regulator” means a body which is a qualifying regulator for the purposes of this Part of this Act by virtue of Part 1 of Schedule 14 to the Legal Services Act 2006 (approved regulators approved by the Legal Services Board in relation to immigration matters); 20
- “relevant authorised persons”, in relation to a designated qualifying regulator, means persons who are authorised by the designated qualifying regulator to provide immigration advice or immigration services.” 25
- 14 (1) Section 90 (orders by disciplinary bodies) is amended as follows.
- (2) In subsection (2), for paragraph (a) substitute –
- “(a) appearing to the Secretary of State to be established for the purpose of hearing disciplinary charges against – 30
- (i) members of a designated professional body, or
- (ii) persons regulated by designated qualifying regulators; and”.
- (3) In subsection (3) after “body” insert “or designated qualifying regulator”. 35
- (4) In subsection (5) –
- (a) after “means” insert “ –
- “(a) ”, and
- (b) after “that body” insert “, or
- (b) a person who is authorised by the designated qualifying regulator concerned to provide immigration advice or immigration services.” 40
- 15 In section 166(4) (orders requiring approval by Parliament), after paragraph (d) insert –
- “(da) section 86A(3),”. 45
- 16 (1) Schedule 5 (the Immigration Services Commissioner) is amended as follows.

- (2) In paragraph 3 (code of standards) –
 - (a) after sub-paragraph (3)(a) insert –

5

“(aa) a person who is authorised by a designated qualifying regulator to provide immigration advice or immigration services;”, and
 - (b) in sub-paragraph (3)(b) after “paragraph (a)” insert “or (aa)”,
 - (c) after sub-paragraph (6)(a) insert –

10

“(aa) each of the designated qualifying regulators;”, and
 - (d) omit sub-paragraph (6)(b).
- (3) In paragraph 4 (extension of scope of the code) –
 - (a) omit sub-paragraph (2)(b),
 - (b) in sub-paragraph (3)(a) omit “England and Wales or”, and
 - (c) omit sub-paragraph (4)(a).

15
- (4) In paragraph 5 (investigation of complaints) –
 - (a) in sub-paragraph (3), for the words from “but” to the end substitute –

20

“but not if the complaint is excluded by sub-paragraph (3A).”,
 - (b) after that sub-paragraph insert –

25

“(3A) A complaint is excluded if –
 - (a) it relates to a person who is excluded from the application of subsection (1) of section 84 by subsection (6) of that section, or
 - (b) it relates to a person within section 84(2)(ba).”

PART 3

TRANSITIONAL PROVISION

The transitional period

- 17 (1) In this Part of this Schedule references to “the transitional period” are to the period which –

30

 - (a) begins with the day appointed under section 157 for the coming into force of section 10 (entitlement to carry on reserved legal services), and
 - (b) ends with the day appointed by the Secretary of State by order for the purposes of this paragraph.

35
- (2) Different days may be appointed under sub-paragraph (1)(b) for different purposes.
- (3) An order may be made under sub-paragraph (1)(b) only on the recommendation of the Board.

40

Barristers

- 18 (1) During the transitional period, every barrister is deemed to be authorised by the General Council of the Bar to provide immigration advice and immigration services.
- (2) That authority is exercisable in accordance with, and subject to, the regulatory arrangements of the General Council of the Bar. 5
- (3) A person is not authorised under sub-paragraph (1) unless the person has in force a certificate issued by the General Council of the Bar authorising the person to practise as a barrister.

Solicitors

10

- 19 (1) During the transitional period, every qualified solicitor is deemed to be authorised by the Law Society to provide immigration advice and immigration services.
- (2) That authority is exercisable in accordance with, and subject to, the regulatory arrangements of the Law Society. 15
- (3) “Qualified solicitor” means a person who is qualified under section 1 of the Solicitors Act 1974 (c. 47) to act as a solicitor.

Legal Executives

- 20 (1) During the transitional period, a person authorised by the Institute of Legal Executives to practise as a member of the profession of legal executives is deemed to be authorised by that Institute to provide immigration advice and immigration services. 20
- (2) That authority is exercisable in accordance with and subject to the regulatory arrangements of the Institute of Legal Executives.

SCHEDULE 15

Section 155 25

INDEX OF DEFINED EXPRESSIONS

<i>Expression</i>	<i>Interpretation provisions</i>	
administration of oaths	Schedule 2	
authorised person, in relation to an activity	section 13	30
approved regulator	section 15	
the Board	section 2	
complainant (in Part 6)	section 129	
conduct of litigation	Schedule 2	

<i>Expression</i>	<i>Interpretation provisions</i>	
consumers	section 154	
conveyancing services	section 154	
court	section 154	
document	section 148	5
enactment	section 154	
exempt person	section 14 and Schedule 3	
functions	section 154	
“immigration advice” and “immigration services”	section 154	10
interest, in a body (in Part 5)	section 90	
intervention direction	section 34	
legal activity	section 9	
licensed body	section 59	
licensed activity (in Part 5)	section 91	15
licensing authority	section 60	
licensing rules	section 66	
manager, in relation to a body (in Part 5)	section 91	
material interest, in a body which is a company with a share capital (in Part 5)	section 90	20
modify	section 154	
non-authorised person (in Part 5)	section 91	
non-reserved activity (in Part 5)	section 91	25
not for profit legal services	section 154	
not for profit body	section 154	
notarial activities	Schedule 2	
officer	section 154	
the OFT	section 154	30
the OLC	section 92	
ombudsman	section 99	
the ombudsman scheme	section 92	

<i>Expression</i>	<i>Interpretation provisions</i>	
probate activities	Schedule 2	
regulatory arrangements	section 16	
regulatory functions	section 22	
regulatory objectives	section 1	5
relevant approved regulator, in relation to an activity	section 15	
relevant approved regulator, in relation to a person	section 15	
relevant licensing authority, in relation to a licensed body (in Part 5)	section 60	10
relevant authorising body (in Part 6)	section 129	
reserved instrument activities	Schedule 2	15
reserved legal activity	section 9 and Schedule 2	
reserved legal services	section 154	
respondent (in Part 6)	section 129	
right of audience	Schedule 2	
scheme rules (in Part 6)	section 105	20
solicitor	section 154	
the senior judges	section 154	
terms of a licence (in Part 5)	section 68	

*These notes refer to the draft Legal Services Bill
as published on 24 May 2006*

DRAFT LEGAL SERVICES BILL

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the draft Legal Services Bill which was published on 24 May 2006. They have been prepared by the Department for Constitutional Affairs in order to assist the reader of the draft Bill and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the draft Bill. They are not, and are not meant to be, a comprehensive description of the draft Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

OVERVIEW OF THE DRAFT BILL

3. This draft Bill has 159 clauses and fifteen Schedules. The explanatory notes are divided into eight parts, reflecting the structure of the Bill.
4. An overview of the Bill is set out below. A detailed description of each Part is contained in the commentary. Terms used are defined in the text where they first appear, and Schedule 15 contains an index of defined expressions. Explanatory notes

*These notes refer to the draft Legal Services Bill
as published on 24 May 2006*

to accompany each Schedule are contained within the clause that introduces the Schedule. At the end of this section there is an index of Schedules and corresponding clauses.

5. **Part 1: The Regulatory Objectives** sets out the seven regulatory objectives of the regulators, which guide the Legal Services Board, the approved regulators, and the Office for Legal Complaints in exercising their functions.

6. **Part 2: The Legal Services Board** sets out the structure and functions of the Legal Services Board. It outlines the functions that the Board has in relation to the regulatory objectives. It also sets out the requirements for both appointment to, and membership of the Board and the powers that the Secretary of State has in relation to these processes.

7. **Part 3: Reserved Legal Activities** lists and defines the reserved legal activities. It explains who is entitled to carry out these activities, and the penalties for those who are not entitled. It sets out transitional arrangements for those currently allowed to carry on reserved legal activities. It also explains the process for altering the scope of the reserved legal activities, and the roles of the different bodies involved in this. “Approved regulators” are the bodies that authorise persons to carry on reserved legal activities, and regulate the persons authorised by them. This Part of the Bill explains what an approved regulator is, lists the current regulators, and explains how other bodies can achieve this status in the future.

8. **Part 4: Regulation of Approved Regulators** sets out the general duties of approved regulators, and the powers that the Board has to ensure that these are being carried out. It details how the Board can intervene when there is a problem, the procedures that it must follow, and the bodies that it must consult. The Board’s powers include target setting, censure, financial penalties, and direct intervention in the approved regulator’s regulation of its members.

9. **Part 5: Alternative Business Structures** makes provision for new business structures in legal services. These will allow lawyers and non-lawyers to form legal partnerships. This Part of the Bill sets out how the Board can operate as a licensing authority for alternative business structures, and how other licensing authorities can be established. It defines the methods for constructing rules and procedures for the regulation of alternative business structures.

10. **Part 6: Legal Complaints** establishes an independent complaints handling body called the Office for Legal Complaints (OLC). The OLC will appoint ombudsmen to deal with complaints. This Part sets out the requirements as to the membership of the OLC, and appointment as an ombudsman. It also sets out requirements in relation to the accountability of the OLC, the rules that the OLC may implement, and the regulatory arrangements of approved regulators under this scheme.

*These notes refer to the draft Legal Services Bill
as published on 24 May 2006*

11. **Part 7: Financial Provisions** sets out arrangements for the funding of both the Board and the Office for Legal Complaints.

12. **Part 8: Miscellaneous and General Provisions** makes provision for any guidance to be produced by the Board, and allows the Board to enter into voluntary arrangements. It sets out the general provisions in relation to offences and details the procedure in issuing notices or directions. It also covers legal professional privilege and amendments to the Immigration and Asylum Act 1999.

SUMMARY

13. The Legal Services Bill establishes a new framework for the regulation of legal services in England and Wales.

14. The Bill makes provision for:

- A new regulatory framework that will replace the “regulatory maze” of legal services.
- **The establishment of the Legal Services Board (“the Board”)**: a single, oversight body, independent from both Government and approved regulators (for example, the Law Society and Bar Council). It will have a duty to promote the regulatory objectives set out in Part 1.
- **The establishment of an independent Office for Legal Complaints (OLC)**: a body with statutory power to handle complaints concerning providers of legal services, and to award redress to consumers in appropriate circumstances. It will address concerns about the quality, independence, and consistency of complaints handling by the legal professions.
- **Alternative Business Structures (ABS)** will enable lawyers and non-lawyers to work together on an equal footing to deliver legal and other services. External investment will be possible, and new business structures will give legal providers greater flexibility to respond to market demands, within the UK and overseas. Licences will be conferred by licensing authorities and various safeguards will be in place.

- It will be for the Legal Services Board to advise the Government on any areas where it identifies problems within the legal services market, or “regulatory gaps”.

BACKGROUND

15. In 2001 the Office of Fair Trading published a report¹ recommending that rules governing the legal professions should be fully subject to competition law and that unjustified restrictions on competition be removed. Following this, the Government carried out a consultation, and published a report into competition and regulation in the legal services market.²

16. In 2004 Sir David Clementi was appointed by the Government to conduct an independent review of the regulation of legal services. He found that many areas were in need of restructure and development, and concluded that the current regulatory model was “inflexible, outdated and over-complex”.³ Sir David highlighted concerns about the current:

- regulatory framework,
- complaints systems, and
- restrictive nature of business structures.

17. In October 2005 the Government published a White Paper, *The Future of Legal Services: Putting Consumers First*.⁴ The White Paper set an agenda for reforming the delivery of legal services. It proposed a new regulatory framework that would direct regulation to those areas where it is needed:

¹ Office of Fair Trading, 2001, *Competition in the Professions – A Report by the Director General of Fair Trading*

² Department for Constitutional Affairs, 2003, *Competition and Regulation in the Legal Services Market – A Report Following the Consultation “In the Public Interest?”*

³ Clementi, Sir David, 2004b, *Review of the Regulatory Framework for Legal Services in England and Wales – Final Report*

⁴ Department for Constitutional Affairs, 2005, *The Future of Legal Services: Putting Consumers First*

*These notes refer to the draft Legal Services Bill
as published on 24 May 2006*

“We will create a Legal Services Board, an Office for Legal Complaints and we will take steps to enable firms to provide services under alternative business structures to those presently available.”

The legal services sector today

18. Under the current **regulatory system** there are seven forms of legal service that are subject to statutory control. These are:

- the right to conduct litigation,
- the right of audience before the courts,
- the provision of immigration advice and services (these are currently regulated by the Office of the Immigration Services Commissioner under Part 5 of the Immigration and Asylum Act 1999),
- certain probate services (the right to draw or prepare any papers on which to found or oppose a grant of probate, or a grant of letters of administration),
- conveyancing and the preparation of certain other documents,
- notarial services, and
- acting as a commissioner for oaths.

19. These services are regulated by legal professional bodies such as the Law Society or the Bar Council, as well as higher level regulators such as the Secretary of State for Constitutional Affairs (formerly Lord Chancellor), the Master of the Rolls and the Office of Fair Trading. Some, like the Law Society, are primary regulators, whereas others like the Legal Services Ombudsman have a role in overseeing those primary regulators. In addition to these different levels of regulators, there is also a range of major purchasers in the market who act as quasi-regulators, for example, the Legal Services Commission. This Bill will not affect these quasi-regulators.

20. There are a number of statutory restrictions on the type of **business structures** through which legal services may be provided. Some existing regulators prohibit lawyers from entering into partnership with non-lawyers. They also place restrictions on unregulated persons being formally involved in the management of these businesses, and unregulated persons having any stake in the ownership of such businesses. This generally means that neither different types of lawyers (for example, solicitors and barristers) nor lawyers and non-lawyers can work together in legal partnerships.

21. **If consumers wish to complain** about any of the legal services listed above, they need to take that complaint up with the person that they are complaining about.

*These notes refer to the draft Legal Services Bill
as published on 24 May 2006*

If the complaint is not resolved in-house, consumers can then contact the regulatory body for that service. In the event that a complainant is not satisfied with the way in which a complaint has been handled, they are then able to escalate a complaint to the Legal Services Ombudsman. The Ombudsman will investigate the way in which the complaint was handled and the response from the professional body. However, if the Ombudsman believes that a complaint has not been investigated properly, she will recommend that the professional body look at the matter again. Last year the Ombudsman widened her investigation to look at the original complaint in less than 1% of cases.⁵

SCHEDULES

22. Explanatory notes to accompany the Schedules are contained within the clause that each schedule refers to.

Schedule	Located in
1 The Legal Services Board	clause 2
2 The reserved legal activities	clause 9
3 Exempt persons	clause 14
4 Authorised persons (Parts 1 to 3)	clause 17
5 Approved regulators (Parts 1 to 3)	clause 15
6 Alteration of reserved legal activities	clause 19
7 Directions: procedure	clause 26
8 Intervention directions: procedure (Part 1)	clause 34

⁵ Legal Services Ombudsman, 2005, *Annual Report of the Legal Services Ombudsman for England and Wales 2004/2005*

*These notes refer to the draft Legal Services Bill
as published on 24 May 2006*

	Intervention directions: procedure (Part 2)	clause 37
9	Cancellation of approval	clause 38
10	Designation of approved regulators as licensing authorities (Part 1)	clause 61
	Designation of approved regulators as licensing authorities (Part 2)	clause 63
11	Licensing rules (Parts 1 to 4)	clause 66
12	Licensing authority's powers of intervention	clause 85
13	The Office for Legal Complaints	clause 92
14	Immigration advice and immigration services (Parts 1 to 3)	clause 140
15	Index of defined expressions	clause 154

COMMENTARY ON CLAUSES

PART 1: THE REGULATORY OBJECTIVES

Clause 1: The regulatory objectives

23. This Part of the Bill sets out the seven regulatory objectives that will guide the Legal Services Board, the approved regulators and the Office for Legal Complaints in exercising their functions. It also sets out the three professional principles of those authorised to carry on reserved legal activities.

24. The Bill does not rank these objectives and principles. The regulators will be best placed to consider which objectives and/or principles are the most important in a particular instance, on a case-by-case basis. Clause 3 sets out the Board's

*These notes refer to the draft Legal Services Bill
as published on 24 May 2006*

responsibilities in relation to the regulatory objectives. Clauses 23 and 93 set out the approved regulators' and the Office for Legal Complaints' responsibilities in relation to these.

PART 2: THE LEGAL SERVICES BOARD

25. This Part of the Bill sets out the structure and functions of the Legal Services Board. It outlines the functions that the Board will have in relation to the regulatory objectives, and the ways that it will maintain these principles. It also sets out the requirements for both appointment to, and membership of the Board and the powers that the Secretary of State will have in relation to these processes.

Background

26. Currently there are seven forms of legal service that are subject to statutory control. Legal activities are discussed in Part 3 of the Bill.

27. Approved regulators, such as the Law Society and The Bar Council currently regulate practitioners carrying on reserved legal activities. In addition to these approved regulators, the current system involves a number of higher level regulators:

- the Secretary of State for Constitutional Affairs,
- the Master of the Rolls,
- the higher judiciary,
- the Legal Services Ombudsman,
- the Legal Services Complaints Commissioner,
- the Immigrations Services Commissioner,
- the Rules Committee,
- the Home Secretary,
- the Department for Trade and Industry,
- the Office of Fair Trading,

*These notes refer to the draft Legal Services Bill
as published on 24 May 2006*

- the Financial Services Authority, and
- the Archbishop of Canterbury.

28. In his 2004 independent review of legal services⁶ Sir David Clementi referred to the legal services system as a “regulatory maze” and concluded that it was “outdated, inflexible, over-complex and not accountable or transparent enough”. In 2005, following Sir David’s report, the Department for Constitutional Affairs published a White Paper, *The Future of Legal Services: Putting Consumers First*.⁷ The White Paper detailed proposals to reform the current system by implementing a new regulatory framework that would remove the “regulatory maze” of oversight regulators.

29. This section of the Bill establishes a Legal Services Board that will act as an independent oversight regulator. It will be the head of the new regulatory framework. The Board will authorise the approved regulators, ensuring that they are carrying out their day-to-day regulation to the required standards. Both the Board and the approved regulators will work together in line with the regulatory objectives, which are set out in Part 1 of the Bill.

Clause 2: The Legal Services Board

30. This clause establishes a corporate body called the Legal Services Board to act as an independent oversight regulator. Schedule 1 is about the Board.

31. This Schedule sets out:

- the membership of the Board,
- the terms of appointment and tenure of members,
- staffing,
- committees,
- the delegation of functions, and
- borrowing and accounts rules in relation to the Board.

32. Sub-paragraph (1) of paragraph 1 states that the Board is to consist of:

- a Chairman appointed by the Secretary of State,

⁶ Clementi, 2004b

⁷ Department for Constitutional Affairs, 2005

*These notes refer to the draft Legal Services Bill
as published on 24 May 2006*

- the Chief Executive of the Board appointed by the Board, and
- between seven and ten other persons appointed by the Secretary of State.

33. The Board must have a majority of lay persons as set out at sub-paragraph (1) of paragraph 2 of the Schedule. A “lay person” is defined as any person who has never been an authorised person in relation to reserved legal activities, and must not ever have practised as:

- a barrister,
- a solicitor,
- a public notary,
- a licensed conveyancer, or
- anyone granted a right of audience.

34. Paragraph 3 lists the criteria to be considered by the Secretary of State when appointing ordinary members to the Board. The Board must include members who (between them) have experience in, or knowledge of:

- the provision of legal services,
- legal education and training,
- consumer affairs,
- commercial affairs, and
- not for profit legal services (as defined by clause 154).

35. It is expected that, as required by the Commissioner for Public Appointments, all Ministerial appointments to the Board will be made in accordance with the Commissioners’ Code of Practice. As part of the planning of the appointments process, it is expected that the Secretary of State will seek the views of all interested parties (including the Chair and other members of the Board) on issues such as selection criteria, and the diversity of skills and experience needed on the Board. In accordance with the Office of the Commissioner for Public Appointments Code of Practice, it is expected that a selection panel, including, amongst others, a representative from the public body itself and an Independent Assessor, will conduct the key stages of the appointments process. The outcome of the Panel’s deliberations will form a recommendation to be made to the Minister.

36. Terms of appointment are set out in paragraphs 4 to 9 of the Schedule. A member (other than the Chief Executive) must be appointed for a fixed period, which must not exceed five years. A person may only be re-appointed once for a further period not exceeding five years.

*These notes refer to the draft Legal Services Bill
as published on 24 May 2006*

37. The Secretary of State may remove the Chairman from his position (and hence from the Board). The Secretary of State may remove other Board members after consultation with the Chairman. The Secretary of State may remove the Chairman or other members only in specific circumstances and must be satisfied that the member:

- has failed to discharge the responsibilities of a Board member for a continuous period of six months,
- has been convicted of an offence,
- is an undischarged bankrupt, or
- is otherwise unfit to hold the office or unable to discharge his or her functions.

The Chairman or other members may also resign by giving notice to the Secretary of State. These provisions do not apply to the Chief Executive, who is a member of the Board's staff.

38. Paragraphs 11 to 15 set the additional staffing appointments to be made by the Board. The Board must appoint a Chief Executive, and may appoint any other staff that it considers appropriate to assist in the performance of its functions.

39. Paragraphs 16 to 18 enable the Board to enter into arrangements for assistance to be provided to it by persons other than those employed under paragraph 11. They also set out the Board's powers to form committees and sub-committees and enable the Board to regulate its own proceedings and those of its committees.

40. Under paragraph 20 the Board may delegate functions to the Chief Executive or any other member of the Board, any other staff member of the Board or any committee or sub-committee. However, the Board will retain accountability for the exercise of its statutory functions.

41. Paragraph 21 states that the Board is not to borrow money, except:

- with the consent of the Secretary of State, or
- in accordance with general authorisation given by the Secretary of State.

42. Paragraph 22 requires the Board to keep proper accounts. Requirements to produce an annual report are set out in clause 5.

43. Paragraphs 27 to 29 make provision for amendments to the House of Commons Disqualification Act 1975, the Northern Ireland Assembly Disqualification Act 1975, the Freedom of Information Act 2000 and the Public Records Act 1958. These are standard provisions.

*These notes refer to the draft Legal Services Bill
as published on 24 May 2006*

44. Paragraph 30 provides that the Board, its members and its staff will not be held liable for any damages resulting from the exercise of the Board's functions, except in the cases where an act or omission is carried out in bad faith or was unlawful in accordance with section 6(1) of the Human Rights Act 1998.

Clause 3: Board's duty to promote regulatory objectives

45. The Board will have a duty to comply with the requirements set out in clause 1. This clause states that the Board must, so far as reasonably practicable, act in a way that is compatible with the regulatory objectives. It also requires the Board to have regard to the principles of best regulatory practice. Specifically, the clause refers to the importance of regulatory activities being transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed.

Clause 4: Corporate Governance

46. This clause requires that the Board have regard to generally accepted principles of good corporate governance in managing its affairs.

Clause 5: Annual Report

47. This clause states that the Board must prepare an annual report on the discharge of its functions. This will be laid before Parliament. It will include the extent to which, in the Board's opinion, the Board has met the regulatory objectives.

48. Paragraph 22 of Schedule 1 sets out financial accountability in relation to the Board's accounts.

Clause 7: The Consumer Panel

49. This clause requires the Board to set up and maintain a Consumer Panel – a panel of persons whose task will be to represent the interests of consumers (as defined by clause 154). As stated in *subsections (2) to (5)*, appointments will be made by the Board and one of the Panel members will be appointed as chairman by the Board. The Panel must not include any person who is:

- a member of the Board or of its staff,

*These notes refer to the draft Legal Services Bill
as published on 24 May 2006*

- a member of the Office for Legal Complaints, an ombudsman appointed by it or a member of its staff appointed under paragraph 11 of Schedule 13,
- a member of the governing body or the staff of an approved regulator,
- or a person authorised to carry on a reserved legal activity.

50. The Board must consider representations made by the Consumer Panel and must publish a notice stating the reasons for acting contrary to the Panel's advice.

51. Consumer Panels have been set up by other regulatory bodies, for example the Financial Services Consumer Panel, which advises the Financial Services Authority. This was established under the Financial Services and Markets Act 2000.

PART 3: RESERVED LEGAL ACTIVITIES

52. This Part of the Bill lists and defines the reserved legal activities. It explains who is entitled to carry out these activities, and the penalties for those who carry out these activities when not entitled to do so. It sets out transitional arrangements for those currently allowed to carry on reserved legal activities. It also explains the process for altering the scope of the reserved legal services, and the roles of the different bodies involved in this.

53. This Part also explains what an approved regulator is, lists the current regulators, and explains how other bodies can achieve this status in the future.

Background

54. There are currently seven forms of legal activity which are subject to statutory regulatory control. These are:

- the right to conduct litigation,
- the right of audience in the courts,
- the provision of immigration advice and services (these are currently regulated by the Office of the Immigration Services Commissioner under Part 5 of the Immigration and Asylum Act 1999),

*These notes refer to the draft Legal Services Bill
as published on 24 May 2006*

- certain probate services (the right to draw or prepare any papers on which to found or oppose a grant of probate, or a grant of letters of administration),
- conveyancing and the preparation of certain other documents,
- notarial services, and
- acting as a commissioner for oaths.

Their current approved regulators are:

- the Law Society,
- the General Council of the Bar,
- the Court of Faculties,
- the Institute of Legal Executives,
- the Council for Licensed Conveyancers,
- the Chartered Institute of Patent Agents, and
- the Institute of Trade Mark Attorneys.

Clause 9: Meaning of “reserved legal activities” and “legal activity”

55. This clause lists the legal activities that are to be regulated under the Bill. Schedule 2 sets out the meaning of each activity. Under clause 19 the Secretary of State may, by order, amend clause 9 and Schedule 2 so as to add any legal activity to the reserved legal activities for the purposes of this Bill.

56. Clause 9 replaces the following existing legislation:

- section 28 of the Courts and Legal Services Act 1990, which makes provision for the regulation of the right to conduct litigation;
- sections 27 and 29 of the Courts and Legal Services Act 1990, which make provision for the regulation of rights of audience;
- section 22 of the Solicitors Act 1974 and section 11 of the Administration of Justice Act 1985, which make provision for those who can provide conveyancing services;
- section 23 of the Solicitors Act 1974 and section 55 of the Courts and Legal Services Act 1990, which make provision for probate services;
- section 1 of the Public Notaries Act 1801 and section 10 of the Public Notaries Act 1843, which make provision for notaries.

*These notes refer to the draft Legal Services Bill
as published on 24 May 2006*

- section 1 of the Commissioner for Oaths Act 1889, section 81 of the Solicitors Act 1974, and section 113 of the Courts and Legal Services Act 1990, which provide for commissioners for oaths.

Clause 10: Entitlement to carry on a reserved legal activity

57. This clause provides that a person can carry on a reserved legal activity only if the person is:

- an authorised person (see clause 13), or
- an exempt person (see clause 14).

This is subject to transitional protection for not for profit bodies, which is set out under clause 18.

Clause 11: Offence to carry on a reserved legal activity if not entitled

58. This clause makes it an offence for a person who is not entitled to carry on a reserved legal activity to carry out that activity. This is punishable:

- on summary conviction, by imprisonment for up to twelve months, or a fine up to the statutory maximum on the standard scale (currently £5,000), or both;
- on conviction on indictment, by imprisonment for a term of up to two years, or a fine, or both.

Clause 12: Offence to pretend to be entitled

59. This clause makes it an offence for a person who is not entitled to carry on a reserved legal activity to describe him or hold himself out as entitled to carry on that activity. This is punishable, on summary conviction, by a fine of up to level 4 on the standard scale (currently £2,500), and on indictment, by a fine.

Clause 13: Authorised persons

60. An “authorised person” is:

*These notes refer to the draft Legal Services Bill
as published on 24 May 2006*

- a person who is authorised to carry on a reserved legal activity by a relevant approved regulator (other than by the grant of an ABS licence), or
- a body authorised to carry on a reserved legal activity by virtue of an ABS licence issued by the Board or a relevant approved regulator.

61. A licensable body (as defined in *subsections (5) to (7)*) or a not for profit body may be an authorised person only if it is authorised to carry on the relevant activity by virtue of an ABS licence.

Clause 14: Exempt persons

62. **Schedule 3** defines who an “exempt person” is, in relation to each reserved legal activity. For example, an individual who carries on probate activities other than for fee, gain or reward is exempt. A not for profit body cannot be an exempt person.

Clause 15: Approved regulators and relevant approved regulators

63. This clause defines “approved regulator” and “relevant approved regulator”, and explains how bodies can become approved regulators.

64. **Part 1** of **Schedule 5** lists existing bodies which will automatically become approved regulators when the Bill comes into force. The regulatory arrangements for these “listed bodies” are to be treated as having been approved by the Board.

65. **Part 2** of the Schedule explains that when a body wants to grant rights to a person to carry on one or more reserved legal activities, it must apply to the Board for the Board to:

- recommend that the Secretary of State make an order designating it as an approved regulator in relation to those activities, and
- approve the body’s regulatory arrangements.

66. The Schedule details what the application and proposed regulatory arrangements must include, along with the procedure. It states that a fee must accompany the application.

67. The Board may decide to dismiss the application if there are clear reasons why it should refuse to consider it further. Where the Board decides to dismiss the application, it must notify the body and state the reasons for the dismissal.

*These notes refer to the draft Legal Services Bill
as published on 24 May 2006*

68. Where the Board proceeds to consider the application, it has a duty to seek advice before making a recommendation or approving the body's regulatory arrangements. Paragraph 5 requires that the Board must give a copy of the application and accompanying material to:

- the Secretary of State,
- the OFT,
- the Consumer Panel,
- the senior judges, and
- such other persons as the Board considers it reasonable to consult regarding the application.

69. Paragraph 11 allows the consultees, for the purpose of giving advice, to request that the applicant, or any other person, provide additional specified information.

70. Paragraphs 6 to 10 set out how each party must consider the application:

- The Secretary of State must give advice to the Board in respect of the application, as he thinks fit.
- The OFT and the Consumer Panel must each give the Board such advice as it sees fit. The OFT must, in particular, consider whether making an order in accordance with the recommendation applied for would, or be likely to, restrict, distort or prevent competition within the market for reserved legal services. The Consumer Panel must have regard to the likely impact that such an order would have on consumers.
- Those other persons whom the Board considers it reasonable to consult may give advice in respect of the application.
- The senior judges must then consider this advice, and then give advice to the Board regarding whether the application should be granted, as each sees fit. The judges must, in particular, have regard to the likely impact on the courts in England and Wales of the making of an order in accordance with the recommendation applied for.

71. The Board must give the applicant copies of any of the advice given above. The applicant may make representations to the Board within 28 days, or any longer period specified by the Board, as specified in paragraph 12 of the Schedule. The Board must make rules governing the making of representations.

*These notes refer to the draft Legal Services Bill
as published on 24 May 2006*

72. Paragraph 13 of the Schedule explains that once the period for representations has passed, the Board must publish the advice and representations. This does not prevent anyone who has given advice under paragraphs 6 to 10, or made a representation under paragraph 12, from publishing that material. Any publisher must, so far as practicable, exclude any matter which relates to the private affairs of a particular individual whose interests might be affected, seriously and prejudicially, by publication.

73. The Board must make rules specifying how it will determine applications. Paragraph 14 sets out what the rules must provide for when the Board is considering an application.

74. Paragraph 15 sets out the process that the Board must follow to consider its decision. It must consider the advice and representations listed above, as well as any other information that it considers relevant, and then decide whether to grant the application. The Board may grant the application in whole or in part, and must give notice in writing of its decision to the applicant, and publish this notice.

75. Paragraph 16 states that the Board must give its decision within twelve months, beginning with the day on which the application is made to the Board. The Board may extend this decision period by issuing and publishing a notice, only after consultation with the OFT, the Consumer Panel, and the senior judges, and after obtaining the Secretary of State's consent to the extension.

76. Under paragraph 17, where an application is granted, the Board must recommend to the Secretary of State that an order be made designating the body as an approved regulator in relation to the appropriate reserved legal activity or activities. Where the application relates to more than one reserved legal activity, the Board may grant it in relation to all or some of those activities. The Board must publish its recommendation. The Board must provide the Secretary of State with the advice listed above and any further representations, as detailed in paragraph 13. Paragraph 18 allows the Secretary of State to request further information in order to make a decision.

77. The Secretary of State may then make an order in accordance with the recommendation (or a part of it), or refuse to make such an order. Paragraph 19 sets out the procedure for doing this. If the Secretary of State decides not to make an order, he must give the applicant and the Board notice of that decision and of the reasons for it, and publish this notice.

78. **Part 3** of the Schedule sets out how the regulatory arrangements of an approved regulator must be approved. Paragraph 2 ensures that the regulatory arrangements of the existing bodies are treated as approved at the time the new regime comes into force. Paragraph 20 ensures that the regulatory arrangements of a body are approved when it is designated by an order under Part 2. Part 3 deals with the approval of alterations to the regulatory arrangements of an approved regulator.

*These notes refer to the draft Legal Services Bill
as published on 24 May 2006*

79. If an approved regulator alters its regulatory arrangements, that will not have effect until it is approved for the purposes of this Bill. An alteration can include an addition to the arrangements, or a revocation of any part. Paragraph 21 allows for the alteration to be approved:

- if it is approved under paragraph 20 of Part 2 of the Schedule (above),
- if it is approved under this Part of the Schedule,
- if it is an exempt alteration,
- if it is an alteration made in compliance with a performance targets direction, as under clause 24,
- if it is approved under paragraph 18 of Schedule 10 (approval of licensing rules), or
- if it is approved under Part 1 of Schedule 14 (qualifying regulators for immigration advice and immigration services).

80. Paragraph 22 sets out what an application by an approved regulator for an alteration to its regulatory arrangements must consist of. Paragraph 23 sets out what the Board must do on receipt of an application. It may grant the application, or it may issue and publish a notice stating that it is considering whether to refuse the application. In the second case the Board must seek advice as it considers appropriate.

81. Under paragraph 24, where the Board has given the approved regulator a notice, the Board may invite such persons as it considers appropriate to give it advice regarding whether the application should be granted. The consultees may, for the purpose of giving advice, request that the approved regulator, or any other person, provides additional specified information.

82. The Board must give the approved regulator copies of any of the advice given above. The approved regulator may make representations to the Board within 28 days, or such longer period as the Board allows, as specified in paragraph 25 of the Schedule. The Board must make rules governing the making of representations.

83. Paragraph 26 of the Schedule requires that once the period for representations has passed, the Board must publish the advice and representations. This does not prevent anyone who has given advice under paragraph 24, or made a representation under paragraph 25, from publishing that material. Any publisher must, so far as practicable, exclude any matter which relates to the private affairs of a particular individual whose interests might be affected, seriously and prejudicially, by publication.

84. Paragraph 27 sets out the process that the Board must follow to consider its decision. It must consider the advice and representations listed above, as well as any

*These notes refer to the draft Legal Services Bill
as published on 24 May 2006*

other information that it considers relevant, and then decide whether to grant the application. The Board may grant the application in whole or in part, and must give notice in writing of its decision to the applicant, and publish this notice. The Board may refuse the application only if it is satisfied that one of the conditions set out in sub-paragraph (3) is met. If the Board decided to refuse the application, it must specify the reasons in its published notice.

85. Paragraph 28 states that if the Board does not give the approved regulator notice of its decision within the decision period (twelve months), then the application is deemed to have been granted. The Board may extend the decision period with the consent of the Secretary of State. The total decision period must not exceed eighteen months.

Clause 16: Regulatory arrangements

86. This clause defines the “regulatory arrangements” of bodies. These include the arrangements made for the body to authorise persons to carry on reserved legal activities, the body’s conduct rules, and disciplinary arrangements etc. The regulatory arrangements do not include arrangements which are made in connection with any role the body may have to represent or promote the interests of persons regulated by it.

Clause 17: Continuity of existing rights to carry on reserved legal activities

87. **Schedule 4** sets out transitional arrangements for:

- those granted rights of audience or rights to conduct litigation by the bodies listed in paragraph 1 of the Schedule,
- licensed conveyancers, subject to the conditions of paragraph 2 of the Schedule,
- legal partnerships and conveyancing partnerships, as detailed in paragraph 3 of the Schedule.

88. In addition, during the transitional period, which is determined by the Secretary of State, every barrister, solicitor, legal executive, licensed conveyancer, notary public, patent agent, and trade mark agent is deemed to have been authorised to carry on certain reserved legal activities by their professional body, as listed in Part 2 of the Schedule.

Clause 19: Extension of the reserved legal activities

89. This clause allows the Secretary of State, by order, to extend the activities within the scope of the definition of “relevant legal activities”, by amending clause 9 or Schedule 2. He can make this order only on the recommendation of the Board. This will enable legal services to be regulated where it would be in consumers’ interests to do so.

90. **Schedule 6** sets out how the Board will do this. It also sets out the procedure for determining whether a recommendation should be made under clause 21 (recommendations that activities should cease to be reserved legal activities).

91. The Board can be requested by:

- the Secretary of State,
- the OFT,
- the Consumer Panel, or
- the senior judges acting jointly

to investigate whether the reserved legal activities should be extended, or if an activity should cease to be a reserved legal activity. If such a request is made, preliminary inquiries for an investigation by the Board may take up to three months, although this can be extended by agreement with the Secretary of State. Anybody else may make a request of this kind, although the Board is not then obliged to make preliminary enquiries. The Board can also instigate investigations even if no request has been made.

92. Paragraph 5 enables the Board to seek advice from the OFT, and/or the Consumer Panel before determining whether it is appropriate to hold an investigation. If asked for advice, the OFT and the Consumer Panel must each give the Board such advice as it sees fit. The OFT must, in particular, consider whether making a change would, or would be likely to, restrict, distort or prevent competition in the market for reserved legal services. The Consumer Panel must have regard to the likely impact that making a change would have on consumers. Each may, for the purpose of giving advice, ask any person to provide additional specified information.

93. Paragraph 6 states that, if the Board seeks the advice of the senior judges, the senior judges must then consider any advice received from the OFT or the Consumer Panel, and then give such advice to the Board as each sees fit. The judges must, in particular, have regard to the likely impact on the courts in England and Wales of the making of an order or (as the case may be) provision in accordance with a recommendation that an activity should cease to be a reserved legal activity. The Board must consider, and publish, any advice given.

*These notes refer to the draft Legal Services Bill
as published on 24 May 2006*

94. Under paragraph 8, if the Board has been asked to investigate by the Secretary of State, OFT, Consumer Panel or the senior judges, it can refuse to hold a full investigation only if it has consulted the OFT, the Consumer Panel, and the senior judges, and the Board has received advice (or the periods within which that advice is required to be given have expired). But unless the request for the investigation was made by the Secretary of State, the Board can refuse only with the Secretary of State's consent.

95. If the request proceeds to a full investigation, the Board must give notice of this to the Secretary of State, the OFT, the Consumer Panel, and the senior judges. The Board must publish this notice.

96. Within twelve months the Board must produce and publish a report with its provisional recommendation and reasons, as stated in paragraphs 10 and 11. The Board may extend this investigation period by issuing and publishing a notice, only after consultation with the OFT, the Consumer Panel, and the senior judges, and after obtaining the Secretary of State's consent to the extension.

97. The Board may make rules governing the making of representations and the giving of evidence. Paragraphs 12 to 14 set out what the Board must consider in making these rules. Paragraph 18 permits the Board to pay such costs of a person, as the Board considers reasonable, for the purpose of facilitating the giving of oral evidence or representations.

98. Paragraph 16 sets out the process that the Board must follow in making its final report. It must decide:

- whether or not to make a recommendation to extend the reserved legal activities, or
- whether or not to make a recommendation that an activity should cease to be a reserved legal activity.

The Board must make its report within the "final reporting period", as set out in paragraph 17. Paragraph 16 requires the report to:

- set out the Board's decision and reasons for it, and
- where applicable, its recommendation, and any statement of further statutory changes that may be needed if an order is made in accordance with the recommendation.

99. The Board must give a copy of this report to the Secretary of State, and publish the report.

*These notes refer to the draft Legal Services Bill
as published on 24 May 2006*

100. Clause 19 provides that the Secretary of State must consider the report and publish a decision. Where he decides not to make an order that the Board has recommended, he must state his reasons. He will not be able to make an order where the Board has recommended that he should not, nor will he be able to amend an order that the Board has recommended. This Bill does not give the Secretary of State the power to make changes on his own initiative (including amending Board recommendations as they are implemented). This would require separate legislation.

Clause 20: Provisional designation as approved regulators and licensing authorities

101. *Subsection (1)* of this clause allows the Secretary of State to designate a body “approved” in preparation for the bringing of a legal activity into the group of reserved legal activities. This may be done under Part 2 of Schedule 5, which is explained under clause 15 above, or Part 1 of Schedule 10, which is explained under clause 61 below. This means that a regulator will be ready to operate as soon as the order comes into effect. *Subsection (3)* allows persons or bodies to apply to be authorised while a regulator’s designation is still provisional, and also enables persons to be deemed to be authorised during a transitional period after a new activity becomes a reserved legal activity.

Clause 21: Recommendations that activities should cease to be reserved legal activities

102. This clause enables the Board to recommend to the Secretary of State that an activity should cease to be a reserved legal activity. The applicable procedure is set out in Schedule 6. This Schedule is explained above, under clause 19. The Bill does not empower the Secretary of State to implement the recommendation by order; separate legislation would be required for this.

PART 4: REGULATION OF APPROVED REGULATORS

103. This Part of the Bill sets out the general duties of approved regulators, and the powers that the Board has to ensure that these duties are being carried out. It details

how the Board can intervene when there is a problem, the procedures that it must follow, and the bodies that it must consult before exercising its powers. The Board's powers include target setting, censure, financial penalties, and direct intervention in the approved regulator's regulation of its members.

Background

104. Sir David Clementi's 2004 Review⁸ identified a "regulatory maze", and proposed that an independent oversight regulator be established to simplify regulation and ensure that the system was clear to consumers. The Government's White Paper, *The Future of Legal Services: Putting Consumers First*⁹ set out how this oversight regulator should operate: it should authorise approved regulators to carry out day-to-day regulation, and it would also need to be able to act if these approved regulators fail.

105. The White Paper stated that in most cases the Board would want to work alongside regulators to help them improve where areas of weakness have been identified. However, where a regulator continued to fail, the Board would be able to remove authorisation in a particular area or areas of regulation, and either identify an alternative regulator, or carry out the regulatory functions itself.

106. This means that the oversight regulator will need to be able to exercise the following powers to:

- require regulators to provide it with information (subject to privacy/confidence) to carry out its duties, where, for example, it wishes to determine whether a regulator has performed its regulatory duties;
- issue regulatory guidance to regulators,
- set regulatory targets for regulators and to monitor compliance,
- direct a regulator to take specific regulatory action, and
- direct a regulator to change its regulatory arrangements.

107. The Board's power to issue guidance is to be found in clause 134. This Part of the Bill provides for these other powers.

⁸ Clementi, 2004b

⁹ Department for Constitutional Affairs, 2005

Clause 23: Approved regulator's duty to promote the regulatory objectives etc

108. In discharging its regulatory functions, an approved regulator will have a duty to comply with the requirements set out in clause 1, in a way which it considers most appropriate.

Clause 24: Performance targets and monitoring

109. The Board may set, or direct an approved regulator to set, performance targets relating to the performance of the approved regulator's regulatory functions, as set out in clause 22. For example, where an approved regulator is failing to deal with misconduct cases quickly, the Board may set targets in relation to how long consideration of a misconduct case should take. An approved regulator must publish any target set by it pursuant to a direction made by the Board, and may monitor the extent to which a target is being, or has been, met. An approved regulator must publish any target it sets in response to a Board direction.

Clause 25: Directions

Clause 26: Directions: procedure

110. Under clause 25, where the regulator has failed to:

- perform its functions,
- meet its targets,
- comply with any other requirement, or
- ensure that its regulatory functions are not prejudiced by the representation or promotion of the interests of persons regulated by it,

the Board may direct it to take steps to remedy the failure. It must publish any direction that it issues to the regulator.

111. *Subsection (2)* of clause 25 sets out the scope for a direction. A direction may only require an approved regulator to take steps which it has power to take, and it may require the regulator to take steps with a view to the modification of any part of its regulatory arrangements. For example, a regulator may propose to take steps that the Board deems disproportionate or inefficient to enforce its regulatory objectives, such as legal action or judicial review, when more cost-effective and less resource/time intensive alternatives are available.

*These notes refer to the draft Legal Services Bill
as published on 24 May 2006*

112. The Board can monitor compliance with a direction, and it may revoke a direction by giving notice to the regulator, and publishing the notice.

113. Under clause 26, when the Board gives a direction to a regulator to take specific steps, the procedure set out in **Schedule 7** must apply.

114. Schedule 7 requires that the Board notifies the approved regulator of the proposed direction, and seeks advice in respect of the direction. Paragraph 2 of the Schedule details the steps that the Board must take to notify the approved regulator. This includes the format of the notice, its purpose, and the period within which representations and objections may be made to the Board. The Board must make rules governing the making and reporting of representations.

115. The Board has a duty to seek advice. Paragraph 3 requires that the Board must give a copy of the warning notice, accompanying material, and any information provided under paragraph 2 to:

- the Secretary of State,
- the OFT,
- the Consumer Panel,
- each of the senior judges, and
- such other persons as the Board considers it reasonable to consult in respect of the proposed direction.

116. Paragraph 9 allows the consultees, for the purpose of giving advice, to request that the approved regulator, or any other person, provide additional specified information.

117. Paragraphs 4 to 8 set out how each party must consider the proposed direction:

- The Secretary of State must give advice to the Board in respect of the proposed direction, as he thinks fit.
- The OFT and the Consumer Panel must each give the Board such advice as it sees fit. The OFT must, in particular, consider whether giving the proposed direction would, or be likely to, restrict, distort or prevent competition within the market for reserved legal services. The Consumer Panel must have regard to the likely impact that giving the direction would have on consumers.
- Those other persons whom the Board considers it reasonable to consult may give advice in respect of the proposed direction.
- The senior judges must then consider this advice, and then give advice to the Board regarding whether the direction should be given, as each sees fit.

*These notes refer to the draft Legal Services Bill
as published on 24 May 2006*

The judges must, in particular, have regard to the likely impact on the courts in England and Wales of the proposed direction.

118. The Board must give the approved regulator copies of any of the advice given above. The approved regulator may make representations to the Board within 28 days, or such longer period as the Board may specify, as specified in paragraph 10 of the Schedule. The Board must make rules governing the making of representations.

119. Paragraph 11 of the Schedule requires that once the period for representations has passed, the Board must publish the advice and representations. This does not prevent anyone who has given advice under paragraphs 4 to 8, or made a representation under paragraph 10, from publishing that material. Any publisher must, so far as practicable, exclude any matter which relates to the private affairs of a particular individual whose interests might be affected, seriously and prejudicially, by publication.

120. Paragraph 12 sets out the process that the Board must follow to consider its decision. It must consider the advice and representations listed above, as well as any other information that it considers relevant. The Board must decide whether to give the approved regulator the proposed direction, give notice in writing of its decision to the approved regulator, and publish this notice. The notice should contain the direction, the Board's reason for this, and the time at which the direction is to take effect.

Clause 28: Public censure

Clause 29: Public censure: procedure

121. If an approved regulator has failed to perform any of its regulatory functions to an adequate standard, or meet a performance target or comply with a direction given by the Board, or has failed to meet any other requirement imposed on it, then the Board may publicly censure the approved regulator. Clause 29 sets out the procedure for this.

Clause 30: Financial penalties

Clause 31: Financial penalties: penalties

122. If an approved regulator has failed to perform any of its regulatory functions to an adequate standard, or meet a performance target set under subsection (1) of clause 24, or comply with a direction given by the Board, or has failed to meet any other requirement imposed on it by the Bill, then the Board may impose a financial penalty on the approved regulator, of such an amount as it considers appropriate. The penalty

is payable to the Board. The Board must, with the consent of the Secretary of State, set a maximum amount for this. Clause 31 sets out the procedure.

Clause 32: Appeals against financial penalties

123. An approved regulator can appeal against a penalty on the grounds that the penalty was not within the power of the Board or that the Board has not complied with the procedure. It can make an application to the High Court, which can quash the penalty, substitute a different amount or, where the penalty is payable by instalments, vary the time by which the penalty must be paid.

Clause 33: Recovery of financial penalties

124. Where an approved regulator has not paid a financial penalty, the Board has the power to recover the penalty, and any interest, as a civil debt payable to the Board. This clause sets out the circumstances in which it can do this. If all or part of a penalty is not paid by the time specified, the unpaid balance carries interest. A penalty does not have to be paid if a judgement has not yet been made on an appeal made in relation to it, or if an application to change the payment date is outstanding.

Clause 34: Intervention directions

125. This clause sets out the definition, scope and conditions under which the Board can impose intervention directions on an approved regulator in relation to their regulatory functions, as set out in clause 22. An intervention direction is a direction that the Board will exercise one or more of the approved regulator's regulatory functions and that the approved regulator must comply with any instructions of the Board in the exercise of these functions.

126. *Subsection (3)* explains that the Board may intervene if the approved regulator has failed to perform any of its regulatory functions to an adequate standard (or at all), or has failed to comply with any requirement imposed on it by this Bill or any other enactment, or if the Board is satisfied that, were the approved regulator to apply for approval now, it would fail in its application. *Subsection (1)* allows the Board to do this, in the form of an intervention direction. The Board must not give an intervention direction unless it is satisfied that the approved regulator's failures cannot be adequately addressed by the exercise of the powers available under clauses 24 to 33.

*These notes refer to the draft Legal Services Bill
as published on 24 May 2006*

127. Where the Board exercises its powers under an intervention direction, it will be able to nominate a person or persons to carry out the regulatory function. The Board may also require the approved regulator to comply with any instructions set by the Board or the nominated person.

128. *Subsection (6)* refers to **Part 1** of **Schedule 8**, which sets out the procedure for giving an intervention direction.

129. Paragraph 2 of Part 1 of the Schedule details the steps that the Board must take to notify the approved regulator that it will intervene. This includes the format of the warning notice, where it must be published, and the period within which representations and objections may be made to the Board. The Board must make rules governing the making and reporting of representations.

130. The Board has a duty to seek advice. Paragraph 3 requires that the Board must give a copy of the warning notice, accompanying material, and any information provided under paragraph 2 to:

- the Secretary of State,
- the OFT,
- the Consumer Panel,
- each of the senior judges, and
- such other persons as the Board considers it reasonable to consult in respect of the proposed intervention direction.

131. Paragraph 9 allows the consultees, for the purpose of giving advice, to request that the approved regulator, or any other person, provide additional specified information.

132. Paragraphs 4 to 8 set out how each party must consider the proposed intervention direction:

- The Secretary of State must give advice to the Board in respect of the proposed intervention direction, as he thinks fit.
- The OFT and the Consumer Panel must each give the Board such advice as it sees fit. The OFT must, in particular, consider whether giving the proposed intervention direction would, or be likely to, restrict, distort or prevent competition within the market for reserved legal services. The Consumer Panel must have regard to the likely impact that giving the proposed intervention direction would have on consumers.

*These notes refer to the draft Legal Services Bill
as published on 24 May 2006*

- Those other persons whom the Board considers it reasonable to consult may give advice in respect of the proposed intervention direction.
- The senior judges must then consider this advice, and then give advice to the Board regarding whether the intervention direction should be given, as each sees fit. The judges must, in particular, have regard to the likely impact of the proposed intervention direction on the courts in England and Wales.

133. The Board must give the approved regulator copies of any of the advice given above. The approved regulator may make representations to the Board within 28 days, or such longer period as the Board may specify, as specified in paragraph 10 of the Schedule. The Board must make rules governing the making of representations.

134. Paragraphs 10 and 11 of the Schedule require that once the period for representations has passed, the Board must publish the advice and representations. This does not prevent anyone who has given advice under paragraphs 4 to 8, or made a representation under paragraphs 2 or 10, from publishing that material. Any publisher must, so far as practicable, exclude any matter which relates to the private affairs of a particular individual whose interests might be affected, seriously and prejudicially, by publication.

135. Paragraph 12 sets out the process that the Board must follow when making its decision. It must consider the advice and representations listed above, as well as any other information that it considers relevant. The Board must then decide whether to give the approved regulator the proposed intervention direction (or an amended intervention direction), give notice in writing of its decision to the approved regulator, and publish this notice. The notice should contain the direction, the Board's reason for this, the nature of any amendments to the direction (if applicable), and the time at which the direction is to take effect.

Clause 35: Intervention directions: further provision

136. Under an intervention direction the approved regulator must give the Board, or a person nominated by the Board, all such assistance as it is reasonably able to give, to allow the Board, or nominated person, to pursue the direction through the exercise of the function. In performing the function to which the direction relates, the Board, or specified person, is entitled to exercise the powers set out in *subsection (4) and (5)*. These include the right of entry to the premises of the approved regulator, and a power to inspect or take copies of documents kept by the approved regulators.

Clause 37: Revocation of an intervention direction

137. An intervention direction has effect until such time as it is revoked by the Board. **Part 2 of Schedule 8** contains the procedure to revoke intervention directions.

138. Paragraph 13 of the Schedule states that where an intervention direction has effect in respect of a regulatory function of an approved regulator, as defined under clause 22, the regulator can apply to the Board for the Board to revoke the direction, or the Board can give notice to the regulator that it intends to revoke the direction.

139. Applications by approved regulators to revoke the direction must be in a form and manner set out by the Board, and must be accompanied by such material as the approved regulator considers appropriate.

140. The Board has a duty to seek advice. Paragraph 14 requires that in both revocation cases, the Board must give a copy of the application or notice, accompanying material, and any information provided under paragraph 13 to:

- the Secretary of State,
- the OFT,
- the Consumer Panel,
- each of the senior judges, and
- such other persons as the Board considers it reasonable to consult in respect of the proposed revocation.

141. Paragraph 20 allows the consultees, for the purpose of giving advice, to request that the approved regulator, or any other person, provide additional specified information.

142. Paragraphs 15 to 19 set out how each party must consider the proposed revocation:

- The Secretary of State must give advice to the Board in respect of the proposed revocation, as he thinks fit.
- The OFT and the Consumer Panel must each give the Board such advice as it sees fit. The OFT must, in particular, consider whether the proposed revocation would, or be likely to, restrict, distort or prevent competition within the market for reserved legal services. The Consumer Panel must have regard to the likely impact that the proposed revocation would have on consumers.

*These notes refer to the draft Legal Services Bill
as published on 24 May 2006*

- The senior judges must then consider this advice, and then give advice to the Board regarding the proposed revocation, as each sees fit. The judges must, in particular, have regard to the likely impact on the courts in England and Wales, which revoking the intervention direction would have.

143. The Board must give the approved regulator a copy of any of the advice given above, and publish that advice. The approved regulator may make representations to the Board within 28 days, or an agreed period, as specified in paragraph 21 of the Schedule. The Board may allow any other person to make written or oral representations about the advice, and it must make rules governing the making of representations.

144. Paragraphs 21 and 22 of the Schedule explain that once the period for representations has passed, the Board must publish the advice and representations. This does not prevent anyone who has given advice under paragraphs 15 to 19, or made a representation under paragraph 21, from publishing that material. Any publisher must, so far as practicable, exclude any matter which relates to the private affairs of a particular individual whose interests might be affected, seriously and prejudicially, by publication.

145. Paragraph 23 sets out the process that the Board must follow to consider its decision. It must consider the advice and representations listed above, as well as any other information that it considers relevant. The Board must then decide whether to revoke the intervention direction, give notice in writing of its decision to the approved regulator, and publish this notice. The notice should contain the revocation, the Board's reason for this, and the time at which the revocation is to take effect.

Clause 38: Cancellation of designation as approved regulator

146. If the Board recommends it, the Secretary of State may, by making an order, cancel a body's designation as an approved regulator in relation to one or more of the reserved legal activities for which it is designated.

147. Under *subsection (3)*, if a body applies to the Board to have its designation as an approved regulator cancelled, and the Board is satisfied that the rules that it has set for this process have been met, then the Board must make such a recommendation to the Secretary of State.

148. Under *subsection (5)*, the Board may recommend that a cancellation order is made if it is satisfied that the conditions listed at *subsection (6)* are met, and that it is appropriate to cancel the body's designation. The Board must specify the reasons in its recommendation. Under *subsection (7)*, the Board may not determine that it is appropriate to cancel the designation unless it is satisfied that the body's failures

*These notes refer to the draft Legal Services Bill
as published on 24 May 2006*

cannot be adequately addressed by the Board exercising the powers available to it under this Part of the Bill (for example, giving intervention directions).

149. **Schedule 9** applies where the Board considers that it may be appropriate for it to make a recommendation under subsection (4). It requires that the Board notifies the body of the proposed recommendation, and seeks advice in respect of the recommendation.

150. Paragraph 2 of the Schedule details the steps that the Board must take to notify the approved regulator that it is considering making a recommendation to cancel approval. This includes the format of the notice, where it must be published, and the period within which representations and objections may be made to the Board.

151. The Board has a duty to seek advice. Paragraph 3 requires that the Board must give a copy of the warning notice, accompanying material, and any information provided under paragraph 2 to:

- the Secretary of State,
- the OFT,
- the Consumer Panel,
- each of the senior judges, and
- such other persons as the Board considers it reasonable to consult in respect of the proposed recommendation.

152. Paragraph 9 allows the consultees, for the purpose of giving advice, to request that the approved regulator, or any other person, provide additional specified information.

153. Paragraphs 4 to 8 set out how each party must consider the proposed recommendation:

- The Secretary of State must give advice to the Board in respect of the proposed recommendation, as he thinks fit.
- The OFT and the Consumer Panel must each give the Board such advice as it sees fit. The OFT must, in particular, consider whether the proposed cancellation would, or be likely to, restrict, distort or prevent competition within the market for reserved legal services. The Consumer Panel must have regard to the likely impact that the proposed cancellation would have on consumers.
- Those other persons whom the Board considers it reasonable to consult may give advice in respect of the proposed recommendation.

*These notes refer to the draft Legal Services Bill
as published on 24 May 2006*

- The senior judges must then consider this advice, and then give advice to the Board regarding whether the recommendation should be given, as each sees fit. The judges must, in particular, have regard to the likely impact of the proposed cancellation on the courts in England and Wales.

154. The Board must give the approved regulator a copy of any of the advice given above, and publish that advice. The approved regulator may make representations to the Board within 28 days, or any longer period specified by the Board, as specified in paragraph 10 of the Schedule. The Board may allow any other person to make written or oral representations about the advice, and it must make rules governing the making of representations.

155. Paragraphs 10 and 11 of the Schedule explain that once the period for representations has passed, the Board must publish the advice and representations. This does not prevent anyone who has given advice under paragraphs 4 to 8, or made a representation under paragraph 10, from publishing that material. Any publisher must, so far as practicable, exclude any matter which relates to the private affairs of a particular individual whose interests might be affected, seriously and prejudicially, by publication.

156. Paragraph 12 sets out the process that the Board must follow to consider its decision. It must consider the advice and representations listed above, as well as any other information that it considers relevant. The Board must then decide whether to make the proposed recommendation, give notice in writing of its decision to the approved regulator, and publish this notice. The notice should contain the recommendation and the Board's reason for this.

157. The Secretary of State may decide not to make an order in response to a recommendation under subsection (3) or (5). In such a case, he must give notice of the decision and reasons for it to the Board, and publish this notice.

Clause 39: Supplementary provision relating to cancellation of a designation

158. This clause allows the Secretary of State to make transfer arrangements when a body has its designation in relation to one or more reserved legal activities cancelled by an order. This allows each person regulated by the body, and who consents to the arrangements, to be treated as having a right to carry on each protected activity granted by:

- a relevant approved regulator, in relation to the protected activity, who consents to the transfer arrangements, or
- if there is no such regulator, the Board acting in its capacity as a relevant approved regulator in relation to the protected activity, as under clause 51.

*These notes refer to the draft Legal Services Bill
as published on 24 May 2006*

Such a person is subject to the regulatory arrangements of the new regulator.

159. This clause also allows money raised from practising fees and held by the old regulator to be paid to the new regulator and treated in the same way as if the money had been raised by the new regulator by way of practising fees.

Clause 41: The Board's policy statements

Clause 42: Policy statement: procedure

160. Clause 41 requires the Board to prepare and issue a policy statement concerning its functions and remit. The Board may also issue a statement of policy with respect to any other matter, where it considers it appropriate, for example, where it seeks to achieve a regulatory objective.

161. The Board shall make policy statements in relation to powers over an approved regulator, as set out in *subsections (1)(a) to 1(f)*.

162. Before the Board issues a policy statement, as above, it must publish a proposed statement in draft, and allow representations to be made concerning it. Clause 42 outlines the procedure for this.

Clause 43: Control of practising fees by approved regulators

163. This clause enables the purposes for which amounts raised by practising fees can be applied to be restricted by rules made by the Board. The rules must make the provision required by *subsection (3)*. It also enables the Board to control the level of practising fees. For these purposes practising fees include fees payable by licensed bodies under paragraph 22 of Schedule 11.

Clause 45: Enforcement of notices under section 44

164. This clause explains which measures could be used, should an approved regulator fail to comply with a notice issued by the Board under subsection (2) of clause 44. Subsection (2) of clause 44 states that the Board will have the option to obtain a High Court order for the approved regulator to comply with the original notice that was issued by the Board.

Clause 46: Reports by the OFT

Clause 47: The Board's response to OFT report

Clause 48: Referral of report by the Secretary of State

Clause 49: Duties of the Competition Commission

Clause 50: Secretary of State's power to give directions

165. These clauses set out duties that the OFT and the Competition Commission have to investigate an approved regulator. Under clause 46, the OFT may investigate if it believes that the regulator's regulatory arrangements restrict, distort, or prevent competition within the reserved legal services market, to a significant extent. Clause 47 details how the Board should respond. Clause 48 and clause 49 set out the procedure should the OFT believe that the Board has not given the OFT's report full and proper consideration. The OFT may give a copy of the report to the Secretary of State, who must, in turn, give a copy of the report to the Competition Commission. The Competition Commission must then make its own report (unless it judges that this would serve no useful purpose).

166. Following the OFT's report (and the Competition Commission's report, where applicable), the Secretary of State may direct the Board to take such action as the Secretary of State considers appropriate.

Clause 51: The Board as an approved regulator

Clause 52: The Board's designation under section 51(1)(a)

Clause 53: Modification of the Board's functions under section 51(1)(b)

Clause 54: Cancellation of the Board's designation under section 51(1)(c)

Clause 55: The Board's power to recommend orders made under section 57

167. Clause 51 states that the Secretary of State may, after a recommendation by the Board:

- designate the Board as an approved regulator in relation to one or more reserved legal activities;
- modify the functions of the Board, with a view to enabling the Board to discharge its functions as an approved regulator effectively and efficiently; and
- cancel the Board's designation as an approved regulator in relation to one or more reserved legal activity.

Clauses 52, 53, and 54 respectively provide for the detail of these three types of order.

168. *Subsections (1) to (3)* of clause 51 make provision for any orders the Secretary of State may make, and *subsection (4)* states that in discharging its functions as an

*These notes refer to the draft Legal Services Bill
as published on 24 May 2006*

approved regulator, the Board must take appropriate steps to ensure appropriate financial and organisational separation in the Board's activities.

169. Clause 55 enables the Board to recommend to the Secretary of State that he make such an order, and sets out the process that the Board must follow in order to make such a recommendation.

PART 5: ALTERNATIVE BUSINESS STRUCTURES

170. This Part of the Bill makes provision for new, alternative business structures in legal services. This means that lawyers and non-lawyers will be able to form legal partnerships and companies. Where non-lawyers act as partners, directors or owners of a firm, the firm will need to operate as a licensed body in accordance with the provisions described here. This Part also sets out how the Board can operate as a licensing authority for alternative business structures, and how other licensing authorities can be established. It defines the methods for constructing rules and procedures for the regulation of alternative business structures.

171. The term "alternative business structure" or "ABS firm" refers to any structure that could potentially deliver a reserved legal service, other than the structures currently allowed to do so in private practice. Examples (some of which are already permitted) include: multi-disciplinary partnerships, limited liability partnerships, unlimited liability incorporated practices, private limited companies, public limited companies and mutual societies.

Background

172. Historically, there have been a number of statutory restrictions on the type of business structures through which legal services may be provided. Some existing regulators prohibit lawyers from entering into partnership with non-lawyers. They also place restrictions on unregulated persons being formally involved in the management of these businesses, and unregulated persons having any stake in the ownership of such businesses.

173. In March 2001, the Office of Fair Trading identified a number of rules of the legal profession that were potentially unduly restrictive, and that might have negative

*These notes refer to the draft Legal Services Bill
as published on 24 May 2006*

implications for consumers.¹⁰ The OFT recommended that rules governing the legal professions should be fully subject to competition law and that unjustified restrictions on competition should be removed. In his 2004 Review,¹¹ Sir David Clementi recommended the “facilitation of legal disciplinary practices, to allow different kinds of lawyers and non-lawyers to work together”.

174. In 2005 the Government published a White Paper, *The Future of Legal Services: Putting Consumers First*.¹² It proposed alternative business structures (ABS), which would allow different types of lawyers (for example, solicitors and barristers), and lawyers and non-lawyers, to work together on an equal footing in an ABS firm. It identified potential benefits for consumers and legal services providers:

“Potential benefits for consumers:

- more choice: consumers will have greater flexibility in deciding from where to obtain legal and some non-legal services.
- reduced prices: consumers should be able to purchase some legal services more cheaply. This should arise where ABS firms realise savings through economies of scale and reduce transaction costs where different types of legal professionals are part of the same firm.
- better access to justice: ABS firms might find it easier to provide services in rural areas or to less mobile consumers.
- improved consumer service: consumers may benefit from a better service where ABS firms are able to access external finance and specialist non-legal expertise.
- greater convenience: ABS firms can provide one-stop-shopping for related services, for example car insurance and legal services for accident claims.
- increased consumer confidence: higher consumer protection levels and an increase in the quality of legal services could flow from ABS firms which have a good reputation in providing non-legal services. These firms will have a strong incentive to keep that reputation when providing legal services.”

“Potential benefits for legal service providers:

- increased access to finance: at present, providers can face constraints on the amount of equity, mainly debt equity, they can raise. Allowing alternative business structures will facilitate expansion by firms (including into international markets) and investment in large-scale capital projects that increase efficiency.

¹⁰ OFT, 2001

¹¹ Clementi, 2004b

¹² Department for Constitutional Affairs, 2005

*These notes refer to the draft Legal Services Bill
as published on 24 May 2006*

- better spread of risk: a firm could spread its risk more effectively among shareholders. This will lower the required rate of return on any investment, facilitate investment and could deliver lower prices.
- increased flexibility: non-legal firms such as insurance companies, banks and estate agents will have the freedom to realise synergies with legal firms by forming ABS firms and offering integrated legal and associated services.
- easier to hire and retain high-quality non-legal staff: ABS firms will be able to reward non-legal staff in the same way as lawyers.
- more choice for new legal professionals: ABS firms could contribute to greater diversity by offering those who are currently under-represented more opportunities to enter and remain within the profession.”

175. This Part of the Bill makes provision to enable new structures to be formed which include both lawyers and non-lawyers. Prospective ABS firms (referred to in the Bill as “licensed bodies”) will have to be licensed by a “licensing authority” (either an approved regulator that has successfully applied to become a licensing authority, or the Board itself). Existing regulators of legal services will be able to apply to the Board for permission to be licensing authorities. If things go wrong, consumers will be able to complain in the usual way: first through the firm’s in-house complaints arrangements, and if necessary, to the new Office for Legal Complaints.

176. The not for profit sector will fall within the regulatory scope of the ABS licensing scheme. Licensing authorities will have the power to adopt different rules for not for profit organisations, and to waive or modify the rules in specific cases where it is appropriate to do so.

Clause 60: Licensing authorities and relevant licensing authorities

177. This clause defines a licensing authority. The Board is a licensing authority in relation to all reserved legal activities. An approved regulator can also be a licensing authority in relation to one or more reserved legal activities, if it is designated as such by the Secretary of State, under Part 1 of Schedule 10, explained under clause 61 below, and if it has licensing rules approved for the purposes of this Bill.

Clause 61: Designation of approved regulator as licensing authority

178. This clause refers to **Part 1 of Schedule 10**. This makes provision for approved regulators to be designated, by order, as licensing authorities in relation to one or more reserved legal activities.

*These notes refer to the draft Legal Services Bill
as published on 24 May 2006*

179. Under paragraph 1, a body may apply to the Board for the Board to recommend to the Secretary of State that the applicant be designated as a licensing authority for one or more of those activities. Sub-paragraph (4) sets out the form that this application must take. Paragraph 2 requires the Board to make rules about the procedures and criteria that it will apply when determining whether to refuse to consider, or to continue its consideration of, an application.

180. The Board has a duty to seek advice before making a recommendation. Paragraph 3 requires that the Board must give a copy of the application and accompanying material to:

- the Secretary of State,
- the OFT,
- the Consumer Panel,
- the senior judges, and
- such other persons as the Board considers it reasonable to consult regarding the application.

181. Paragraph 9 allows the consultees, for the purpose of giving advice, to request that the applicant, or any other person, provide additional specified information.

182. Paragraphs 4 to 8 set out how each party must consider the application:

- The Secretary of State must give advice to the Board in respect of the application, as he thinks fit.
- The OFT and the Consumer Panel must each give the Board such advice as it sees fit. The OFT must, in particular, consider whether making an order in accordance with the recommendation applied for would, or be likely to, restrict, distort or prevent competition within the market for reserved legal services. The Consumer Panel must have regard to the likely impact that such an order would have on consumers.
- Those other persons whom the Board considers it reasonable to consult may give advice in respect of the application.
- The senior judges must then consider this advice, and then give advice to the Board regarding whether the application should be granted, as each sees fit. The judges must, in particular, have regard to the likely impact on the courts in England and Wales of the making of such an order.

183. The Board must give the applicant a copy of any of the advice given above. The applicant may make representations to the Board within 28 days, or an agreed

*These notes refer to the draft Legal Services Bill
as published on 24 May 2006*

period, as specified in paragraph 10 of the Schedule. The Board must make rules governing the making of representations.

184. Paragraph 11 of the Schedule requires that once the period for representations has passed, the Board must publish the advice and representations. This does not prevent anyone who has given advice under paragraphs 4 to 8, or made a representation under paragraph 10, from publishing that material. Any publisher must, so far as practicable, exclude any matter which relates to the private affairs of a particular individual whose interests might be affected, seriously and prejudicially, by publication.

185. The Board must make rules specifying how it will determine applications. Paragraph 12 sets out what the rules must provide for when the Board is considering an application.

186. Paragraph 13 sets out the process that the Board must follow to consider its decision. It must consider the advice and representations listed above, as well as any other information that it considers relevant, and then decide whether to grant the application. The Board may grant the application in whole or in part, and must give notice in writing of its decision to the applicant, and publish this notice.

187. Paragraph 14 states that the Board must give its decision within twelve months, beginning with the day on which the application is made to the Board. The Board may extend this decision period by issuing and publishing a notice, only after consultation with the OFT, the Consumer Panel, and the senior judges, and after obtaining the Secretary of State's consent to the extension.

188. Under paragraph 15, where an application is granted, the Board must recommend to the Secretary of State that an order be made designating the body as a licensing authority in relation to the appropriate reserved legal activity or activities. The Board must publish this recommendation. The Board must provide the Secretary of State with the advice listed above and any further representations, as detailed in paragraph 11. Paragraph 16 allows the Secretary of State to request further information in order to make a decision.

189. The Secretary of State may then make an order in accordance with the recommendation (or part of it), or refuse to make such an order. Paragraph 17 sets out the process for doing this. If the Secretary of State decides not to make an order, he must give the applicant and the Board notice of that decision and of the reasons for it, and publish this notice.

190. Paragraph 18 provides that the body's proposed licensing rules are to be treated as having been approved by the Board, where an order has been made by the Secretary of State.

Clause 63: Cancellation of designation as licensing authority by order

191. If the Board recommends it, the Secretary of State may, by making an order, cancel an approved regulator's designation as a licensing authority in relation to one or more of the reserved legal activities for which it is designated.

192. Under *subsection (3)*, if an approved regulator applies to the Board to have its designation as a licensing authority cancelled, and the Board is satisfied that the rules that it has set for this process have been met, then the Board must make such a recommendation to the Secretary of State.

193. Under *subsection (5)*, the Board may recommend that a cancellation order is made if it is satisfied that the conditions listed at *subsection (6)* are met, and that it is appropriate to cancel the approved regulator's designation. The Board must specify the reasons in its recommendation. Under *subsection (8)*, the Board may not determine that it is appropriate to cancel the designation unless it is satisfied that the licensing authority's failures cannot be adequately addressed by the Board exercising the powers available to it under Part 4 of the Bill (for example, intervention).

194. **Part 2 of Schedule 10** applies where the Board considers that it may be appropriate for it to make a recommendation under *subsection (5)*. It requires that the Board notifies the licensing authority of the proposed recommendation, and seeks advice in respect of the recommendation.

195. Paragraph 20 of the Schedule details the steps that the Board must take to notify the licensing authority. This includes the format of the notice, its purpose, and the period within which representations and objections may be made to the Board. The Board must make rules governing the making of representations, and the reporting of these.

196. The Board has a duty to seek advice. Paragraph 21 requires that the Board must give a copy of the warning notice, accompanying material, and any information provided under paragraph 20 to:

- the Secretary of State,
- the OFT,
- the Consumer Panel,
- each of the senior judges, and
- such other persons as the Board considers it reasonable to consult in respect of the proposed recommendation.

*These notes refer to the draft Legal Services Bill
as published on 24 May 2006*

197. Paragraph 27 allows the consultees, for the purpose of giving advice, to request that the licensing authority, or any other person, provide additional specified information.

198. Paragraphs 22 to 26 set out how each party must consider the proposed recommendation:

- The Secretary of State must give advice to the Board in respect of the proposed recommendation, as he thinks fit.
- The OFT and the Consumer Panel must each give the Board such advice as it sees fit. The OFT must, in particular, consider whether cancelling the licensing authority's designation would, or be likely to, restrict, distort or prevent competition within the market for reserved legal services. The Consumer Panel must have regard to the likely impact that cancelling the designation would have on consumers.
- Those other persons whom the Board considers it reasonable to consult may give advice in respect of the proposed recommendation.
- The senior judges must then consider this advice, and then give advice to the Board regarding whether the recommendation should be given, as each sees fit. The judges must, in particular, have regard to the likely impact of cancelling the designation on the courts in England and Wales.

199. The Board must give the licensing authority a copy of any of the advice given above. The licensing authority may make representations to the Board within 28 days, or such longer period as the Board may specify, as specified in paragraph 28 of the Schedule. The Board must make rules governing the making of representations.

200. Paragraph 29 of the Schedule requires that once the period for representations has passed, the Board must publish the advice and representations. This does not prevent anyone who has given advice under paragraphs 22 to 26, or made a representation under paragraph 28, from publishing that material. Any publisher must, so far as practicable, exclude any matter which relates to the private affairs of a particular individual whose interests might be affected, seriously and prejudicially, by publication.

201. Paragraph 30 sets out the process that the Board must follow to consider its decision. It must consider the advice and representations listed above, as well as any other information that it considers relevant, and then decide whether to make the proposed recommendation. The Board must give notice in writing of its decision to licensing authority, and publish this notice. The notice should contain the recommendation and the Board's reason for this.

*These notes refer to the draft Legal Services Bill
as published on 24 May 2006*

202. Clause 63 provides that if the Secretary of State decides not to make an order in response to a recommendation under subsection (3) or (5) he must give notice of the decision and reasons for it to the Board, and publish this notice.

Clause 64: Supplementary provision relating to cancellation of a designation

203. This clause allows the Secretary of State to make transfer arrangements when a licensing authority has its designation in relation to one or more reserved legal activities cancelled by an order. This allows each body regulated by the licensing authority, and who consents to the arrangements, to be treated as having a right to carry on each protected activity granted by virtue of a licence issued under this Part by a licensing authority, in relation to the protected activity, which consents to the transfer arrangements.

204. Such a body is subject to the licensing rules of the new licensing authority.

Clause 65: The Board's power to recommend orders made under section 64

205. This clause sets out the process that the Board must take if it wishes to recommend to the Secretary of State that the Secretary of State make an order to cancel a licensing authority's designation.

Clause 66: Licensing rules

206. Each licensing authority must have licensing rules. The Board (acting in its capacity as a licensing authority) must make licensing rules within a year of a date appointed by the Secretary of State. The Board (acting otherwise than in its capacity as a licensing authority or as an approved regulator) then needs to approve the making or modifying of licensing rules. Approved regulators may make licensing rules at any time, but they will have effect only when the approved regulator is a licensing authority and its rules have been approved by the Board. *Subsections (4) and (5)* set out the purpose and scope of licensing rules. Licensing rules must make the provisions required by **Schedule 11**.

207. Schedule 11 makes provision for licensing rules. **Part 1** of the Schedule sets out the licensing procedure. Paragraphs 1 to 5 require that a licensing authority make rules for an application for a licence, or renewal of a licence. These must make provision about:

*These notes refer to the draft Legal Services Bill
as published on 24 May 2006*

- the form and manner in which the application must be made, the information which it must contain, and the documents and fee which must accompany it;
- the process the licensing authority must take within the six months in which it must determine the application; and
- the review process, should the licensing authority decide to refuse an application for a licence, or if the licence was made subject to any conditions, as set out in subsection (2) of clause 69; and
- the procedures and criteria that will be applied by the licensing authority when determining whether to exercise its power to modify the terms of a licence.

208. Licensing rules may make provision about:

- limiting the period for which any licence is to remain in force, and
- the renewal of licences.

209. **Part 2** of the Schedule sets out structural requirements. Paragraphs 6 and 7 explain that at least one authorised person must be a manager of the licensed body, and at least one non-authorised person must either be a manager of the licensed body, or have an interest in it. Licensed bodies are, therefore, defined as bodies providing reserved legal services, controlled by a combination of authorised and non-authorised persons.

210. Paragraphs 8 to 11 set out the ownership requirements that licensing rules must cover, limits on the interests that non-authorised persons can hold, and how rules should assess applications for licences with respect to ownership. Paragraph 11 refers to clause 73, which requires an applicant for a licence to identify any non-authorised person who holds, or will hold, an interest in the applicant, or, where the applicant is a company with a share capital, a material interest (10%) or any lower threshold as provided for by the rules of the licensing authority. The licensing authority may require the non-authorised person to provide documents and information. Paragraph 12 refers to clause 74 which sets out the requirements that licensing rules must include to ensure that a person expecting to obtain an interest in a licensed body notifies the body and the licensing authority, and that the licensing authority has the power to give or refuse approval.

211. Paragraphs 13 to 16 make provision for a designated Head of Legal Practice (HOLP) and a designated Head of Finance and Administration (HOFA). A licensed body must have both a HOLP and a HOFA at all times and the licensing authority must approve them. A licensing authority may approve a person's designation only if it considers that the person is able to carry out the relevant duties.

*These notes refer to the draft Legal Services Bill
as published on 24 May 2006*

212. **Part 3** of the Schedule sets out practice requirements for licensed firms, and the licensing rules that should be put in place. Paragraphs 17 to 21 set requirements for practising addresses, individuals' entitlement to carry on licensed activities, disqualified employees and officers, indemnity cover and compensation, and accounts.

213. **Part 4** of the Schedule covers regulation. Paragraphs 22 and 23 make provisions for rules to be set in relation to fees that a licensed body may be required to pay, and the financial penalties that may be imposed on a licensed body.

214. Paragraph 24 makes provision for the suspension or revocation of a licence, and sets the criteria and procedure that a licensing authority will apply in deciding whether to suspend or revoke a licence, or to end the suspension of a licence. Before suspending a licence, the authority will be required to give the licensed body notice of its intention.

Clause 67: Application for licence

Clause 68: Terms of licence

Clause 69: Modification of licence

Clause 70: Registers of licensed bodies

215. These clauses set out the procedures required for issuing a licence. Clause 67 details how a licensing authority should determine whether an application is successful; clauses 68 and 69 explain the terms under which the licensing authority should issue or modify a licence; and clause 70 requires that each licensing authority keep a register of bodies licensed by it.

Clause 71: Evidence of status

216. This clause makes a certificate which has been signed by an officer of a licensing authority and which grants or suspends a licence, or confirms the existence or otherwise of a past licence, evidence of these facts.

Clause 72: Offence to pretend to be a licensed body

217. This clause makes it an offence for a person (including a body corporate) who is not a licensed body to describe himself or hold himself out as a licensed body. This is punishable, on summary conviction, by a fine up to level 4 on the standard scale (currently £2,500), and on indictment, by a fine.

Clause 73: Disclosure of ownership

218. A body that applies to a licensing authority for a licence under clause 67, must identify in its application any non-authorised person who holds, or will hold, an interest or (in the case of a company with a share capital) a material interest in the applicant. A person who fails to do this is guilty of an offence, and is punishable, on summary conviction, by a fine up to level 5 on the standard scale (currently £5,000).

219. Any non-authorised person who is identified in the application and is required to provide information or documents, and who knowingly provides false or misleading information or documents, is guilty of an offence. This is punishable:

- on summary conviction, to a fine up to the statutory maximum on the standard scale (this is currently level 5, £5,000); and
- on conviction on indictment, to imprisonment for a term of up to two years, or a fine, or both.

Clause 74: Change of ownership

220. This clause states that a non-authorised person must notify the licensing authority and the licensed body if he or she intends to acquire, or has acquired, certain interests in a licensed body. A person who fails to do this is guilty of an offence, and is punishable, on summary conviction, to a fine up to the statutory maximum (currently £5,000).

Clause 75: Duties of Head of Legal Practice

Clause 76: Duties of Head of Finance and Administration

221. These clauses set out the duties of the Head of Legal Practice (HOLP) and the Head of Finance and Administration (HOFA) of a licensed body.

222. The HOLP has a duty to ensure that the licensed body complies with the terms of its licence.

223. The HOFA must ensure that the licensed body adheres to the licensing rules relating to accounts. The accounts rules are set out in paragraphs 21 of Schedule 11.

*These notes refer to the draft Legal Services Bill
as published on 24 May 2006*

224. If the HOLP or HOFA does not adhere to his or her duties, then he or she may be disqualified under clause 84 below.

Clause 79: Financial penalties

Clause 80: Financial penalties: procedure

225. If a licensed body has breached the terms of its licence, then its licensing authority may impose a financial penalty on the licensed body, of such an amount as it considers appropriate. The penalty is payable to the licensing authority. The Board must, with the consent of the Secretary of State, set a maximum amount for this. Clause 80 sets out the process.

Clause 81: Appeals against financial penalties

226. A licensed body can appeal against a penalty on the grounds that the penalty was not within the power of the licensing authority or that the licensing authority has not complied with the procedure. It can make an application to the High Court, which can quash the penalty, substitute a different amount or, where the penalty by instalments vary the time by which the penalty must be paid. This clause sets out when a licensed body can make an appeal, and what the court can do.

Clause 82: Recovery of financial penalties

227. Where a licensed body has not paid a financial penalty, the licensing authority has the power to recover the penalty, and any interest, as a civil debt, payable to the licensing authority. This clause sets out the circumstances that it can do this in. If the whole or part of a penalty is not paid by the date specified, the unpaid balance carries interest. A penalty does not have to be paid if a judgement has not yet been made on an appeal made in relation to it, or if an application to change the payment date is outstanding.

Clause 84: Disqualification lists

228. Under this clause the Board is required to keep lists of:

- persons disqualified from acting as a Head of Legal Practice,

*These notes refer to the draft Legal Services Bill
as published on 24 May 2006*

- persons disqualified from acting as a Head of Finance and Administration, and
- persons disqualified from being employed by a licensed body or from being an officer of a licensed body.

The clause explains the circumstances in which a person may be added to a list.

Clause 85: Suspension and revocation of licence

229. A licensing authority may suspend or revoke any licence granted by it under this Part. If a licence is suspended it will be treated as not being in force. **Schedule 12** makes provision for powers of intervention exercisable by a licensing authority when it suspends or revokes any licence. Any reference in this Schedule to a licensed body includes a body whose licence has been suspended or revoked.

230. A licensing authority can apply to the High Court for an order to prohibit a person who is holding money on behalf of a licensed body from making any payment of that money, unless he has the leave of the High Court to do so. Paragraph 2 of Schedule 12 sets out the procedure and scope for this.

231. Paragraph 3 allows the licensing authority to recover or receive money held by, or on behalf of, a licensed body in connection with its activities as a licensed body or with any trust of which it is or was a trustee. Sub-paragraphs (2) to (4) sets out the circumstances and conditions under which these rights apply, and sub-paragraphs (5) to (9) explain the procedure that must be followed.

232. Under sub-paragraph (10), it is an offence for a person to pay out sums of money at a time when such payment is prohibited by a notice given to him. Under sub-paragraph (11), a person guilty of this is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale (currently £1,000). Paragraph 4 sets out how any money recovered must be held.

233. Paragraph 5 allows a licensing authority to apply to the High Court for an order requiring a person to give the licensing authority information about any money held by that person on behalf of a licensed body, and the accounts in which it is held. The High Court can make such an order if it is satisfied that there is reason to suspect that the person holds money on behalf of the licensed body.

234. A licensing authority may also give notice to a licensed body requiring it to produce all the documents in its possession relating to its activities as a licensed body. Paragraph 6 sets out what the notice may require, and who may take possession of the documents. Sub-paragraph (4) makes it an offence for a person having possession of such documents to refuse, neglect or otherwise fail to comply with the notice. Under

*These notes refer to the draft Legal Services Bill
as published on 24 May 2006*

sub-paragraph (6), a person found guilty is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale (currently £1,000). However, it is not an offence if the licensing authority has made an application to the High Court for the production or delivery of documents. Paragraph 7 sets out the procedure that the High Court will take to consider and implement an order. Paragraph 8 sets out the procedure that a licensing authority must follow if it takes possession of documents under notice or order, as detailed in paragraphs 6 and 7.

235. Under paragraph 9, a licensing authority may ask the High Court to make a postal redirection order from time to time, for a period not exceeding 18 months. This means that mail or packages addressed to a licensed body may be directed to its licensing authority, or a person appointed by its licensing authority, and the licensing authority may take possession of these items.

236. Paragraph 10 allows a licensing authority in possession of documents acquired through notices, orders, or redirection of mail (paragraphs 6, 7, or 9) to apply to the High Court for an order to dispose of, or destroy, the documents. The High Court may make any order it thinks fit. Under paragraph 11 a licensing authority may take copies of, or extracts from, documents acquired through notices, orders, or redirection of mail.

237. Paragraph 12 of Schedule 12 allows the licensing authority of a licensed body that is the sole trustee of any trust, or co-trustee only with one or more of its employees, to apply to the High Court for an order. This order will allow the appointment of a new trustee in substitution for the licensed body.

238. Paragraph 13 allows the powers conferred by this Schedule in relation to sums of money and documents to be exercised despite any lien on them or right to their possession. Paragraph 14 allows the licensing authority to do all things that are reasonably necessary to facilitate the exercise of its powers under this Schedule.

239. Paragraph 15 sets out how the licensing authority may recover any costs incurred for the purposes of this Schedule.

Clause 86: Prevention of regulatory conflict: accounts rules

240. Paragraphs 21 of Schedule 11 requires licensing authorities to make rules in relation to a licensed body's accounts. Where a licensed body carries on an activity through a solicitor, those rules apply instead of those setting out account rules in sections 32 and 34 of the Solicitors Act 1974. Where a licensed body carries on an activity through a licensed conveyancer, those rules apply, instead of those setting out accounts rules made under sections 22 and 23 of the Administration of Justice Act 1985.

Clause 88: Not for profit bodies

Clause 89: Foreign bodies

241. Requirements or provisions may be waived or altered for certain types of ABS bodies. Clause 88 allow a licensing authority to waive or modify requirements imposed on a not for profit body if it considers it appropriate to do so. Clause 89 allows the Secretary of State to modify any provision for an ABS body formed under foreign law.

PART 6: LEGAL COMPLAINTS

242. This Part of the Bill establishes an independent complaints handling body called the Office for Legal Complaints (OLC). It removes the ability of approved regulators to provide redress to complainants and grants this power to the OLC. It sets out the appointments process for ombudsmen.

243. It also sets out requirements in relation to the accountability of the OLC, the rules by which the OLC will establish its operating procedures, and the necessary changes to the regulatory arrangements of approved regulators under this scheme.

244. For the purpose of these notes all references to the body that is to be set up will refer to the Office for Legal Complaints, (OLC). The “scheme” that the OLC will operate is referred to in this Part as “the ombudsman scheme”, and references to the OLC relate to the body as a whole, including the ombudsmen and the staff of the OLC.

Background

245. At present each of the approved regulators maintain their own complaints handling and disciplinary arrangements. The following bodies are subject to the jurisdiction of the Legal Services Ombudsman:

- the Law Society (also subject to jurisdiction of Legal Services Complaints Commissioner),

*These notes refer to the draft Legal Services Bill
as published on 24 May 2006*

- the Bar Council,
- the Institute of Legal Executives,
- the Council for Licensed Conveyancers,
- the Institute of Trademark Attorneys, and
- the Chartered Institute of Patent Agents.

246. Under the current system if a consumer wishes to complain about any of the legal services listed above they need to take that complaint up with the person they are complaining about. If the complaint is not resolved in-house, consumers can then contact the regulatory body for that service (the professional body). In the event that a complainant is not satisfied with the way in which a complaint has been handled they can escalate a complaint to the Legal Services Ombudsman. The Ombudsman will investigate the way in which the complaint was handled and the response from the professional body. However, if the Ombudsman believes that a complaint has not been investigated properly, she will recommend that the professional body look at the matter again. Last year the Ombudsman widened her investigation to look at the original complaint in less than 1% of cases.¹³

247. Sir David Clementi's *Review of the Regulatory Framework for Legal Services in England and Wales*, published in 2004,¹⁴ criticised the complaints handling arrangements in a number of ways:

- the record of complaints handling by the front-line bodies – substantial delays and questionable quality in terms of outcome,
- the level of confidence in the independence of the current system,
- the consistency and clarity of redress arrangements for consumers in respect of front-line bodies with overlapping activities; and
- the overlaps in the current oversight regime.

248. Sir David concluded:

“There is a considerable concern about how complaints are dealt with. The concern arises at a number of levels: at an operating level there is an issue about the efficiency with which the systems are run; at an oversight level there is a concern about the overlapping powers of the oversight bodies; and at a level of principle, there is an issue about whether systems for complaints against lawyers, run by lawyers themselves, can achieve consumer confidence.”

¹³ Legal Services Ombudsman, 2005

¹⁴ Clementi, 2004b

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as published on 24 May 2006*

249. The Government's 2005 White Paper, *The Future of Legal Services: Putting Consumers First*¹⁵ proposed the creation of an independent Office for Legal Complaints (OLC), to provide quick and fair redress for consumers, and enhance consumer confidence in the process.

250. The OLC will have clearly defined powers. It will deal with all consumer complaints about those who carry out legal activities and who are members of bodies and organisations regulated by the Board. It will be accountable to the Board and will be funded through a combination of a general levy on legal services providers and a "polluter pays" mechanism. The OLC will investigate all complaints and refer any issues of misconduct to the approved regulator concerned, monitoring the decisions. The Board will oversee the disciplinary arrangements of the approved regulators.

251. The Board will appoint the members of the OLC, acting in consultation with the Secretary of State when appointing the Chairman. The Board will then consult with the Chairman in the appointment of the remaining members of the OLC. The OLC will be able to set "scheme rules" and appoint the Ombudsmen and staff of the OLC.

252. All legal service providers will still be required to maintain in-house complaints handling arrangements. These will continue to be the first port of call for a consumer, and the OLC will not consider complaints which have not been considered in-house, except in very limited circumstances.

253. If the complaint is not resolved in-house, consumers will be able to bring complaints to the OLC free of charge. Complaints will be handled by caseworkers, who will attempt to conciliate complaints where possible.

254. The ombudsmen's function will be to make binding determinations on complaints. However, as with the Financial Ombudsman Service model, a complaint will be passed to an ombudsman only after one or both parties has requested a review of the report (prepared by the caseworker(s) who carried out any investigation necessary). Those caseworkers will confirm their position in writing, explaining their view on the case (which may have been formed on the advice of an ombudsman if considered necessary) and setting out how, in their opinion, the case should be resolved.

¹⁵ Department for Constitutional Affairs, 2005

Clause 92: The Office for Legal Complaints and the ombudsman scheme

255. This clause establishes a body called the Office for Legal Complaints (OLC) to resolve consumer complaints quickly and with minimum formality. It will be free to operate the ombudsman scheme under a name of its own choosing.

256. **Schedule 13** sets out the membership of the OLC, the terms of appointment and tenure of members, staffing, committees, and the delegation of functions.

257. Paragraph 1, sub-paragraph (1) of the Schedule states that the OLC is to consist of a Chairman appointed by the Board, and between six and eight other persons appointed by the Board following consultation with the Chairman.

258. Paragraph 2 provides for the OLC to have a lay chairman and a lay majority. A lay person is defined as someone who has never been an authorised person in relation to reserved legal activities.

259. Terms of appointment for OLC members are set out in paragraphs 5 to 9. Members must be appointed for a fixed period, which must not exceed five years. A person can be re-appointed once only. If an ordinary member who is a lay person becomes an authorised person at any time during their membership to the Board, that person ceases to be a member. The OLC will have a lay majority, and paragraph 4 sets out the experience and knowledge which OLC members will collectively have to demonstrate.

260. The Board can remove the Chairman from his position (with the approval of the Secretary of State). The Board may also remove OLC members after consultation with the Chairman. Sub-paragraph (2) of paragraph 8 limits the circumstances in which the Board can remove OLC members.

261. Paragraphs 11 to 13 set out the appointment terms and conditions for staff of the OLC. Paragraph 14 allows for the OLC to pay for assistance to be provided to it or to the ombudsmen.

262. Paragraphs 15 to 18 allow the OLC to establish committees and sub-committees to carry out any of its functions. Under paragraph 19 the OLC may delegate specified functions to any member of the OLC, any staff member of the OLC or any committee or sub-committee. However, the OLC will retain accountability for the exercise of its statutory functions.

263. Paragraph 20 sets out the arrangements for the OLC's budget. Paragraph 21 states that the OLC are not to borrow money, except:

- with the consent of the Secretary of State, or
- in accordance with general authorisation given by the Secretary of State.

*These notes refer to the draft Legal Services Bill
as published on 24 May 2006*

264. Paragraph 22 sets out the requirements for the OLC's accounts. The OLC must keep proper accounts and proper records, and prepare an annual financial statement of accounts. Details of what these statements must include are listed at subparagraphs (2) to (4).

265. Paragraph 27 makes provision for amendments to the House of Commons Disqualification Act 1975, the Northern Ireland Assembly Disqualification Act 1975 and the Freedom of Information Act 2000. These are standard provisions.

Clause 93: Promotion of regulatory objectives

266. The OLC will have a duty to act in accordance with the regulatory objectives in clause 1. It will also have to have regard to principles of best practice in relation to the administration of ombudsman schemes, such as the recognition criteria of the British and Irish Ombudsman Association.

Clause 94: Corporate governance

267. This clause requires that the OLC have regard to generally accepted principles of good corporate governance in managing its affairs.

Clause 95: Annual report

268. This clause places a duty on the OLC and the Chief Ombudsman to produce annual reports to be sent to the Board. These will be laid before Parliament by the Secretary of State. They will report the extent to which, in the OLC's opinion, it has met the regulatory objectives. They will contain a copy of the Chief Ombudsman's report under clause 100 for the year in question.

Clause 97: Reporting to the Board

269. This clause states that the Board may require a report from the OLC, separately from the annual report. This is to enable the Board to monitor its performance.

Clause 98: Performance targets and monitoring

270. This clause states that the Board may set performance targets for the OLC in relation to any of its functions. *Subsections (3) and (4)* state that any targets must be published.

Clause 99: Appointment of Chief Ombudsman and assistant ombudsmen

271. This clause sets out the appointment process whereby the OLC must appoint a person as Chief Ombudsman. It may also appoint assistant ombudsmen with the consent of the Chief Ombudsman. *Subsection (2)* specifies that ombudsmen must be lay people. *Subsection (5)* ensures that ombudsmen are independent of external influence in decision-making on individual complaints. It is essential that the Board and the OLC cannot intervene in individual complaints.

Clause 102: Jurisdiction of the ombudsman scheme

272. This clause defines what types of person are eligible to bring complaints to the OLC. It is envisaged that the types of person eligible to bring complaints will be similar to those who may bring complaints to the Financial Ombudsman Service – that is, private individuals and small businesses. *Subsection (3)(a)* prevents legal professionals from seeking redress about the actions of other legal professionals whom they have engaged on behalf of their clients.

Clause 103: Acts and omissions by employees

273. This clause states that any omission by an employee will be treated by the OLC as an omission on the part of the employer as well as the employee, unless the employer can demonstrate that they have taken all reasonable steps to prevent such an omission.

Clause 104: Continuity of complaints

274. A complaint about an act or omission of a partnership or unincorporated body will not be affected by a change in membership of the partnership or body. This clause also confers on the OLC power to make rules to ensure the continuity of complaints where a legal person ceases to exist (for example, where a partnership is dissolved) but another person succeeds to the business.

Clause 105: Scheme rules

275. This clause provides for the operating procedures of the OLC to be determined by the OLC in rules. It allows the OLC the flexibility to adapt its procedures in line with changing notions of best practice. Procedures for making rules are set out in clauses 107 and 152.

276. *Subsection (5)* of clause 105 lists areas in which the OLC may wish to make rules. These are examples and the OLC is not prohibited from making rules in other areas. In particular, subsection (5)(c) makes provision for the whole or part of a complaint, in specified circumstances, to be dismissed without consideration of its merits. *Subsection (6)* sets out some of those circumstances. These might include frivolous or vexatious complaints, complaints that have already been considered by another body, or complaints not brought within appropriate time limits. Subsection (6)(d) also allows the OLC to decline to investigate a complaint where it appears that there is a more appropriate route to complain; this might be particularly relevant in an Alternative Business Structure firm which is providing a combination of legal and non-legal services. It is expected that the OLC will make arrangements with other ombudsman schemes to provide for such a scenario. Alternative Business Structures are provided for in Part 5 of the Bill.

Clause 106: Charges payable by respondents

277. The OLC will be partly funded through a “polluter pays” mechanism by which charges are placed on those legal professionals who are subject to complaints (respondents). This clause requires the OLC to make rules determining how these charges are determined. *Subsection (2)* allows the OLC flexibility to make different fees in different circumstances. The OLC will also be obliged to consult before making these rules as with any of its other rules.

Clause 107: Consent requirements for rules

278. This clause states that the consent of the Board is required prior to any rules being made. It also specifically requires the consent of the Secretary of State for rules regarding the setting of charges on respondents in complaints. Before receiving consent, the OLC will be required to consult on its proposed rules. Consultation requirements are at clause 152.

Clause 108: The Board's powers in respect of scheme rules

279. Under this clause the Board will have the power to direct the OLC to amend any of its rules. The direction may be in general terms or it may require a specific modification. Where the direction requires a specific modification to be made the Board must consult under *subsection (2)* before giving the direction, so the consultation procedure under clause 152 does not apply.

Clause 109: Determination of complaints

280. This clause sets out the powers vested in the ombudsman to determine a complaint according to what is fair and reasonable in all the circumstances of the case. For example the ombudsman could:

- require the respondent to make an apology to the complainant,
- require the respondent to take other steps in relation to the complainant as the OLC considers just; and
- order a payment for loss, inconvenience or distress.

These are covered in detail at *subsections (2) to (6)*.

Clause 110: Limitation on value of directions under the ombudsman scheme

281. This clause states that the total value of the directions given on the determination of a complaint under the ombudsman scheme is limited to £20,000. Currently the highest level of compensation in the legal sector is £15,000. *Subsection (2)* explains how the “total value” of the directions is to be determined.

Clause 111: Alteration of limit

282. The Secretary of State may, by order, amend the limit on the total value of directions imposed by clause 110, on the recommendation of an interested body (OLC, the Board or the Consumer Panel). The body recommending alteration of the limit must first publish its proposed recommendation and consider representations made in respect of it.

Clause 112: Acceptance or rejection of determination

283. In determining a complaint the ombudsman is required to prepare a written statement of determination. *Subsection (2)* sets out what should be included in this statement, and *subsection (3)* lists the parties that will need to receive such a statement. On acceptance from the complainant, the ombudsman must give notice to those parties set out in *subsection (6)*. If the determination is accepted by the complainant, it is binding on both parties, and no further legal proceedings can be instituted with regard to the matter that was the subject of the complaint.

Clause 113: Enforcement of directions under section 109

284. This clause sets criteria to ensure that the determination of a complaint can be enforced and that any award made can be recovered in the High Court following an application from the complainant.

Clause 114: Reporting court orders made against authorised persons

285. This clause sets criteria for the OLC in publicising a court order made under clause 113. The court must give the OLC notice of any order made against a person, and the OLC will in turn inform any relevant approved regulators. An ombudsman will then report the making of the order to any approved regulator that authorises that person to carry on an activity which is a reserved legal activity. Approved regulators will be expected to take appropriate regulatory action with regard to providers who do not comply with OLC orders.

Clause 115: Complaints procedures of authorised persons

286. This clause states that an approved regulator must require each authorised person they regulate to maintain in-house complaints procedures, and make provision for the enforcement of this requirement. The provisions made by the approved regulator must satisfy any requirements specified by the Board.

Clause 116: Duties to co-operate with investigations and share information

287. This clause states that the approved regulator must make provision that all authorised persons they regulate provide co-operation and assistance to the ombudsman in relation to an investigation or determination of a complaint.

Clause 117: Reporting failures to co-operate with an investigation to approved regulators

288. Where a person fails to co-operate with an ombudsman as stated in clause 116, the ombudsman can notify that person's approved regulator. The regulator would be expected to take steps to rectify the failure, and may be required to report to the OLC on the actions it takes. If the ombudsman is of the opinion that the approved regulator is seriously or persistently failing to enforce its rules of conduct, it may report this to the Board.

Clause 118: Information and documents

289. This clause states that the ombudsman can require information and documents from parties to a complaint.

Clause 119: Reporting failures to provide information or provide documents

290. Where an authorised person fails to co-operate with an ombudsman as stated in clause 116, the ombudsman can notify that person's approved regulator who would be expected to take steps to rectify the failure. The regulator can be required to report to the OLC on the actions it takes.

Clause 120: Enforcement to provide information or produce documents

291. Following any action taken by a regulator, if a person still fails to provide information or documents under *subsection (1)*, the OLC can certify this failure to the High Court. If the High Court is satisfied that this person has failed without reasonable excuse to comply with the requirement, it may deal with the defaulter as it that person were in contempt.

Clause 122: Restricted information

292. Under this clause, “restricted information” is any information that has been collected during an investigation of a complaint. This clause protects the complainant in that all information is classed as confidential and, except as listed under clause 123, this information must not be disclosed.

Clause 123: Disclosure of restricted information

293. This clause makes exceptions to clause 122. The exceptions are listed at *subsections (2) and (3)*.

Clause 125: Reporting possible misconduct to approved regulators

294. In the course of the OLC considering a complaint, it may become apparent that there is a possibility that a person has breached their regulator’s rules of conduct. Where the OLC is of such an opinion this clause allows it to notify that person’s regulator. The regulator can be required to report to the OLC on the actions it takes. If the ombudsman is of the opinion that the approved regulator is seriously or persistently failing to enforce its rules of conduct, it may report this to the Board.

Clause 127: Approved regulators not to make provision for redress

295. This clause ensures that the regulatory arrangements of an approved regulator must not include any provisions regarding redress. The OLC is to be the single point of entry for all complainants seeking redress from legal professionals.

PART 7: FINANCIAL PROVISIONS

296. This Part of the Bill makes arrangements for the funding of both the Board and the Office for Legal Complaints.

Clause 130: Funding

Clause 131: The levy

Clause 132: The levy: supplementary provisions

Clause 133: Amounts payable into the Consolidated Fund

297. Under clause 130 the Secretary of State may pay amounts to the Board and the OLC for the purposes of meeting their expenditure. Clause 131 then sets out how a levy will be raised from approved regulators. The purpose of the levy is to cover the expenditure of the Board and the Office for Legal Complaints (OLC), which is met in the first instance by the Secretary of State's grant under clause 130.

298. The Board must make rules, which will include how the levy is calculated, and how the Board will apportion the levy between the approved regulators. The rules must be made with the consent of the Secretary of State.

299. The levy is intended to raise an amount equal to the difference between the expenditure of the Board and the OLC and the amounts those bodies receive (and pay into the Consolidated Fund) by way of specific charges, such as application fees for new regulators. The list at clause 133 sets out all the circumstances in which the Board and the OLC may raise money. As they are public bodies, all of these receipts will be paid into the Consolidated Fund under that clause.

300. Under *subsection (1)(d)* of clause 133, where the Board acts as an approved regulator, all moneys raised directly from regulated persons must be paid into the consolidated fund. This money will be used in two ways. The primary function will be to spend the practising fee on regulating the regulated persons (that is, functions including those listed under 43 and subsection 2 of 53). This money will be returned to the Board to cover such costs. The second function is to allow the Board to pay its portion of the levy to cover the costs of the Board as an oversight regulator. This amount will have been pre-determined under the Board's levy rules.

PART 8: MISCELLANEOUS AND GENERAL PROVISIONS

301. This part of the Bill makes provision for any guidance or advice that is produced by the Board, and any voluntary arrangements that are to be established. It sets out the general provisions in relation to offences and details the procedure in issuing notices or directions. It also covers legal professional privilege and amendments to the Immigration and Asylum Act 1999.

Clause 134: Guidance

302. The Board may give guidance on a number of areas, for example, information about the functions of the Board, or for the purpose of the Board's meeting the regulatory objectives. The regulatory objectives are set out at clause 1. The Board will also be able to publish its guidance and offer copies for sale. Following any guidance being issued, the Board may consider the extent to which an approved regulator has complied with such guidance when exercising its regulatory functions.

Clause 135: Voluntary arrangements

303. This clause sets out the arrangements, should any person wish to enter into an arrangement with the Board, so that the Board can provide assistance for the purpose of improving the body or other person's standards of service, and promoting best practice in connection with the carrying on of any legal activity. The Board will be able to charge the person for the purposes of this provision.

304. The body may wish that its legal activity is subject to greater regulation, but it may not be appropriate to make the activity a reserved legal activity. This may be because reservation would have an adverse effect on service provision, out of proportion to the benefit of reservation, or that it would be impossible to create a viable regulator with the numbers and/or size of the providers in question.

Clause 136: The Solicitors Disciplinary Tribunal

305. This clause makes provision in respect of the Solicitors Disciplinary Tribunal which equates it in certain regards with an approved regulator. *Subsection (1)* provides that any alteration of the Tribunal's rules under section 46(9)(b) of the Solicitors Act 1974 requires approval. *Subsections (2) to (8)* set out the procedures, should an alteration be made.

306. *Subsection (6)* applies the Board's power to give directions to an approved regulator under clause 25 to the Tribunal.

307. *Subsection (7)* applies clauses 57 and 58 to the Tribunal and so enables the Secretary of State to modify the functions of the Tribunal for certain limited purposes.

Clause 138: The Board not to interfere with approved regulators' representative functions

308. This clause details the parameters within which the Board can exercise its functions, and ensures that the Board cannot interfere with the approved regulators' representative functions. However, this duty does not prevent the Board from taking action to ensure that the regulator's regulatory functions are not prejudiced by its representative functions.

Clause 139: Legal professional privilege

309. This clause states that legal professional privilege applies to any communication made to or by an individual who is not a barrister or solicitor at any time when the individual is providing advocacy services, litigation services, conveyancing or probate services in their capacity as an authorised person. Such a communication is to be treated as it would be by a solicitor for the purposes of disclosure. This clause reproduces the effect of section 63 of the Courts and Legal Services Act 1990.

Clause 140: Part 5 of the Immigration and Asylum Act 1999

310. At present the regulation of providers of immigration advice or immigration services rests with the Office of the Immigration Services Commissioner (OISC), regulating individual immigration service providers. Members of designated professional bodies (DPBs), such as the Bar Council, the Law Society, and the

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Institute of Legal Executives (ILEX) are exempt from this because of the regulation that their bodies provide.

311. The Bill provides for the regulation of DPBs in respect of immigration services to be transferred from OISC to the Board, although both the Home Secretary and the Secretary of State for Constitutional Affairs (as Lord Chancellor) will have to agree any changes to the list of bodies that will be designated as qualifying regulators for the purposes of regulating the provision of immigration advice or immigration services. OISC will retain its oversight of DPBs outside England and Wales, and of individuals who are not members of DPBs. It is intended that regulation will pass to the Board under the Immigration and Asylum Act 1999, with a new category factored into the Act to enable members of a body which is being authorised by the Board to provide immigration and asylum services when it is recognised under the Immigration and Asylum Act 1999 (“the 1999 Act”).

312. **Part 1 of Schedule 14** explains the process for recognising an approved regulator as suitable to regulate the provision of immigration advice and immigration services. **Part 2** of the Schedule contains amendments of Part 5 of the 1999 Act and enables approved regulators that have been so recognised to be designated under that Act. The result of such a designation is that the individuals authorised by the designated qualifying regulator to provide immigration advice or immigration services are able to provide that advice or those services under the 1999 Act without committing the offence in section 91 of that Act. **Part 3** of the Schedule sets out transitional provision to protect members of bodies which are currently designated professional bodies in England and Wales under section 86 of the 1999 Act. Paragraph 6 states the timescales for the beginning and end of the transitional period. Paragraphs 7 to 9 state that during this transitional period barristers will be authorised by the Bar Council, solicitors will be authorised by the Law Society, and Legal Executives will be authorised by ILEX to provide immigration advice and immigration services.

Clause 142: Employed advocates

313. This clause ensures that qualification regulations and conduct rules which apply to the exercise of a right of audience by a person employed as a Crown Prosecutor or in any other employment are not more restrictive than those regulations and rules applying to other persons exercising that right.

Clause 143: Powers of court in respect of rights of audience and conduct of litigation

314. *Subsection (1)* of this clause states that that Bill will not affect the court's right to refuse to hear a person who would otherwise have the right to audience. *Subsection (3)* states that no person may exercise a right of audience before the court if the court has refused that appearance. This extends to, and includes, an "advocate" as defined in *subsection (6)*. This clause reproduces provisions found in sections 27 and 28 of the Courts and Legal Services Act 1990.

Clause 146: Local weights and measures authorities

315. This clause replicates the existing powers that are listed in sections 22 and 22A of the Solicitors Act 1974 regarding weights and measures authorities and officers. It applies only in relation to reserved instrument activities. It states that a weights and measures authority may institute proceedings for an offence if the alleged offender was not entitled to carry out reserved instrument activities. *Subsections (3) to (9)* make provision about rights of entry and search warrants.

Clause 152: Consultation requirements for rules

316. This clause requires the Board and the OLC to comply with certain consultation requirements before making rules under the Bill. The rule-making body must publish a draft of any rules it proposes. The rule-making body must then consider any representations made. If, following representations, the rules differ from the original draft, the rule-making body must publish the details of the difference. The rule-making body must publish any rules it makes and can charge a fee to provide either the draft or final rules.

Clause 155: Index of defined expressions.

317. This clause refers to **Schedule 15**, which lists the places where expressions used in this Bill are defined or otherwise explained.

Draft Legal Services Bill

Full Regulatory Impact Assessment

Contents

- Abbreviations and Acronyms
- 1. Purpose and Intended Effect
- 2. Consultation
- 3. Sectors and Groups Affected
- 4. Reforming the Regulatory Framework for Legal Services
 - Options considered
 - Benefits and costs of options considered
- 5. Facilitating Alternative Business Structures in the Provision of Legal Services
 - Options considered
 - Benefits and costs of options considered
- 6. Reforming the Complaint Handling Arrangements in Legal Services
 - Options considered
 - Benefits and costs of options
- 7. Small Firms Impact Test
- 8. Legal Aid Impact Test
- 9. Racial Equality Impact Assessment
- 10. Competition Assessment
- 11. Enforcement, Sanctions and Monitoring
- 12. Implementation, Delivery Plan and Post-Implementation Review
- 13. Summary and Conclusion
- 14. Appendix A: References

List of Abbreviations and Acronyms

ABS	Alternative Business Structures
ADR	Alternative Dispute Resolution
BME	Black and Minority Ethnic groups
BRE	Better Regulation Executive
CASIA	Complaints Against the Solicitor Independent Adjudication
CDS	Criminal Defence Service
CLACs	Community Legal Advice Centres
CLANs	Community Legal Advice Networks
CLS	Community Legal Service
DCA	Department for Constitutional Affairs
FLR	Front Line Regulator (Professional Regulatory Bodies)
FSA	Financial Services Authority
FSB	Federation of Small Businesses
HOFA	Head of Finance and Administration
HOLP	Head of Legal Practice
LDP	Legal Disciplinary Practice
LPP	Legal Professional Privilege
LSA	Legal Services Authority
LSB	Legal Services Board
LSC	Legal Services Commission
LSCC	Legal Service Complaints Commissioner (also see OLSCC)
LSO	Legal Services Ombudsman (also see OLSO)
NfP	Not-for-Profit Organisation
OFT	Office of Fair Trading
OISC	Office of the Immigration Services Commission
OLC	Office for Legal Complaints

OLSCC	Office of the Legal Service Complaints Commissioner
OLSO	Office of the Legal Services Ombudsman
PwC	PricewaterhouseCoopers LLP
RIA	Regulatory Impact Assessment
ROCAS	Reform of Complaints against Solicitors
SBS	Small Business Service

1. Purpose and Intended Effect

The Regulatory Impact Assessment (RIA) which follows sets out the rationale for reform of the regulation of legal services. The RIA also analyses the likely impacts of the options considered for implementing these reforms on a range of key stakeholders.

Nature and scope of the legal services market

- 1.1. The legal services market in England and Wales makes an important contribution to the UK economy. It generated £19 billion or 1.73% of the UK's gross domestic product in 2003¹, which was an increase in real terms of almost 60% since 1995.
- 1.2. In 2003, the volume of UK legal services exported totalled £1.9 billion - three times that of 1995. Total imports of legal services were worth £403m for the same period, showing that the legal services sector is a net exporter to the value of £1.5 billion².
- 1.3. The solicitors' profession has also grown markedly in the recent past. There were 54,734 solicitors in England and Wales with practising certificates in 1990, while in 2004 there were 96,757 solicitors, of whom 75,079 were working in private practices. In addition, the number of solicitors from England and Wales located abroad has increased more than nine times between 1990 and 2004 from 355 to nearly 3,400, now located in 71 countries.
- 1.4. In contrast, the number of solicitors' firms fell from 10,120 in 1997 to 9,211 in 2004. Sole practitioners made up 45.3% of solicitors' firms and a further 39.7% had four or fewer partners, but 69.2% of solicitors worked in firms of five partners or more. The number of large practices (those with 26 partners or more) has increased in recent years, and in 1999/2000 these firms generated 50.2% of the total £10.52 billion generated by the profession.
- 1.5. In addition, there were 3,310 solicitors with rights of audience in the higher courts in April 2005³.
- 1.6. The Bar has also witnessed a proportionate increase in numbers in the recent years. In 2004 there were 14,364 practising barristers in England and Wales, 11,564 of whom were in independent private practice (251 of whom were not tenants of the 355 chambers) and the rest in employment⁴. This is a large increase from 1990, when there were 6,645 barristers in independent private practices.
- 1.7. Both the Bar and the solicitors' profession are significant employers in the UK with figures from International Financial Services London showing that total

¹ Data taken from the Office of National Statistics Annual Business Inquiry – <http://www.statistics.gov.uk/abi>

² Office of National Statistics – United Kingdom Balance of Payments – The Pink Book 2004 – http://www.statistics.gov.uk/downloads/theme_economy/PinkBook04.pdf

³ A solicitor usually briefs a barrister on a case in the higher courts. The barrister then presents the case to the court. However, a solicitor may choose to gain higher rights in order to offer a complete service to a client – from initial advice through to case preparation and presentation before the courts.

⁴ The General Council of the Bar Annual Report 2004 – http://barcouncil.org.uk/documents/Bar%20Annual%20Report_2004_WEB.pdf

recorded employment for the solicitors' profession and the Bar (fee earners and administrative staff) in 2003 totalled 267,503⁵.

1.8. Elsewhere in the legal services sector in 2004, there were:

- nearly 22,000 members of the Institute of Legal Executives. Most legal executives work for solicitors' firms, although a few work independently from solicitors;
- 850 licensed conveyancers in England and Wales, and around 1,300 in training;
- 857 registered trade mark attorneys and 1,500 United Kingdom registered patent attorneys; and
- approximately 900 public notaries in practice, of which around 30 are scrivener notaries, and 815 are general notaries who are also in practice as solicitors.

1.9. The Not for Profit (NfP) sector is a vital channel for providing access to justice where the need is greatest. This sector encompasses some of the legal services publicly funded by legal aid through the Legal Services Commission (LSC), volunteer services offered by members of the public and pro bono work where lawyers provide their services free of charge.

1.10. There are also a number of NfP organisations providing legal advice, representation and other non-legal services to individuals. These organisations include:

- 468 Citizens Advice Bureaux in England and Wales
- just under 1,000 members of AdviceUK (formerly the Federation of Information and Advice Centres)
- 57 law centres in the Law Centres Federation
- other membership organisations such as trades unions

1.11. The LSC is a key consumer of legal services. It delivers civil and criminal legal and advice services, publicly funded via legal aid, through its Community Legal Service (CLS) and Criminal Defence Service (CDS) schemes.

1.12. In 2003-04 the LSC spent in excess of £2 billion funding legal services and NfP caseworkers who performed legal aid work, amounting to 10.9% of the total turnover of the legal services in the UK, and provided more than 2.6 million acts of assistance through CLS and CDS schemes.

⁵ International Financial Services London, 2005, Legal Services: City Business Series – http://www.ifsl.org.uk/pdf_handler.cfm?file=CBS_Legal_Services_2005&CFID=50659&CFToken=73281930

The existing arrangements for the regulation of legal services

- 1.13. The current regulatory framework for legal services has essentially developed piecemeal and over time. Today it is largely a co-regulatory arrangement with the legal professional bodies exercising regulatory control over their members, subject to varying degrees of oversight by a range of high-level oversight regulators.
- 1.14. There are currently seven forms of legal service are subject to statutory regulatory control⁶. The current machinery for regulating legal services is complex. A number of front-line regulators, including the legal professional bodies like the Law Society and Bar Council, have a direct impact on the provision of legal services. Regulation is focused strongly on the nature of the provider, rather than the type of service delivered.
- 1.15. In addition to the front line regulators, the system, involves a number of high-level regulators, including the Secretary of State for Constitutional Affairs, Master of the Rolls, and the Office of Fair Trading. Important purchasers of legal services such as the Legal Services Commission or local authorities also play a quasi-regulatory role, for example by setting their own entry and quality standards.
- 1.16. But the existing system of profession-led regulation has a number of characteristics, some aspects of which the Government would want to retain where it is appropriate to do so. For example:
- self-regulatory bodies typically have a greater degree of expertise and technical knowledge about the professions than an external regulatory authority. This information advantage allows the self-regulatory bodies to better guarantee quality of services, monitor compliance and enforce the necessary codes of conduct. Consequently, costs of information for the formulation and interpretation of quality standards, monitoring, and enforcement can be minimised.
 - self-regulatory bodies may be able to draft and review regulations more quickly and flexibly to respond to changes in consumer preferences.
 - the cost of regulation is borne largely by the regulated professions themselves via fees, albeit with at least part of the regulatory cost being passed on to the consumers of legal services.

Drivers for reform of the regulatory framework

The need for a more effective regulatory structure

- 1.17. The problems associated with the current regulatory framework can be seen in terms of regulatory proliferation, confusion and fragmentation, the

⁶ These are: the right to conduct litigation; the right of audience in the courts; the provision of immigration services; certain probate services; conveyancing; notarial services and acting as a commissioner for oaths. These are described in more detail at Appendix B of the Government's White Paper – The Future of Legal Services: Putting Consumers First. <http://www.dca.gov.uk/legalsys/foiwp.pdf>. The Government has proposed to introduce a statutory framework for the regulation of claims management services. Measures to achieve this have formed part of the Government's Compensation Bill which is currently before Parliament.

propensity of the current structure to create regulatory anomalies and gaps, and difficulties of interface and co-operation.

- 1.18. **Overlaps** in the current regulatory framework mean that the Secretary of State for Constitutional Affairs has the power to alter rules relating to the qualification or conduct of persons exercising rights of audience or rights to conduct litigation. In addition all rules of the Law Society require the approval of the Master of the Rolls.
- 1.19. For consumers, the complexities of the current system means that many will not have sufficient information to distinguish between the level of protection they are afforded under different parts of the regulatory framework, and by unregulated providers. This lack of information creates a risk that unregulated service providers may drive out regulated ones, reducing quality and diminishing choice. It also means that consumers are not protected in a consistent fashion.
- 1.20. It should be noted that almost everyone will need to use legal services at some point, and on the occasions when they do it will often be in highly stressful circumstances (e.g. when moving home, resolving a family dispute, involved in a court case or carrying out a business transaction).
- 1.21. For some legal services, namely litigation and advocacy, providers potentially can be subject to varying degrees of regulation, or regulatory influence, by a number of bodies including professional bodies, oversight regulators, service or other sectoral regulators (such as the Financial Services Authority), purchasers of legal services (particularly where, as in the case of the Legal Services Commission, they set quality requirements) and insurers.
- 1.22. The existing asymmetry of information in respect of the regulatory standards applied to different providers of legal services may also create significant anomalies between lawyers regulated by different frontline bodies, and between lawyers and non-lawyers, in terms of both consumer protection and regulatory burdens.
- 1.23. **Gaps** in the current arrangements generally mean that an Act of Parliament will be required to provide the protection that consumers need where a new or additional activity needs to be subject to regulatory control e.g. claims management services. This means it is difficult to put safeguards in place quickly when new problems arise. The current system of regulation is therefore not flexible enough to offer consumers the protection they need and deserve.
- 1.24. Potential **conflicts of interest** also arise in the existing framework, with most of the regulators of legal professionals also performing a representative role, acting as advocates for their members. This raises a concern as, arguably, there is a risk that the regulators' judgements might be unduly influenced by putting the interests of members above those of consumers of legal services, undermining public confidence in the legal services sector. Even when this is not the case, the *perception* of undue influence on regulators' considerations may be damaging to the image of the profession. However, largely in response to the recommendations made by Sir David Clementi, the Law Society and the Bar Council have recently announced that they are to establish separate arms to deal with regulation of their respective professions, which will be ring-fenced from representative interests.

The need for more effective competition

- 1.25. UK competition policy⁷ is grounded in the assertion that competitive markets are the most effective vehicles for generating economic growth. Well-functioning markets provide strong incentives for good performance by encouraging firms to improve productivity, reduce costs and innovate, whilst rewarding consumers with lower prices, higher quality and wider choice. Encouraging efficiency, competition in the domestic market also contributes to UK's international competitiveness.
- 1.26. In March 2001, the Office of Fair Trading (OFT) identified⁸ a number of rules of the legal professions that were potentially unduly restrictive, and that may have negative implications for consumers by affecting the quality and price of legal services. The OFT recommended that the legal professional rules should be fully subject to competition law and that unjustified restrictions on competition should be removed. Examples of these rules identified by the OFT include:
- restrictions on employed solicitors acting for third parties (Employed Solicitors' Code 1990 and Solicitors' Practice Rule 4)
 - restrictions on receiving a payment for referring a client (Solicitors' Practice Rule 3)
 - fee guidance issued by the Law Society in relation to probate and conveyancing work
 - rules preventing barristers from forming partnerships with one another and with members of other professions restrictions on barristers having direct access to clients
 - rules prohibiting the conduct of litigation by barristers in independent practices.
- 1.27. In their report, the OFT recommended that the legal professional rules should be fully subject to competition law and that in the absence of a clear rationale for current restrictions to be in place, unjustified restrictions on competition should be removed.
- 1.28. In a subsequent report⁹, the OFT welcomed the fact that some of the identified restrictions have been removed or are in the process of being removed. However, it pointed out that the remaining rules that the professional bodies have sought to justify continue to be unnecessarily restrictive and hamper the freedom for suppliers to compete in the legal services market.

⁷ HM Treasury, Budget 2005 – Investing in our Future: Fairness and Opportunity for Britain's hard-working families. http://www.hm-treasury.gov.uk/budget/budget_05/budget_report/bud_bud05_report.cfm

⁸ Office of Fair Trading, March 2001, "Competition in Professions" - <http://www.offt.gov.uk/NR/rdonlyres/B08439C8-C5F6-4946-8AFF-71C050D34F46/0/oft328.pdf>

⁹ Competition in Professions, progress statement, OFT April 2002 - <http://www.offt.gov.uk/NR/rdonlyres/23B43E4F-2D9C-485C-9F7C-4FF8CAB80FAF/0/oft385.pdf>

- 1.29. Markets in which competition is weak not only allow inefficient firms to survive, but can also weaken their incentives to innovate. In the extreme, firms in an uncompetitive environment can use market power to raise prices and restrict output, and hence earn higher profits at their customers' expense.
- 1.30. Free markets will only deliver efficient outcomes if a significant number of consumers have full information about the nature of the goods or services provided, including the price/quality trade-off, to be able to make purchasing judgements.
- 1.31. However, lawyers' customers often lack the detailed knowledge necessary to make an accurate assessment of the value for money of the services they procure, and whether the legal advice and representation they have received can resolve their problems. In addition, the 'credence' nature of legal services means that even after the consumer has received the expert advice, they may still be unable to judge the quality of the advice or representation received.
- 1.32. The problem is exacerbated by the fact that many legal services are purchased infrequently, which means that consumers do not have the opportunity to compare the quality of advice they received against previous purchases. Therefore, the legal services market fails to deliver efficient outcomes, as it does not display the characteristics of a free market.
- 1.33. As mentioned at 1.20, it should also be noted here that on the occasions when people do use legal services it will often be in highly stressful circumstances (e.g. when moving home, resolving a family dispute, involved in a court case or carrying out a business transaction).
- 1.34. This set of circumstances can have the following consequences:
- If any consumers are unable to distinguish between high quality and low quality suppliers, there is a risk that bad suppliers will drive out good suppliers by offering poor quality services.
 - Many consumers do not have sufficient knowledge to judge whether the legal services being provided by lawyers are necessary or adequate. When consulted by consumers, lawyers will usually diagnose the legal problem, suggest remedies and implement them. In circumstances where lawyers may have private interests that differ from their customers, there may be incentives for lawyers to over-provide their services (in terms of quantity or quality) above the socially desirable level.
- 1.35. The existence of information asymmetries in the legal services market argues for regulatory intervention in the market. Indeed, self-regulatory bodies, such as the Law Society and the Bar Council, maintain rules on entry, conduct and business structures which attempt to address the market failures

The need for more effective and independent complaints handling arrangements

- 1.36. Under current arrangements, there are separate complaints and discipline systems for each of the legal professions. If consumers are not satisfied with the way a professional body has handled their complaint, they can take the

matter to the Office of the Legal Services Ombudsman (OLSO) free of charge.

- 1.37. The majority of complaints are about the standard of service that consumers have received. There are far fewer concerns about how the professional bodies discipline their members when they break the rules.
- 1.38. The problems with the handling of complaints against solicitors first came to light in the mid 1980's. Recent research suggests that the consumer's experience has not improved greatly over the intervening period.¹⁰
- 1.39. The proliferation, fragmentation and overlap in the current regulatory framework are also features of the arrangements in the existing complaints handling arrangements. The following are examples of some anomalies, gaps and overlap:
 - The Legal Services Ombudsman (LSO), the Legal Services Complaints Commissioner (LSCC), the Secretary of State for Constitutional Affairs, the Master of the Rolls, the Court of Faculties, the Financial Services Authority (FSA), the Patent Office and the Immigration Services Commissioner are each responsible for varying degrees of external oversight of complaints handling.
 - Complaints against barristers and solicitors are pursued by means of different procedures, even where they are providing similar types of service.
 - A consumer seeking a conveyancing service in a high street firm may, within one transaction, deal with a number of individuals – e.g. a solicitor, a licensed conveyancer and/or a member of the Institute of Legal Executives. If a complaint is involved, there could be up several different complaint mechanisms involved.
- 1.40. Consumers also have concerns about the independence of the current complaints handling arrangements for legal services. Currently professional bodies, such as the Law Society and the Bar Council, are responsible for regulating the conduct of their members, representing their interests, and for handling consumer complaints.
- 1.41. The, at least perceived, lack of independence adds to the feeling held by many consumers that they are at a particular disadvantage in raising a complaint against a lawyer. The absence of significant consumer influence in the complaints handling system is perceived to be lacking in accountability and transparency. As a consequence, the system fails to promote consumer confidence in the legal professions.
- 1.42. In her 2004/5 annual report¹¹, the LSO pointed out that despite some improvements in complaints handling made by the Law Society, she was dissatisfied by the Society's own internal quality control of the complaints

¹⁰ Details of the findings from a series of opinion surveys conducted since 2004 can be found in the response submitted by Which? to the Government's White Paper: The Future of Legal Services: Putting Consumers First. Their response can be found at:

http://www.which.net/campaigns/other/legalservices/0601legalserviceswp_cresp.pdf

¹¹ Annual Report of the Legal Services Ombudsman for England and Wales 2004/2005, Law in Order: Your right to expect better. July 2005. <http://www.olscc.gov.uk/pdfs/OLSCAnnualreport2004-2005.pdf>

handling arrangements. In 2004/05, 17,074 complaints were made against the 96,757 solicitors who were practising in England and Wales that fell within the Ombudsman's remit. Of the 1,265 cases that were referred to the Ombudsman, she was satisfied with the quality of handling in 62% of the cases.

- 1.43. In the same period, 455 complaints were made against the 14,364 practising barristers. Of the 174 cases that were referred to the Ombudsman, she was satisfied with the quality of handling in 78.7% of the cases (a decreasing number over the last three years). The Ombudsman was satisfied with both turnaround times and the quality of complaint handling by the Bar Council.
- 1.44. The Government welcomes the progress that the Law Society and LSCC are making. The Law Society also established a Consumer Complaints Board from 1 January 2006 with a lay majority to oversee its handling of complaints. This is another welcome step.
- 1.45. However, consumers are demanding more when they have complaints about any legal service. Change is needed to meet their demands. Most importantly, they need to be satisfied that complaints are handled independently, without self-interest; that they are handled efficiently, fairly and quickly; and that complaints are used to correct faults in the system.
- 1.46. The Government's White Paper of October 2005¹² identified the main consumer demands with regard to complaints handling as:
 - **Independence:** consumers do not have enough confidence in the current system. They are not convinced by bodies that act as both the team manager and the referee.
 - **Timeliness:** where things go wrong, consumers have a right to expect that their complaints will be dealt with quickly and efficiently.
 - **Consistency and clarity:** consumers need to know whom to go to when they have a complaint. There should be no overlaps or gaps from the consumer's point of view.
 - **Best practice:** professional bodies largely set their own standards, which may not always be consistent nor represent best practice. Quality and best practice – within the legal services sector and beyond it – should be identified and driven through the whole system.

The pathway to reform of the current arrangements

- 1.47. The Government responded to the OFT's 2001 Report entitled "Competition in Profession", with a wide-ranging public consultation exercise¹³. Consumers were clear that their needs were not being met. They felt legal services lacked sufficient orientation towards the consumer; they did not have confidence in

¹² The Future of Legal Services: Putting Consumers First, October 2005 - <http://www.dca.gov.uk/legalsys/folwp.pdf>

¹³ For further information see Department for Constitutional Affairs, July 2003, "Competition and Regulation in the Legal Services Market". <http://www.dca.gov.uk/consult/general/oftreptconc.htm>

self-regulation alone; and experience of poor complaints handling had undermined their confidence in the legal profession.

- 1.48. The Department for Constitutional Affairs' Report which followed in July 2003¹⁴ confirmed the view that:

"the current framework is out-dated, inflexible, over-complex and insufficiently accountable or transparent".

It concluded that a thorough and independent investigation without reservation was needed.

The terms of reference were:

- *to consider what regulatory framework would best promote competition, innovation and the public and consumer interest in an efficient, effective and independent legal sector; and*
- *to recommend a framework which will be independent in representing the public and consumer interest, comprehensive, accountable, consistent, flexible, transparent, and no more restrictive or burdensome than is clearly justified."*

- 1.49. Subsequently, in July 2003 the Government appointed Sir David Clementi to carry out an independent review of regulation of legal services in England and Wales. As part of his review Sir David published his own consultation paper in March 2004¹⁵.

- 1.50. In December 2004, Sir David Clementi published his full report. The report confirmed there was a clear case for reform of the existing **regulatory structure**¹⁶.

"...The current system is flawed. In part the failings arise because the governance structures of the main frontline professional bodies are inappropriate for the regulatory tasks they face. A further cause is the over-complex and inconsistent system of oversight regulatory arrangements for existing frontline regulatory bodies... There are no clear objectives and principles which underlie this regulatory system; and the system has insufficient regard to the interests of consumers. Reforms have been piecemeal, often adding to the list of inconsistencies. The complexity and lack of consistency has caused some to refer to the current system as a maze."

- 1.51. Sir David Clementi also emphasised his concerns about the need for **more effective competition**, and particularly the restrictive nature of current business structures in the provision of legal services in his final report:

¹⁴ *ibid.*

¹⁵ For further information see <http://www.legal-services-review.org.uk/content/consult/review.htm>

¹⁶ For further information see <http://www.legal-services-review.org.uk/content/report/index.htm>

“...business practices have changed. In particular the skills necessary to run a modern legal practice have develop; but whilst those with finance or IT skills may sit on the management committee of a legal firm, they are not permitted to be principals in the business. There is concern also about whether the restrictive practices of the main legal professional bodies can still be justified...”

- 1.52. Sir David recommended the facilitation of legal disciplinary practices, which would bring together lawyers from different legal professions, for example solicitors and barristers working together on an equal footing, and would permit non lawyers to be involved in management and ownership of these practices.

- 1.53. Sir David also expressed concerns about the **complaint handling arrangements** in the provision of legal services:

“There is considerable concern about how consumer complaints are dealt with. The concern arises at a number of levels: at an operating level, there is an issue about the efficiency with which the systems are run; at an oversight level, there is a concern about the overlapping powers of the oversight bodies; and at a level of principle, there is an issue about whether systems for complaints against lawyers, run by lawyers themselves, can achieve consumer confidence. A large number of the responses to the Consultation Paper expressed dissatisfaction with the current arrangements.”

- 1.54. To increase the independence of the complaint system and to simplify the system for consumers and suppliers of legal services, Sir David recommended the establishment of the new Office for Legal Complaints (OLC), a single independent body to handle consumer complaints in respect of all members of FLRs, subject to oversight by the LSB.
- 1.55. In October 2005 the Government set out its agenda for reforming the regulation and delivery of legal services in the White Paper: *The Future of Legal Services: Putting Consumers First*¹⁷. The DCA subsequently consulted widely to further develop the proposals outlined within.
- 1.56. In response to that consultation, the Government has published a draft Legal Services Bill for Parliamentary pre-legislative scrutiny.

The Government’s objectives in reforming the current arrangements

- 1.57. The draft Legal Services Bill develops the proposals set out in the Government’s White Paper and **puts consumers at the heart** of a new framework for the regulation and delivery of legal services. Key outcomes are to create a new regulatory framework that puts consumers first by:

¹⁷ For further information see *The Future of Legal Services: Putting Consumers First*, (October 2005) *op.cit*

- increasing public trust and confidence in the legal sector;
- ensuring consumer interests are represented effectively;
- ensuring competition in the legal services market is not unjustifiably restricted;
- ensuring that appropriate standards of education, training and conduct are maintained;
- improving redress arrangements to ensure that consumers are given quick and fair redress;
- ensuring that appropriate standards are maintained through effective regulation and disciplinary arrangements;
- ensuring access to justice is provided and improved; and
- ensuring the independence of the legal profession from outside influences is maintained.

Devolution

1.58. The Government's proposals have effect in England and Wales¹⁸ only.

¹⁸ The Office of the Immigration Services Commissioner (OISC), an existing statutory regulator, will continue to regulate immigration advisers in the UK who are not members of designated professional bodies and pursue those who flout their regulatory scheme. The OISC will remain the responsibility of the Home Secretary. The LSB will take over the OISC's current responsibility, in England and Wales, to monitor the professional bodies' regulation of their members who provide immigration advice. The LSB and OISC will develop a Memorandum of Understanding to set out cooperation between the two organisations, particularly in respect of quality and standards of service for dealing with complaints

2. Consultation

Engagement with stakeholders

- 2.1. Throughout the development of its proposals, the Government has held discussions with key stakeholders. These include:
- **Consumer organisations:** such as Which?, Citizens Advice, National Consumer Council, the Federation of Small Businesses, the Equality Commission, Complaints against Solicitors Independent Adjudication (CASIA), Reform of Complaints against Solicitors (ROCAS).
 - **Regulatory bodies:** including the Law Society, the General Council of the Bar, the Institute of Legal Executives, the Institute of Trade Mark Attorneys, the Chartered Institute of Patent Agents, the Council for Licensed Conveyancers, the Court of Faculties, the Council of the Inns of Court, the Association of Law Costs Draftsmen.
 - **Other professional representative bodies:** such as City of London Law Society, Association of Personal Injury Lawyers, Resolution, Legal Aid Practitioners Group.
 - **Others include:** Office of the Legal Services Ombudsman, Office of the Legal Services Complaints Commissioner, British Bankers Association, Legal Action Group, Law Centres Federation, Amicus.

Responses to the White Paper

- 2.2. The Legal Services Reform White Paper, published in October 2005, invited comments on the Government's proposals. The Department of Constitutional Affairs received just over 100 responses to the White Paper's invitation for comments. The vast majority of responses received accepted and supported the Government's proposals for reform.
- 2.3. Just over half of the responses represented the views of the legal profession, a quarter of responses were from the consumer organisations or members of the public and the remainder represented other professions, the Not for Profit sector, and other interested parties.
- 2.4. Responses from the larger professional bodies have been mixed, but in the main supportive of the Government's objectives and main proposals. However some bodies have expressed concerns about the need for careful implementation to ensure, for example, that the Government does not create a large bureaucracy in setting up the Legal Services Board. Responses consequently raised concerns about the LSB's governance structure maintaining the professions' independence from government, and about the need to limit further the LSB's powers to ensure that it is proportionate and risk-based. They also continue to press for the Government to contribute to the cost of reform and are opposed to the profession paying for the full costs. They also raised some concerns about the Alternative Business Structure (ABS) proposals, including issues around access to justice and the cost of the reforms.

- 2.5. Responses from the other professional bodies also argued strongly that the Government should contribute to the costs of the new arrangements. There were also some concerns that the voice of the smaller bodies could be lost in the regulatory framework. Some argued for a professional advisory panel. Other concerns included the added bureaucracy of applying ABS safeguards, a concern that the new Office for Legal Complaints (OLC) should not be essentially the Law Society's Consumer Complaints Services "re-badged" and an argument that the OLC should have the power to delegate complaints handling to those FLRs which meet the minimum service standards. Finally, the smaller bodies would like to see a central compensation fund established to which all legal service providers contribute.
- 2.6. The consumer organisations remained extremely supportive of the proposals, as they have been throughout the development of the proposals. Generally their main concern has been that the OLC has sufficient powers to deal effectively with consumer complaints. The Consumer Advisory Panel, which was established to advise the Government on the implementation of the proposals for legal service reform have played a key role in the detail and development of these proposals. Membership of the Panel consists of Citizens Advice, Which?, National Consumer Council, Federation of Small Business and the Equal Opportunities Commission (with the Office of Fair Trading (OFT) assisting the Panel).
- 2.7. Responses from the Not for Profit (NfP) sector were broadly supportive of the prospect of regulation via the ABS framework. Some NfP organisations actively welcome this on the basis that this will provide greater clarity to providers over how regulation applies to them, and more consistent protection for consumers. There were also concerns expressed, however, that the new framework will lead to higher costs for charitable organisations and smaller providers, and that there is insufficient recognition of the different objectives of commercial and NfP providers. Some respondents felt that the proposals in the White Paper for LSB discretion did not go far enough in counteracting the threat of greater regulatory burdens whereas others expressed concerns that these should not mean less scrutiny of NfP practices or the quality of services they offer to consumers.
- 2.8. The Government also received various responses from businesses which were supportive of the ABS proposals and the possible opportunities that these proposals would enable.
- 2.9. The trade union response has been broadly supportive of the proposals for the LSB, OLC and ABS. However, their primary concern was to ensure that the services that they provide are not captured by the definition of legal services and have asked for a specific exemption. They also expressed their wish for any individuals affected by the Government's proposals to be dealt with fairly.

Impact of consultation on the proposals

2.10. Public responses to the Government's White Paper and the results of its stakeholder engagement have resulted in some amendments to the policy proposals set out in the White Paper. The table below identifies the key changes:

	White Paper reference	Change/addition
LSB - Diversity Objective	The White Paper makes references to the general increase in diversity of the legal profession, but does not set it as an objective of the LSB.	The Government considers that the objective of the LSB to "encourage a strong, effective legal profession" should be amended to "encourage a strong, effective and diverse legal profession".
LSB - Consumer Affairs	The White Paper states that members of the LSB Board and Consumer Panel will have between them experience of "consumer affairs".	The Government intends that the legislation should require that the Consumer Panel should have a fair degree of members representation of all types of consumers, including sophisticated consumers who are using reserved services in connection with businesses carried on by them.
LSB - duty to consider representations of FLRs and representative bodies	The White Paper does not set out a general requirement for the LSB to consult the profession, although it must consult the Secretary of State for Constitutional Affairs, its Consumer Panel, the OFT and the Senior Judiciary when authorising/ deauthorising FLRs, bringing in unregulated activities under the LSB's scope, regulating directly, reviewing targets/sanctions or altering the rules of an FLR.	The Government intends to place a duty on the LSB to consider the representations of FLRs or representative bodies before exercising its powers (e.g. the power to issue a direction). The LSB, once it is established, will have the flexibility to decide the most effective way to consult the profession in exercising its other statutory functions, including the option of setting up a Professional panel.
ABS - register for ABS firms	The White Paper did not mention the maintenance of a register of ABS firms.	The Government considers that ABS regulators should be under a duty to maintain a publicly accessible register of their licensed ABS firms. The LSB will be required to make the rules governing the registers.
ABS - removal of HOLP	The White Paper proposed that ABS regulators would	This requirement will not be set out in the legislation.

	White Paper reference	Change/addition
	have to provide consent before an ABS firm could remove the HOLP.	
Complaints - role of Ombudsmen	The White Paper proposed that complaints about lawyers would be determined by arbiters.	The Government considers that complaints should be determined by ombudsmen rather than arbiters
Complaints - name of the new complaints handling body	Sir David Clementi referred to the complaints body as the “Office for Legal Complaints”, and the Government has since adopted this term in public discussion – including in the White Paper.	Provision has been made in the legislation to allow the new complaints-handling body to determine its own trading name (i.e. as part of the Government’s preferred branding for Alternative Dispute Resolution schemes, the OLC could choose to operate under a title including the term Ombudsman).

3. Sectors and Groups Affected

3.1. The Government has identified that the following sectors and groups will be affected by its proposals:

- Consumers of any legal services;
- Members of the legal professions that provide reserved legal services (barristers, solicitors, legal executives, licensed conveyancers, notaries, patent agents, and trademark attorneys);
- Legal professional and/or regulatory bodies that regulate the provision of reserved legal services (Bar Council, Law Society, Institute for legal Executives, Council for Licensed Conveyancers, Court of Faculty, Chartered Institute of Patent Agents, and the Institute of Trade Mark Attorneys);
- Providers of unreserved legal services, including general legal advisors, will writers, employment advisors and claims managers¹⁹;
- Businesses and organisations that currently employ 'in-house' lawyers;
- All NfP organisations that offer legal advice and purchase legal services;
- Government and the Government Legal Service;
- Existing oversight regulators (e.g. the OFT);
- Potential investors/partners in ABS firms;
- Providers of immigration services and the Immigration Services Commissioner; and
- The Offices of the Legal Services Ombudsman and Legal Services Complaints Commissioner.

¹⁹ The Government has proposed to introduce a statutory framework for the regulation of claims management services. Measures to achieve this have formed part of the Government's Compensation Bill which is currently before Parliament.

4. Reforming the Regulatory Framework for Legal Services

Options for reform of the regulatory framework

4.1. The following options for the reform of the regulatory framework for legal services have been considered:

- **Option 1 – Do nothing**

4.2. The current regulatory arrangements for legal services would be retained. Under this option, the weaknesses of the current system of regulation for existing front-line professional bodies that are over-complex and inconsistent will remain. Moreover, some existing front-line professional bodies will retain their dual roles of representing and regulating their respective professions. There is a risk that regulations on conduct and business structures would continue to be set with insufficient regard to protecting and promoting consumer interests, and promoting competition.

- **Option 2 – A new single regulatory authority**

4.3. Under this option a single regulatory authority, **the Legal Services Authority (LSA)**, would be created. It would be based largely on the Financial Services Authority (FSA) model, and would exercise full regulatory control over the provision of all legal services. The LSA functions would be analogous to those that the FSA possesses, including the setting and enforcement of the rules and codes governing service provision, giving guidance and advice on general policy, and exercising investigative, enforcement and disciplinary powers. Regulatory power would be taken away from existing self-regulating bodies and vested in the LSA, with the existing professional bodies relegated to a solely representative role.

- **Option 3 – An oversight regulator**

4.4. Under this option, a new independent oversight body, **the Legal Services Board (LSB)** would be created. The LSB would assume the roles and responsibilities of the range of existing oversight regulators, providing consistent and appropriate oversight of front-line regulators (FLRs). These would be existing (or new) professional or other bodies which could seek authorisation from the LSB to act as FLRs for the provision of reserved legal services, to perform the day-to-day regulatory functions. In considering applications for authorisation, the LSB would want to ensure that FLRs met its requirements (e.g. in having appropriate governance arrangements that provide for a clear split in the exercise of their regulatory and representative functions).

4.5. In addition, if the LSB was satisfied that an authorised FLR was not exercising its regulatory functions to a high standard, it would have the power to take action, including the right to de-authorise the failing FLR. Where there is no appropriate FLR the LSB will have the power to regulate authorised persons directly. Where it is doing so, the LSB will have powers conferred on it to ensure that it can provide effective regulation. In addition, to provide

additional consumer protection, the LSB could apply for designation as an enforcer under Part 8 of the Enterprise Act 2002. This would provide the LSB with the power to seek “stop now” orders. In effect this means that the LSB will be able to obtain a court order to require practices or individual practitioners to cease carrying out a specified activity immediately, where that activity breaches certain legislation and harms the collective interests of consumers. This can be used in rare cases of flagrant and particularly damaging abuse.

- 4.6. Additional legal service activities would be brought into, or taken out of, the scope of the LSB’s regulatory reach by secondary legislation. There would be a statutory requirement for the LSB to consult the OFT, the Secretary of State the higher judiciary and its Consumer Panel²⁰ about its regulatory decisions. The LSB would also enter discussions regularly with other statutory regulators, such as the Financial Services Authority (FSA), on regulatory issues.
- 4.7. This is the option preferred by the Government on reforming the regulatory framework for legal services. Through retaining the day-to-day functions of the existing professional bodies, the proposed regulatory framework will be able to utilise the expertise of the legal professional bodies whilst providing an oversight sight body that has the powers to ensure that regulation is set according to consumers’ interests. The LSB will be less bureaucratic whilst reducing the potential for additional regulatory burden on both professional bodies and firms, encouraging competition and innovation in the market and possibly reducing the price of legal services whilst improving the quality of legal services. Most importantly the LSB will have the power to ensure that the regulation of the profession is consistent with all the objectives of the Government’s reform of the regulatory framework for legal services in England and Wales.

Benefits and costs of options of reforming the regulatory framework for legal services

• Option 1 – Do nothing

Benefits

- 4.8. There would be no additional economic or social benefits arising from this option.

Costs

- 4.9. Through retaining the current regulatory arrangements for legal services, the weaknesses of the system, such as its over-complex and inconsistent arrangements, would remain. Consumers will continue to lack the knowledge necessary to make accurate assessments of the value for money of the services they have purchased and/or whether the legal advice and representation they received can solve their problems. In addition, there is a risk that regulations on conduct and business structures would continue to be

²⁰ The Consumer Panel would advise the LSB on the need of consumers of legal services. The members of the Panel would be appointed on merit and would have experience of consumer affairs.

set with insufficient regard to protecting and promoting consumer interests, and promoting competition, innovation and diversity in the legal profession.

- 4.10. There would be no additional policy costs arising from this option. Using information provided by the legal professional bodies, PricewaterhouseCoopers (PwC), in their independent report on the regulatory reform of legal services²¹, estimate that the total regulatory costs in 2005-06 were some £97.4m. Of these costs some £64.9m relate to regulatory functions including disciplinary costs²². The estimate does not fully capture the opportunity cost of the time spent by high-level regulators (e.g. senior judicial and ministerial time), and therefore understates the total costs of regulation in this respect.
- 4.11. The Law Society's costs represent a substantial proportion of this total at approximately 71%.

- **Option 2 – A new single regulatory authority**

Benefits

Economic benefits

- 4.12. As all regulatory functions would be vested in and carried out by the LSA, which has an objective of promoting consumer interests, the emphasis on service-driven regulation should reduce the risks of regulations on entry to the professions, and conduct and business structures being set more strictly than necessary. This in turn should help promote competition and innovation in the legal services market. Provided that the LSA can be an effective organisation in ensuring that regulation is in the consumer interest rather than that of providers, prices for legal services should fall and the market would expand, to the benefits of consumers.
- 4.13. The creation of a single and independent regulator that removes the self-regulatory elements within the regulatory framework and has significant non-legal/consumer influence should lead to greater accountability by reducing conflicts of interest, which can arise, between the regulatory and representative functions of the professional bodies. This will also improve the transparency of regulatory procedures and increase regulatory certainty. This in turn should increase consumer confidence in the professions, potentially leading to an increase in the demand for legal services.
- 4.14. A single regulator is likely to give rise to the harmonisation of regulation and the reduction of regulatory inconsistencies for the legal sector. The resulting reduction of regulatory burden stemming from the duplication of regulatory functions²³, and increases in efficiencies could lower compliance costs for existing suppliers, and would attract new entrants into the sector, increasing competition and innovation. Harmonisation of regulation should also prevent suppliers from taking advantage of the operation of different regulators covering the same services by choosing the one most convenient for them.

²¹ PwC's independent report is published on DCA's website and can be found at: <http://www.dca.gov.uk/legalsys/lrreform.htm>

²² This includes enforcement, rule making, monitoring, rule-making activities and setting entry standards, but excludes complaints handling and disciplinary costs.

²³ See Section 1, Rationale for Government Intervention to Reform the Regulatory Framework

This will reduce the risk of regulations being weakened and consumer protection endangered. As a result, the quality of legal services should improve, to the benefit of consumers.

- 4.15. The fact that the LSA has the power to set and impose directly professional rules, standards of services and rules of conduct consistently across the legal professions would mitigate the risk of regulatory capture²⁴. This would ensure that decisions made regarding regulatory issues, are taken independently and facilitate consumer input into the decision making process, thus protecting consumer interests.
- 4.16. A single regulator should help in facilitating more consistency in training and entry standards, permitting common training between different legal service providers and making it easier to transfer between them. This should lower the barriers to entry to the legal services market for potential new entrants, and promote diversity and competition amongst providers.
- 4.17. A single regulator should provide a clear forum for dealing with any conflicts in the objectives within the regulatory regime. It is better that resolution of such conflict rests within one accountable body, rather than in separate bodies with different vested interests.
- 4.18. A single regulator should permit significant flexibility in the system. The emergence of new services that require regulation would not require the setting-up of new bodies to regulate them in the future. This would reduce the propensity to create regulatory anomalies and gaps. A single regulator would also make it easier to regulate Alternative Business Structures firms (ABS), through the simplification and concentration of regulatory powers in one body.

Social benefits

- 4.19. A single regulator is likely to give rise to greater consistency, providing a single coherent system of authorisation, supervision and investigation, which will demonstrate transparency and accountability to the consumer. In addition, clearer lines of responsibility and greater accountability for the objectives of the regulatory system will lead to greater consumer confidence and awareness of consumer rights.
- 4.20. The shift away from a professionally-driven approach to one that is more service-driven might be accompanied by a more consumer-driven approach, one that emphasised the need to satisfy consumer interests rather than sustain the standing of the professional provider. This should improve customer relations and society's perception of legal service providers.

Costs

Economic costs

- 4.21. There would be a substantial risk that by increasing workload after its creation and without sound management, the LSA could become an overly bureaucratic and inefficient organisation, with consequent issues of costs and

²⁴ Regulatory capture occurs when regulators advocate the interests of the suppliers that they regulate rather than the consumer

unwieldy procedures. In addition, it is possible that regulatory expertise would be lost during the transitional period through the abolition of the professional bodies' regulatory powers. Moreover, with all regulatory functions being performed by the LSA, the potential for competition between the professional bodies, in the provision of representative and regulatory services, would be removed.

- 4.22. There is a risk that the creation of the LSA would produce additional regulatory burdens on the professions (compared to alternative options considered by the government), thus incurring significant additional compliance costs for existing and potential new suppliers. This may result in existing suppliers transferring the additional costs to consumers, leading to price increases without any corresponding increase in quality. Moreover, there is a risk that these costs would fall disproportionately on legal practitioners in rural areas and small practices, and potentially be passed onto their customers, as there would be fewer practitioners in these practices to shoulder the additional cost burdens. The additional costs may also result in a rise in entry costs sufficient enough to deter potential new entrants to the legal services market, stifling competition and reducing the incentives for existing suppliers to innovate.
- 4.23. Establishing an independent LSA with all regulatory powers vested in it would make it less likely that the expertise of the professional bodies for setting the levels of entry standards and training, formulating professional rules, monitoring compliance and enforcing the necessary codes of conduct would be utilised. It would be less likely that the professions would be willing to give up time freely to support the regulatory system and consequently the cost of information for the formulation and interpretation of quality standards may rise.
- 4.24. Without the expertise of the professions, the risk increases for the regulatory framework to be set inappropriately, to the detriment of consumers and the professions. Furthermore, the removal of regulatory functions from the professions may lessen the feeling of responsibility professionals have for the quality standards of their professions and thus increase monitoring and enforcement costs.
- 4.25. Although the LSA would be independent from government and fully funded by the professions, the fact that all regulatory powers are vested in the LSA may increase scepticism regarding the independence of the legal professions from outside influence. It has been argued that the resulting detrimental effect on the confidence of the UK legal professions may deter foreign consumers of legal services from using the UK (and London in particular) as a centre for international and commercial litigation and arbitration. Figures show that up to 4,000 international disputes a year take place in London, and above 90% of disputes handled by international law firms in London involve at least one foreign party with monies in dispute totalling over US\$40 billion in 2002²⁵.
- 4.26. Using the information provided by the legal professional bodies, the operating cost for the LSA, including disciplinary functions, were estimated in PwC's Final Report²⁶ to be £66.4m annually. This represents a total estimated net

²⁵ International Financial Services London, (March 2005), *Legal Services: City Business Series. op. cit.*

²⁶ PwC's independent report is published on DCA's website and can be found at:
<http://www.dca.gov.uk/legalsys/lisreform.htm>

additional annual ongoing costs of £1.5m greater than the current costs of separate legal regulation (i.e. the “Do Nothing” option).

- 4.27. Using broad assumptions, the PwC report estimates that the transition costs associated with the establishment of the LSA represent £55.3m, spread over three years either side of the LSA inheriting its powers and duties.

Option	Annual Running Costs	Transition Costs (two years before vesting)	Transition Costs (one year before vesting)	Transition costs (one year <u>after</u> vesting)
	£000	£000	£000	£000
Do nothing	64,900	n/a	n/a	n/a
With Legal Services Authority	66,400	11,550	16,740	27,000

Costs in 2005-06 prices.

Social costs

- 4.28. Aside from the social costs referred to under the economic costs section there would be no additional social costs arising from this option.

• **Option 3 - An oversight regulator**

Benefits

Economic benefits

- 4.29. By providing a single point of consistent oversight regulation, the establishment of the LSB would lead to a reduction of inconsistencies in the current regulatory framework in the form of regulatory proliferation, confusion, fragmentation and anomalies for the legal sector. The process of altering professional rules as a response to changes in market condition would also be streamlined. This should result in a reduction in regulatory burden for existing suppliers and an increase in efficiency. Consequently, new entrants would be attracted to the legal services market, increasing competition and driving innovation within the sector.
- 4.30. The flexibility of the system that allows the LSB to authorise new and current FLRs to regulate their members in the provision of a range of existing legal services and newly reserved areas of legal services, would help facilitate Alternative Business Structures (ABS) and consequently encourage competition and innovation in the market.
- 4.31. In addition, this flexibility should also increase competition for the rights to regulate the ABS firms that offer the said services, leading to efficiency drives amongst the ABS regulators and reducing regulatory burdens for ABS firms. Moreover this flexibility should ensure that consumers are appropriately protected, especially with the legal services market developing rapidly and new forms of legal services emerging.

- 4.32. An LSB that has a statutory objective to protect and promote consumer interest would reduce the risk of regulations on entry to the professions, conduct and demarcation, being set more strictly than necessary, to the detriment of competition and innovation in the legal services market. The LSB will have a duty to ensure that such regulatory restrictions are applied in a manner that does not deprive consumers of a strong, effective and diverse profession, in the long run.
- 4.33. A regulatory framework that gives responsibility for the regulatory functions to FLRs with an LSB that provides consistent oversight means that the expert knowledge of the legal professions for setting entry standards and training, formulating professional rules, monitoring compliance and enforcing the necessary codes of conduct would be retained. The risk of losing regulatory expertise during any transitional period should also be reduced. Leaving the day-to-day regulations as far as possible to the FLRs would also be more likely to increase the commitment of suppliers to high standards, reducing the risk of rising monitoring and enforcement costs.
- 4.34. The duty of the LSB to consult with the Office of Fair Trading (OFT) when authorising new FLRs, or adding to or removing from the list of reserves legal services, will encourage a balance and enforcement of competition issues as the LSB and OFT sees fit. In addition, the LSB will be under a duty to respond to any competition issues that the OFT brings to its attention. This will reduce the risk of competition being stifled by anti-competitive practices, maintaining the benefits of innovation and diversity within the market.
- 4.35. Through the regulatory powers being retained by the FLRs and the LSB's role as an independent oversight regulator, the risk of increasing the scepticism regarding the independence of the legal professions from outside influence would be reduced. It has been argued that this may reduce the likelihood of deterring foreign consumers from using the UK (and London in particular) as a centre for international and commercial litigation and arbitration. As detailed in paragraph 4.42, such activities are beneficial for the international reputation of the UK's legal profession and the UK economy.

Social benefits

- 4.36. If the oversight body was not created and the professional regulatory bodies were only required to separate their regulatory and representative functions, as Law Society has suggested, there would still remain a number of deficiencies in the regulatory framework which these arrangements would not address. More specifically, by introducing the LSB the inconsistencies in the existing regulatory framework would be eliminated and the LSB, acting as an independent oversight regulator would be best able to identify best practices to meet the objectives of reforming the regulatory framework.
- 4.37. Through the creation of an oversight regulator, the regulatory framework would provide consumers with better protection as an oversight body would monitor the legal services sector and ensure that regulatory gaps are anticipated and tackled before consumers are put at risk. In addition, the separation of the regulatory and representative functions of the professional bodies will not ensure that the facilitation of the ABS will be adequately accommodated. The LSB will be responsible for authorising the ABS

regulators who will licence businesses to provide legal and non-legal associated services to consumers. We anticipate that ABS will encourage competition and innovation in the provision of legal services.

- 4.38. The separation of the regulatory and representative functions of the professional bodies alone will not contribute to increasing the confidence of the consumers. By creating the LSB, there will be an independent oversight body that is independent from the Government and the profession, and can therefore focus on promoting consumer interests and the outlined objectives of reforming the regulatory framework. Such a system will help to increase consumer confidence in the system and improve the professional standing of providers.
- 4.39. The LSB would be an organisation that is smaller, less bureaucratic and more efficient than the LSA model. As such it would have a greater ability to adjust flexibly to future changes in the legal services market, and to make the appropriate regulatory response. This should aid the future development in the market, in particular the possible expansion of the role of ABS firms in the provision of legal services. Further, this may also bring positive benefits in terms of increasing access to justice especially to the most vulnerable sections of society, such as those consumers restricted through geographical access to legal services and those with special needs.
- 4.40. In accordance with the objectives of the new regulatory framework, the LSB will aim to operate openly and transparently so consumers can understand its decisions and hold it to account. The LSB will carry out ongoing consultation with consumers and will establish and maintain a consumer panel, further demonstrating its dedication to consumer interests. It is anticipated that this feature of the LSB will instill greater confidence in consumers.
- 4.41. The clear separation of regulatory and representative functions, which the LSB would require FLRs to have in place, in conjunction with an oversight regulator would lead to greater accountability, transparency and an increase regulatory certainty. The LSB's retention of the right to carry out regulatory functions directly, should front-line bodies fail, provides an incentive for FLRs to regulate their professions in ways which are in the consumers' interest and in line with the LSB's objectives.
- 4.42. Under the LSB, the front-line regulatory powers would be exercised at FLRs' level, subject to regulatory competencies and governance arrangements. The fact that day-to-day regulatory functions would be performed by FLRs themselves, would support the principle that the legal profession should be independent of government to be demonstrated more clearly, compared to the LSA model. This should mitigate any potential impact on UK legal services' international standing. In particular, this should reduce the risk of withdrawal of foreign purchasers and supplier of legal services from the UK legal services market, and the likelihood of English lawyers being prohibited from carrying out legal work within the foreign jurisdictions post-reform, compared to the LSA option.

Costs

Economic costs

- 4.43. Under the LSB option, the legal professions would be subject to regulations set by the existing professional bodies (once authorised by the LSB). These regulations, and other regulatory arrangements, would require the approval of the LSB before coming into force. In addition, if in the future the LSB decides to widen its regulatory net to include previously unregulated professions, then there is a possibility that new regulatory costs would fall on practitioners of those professions. As such, although suppliers may pass on any additional regulatory costs to consumers, this should be minimal, as increased competition amongst suppliers will provide an incentive for suppliers to identify cost-saving strategies to keep prices relatively low.
- 4.44. The LSB's ability to adapt to changes in the legal services market (including the possibility to widen its regulatory net) would not be without significant benefits. Oversight regulation conducted by the LSB would drive efficiency in the market whilst protecting consumer interests. The result of this would be a consistent level of high-quality provision across all professions within legal services.
- 4.45. There is a possibility that the FLRs may utilise their knowledge of the current market conditions of the legal services' market via the day-to-day businesses of their members, to formulate regulations that put the interests of the professions above those of consumers. However, there are safeguards in place to substantially reduce the incentives of bodies to set regulations in such a way that harm consumers. Such safeguards include the ability of the LSB to approve and/or direct that a rule be called in or amended and impose sanctions, with de-authorisation of the FLR as the last resort.
- 4.46. In regards to the application of these safeguards, the LSB will also be required to act proportionately exercising its powers consistent with the need to ensure effective regulation.
- 4.47. In their independent report²⁷ on the costs of the Government's proposed arrangements, PwC identify the ongoing annual running costs of regulatory system, including disciplinary costs, under the LSB model to be around £67.3m. The key driver for the difference in costs compared to the 'do nothing' option (which is estimated to cost £64.9m) is the additional annual running costs of a Legal Services Board which is estimated at £3.6m (as per PwC's base-case scenario).
- 4.48. This represents a total estimated net additional annual ongoing costs of £2.4m greater than the current costs of separate legal regulation (i.e. the "Do Nothing" option).
- 4.49. The cost of the LSB option is also approximately £900,000 per year more than the LSA. In spite of the much lower annual running costs of the LSB oversight regulator (£3.6m against £66.4m), it is estimated that with the LSB option, £63.6m of the costs will remain with approved regulators (as the powers and duties of day-to-day regulation will be delegated down from the

²⁷ PwC's independent report is published on DCA's website and can be found at: <http://www.dca.gov.uk/legalsys/lrsreform.htm>

LSB to approved regulators) under the new system. This is because the FLRs will continue to incur costs (e.g. staff and accommodation costs) in largely the same way as they do at present.

- 4.50. The Government are content that the small increase in regulatory costs are justified by benefits accruing to consumers and the legal service sector as a whole from the introduction of an oversight regulator (as discussed above). This increase in regulatory costs with the LSB option should be seen in conjunction with the decrease in costs attributable to bodies involved in the regulatory framework from the creation of a single, independent complaints handling body (see 6.34 onwards).
- 4.51. PwC's base case costs quoted above is estimated on the assumption that the LSB would have a core staff of 39 staff, with a 9-member board and a 10-person Consumer Panel in an out-of-London location. The estimate assumes that the underlying nature and volume of regulatory activities under the new LSB would not be substantially different from those performed under the current regulatory framework.
- 4.52. The main driver for the LSB's estimated annual running costs of £3.6m are direct staff costs of £1.9m.
- 4.53. PwC have estimated transitional costs of £2.3m for the LSB which will be spread over approximately three years either side of vesting powers in the new oversight regulator. The largest transition cost, £900,000 relate to new premises costs (rent, rates and insurances). The majority of transition costs (£1.6m) will fall in the year before vesting powers in the LSB.

Option	Annual Running Costs	Transition Costs (two years before vesting)	Transition Costs (one year before vesting)	Transition costs (one year <u>after</u> vesting)
	£000	£000	£000	£000
Do nothing	64,900	n/a	n/a	n/a
With a Legal Services Authority	66,400	11,550	16,740	27,000
With a Legal Services Board	67,250	200	1,580	500

Costs in 2005-06 prices.

- 4.54. PwC's report also identifies £1m of additional "implementation costs" of setting up a task force for detailed organisation design for the LSB and an independent complaints handling body (i.e. the OLC). These costs are estimated to fall in the year before powers and duties are vested in the new bodies.
- 4.55. In their independent report, PwC have also costed alternative scenarios over and above their base case. This included costing for an incremental increase in the level of activity and locating the LSB in the North of England or London. A combination of these variables could result in the annual ongoing running costs of the LSB rising to £5.6m (base-case plus incremental level of activity

and located in London). Under this alternative scenario, transition costs could also rise by approximately £600,000.

Social costs

- 4.56. Entity regulation could dilute personal ethical responsibilities and regulatory accountability of individual solicitors. The removal of self-regulation could also demoralise legal practitioners increasing the risk of lowering quality standards to the detriment of consumer interests. However, through the FLRs retaining the responsibility for ethical and regulatory accountability, this should be prevented.

5. Facilitating Alternative Business Structures (ABS) in the Provision of Legal Services

5.1. The following options for facilitating ABS in the provision of legal services have been considered:

- **Option 1 – Do nothing**

5.2. Under this option, restrictions on alternative business structures in the legal professions could remain. In particular, restrictions on the formation of new business structures, both amongst legal practitioners of different types, and between lawyers and non-lawyers, would be able to stay. External financing from non-lawyers into legal practices would continue to be prohibited by most legal regulators. This option would not attract any additional costs or create any additional burdens. It would not, however, address the concern that the restrictive practices of the main legal professional bodies, in particular those which prevent different types of lawyers working together on an equal footing, may have adverse effect on competition and innovation in the legal services industry.

- **Option 2 – Facilitate the formation of legal disciplinary practices (LDPs)**

5.3. Under this option, lawyers from different legal professional bodies would be permitted to form legal disciplinary practices (LDPs). Non-lawyers would be permitted to be managers of LDPs, with roles to enhance the provision of legal services, but not to provide other non-legal services to the public. Outside ownership would be permitted, provided that the owners are cleared by the regulatory authorities as fit to own the LDP.

5.4. In the regulation of LDPs, a recognised front-line regulator (FLR) would apply to the LSB for authorisation to regulate the designated types of LDPs. To obtain the authorisation from the LSB, the FLR would need to demonstrate its competence in the legal areas it wants to regulate and to satisfy the LSB of its governance and administrative arrangements. A prospective LDP would apply for a licence to be regulated by a FLR, the granting of which depends on whether the specified legal service areas proposed by the applicant fall within the terms of the authorisation granted by the LSB to the FLR, and on whether the applicant meets the relevant safeguard tests. In particular, the prospective LDP must nominate:

- a Head of Legal Practice (HOLP), a qualified lawyer subject to approval by the Regulator as a suitable candidate for the function of ensuring compliance in relation to the legal areas in which the ABS will practice
- a Head of Finance and Administration (HOFA), approval by the Regulator as a suitable candidate for the function of ensuring compliance in relation to practice management, particularly handling of clients' monies.

- **Option 3 - Facilitate alternative business structures (ABS) in the provision of legal and other associated non-legal services via a licensing regime**

- 5.5. Under this option, it would be possible for different lawyers and providers of associated non-legal services to obtain a licence to establish ABS firms²⁸ that contain multiple disciplines, with external financing, subject to the approval of a professional body that has obtained an authorisation from the LSB to regulate that form of ABS. Under the proposed arrangement, it would be open to a FLR to seek authorisation from the LSB to regulate ABS firms. The application would need to set out precisely the activities which the prospective ABS regulator is seeking to license, the governance arrangements which it has in place, and its competence to regulate the activities it proposes to license. If one of the activities the ABS regulator is seeking to license involves an area outside the legal profession (e.g. financial services), the LSB would also have to co-operate with regulators of other regulated services (e.g. the FSA) before giving its authorisation.
- 5.6. In addition, the ABS firm must meet the standards set by the FLR. ABS firms could be 100% financed externally at the outset, but the ABS regulator would be required to ensure that the ABS firm acquires appropriate indemnity insurance cover. External investors in ABS firms must also pass a robust 'fit to own' test set by the FLR/LSB before being permitted to invest in the firm. This test would be triggered by an amount prescribed in statute and subject to any supplementary requirements imposed by the rules of ABS Regulators. .
- 5.7. Moreover, a prospective ABS must nominate:
 - a Head of Legal Practice (HOLP), a qualified lawyer subject to approval by the Regulator as a suitable candidate for the function of ensuring compliance in relation to the legal areas in which the ABS will practice
 - a Head of Finance and Administration (HOFA), approval by the Regulator as a suitable candidate for the function of ensuring compliance in relation to practice management, particularly handling of clients' monies.
- 5.8. Legislation will require the LSB to monitor the provision of legal services across different sectors and geographically, and use the results to inform its regulatory decisions. This will include the authorisation of, and the imposition of any conditions upon ABS regulators in accordance with the LSB's objectives. Furthermore, the LSB would be able to take appropriate actions against ABS regulators if they violate the terms of authorisation, and against the ABS firm if it violates the terms of its licence.
- 5.9. This is the Government's preferred option on facilitating ABS in the provision of legal services. The ABS licensing regime is much less restrictive than the LDP option, allowing firms to offer both legal and associated non-legal services. ABS firms that contain a mixture of lawyers and non-lawyers could lead to the sharing of good management practice, technological innovation and efficiencies across the market enhancing competition amongst firms and potentially reducing the price of legal services. In addition, access to external finance will enable firms to spread start-up risks, access equity to expand

²⁸ In this context, 'ABS firm' is a generic term for all types of legal business entities (e.g. commercial, NfP) that might be considered for ABS.

their business, diversify and improve the efficiency of their service provision to the benefit of customers.

Benefits and Costs of facilitating Alternative Business Structures for the Provision of Legal Services

- **Option 1- Do nothing**

Benefits

5.10. There would be no additional economic or social benefits arising from this option.

Costs

5.11. The current unjustified restrictions on business structures in the legal services market will be able to remain. The inflexibility of the arrangements will continue to stifle competition in the market to the detriment of legal services providers and consumers. In addition, the lack of incentives for providers to improve productivity, reduce costs and innovate whilst rewarding consumers with low prices, higher quality and wider choice will continue to persist. The retention of the current restrictions will also have an impact on the UK's international competitiveness as English law firms are unable to adapt to the ever-growing global changes in technology, innovation and consumer-oriented focus.

- **Option 2 – Facilitate the formation of legal disciplinary practices (LDPs)**

Benefits

Economic benefits

5.12. Enabling a wider range of business structures in legal services should benefit consumers and suppliers by allowing the legal services market to work better. This is because competition between existing suppliers, and potential competition from new suppliers and from new forms of supply, would be less restricted as a result of the removal of the current restrictions on partnerships between legal practitioners. In particular, allowing new capital from outside the legal service industry should increase capacity and exert a downward pressure on prices²⁹ via increased competition.

5.13. In addition, allowing the formation of LDPs would increase the scope of sharing the risks of starting a new firm amongst new entrants to the legal services market, leading to a decrease in financing costs. This would lower the barriers to entry for potential new entrants, potentially increasing the number of suppliers in the market, stimulate more competition and encourage innovation, leading to an increase in the quality of the services.

²⁹ It has been noted that a combination of technology, regulatory changes and the removal of the ban on advertising have resulted in reductions in the prices of conveyancing services. See Stephen, F. H., Love, J. H. & Paterson, A. A., (November 1994), *Deregulation of conveyancing markets in England and Wales*, Fiscal Studies, 15, pp. 102-118

- 5.14. The exploration of integrated legal practices would bring greater convenience to consumers by allowing a one-stop shop for different types of legal services e.g. car insurance and accident claim services. In addition, integrated legal practices would provide opportunities for LDPs to gain from economies of scale (economies of scope and/or economies of specialisation). If so, it is expected that the costs of these legal services would fall, as consumers would now have the opportunity of purchasing services from a single LDP, if they prefer, rather than having to purchase from a number of suppliers. The degree of the reduction in costs, however, would depend on the level of competition in the legal services market.
- 5.15. Allowing external investment in LDPs would give these firms access to a wider pool of capital, for example via share issue, that can be used for new investment such as upgrading infrastructure and greater innovation towards the provision of legal services in more consumer-friendly ways, which should then generate scope for further efficiency gains³⁰. Additionally, the increased access to external financing and the inherent flexibility of LDPs would give more opportunities for owners to invest in expanding their businesses to take advantage of any changes in legal services market, and help to maintain or increase the international competitiveness of the UK legal service sector³¹.
- 5.16. External owners of LDPs may seek to float a stake in the stock market which could then improve efficiency by sending a market signal concerning the future prospects of the firm, which prospective recruits and investors may find valuable in choosing among alternative employers and investments, and which the LDP could find useful for evaluating its own performance³².
- 5.17. In addition, the reduction of the need for partnership equity in LDPs would lower the barriers to entry for potential new entrants³³, potentially increasing the number of suppliers in the market, and should help to stimulate more competition and encourage innovation. It would also allow owners and partners of LDPs to diversify their risks, lowering the cost of capital, and facilitating their withdrawals from the legal services market by making their interests more liquid³⁴.
- 5.18. Permitting different types of legal service to be delivered via new business structures should enable more efficient delivery than at present. Corporations, with separate owners and managers, tend to provide personal legal services that involve relatively small but numerous transactions of a similar nature more efficiently, while partnership structures would be best for the more complex, diverse and relatively infrequent transactions.

³⁰ It has been argued that permitting external financing of law firms would be key to the introduction of more information technology to reduce the costs of personal legal services that involve relatively small but numerous transactions of a similar nature, and that under the current rules similar transformation would be unlikely to take place. See Dow, J. and Lapuerta, C., (2005), *The benefits of multiple ownership models in law services*. [<http://www.dca.gov.uk/legalsys/lreform.htm#cr>]

³¹ It has been argued that the strong competitive position of English law firms is likely to be maintained *only* if the legal profession is adaptable. See Brealey, R. A. and Franks, J. R., (2005), *The organisational structure of legal firms; a discussion of the recommendations of the 2004 Review of the Regulatory Framework for Legal Services in England and Wales*. [<http://www.dca.gov.uk/legalsys/lreform.htm#cr>]

³² See Dow, J. and Lapuerta, C., (2005), *op. cit.*

³³ It has been suggested that the illiquidity of partnership equity places the law firm at some competitive disadvantage in recruiting. Brealey, R. A. and Franks, J. R. (2005). *op. cit.*

³⁴ Dow, J. and Lapuerta, C., (2005) and Brealey, R. A. and Franks, J. R., (2005), *op. cit.*

- 5.19. External financiers of LDPs may want to build up reputation of the newly-established LDPs by developing brands and by ensuring the quality of the services they offer satisfy the consumers' demands³⁵. Once the reputation has been established, the LDPs would have strong incentives to maintain the high quality of services such that business would not be lost as a result of tarnished reputations. As a result, the owners may demand stricter operational discipline such as higher level of internal controls with checks and balances in connection with consumers' monies (in particular if the LDP becomes a public limited company) to protect the reputation, which could potentially lead to an increase in efficiency. This should also lessen the likelihood of harm done to consumers due to conflict of interests³⁶.

Social benefits

- 5.20. It is anticipated that innovations in the legal services market, driven by the expected increase in the level of competition in the market, could lead to the introduction of new customer service techniques and new channels for delivering services. As a result, less mobile consumers and those living in rural areas, may find it more convenient to purchase legal services, enhancing access to justice.
- 5.21. One example of how embracing new technologies and marketing ideas can benefit legal service providers and consumers alike is the model used by firms such as Shop4Law³⁷. Shop4Law use an internet-based programme through which consumers identify their personal needs and are matched with individual legal service providers. For solicitors, Shop4Law are an innovative way to promote themselves and develop their businesses in a cost effective way. For consumers, the website provides a convenient and user-friendly way of finding a solicitor who is most closely aligned to their preferences (be they location, experience, cost or speed of service).
- 5.22. The reduction of the need for partnership equity in LDPs is expected to provide more opportunities to a wider range of individuals, such as female legal professionals³⁸ and those from lower income groups³⁹, who have the required competence but not the capital or time to progress within existing legal partnership arrangements. It should also make it easier for LDPs to hire and retain high-quality para-legal and managerial staff.
- 5.23. The potential increase in the number of suppliers in the legal services market may also raise the possibility of increased training opportunities for law students, including those from under-represented groups. In particular, it has been pointed out that the increased flexibility provided by LDPs would improve the representation of women and their retention at the Bar⁴⁰. This could also help to increase diversity in the legal professions further.

³⁵ Data provided by The Law Society, shows that claims of 'dishonest practice' are disproportionately generated by smaller law firms (as measured by number of partners) which tend to have less incentives to build up reputation compared to their larger counterparts. Grout, P. A., (2005), *The Clementi Report: Potential risks of external ownership and regulatory response – A report to the Department for Constitutional Affairs*. [<http://www.dca.gov.uk/legalsys/lcreform.htm#cr>]

³⁶ Blanes i Vidal, Jordi, Ian Jewitt and Clare Leaver, 2005, *Legal Disciplinary Practices: A Discussion of the Clementi Proposals* - <http://www.dca.gov.uk/legalsys/blanes-i-vidal-leaver-jewitt.pdf>

³⁷ <http://www.shop4law.co.uk/>

³⁸ See 5.47

³⁹ Office of Fair Trading, (2001), *op. cit.*

⁴⁰ Blanes i Vidal, J., Jewitt, I. and Leaver, C., (2005), *op. cit.*

Costs

Economic costs

- 5.24. Although constrained by the existing regulatory framework, many in the legal profession have sought to extend the range of legal and non-legal services that they can deliver. For example, a number of legal practices currently offer financial services as part of an all-round service to their customers. Under this option, LDPs would be restricted to the provision of legal services only, which could be more restrictive than the current system where legal practices can offer a wide range of unregulated (non legal) services such as general business advice and estate agency services, as well as other regulated services such as financial advice. This would reduce the incentives for prospective owners to start a new LDP, reducing the scope of competition within the legal services market, to the detriment of consumers of legal services.
- 5.25. Concerns have been expressed that the introduction of outside ownership of LDPs may lead to the leaking of client's confidential information due to unreasonable commercial pressure or conflicts of interest⁴¹, compromising the interests of consumers. However, it has been pointed out that the potential harm from conflicts of interest caused to consumers is often induced by the inability of owners to perfectly control managers, rather than by their excessive ability to do so⁴². In addition, it is expected that the proposed safeguards in place, such as the fitness-to-own test and the incorporation of a HOLP and a HOFA in the LDP, would minimise this risk⁴³. Furthermore, commercial considerations should also play an important role in protecting confidential information.

Social costs

- 5.26. There is a risk that the anticipated increase in the level of competition in the legal services market may lead to the withdrawal of some inefficient suppliers of legal services from certain areas of the market. In particular, those inefficient suppliers on local high streets and in rural areas may be forced to close down in the face of greater competition from lower cost providers. This raises the potential risk of reducing consumer choices and may have an adverse effect on access to justice. However, this risk should be mitigated by the expected changes in the provision of legal services.
- 5.27. Different legal practitioners will have the opportunity to form integrated legal practices and be more efficient by taking advantage of the potential gains from economies of scale, thus ensuring that they can continue offering legal services (see para. 5.31). In addition, new innovations in the legal services market, driven by greater competition, would lead to new ways of legal services being delivered to consumers in rural areas, thus ensuring that their access to justice would not be diminished (see para. 5.44).

⁴¹ It has been pointed out that conflicts of interests are the other side of the coin to synergies, and if most operations of the LDP were ring-fenced, then opportunities for synergies in the LDP would be limited. The resulting gains from economies of scale are correspondingly lower. Brealey, R. A. & Franks, J. R., (2005), *op. cit.*

⁴² Blanes i Vidal, J., Jewitt, I. and Leaver, C., (2005), *op. cit.*

⁴³ It has been argued that conflicts of interest already exist in law firms and that the resulting problems would be better dealt with by regulation rather than by severe restrictions on outside ownership. See Brealey, R. A. & Franks, J. R., (2005), *op. cit.*

- **Option 3 - Facilitate alternative business structures (ABS) in the provision of legal and other associated non-legal services via a licensing regime**

Benefits

Economic benefits

- 5.28. It is foreseen that all the economic benefits listed under the LDP model would apply equally under this licensing model (see para. 5.12–5.19). However, it is expected that the scale of these benefits would be greater under the ABS licensing model in some areas.
- 5.29. Firstly, the business structures facilitated under the licensing regime are much less restrictive compared to the LDP model by allowing the ABS firms to be multi-disciplinary practices, offering both legal and associated non-legal services⁴⁴. The licensing regime is also less restrictive compared to the ‘do nothing’ option as it allows ABS firms to offer reserved and unreserved legal and associated services⁴⁵. The scope of competition within the legal services market could widen as a consequence.
- 5.30. Secondly, the ABS firms may find it easier to attract external financing than LDPs due to their ability to accommodate legal and non-legal business areas, thus allowing them to offer more service packages, which would be more attractive to investors. Also the scope of sharing the risks of starting a new ABS firm would not be restricted to legal practitioners. Reduced risk for new entrants could lead to higher levels of competition than under the LDP model.
- 5.31. Thirdly, gains from facilitating integrated practices could be larger, as consumers may benefit from the convenience of purchasing legal as well as associated non-legal services under one roof. The scale of the gains from economies of scale may also be larger, since some ABS firms could be larger than LDPs due to their ability to accommodate practitioners from a wider range of services⁴⁶.
- 5.32. Fourthly, the incentives to maintain high quality would be higher for ABS firms compared to LDPs as more areas of service would be at risk from a bad reputation⁴⁷. Owners of ABS firms may also demand even stricter operational discipline⁴⁸ to ensure that the hard-earned reputation is maintained⁴⁹.

⁴⁴ It is interesting to note that enactment of the Legal Profession (Incorporated Legal Practices) Act 2000 in New South Wales, Australia, has facilitated the establishment of legal practices with alternative business structures, known as Incorporated Legal Practices (ILPs). In 2005, approximately 60 of the 452 ILPs in New South Wales are multi-disciplinary. Mark, S. A. and Cowdroy, G., (2004), ‘Incorporated legal practices - A new era in the provision of legal services in the state of New South Wales’ *Penn State International Law Review*, 22.

⁴⁵ In New South Wales in 2005, approximately 20% of ILPs provide accountancy and / or financial planning services as well as legal services. The data suggests that the most common areas of practice for ILPs are commercial / corporate advisory work, financial services and conveyancing. Over 10% of the legal profession in New South Wales now work in an ILP and this number is steadily increasing.

⁴⁶ Davies, S. W., (2005), *The economic implications of partnership restrictions in the legal services sector and their possible removal*. [<http://www.dca.gov.au/legalsys/lrreform.htm#cr>]

⁴⁷ This is especially true for large corporations, where one scandal can harm an entire corporation’s reputation and business. Moreover, the stakes of large corporations in protecting their reputations can prompt service quality that exceeds minimum acceptable levels.

⁴⁸ It has been noted that a number of large national legal firms in New South Wales are seriously considering ABS because of the improved management and structural options it affords them, but are waiting for legislation to be enacted in all states.

- 5.33. Moreover, ABS firms that contain practitioners from different services would allow the sharing of good practice and the sharing of innovation and technological advances across the professions. These should lead to increases in efficiency and better quality of services. The greater scope for flexibility of services that these firms provide should also allow firms to respond rapidly to changing consumer demand by offering new combinations of legal and non-legal service packages.
- 5.34. The facilitation of ABSs will also enable firms to expand the scope of their business and broaden their capacity to compete in international markets. Under the existing restrictions providers can face constraints on the amount of debt equity they can raise to aid the expansion of their business. Under ABS, legal service providers will have access to wider range of equity to invest in large-scale capital projects that increase efficiency.

Social benefits

- 5.35. It is foreseen that the social benefits listed under the LDP model would apply equally under the ABS licensing model (see para. 5.20–5.23). However, it is expected that the scale of these benefits would be greater under this model in some areas.
- 5.36. By facilitating a greater number of new suppliers in the legal services market, the ABS licensing model may also provide more opportunities for under-represented groups to enter into and to progress within the legal professions than under the LDP model. This could help increase diversity in the legal professions further. In addition, there should also be more training opportunities for law students compared to the LDP model. This will have benefits for trainees in BME groups, whom statistics have identified as having greater restrictions to training facilities than their non-BME counterparts⁵⁰.
- 5.37. The potentially larger gains from economies of scale by ABS firms should mean that ABS firms would be more likely than LDP firms to centralise their back-office operations, minimising costs. This raises the possibility of providing legal services in areas where they did not exist before, e.g. in rural areas. These could now become financially viable and attractive to owners of ABS firms. Through longer opening hours, increased usage of technology and advanced customer care skills, ABS firms would be able to offer consumers improved access to a wide range of legal services, enhancing access to justice.
- 5.38. In addition, increased efficiency and the larger scope of information-sharing with other business areas within the ABS firm may lead to suppliers becoming willing and able to offer more types of legal services that were less financially viable under the existing restrictive business structures.
- 5.39. As civil disputes often involve multi-disciplinary issues, the ABS proposals could act as a catalyst for the increased creation of one-stop shops with integrated legal and non-legal professionals. If so this could result in an

⁴⁹ Data from New South Wales suggests that practitioners working in ILPs are slightly less likely to be the subject of a consumer complaint than practitioners working in traditionally structured firms. This may be due to the requirement of ILPs to implement appropriate management systems.

⁵⁰ The Law Society, Strategic Research Unit (2005) *Trends in the solicitors' profession: Annual statistical report 2005*. Also see Racial Equality Impact Assessment.

increased in those providers which offer more comprehensive services for consumers, leading to a situation where the parties involved are better able to make more informed decisions as to how the disputes would be best settled. For example, providers may choose to utilise Alternative Dispute Resolution (ADR) methods, thus reducing the need for the parties involved to incur substantial costs, unwanted stress and uncertainty of litigation. This would also help reduce the demand on valuable court time.

Costs

Economic costs

- 5.40. Allowing alternative business structures may lead to a risk that confusion could arise within the ABS firms that have to satisfy different regulations set by different regulators, where the ABS firm provides services subject to control by more than one regulator. This would raise the firm's compliance costs and the operational costs for the different regulators, as more resources may have to be employed to ensure that regulations set by various regulators do not contradict each other. More importantly, the possibility of confusion amongst the regulators may increase the risk of certain parts of ABS firms' businesses not being properly regulated, to the detriment of consumers. Potential conflicts arising out of the rules of different regulators may also increase the risk of regulatory capture.
- 5.41. However, the LSB would only agree to license services, other than legal, where it was satisfied with the regulatory arrangements of the ABS regulator (e.g. The regulator had agreements in place with other regulators concerned). It could also minimise this risk by entering into discussions regularly with other statutory regulators, such as the FSA, on regulatory issues. In addition, the statutory requirement for the LSB to consult the OFT, the higher judiciary and its Consumer Panel, about its regulatory decisions, should ensure that confusion of regulations across the services are reduced.
- 5.42. Where the different regulators concerned with an ABS firm experience a conflict of rules, it would be the responsibility of the ABS regulator to resolve this conflict. Where this has proved unsuccessful, the case would then be referred to the LSB to give direction as to how the conflict could be resolved in accordance with their objectives.
- 5.43. There is a concern, similar to that associated with the LDP model, that the introduction of outside ownership and providers of non-legal services in ABS firms could lead to the leaking of client's confidential information due to unreasonable commercial pressure or conflicts of interest, compromising the interests of consumers. However, the 'fit to own' test for external investors and the incorporation of a HOLP and a HOFA would apply to the ABS firm. ABS firms would also be required to make clear to all potential clients the extent to which restrictions on confidential information would apply and in relation to which partners, directors or employees of the firm. These safeguards should be able to minimise the risk of client's confidential information being exposed⁵¹.

⁵¹ The experience in New South Wales suggests that these conflicts of interest do not seem to arise to any greater extent than the issues created in firms under existing business structures where corporate/commercial clients exert enormous pressure on legal practitioners to provide legal advice that is ethically questionable.

- 5.44. There is a risk that in a liberalised regime that facilitates alternative business structures, larger legal firms may seek to “foreclose” competition from smaller firms, reducing the choice available to consumers⁵². This could have serious implications for those consumers in rural areas if those larger legal firms do not consider it profitable to spread their service provision to those areas.
- 5.45. However, it is envisaged that ABS is likely to increase rural access to legal services through possibly utilising the existing infrastructure of firms. For example, banks and building societies could use their high street offices and internet delivery systems to provide legal services in those areas, avoiding high set-up costs.
- 5.46. The government recognises the risk of diminished access in rural areas and the LSB and ABS regulators will be under a duty to ensure that the statutory objective of access to justice is achieved especially for those with a geographical disadvantage and those with special needs. As a result of this duty, the distribution of service provision will be closely scrutinised by the FLRs, who are bound by the statutory objective of promoting competition, thus mitigating the risk.
- 5.47. Due to the increased competition introduced by the ABS proposals, there is a possibility that inefficient firms may be driven out of the market if they cannot adapt to participate in the newly competitive legal services market. This may affect mainly smaller firms who cannot evolve with the market, affecting mainly BME solicitors and women. However, women should benefit from the move away from the traditional partnership structures, to a more flexible structure that the ABS proposals should promote. They will benefit from the greater range of employment opportunities with high responsibility within legal and non-legal entities, thus facilitating their ability to demonstrate their capability in ways that are not widely acceptable in the existing societal structure which is predominantly patriarchal⁵³. The impact these proposals may have on BME groups is discussed in detail in the Racial Equality Impact Assessment⁵⁴.
- 5.48. Under the licensing scheme, those firms who are currently operating under business arrangements that will fall within the regulatory net of ABS licensing may be at a competitive disadvantage because of the regulatory burden of the licensing fees. However, the FLRs will have the discretion to waive or alter any or all of the licensing conditions in consideration of the ABS firm. Where the organisation is a Not for Profit (NfP) firm, the LSB and FLRs would have the discretion to waive or alter any or all of the licensing conditions according to the nature of the entity that it regulates. This could include:
- group licensing;
 - the discretion to waive the licence on competency grounds, where the criteria has been demonstrated through quality assurance schemes, such as the Legal Service Commission’s Quality Mark, and;

⁵² See Small Firms Impact Test

⁵³ Landers, Rebitzer and Taylor (1996) *cited* Blanes i Vidal, J., Jewitt, I. and Leaver, C., (2005) offer compelling evidence that the existing business structures are particularly unsuitable for the progression of women solicitors.

⁵⁴ See Racial Equality Impact Assessment

- the discretion to waive the licence to increase access to justice, in cases where to impose the licence would be such a burden on the organisation, it would not be able to provide services.

For other than NfP ABS providers, there will be a transitional period to enable FLR's to consider existing arrangements and to issue any appropriate licences. This issue is discussed further in the Competition Assessment⁵⁵.

- 5.49. The administrative costs of regulating ABS would be determined by the extent of the regulatory activities for ABS carried out by the ABS regulator. ABS regulators would be expected to levy an ABS licensing fee on ABS firms. This fee would be fair and proportionate to the size of the firm, and would cover the cost of operating the 'licensing' scheme. As this fee is expected to be justified by the benefits ABS firms would gain in being permitted to form new business structures, for example gains in the form of economies of scale, reduction in transaction costs and increased level of freedom in terms of organisational form for business structures in the legal services market, it is not expected that the fee would deter new entrants from setting up ABS firms.
- 5.50. Moreover, it is envisaged that the process of applying for an ABS licence would be no more complicated and administratively burdensome for ABS firms than the existing process for solicitors of applying for a practising certificate. For NfP organisations, licences can be obtained as a group, or the fee can be waived on competency grounds, to minimise the burden generated from the process of obtaining and maintaining the licences, ensuring that access to justice would be safeguarded.

Social costs

- 5.51. As in the LDP model, there is a risk that the anticipated increase in the level of competition in the legal services market may lead to the withdrawal of some inefficient suppliers of legal services from certain areas of the market, in particular, those located on local high streets and in rural areas. This raises the potential of reducing consumer choices and may have an adverse effect on access to justice. However, it is expected that this risk would be more likely to be mitigated in the ABS licensing model by the expected changes in the provision of legal services. Through lifting the restrictions on access to external finance and partnerships between lawyers and non-lawyers, there is great potential for widespread expansion, efficiency gains and technological innovation in the provision of integrated services.
- 5.52. Compared to the LDP proposals, the ABS licensing regime will be better placed to encourage service provision in rural areas. The lowered risk in starting up new legal business, afforded by external finance, and the potential to offer legal and associated non-legal services under one roof will provide an incentive for suppliers to provide legal services in areas and locations which were previously regarded as unprofitable.
- 5.53. In particular, since there is potential for the size of some ABS firms to be larger than LDPs (due to the greater variety of permitted services), the scale of gains from economies of scale for these ABS firms would also be larger.

⁵⁵ See Competition Assessment

Thus it is more likely for practitioners from different professions to join up to take advantage of the potential gains, and to continue to offer integrated legal and associated services on high streets and rural areas. In addition, as it is expected that ABS firms would be more likely to continue offering services in these locations via increased usage of technology, access to justice should not be diminished.

- 5.54. Through lifting the restrictions on partnerships between lawyers and non-lawyers in the provision of legal and non-legal services, consumers may be at risk from the practice of 'tying-in'⁵⁶. This risk is further enhanced if there is a majority of non-lawyer owners in the ownership structure exerting commercial pressure on practitioners. In order to reduce this risk, legislation dictates that the FLRs of ABS ensure that firms identify a HOLP who will ensure that the ABS firm adheres to the rules of the FLR. In addition, the LSB will also have the discretion to decide whether the services provided by some ABS firms require a certain level of lawyer control to prevent practices that are not in the interest of the consumer.

⁵⁶ Blanes i Vidal, J., Jewitt, I. and Leaver, C., (2005), *op. cit.* Identify two types of 'tying-in'. 'Contractual Tying-in' occurs where non-advocacy and advocacy services are bundled together so that a customer cannot purchase one without the other. This also relates to 'buy one, get one free' offers. 'De Facto tying-in' relates to the *switching costs* of clients switching from one supplier to another. These costs may include transferring files and giving new instructions. Depending on how high these switching costs are, providers may fail to refer clients to other suppliers when faced by lack of expertise or conflicts of interest. Both these forms of 'tying-in' are illegal under the Competition Act 1998, would apply to the entire firm.

6. Reforming the Complaints Handling Arrangements in Legal Services

6.1. The aim of this proposal is to simplify the current arrangements in the complaints handling of legal services encountered by consumers and suppliers, to increase accountability and transparency of the complaints handling system, to improve the way consumer complaints are handled, and to increase consumer confidence in the complaints handling system.

6.2. The following options on reforming the complaints handling arrangements in legal services have been considered:

- **Option 1 – Do nothing**

6.3. The current structure to deal with complaints and disciplinary matters in the legal services would be retained. This would mean leaving consumer complaints with the professional bodies subject to oversight by various bodies. Possible acts of misconduct would continue to be handled by the disciplinary procedures of the professional bodies. Tribunals that are independent of, but are funded by, the professional bodies would continue to hear cases of possible misconduct. This option would not attract any additional costs or create any additional burdens. However, there is a risk that the proliferation, fragmentation and overlap featured in the current complaints handling arrangements would remain. In addition, complaint handling by certain professional bodies could remain unsatisfactory, and the independence of the complaint system would continue to be questioned, undermining consumer confidence in the legal services market.

- **Option 2 – A single point of entry for all complaints against legal practitioners (the ‘post box’ option)**

6.4. Under this option, a single point of entry for all consumer complaints would be established for complaints that remained unresolved at the ‘in-house’ level. Complaints would be sifted into different categories or type of complaints and would then be passed down to the FLRs to deal with them. This point of entry would essentially be a ‘**post-box**’ for all complaints and the complaints handling system would remain in the control of the legal profession.

- **Option 3 – A new complaint handling body**

6.5. Under this option, **the Office for Legal Complaints (OLC)** would take over the role of the FLRs in handling consumer complaints. The OLC would be a single body, completely independent from the FLRs. The Office of the Legal Services Ombudsman and the Office of the Legal Services Complaints Commissioner would be abolished.

6.6. The OLC would form part of the new regulatory framework involving the LSB and would be accountable to the LSB for its overall operation. This would ensure that the LSB has proper oversight of the entire regulated legal services sector. However, the LSB would have no authority to examine individual complaints.

- 6.7. Legal service providers would be required by the FLRs to maintain 'in house' complaints handling procedures, which must satisfy any requirements set by the LSB, to deal with complaints made by consumers in the first instance. The OLC would handle all complaints made against the providers that cannot be resolved at the local level. These complaints would be passed directly to the OLC. The OLC would refer potential issues of misconduct to the FLRs. The OLC would have the ability to require a FLR to inform the OLC of the action it takes on conduct matters.
- 6.8. In addition, the OLC would be empowered to provide redress, up to a limit of £20,000, to consumers when appropriate. It may also refer the complaints to other statutory regulators (or their redress body) concerned. The existing disciplinary arrangements with regard to acts of misconduct would be largely unchanged and would continue to be handled by the disciplinary procedures of the FLRs, although there would be LSB oversight.
- 6.9. This is the Government's preferred option on reforming the complaints handling arrangements in legal services. The OLC will be independent of the legal profession, which will help to improve consumer confidence in the legal services industry, and should aid the regulatory framework in achieving its objectives. The body will provide a single system with one point of entry for all consumer complaints, making the system simpler for consumers and helping to accommodate alternative business structures. In addition, the fact that the OLC will have powers to deal directly with complaints as well as having the ability to provide redress of up to £20,000 will provide legal services providers with an incentive to act in an ethical and accountable manner to avoid complaints being lodged against them and also provide consumers with adequate compensation, where necessary.

The Benefits and Costs of reforming the Complaints-handling arrangements for Legal Services

- **Option 1 – Do nothing**

Benefits

- 6.10. There would be no additional economic or social benefits arising from this option.

Costs

- 6.11. There would be no additional economic or social costs arising from this option. However the proliferation, fragmentation and overlap featured in the current complaints handling arrangements would remain. In addition, complaint handling by certain professional bodies might remain unsatisfactory, and the independence of the complaint system would continue to be questioned, undermining consumer confidence in the legal services market.
- 6.12. There would be no additional policy costs arising from this option. Using information provided by the legal professional bodies, PricewaterhouseCoopers (PwC), in their independent report on the regulatory

reform of legal services⁵⁷ estimate that the total regulatory costs in 2005-06 were £97.4m. Of these costs £32.5m relate to complaints handling.

6.13. The Law Society's costs represent a substantial proportion of this total at approximately 88%.

- **Option 2 – A single point of entry for all complaints against legal practitioners (the 'post box' option)**

Benefits

Economic benefits

6.14. This option provides a single system with one point of entry for all consumer complaints, making the system simpler for consumers to use. This system will also minimise the inefficiencies caused by consumer complaints being directed to the incorrect regulator.

Social benefits

6.15. The simplification of the complaints handling system will increase public understanding of the system and therefore encourage those consumers who have a valid reason to complain, to do so. This might help to restore some consumer confidence in the complaints handling system.

Costs

Economic costs

6.16. A body with a 'post-box' role for consumer complaints would put an additional operational cost burden on suppliers, through the cost of creating and running the new body. This burden is likely to be transferred to consumers, leading to higher prices. The fact that this body has no power to deal with the substance of complaints would mean that the higher prices consumers would be paying would bring little, if any, additional benefit such as better complaints handling.

Social costs

6.17. Under this 'post-box' complaints system, substantive complaints handling functions including adjudication would remain in the control of the legal profession, and therefore there will continue to be some concerns as to the independence of the system. This system might fail to improve consumer confidence in the legal services industry and would fail to aid the regulatory framework in meeting its objectives such as protecting and promoting consumers' interests.

6.18. As the 'post-box' complaint office is unable to award redress, there would be less incentive for suppliers to improve service quality. This complaint office will essentially act as a 'complaints distribution centre'.

6.19. Using the information provided by the legal professional bodies, the operating cost for the post-box option, were estimated in PwC's Final Report⁵⁸ to be

⁵⁷ PwC's independent report is published on DCA's website and can be found at:
<http://www.dca.gov.uk/legalsys/lrreform.htm>

£32.9m annually. This represents a total estimated net additional annual ongoing costs of £400,000 greater than the current costs for complaints handling (i.e. the “Do Nothing” option).

- 6.20. Using broad assumptions, the PwC report estimates that the transition costs associated with the establishment of the postbox option represent £500,000, spread over one year.
- 6.21. The relatively small increase under the post-box option reflects the small change in the way complaints handling is arranged under this option.

Option	Annual Running Costs	Transition Costs (two years before vesting)	Transition Costs (one year before vesting)	Transition costs (one year <u>after</u> vesting)
	£000	£000	£000	£000
Do nothing	32,520	n/a	n/a	n/a
Postbox	32,920	-	-	500

Costs in 2005-06 prices.

- **Option 3 – A new complaint handling body**

Benefits

Economic benefits

- 6.22. A single complaint body would bring greater consistency and clarity to the complaints handling process. With one point of entry for all consumer complaints, the system will be simpler and will also help to accommodate Alternative Business Structures (ABS) by identifying the most efficient route for resolution when the complaint has not been successfully resolved via ‘in-house’ procedures. The clearer channels for complaints handling would lead to a more efficient and effective complaint mechanism. Coupled with potential scope for economies of scale, through the amalgamation of several systems into one, this should lead to time and overhead savings for FLRs and suppliers of legal services.
- 6.23. The ability of the OLC to award redress of up to £20,000 in a manner that is fair to both consumers and providers, should give consumers with valid reasons to complain an incentive to do so. Such a redress mechanism would have a further benefit to the profession to the extent that consumers would have more confidence in purchasing legal services. The ability of the OLC to award redress should also provide suppliers with an incentive to act in an ethical and accountable manner, and overall, improve the service quality of legal services.
- 6.24. Creating an independent complaints handling body with effective powers, ensures that legal professionals have an added incentive to adhere to the code of practice and disciplinary procedures outlined by the FLRs and OLC. These powers will also act as a deterrent to non-compliance on the part of the providers. These provisions will encourage consumers to make legitimate

⁵⁸ PwC’s independent report is published on DCA’s website and can be found at: <http://www.dca.gov.uk/legalsys/lrsreform.htm>

complaints, which should increase the chances of instances of misconduct being brought to the FLRs' attention.

- 6.25. The way the OLC would be funded, in part by a general levy on the profession, and in part as a payment from those against whom complaints are upheld (i.e. 'polluter pays'), should provide suppliers with another incentive to improve service quality of legal services in order to reduce the likelihood of having complaints lodged against them, potentially to the detriment of their reputations and finances. The 'polluter pays element' should also serve to ensure that, to the greatest possible extent, the costs of running a complaints handling system are met by those who are responsible for generating complaints.

Social benefits

- 6.26. A complaint system that is independent of the legal profession would improve consumer confidence in the legal services industry and should aid the regulatory framework in achieving its objectives. In conjunction with the statutory requirement for the FLRs to separate their regulatory and representative functions under the LSB model, it would remove consumers' concerns that the system for complaints against lawyers, run by lawyers themselves, fail to look after their interests. Consequently, consumers with valid reasons to complain should be more confident and inclined to do so, encouraging suppliers to improve the quality of their legal services and therefore reduce the number of complaints lodged against them.
- 6.27. The powers that the OLC will have to share information about complaints with consumers will empower consumers to make better informed decisions about choosing their legal services provider thus improving consumer confidence in the legal services market. They will be confident that complaints will be dealt with transparently and independently. Such information will help consumers make better-informed decisions about purchasing legal services, helping to address the existing information asymmetries in the market, improve standards of quality and eventually, through increased competitiveness, potentially reduce prices and improve access to justice.
- 6.28. By providing an independent and impartial complaint system, the OLC provides a clear forum for dealing with complaints in a way that is consistent with the objectives of legal services reform. This involves primarily protecting and promoting consumer interests; providing an incentive for individual practitioners to meet appropriate quality standards and increasing public understanding of the citizen's legal rights.
- 6.29. By leaving front line regulators with the power to discipline their own members, the reform of complaints handling arrangements recognises that consumers are far more content with this aspect of their performance to date.

Costs

Economic costs

- 6.30. There is a possibility that increased consumer confidence in the complaint system, simplification of the complaint procedures, an increase in the redress amount and the greater transparency of the disciplinary systems may lead to a rise in complaints both of a genuine and spurious nature. The potential increase in complaint cases may increase the workload for suppliers of sub-standard legal services, as the OLC would now be more likely to follow-up a higher proportion of the complaints received. However, this cost has to be balanced by the fact that firms required by the OLC to compensate for the poor service provided would have further incentives to improve the quality of their services, leading to fewer complaints being lodged against them. This would reduce the likelihood of the cost involved in handling complaints being incurred in the first place.
- 6.31. Since the OLC is expected to be more effective in handling complaints, there could be an increase in the numbers of legitimate complaints made, therefore it is more likely that suppliers who provide poor quality services would be complained against to the OLC. Consequently, the compliance costs for these suppliers are likely to rise, for example in the form of paying financial redresses or extra investment in their 'in-house' complaints handling facilities. However, this possibility should act as incentives for these suppliers to raise the quality of their services, or to improve their complaints handling facilities so that complaints can be satisfactorily resolved in-house, to the benefits of consumers.
- 6.32. It has been suggested that the introduction of the OLC may make legal professionals overly cautious and therefore they may seek to avoid taking on cases, which are more complex or 'difficult' and could leave them more susceptible to complaints, thus incurring extra costs. This may lead to some suppliers withdrawing from those particular areas and, reducing competition, or worse still, abandoning them all together. As a result, consumers may be unable to find a supplier that is willing to provide them with the services they demand. However, the likelihood of this happening is reduced by the proposal that the amount of redress the OLC can award would be limited to £20,000. Further, the risk of legal providers taking an overly cautious approach is equally applicable under the current system and there is no empirical evidence that it has driven some lawyers to avoid these cases. The 'cab-rank' principle⁵⁹ also ensures that some lawyers are not allowed to select their clients by personal preference.
- 6.33. The cost of generating more complaints may not necessarily incur an additional cost to particular sectors of the legal services market. In working out its funding mechanism, the OLC would consult with the profession to ensure that the costs of complaints handling are divided fairly. It would be open to the OLC, for example, to ensure that the cost per complaint is lower in areas where providers are inherently more likely to generate complaints. For example, criminal barristers generate high levels of complaints because their clients often view it as another de facto route to appeal; but these

⁵⁹ The "cab rank" rule dictates that every member of the Bar is obliged, without fear or favour, to represent clients who offer themselves, regardless of how unpopular they may be in the community or elsewhere.

complaints are not especially likely to be upheld. The OLC will consult on its annual budget, and as it is bound by the regulatory objectives it is likely that it would want to take steps to mitigate any possible risk that providers will shy away from particular areas of the law.

- 6.34. In their report⁶⁰ on the costs of the Government's proposed arrangements, PwC identify the ongoing annual running costs of complaints handling system under the OLC option to be around £20.6m. This figure represents £16.8m for the OLC's running costs and approximately £3.8m in unavoidable overhead costs currently allocated to regulators' complaints handling functions.
- 6.35. The key driver for the difference in costs compared to the 'do nothing' option (which was £32.5m) are the savings made against annual running costs from the rationalisation of the complaints handling system, which are estimated at £28.7m and the ongoing annual running costs of the new OLC estimated at £16.8m (for their base-case scenario).
- 6.36. This represents a total estimated net additional annual ongoing costs of £12m less than the current costs of separate complaints handling (i.e. the "Do Nothing" option).
- 6.37. The OLC is also approximately £12.3m per year cheaper than the post-box option. This is because under the post-box option, complaints handling will continue to be handled by the individual regulators, and thus will not benefit from the rationalisation of the current complaints handling framework.
- 6.38. This base case cost is estimated on the assumption that the OLC would have a core staff of 319 staff, with a 7-member board, based in the West Midlands. The estimate assumes that the underlying nature and volume of complaints under the new OLC would not be substantially different from those received under the current regulatory framework.
- 6.39. PwC have estimated one-off transition costs of £23.6m for the OLC which will be spread over approximately two years either side of vesting powers and duties in the new single complaints body. The Government is satisfied that these costs are justified by the benefits of a single, independent complaints-handling body as outlined above. Furthermore, these one-off transition costs should be seen in the context of the estimated £12m annual decrease in operating costs under the OLC option.

Option	Annual Running Costs	Transition Costs (two years before vesting)	Transition Costs (one year before vesting)	Transition costs (one year <u>after</u> vesting)
	£000	£000	£000	£000
Do nothing	32,520	n/a	n/a	n/a
Postbox	32,920	-	-	500
With an Office for Legal Complaints	20,590	140	12,280	11,140

Costs in 2005-06 prices.

⁶⁰ PwC's independent report is published on DCA's website and can be found at: <http://www.dca.gov.uk/legalsys/lrreform.htm>

- 6.40. PwC's report also identifies £1m of additional "implementation costs" of setting up a task force for detailed organisation design for the OLC and an oversight regulator (i.e. the LSB). These costs are expected to fall in the year before powers and duties are vested in the new bodies.
- 6.41. PwC have also costed alternative scenarios over and above their base case. This includes costing an incremental level of resource for higher volume of complaints, locating the OLC in the North of England and operating from multiple sites (as opposed to a single location). A combination of these variables could result in the annual ongoing running costs of the OLC rising to £24.8m (base-case plus incremental volume of complaints, with a multi-site location with HQ based in the West Midlands). Under this specific scenario, transition costs could be expected to rise by approximately £4.5m

Social costs

- 6.42. A complaint that involves legal and non-legal professions in the ABS firm could lead to confusion amongst the FLRs, the OLC and the regulatory bodies of the non-legal professions as to how the complaint should be handled. The lack of consistency among legal and non-legal handling bodies could lead to increases in the operational and compliance costs of the ABS firms. However, the ABS regulator would have to have suitable and transparent arrangements with non-legal regulators in place before it was authorised to allow firms to provide non-legal services.
- 6.43. Confusion could also arise for consumers if their complaint was passed on from the OLC to a non-legal complaints handling body. However, this confusion would be mitigated by the ABS firms making it clear at the outset, to the consumer, that different regulators have regard to different services provided by the firm. By having the authority to enter into discussions with other statutory regulators, the LSB would have the opportunity to ensure that the handling of the complaint would be consistent across the professions involved.

7. Small Firms Impact Test

- 7.1. The Law Society's database shows there were 9,211 private solicitors' firms in 2004, with 75,079 solicitors with practising certificates working in these firms. Sole practitioners made up 45.3% of all solicitors' firms (4,176), while 98.5% of all firms (9,069) had no more than 25 partners. However, the data excludes information on non-admitted fee earners, as well as the number of administrative and support staff employed by solicitors' firms.
- 7.2. Amongst the 11,564 barristers who were practising in independent private practices in 2004, 2.2% were practising as sole practitioners.
- 7.3. As well as providers of reserved legal services, a much larger number of small businesses are also consumers of reserved legal services and other professional services (e.g. through incorporation, conveyancing, litigation, auditing, leasing and consultancy work)⁶¹.
- 7.4. As discussed earlier, there is a risk that an LSA that has to carry out all regulatory functions would produce additional regulatory burdens on the professions, thus incurring significant additional compliance costs for existing and potential new suppliers. In particular, these costs may fall disproportionately on small legal practices.
- 7.5. Under the Government-preferred option, the LSB would act as a relatively small oversight regulator, whilst delegating day-to-day regulatory functions to FLRs. As such, the LSB is not expected to impose any additional compliance costs on small legal practices. Moreover, since the establishment of the LSB would lead to a reduction of inconsistencies in the current regulatory framework, the LSB model should result in a reduction in regulatory burden for small legal firms. However, there is a possibility that new regulatory costs would fall onto the small practitioners of those currently unregulated professions, if the LSB decides to bring them into its regulatory net.
- 7.6. Both the LDP and the 'licensing' models are expected to provide benefits to small firms that act as consumers of legal and associated services, in that both models allow the provision of one-stop shop of these services to consumers, bringing to them greater convenience.
- 7.7. There is a risk that the anticipated increase in the level of competition facilitated by both LDP and 'licensing' models may lead to closure of small, inefficient legal suppliers in some locations. However, this risk would be mitigated by the possibility provided by both models that practitioners from different professions are allowed to join up to ensure that it is economically viable for them to continue to provide legal and associated services, and to gain from efficiency savings⁶².

⁶¹ According to the Federation of Small Businesses (FSB), there are currently around 4.3million businesses in the UK, of which 99% are defined as "small" and 63% are sole proprietors. Small and Medium Enterprises employ 58% of the private sector workforce and turnover totals 50% of UK GDP. 60% of all commercial innovations come from small businesses. <http://www.fsb.org.uk>

⁶² Data from the Law Society of New South Wales, Australia indicated that amongst the 452 Incorporated Legal Practices (ILPs) in the state, which have business structures broadly similar to those proposed in the 'licensing' regime, the vast majority of these ILPs were previously sole practitioners or small partnerships. Mark, S. A. and Cowdroy, G., (2004), Mark, Steven and Georgina Cowdroy, 2004, "Incorporated legal practices – A new era in the

- 7.8. There is a risk that some smaller firms will experience a disproportionate burden from the cost of the licensing fee, such that they may completely withdraw from providing reserved services. In such a case, the LSB and FLRs would have the discretion to alter the licensing conditions according to the nature of the entity that it regulates, if it would be in the public interest. This will help to maintain and enhance access to justice (especially in rural areas), whilst ensuring that high standards of service are delivered. The FSA possess the power to set different licensing fees according to the size of the firm seeking a licence, a practice that the ABS regulator would be free to replicate if it so chooses.
- 7.9. The Law Society, which represents all solicitors in England and Wales, including those of small firms, has expressed its broad support for the Government proposals. In particular, the Society's former president has publicly said that the proposals '*will create a dynamic legal market offering a better deal for consumers and fresh opportunities for solicitors.*'⁶³
- 7.10. The Federation of Small Businesses (FSB) has also expressed its broad support for the Government proposals and is one of five organisations that are represented on the Legal Services Reform Consumer Panel. In particular, the FSB are very supportive the one-stop shop option that the licensing regime of alternative business structures (ABS) in the provision of legal services provides.
- 7.11. As providers of legal services, the FSB view ABS as an excellent opportunity for smaller legal service providers to continue to compete effectively with larger firms and counter the threats posed in the modern marketplace by globalisation, the Internet, legal expense insurance etc. ABSs will also allow small legal service providers to pool resources with other firms that provide complementary services. The FSB suggest that enabling the formalisation of the current practice of co-operation between small businesses with similar target markets will lead to a reduced risk of business failure through product diversification, increased retention of key staff and access to a lower cost of capital on external financing.
- 7.12. As consumers of legal services, the FSB sees ABSs as complementing the current trend towards small businesses wishing to purchase their professional services under 'one-roof'⁶⁴. This allows small businesses to benefit from efficiency savings passed on through reduced professional fees and allow

provision of legal services in the state of New South Wales", *Penn State International Law Review*, 22, pp. 671-693 - http://papers.ssrn.com/sol3/papers.cfm?abstract_id=673021

⁶³ The Law Society, (22 March 2005), *The future of legal services*. Press release.

[<http://www.lawsociety.org.uk/newsandevents/pressreleases/view=newsarticle.law?NEWSID=228090>]

⁶⁴ This approach complements the support offered by the Government

<http://www.businesslink.gov.uk>. *Business Link* brings together a host of high quality advice and support for start-up and growth businesses. In the last year, Business Link gave advice to 170,000 people thinking of starting up, and half a million existing businesses. Furthermore, as announced on 22 March 2006, the Department of Trade and Industry is spearheading a Government-wide initiative to streamline business support at a local, regional and national level:

<http://www.gnn.gov.uk/environment/detail.asp?ReleaseID=192196&NewsAreaID=2&NavigatedFromDepartment=False>

them to manage the risks associated with buying in professional services more easily.

- 7.13. DCA officials consulted the Small Business Service (SBS) who are content with our approach.

8. Legal Aid Impact Test

- 8.1 The Legal Services Commission (LSC) has reported that the cost of legal aid has risen from £1.5 billion in 1997 to over £2 billion today, an increase of 14% in real terms. Further, the cost of criminal legal aid in 2004-2005 was £1,192m⁶⁵ accounting for over half of the legal aid budget (i.e. 58%). This continual growth is putting enormous pressure on vital services for vulnerable people, provided through civil and family legal aid⁶⁶.
- 8.2 In 2004-2005, £846m was spent on civil legal aid. In 2004-2005 solicitors' fees covering civil representation and legal help accounted for 53% of total gross cash payments whereas Not for Profit fees accounted for 5%⁶⁷.
- 8.3 The supply base for criminal defence services is fragmented and is characterised by a large number of relatively small suppliers. Approximately 2500 firms claimed for criminal defence work in 2004-2005. Of these, more than 1,100 (40%) received a revenue of less than £100,000 for criminal defence work and approximately 600 firms (approximately 25% of all firms) claimed less than £50,000 for criminal defence work in 2004-2005. Only just over 80 firms (3%) had turnover in excess of £1m from criminal defence work⁶⁸.
- 8.4 There are a large number of firms that generate only a small amount of money from Civil Legal Aid (total amount incl. Set Offs) – 33% of firms have a civil legal aid income of between £0 and £10,000. However, there are also firms that generate substantial amounts (11% have income of over £200,000, 41 (5%) have income over a million)⁶⁹. The profitability of undertaking legal aid work tends to be more evident in firms that undertake legally aided work for over 33% of their total work. Firms that specialise in legal aid work (over 66% of total work) had a higher profitability, than other firms, although the majority of this may be attributed to the fact that they undertook more criminal than civil work, which is generally more expensive⁷⁰.
- 8.5 There is a possibility that through the ABS proposals, larger firms will be able to create optimal structures quickly to better improve their efficiency and gain a larger share of the market affecting those small to medium size firms that use a mixture of private and legal aid work to retain their share of the market.
- 8.6 However, although it is anticipated that small to medium size firms may face challenges in competing effectively in the market, they could also seek to utilise the ABS proposals to pool their resources with other legal or associated non-legal services providers to generate efficiency gains through the provision of services that are both transactional by nature and human capital intensive. For example, recruiting/allocating staff to specialise in particular areas of law will reduce the cost of research and the procurement of external expertise to provide certain services efficiently.

⁶⁵ LSC Annual report, 2004-2005 http://www.legalservices.gov.uk/docs/about_us_main/AR05.pdf

⁶⁶ Lord Carter Review (February, 2006) "Procurement of Criminal Defence Services- Market-based reform". http://www.legalaidprocurementreview.gov.uk/docs/carter_review.pdf

⁶⁷ Data sourced from LSC. Based on gross cash payments to suppliers by type, 2004-2005. These figures are indicative only and not entirely conclusive.

⁶⁸ Data sourced from LSC; Lord Carter Review (March 2006)

⁶⁹ Data sourced from Frontier Economics.

⁷⁰ DCA and Otterburn Legal Consulting (2003) "Review of Demand, Supply and Purchasing Arrangements: Survey of Legal Aid firms 2003"

- 8.7 For those smaller firms who undertake a mixture of private and legal aid work, there is no evidence to suggest that greater competition in the private sector will prevent them from diversifying, expanding and achieving greater efficiency as a result of the ABS proposals. We have had some very supportive comments from organisations representing small providers about the opportunities for small businesses, under the ABS proposals⁷¹.
- 8.8 Lord Carter's review of the procurement of criminal defence services in England and Wales⁷² outlined a number of proposals to address the inefficiencies in the current procurement of criminal defence services. The aim is to create a sustainable procurement system which provides the best possible quality defence service, reward the most efficient suppliers, provide clients with *appropriate choice*, develop a sustainable supplier base and bring greater predictability. By 2009, a steady-state should be reached with a smaller number of larger, more efficient, good quality suppliers who profit from increased volumes of work, which are delivered at a lower cost⁷³. Lord Carter is also currently reviewing civil and family legal aid procurement and will be producing recommendations in this area.
- 8.9 The Government's preferred option for facilitating ABS, in the provision of legal and other associated non-legal services will be most relevant to this sector. The precise impact of ABS on the criminal legal aid market is difficult to predict, though Lord Carter's proposals will tend to make the legal aid market more concentrated (i.e. fewer, larger suppliers) the extent to which ABS will facilitate this will depend on how firms adopt ABS.
- 8.10 Lord Carter's current proposals are for the achievement of 'best value' through market-based reform, where tenders in steady-state will be judged on the criteria of quality, capacity and price. The proposed billing arrangements are intended to encourage risk sharing and the introduction of fixed fees to reduce administration costs. The procurement of work, ultimately through price competitive bids, would be structured in such a way to encourage a smaller number of larger, more efficient, good quality suppliers who will profit from increased volumes of work, delivered at a lower cost⁷⁴. These proposals coupled with ABS will remove existing barriers, generating parallel incentives to grow and increase efficiency in order to bid for more work.
- 8.11 Our proposals will provide legal providers with a wider range of business structures, through the provision of shared services, than is currently possible. This greater flexibility could ease the implementation of Lord Carter's proposals. The proposals will provide firms with greater opportunities to access external investment and allow lawyers and non-lawyers to work together on an equal footing. ABS will give providers more options when considering cutting their costs, upgrading their infrastructure and in applying fresh ideas about providing services using more 'consumer-friendly' methods. By increasing competition in the market, ABS could potentially generate a higher standard of quality than currently exists in the legal aid market, improving access to justice for the most vulnerable sections of society.

⁷¹ See Small firms Impact Test

⁷² Lord Carter Review (February 2006) op cit.

⁷³ *ibid*

⁷⁴ *ibid*

- 8.12 Our proposals have raised concerns as to the opportunities for small businesses in the legal aid market. Under the ABS proposals, legal aid service providers, small firms included, will find it easier to organise themselves to improve efficiency gains and increase capacity. However, through Lord Carter's proposals there will not be a 'one size fits' all approach to the distribution of contracts. Small firms will still be able to win contracts depending on client population and need.
- 8.13 Through permitting individual providers to work with lawyers and non-lawyers in the provision of legal services, ABS will encourage the creation of flexible structures to better utilise the spare capacity in the market where appropriate. For example, depending on the terms and conditions of the contract, a large provider having taken on legal aid work might then sub-contract this work to existing smaller firms around the country. This could mean that some of the smaller sub-contracted firms end up with more legal aid work than they would have been able to obtain on their own. This is an added benefit for smaller providers as they could pursue growth as a single firm or form consortium with others, if they choose.
- 8.14 The impact of LSR on civil legal aid is difficult to predict. Lord Carter's proposals on civil and family legal aid procurement will be published as part of his final report. However, subject to Lord Carter's recommendations in this area, there are existing problems, which the proposals under the ABS may help to alleviate.
- 8.15 The LSC's recent proposals for Community Legal Advice Centres (CLACs) and Community Legal Advice Networks (CLANs) are intended to produce better co-ordination of the delivery of services to better serve clients with multiple problems which can often lead to social exclusion. These entities will bring a number of services and suppliers together providing core legal services covering 'social welfare' law. These entities could also benefit from access to external finance which the ABS proposals will permit.
- 8.16 The options provided by ABS could potentially help these structures to benefit from easier access to external finance and new management practices, further improving efficiency. Additionally, ABS firms could help firms grow by facilitating the formation of consortiums or franchises to provide a combination of services demanded in those areas where there is a scarcity of legal services. It may encourage big firms with non-lawyer owners to utilise existing resources more efficiently to provide 'transaction-type' legal services. For example, firms with a strong brand focus in others area such as car insurance or retailing could do well in this area because of the customer service culture and existing infrastructure which includes call centres, customer database etc. ABS firms would be better placed to offer a range of high quality complementary services compared to more restrictive traditional law firms.
- 8.17 The introduction of ABS should potentially create a greater supply of civil legal aid providers through wider access to external finance for expansion and diversification through the accommodation of legal and non-legal business areas. However, it has been argued that these providers will only contribute effectively if they are providing the type of services that are lacking in the existing supply base. If driven by profit motive, which ABS will further induce by making it easier for providers to make efficiencies, then this is unlikely. If this problem does materialise, the LSC will need to provide further incentives for firms in order to alleviate this problem.

- 8.18 The Government has consulted with the Legal Services Commission and they have expressed their full support of the ABS proposals. In particular, there are numerous benefits that consumers of legal aid would experience through the pooling of expertise, accountability and improvements in the volume and quality of advisory services currently curtailed by existing restrictions. In addition, they envisage that the ABS proposals could potentially enable significant cost savings through the possibility of single contracts, in cases that involve solicitors and barristers, rather than the scheme of double contracting they currently operate.
- 8.19 In conclusion, the proposals under the government-preferred option, particularly the facilitation of ABS, could potentially have a positive impact on the legal aid market. The legal aid impact test has identified a number of areas where benefits will accrue to the legal aid consumer through an increase in the level of legal aid service provision, facilitation of complementary services provided through the integration of mixed service providers thus improving access to justice. Although we have identified some possible risks in the challenges that small firms may face through increased competition and the lack of incentives for suppliers to provide services that are particularly scarce in the market, it is clear that the potential benefits clearly outweigh the costs. Overall the Government-preferred options should have a largely positive effect on legal aid provision.

9. Racial Equality Impact Assessment

- 9.1. The Department has completed the Racial Equality Impact Assessment and based on the following findings; concluded that there would be a significant impact on minority ethnic groups, which the Department has identified to be largely positive.
- 9.2. In 2001, the size of the minority ethnic population was 4.6 million or 7.9% of the total population of the United Kingdom⁷⁵.
- 9.3. Under the Government preferred option there is an increased likelihood that through the higher levels of competition envisaged, as a result of facilitating ABS for the provision of legal services, firms may experience an increase in efficiency and a reduction in costs. If these reduced costs encourage lower prices for consumers, the proposals could lead to greater access to legal services for those minority ethnic groups on lower incomes.
- 9.4. Research has indicated that people from minority ethnic groups were more likely than white people to live in low-income households in 2000/2001⁷⁶. Almost 60% in this group were living in low-income households before housing costs were deducted. This increased to 68% after housing costs. The potential reduction in the cost of legal services will be especially advantageous for those minority ethnic consumers in the 'middle bracket' that do not qualify for legal aid but would struggle to purchase legal services privately⁷⁷.
- 9.5. In the year ending 31 July 2005, 9,665 students enrolled with the law society. Of these students 25.2% were drawn from the minority ethnic groups compared to 68.3% of white Europeans. Of the new trainees registered, 18% of trainees with known ethnicity were drawn from minority ethnic groups compared with 81.6% of white Europeans⁷⁸.
- 9.6. Minority ethnic group solicitors make up 9.4 % of solicitors on the Roll, of whom around a quarter are resident abroad. 73.9% of the 11,874 minority ethnic group solicitors on the Roll had practising certificates⁷⁹.
- 9.7. Recent research from the Law Society shows that in 2005 there were 9,081 solicitors' firms of which 7,809 were classified as relatively small firms with four or fewer partners. This makes up 86% of all private firms.
- 9.8. Nearly half of minority ethnic solicitors (47%) work in firms with four or fewer partners compared to only 28.7% of White Europeans. In addition, 7.9% of solicitors from minority ethnic groups are sole practitioners, compared with only 5.1% for all white European solicitors in private practice.
- 9.9. There is a possibility that the anticipated increase in the level of competition facilitated by both LDP and 'licensing' models may lead to closure of

⁷⁵ Data from The Office for National Statistics:

<http://www.statistics.gov.uk/CCI/nugget.asp?ID=273&Pos=1&ColRank=2&Rank=896>

⁷⁶ Data from The Office for National Statistics: http://www.statistics.gov.uk/cci/nugget_print.asp?ID=269

⁷⁷ The 'middle bracket of consumers' refers to those consumers whose income is too high to be eligible for legal aid, but too low to purchase the required services privately.

⁷⁸ Law Society Strategic Research Unit 2005 op cit.

⁷⁹ *ibid*.

inefficient legal suppliers in some locations. There is little empirical evidence that indicates the proportion of firms, operating in the legal services markets, which could be characterised as inefficient and further, the proportion that would be classified as inefficient after the introduction of ABS. Therefore we cannot speculate as to distribution of closures across the market.

- 9.10. In 2005 there were 7,809 private practices in the UK that had four or fewer partners representing 86% of all private practices⁸⁰. Empirical and anecdotal evidence has shown that the majority of smaller firms employ mainly solicitors from the minority ethnic groups with nearly half of minority ethnic solicitors (47%) working in firms with four or fewer partners⁸¹. It is envisaged that that these smaller firms will be most interested in adopting ABS in order to either expand the size of their practice or diversify, to increase efficiency even if they wish to remain small.
- 9.11. Currently, there is no direct evidence to suggest that minority ethnic solicitors will be faced with restricted labour market mobility due to discrimination, and therefore the ABS proposals could provide many opportunities to increase diversity with the legal profession.
- 9.12. The introduction of ABS could potentially create a high demand for legal and non-legal services in the legal service labour market that will increase the training and employment opportunities available to BME solicitors. In addition, the move away from the traditional-type of firm structure to a corporate –type structure, in the legal services market, will bring many of the positive ethics of corporate practice that encourage diversity and equal opportunities in the workplace. This will improve career progression for BME solicitors, who have often found they are facing a ‘glass-ceiling’ that prevents progression past middle management and into partner positions⁸².
- 9.13. Under the Government-preferred option, the LSB would act as an oversight regulator, delegating day-to-day functions to FLRs. The LSB will be under a duty to act in a manner, which meets the regulatory objectives, including ‘encouraging a strong, effective and diverse legal profession’. A similar duty will also apply to the FLRs. This will include the duty to publish policy statements on the how the statutory objectives will be achieved and the LSB will be able to issue guidance to FLRs as to how to achieve them.
- 9.14. If FLRs are found to be acting inconsistently with the regulatory objectives, the LSB will also have effective enforcement powers and will be able to set sanctions, for instance the power to direct the failing FLR. This system ensures that the FLRs will be free to use their expertise to fulfil the objectives in the most efficient way, but also enables the LSB to intervene when the interests of consumers and disadvantaged groups are compromised⁸³.

⁸⁰ *ibid*

⁸¹ *ibid*.

⁸² Research by the Law Society has shown that whereas 38.9% of white solicitors in private practice are at partnership level, the corresponding proportion from BME groups is much lower at 23%. Law Society : *Minority ethnic group solicitors, Fact sheet information series* (2004)

[http://www.lawsociety.org.uk/secure/file/147419/d:teamsite-](http://www.lawsociety.org.uk/secure/file/147419/d:teamsite-deployed/documents/templatedata/Publications/Research%20fact%20sheet/Documents/minorityethnic04_v1.pdf)

[deployed/documents/templatedata/Publications/Research%20fact%20sheet/Documents/minorityethnic04_v1.pdf](http://www.lawsociety.org.uk/secure/file/147419/d:teamsite-deployed/documents/templatedata/Publications/Research%20fact%20sheet/Documents/minorityethnic04_v1.pdf)

⁸³ Department for Constitutional Affairs – Nov 2005, “Increasing Diversity in the Legal Profession: A report on Government proposals”, http://www.dca.gov.uk/legalsys/diversity_in_legal_2col.pdf reported that there were a number of factors preventing women and ethnic minority groups from succeeding in legal careers. The Panel recommended that the LSB should be properly resourced to conduct or commission its own research into issues

- 9.15. In conclusion, the department anticipates that the proposals for the reform of legal services will have a largely positive impact on BME groups in the legal profession. The ABS proposals could provide opportunities for smaller firms employing BME solicitors to expand, diversify and improve their efficiencies. In addition, through the possible reduction in prices, as a result of competition, the department anticipates that BME groups on lower incomes, but still within the '*middle bracket*' of consumers, will have greater access to legal services through affordability, thus potentially improving access to justice.

10. Competition Assessment

- 10.1. The Department has completed the competition filter test and, based on the following findings, concluded that a simple competition assessment is required. In the following paragraphs the impact on competition is considered under each of the Government-preferred options

Impact of proposed Legal Services Board

- 10.2. The proposed LSB would act as an oversight regulator, whilst delegating day-to-day regulatory functions to FLRs. As such, it is anticipated that there would not be any significant additional regulatory costs for firms compared to the current regulatory arrangement, and they should not fall disproportionately on smaller firms. However, additional regulatory costs would fall onto practitioners of those currently unregulated professions, if the LSB decides to bring them into its regulatory net.

Impact of proposed Office of Legal Complaints

- 10.3. Moreover, as the OLC would be funded in part as a payment from those firms against whom complaints are upheld (i.e. partial polluter pays), regulatory costs would fall more heavily on those who provide poor quality legal services and have received valid complaints. However, it would be open to the OLC to ensure that the cost per complaint is lower in areas where providers are more likely to generate complaints. This will ensure that those providers in areas of law which are more prone to complaints (for example, complaints are often filed after a criminal conviction, as a ill-perceived route to an appeal).

Impact of Licensing Model under ABS

- 10.4. Under the 'licensing' model, set-up costs should be lowered for new entrants to the legal services market, as access to external financing increases the scope of sharing the risks of starting a new firm. Moreover, as current legal firms that wish to become ABS firms have to be subject to the same set of regulations as new ABS firms, it is not foreseen that new entrants would have to meet higher ongoing regulatory costs.
- 10.5. As the proposals aim to stimulate greater competition, innovation and consumer choice in the legal services market, they are expected to have a positive effect on the market structure. Reduced regulatory inconsistencies, lowered risk in starting-up new legal business afforded by external financing, and the potential to offer legal and associated services under one roof would all act as draws for potential new owners of ABS firms to enter the legal services market.
- 10.6. In the long run, this can increase the number of participants in the legal services market, and can potentially make it more competitive. There is also a possibility that existing legal and non-legal firms may merge to take advantage of the gains from economies of scale and scope, increasing their size or the range of services they offer.

- 10.7. It is not anticipated that the new regulatory framework would directly restrict the ability of legal firms to choose the price, quality or location of their services, as the Government is not proposing any regulatory rules with respect to prices. Rather the Government's proposals are facilitative, enabling firms to organise themselves in more efficient ways, resulting in new more efficient market structures, with as a result, a new vector of market derived prices. However, the range of the services these firms wish to provide may be influenced by the regulatory arrangements required for those services. If the said services fall under the regulatory net of ABS regulation, firms will be faced with an additional cost.
- 10.8. This regulatory cost will be counterbalanced by both the anticipated increased benefits to both firms and consumers through the formulation of such firms. Both firms and consumers will benefit from firms' increased opportunities to take advantage from economies of both scope and scale. In addition, it must be highlighted that, amongst other things, an objective of good regulation is to manage the most prevalent risks by implementing mechanisms that may incur costs to the profession as a whole, whilst ensuring that those operating in the profession can still operate efficiently with minimal restrictions.
- 10.9. Firms that choose to adopt the ABS proposals may face new cost structures for their businesses because of the changes in service provision. By changing the cost structure of the firm, the determination of price will also be influenced according to the cost structure adopted to accommodate the new services. In addition, the make-up of the market could also have an effect on the way prices are determined. By introducing access to external finance and permitting lawyers and non-lawyers to work together to provide legal and associated non-legal services, there could be a greater supply of suppliers entering the legal services market further reducing prices, whilst increasing competition, technological innovation and quality.
- 10.10. For example, investments in new IT systems needed for different services may increase operating costs through the need for training and maintenance, whereas contractual burdens and savings gained through the 'bundling' of services will reduce costs in certain areas. These changes will enhance the firms' capacity for price competition in the market and therefore is envisaged to have a positive effect on competition in the legal services market and therefore, greater benefits for consumers.
- 10.11. Within the new cost structures firms are likely to face in their adoption of ABS, is the cost of licensing fees charged by the ABS regulator. This form of regulatory cost may increase the cost of providing legal services and place them at a disadvantage to compete in the legal services market. The firms most likely to experience this burden are firms who choose to access external investment through non-lawyers ownership and/or form partnerships between lawyers and non-lawyers, on an equal footing, to provide 'reserved' legal services⁸⁴. However, it is necessary to provide adequate regulatory safeguards to ensure that the potential risks generated by the proposals are managed sufficiently in the interest of the consumers and the professional reputation of the legal services market.

⁸⁴ 'Reserved' services are those services subject to statutory regulation. They include Litigation, Advocacy, Immigration Services, Probate Service, Conveyancing, Notarial Acts and Oaths.

- 10.12. There is a risk of an adverse effect on those firms who are currently effectively regulated under arrangements that will fall under ABS regulation once the proposals come into force. They will be required to change their regulatory arrangements in order to comply with the new regime. However, the current number of those firms that are currently operating arrangements that would fall under the ABS regulatory umbrella, make up a small proportion of the market and therefore the envisaged overall effect will be limited to a handful of commercial firms⁸⁵.
- 10.13. Similar to the risk facing those firms whose existing arrangements would come under ABS regulation under the new regime, Not for Profit firms, who provide 'reserved' services, such as advocacy, would also be subject to ABS licensing conditions. This might generate a disproportionate burden on entities that have different priorities and fewer resources than the private sector.
- 10.14. Such a burden would probably have a disproportionate effect on these entities such that they may completely withdraw from providing reserved services. In such a case the LSB and FLRs would have the discretion to waive or alter any or all of the licensing conditions according to the nature of the entity that it regulates, if it would be in the public interest. This will help to maintain and enhance access to justice, whilst ensuring that high standards of service are delivered. Small firms entering or operating within the market may also benefit from the discretion the authorities will have to alter the level of licensing fees if they felt this would further enhance competition in the market. The FSA possess the power to set different licensing fees according to the size of the firm seeking a licence, a practice that the ABS regulator would be free to replicate if it so chooses.
- 10.15. Where a firm chooses to make only minor changes to its business structure it would be required to be regulated as a ABS firm and therefore be subject to a regulatory burden considered disproportionate to the changes made. Again, the LSB and the FLR will be responsible for ascertaining the changes in the risk profile faced by the consumer, as a result of the 'minor' changes. An example of this could be where different types of lawyers wish to enter into partnership but are concerned about the regulatory burden that would be incurred by adopting such an arrangement. In this scenario, such an arrangement will fall outside of ABS regulation and therefore would not be subject to any additional regulatory burdens.
- 10.16. In conclusion, the government's proposals appear to have a positive impact on competition facilitated mainly by the ABS proposals. In order to ensure that the market achieves the competition objective of the LSB, the LSB will be under a duty to formally consult with the OFT when authorising new FLRs, or adding or removing from the list of reserved legal services. The LSB will also be under statutory duty to respond to any OFT report published and take appropriate action. This will ensure that the LSB fully utilise the expertise of the OFT is when assessing competition issues in the legal services market.
- 10.17. Required consultation with the OFT will also help to prevent anti-competitive practices in the market and help ensure that the FLRs' regulation is carried

⁸⁵ Principally Licensed Conveyancers (some 42 firms), with a very limited number of patent agent and trade mark attorney firms who are currently permitted to have external ownership by non-lawyers.

out in accordance with the LSB's objectives for competition in the legal services market. In addition, the ABS proposals are lifting the current restrictions that prevent firms from choosing to arrange their business through alternative structures, if such arrangements generate greater efficiency.

- 10.18. If a firm chooses to adopt ABS, there is a great likelihood that the benefits acquired, both for the providers and potential clients, significantly outweighs the cost of the regulatory burden which also have the effect of mitigating against any increased risk consumers may face through changes that take place in this market.

11. Enforcement, Sanctions and Monitoring

Administrative Burdens – A risk based approach

- 11.1. The recent Hampton Review of Inspection and Enforcement⁸⁶ (March 2005) recommended that all regulatory agencies should adopt a risk based approach to regulation. The Government accepted all its recommendations. All regulatory activity for legal services should be on the basis of a clear, comprehensive risk assessment.
- 11.2. Effective regulation ensures that consumers are protected. But too much regulation is damaging because it imposes costs, stops consumers getting what they need and puts unnecessary burdens on providers. Regulation must be proportionate and based on an assessment of risk. Risk based regulation means identifying and assessing the risk, determining the strategy for managing the risk and communicating this risk.
- 11.3. All parts of the new regulatory framework will need to keep up to date with developments in regulation and the sector and adopt best practice.
- 11.4. Regulators should be able to justify their activities on the basis of risk, and communicate this effectively. Good regulators use the full range of tools at their disposal, such as providing good advice to facilitate better compliance as well as a proportionate response to non-compliance.
- 11.5. There are a number of best practice guides but the Better Regulation Executive (BRE) set out principles of good regulation.
- 11.6. The BRE guidelines say that regulation should be:
 - **proportionate**: regulators should only intervene when necessary. Remedies should be appropriate to the risk posed, and costs identified and minimised
 - **accountable**: regulators must be able to justify decisions, and be subject to public scrutiny
 - **consistent**: Government rules and standards must be joined up and implemented fairly
 - **transparent**: regulators should be open, and keep regulations simple and user friendly
 - **targeted**: regulators should be focused on the problem, and minimise side effects.

The Government strongly supports the adoption of these principles by the Legal Services Board in executing its powers and carrying out its duties.

Consistent Enforcement

- 11.7. Under **existing arrangements**, the making and application of regulations is generally carried out by legal professional bodies. However, schedule 4 to the Courts and Legal Services Act 1990 (as amended by schedule 5 to the Access to Justice Act 1999) requires that certain rules maintained by the legal professional bodies must first be approved by the Secretary of State before

⁸⁶ Hampton, Philip (2005) Reducing Administrative Burdens: Effective Inspection and Enforcement. [<http://www.hm-treasury.gov.uk/media/A63/EF/bud05hamptonv1.pdf>]

they may have effect (essentially those rules which relate to the granting or exercise of a right of audience or a right to conduct litigation). The Secretary of State also has the power to alter these rules by Order. In the case of the Council for Licensed Conveyancers, all rules of the Council require the approval of the Secretary of State before they may have effect, but the Secretary of State has no power to alter rules of the Council. As well as making and applying their rules, the legal professional bodies are also responsible for enforcing their rules, including through various conduct and disciplinary arrangements.

- 11.8. Under the Government's **proposed arrangements** those professional bodies recognised by the Legal Services Board (LSB) as Front Line Regulators (FLRs) will continue to be responsible for making their rules, but those rules will require the approval of the LSB before they can have effect. The LSB will also have the power to amend the rules of FLRs. In practice, we expect that the LSB may choose to waive the requirement for its approval of FLRs rules in certain cases. For example where it is content that the FLR concerned has a proven track record in a particular area, or where it judges that certain categories of rules do not present a significant risk when judged against its statutory objectives.
- 11.9. In practice we see little change in the burden on either the FLRs or providers of legal services as a result of this change. Conversely, we expect the process for approval will be quicker than the existing arrangements under which the Secretary of State generally refers rule change applications submitted by legal professional bodies to the Legal Services Consultative Panel (a statutory body established under the provisions of the Access to Justice Act 1999, which has a voluntary membership and generally meets once a month).
- 11.10. Disciplinary Tribunals, as currently maintained by each front-line regulator, will continue to enforce decisions on allegations of professional misconduct.
- 11.11. The OLC will make enforceable awards on consumer redress of up to a limit of £20,000. These awards will be enforceable through the courts as a civil debt. At present, not all of the FLRs are able to make enforceable awards.
- 11.12. Under the **alternative model** all rules would be made and enforced by a new Legal Services Authority. The legal professional bodies would have no statutory regulatory powers and their role would effectively be reduced to that of representative bodies.
- 11.13. Again we would see little change in the burden on either the FLRs or providers of legal services as a result of this change.

Proportionate Powers

- 11.14. Under the **existing arrangements** the legal professional bodies are responsible for the application of sanctions where their members fail to observe their rules of conduct or other regulations that may have effect. This will usually follow an investigation by the professional body often arising out of a consumer complaint. Some sanctions are applied directly by FLRs, but more serious matters generally require the matter to be considered by an independent tribunal.

- 11.15. In addition to sanctions applied to practitioners by the professional bodies, the Legal Services Ombudsman (LSO), established under the provisions of the Courts and Legal Services Act 1990, will consider cases referred by consumers and will generally investigate the way a professional body has handled a complaint. The LSO can ask a professional body to reconsider a complaint, or order a professional body to pay compensation to a consumer if they have suffered as a result of poor handling of the complaint.
- 11.16. The Access to Justice Act also provided for the establishment of a Legal Services Complaints Commissioner (LSCC) with the power to set targets for complaints handling by legal professional bodies and to fine those bodies if they fail to meet the targets set. The LSCC was established in 2004 with powers directed at the Law Society.
- 11.17. Under the Government's **proposed arrangements** FLRs would be responsible for applying its powers to those persons or bodies which they regulate, in much the same way that they do under the existing arrangements. However, the LSB would have available to it a range of powers which it could apply in respect of FLRs where these fail effectively to discharge their regulatory functions. As FLRs will no longer handle consumer complaints, the functions of the LSO and LSCC in sanctioning FLRs for inadequate complaints handling are no longer required.
- 11.18. In terms of the burdens on providers of legal services we see little change to the existing arrangements; the FLRs will continue to sanction their members in much the same way as they do under the existing arrangements. However, FLRs are likely to be under a **potentially** greater burden, given the range of powers that will be available to the LSB in the event that FLRs fail to perform effectively (such a range of powers is currently not available to any of the existing oversight regulators). However, the burden, which will only be applied where FLRs fail, is considered to be more than outweighed by the benefits to consumers.
- 11.19. Under the **alternative model** FLRs would be removed from the equation and powers would be applied directly upon providers of legal services by a new single regulator, the Legal Services Authority (LSA). There is no evidence to suggest that the burden which would be applied to practitioners by the LSA would be any more onerous than if it were applied by FLRs.

Risk-based Monitoring

- 11.20. Under existing arrangements, the performance of providers of legal services is generally monitored by the legal professional bodies. The performance of the legal professional bodies in regulating their members is variously monitored by a range of oversight regulators including the LSO and LSCC in terms of complaints handling, the Office of Fair Trading in respect of competition matters, the Master of the Rolls in respect of rules of the Law Society and the Secretary of State for Constitutional Affairs in respect of certain rules of the main professional bodies, and, in effect, as regulator of last resort.
- 11.21. Under the **proposed arrangements** FLRs will remain primarily responsible for monitoring the conduct of providers of legal services, but the LSB will act as the single oversight regulator charged with the responsibility of monitoring

the performance of FLRs. This will rationalise the existing “regulatory maze” identified by Sir David Clementi in his Report of December 2004, and, because they will be dealing with a single oversight regulator, is expected to reduce the overall burden on FLRs.

- 11.22. In terms of complaints handling, the responsibility for dealing with consumer complaints will be removed from FLRs and given to the new OLC. This should remove a considerable burden from FLRs. The OLC’s performance will be monitored by the LSB. We do not anticipate any significant impact on the providers of legal services, although we expect consumers to receive a much more effective complaints handling experience.
- 11.23. Under the ***alternative model*** the responsibility for monitoring the conduct of providers of legal services would be removed from legal professional bodies and transferred to an LSA. As with the preferred arrangements, this would rationalise the existing “regulatory maze” reduce the overall burden on FLRs.
- 11.24. In terms of complaints handling, the responsibility for dealing with consumer complaints would similarly be removed from FLRs and given to the new OLC.

Compensatory simplification measures

- 11.25. The Government’s preferred options are to be seen as simplification measures in their own right. The proposed regulatory framework is designed to provide a clear and consistent regulatory oversight regulation. The creation of an oversight body to provide a single point of oversight would eliminate the problems of the current framework, in terms of regulatory proliferation, confusion and fragmentation; the propensity of the current structure to create regulatory anomalies and gaps; and difficulties of interface and co-operation, thus increasing transparency, consistency and accountability.
- 11.26. Moreover, the removal of the restrictive nature of current business structures in legal services would facilitate more competition and innovation in the provision of legal services and offer more choice to consumers. It would also open up more opportunities for existing and potential new suppliers to offer new types of legal services.
- 11.27. In addition, the establishment of a single complaints handling body would simplify the complaint systems for consumers to use and also increase the efficiency with which the systems are run.

12. Implementation, Delivery Plan and Post-Implementation Review

- 12.1. Implementation of the proposals contained in the draft Legal Services Bill will be managed by the Department for Constitutional Affairs (DCA) working in consultation with stakeholders. The DCA considers the input of stakeholders as key to the successful deliver of the reforms and is committed to a consultative approach to working throughout the implementation process.
- 12.2. To ensure that implementation is taken forward in a structured manner, which enables progress to be carefully monitored, programme management will be used in line with principles of best practice. This will provide for continual assurance of the implementation and planning process including benefits realisation, management of risk and stakeholder engagement.
- 12.3. Consultation with other Government departments and organisations with experience in managing comparable or similar implementation programmes will be factored into the delivery plan as will benchmarking exercises to identify best practice in regulation and complaints handling.

Implementation period

- 12.4. Engagement with stakeholders is already ongoing. This will continue throughout the passage of the Bill and beyond.
- 12.5. Planning for implementation and preliminary work is in hand. Full-scale implementation will begin once the Bill has received Royal Assent, in line with Government Accounting. Following Royal Assent the expectation is that implementation will take upward of 12-18 months. This timetable incorporates implementation of supporting secondary legislation.

Key milestones

Royal Assent

- 12.6. Subject to receiving Royal Assent, expenditure on implementation can begin in line with Government Accounting rules. The first task will be the appointment of an LSB Chair and OLC Chair and appointment of members of the Board. The intention is to begin the recruitment process immediately following Royal Assent. Six to nine months is usually considered to be the lead in time required to make an upper tier appointment.

Staff appointments

- 12.7. Staff appointments to both organisations will be made by the respective boards. It is anticipated that staff appointments will take upwards of 4 months.

Building acquisition and/or fit out

- 12.8. The expectation is that building acquisition and/ or fit out will begin in tandem, or shortly before, the staff appointments process and will also take upwards of 4 months.

Post-Implementation Review

- 12.9. At the point of Programme closure a review will be carried out to assess and evaluate the performance of the programme and its management processes to identify lessons that may help other programmes. The closure process will also be used to identify whether a further review, after closure of the programme, may be required to provide a complete assessment of the overall benefits realisation process.
- 12.10. The RIA will provide the baseline against which any post-implementation review will be measured.
- 12.11. The DCA will also seek to review the effectiveness of the reforms on a continual basis in its capacity as sponsoring department. The DCA will continue to work with stakeholders as part of this process.
- 12.12. Additionally the proposed reforms have levels of accountability built in to ensure compliance with the legislation.
- 12.13. **The Legal Services Board** will be accountable to Parliament through the Secretary of State for Constitutional Affairs as sponsoring Minister. It will be required to present an annual report to the Secretary of State, who will lay it before Parliament and make it available publicly. The annual report will include the LSB's assessment of:
- the discharge of its functions
 - how it has met the regulatory objectives
 - its performance against standards of service delivery and
 - its statement of accounts.
- 12.14. The LSB will also have a duty to report to the Secretary of State for Constitutional Affairs at his request on any matter concerning the discharge of its duties.
- 12.15. Additionally the Government anticipates that the Constitutional Affairs Select Committee may wish to scrutinise the LSB's work by calling the Chair or other members to give evidence under existing select committee powers.
- 12.16. The Chief Executive of the LSB will act as the accounting officer for the LSB. This will include responsibility for the propriety and regularity of finances, for keeping proper records, and for safeguarding assets. As accounting officer, the Chief Executive will be responsible to the Permanent Head of the Department for Constitutional Affairs as accounting officer of the sponsoring Department.
- 12.17. Although the OLC will be wholly independent in its handling of complaints, the OLC will remain accountable to the LSB in respect of its targets and funding. The LSB will be able to remove the chair of the board, or board members in cases of poor performance or conduct, or of bringing the OLC into disrepute.

13. Summary and Conclusion

Options preferred by the Government

- 13.1. As a result of the cost benefit analysis that the Government has carried out on the three options for reforming the regulatory framework for legal services, the Government has concluded that in order to simplify the current regulatory framework for legal services, the creation of an independent Legal Services Board (LSB) is the Government's preferred option.
- 13.2. The creation of the LSB would provide an independent, single point of oversight regulation to the legal service profession with effective powers to ensure that the day-to-day regulatory functions of the Front Line Regulators are in accordance with the overall objectives of the LSB including improving access to justice, protecting and promoting consumers' interests and encouraging a strong, effective and diverse legal profession.
- 13.3. The effective powers granted to the LSB will ensure that consumers' interests are put at the forefront of legal service provision, and transparency and accountability are achieved in the legal services market. The LSB would be responsible for authorising the FLRs to conduct the day-to-day regulatory functions if it were satisfied with their competence and governance arrangements, and also that the FLRs had demonstrated that they had successfully separated their regulatory and representative functions.
- 13.4. The LSB would also have statutory powers to intervene if the FLRs are judged to be failing in their duties, which ensures that the incompetence of any FLR will not persist to the detriment of consumers. In further demonstrating its commitment to protecting and promoting consumers' interests, the LSB would set up and maintain a Consumer Panel to ensure that it is in touch with the views and demands of different consumers.
- 13.5. The LSB would also be able to propose to the Secretary of State any additional legal service activities that would be brought into, or taken out of, the scope of the LSB's regulatory reach by secondary legislation. This mechanism will ensure that the powers and functions of the LSB have the flexibility to adapt to potential future changes in the regulatory requirements of the legal services market.
- 13.6. As per the analysis conducted using PwC's independent report, the Government is content that the slight increase in ongoing running costs (£2.4m) and the one-off transition costs (£2.3m) associated with the LSB option, are justified by the benefits accruing to consumers and the legal service sector as a whole from the introduction of an oversight regulator. This increase in regulatory costs under the LSB option should be seen in conjunction with the decrease in annual running costs attributable to bodies involved in the regulatory framework from the creation of a single, independent complaints handling body (£12m).
- 13.7. As a result of the cost benefit analysis that the Government conducted on the three options proposed for facilitating alternative business structures, the government has concluded that the option for facilitating the alternative

business structures via a licensing regime is best suited to meeting the objectives of the reform for legal services.

- 13.8. The proposal would enable lawyers and providers of associated non-legal services can work together, with external financing, to provide legal and associated services via a licensing regime. This would be subject to the approval of a FLR that has obtained an authorisation from the LSB to regulate that form of ABS. By permitting this form of business structures in the legal services profession, ABS will encourage competition, innovation and efficiency in service delivery whilst simultaneously improving the quality of legal services for consumers.
- 13.9. In order to assess the suitability of a prospective ABS firm, The authorised FLR must be satisfied that the prospective ABS has attained the set standards. In particular, a prospective ABS firm would be required to satisfy the LSB's compensation fund and indemnity insurance requirements and to nominate a Head of Legal Practice (HOLP) and a Head of Finance and Administration (HOFA) to ensure that the conduct of legal business and practice management is in accordance with the regulatory rules.
- 13.10. External investors of the ABS firm must also pass a robust 'fit to own' test set by the FLR before being permitted to invest in the firm.
- 13.11. The ABS option is much less restrictive than the LDP option considered, allowing firms to offer both legal and associated non-legal services. ABS firms that contain a mixture of lawyers and non-lawyers could lead to the sharing of good management practice, technological innovation and efficiencies across the market enhancing competition amongst firms and potentially reducing the price of legal services. In addition, access to external finance will enable firms to spread start-up risks, access equity to possibly expand their business, diversify and improve the efficiency of their service provision to the benefit of consumers.
- 13.12. The Racial Equality Impact Assessment revealed that the ABS proposals have the potential to have a positive effect on the BME consumers and solicitors through the expected reduction in prices and the changes in business structures.
- 13.13. The Government envisages the ABS proposals will have a positive impact on legal aid suppliers. The Legal Aid Impact Test has identified a number of areas where benefits will accrue to the legal aid consumer though an increase in the level of legal aid service provision, facilitation of complementary services provided through the integration of mixed service providers. In addition, through the potential reduction in prices, there could be an improvement in access to justice through affordability for the middle bracket of consumers.
- 13.14. The Government carried out a Small Firms Impact Test and was satisfied that the proposed options would provide greater opportunities for small firms to access equity, diversify, expand and effectively compete in the market for legal services.
- 13.15. As a result of the cost benefit analysis that the Government conducted on the three options proposed for reforming the complaints handling arrangements in legal services, the Government proposes the establishment of a new Office

for Legal Complaints (OLC) to take over the role of the professional bodies in handling consumer complaints. The OLC would provide an independent complaint handling system with effective powers to deal with complaints made against providers, which could not be resolved at the local level.

- 13.16. The body would also be empowered to provide redress to consumers, set standards for complaints handling and identify best practice.
- 13.17. Through the independent nature of the OLC, it is envisaged that consumer confidence in the complaints handling system should increase and will therefore encourage consumers to file legitimate complaints against inefficient providers.
- 13.18. The OLC would be accountable to the LSB for its overall operation, to ensure that the LSB has proper oversight of the entire regulated legal service sector that the OLC is operating in accordance with the LSB's objectives for the regulation of legal services.
- 13.19. As per the analysis conducted using PwC's independent report, the Government is content that the transition costs associated with the OLC option (£23.6m), are justified by the benefits accruing to consumers and the legal service sector as a whole from the introduction of a single, independent complaints handling body. These one-off costs should be seen in the context of the estimated £12m decrease in annual running costs of the complaints handling system.

Summary of expected benefits and costs

- 13.20. The table below summarises the expected benefits and costs of the Government's preferred options for the reform of legal services:

	<i>Benefits</i>	<i>Costs</i>
<i>An oversight regulator (LSB)</i>	<u>Economic</u> <ul style="list-style-type: none"> i. Consolidation of regulatory roles and responsibilities of the multiple oversight regulators to a single point of consistent regulatory oversight. ii. As a relatively small oversight regulator, LSB will be less bureaucratic and more efficient. iii. Simplified regulatory framework which reduces regulatory proliferation, fragmentation and inconsistencies, may lead to lower compliance costs for suppliers. iv. Risk of additional regulatory burdens reduced. 	<u>Economic</u> <ul style="list-style-type: none"> i. Risk of adding regulatory burdens on those suppliers of currently unregulated legal services, if these services are brought into the LSB's regulatory net. ii. Additional regulatory costs may be past onto the consumer through higher prices. However, anticipated that additional regulatory burdens on professions will be minimal. iii. Risk of the professions formulating regulations that put the professions' interests above those of

	<ul style="list-style-type: none"> v. Reduced likelihood of regulatory anomalies and gaps, offering greater protection to consumers. vi. No self-regulatory element within the framework, ensuring that regulatory decisions are made in consumers' interest. vii. Reduced risk of regulations being set to the detriment of competition and innovation. viii. Less likely to lose regulatory expertise during transitional period. ix. Retention of day-to-day regulation in hands of professional bodies should increase quality standards reducing risk of rising monitoring and enforcement costs. x. Increased independence of regulatory decisions. xi. Increased consumer confidence via greater accountability, transparency and regulatory certainty. xii. Greater flexibility in the regulatory system, especially with regard to regulation of ABS firms. xiii. Duty to consult with OFT when authorising new FLRs and observing market behaviour will reduce anti-competitive practices. xiv. Independence of oversight regulator will ensure that foreign consumers are not deterred from using the UK for international and commercial litigation and arbitration. <p><u>Social</u></p> <ul style="list-style-type: none"> i. Principle of the legal profession being independent of government will be demonstrated more clearly than if the regulatory role were removed from the 	<p>consumers. Risk minimised by LSB's ability to 'call-in' rules and to impose sanctions to ensure that regulations will not be set in such a way that would harm consumers.</p> <p><u>Social</u></p> <ul style="list-style-type: none"> i. Removal of self-regulation could dilute ethical responsibilities and regulatory accountability of individual practitioners
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	<p>professional bodies entirely.</p> <p>ii. Greater ability to adjust to future changes in the legal services market and to make the appropriate regulatory response. This will aid the future development in the market, bringing positive benefits in terms of increasing access to justice and diversity within the legal professions.</p> <p>iii. Introducing the LSB will eliminate the inconsistencies in the existing framework and identify best practices to achieve the objectives of reforming the regulatory framework.</p> <p>iv. Oversight regulator will ensure that regulatory gaps are anticipated and tackled before consumers are put at risk.</p> <p>v. Increased consumer confidence and improvement in professional standing of legal service providers.</p> <p>vi. Promotion of consumer interests and achievement of regulatory objectives.</p> <p>vii. Consumer input in LSB, through consumer panel, will ensure that decisions are made in the interests of the consumers.</p> <p>viii. Consumers will be better enabled to understand the system and feel empowered to make well-informed choices about purchasing legal services.</p> <p>ix. Compulsory separation of regulatory and representative functions of FLRs will lead to accountability, transparency and an increase in regulatory certainty.</p>	<p>increasing the risk of lowering standards to the consumers' detriment. This risk should be minimised through FLRs' responsibility for ethical and regulatory accountability.</p>
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	Benefits	Costs
<i>Facilitate alternative business structures (ABS) in the provision of legal and associated non-legal services via a licensing regime</i>	<u>Economic</u> <ul style="list-style-type: none"> i. Competition enhanced by the removal of unduly restrictive professional rules. ii. Licensing regime is much less restrictive in the type of business structure ABS firms are allowed to operate under, thus widening the scope of competition. iii. Allowing new capital from outside the profession will help to increase capacity and exert a downward pressure on prices via increased competition. iv. Through fall in start-up costs for potential new suppliers, there should be an increase in suppliers, increasing competition and innovation in the market, leading to an increase in the quality of services. v. Opportunity for owners to diversify risks and lowers cost of capital. vi. Greater convenience to consumer by allowing one-stop shop of different types of legal and associated non-legal services. vii. Ability to provide legal and associated business under on roof increases scope of efficiency gains for suppliers. viii. Increased access to external financing and inherent flexibility encourages ABSs to innovate and to improve efficiency. ix. Facilitate building up of reputation, leading to increase in quality of legal services and higher protection for consumers. x. Integration of practitioners from different services 	<u>Economic</u> <ul style="list-style-type: none"> i. Confusion of different regulations amongst ABS regulators and firms. May also increase the risk of regulatory capture. Risk minimised by the statutory requirement of the LSB to seek advice and agreement with other regulators about cross-discipline regulatory decisions. ii. Risk of information protected under legal professional privilege being leaked due to unreasonable commercial pressure or conflict of interest. Mitigated by proposed safeguards (e.g. HOLP and HOFA). iii. Risk that larger legal firms may seek to 'foreclose' competition from smaller firms which employ mainly BME solicitors and women solicitors. Risk minimised by FLR's statutory objective of promoting competition. iv. Inefficient firms may be driven out of the market due to increased competition. This may not be considered as an economic cost if it raises the overall quality of legal services in the market. v. Licensing fees may pose a regulatory burden on NFP firms and those firms adopting minor changes bringing them into the regulatory net. However, LSB and ABS have discretion to waive

	<p>should allow the sharing of good practice, innovation and technological advances across the profession.</p> <p>xi. Higher incentives for ABS firms to maintain quality services.</p> <p>xii. ABS will expand scope of businesses and allow such businesses to compete more effectively in the international market.</p> <p>xiii. Permitting external ownership allows external owners to use the stock to signal quality of firm to attract prospective recruits and investors.</p> <p><u>Social</u></p> <p>i. Enhanced access to justice via new channels for delivering services.</p> <p>ii. Provide more opportunities for under-represented groups to enter, and help increase diversity in the legal profession.</p> <p>iii. More types of legal services can be offered due to increased efficiency and scope of information-sharing across different business areas.</p> <p>iv. Facilitate more opportunities for disputes to be settled via Alternative Dispute Resolution methods, reducing the need of litigation and the demand on valuable court time.</p>	<p>or alter any or all of the existing rules if it is in the public interest. In addition, it is not expected that the licensing fee would act as a deterrent to new entrants.</p> <p><u>Social</u></p> <p>i. Greater competition may lead to closure of inefficient suppliers in some locations. They are more likely to be replaced under the licensing model by more efficient suppliers, and/or by new delivery methods.</p> <p>ii. Consumers face the risk of 'tying-in' practices, which is further enhanced if the majority of owners are non-lawyers influenced by commercial pressures. This risk should be reduced by the requirement that all ABS firms should nominate a HOLP who will ensure that the ABS firm adheres to the rules of the FLR.</p>
	Benefits	Costs
<i>A new complaints handling body, the Office for</i>	<p><u>Economic</u></p> <p>i. Independence for the complaints handling system, thus increasing</p>	<p><u>Economic</u></p> <p>i. Increased rise in complaints will lead to an increased workload</p>

<p>Legal Complaints (OLC)</p>	<p>consumer confidence in the legal services industry.</p> <ul style="list-style-type: none"> ii. Single point of entry for all service complaints simplifies complaint-handling arrangements for consumers and eliminates duplication of roles across profession leading to time and overhead savings for FLRs and suppliers iii. Greater consistency and clarity in the complaints handling process, leading to a more efficient and effective complaint mechanism, thus inducing savings for FLRs and suppliers. iv. Reduced inefficiency in complaints handling system by ensuring complaints are directed to the correct FLR. v. Redress award of up to £20,000 will provide an incentive for suppliers to improve quality of services to protect reputations of suppliers, thus reduce the likelihood of complaints lodge against them, potentially reducing administrative burdens. vi. Possibility of redress will also encourage legitimate complaints from consumers who have received a poor service, increasing their confidence when purchasing legal services. vii. Because the OLC will be an independent body with effective powers the legal professionals will have an incentive to adhere to the code of practice and disciplinary procedures as outlined by the FLRs and OLC. <p><u>Social</u></p> <ul style="list-style-type: none"> i. Independence of the OLC will improve consumer confidence in the 	<p>to handle complaints for sub-standard suppliers, though this may act as an incentive for them to improve standards of services.</p> <ul style="list-style-type: none"> ii. Legal professionals may become overly risk-averse and avoid taking more complex and difficult legal cases, reducing access to justice. But this risk is equally applicable under the current system and there is no evidence to suggest that lawyers have been driven to avoid these types of cases. iii. Confusion amongst FLRs, the OLC and other statutory regulators as to how complaints should be handled. The authority the LSB has to discuss with other statutory regulators will ensure the handling of complaints will be consistent across the professions involved. iv. Due to more effective complaints body, compliance costs for firms will rise in order to meet the standards set for 'in-house' procedures. However, this may act as an incentive for providers to improve standards to reduce likelihood of complaints being lodged against them. <p><u>Social</u></p> <ul style="list-style-type: none"> i. Confusion may arise for the consumers when using ABS firms, as to
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	<p>complaints system and aid the LSB in achieving its objectives through focussing on consumer interests.</p> <p>ii. The power that the OLC will have to share information about complaints will empower consumers to make better decisions when choosing their legal services provider and provides an incentive for providers to improve the quality of their services.</p>	<p>how the complaints concerning cross-service practitioners should be handled. However, the ABS regulator would have to have suitable and transparent arrangements with non-legal regulators in place before it was authorised to allow firms to provide non-legal services. The firm would also have to make it clear to the consumers at the outset that different regulators, regulated different services in the firm.</p>
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13.21. The table below summarises the operating and transitional costs of the options proposed by the Government on reforming the regulatory framework and complaints-handling arrangements for legal services:

Reforming the Regulatory Framework:

Option	Annual Running Costs	Transition Costs (two years before vesting)	Transition Costs (one year before vesting)	Transition costs (one year <u>after</u> vesting)
	£000	£000	£000	£000
Do nothing	64,900	n/a	n/a	n/a
With a Legal Services Authority	66,400	11,550	16,740	27,000
With a Legal Services Board	67,250	200	1,580	500

Reforming the Complaints Handling Arrangements:

Option	Annual Running Costs	Transition Costs (two years before vesting)	Transition Costs (one year before vesting)	Transition costs (one year <u>after</u> vesting)
	£000	£000	£000	£000
Do nothing	32,520	n/a	n/a	n/a
With a Post-box	32,920	-	-	500
With an Office for Legal Complaints	20,590	140	12,280	11,140

All Costs in 2005-06 prices

- 13.22 PwC's report also identifies £1m of additional "implementation costs" of setting up a task force for detailed organisation design for the LSB and the OLC. These costs are estimated to fall in the year before powers and duties are vested in the new bodies.
- 13.23 PwC have also costed alternative scenarios over and above their base cases outlined above.
- 13.24 For the LSB, PwC costed alternative scenarios which allowed for an incremental increase in the level of activity and locating the LSB in the North of England or London. A combination of these variables could result in the annual ongoing running costs of the LSB rising to £5.6m. The cost of the LSB would therefore rise to £69.3m. Under this alternative scenario, transition costs could also be expected to rise by approximately £600,000.
- 13.25 For the OLC, PwC costed alternative scenarios which allowed for an incremental level of resource for higher volume of complaints, locating the OLC in the North of England and operating from multiple sites (as opposed to a single location). A combination of these variables could result in the annual ongoing running costs of the OLC rising to £24.8m (base-case plus incremental volume of complaints, with a multi-site location with HQ based in the West Midlands). The cost under the OLC option would therefore rise to £28.6m. Under this alternative scenario, transition costs could also be expected to rise by approximately £4.5m.

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