

Legal Services Bill [HL]

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Department for Constitutional Affairs, are published separately as HL Bill 9 – EN.

EUROPEAN CONVENTION ON HUMAN RIGHTS

The Lord Falconer of Thoroton has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Legal Services Bill [HL] are compatible with the Convention rights.

Legal Services Bill [HL] (Volume I)

The Bill is divided into two Volumes. Volume I contains the Clauses. Volume II contains the Schedules to the 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 The Board's duty to promote the regulatory objectives etc
- 4 Standards of regulation, education and training
- 5 Corporate governance
- 6 Annual report
- 7 Supplementary powers

Consumer Panel

- 8 The Consumer Panel
- 9 Committees and the procedure of the Consumer Panel
- 10 Representations by the Consumer Panel
- 11 Advice and research functions of the Consumer Panel

PART 3

RESERVED LEGAL ACTIVITIES

Reserved legal activities

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

Carrying on the activities

- 13 Entitlement to carry on a reserved legal activity

Offences

- 14 Offence to carry on a reserved legal activity if not entitled
15 Carrying on of a reserved legal activity: employers and employees etc
16 Offence to pretend to be entitled

Interpretation

- 17 Authorised persons
18 Exempt persons
19 Approved regulators and relevant approved regulators
20 Regulatory arrangements

Continuity of existing rights and transitional protection

- 21 Continuity of existing rights to carry on reserved legal activities
22 Transitional protection for non-commercial bodies

Alteration of reserved legal activities

- 23 Extension of the reserved legal activities
24 Provisional designation as approved regulators and licensing authorities
25 Recommendations that activities should cease to be reserved legal activities

PART 4

REGULATION OF APPROVED REGULATORS

Introductory

- 26 Regulatory and representative functions of approved regulators

General duties of approved regulators

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

Separation of regulatory and representative functions

- 28 Prohibition on the Board interfering with representative functions
29 Rules relating to the exercise of regulatory functions

Performance targets

- 30 Performance targets and monitoring

Directions

- 31 Directions
32 Directions: procedure
33 Enforcement of directions

Censure

- 34 Public censure
- 35 Public censure: procedure

Financial penalties

- 36 Financial penalties
- 37 Financial penalties: procedure
- 38 Appeals against financial penalties
- 39 Recovery of financial penalties

Intervention

- 40 Intervention directions
- 41 Intervention directions: further provision
- 42 Intervention directions: enforcement
- 43 Revocation of intervention directions

Cancellation of approval

- 44 Cancellation of designation as approved regulator
- 45 Cancellation of designation: further provision
- 46 The Board's power to recommend orders made under section 45
- 47 Cancellation of designation: powers of entry etc

Policy statements

- 48 The Board's policy statements
- 49 Policy statements: procedure

Practising fees

- 50 Control of practising fees charged by approved regulators

Regulatory conflict

- 51 Regulatory conflict with approved regulators
- 52 Modification of provision made about regulatory conflict
- 53 Regulatory conflict with other regulatory regimes

Information

- 54 Provision of information to the Board
- 55 Enforcement of notices under section 54

Competition

- 56 Reports by the OFT
- 57 The Board's response to OFT report
- 58 Referral of report by the Secretary of State to the Competition Commission
- 59 Duties of the Competition Commission
- 60 Secretary of State's power to give directions

The Board as approved regulator

- 61 The Board as an approved regulator
- 62 The Board's designation under section 61(1)(a)
- 63 Modification of the Board's functions under section 61(1)(b)
- 64 Cancellation of the Board's designation under section 61(1)(c)
- 65 The Board's power to recommend orders made under section 61
- 66 Effect of the Board's designation as an approved regulator
- 67 Regulatory conflict and the Board as approved regulator

Functions of approved regulators etc

- 68 Modification of the functions of approved regulators etc
- 69 Procedural requirements relating to recommendations under section 68

PART 5

ALTERNATIVE BUSINESS STRUCTURES

Introductory

- 70 Carrying on of activities by licensed bodies
- 71 "Licensable body"

Licensing authorities

- 72 Licensing authorities and relevant licensing authorities
- 73 Designation of approved regulator as licensing authority
- 74 Automatic cancellation of designation as licensing authority
- 75 Cancellation of designation as licensing authority by order
- 76 Cancellation of designation: further provision
- 77 The Board's power to recommend orders made under section 76
- 78 Cancellation of designation: powers of entry etc

Appeals

- 79 Functions of appellate bodies
- 80 Procedural requirements relating to recommendations under section 79

Licensing rules

- 81 Licensing rules

Licensing

- 82 Application for licence
- 83 Terms of licence
- 84 Modification of licence
- 85 Registers of licensed bodies
- 86 Evidence of status

Ownership of licensed bodies

- 87 Ownership of licensed bodies

Regulation of licensed bodies

- 88 Duties of non-authorised persons
- 89 Duties of Head of Legal Practice
- 90 Duties of Head of Finance and Administration
- 91 Information
- 92 Enforcement of notices under section 91
- 93 Financial penalties
- 94 Appeals against financial penalties
- 95 Recovery of financial penalties
- 96 Referral of employees etc to appropriate regulator
- 97 Disqualification
- 98 Lists of disqualified persons
- 99 Suspension and revocation of licence
- 100 Intervention
- 101 Regulatory conflict and the Board as licensing authority
- 102 Prevention of regulatory conflict: accounts rules

Special kinds of body

- 103 Trade union exemptions
- 104 Power to modify application of licensing rules etc to special bodies
- 105 Modifications under section 104: supplementary
- 106 “Low risk body”
- 107 Foreign bodies

Interpretation

- 108 Interpretation of Part 5

PART 6

LEGAL COMPLAINTS

Complaints procedures of authorised persons

- 109 Complaints procedures of authorised persons

Overview of the scheme

- 110 Overview of the scheme

The Office for Legal Complaints

- 111 The Office for Legal Complaints
- 112 The ombudsman scheme
- 113 General obligations
- 114 Corporate governance
- 115 Annual report
- 116 Supplementary powers
- 117 Reporting to the Board
- 118 Performance targets and monitoring

The ombudsmen

- 119 Appointment of the Chief Ombudsman and assistant ombudsmen
- 120 Annual report of Chief Ombudsman
- 121 Additional reports of Chief Ombudsman

Jurisdiction and operation of the ombudsman scheme

- 122 Jurisdiction of the ombudsman scheme
- 123 Complaints excluded because respondent's complaints procedures not used
- 124 Complaints excluded by scheme rules
- 125 Parties
- 126 Pre-commencement acts and omissions
- 127 Orders under section 125
- 128 Acts and omissions by employees etc
- 129 Continuity of complaints
- 130 Operation of the ombudsman scheme
- 131 Delegation of an ombudsman's functions
- 132 Notification requirements
- 133 Charges payable by respondents

Determinations under the scheme

- 134 Determination of complaints
- 135 Limitation on value of directions under the ombudsman scheme
- 136 Alteration of limit
- 137 Acceptance or rejection of determination
- 138 Enforcement by complainant of directions under section 134
- 139 Reporting court orders made against authorised persons

Reporting misconduct

- 140 Reporting possible misconduct to approved regulators

Co-operation with investigations

- 141 Duties to share information
- 142 Duties of authorised persons to co-operate with investigations
- 143 Reporting failures to co-operate with an investigation to approved regulators

Information

- 144 Information and documents
- 145 Reporting failures to provide information or produce documents
- 146 Enforcement of requirements to provide information or produce documents
- 147 Reports of investigations
- 148 Restricted information
- 149 Disclosure of restricted information
- 150 Data protection

Defamation

- 151 Protection from defamation claims

Scheme rules

- 152 Consent requirements for rules
- 153 The Board's powers in respect of rules

Effect on existing arrangements for redress etc

- 154 Approved regulators not to make provision for redress
- 155 Legal Services Complaints Commissioner and Legal Services Ombudsman

Interpretation

- 156 Interpretation of Part 6

Claims management services

- 157 Extension of Part 6 to claims management services

PART 7

FURTHER PROVISIONS RELATING TO THE BOARD AND THE OLC

Guidance

- 158 Guidance

Voluntary arrangements

- 159 Voluntary arrangements

Disclosure and use of information

- 160 Restricted information
- 161 Disclosure of restricted information
- 162 Disclosure of information to the Board
- 163 Data protection
- 164 Use of information

Payments by Secretary of State

- 165 Funding

The levy

- 166 The levy
- 167 The levy: supplementary provisions

Payments into the Consolidated Fund

- 168 Amounts payable into the Consolidated Fund

PART 8

MISCELLANEOUS PROVISIONS ABOUT LAWYERS ETC

Duties of regulated persons

- 169 Duties of regulated persons

Solicitors, the Law Society and the Disciplinary Tribunal

- 170 The Law Society, solicitors, recognised bodies and foreign lawyers
171 The Solicitors Disciplinary Tribunal: approval of rules
172 Board's power to give directions to the Tribunal
173 Functions of the Tribunal

Other lawyers

- 174 Licensed conveyancers
175 Commissioners for oaths
176 Trade mark attorneys
177 Patent attorneys
178 Immigration advisers and immigration service providers
179 Claims management services

Advocates and litigators

- 180 Duties of advocates and litigators
181 Employed advocates

Legal professional privilege

- 182 Legal professional privilege

Savings

- 183 Powers of court in respect of rights of audience and conduct of litigation
184 Solicitors to public departments and the City of London

Pro bono representation

- 185 Payments in respect of pro bono representation

Scotland

- 186 Application of the Legal Profession and Legal Aid (Scotland) Act 2006
187 Scottish legal services ombudsman: functions

PART 9

GENERAL

Offences

- 188 Offences committed by bodies corporate and unincorporated bodies

189 Local weights and measures authorities

Notices etc

190 Notices and directions

191 Documents

192 The giving of notices, directions and other documents

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

Orders, rules etc

194 Orders, regulations and rules

195 Consultation requirements for rules

196 Parliamentary control of orders and regulations

Interpretation

197 Interpretation

Miscellaneous and supplementary

198 Minor and consequential provision etc

199 Transitional provision

200 Repeals

201 Commencement

202 Extent

203 Index of defined expressions

204 Short title

-
- Schedule 1 – The Legal Services Board
 - Schedule 2 – The reserved legal activities
 - Schedule 3 – Exempt persons
 - Schedule 4 – Approved regulators
 - Part 1 – Existing regulators
 - Part 2 – Designation of bodies by order
 - Part 3 – Alteration of approved regulator’s regulatory arrangements
 - Schedule 5 – Authorised persons
 - Part 1 – Continuity of rights
 - Part 2 – Rights during transitional period
 - Part 3 – Interpretation
 - 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 – Entitlement to make an application for a licence to the Board
- Schedule 13 – Ownership of licensed bodies
 - Part 1 – Introductory
 - Part 2 – Approval of restricted interests on application for licence
 - Part 3 – Approval of restricted interests after licence is issued
 - Part 4 – Additional restrictions
 - Part 5 – Enforcement
- Schedule 14 – Licensing authority’s powers of intervention
- Schedule 15 – The Office for Legal Complaints
- Schedule 16 – The Law Society, solicitors, recognised bodies and foreign lawyers
 - Part 1 – The Solicitors Act 1974 (c. 47)
 - Part 2 – The Administration of Justice Act 1985 (c. 61)
 - Part 3 – The Courts and Legal Services Act 1990 (c. 41)
- Schedule 17 – Licensed conveyancing
- Schedule 18 – 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 19 – Claims management services
- Schedule 20 – Amendments in relation to the Legal Profession and Legal Aid (Scotland) Act 2006
- Schedule 21 – Minor and consequential amendments
- Schedule 22 – Transitional provision
- Schedule 23 – Repeals
- Schedule 24 – Index of defined expressions

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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; to make provision about claims management services and about immigration advice and immigration services; to make provision in respect of legal representation provided free of charge; to make provision about the application of the Legal Profession and Legal Aid (Scotland) Act 2006; to make provision about the Scottish legal services ombudsman; 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 an independent, 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 within this subsection are services such as are provided by authorised persons (including services which do not involve the carrying on of activities which are reserved legal activities).
- (3) The “professional principles” are –
- (a) that authorised persons should act with independence and integrity, 5
 - (b) that authorised persons should maintain proper standards of work,
 - (c) that authorised persons should act in the best interests of their clients,
 - (d) that persons who exercise before any court a right of audience, or conduct litigation in relation to proceedings in any court, by virtue of being authorised persons should comply with their duty to the court to act with independence in the interests of justice, and 10
 - (e) that the affairs of clients should be kept confidential.
- (4) In this section “authorised persons” means authorised persons in relation to activities which are reserved legal activities.

PART 2

15

THE LEGAL SERVICES BOARD

Constitution

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. 20

General functions

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

- (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 – 25
- (a) which is compatible with the regulatory objectives, and
 - (b) which the Board considers most appropriate for the purpose of meeting those objectives.
- (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, 30
 - (b) any other principle appearing to it to represent the best regulatory practice, and
 - (c) the public interest. 35

4 Standards of regulation, education and training

The Board must assist in the maintenance and development of standards in relation to –

- (a) the regulation by approved regulators of persons authorised by them to carry on activities which are reserved legal activities, and
- (b) the education and training of persons so authorised.

5 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. 5

6 Annual report

- (1) The Board must prepare a report (“the annual report”) for each financial year.
- (2) The annual report must deal with— 10
 - (a) the discharge of the Board’s functions,
 - (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. 15
- (3) As soon as reasonably practicable after the end of each financial year, the Board must give the Secretary of State a copy of the annual report prepared for that year.
- (4) The Secretary of State must lay a copy of the annual report before Parliament.
- (5) In this section “financial year” means— 20
 - (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.

7 Supplementary powers

The Board may do anything calculated to facilitate, or incidental or conducive to, the carrying out of any of its functions. 25

Consumer Panel

8 The Consumer Panel

- (1) The Board must establish and maintain a panel of persons (to be known as “the Consumer Panel”) to represent the interests of consumers. 30
- (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.
- (4) The Board must secure that the membership of the Consumer Panel is such as to give a fair degree of representation to both— 35
 - (a) those who are using (or are or may be contemplating using), in connection with businesses carried on by them, services provided by

<p>persons who are authorised persons in relation to activities which are reserved legal activities, and</p> <p>(b) those who are using (or are or may be contemplating using) such services otherwise than in connection with businesses carried on by them.</p> <p>(5) The Consumer Panel must not include any person who is—</p> <p style="padding-left: 20px;">(a) a member of the Board or of its staff;</p> <p style="padding-left: 20px;">(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 15;</p> <p style="padding-left: 20px;">(c) a member of the governing body, or of the staff, of an approved regulator;</p> <p style="padding-left: 20px;">(d) an authorised person in relation to an activity which is a reserved legal activity;</p> <p style="padding-left: 20px;">(e) a person authorised, by a person designated under section 5(1) of the Compensation Act 2006 (c. 29), to provide services which are regulated claims management services (within the meaning of that Act);</p> <p style="padding-left: 20px;">(f) an advocate in Scotland;</p> <p style="padding-left: 20px;">(g) a solicitor in Scotland;</p> <p style="padding-left: 20px;">(h) a member of the Bar of Northern Ireland; or</p> <p style="padding-left: 20px;">(i) a solicitor of the Court of Judicature of Northern Ireland.</p> <p>(6) The chairman and other members of the Consumer Panel are to be—</p> <p style="padding-left: 20px;">(a) appointed on terms and conditions determined by the Board, and</p> <p style="padding-left: 20px;">(b) paid by the Board in accordance with provision made by or under the terms of appointment.</p> <p>9 Committees and the procedure of the Consumer Panel</p> <p>(1) The Consumer Panel may make such arrangements as it thinks fit for committees established by the Panel to give advice to the Panel about matters relating to the carrying out of the Panel’s functions.</p> <p>(2) The Consumer Panel may make such other arrangements for regulating its own procedure, and for regulating the procedure of the committees established by it, as it thinks fit.</p> <p>(3) Those arrangements may include arrangements as to quorums and as to the making of decisions by a majority.</p> <p>(4) The committees established by the Consumer Panel may include committees the membership of which includes persons who are not members of the Panel.</p> <p>(5) The membership of every committee established by the Consumer Panel must contain at least one person who is a member of the Panel.</p> <p>(6) Where a person who is not a member of the Consumer Panel is a member of a committee established by it, the Board may pay to that person such remuneration and expenses as the Board may determine.</p> <p>10 Representations by the Consumer Panel</p> <p>(1) The Board must consider any representations made to it by the Consumer Panel.</p>	<p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p> <p>35</p> <p>40</p>
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- (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.
- (3) The Consumer Panel may publish such information as it thinks fit about any representations made by it to the Board. 5
- (4) Where the Consumer Panel publishes information about any representations made by it, the Board must publish any notice it gives under subsection (3) in respect of those representations.

11 Advice and research functions of the Consumer Panel

- (1) The Consumer Panel may, at the request of the Board – 10
 - (a) carry out research for the Board;
 - (b) give advice to the Board.
- (2) The Board must consider any advice given and the results of any research carried out under this section.
- (3) The Consumer Panel may publish such information as it thinks fit about advice it gives, and about the results of research carried out by it, under this section. 15

PART 3

RESERVED LEGAL ACTIVITIES

Reserved legal activities

12 Meaning of “reserved legal activity” and “legal activity” 20

- (1) In this Act “reserved legal activity” means –
 - (a) the exercise of a right of audience;
 - (b) the conduct of litigation;
 - (c) reserved instrument activities;
 - (d) probate activities; 25
 - (e) notarial activities;
 - (f) the administration of oaths.
- (2) Schedule 2 makes provision about what constitutes each of those activities.
- (3) In this Act “legal activity” means –
 - (a) an activity which is a reserved legal activity within the meaning of this Act as originally enacted, and 30
 - (b) any other activity which consists of one or both of the following –
 - (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; 35
 - (ii) the provision of representation in connection with any matter concerning the application of the law or any form of resolution of legal disputes.
- (4) But “legal activity” does not include any activity of a judicial or quasi-judicial nature (including acting as a mediator). 40

- (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.
- (6) Section 23 makes provision for adding legal activities to the reserved legal activities. 5

Carrying on the activities

13 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. 10
- (2) A person is entitled to carry on an activity (“the relevant activity”) which is a reserved legal activity where –
- (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 22 (transitional protection for non-commercial bodies). 15

Offences

14 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. 20
- (2) 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.
- (3) A person who is guilty of an offence under subsection (1) is liable – 25
- (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).
- (4) 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. 30
- (5) In relation to an offence under subsection (1) committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (c. 44), the reference in subsection (3)(a) to 12 months is to be read as a reference to 6 months. 35

15 Carrying on of a reserved legal activity: employers and employees etc

- (1) This section applies for the interpretation of references in this Act to a person carrying on an activity which is a reserved legal activity. 40

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- (2) References to a person carrying on an activity which is a reserved legal activity include a person (“E”) who –
- (a) is an employee of a body or other person (“B”), and
 - (b) carries on the activity in E’s capacity as such an employee.
- (3) For the purposes of subsection (2), it is irrelevant whether B is entitled to carry on the activity. 5
- (4) B does not carry on an activity which is a reserved legal activity by virtue of E carrying it on in E’s capacity as an employee of B, unless the provision of relevant services to the public or a section of the public (with or without a view to profit) is part of B’s business. 10
- (5) Relevant services are services which consist of or include reserved legal activities carried on by employees of B in their capacity as employees of B.
- (6) The Secretary of State may by order make provision about –
- (a) what does or does not constitute a section of the public;
 - (b) the circumstances in which the provision of relevant services to the public or a section of the public does or does not form part of B’s business. 15
- (7) The Secretary of State may make an order under subsection (6) only on the recommendation of the Board.
- (8) If B is a body, references to an employee of B include references to a manager of B. 20
- 16 Offence to pretend to be entitled**
- (1) It is an offence for a person –
- (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 25
 - (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 –
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both), and 30
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both).
- (3) In relation to an offence under subsection (1) committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (c. 44), the reference in subsection (2)(a) to 12 months is to be read as a reference to 6 months. 35

Interpretation

17 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 – 40

-
- (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
 - (b) a licensable body which, by virtue of such a licence, is authorised to carry on the relevant activity by a licensing authority in relation to the reserved legal activity. 5
 - (2) A licensable body may not be authorised to carry on the relevant activity as mentioned in subsection (1)(a).
 - (3) But where a body (“A”) which is authorised as mentioned in subsection (1)(a) becomes a licensable body, the body is deemed by virtue of this subsection to continue to be so authorised from that time until the earliest of the following events – 10
 - (a) the end of the period of 90 days beginning with the day on which that time falls;
 - (b) the time from which the relevant approved regulator determines this subsection is to cease to apply to A; 15
 - (c) the time when A ceases to be a licensable body.
 - (4) Subsection (2) is subject to Part 2 of Schedule 5 (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). 20
 - (5) A person other than a licensable body may not be authorised to carry on the relevant activity as mentioned in subsection (1)(b).
 - (6) But where a body (“L”) which is authorised as mentioned in subsection (1)(b) ceases to be a licensable body, the body is deemed by virtue of this subsection to continue to be so authorised from that time until the earliest of the following events – 25
 - (a) the end of the period of 90 days beginning with the day on which that time falls;
 - (b) the time from which the relevant licensing authority determines this subsection is to cease to apply to L; 30
 - (c) the time when L becomes a licensable body.

18 Exempt persons

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. 35

19 Approved regulators and relevant approved regulators

- (1) In this Act, the following expressions have the meaning given by this section –
 - “approved regulator”;
 - “relevant approved regulator”.
- (2) “Approved regulator” means – 40
 - (a) a body which is designated as an approved regulator by Part 1 of Schedule 4 or under Part 2 of that Schedule (or both) and whose regulatory arrangements are approved for the purposes of this Act, and
 - (b) if an order under section 61(1)(a) has effect, the Board.

- (3) 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 by Part 1, or under Part 2, of Schedule 4 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 61(1)(a). 5
- (4) 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.
- (5) Schedule 4 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, and 15
 - (c) Part 3 makes provision relating to the approval of changes to an approved regulator’s regulatory arrangements.
- (6) An approved regulator may authorise persons to carry on any activity which is a reserved legal activity in respect of which it is a relevant approved regulator. 20

20 Regulatory arrangements

- (1) In this Act references to the “regulatory arrangements” of a body are to –
- (a) its arrangements for authorising persons to carry on reserved legal activities, 25
 - (b) its arrangements (if any) for authorising persons to provide immigration advice or immigration services,
 - (c) its practice rules,
 - (d) its conduct rules, 30
 - (e) its disciplinary arrangements in relation to regulated persons (including its discipline rules),
 - (f) its qualification regulations,
 - (g) its indemnification arrangements,
 - (h) its compensation arrangements, 35
 - (i) 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, and 40
 - (j) its licensing rules (if any), so far as not within paragraphs (a) to (i), (whether or not those arrangements, rules or regulations are contained in, or made under, an enactment).
- (2) In this Act –
- “compensation arrangements”, in relation to a body, means arrangements to provide for grants or other payments for the purposes of relieving or mitigating losses or hardship suffered by persons in consequence of – 45

- (a) negligence or fraud or other dishonesty on the part of any persons whom the body has authorised to carry on activities which constitute a reserved legal activity, or of employees of theirs, in connection with their activities as such authorised persons, and 5
- (b) failure, on the part of regulated persons, to account for money received by them in connection with their activities as such regulated persons;
- “conduct rules”, in relation to a body, means any rules or regulations (however they may be described) as to the conduct required of regulated persons; 10
- “discipline rules”, in relation to a body, means any rules or regulations (however they may be described) as to the disciplining of regulated persons;
- “indemnification arrangements”, in relation to a body, means arrangements for the purpose of ensuring the indemnification of those who are or were regulated 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 such regulated persons; 15
- “practice rules”, in relation to a body, means any rules or regulations (however they may be described) which govern the practice of regulated persons; 20
- “qualification regulations”, in relation to a body, means –
- (a) any rules or regulations relating to – 25
- (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 carry on an activity which is a reserved legal activity, 30
- (b) any rules or 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, 35
- in order for them to be authorised by the body to provide immigration advice or immigration services, and
- (c) any other rules or 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, 40
- (however they may be described).
- (3) In this section “regulated persons”, in relation to a body, means any class of persons which consists of or includes –
- (a) persons who are authorised by the body to carry on an activity which is a reserved legal activity; 45
- (b) persons who are not so authorised, but are employees of a person (other than an individual) who is so authorised.
- (4) In relation to an authorised person other than an individual, references in subsection (2) and (3) to employees of the person include managers of the person. 50

Continuity of existing rights and transitional protection

21 Continuity of existing rights to carry on reserved legal activities

Schedule 5 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. 5

22 Transitional protection for non-commercial bodies

- (1) During the transitional period, a body within subsection (2) is entitled to carry on any activity which is a reserved legal activity.
- (2) The bodies are –
 - (a) a not for profit body, 10
 - (b) a community interest company, or
 - (c) a trade union.
- (3) The transitional period is the period which –
 - (a) begins with the day appointed for the coming into force of section 13, and 15
 - (b) ends with the day appointed by the Secretary of State by order for the purposes of this paragraph.
- (4) Different days may be appointed under subsection (3)(b) for different purposes.
- (5) An order may be made under subsection (3)(b) only on the recommendation of the Board. 20

Alteration of reserved legal activities

23 Extension of the reserved legal activities

- (1) The Secretary of State may, by order, amend section 12 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. 25
- (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. 30
- (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 35
 - (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.

24 Provisional designation as approved regulators and licensing authorities

- (1) The Secretary of State may, by order, make provision – 5
- (a) enabling applications to be made, considered and determined under Part 2 of Schedule 4 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. 10
- (2) An order under subsection (1) may, in particular, provide that Part 2 of Schedule 4 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 – 15
- (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 20
 - (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. 25
- (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 23; 30
 - “provisional designation order” means an order made by the Secretary of State under Part 2 of Schedule 4 or Part 1 of Schedule 10 which is conditional upon the Secretary of State making an order under section 23 in respect of the provisional reserved activity, pursuant to a recommendation made by the Board following the provisional report; 35
 - “new reserved legal activity” means a legal activity which has become a reserved legal activity by virtue of an order under section 23.

25 Recommendations that activities should cease to be reserved legal activities

- (1) The Board may recommend that an activity should cease to be a reserved legal activity. 40
- (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 (but nothing in section 198 (minor and consequential provision etc) authorises the Secretary of State to give effect to such a recommendation). 45

- (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

REGULATION OF APPROVED REGULATORS

5

Introductory

26 Regulatory and representative functions of approved regulators

- (1) In this Act references to the “regulatory functions” of an approved regulator are to any functions the approved regulator has –
- (a) under or in relation to its regulatory arrangements, or
 - (b) in connection with the making or alteration of those arrangements.
- (2) In this Act references to the “representative functions” of an approved regulator are to any functions the approved regulator has in connection with the representation, or promotion, of the interests of persons regulated by it.

General duties of approved regulators

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27 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.
- (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.
- (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,
 - (b) any other principle appearing to it to represent the best regulatory practice, and
 - (c) the public interest.

Separation of regulatory and representative functions

28 Prohibition on the Board interfering with 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 exercising its functions for the purpose of ensuring –
- (a) that the exercise of an approved regulator’s regulatory functions is not prejudiced by its representative functions, and

- (b) that decisions relating to the exercise of an approved regulator’s regulatory functions are, so far as reasonably practicable, taken independently from decisions relating to the exercise of its representative functions.

29 Rules relating to the exercise of regulatory functions 5

- (1) The Board must make rules (“internal governance rules”) setting out requirements to be met by approved regulators for the purpose of ensuring—
- (a) that the exercise of an approved regulator’s regulatory functions is not prejudiced by its representative functions, and
 - (b) that decisions relating to the exercise of an approved regulator’s regulatory functions are so far as reasonably practicable taken independently from decisions relating to the exercise of its representative functions. 10
- (2) The internal governance rules must require each approved regulator to have in place arrangements which ensure— 15
- (a) that the persons involved in the exercise of its regulatory functions are, in that capacity, able to make representations to, be consulted by and enter into communications with the Board, the Consumer Panel, the OLC and other approved regulators, and
 - (b) that the exercise by those persons of those powers is not prejudiced by the approved regulator’s representative functions and is, so far as reasonably practicable, independent from the exercise of those functions. 20
- (3) The internal governance rules must also require each approved regulator—
- (a) to take such steps as are reasonably practicable to ensure that it provides such resources as are reasonably required for or in connection with the exercise of its regulatory functions; 25
 - (b) to make such provision as is necessary to enable persons involved in the exercise of its regulatory functions to be able to notify the Board where they consider that their independence or effectiveness is being prejudiced. 30
- (4) The first set of rules under this section must be made before the day appointed by the Secretary of State by order for the purposes of this section.

Performance targets

30 Performance targets and monitoring 35

- (1) The Board may—
- (a) set one or more performance targets relating to the performance by an approved regulator of any of its regulatory functions, or
 - (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, 40
- if the Board is satisfied that the conditions in subsection (2) are satisfied.
- (2) Those conditions are—

- (a) that an act or omission of the approved regulator (or a series of such acts or omissions) has had, or is likely to have, an adverse impact on one or more of the regulatory objectives, and
 - (b) that, in all the circumstances of the case, it is appropriate to take the action proposed under subsection (1). 5
- (3) A direction under subsection (1)(b) may impose conditions with which the performance targets must conform.
- (4) If the Board proposes to take action under this section in respect of an approved regulator it must give notice to the approved regulator –
 - (a) describing the action it proposes to take, 10
 - (b) specifying the acts or omissions to which the proposed action relates and any other facts which, in the opinion of the Board, justify the taking of that action, 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) before which representations with respect to that action may be made. 15
- (5) Before taking action under this section, the Board must consider any representations which are duly made.
- (6) In exercising its regulatory functions, an approved regulator must seek to meet any performance target set for or by it under this section. 20
- (7) The Board must publish any target set or direction given by it under this section.
- (8) An approved regulator must publish any target set by it pursuant to a direction under subsection (1)(b).
- (9) 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. 25

Directions

31 Directions

- (1) This section applies if the Board is satisfied – 30
 - (a) that an act or omission of an approved regulator (or a series of such acts or omissions) has had, or is likely to have, an adverse impact on one or more of the regulatory objectives,
 - (b) that an approved regulator has failed to comply with any requirement imposed on it by or under this Act (including this section) or any other enactment, or 35
 - (c) that an approved regulator –
 - (i) has failed to ensure that the exercise of its regulatory functions is not prejudiced by any of its representative functions, or
 - (ii) has failed to ensure that decisions relating to the exercise of its regulatory functions are, so far as reasonably practicable, taken independently from decisions relating to the exercise of its representative functions. 40
- (2) If, in all the circumstances of the case, the Board is satisfied that it is appropriate to do so, it may direct the approved regulator to take – 45

-
- (a) in a case within subsection (1)(a), such steps as the Board considers will counter the adverse impact, mitigate its effect or prevent its occurrence or recurrence;
 - (b) in a case within subsection (1)(b) or (c), such steps as the Board considers will remedy the failure, mitigate its effect or prevent its recurrence. 5
 - (3) A direction under subsection (2) –
 - (a) may only require an approved regulator to take steps which it has power to take;
 - (b) may require an approved regulator to take steps with a view to the modification of any part of its regulatory arrangements. 10
 - (4) The Board may not exercise its powers under this section so as 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). 15
 - (5) 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.
 - (6) The power to give a direction under this section is subject to any provision made by or under any other enactment. 20
 - (7) The Board may take such steps as it regards as appropriate to monitor the extent to which a direction under this section is being, or has been, complied with.
 - (8) Where the Board revokes a direction under this section, it must –
 - (a) give the approved regulator to whom the direction was given notice of the revocation, and
 - (b) publish that notice. 25
- 32 Directions: procedure**
- Schedule 7 makes provision about the procedure which must be complied with before a direction is given under section 31. 30
- 33 Enforcement of directions**
- (1) If at any time it appears to the Board that an approved regulator has failed to comply with a direction given under section 31, 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. 35
 - (3) This section is without prejudice to any other powers conferred on the Board by this Part. 40

Censure

34 Public censure

- (1) This section applies if the Board is satisfied –
 - (a) that an act or omission of an approved regulator (or a series of such acts or omissions) has had, or is likely to have, an adverse impact on one or more of the regulatory objectives, and 5
 - (b) that, in all the circumstances of the case, it is appropriate to act under this section.
- (2) The Board may publish a statement censuring the approved regulator for the act or omission (or series of acts or omissions). 10

35 Public censure: procedure

- (1) If the Board proposes to publish a statement under section 34 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, 15
 - (b) specifying the acts or omissions to which the proposed statement relates, 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. 20
- (2) Before publishing the statement, the Board must consider any representations which are duly made.
- (3) Before varying any proposed statement set out in a notice under subsection (1)(a), the Board must give notice to the approved regulator – 25
 - (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. 30
- (4) Before varying the proposal, the Board must consider any representations which are duly made.

Financial penalties

36 Financial penalties

- (1) This section applies if the Board is satisfied – 35
 - (a) that an act or omission of an approved regulator (or a series of such acts or omissions) has had an adverse impact on one or more of the regulatory objectives, and
 - (b) that, in all the circumstances of the case, it is appropriate to impose a financial penalty on the approved regulator. 40

- (2) The Board may impose a penalty, in respect of the act or omission (or series of acts or omissions), of such an amount as it considers appropriate, but not exceeding the maximum amount prescribed under subsection (3).
- (3) The Board must make rules prescribing the maximum amount of a penalty which may be imposed under this section. 5
- (4) Rules may only be made under subsection (3) with the consent of the Secretary of State.
- (5) A penalty under this section is payable to the Board.
- (6) For the purposes of this section and sections 37 to 39, references to an approved regulator are to a body which was an approved regulator at the time the act or omission (or series of acts or omissions) within subsection (1)(a) occurred (whether or not the body subsequently ceased to be an approved regulator). 10
- (7) In sections 37 to 39 references to a “penalty” are to a penalty under this section.

37 Financial penalties: procedure

- (1) If the Board proposes to impose a penalty on an approved regulator, it must give notice to the approved regulator – 15
- (a) stating that the Board proposes to impose a penalty and the amount of the penalty proposed to be imposed,
 - (b) specifying the acts or omissions to which the proposed penalty relates,
 - (c) specifying the other facts which, in the Board’s opinion, justify the imposition of a penalty and the amount of the penalty, and 20
 - (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 an approved regulator, the Board must consider any representations which are duly made.
- (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 – 30
- (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 Board must consider any representations which are duly made.
- (5) As soon as practicable after imposing a penalty, the Board must give notice to the approved regulator – 40
- (a) stating that it has imposed a penalty on the approved regulator and its amount,
 - (b) specifying the acts or omissions to which the penalty relates,
 - (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.
- (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. 5
- (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. 10

38 Appeals against financial penalties

- (1) An approved regulator on whom a penalty is imposed may appeal to the court on one or more of the appeal grounds.
- (2) The appeal grounds are –
 - (a) that the imposition of the penalty was not within the power of the Board under section 36; 15
 - (b) that any of the requirements of section 37 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; 20
 - (c) that the amount of the penalty is unreasonable;
 - (d) 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.
- (3) An appeal under subsection (1) must be made – 25
 - (a) within the period of 42 days beginning with the day on which the notice under section 37(5) is given to the approved regulator in respect of the penalty, or
 - (b) where the appeal relates to a decision of the Board on an application by the approved regulator under section 37(6), within the period of 42 days beginning with the day on which the approved regulator is notified of the decision. 30
- (4) On any such appeal, 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 – 35
 - (a) quash the penalty,
 - (b) substitute a penalty of such lesser amount as the court considers appropriate, or
 - (c) in the case of the appeal ground in subsection (2)(d), substitute for any time imposed by the Board a different time or times. 40
- (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 appeal under this 45

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.

- (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. 5

39 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).
- (2) If an appeal is made under section 38 in relation to a penalty, the penalty is not required to be paid until the appeal has been determined or withdrawn. 10
- (3) If the Board grants an application under subsection (6) of section 37 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. 15
- (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 appeal relating to the penalty has been made under section 38 during the period within which such an appeal can be made, or 20
 - (b) an appeal 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.

Intervention 25

40 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 –
- (a) that an act or omission of an approved regulator (or a series of such acts or omissions) has had, or is likely to have, an adverse impact on one or more of the regulatory objectives, and 30
 - (b) that, in all the circumstances of the case, it is appropriate to give the intervention direction.
- (2) An intervention direction, in relation to a regulatory function of an approved regulator, is a direction – 35
- (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. 40
- (3) The Board may not determine that it is appropriate to give an intervention direction unless it is satisfied that the matter cannot be adequately addressed by the Board exercising the powers available to it under sections 30 to 39.

- (4) 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.
- (5) The Board must make rules as to the persons it may nominate for the purposes of subsection (2)(a). 5

41 Intervention directions: further provision

- (1) This section applies where an intervention direction has effect in respect of a function of an approved regulator (“the relevant function”).
- (2) The approved regulator must give the specified person all such assistance, in connection with the proposed exercise of the relevant function by the specified person in pursuance of the direction, as the approved regulator is reasonably able to give. 10
- (3) On an application by the specified person (or a person appointed by the specified person to act on its behalf) a judge of the High Court, Circuit judge or justice of the peace may issue a warrant authorising that person to – 15
 - (a) enter and search the premises of the approved regulator, and
 - (b) take possession of any written or electronic records found on the premises.
- (4) The person so authorised may, for the purpose of the exercise by the specified person of the relevant function, take copies of written or electronic records found on a search carried out by virtue of the warrant. 20
- (5) The judge or justice of the peace may not issue the warrant unless satisfied that its issue is necessary or desirable for the exercise by the specified person of the relevant function.
- (6) The Secretary of State must make regulations – 25
 - (a) specifying further matters which a judge or justice of the peace must be satisfied of, or matters which a judge or justice of the peace must have regard to, before issuing a warrant, and
 - (b) regulating the exercise of a power conferred by a warrant issued under subsection (3) or by subsection (4) (whether by restricting the circumstances in which a power may be exercised, by specifying conditions to be complied with in the exercise of a power, or otherwise). 30
- (7) Regulations under subsection (6)(b) must in particular make provision as to the circumstances in which written or electronic records of which a person has taken possession by virtue of a warrant issued under subsection (3) may be copied or must be returned. 35
- (8) But the Secretary of State may not make regulations under subsection (6) unless – 40
 - (a) they are made in accordance with a recommendation made by the Board, or
 - (b) the Secretary of State has consulted the Board about the making of the regulations.
- (9) In this section “the specified person” means the Board or, where a person is nominated by it as mentioned in section 40(2), that person.

- (10) The Board must make rules as to the persons a specified person may appoint for the purposes of subsection (3).

42 Intervention directions: enforcement

- (1) If at any time it appears to the Board that an approved regulator has failed to comply with an obligation imposed on it by, or by virtue of, an intervention direction or section 41(2), the Board may make an application to the High Court under this section. 5
- (2) If, on an application under subsection (1), the High Court decides that the approved regulator has failed to comply with the obligation in question, it may order the approved regulator to take such steps as the High Court directs for securing that the obligation is complied with. 10
- (3) This section is without prejudice to any other powers conferred on the Board by this Part.

43 Revocation of intervention directions

- (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). 15
- (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 20

44 Cancellation of designation as approved regulator

- (1) The Secretary of State may by order cancel a body's designation as an approved regulator – 25
- (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). 30
- (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 35
- (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. 40

- (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 an act or omission of an approved regulator (or a series of such acts or omissions) has had, or is likely to have, an adverse impact on one or more of the regulatory objectives, 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 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 matter cannot be adequately addressed by the Board exercising the powers available to it under sections 30 to 42.
- (7) Schedule 9 makes further provision about the making of recommendations under subsection (5).
- (8) 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 the Board notice of the decision and the reasons for it.
- (9) The Secretary of State must publish a notice given under subsection (8).
- (10) 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 5 (protection of rights during a transitional period), any person is being treated as authorised by the body to carry on that activity.

45 Cancellation of designation: further provision

- (1) This section applies where a body (“the former regulator”) has its designation in relation to one or more reserved legal activities cancelled by an order under section 44.
- (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 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.
- (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 former 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 –
- (a) a relevant approved regulator, in relation to the protected activity, who consents to the transfer arrangements, or

- (b) 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 61.
- (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; 5
- (b) may make provision requiring amounts held by the former 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. 10
- (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. 15
- (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 46, and 20
- (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.
- (8) For the purposes of this section –
- (a) a person is “authorised by the former regulator” if immediately before the time the cancellation takes effect the person is authorised by the former 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, and 25
- (b) in relation to that person – 30
- (i) the activity which that person is authorised to carry on as mentioned in paragraph (a) is a “protected activity”, and
- (ii) “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. 35
- (10) But for the purposes of this section “practising fee” does not include a fee payable by a licensed body to its licensing authority under licensing rules. 40
- 46 The Board’s power to recommend orders made under section 45**
- (1) The Board may recommend to the Secretary of State that the Secretary of State make an order under section 45 in the form of a draft order prepared by the Board and annexed to the recommendation. 45
- (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
- (5) If the draft order to be annexed to the recommendation differs from the draft published under subsection (2)(b) in a way which in the opinion of the Board is 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. 10

47 Cancellation of designation: powers of entry etc

- (1) This section applies where a body (“the former regulator”) has its designation in relation to one or more reserved legal activities cancelled by an order under section 44. 15
- (2) The Board may request the former regulator to provide assistance to the new regulator and the Board, for the purpose of continuing regulation.
- (3) On an application by a person appointed by the Board to act on its behalf, a judge of the High Court, Circuit judge or justice of the peace may issue a warrant authorising that person to – 20
 - (a) enter and search the premises of the former regulator, and
 - (b) take possession of any written or electronic records found on the premises.
- (4) A person so authorised may, for the purpose of continuing regulation, take copies of written or electronic records found on a search carried out by virtue of the warrant. 25
- (5) The judge or justice of the peace may not issue the warrant unless satisfied that its issue is necessary or desirable for the purpose of continuing regulation.
- (6) The Secretary of State must make regulations – 30
 - (a) specifying further matters which a judge or justice of the peace must be satisfied of, or matters which a judge or justice of the peace must have regard to, before issuing a warrant, and
 - (b) regulating the exercise of a power conferred by a warrant issued under subsection (3) or by subsection (4) (whether by restricting the circumstances in which a power may be exercised, by specifying conditions to be complied with in the exercise of a power, or otherwise). 35
- (7) Regulations under subsection (6)(b) must in particular make provision as to circumstances in which written or electronic records of which a person has taken possession by virtue of a warrant issued under subsection (3) may be copied or must be returned. 40
- (8) But the Secretary of State may not make regulations under subsection (6) unless –
 - (a) they are made in accordance with a recommendation made by the Board, or

- (b) the Secretary of State has consulted the Board about the making of the regulations.
- (9) The Board must make rules as to the persons it may appoint for the purposes of subsection (3).
- (10) For the purposes of this section – 5
“authorised by the former regulator”, “protected activity” and “new regulator” have the same meaning as for the purposes of section 45;
“the purpose of continuing regulation” means the purpose of enabling persons authorised by the former regulator to continue to be authorised and regulated in relation to the protected activity. 10

Policy statements

48 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 – 15
(a) section 30 (performance targets and monitoring);
(b) section 31 (directions);
(c) section 34 (public censure);
(d) section 36 (financial penalties);
(e) sections 40 (intervention directions);
(f) section 44 (cancellation of designation as approved regulator); 20
(g) section 75 (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 36 should be must include having regard to – 25
(a) the seriousness of the act or omission (or series of acts or omissions) in question, and
(b) the extent to which it was deliberate or reckless.
- (4) The Board may at any time alter or replace any statement issued under this section. 30
- (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. 35
- (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.

49 Policy statements: procedure

- (1) Before issuing a statement under section 48, the Board must publish a draft of the proposed statement. 40

- (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.
- (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
- (5) The Board may make a reasonable charge for providing a person with a copy of a draft published under subsection (1).

Practising fees 10

50 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. 15
- (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.
- (4) Those rules must, in particular, provide that the following are permitted purposes – 20
 - (a) the regulation, accreditation, education and training of relevant authorised persons and those wishing to become such persons, including – 25
 - (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 payment of a levy imposed on the approved regulator under section 166; 30
 - (c) the participation by the approved regulator in law reform and the legislative process;
 - (d) 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; 35
 - (e) the promotion of the protection by law of human rights and fundamental freedoms;
 - (f) the promotion of relations between the approved regulator and relevant national or international bodies, governments or the legal professions of other jurisdictions. 40
- (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.
- (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; 5
 - (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).
- (7) Rules under subsection (6)(c) must, in particular, contain – 10
- (a) provision requiring the Board, before it determines an application for approval of the level of a fee, to consult such persons as it considers appropriate about the impact of the proposed fee on persons providing non-commercial legal services;
 - (b) provision about the time limit for the determining of an application. 15
- (8) 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.

Regulatory conflict

- 51 Regulatory conflict with approved regulators** 20
- (1) The regulatory arrangements of an approved regulator must make such provision as is reasonably practicable to prevent regulatory conflicts.
- (2) For the purposes of this section and section 52, a regulatory conflict is a conflict between –
- (a) a requirement of the approved regulator’s regulatory arrangements, and 25
 - (b) a requirement of the regulatory arrangements of another approved regulator.
- (3) Subsection (4) applies where a body is authorised by an approved regulator (“the entity regulator”) to carry on an activity which is a reserved legal activity. 30
- (4) If a conflict arises between –
- (a) a requirement of the regulatory arrangements of the entity regulator, in relation to the body authorised by the entity regulator or an employee or manager of the body (“an entity requirement”), and
 - (b) a requirement of the regulatory arrangements of another approved regulator in relation to an employee or manager of the body who is authorised by it to carry on a reserved legal activity (“an individual requirement”), 35
- the entity requirement prevails over the individual requirement.
- 52 Modification of provision made about regulatory conflict** 40
- (1) An approved regulator (“the applicant regulator”) may make an application under this section if it considers that the regulatory arrangements of another approved regulator (“the conflicting regulator”) do not make appropriate provision to prevent a regulatory conflict with the applicant regulator.

- (2) An application under this section is an application made to the Board for the Board to exercise its powers under section 31 to direct the conflicting regulator –
 - (a) to take steps to modify, in such manner as may be specified in the direction, the provision made by its regulatory arrangements to prevent a regulatory conflict with the applicant regulator, or 5
 - (b) if its regulatory arrangements do not make any such provision, to make such provision as may be specified in the direction to prevent such a conflict.
- (3) An approved regulator must consider any request made by an affected person – 10
 - (a) for the approved regulator to reconsider the provision made by its regulatory arrangements to prevent a regulatory conflict with another approved regulator, or
 - (b) for the approved regulator to make an application under this section. 15
- (4) An “affected person”, in relation to an approved regulator, means –
 - (a) a person authorised by the approved regulator to carry on a reserved legal activity;
 - (b) an employee or manager of such a person.
- (5) Where an application is made under this section, the Board – 20
 - (a) must give the applicant regulator and the conflicting regulator an opportunity to make representations, and
 - (b) may consult any persons it considers appropriate.
- (6) The Board must decide whether or not to give a warning notice in response to the application. 25
- (7) The Board must make that decision before the end of the period of 6 months beginning with the day on which the application is received by it.
- (8) The Board must give notice of its decision, and the reasons for it, to the applicant regulator and the conflicting regulator.
- (9) For the purposes of this section “warning notice” means a notice given under paragraph 2(1) of Schedule 7 (warning of proposed direction under section 31). 30

53 Regulatory conflict with other regulatory regimes

- (1) The regulatory arrangements of an approved regulator must make such provision as is reasonably practicable and, in all the circumstances, appropriate – 35
 - (a) to prevent external regulatory conflicts,
 - (b) to provide for the resolution of any external regulatory conflicts which arise, and
 - (c) to prevent unnecessary duplication of regulatory provisions made by an external regulatory body. 40
- (2) For the purposes of this section, an external regulatory conflict is a conflict between –
 - (a) a requirement of the regulatory arrangements of the approved regulator, and

- (b) a requirement of any regulatory provision made by an external regulatory body.
- (3) For this purpose “external regulatory body” means a person (other than an approved regulator) who exercises regulatory functions in relation to a particular description of persons with a view to ensuring compliance with rules (whether statutory or non-statutory) by those persons. 5
- (4) Regulatory arrangements made for the purposes of subsection (1)(b) may, with the consent of the Board, provide for the Board to exercise functions in connection with the resolution of conflicts.

Information 10

54 Provision of information to the Board

- (1) The Board may, by notice, require an approved regulator –
- (a) to provide any information, or information of a description, specified in the notice, or
- (b) to produce documents, or documents of a description, specified in the notice. 15
- (2) A notice under subsection (1) –
- (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; 20
- (c) may require any information to be provided, or document to be produced, to the Board or to a person specified in the notice.
- (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. 25
- (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 30
- (b) that person’s compliance with a requirement imposed under subsection (3).
- (5) The Board, or a person specified under subsection (2)(c), may take copies of or extracts from a document produced pursuant to a notice under subsection (1). 35
- (6) For the purposes of this section and section 55, references to an approved regulator include a body which was, but is no longer, an approved regulator.

55 Enforcement of notices under section 54

- (1) Where an approved regulator is unable to comply with a notice given to it under section 54(1), it must give the Board a notice to that effect stating the reasons why it cannot comply. 40
- (2) If an approved regulator refuses, or otherwise fails, to comply with a notice under section 54(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.

- (3) This section applies in relation to a person to whom a notice is given under section 54(3) as it applies in relation to an approved regulator to whom a notice is given under section 54(1). 5

Competition

56 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) prevent, restrict or distort 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. 10
- (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 15
 - (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.
- (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 20
 - (b) publish the report.
- (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. 25
- (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. 30
- (6) For the purposes of the law of defamation, absolute privilege attaches to any report of the OFT under this section.

57 The Board’s response to OFT report

- (1) This section applies where a report is made by the OFT under section 56 in respect of an approved regulator. 35
- (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 56, or such longer period as the Board may specify in a particular case, to make representations to the Board about the OFT’s report.
- (3) The Consumer Panel may give the Board such advice as the Consumer Panel thinks fit regarding the OFT’s report. 40

- (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.

58 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 56. 5
- (2) The OFT may give a copy of its report to the Secretary of State.
- (3) The OFT must notify the Board and the approved regulator if it gives a copy of its report to the Secretary of State. 10
- (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 60.

59 Duties of the Competition Commission 15

- (1) Where the Secretary of State seeks the advice of the Competition Commission under section 58, 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. 20
- (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.
- (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 58(4)(a). 25
- (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. 30
- (6) A report under this section stating the Commission's conclusion that there is, or is likely to be, such an effect must also –
- (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. 35
- (7) When determining under subsection (6)(b) any action to be taken by the Board, the Commission must ensure –
- (a) that the action stated is action which the Board has power to take, and
 - (b) 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. 40

- (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.
- (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 –
 - (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.
- (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.

60 Secretary of State's power to give directions

- (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 56.
- (2) Before giving a direction under subsection (1), the Secretary of State must consider any report from the Competition Commission under section 59 on that matter.
- (3) When exercising the power to give a direction under subsection (1), the Secretary of State must ensure –
 - (a) that the action stated is action which the Board has power to take, and
 - (b) 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.
- (4) The Secretary of State must publish a direction given under this section.

The Board as approved regulator

61 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;
 - (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.
- (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 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.
- (3) If the Secretary of State decides not to make an order pursuant to a recommendation made under section 65, the Secretary of State must – 5
- (a) give the Board a notice stating the reasons for that decision, and
- (b) publish the notice.
- (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. 10
- (5) An order under this section may make such modifications of provision made by or under any enactment (including this Act or any Act passed after this Act) as the Secretary of State considers necessary or expedient. 15
- 62 The Board’s designation under section 61(1)(a)**
- (1) This section applies in relation to an order under section 61(1)(a) (an order designating the Board as an approved regulator).
- (2) Subject to subsection (3), the order may designate the Board as an approved regulator in relation to a reserved legal activity only where – 20
- (a) a body’s designation as an approved regulator in relation to the activity is cancelled under section 44, or
- (b) the activity becomes a reserved legal activity by virtue of an order under section 23.
- (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. 25
- (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). 30
- 63 Modification of the Board’s functions under section 61(1)(b)**
- (1) This section applies in relation to an order under section 61(1)(b) (an order modifying the functions of the Board). 35
- (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 or any category of persons (whether corporate or unincorporate) to carry on one or more activities which are reserved legal activities in relation to which the Board is designated as an approved regulator; 40
- (b) to make qualification regulations;

- (c) to make provision as to the educational, training and other requirements to be met by regulated persons who are not relevant authorised persons;
 - (d) to make practice rules and conduct rules;
 - (e) to make disciplinary arrangements in relation to regulated persons (including discipline rules); 5
 - (f) to make rules requiring the payment of fees specified in or determined in accordance with the rules;
 - (g) to make indemnification arrangements;
 - (h) to make compensation arrangements; 10
 - (i) to make rules as to the treatment of money (including money held in trust) which is received, held or dealt with for clients, or other persons, by regulated persons, and as to the keeping by such persons of accounts in respect of such money;
 - (j) 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; 15
 - (k) to delegate any of the functions exercisable by the Board in its capacity as an approved regulator to such persons as it considers appropriate. 20
- (3) The order may –
- (a) provide for any provision of Schedule 14 (licensing authority’s powers of intervention) – 25
 - (i) to apply in relation to the Board (in its capacity as an approved regulator) and regulated persons as it applies in relation to a licensing authority and licensed bodies (or managers or employees of such bodies), or
 - (ii) to so apply with such modifications as are prescribed by the order, or 30
 - (b) make provision, in relation to the Board (in that capacity) and regulated persons, corresponding to any of the provisions made, in relation to licensing authorities and licensed bodies (or managers or employees of such bodies), by that Schedule. 35
- (4) For the purposes of providing such indemnity, and enabling such grants or other payments to be made, as are mentioned in subsection (2)(g) and (h), the order may authorise the Board to make rules –
- (a) authorising or requiring the Board to establish and maintain a fund or funds; 40
 - (b) authorising or requiring the Board to take out and maintain insurance with authorised insurers;
 - (c) requiring relevant authorised persons or relevant authorised persons of any specific description to take out and maintain insurance with authorised insurers. 45
- (5) In this section –
- “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; 5
- (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; 10
- “regulated person” has the meaning given by section 20;
- “relevant authorised person” means a person authorised by the Board (other than by the grant of a licence under Part 5) to carry on one or more activities which are reserved legal activities. 15
- (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 20
- (b) the definition of “authorised insurer” in subsection (5) must be read with section 22 of the Financial Services and Markets Act 2000, and any relevant order under that section, and with Schedule 2 to that Act.
- 64 Cancellation of the Board’s designation under section 61(1)(c)**
- (1) This section applies in relation to an order under section 61(1)(c) (cancellation of Board’s designation as an approved regulator). 25
- (2) Where such an order is made, section 45 (other than subsection (4)(b)) and section 46 (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 44 and persons authorised by that approved regulator to carry on activities which are reserved legal activities. 30
- (3) In this section “relevant authorised persons” has the same meaning as in section 63.
- 65 The Board’s power to recommend orders made under section 61** 35
- (1) The Board may recommend to the Secretary of State that the Secretary of State make an order under section 61 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 give each of the persons listed in subsection (3) a notice containing – 40
- (a) a copy of the proposed recommendation,
- (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 – 45
- (a) the Secretary of State,

- (b) the OFT,
 - (c) the Consumer Panel,
 - (d) the Lord Chief Justice, and
 - (e) such other persons as the Board considers it reasonable to consult regarding the proposals. 5
 - (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. 10
- 66 Effect of the Board’s designation as an approved regulator 15**
- (1) The powers of the Board under sections 30 to 50 and 54 (regulatory powers in respect of approved regulators) are not exercisable by it in relation to the Board in its capacity as an approved regulator.
 - (2) In section 52 references to an approved regulator do not include the Board in its capacity as an approved regulator. 20
 - (3) Sections 56 to 60 (reports by OFT etc) do not apply in relation to the Board in its capacity as an approved regulator.
- 67 Regulatory conflict and the Board as approved regulator**
- (1) An approved regulator may make a request under subsection (4) if it considers that the regulatory arrangements of the Board (in its capacity as an approved regulator) do not make appropriate provision to prevent a conflict between— 25
 - (a) a requirement of those regulatory arrangements, and
 - (b) a requirement of the regulatory arrangements of the approved regulator.
 - (2) An affected person in relation to an approved regulator may request the approved regulator to exercise its powers under subsection (1). 30
 - (3) An affected person in relation to the Board may make a request under subsection (4) if the person considers that the regulatory arrangements of the Board (in its capacity as an approved regulator) do not make appropriate provision to prevent a conflict between— 35
 - (a) a requirement of those regulatory arrangements, and
 - (b) a requirement of the regulatory arrangements of an approved regulator.
 - (4) The request is a request made to the Board (in its capacity as an approved regulator) that it reconsider the provision made by its regulatory arrangements to prevent a regulatory conflict with the conflicting regulator. 40
 - (5) An affected person in relation to the Board may make an application under subsection (6) if the person considers that the regulatory arrangements of an

- approved regulator do not make appropriate provision to prevent a conflict between—
- (a) a requirement of those regulatory arrangements, and
 - (b) a requirement of the regulatory arrangements of the Board (in its capacity as an approved regulator). 5
- (6) The application is an application to the Board for it to exercise its powers under section 31 to direct the approved regulator—
- (a) to take steps to modify, in such manner as may be specified in the direction, the provision made by its regulatory arrangements to prevent a regulatory conflict with the Board (in its capacity as an approved regulator), or 10
 - (b) if its regulatory arrangements do not make any such provision, to make such provision as may be specified in the direction to prevent such a conflict.
- (7) An affected person in relation to an approved regulator (other than the Board) may make a request under subsection (8) if the person considers that the regulatory arrangements of the approved regulator do not make appropriate provision to prevent a conflict between— 15
- (a) a requirement of those regulatory arrangements, and
 - (b) a requirement of the regulatory arrangements of the Board (in its capacity as an approved regulator). 20
- (8) The request is a request to the approved regulator that it reconsider the provision made by its regulatory arrangements to prevent a regulatory conflict with the Board.
- (9) The Board (in its capacity as an approved regulator) and any other approved regulator must consider any request made to it under this section. 25
- (10) Subsections (5) to (8) of section 52 apply in relation to an application under subsection (6) as they apply in relation to an application under that section, except that—
- (a) references to the applicant regulator are to be read as references to the person who made the application, and 30
 - (b) references to the conflicting regulator are to be construed in accordance with this section.
- (11) In this section—
- “affected person” in relation to the Board or any other approved regulator, means— 35
 - (a) any person authorised by the body to carry on a reserved legal activity, or
 - (b) an employee or manager of such a person;
 - “conflicting regulator” means— 40
 - (a) in a case within subsection (1), the approved regulator making the request, and
 - (b) in a case within subsection (3) or (5), the approved regulator whose regulatory arrangements are considered to conflict with those of the Board. 45

Functions of approved regulators etc

68 Modification of the functions of approved regulators etc

- (1) The Secretary of State may by order modify, or make other provision relating to, the functions of an approved regulator or any other body (other than the Board). 5
- (2) The Secretary of State may make an order under subsection (1) only if—
 - (a) the Board has made a recommendation under this section,
 - (b) a draft order was annexed to the recommendation, and
 - (c) the order is in the same form as, or a form not materially different from, that draft order. 10
- (3) The Board may make a recommendation under this section only with a view to an order being made which enables the body to which it relates to do one or more of the following—
 - (a) to become designated by an order under Part 2 of Schedule 4 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; 15
 - (b) to authorise persons or any category of persons (whether corporate or unincorporate) to carry on one or more activities which are reserved legal activities in relation to which the body is (at the time the authorisation has effect) designated as an approved regulator, or to make regulatory arrangements; 20
 - (c) to carry out its role as an approved regulator (including its role, if any, as a licensing authority) more effectively or efficiently;
 - (d) to become a qualifying regulator under Part 1 of Schedule 18; 25
 - (e) 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) (other than paragraph (a)), (3) and (4) of section 63 apply in relation to an order under this section as they apply in relation to an order under section 61(1)(b) in relation to the Board.
- (5) An order under this section also may make provision in relation to—
 - (a) the provision of immigration advice or immigration services, and 35
 - (b) persons authorised to provide such advice and services by the body to which the order relates,corresponding to the provision which may be made by virtue of section 63(2) to (4) in relation to reserved legal activities and persons authorised to carry on those activities. 40
- (6) An order under this section may modify provisions made by or under any enactment (including this Act or any Act passed after this Act), prerogative instrument or other instrument or document.
- (7) Any provision made by an order under this section may be expressed to be conditional upon—
 - (a) the body to which the order relates being designated by an order under Part 2 of Schedule 4 as an approved regulator, or by an order under Part 45

- 1 of Schedule 10 as a licensing authority, in relation to one or more reserved legal activities specified in the proposed draft 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). 5
- (8) The powers to make an order conferred by this section are without prejudice to any powers (statutory or non-statutory) which an approved regulator or other body may have apart from this section.
- 69 Procedural requirements relating to recommendations under section 68**
- (1) A recommendation may be made under section 68 only with the consent of the approved regulator or other body to which the recommendation relates. 10
- (2) Before making a recommendation under that section, the Board must publish a draft of –
- (a) the proposed recommendation, and
- (b) the proposed draft order. 15
- (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. 20

PART 5 25

ALTERNATIVE BUSINESS STRUCTURES

Introductory

- 70 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. 30
- (2) In this Act “licensed body” means a body which holds a licence in force under this Part.
- 71 “Licensable body”**
- (1) For the purposes of this Act, a body is a “licensable body” if –
- (a) at least one manager of the body is an individual who is a non-authorised person, or
- (b) at least one person who has an interest in shares in the body is a non-authorised person. 35

- (2) For the purposes of this Act, whether a person has an interest in shares in any description of body is to be determined in accordance with section 820 of the Companies Act 2006 (c. 46).
- (3) In this Act “shares” means –
- (a) in relation to a body with a share capital, allotted shares (within the meaning of the Companies Acts); 5
 - (b) in relation to a body with capital but no share capital, rights to share in the capital of the body;
 - (c) in relation to a body without capital, interests –
 - (i) conferring any right to share in the profits, or liability to contribute to the losses, of the body, or 10
 - (ii) giving rise to an obligation to contribute to the debts or expenses of the body in the event of a winding up.

Licensing authorities

72 Licensing authorities and relevant licensing authorities 15

- (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. 20
- (2) For the purposes of this Act –
- (a) the Board is a licensing authority in relation to all reserved legal activities, and
 - (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. 25
- (3) The Board –
- (a) may delegate any of its functions as a licensing authority to such persons as it considers appropriate;
 - (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. 30
- (4) In this Part “relevant licensing authority” –
- (a) in relation to a licensed body, means the licensing authority by which the licensed body is authorised to carry on an activity which is a reserved legal activity; 35
 - (b) in relation to an applicant for a licence, means the licensing authority to which the application is made.

73 Designation of approved regulator as licensing authority 40

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.

74 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
 - (b) as a licensing authority in relation to the activity. 5
- (2) If the Secretary of State makes an order under section 44 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.
- (3) The cancellation takes effect at the same time as cancellation of the body’s designation as an approved regulator. 10

75 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 –
 - (a) in relation to all the reserved legal activities in relation to which it is designated, or 15
 - (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). 20
- (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, 25
 - (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. 30
- (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 –
 - (a) that an act or omission of the licensing authority (or a series of such acts or omissions) has had, or is likely to have, an adverse impact on the regulatory objectives, and 35
 - (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. 40
- (6) 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 45

activities unless it is satisfied that the matter cannot be adequately addressed by the Board exercising the powers available to it under sections 30 to 42.

- (7) Part 2 of Schedule 10 makes further provision about the making of recommendations under subsection (5).
- (8) 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 the Board notice of the decision and the reasons for it. 5
- (9) The Secretary of State must publish a notice given under subsection (8).

76 Cancellation of designation: further provision

- (1) This section applies where an approved regulator (“the former authority”) has its designation as a licensing authority in relation to one or more reserved legal activities cancelled – 10
 - (a) by virtue of section 74, or
 - (b) by an order under section 75.
- (2) The Secretary of State may by order make – 15
 - (a) such modifications of provisions made by or under any enactment (including this Act or any enactment passed 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. 20
- (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. 25
- (5) “Consenting licensed body” means a licensed body authorised by the former authority which consents to the transfer arrangements.
- (6) The transfer arrangements – 30
 - (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;
 - (b) may make provision requiring amounts held by the former 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. 40
- (8) The Secretary of State may make an order under this section only if –

-
- (a) the Board has made a recommendation in accordance with section 77, 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 – 5
- (a) a licensed body is “authorised by the former authority” if immediately before the time the cancellation takes effect the body is, by virtue of a licence under this Part, authorised by the former authority to carry on an activity which is a reserved legal activity to which the cancellation relates, and 10
- (b) in relation to that body –
- (i) the activity which the body is authorised to carry on as mentioned in paragraph (a) is a “protected activity”, and
- (ii) “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. 15
- (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 21 of Schedule 11.
- 77 The Board’s power to recommend orders made under section 76** 20
- (1) The Board may recommend to the Secretary of State that the Secretary of State make an order under section 76 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 – 25
- (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. 30
- (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. 35
- 78 Cancellation of designation: powers of entry etc**
- (1) This section applies where an approved regulator (“the former authority”) has its designation in relation to one or more reserved legal activities cancelled by virtue of section 74 or an order under section 75. 40
- (2) The Board may request the former authority to provide assistance to the new authority and the Board, for the purpose of continuing regulation.

- (3) On an application by a person appointed by the Board to act on its behalf, a judge of the High Court, Circuit judge or justice of the peace may issue a warrant authorising that person to –
 - (a) enter and search the premises of the former authority, and
 - (b) take possession of any written or electronic records found on the premises. 5
- (4) A person so authorised may, for the purpose of continuing regulation, take copies of written or electronic records found on a search carried out by virtue of the warrant.
- (5) The judge or justice of the peace may not issue the warrant unless satisfied that its issue is necessary or desirable for the purpose of continuing regulation. 10
- (6) The Secretary of State must make regulations –
 - (a) specifying further matters which a judge or justice of the peace must be satisfied of, or matters which a judge or justice of the peace must have regard to, before issuing a warrant, and 15
 - (b) regulating the exercise of a power conferred by a warrant issued under subsection (3) or by subsection (4) (whether by restricting the circumstances in which a power may be exercised, by specifying conditions to be complied with in the exercise of a power, or otherwise).
- (7) Regulations under subsection (6)(b) must in particular make provision as to circumstances in which written or electronic records of which a person has taken possession by virtue of a warrant issued under subsection (3) may be copied or must be returned. 20
- (8) But the Secretary of State may not make regulations under subsection (6) unless – 25
 - (a) they are made in accordance with a recommendation made by the Board, or
 - (b) the Secretary of State has consulted the Board about the making of the regulations.
- (9) The Board must make rules as to the persons it may appoint for the purposes of subsection (3). 30
- (10) For the purposes of this section –
 - “authorised by the former authority”, “protected activity” and “new authority” have the same meaning as for the purposes of section 76;
 - “the purpose of continuing regulation” means the purpose of enabling bodies authorised by the former authority to continue to be authorised and regulated in relation to the protected activity. 35

Appeals

79 Functions of appellate bodies

- (1) The Secretary of State may by order – 40
 - (a) establish a body to hear and determine appeals from decisions, made by a person specified in the order in the person’s capacity as a licensing authority, which are appealable under this Part or licensing rules made by the person;

- (b) modify, or make any other provision relating to, the functions of a body within subsection (2) or any other body, for the purpose of enabling the body to hear and determine appeals from such decisions.
- (2) The bodies mentioned in subsection (1)(b) are –
- (a) the Solicitors Disciplinary Tribunal; 5
- (b) the Discipline and Appeals Committee established by the Council of Licensed Conveyancers under section 25 of the Administration of Justice Act 1985 (c. 61).
- (3) The Secretary of State may make an order under subsection (1) only if –
- (a) the Board has made a recommendation in accordance with section 80, 10
- (b) a draft order was annexed to the recommendation, and
- (c) the order is in the same form as, or not materially different from, that draft order.
- (4) An order under this section may –
- (a) make provision as to the payment of fees, and award of costs, in relation to such appeals; 15
- (b) modify provisions made by or under any enactment (including this Act or any Act passed after this Act), prerogative instrument or other instrument or document.
- (5) Any provision made by an order under this section may be expressed to be conditional upon the person specified in the order being designated by an order under Part 1 of Schedule 10 as a licensing authority in relation to one or more reserved legal activities. 20
- (6) The powers to make an order conferred by this section are without prejudice to any powers (statutory or non-statutory) which a body may have apart from this section. 25

80 Procedural requirements relating to recommendations under section 79

- (1) A recommendation may be made under section 79 only with the consent of –
- (a) the person from whose decisions the appeals are to be made, and
- (b) where the recommendation is for an order under section 79(1)(b), the body to which appeals are to be made. 30
- (2) Before making a recommendation under that section, the Board must publish a draft of –
- (a) the proposed recommendation, and
- (b) the proposed draft order. 35
- (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 any 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. 40

Licensing rules

81 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; 5
 - (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) Licensing rules made by an approved regulator have effect only at a time when the approved regulator is a licensing authority (subject to any provision made by an order under section 24). 10
- (3) Licensing rules of a licensing authority are rules as to –
 - (a) the licensing by the authority of licensable bodies, and
 - (b) the regulation by the licensing authority of licensable bodies licensed by it, and their managers and employees. 15
- (4) Licensing rules of a licensing authority must contain –
 - (a) appropriate qualification regulations in respect of licensable bodies to which the licensing authority proposes to issue licences under this Part,
 - (b) appropriate arrangements (including conduct rules, discipline rules and practice rules) under which the licensing authority will be able to regulate the conduct of bodies licensed by it, and their managers and employees, 20
 - (c) appropriate indemnification arrangements,
 - (d) appropriate compensation arrangements, 25
 - (e) the provision required by sections 51 and 53 (resolution of regulatory conflict) (including those provisions as applied by section 101),
 - (f) the provision required by sections 109 and 142 (requirements imposed in relation to the handling of complaints), and
 - (g) any other provision required to be contained in licensing rules by this Act. 30
- (5) Without prejudice to the generality of subsection (3), licensing rules of a licensing authority may contain any provision authorised by this Act.
- (6) Schedule 11 makes further provision as to the contents of licensing rules.
- (7) Subsections (4) to (6) are subject to – 35
 - (a) section 103 (which exempts trade unions from certain provisions), and
 - (b) section 104 (which provides for the modification of licensing rules in their application to bodies to which that section applies).
- (8) Licensing rules may not apply to bodies to which section 104 applies in a way which is different from the way they apply to other bodies, except by virtue of an order under that section. 40

*Licensing***82 Application for licence**

- (1) A licensing authority other than the Board must determine any application for a licence which is made to it.
- (2) The Board (acting in its capacity as a licensing authority) may determine an application for a licence which is made to it only if the applicant is entitled to make the application by virtue of a decision of the Board (acting otherwise than in its capacity as a licensing authority) under Schedule 12. 5
- (3) A licensing authority may not grant an application for a licence unless it is satisfied that if the licence is granted the applicant will comply with its licensing rules. 10
- (4) If the licensing authority grants an application for a licence, it must issue the licence as soon as reasonably practicable.
- (5) The licence has effect from the date on which it is issued.
- (6) References in this section to an application for a licence are to an application for a licence which is – 15
 - (a) made to a licensing authority by a licensable body, in accordance with the authority's licensing rules, and
 - (b) accompanied by the required application fee.

83 Terms of licence

- (1) A licence issued under section 82 must specify – 20
 - (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 an order under section 104 has been made in relation to the licensed body, the licence must also specify the terms of the order. 25
- (3) In the case of a licensing authority other than the Board, 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 the reserved legal activities in question. 30
- (4) A licence must be granted subject to the condition that –
 - (a) any obligation which may from time to time be imposed on the licensed body or a person within subsection (5) by or under the licensing authority's licensing rules is complied with, and
 - (b) any other obligations imposed on the licensed body or a person within that subsection by or under this or any other enactment (whether passed before or after this Act) are complied with. 35
- (5) The persons mentioned in subsection (4) are the managers and employees of a licensed body, and persons having an interest in shares, or holding a material interest, in the licensed body (in their capacity as such). 40
- (6) A licence may be granted subject to such other conditions as the licensing authority considers appropriate.

- (7) Those conditions may include conditions as to the non-reserved activities which the licensed body may or may not carry on.
- (8) In this Part references to the terms of the licence are to the matters listed in subsections (1) and (2).

84 Modification of licence 5

- (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 it to do so;
 - (b) in such other circumstances as may be specified in its licensing rules.
- (2) If a licensed body is a body to which section 104 applies, the licensing authority may modify the terms of its licence in accordance with sections 104 and 105. 10
- (3) A licensing authority modifies the terms of a licensed body’s licence 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 or such later time as may be specified in the notice. 15
- (4) The licensing authority’s power under this section is subject to—
 - (a) section 83(3) and (4), and
 - (b) licensing rules made under paragraph 6 of Schedule 11.

85 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. 20
- (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. 25
- (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.
- (4) The Board may make rules about—
 - (a) the register to be kept by the Board under this section, and 30
 - (b) the register to be kept under this section by each licensing authority designated under Part 1 of Schedule 10.
- (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. 35

86 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.
- (2) The matters are 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. 40

- (3) A certificate purporting to be so signed is to be taken to have been so signed unless the contrary is proved.

Ownership of licensed bodies

87 Ownership of licensed bodies

Schedule 13 makes provision about the holding of certain interests in licensed bodies by non-authorised persons. 5

Regulation of licensed bodies

88 Duties of non-authorised persons

A non-authorised person who is an employee or manager of a licensed body, or has an interest in shares, or holds a material interest, in a licensed body, must not do anything which causes or substantially contributes to a breach by – 10

- (a) the licensed body, or
 - (b) an employee or manager of the licensed body who is an authorised person in relation to an activity which is a reserved legal activity, 15
- of the duties imposed on them by section 169.

89 Duties of Head of Legal Practice

- (1) The Head of Legal Practice of a licensed body must –
- (a) take all reasonable steps to ensure compliance with the terms of the licensed body’s licence, and 20
 - (b) as soon as reasonably practicable, report to the licensing authority any failure to comply with the terms of the licence.
- (2) Subsection (1) does not apply to the terms of the licence so far as they require compliance with licensing rules made under paragraph 20 of Schedule 11 (accounts) (as to which see section 90). 25
- (3) The Head of Legal Practice of a licensed body must –
- (a) take all reasonable steps to ensure that the licensed body, and any of its employees or managers who are authorised persons in relation to an activity which is a reserved legal activity, comply with the duties imposed by section 169, and 30
 - (b) as soon as reasonably practicable, report to the licensing authority such failures by those persons to comply with those duties as may be specified in licensing rules.
- (4) The Head of Legal Practice of a licensed body must –
- (a) take all reasonable steps to ensure that non-authorised persons subject to the duty imposed by section 88 in relation to the licensed body comply with that duty, and 35
 - (b) as soon as reasonably practicable, report to the licensing authority any failure by a non-authorised person to comply with that duty.

90 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 compliance with licensing rules made under paragraph 20 of Schedule 11 (accounts).
- (2) The Head of Finance and Administration must report any breach of those rules to the licensing authority as soon as reasonably practicable. 5

91 Information

- (1) The relevant licensing authority in relation to a licensed body may by notice require a person within subsection (2) –
 - (a) to provide information, or information of a description, specified in the notice, or 10
 - (b) produce documents, or documents of a description, specified in the notice,
for the purpose of enabling the licensing authority to ascertain whether the terms of the licensed body’s licence are being, or have been, complied with. 15
- (2) The persons are –
 - (a) the licensed body;
 - (b) any manager or employee (or former manager or employee) of the licensed body;
 - (c) any non-authorized person who holds a material interest in the licensed body. 20
- (3) A notice under subsection (1) –
 - (a) may specify the manner and form in which any information is to be provided;
 - (b) must specify the period within which the information is to be provided or the document produced; 25
 - (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.
- (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. 30
- (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). 35
- (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). 40
- (7) For the purposes of this section and section 92, references to a licensed body include a body which was, but is no longer, a licensed body.

92 Enforcement of notices under section 91

- (1) Where a person is unable to comply with a notice given to the person under section 91, the person must give the licensing authority a notice to that effect stating the reasons why the person cannot comply.
- (2) If a person refuses or otherwise fails to comply with a notice under section 91, 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. 5

93 Financial penalties

- (1) A licensing authority may, in accordance with its licensing rules, impose on a licensed body, or a manager or employee of a licensed body, a penalty of such amount as it considers appropriate. 10
- (2) The amount must not exceed the maximum amount prescribed under subsection (3).
- (3) The Board must make rules prescribing the maximum amount of a penalty which may be imposed under this section. 15
- (4) Rules may only be made under subsection (3) with the consent of the Secretary of State.
- (5) A penalty under this section is payable to the licensing authority.
- (6) For the purposes of this section – 20
 - (a) references to a licensed body are to a body which was a licensed body at the time the act or omission in respect of which the penalty is imposed occurred, and
 - (b) references to a manager or employee of a licensed body are to a person who was a manager or employee of a licensed body at that time, 25
(whether or not the body subsequently ceased to be a licensed body or the person subsequently ceased to be a manager or employee).
- (7) In sections 94 and 95 references to a “penalty” are to a penalty under this section.

94 Appeals against financial penalties 30

- (1) A person on whom a penalty is imposed under section 93 may, before the end of such period as may be prescribed by rules made by the Board, appeal to the relevant appellate body on one or more of the appeal grounds.
- (2) The appeal grounds are – 35
 - (a) that the imposition of the penalty is unreasonable in all the circumstances of the case;
 - (b) that the amount of the penalty is unreasonable;
 - (c) that it is 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. 40
- (3) On any such appeal, where the relevant appellate body considers it appropriate to do so in all the circumstances of the case and is satisfied of one or more of the appeal grounds, that body may –

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- (a) quash the penalty,
 - (b) substitute a penalty of such lesser amount as it considers appropriate, or
 - (c) in the case of the appeal ground in subsection (2)(c), substitute for any time imposed by the licensing authority a different time or times. 5
- (4) Where the relevant appellate body 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) Where the relevant appellate body 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 appeal 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
- (6) A party to the appeal may appeal to the High Court on a point of law arising from the decision of the relevant appellate body, but only with the permission of the High Court. 15
- (7) The High Court may make such order as it thinks fit.
- (8) Except as provided by this section, the validity of a penalty is not to be questioned by any legal proceedings whatever.
- 95 Recovery of financial penalties**
- (1) If the whole or any part of a penalty is not paid by the time by which, in accordance with licensing rules, 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). 20
- (2) Where a penalty, or any portion of it, has not been paid by the time by which, in accordance with licensing rules, it is required to be paid and – 25
- (a) no appeal relating to the penalty has been made under section 94 during the period within which such an appeal can be made, or
 - (b) an appeal has been made under that section and determined or withdrawn,
- the licensing authority may recover from the person on whom the penalty was imposed, as a debt due to the licensing authority, any of the penalty and any interest which has not been paid. 30
- (3) A licensing authority must pay into the Consolidated Fund any sum received by it as a penalty (or as interest on a penalty).
- 96 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 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 person who exercises regulatory functions in relation to the carrying on of such activities by the person.

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97 Disqualification

- (1) A licensing authority may in accordance with its licensing rules disqualify a person from one of more of the activities mentioned in subsection (2) if—
 - (a) the disqualification condition is satisfied in relation to the person, and
 - (b) the licensing authority is satisfied that it is undesirable for the person to engage in that activity or those activities.
- (2) The activities are—
 - (a) acting as Head of Legal Practice of any licensed body,
 - (b) acting as Head of Finance and Administration of any licensed body,
 - (c) being a manager of any licensed body, or
 - (d) being employed by any licensed body.
- (3) The disqualification condition is satisfied in relation to a person if, in relation to a licensed body licensed by the licensing authority, the person (intentionally or through neglect)—
 - (a) breaches a relevant duty to which the person is subject, or
 - (b) causes, or substantially contributes to, a significant breach of the terms of the licensed body’s licence.
- (4) The relevant duties are—
 - (a) the duties imposed on a Head of Legal Practice by section 89,
 - (b) the duties imposed on a Head of Finance and Administration by section 90,
 - (c) the duties imposed by section 169 on regulated persons (within the meaning of that section), and
 - (d) the duty imposed on non-authorised persons by section 88.

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98 Lists of disqualified persons

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- (1) The Board must keep lists of persons who are disqualified from—
 - (a) acting as Head of Legal Practice of any licensed body,
 - (b) acting as Head of Finance and Administration of any licensed body,
 - (c) being a manager of any licensed body, or
 - (d) being employed by any licensed body.
- (2) A person is disqualified from acting in a way mentioned in subsection (1) if—
 - (a) the person has been disqualified from so acting by a licensing authority under section 97, and
 - (b) the disqualification continues in force.
- (3) The disqualification ceases to be in force if the appropriate licensing authority so determines, on a review or otherwise, in accordance with licensing rules made under paragraph 23 of Schedule 11.
- (4) The appropriate licensing authority is—

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- (a) the licensing authority which disqualified the person, or
 - (b) if the person was disqualified by an approved regulator which is no longer designated as a licensing authority, the successor licensing authority.
 - (5) The successor licensing authority is— 5
 - (a) the licensing authority which licenses the body in relation to which the disqualification condition (within the meaning of section 97) was satisfied in respect of the person, or
 - (b) if there is no such licensing authority, the licensing authority designated by the Board on an application by the disqualified person. 10
 - (6) The Board must publish the lists kept by it under subsection (1).
- 99 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.
 - (2) A licence is to be treated as not being in force at any time while it is suspended under this section. 15
- 100 Intervention**
- Schedule 14 confers powers of intervention on licensing authorities.
- 101 Regulatory conflict and the Board as licensing authority**
- (1) Sections 51 and 53 (regulatory conflict between approved regulators and between approved regulators and other regulators) apply in relation to the Board in its capacity as a licensing authority and its licensing rules as they apply in relation to an approved regulator (including the Board in its capacity as approved regulator) and its regulatory arrangements. 20
 - (2) Section 67 (regulatory conflict and the Board as approved regulator) applies in relation to the Board in its capacity as a licensing authority and its licensing rules as it applies in relation to the Board in its capacity as an approved regulator and its regulatory arrangements. 25
- 102 Prevention of regulatory conflict: accounts rules**
- (1) Where a licensed body carries on an activity through a solicitor, the rules made under paragraph 20 of Schedule 11 apply instead of those made under sections 32 to 34 of the Solicitors Act 1974 (c. 47). 30
 - (2) Where a licensed body carries on an activity through a licensed conveyancer, the rules made under paragraph 20 of Schedule 11 apply instead of those made under sections 22 and 23 of the Administration of Justice Act 1985 (c. 61). 35

*Special kinds of body***103 Trade union exemptions**

- (1) Paragraphs 11 to 14 of Schedule 11 (Head of Legal Practice and Head of Finance and Administration) do not apply in relation to a licensed body which is a trade union. 5
- (2) Schedule 13 (ownership) does not apply in relation to an applicant for a licence, or a licensed body, which is a trade union.

104 Power to modify application of licensing rules etc to special bodies

- (1) This section applies to a licensed body (or an applicant for a licence) which is— 10
- (a) a trade union,
 - (b) a not for profit body,
 - (c) a community interest company,
 - (d) a low-risk body (see section 106), or
 - (e) a body of such other description as may be prescribed by order made by the Secretary of State on the recommendation of the Board. 15
- (2) A body to which this section applies may apply to the relevant licensing authority, in accordance with its licensing rules, for the authority to make an order under this section.
- (3) The licensing authority may make one or both of the following orders— 20
- (a) that the authority’s licensing rules apply in relation to the body with such modifications as may be specified in the order;
 - (b) that Schedule 13 does not apply in relation to the body, or applies in relation to the body with such modifications as may be specified in the order.
- (4) On an application under subsection (2), the licensing authority may make any order which the authority— 25
- (a) has power to make under subsection (3), and
 - (b) considers appropriate in all the circumstances of the case, whether or not it is the order for which the applicant applied.
- (5) In deciding what order (if any) is appropriate in all the circumstances of the case, the licensing authority must in particular have regard to— 30
- (a) the reserved legal activities and non-reserved activities which the body carries on (or proposes to carry on),
 - (b) the nature of the persons to whom the body provides (or proposes to provide) services, 35
 - (c) any non-authorized persons who have an interest in shares in the licensed body or hold a material interest in the licensed body, or are managers of the body, and
 - (d) any other matter specified in the authority’s licensing rules.
- (6) If the licensing authority makes an order under subsection (3), the authority’s licensing rules or Schedule 13 or both (as the case may be) have effect in relation to that body in accordance with that order. 40
- (7) The licensing authority may not make an order under subsection (3)(a) in relation to provisions of its licensing rules made in accordance with—

- (a) section 81(4)(a) to (4)(f), or
 - (b) the paragraphs of Schedule 11 listed in subsection (8).
- (8) The paragraphs mentioned in subsection (7)(b) are—
- (a) paragraphs 2 and 3 (determination and review of applications for a licence); 5
 - (b) paragraphs 7 and 8 (applications under this section);
 - (c) paragraphs 9(3), 18 and 23 (disqualifications);
 - (d) paragraph 10(2) (management);
 - (e) paragraph 16 (carrying on of licensed activities);
 - (f) paragraph 24(1), (2), (3) and (8) (grounds for suspending and revoking licences); 10
 - (g) paragraph 24(10) and (11) (procedure for suspending or revoking licence);
 - (h) paragraph 26(2) (review of decision to suspend or revoke licence).
- (9) The licensing authority may not make an order under subsection (3)(a) which results in its licensing rules, as they apply in relation to the body to which the order relates, not making the provision required by the following paragraphs of Schedule 11— 15
- (a) paragraph 1 (applications for licences);
 - (b) paragraph 4(3) (renewal of licences); 20
 - (c) paragraph 6 (modification of licence);
 - (d) paragraph 20 (accounts).

105 Modifications under section 104: supplementary

- (1) This section applies where a licensing authority has made an order under section 104 in relation to a body to which that section applies. 25
- (2) The licensing authority must revoke the order under section 104 if it becomes aware that the body in respect of which the order was made is no longer a body to which that section applies.
- (3) The licensing authority may revoke or otherwise modify an order under section 104— 30
- (a) on the application of the body in relation to which the order was made, or
 - (b) of its own motion.
- (4) It may do so only if it considers it appropriate to do so in all the circumstances of the case, having regard to the matters mentioned in section 104(5). 35

106 “Low risk body”

- (1) A body (“B”) is a low risk body if the management condition and the ownership condition are satisfied in relation to it.
- (2) The management condition is that the number of managers of the body who are non-authorized persons is less than 10% of the total number of managers. 40
- (3) The ownership condition is that—
- (a) the proportion of shares in B in which non-authorized persons have an interest is less than 10%, and

- (b) the proportion of the voting power in B which non-authorised persons are entitled to exercise, or control the exercise of, is less than 10%, and
 - (c) if B has a parent undertaking (“P”) –
 - (i) the proportion of shares in P in which non-authorised persons have an interest is less than 10%, and 5
 - (ii) the proportion of the voting power in P which non-authorised persons are entitled to exercise, or control the exercise of, is less than 10%.
- (4) For the purposes of this section –
- “parent undertaking” has the same meaning as in the Financial Services and Markets Act 2000 (c. 8) (see section 420); 10
 - “voting power”, in relation to a body which does not have general meetings at which matters are decided by the exercise of voting rights, means the right under the constitution of the body to direct the overall policy of the body or alter the terms of its constitution. 15

107 Foreign bodies

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. 20

Interpretation

108 Interpretation of Part 5

In this Part –

- “licensed activity”, in relation to a licensed body, means an activity –
 - (a) which is a reserved legal activity, and 25
 - (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, and is not a registered foreign lawyer (within the meaning of section 89 of the Courts and Legal Services Act 1990 (c. 41)); 30
- “non-reserved activity” means an activity which is not a reserved legal activity;
- “relevant appellate body”, in relation to decisions made by a licensing authority under this Part, means the body having power to hear appeals from those decisions (whether by virtue of an order under section 79 or otherwise). 35

PART 6

LEGAL COMPLAINTS

Complaints procedures of authorised persons

109 Complaints procedures of authorised persons

- (1) The regulatory arrangements of an approved regulator must make provision requiring each relevant authorised person – 5
- (a) to establish and maintain procedures for the resolution of relevant complaints, or
 - (b) to participate in, or make arrangements to be subject to, such procedures established and maintained by another person, 10
- and 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) In this section – 15
- “relevant authorised person”, in relation to an approved regulator, means a person in relation to whom the approved regulator is a relevant approved regulator;
 - “relevant complaint”, in relation to a relevant authorised person, means a complaint which – 20
 - (a) relates to an act or omission of that person, and
 - (b) may be made under the scheme provided for by this Part.
- (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 – 25
- ““relevant authorised person”, in relation to the Board, means a person licensed by the Board under Part 5;”. 30

Overview of the scheme

110 Overview of the scheme

- (1) This Part provides for a scheme under which complaints which –
- (a) relate to an act or omission of a person (“the respondent”) in carrying on an activity, and 35
 - (b) are within the jurisdiction of the scheme (see section 122), may be resolved quickly and with minimum formality by an independent person.
- (2) Under the scheme –
- (a) redress may be provided to the complainant, but 40
 - (b) no disciplinary action may be taken against the respondent.

- (3) Section 154 prevents provision relating to redress being included in the regulatory arrangements of an approved regulator, or licensing rules made by the Board in its capacity as a licensing authority.
- (4) But neither the scheme nor any provision made by this Part affects any power of an approved regulator, or the Board in its capacity as a licensing authority, to take disciplinary action. 5
- (5) “Disciplinary action” means the imposition of sanctions, in respect of a breach of conduct rules or discipline rules, on a person who is an authorised person in relation to an activity which is a reserved legal activity.

The Office for Legal Complaints 10

111 The Office for Legal Complaints

- (1) There is to be a body corporate called the Office for Legal Complaints (in this Act referred to as “the OLC”).
- (2) Schedule 15 is about the OLC.

112 The ombudsman scheme 15

- (1) The scheme provided for by this Part is to be administered by the OLC in accordance with this Part and with scheme rules made under this Part.
- (2) In this Part “scheme rules” means rules made by the OLC.
- (3) The scheme is to be operated under a name (which must include the word “ombudsman”) chosen by the OLC, and is referred to in this Act as “the ombudsman scheme”. 20

113 General obligations

- (1) In discharging its functions the OLC must comply with the requirements of this section.
- (2) The OLC must, so far as is reasonably practicable, act in a way – 25
 - (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 – 30
 - (a) any principles appearing to it to represent the best practice of those who administer ombudsman schemes, and
 - (b) the public interest.

114 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. 35

115 Annual report

- (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 120 for the financial year in question.
- (4) As soon as reasonably practicable after the end of each financial year, the OLC must give 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.

116 Supplementary powers

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

117 Reporting to the Board

- (1) The Board may require the OLC to prepare and give 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 under this section.

118 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.
- (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) 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 ombudsmen

- 119 Appointment of the Chief Ombudsman and assistant ombudsmen** 5
- (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. 10
- (2) The person appointed under subsection (1)(a) must be a lay person.
- (3) It is a condition of an appointment under subsection (1)(b) that the person appointed must not during the appointment carry on any activity which is a reserved legal activity for or in expectation of any fee, gain or reward.
- (4) Each person appointed under subsection (1)(a) or (b) must be a person appearing to the OLC to have appropriate qualifications and experience to act as an ombudsman for the purposes of the ombudsman scheme. 15
- (5) In this Act a reference to an “ombudsman” (except in the expressions “ombudsman scheme”, “Chief Ombudsman” and “assistant ombudsman”) is a reference to the Chief Ombudsman or an assistant ombudsman. 20
- (6) A person’s appointment as Chief Ombudsman ceases if that person ceases to be a lay person.
- (7) The terms and conditions on which a person is appointed as an assistant ombudsman must specify the consequences of a breach of the condition imposed by subsection (3). 25
- (8) 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 a 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
- (9) Appointment as an ombudsman does not confer the status of Crown servant.
- (10) In this section “lay person” has the same meaning as in Schedule 15.
- 120 Annual report of Chief Ombudsman**
- (1) The Chief Ombudsman must prepare a report for each financial year on the discharge of the functions of the ombudsmen. 35
- (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 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 115(7).

121 Additional reports of Chief Ombudsman 5

- (1) The OLC may require the Chief Ombudsman to prepare and give the OLC, within a specified period, a report in respect of any specified matter relating to the functions of the ombudsmen.
- (2) In subsection (1) “specified” means specified in the requirement.

Jurisdiction and operation of the ombudsman scheme 10

122 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 within the jurisdiction of the ombudsman scheme if –
 - (a) the complaint is not excluded from the jurisdiction of the scheme by section 123, or by scheme rules made under section 124, 15
 - (b) the respondent is within section 125, and
 - (c) the complainant is within section 125 and wishes to have the complaint dealt with under the scheme.
- (2) In subsection (1) references to an act or omission include an act or omission which occurs before the coming into force of this section. 20
- (3) 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.

123 Complaints excluded because respondent’s complaints procedures not used 25

- (1) A complaint is excluded from the jurisdiction of the ombudsman scheme if the complainant has not first used the respondent’s complaints procedures in relation to the complaint.
- (2) The respondent’s complaints procedures are the procedures established by the respondent, or which the respondent participates in or is subject to, in accordance with regulatory arrangements (or licensing rules of the Board) made in accordance with section 109. 30
- (3) Scheme rules may provide that subsection (1) does not apply in specified circumstances.

124 Complaints excluded by scheme rules 35

- (1) Scheme rules may make provision excluding complaints of a description specified in the rules from the jurisdiction of the ombudsman scheme.
- (2) But they may not make provision excluding a complaint from the jurisdiction of the ombudsman scheme on the ground that it relates to a matter which has

been or could be dealt with under the disciplinary arrangements of the respondent’s relevant authorising body.

125 Parties

- (1) The respondent is within this section 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). 5
- (2) The complainant (“C”) is within this section if C –
 - (a) meets the first and second conditions, and
 - (b) is not excluded by subsection (5).
- (3) The first condition is that C is – 10
 - (a) an individual, or
 - (b) a person (other than an individual) of a description prescribed by order made by the Secretary of State in accordance with a recommendation made under section 127.
- (4) The second condition is that – 15
 - (a) the services to which the complaint relates were provided by the respondent to C;
 - (b) the services to which the complaint relates were provided by the respondent to an authorised person who procured them on C’s behalf;
 - (c) the services to which the complaint relates were provided by the respondent – 20
 - (i) in the respondent’s capacity as a personal representative or trustee, or
 - (ii) to a person acting as a personal representative or trustee, and C is a beneficiary of the estate or trust in question; or 25
 - (d) C satisfies such other conditions, in relation to the services to which the complaint relates, as may be prescribed by order made by the Secretary of State in accordance with a recommendation made under section 127.
- (5) C is excluded 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, 30
 - (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
 - (c) C was a person prescribed, or of a description prescribed, as excluded by order made by the Secretary of State in accordance with a recommendation made under section 127. 35
- (6) In subsection (4)(b) “authorised person” means an authorised person in relation to any activity which is a reserved legal activity.
- (7) In this section – 40

“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. 45

126 Pre-commencement acts and omissions

- (1) For the purposes of section 125 a person is to be regarded as an authorised person in relation to an activity which is a reserved legal activity, at a time before section 122 comes into force, if the person was at that time –
 - (a) a person of the kind mentioned in paragraph 2(4) of Schedule 15, 5
 - (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 patent attorney body or a trade mark body.
- (2) In this section –
 - “conveyancing partnership” has the meaning given by paragraph 11(5) of Schedule 5; 10
 - “legal partnership” has the meaning given by paragraph 7(4) of that Schedule;
 - “patent attorney body” has the meaning given by paragraph 13(7) of that Schedule; 15
 - “trade mark body” has the meaning given by paragraph 15(7) of that Schedule.

127 Orders under section 125

- (1) An interested body may, at any time, recommend to the Secretary of State that the Secretary of State make an order under section 125(3)(b), (4)(d) or (5)(c). 20
- (2) 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 (1).
- (3) An interested body must, before making a recommendation under subsection (1) – 25
 - (a) publish a draft of the proposed recommendation,
 - (b) invite representations regarding the proposed recommendation, and
 - (c) consider any such representations which are made.
- (4) Where the Secretary of State receives a recommendation under subsection (1), the Secretary of State must consider whether to follow the recommendation. 30
- (5) If the Secretary of State decides not to follow the recommendation, the Secretary of State must publish a notice to that effect which includes the Secretary of State’s reasons for the decision.
- (6) In this section “interested body” means – 35
 - (a) the OLC,
 - (b) the Board, or
 - (c) the Consumer Panel.

128 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. 40

- (2) 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.
- (3) But subsection (2) 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. 5

129 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. 10
- (2) Scheme rules must make provision 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. 15
- (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. 20
- (4) Scheme rules may make provision conferring rights on persons specified in the rules to continue a complaint made by a person who has died or is otherwise unable to act.

130 Operation of the ombudsman scheme

- (1) Scheme rules must set out the procedure for – 25
- (a) the making of complaints under the ombudsman scheme, and
 - (b) the investigation, consideration and determination of complaints by an ombudsman.
- (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 30
 - (b) may provide that an ombudsman may extend that time limit in specified circumstances. 35
- (3) Scheme rules made under subsection (1) may (among other things) make provision –
- (a) for the whole or part of a complaint to be dismissed, in specified circumstances, without consideration of its merits;
 - (b) for the reference of a complaint, in specified circumstances and with the consent of the complainant, to another body with a view to it being determined by that body instead of by an ombudsman; 40
 - (c) for a person who, at the relevant time (within the meaning of section 125(7)) was an authorised person in relation to an activity 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

- (d) about the evidence which may be required or admitted and the extent to which it should be oral or written;
 - (e) for requiring parties to the complaint to attend to give evidence and produce documents, and for authorising the administration of oaths by ombudsmen; 5
 - (f) about the matters which are to be taken into account in determining whether an act or omission was fair and reasonable;
 - (g) 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
 - (h) for an ombudsman to award costs against the respondent in favour of the complainant;
 - (i) 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;
 - (j) for the purpose of facilitating the settlement of a complaint with the agreement of the parties to it; 20
 - (k) for specified persons to be notified of complaints, determinations and directions under the ombudsman scheme.
- (4) The circumstances specified under subsection (3)(a) may include the following – 25
- (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; 30
 - (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; 35
 - (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.
- (5) No person may be required by scheme rules – 40
- (a) to provide any information or give any evidence which that person could not be compelled to provide or give 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
- (6) Scheme rules may authorise an ombudsman making an award of costs in accordance with rules within subsection (3)(h) or (i) to order that the amount payable under the award bears interest, from a time specified in or determined in accordance with the order, at a rate specified in or determined in accordance with the rules. 50

- (7) An amount due under an award made in favour of a person by virtue of provision made under subsection (3)(g), (h) or (i) is recoverable as a debt due to that person.
- (8) 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;
 - “specified” means specified in scheme rules.

131 Delegation of an ombudsman’s functions

- (1) An ombudsman may delegate to a member of the OLC’s staff appointed under paragraph 11 of Schedule 15 –
- (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).
- (2) Those functions are –
- (a) the Chief Ombudsman’s power to consent to the appointment of an assistant ombudsman under section 119, and
 - (b) the duties imposed on the Chief Ombudsman by section 120 (Chief Ombudsman’s report).

132 Notification requirements

- (1) This section applies where a complaint –
- (a) is excluded from the jurisdiction of the ombudsman scheme under section 123, or by virtue of scheme rules made under section 124;
 - (b) is dismissed, or referred to another body, by virtue of scheme rules;
 - (c) is settled, withdrawn or abandoned (or treated as withdrawn or abandoned by virtue of scheme rules).
- (2) 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 section 130(3)(k),
- and, in a case within subsection (1)(a) or (b), must give reasons for the exclusion, dismissal or referral.

133 Charges payable by respondents

- (1) Scheme rules must require respondents, in relation to complaints under the ombudsman scheme, to pay to the OLC such charges as may be specified in the rules.
- (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;
 - (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. 5
- (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.

Determinations under the scheme 10

134 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 – 15
- (a) a direction that the respondent make an apology to the complainant;
 - (b) 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 20
 - (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);
 - (c) 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; 25
 - (d) 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; 30
 - (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. 35
- (3) For the purposes of subsection (2)(b) “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;
 - (b) that the whole or part of the fees be remitted; 40
 - (c) that the right to recover the fees be waived, whether wholly or to any specified extent.
- (4) Where –
- (a) a direction is made under subsection (2)(b) 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 45

(b) a direction is made under subsection (2)(c), the direction may also provide for the amount payable under the direction to carry interest from a time specified in or determined in accordance with the direction, at the rate specified in or determined in accordance with scheme rules. 5

- (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.

135 Limitation on value of directions under the ombudsman scheme

- (1) Where a determination is made under the ombudsman scheme in respect of a complaint, the total value of directions under section 134(2)(c) to (e) contained in the determination must not exceed £20,000. 10
- (2) For this purpose the total value of such directions is the aggregate of—
- (a) the amount of any compensation specified in a direction under subsection (2)(c) of section 134, and 15
- (b) the amount of any expenses reasonably incurred by the respondent when complying with a direction under subsection (2)(d) or (e) of that section.
- (3) For the purposes of determining that total value, any interest payable on an amount within subsection (2)(a) of this section, by virtue of section 134(4), is to be ignored. 20

136 Alteration of limit

- (1) The Secretary of State may by order amend section 135(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 135(1) should be amended so as to substitute the amount specified in the recommendation for the amount for the time being specified in that provision. 25
- (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). 30
- (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 35
- (c) consider any such representations which are made.
- (5) Where the Secretary of State receives a recommendation under subsection (2), the Secretary of State must consider whether to follow the recommendation.
- (6) If the Secretary of State decides not to follow the recommendation, the Secretary of State must publish a notice to that effect which includes the Secretary of State’s reasons for the decision. 40
- (7) In this section “interested body” means—
- (a) the OLC,

- (b) the Board, or
- (c) the Consumer Panel.

137 Acceptance or rejection of determination

- (1) When an ombudsman has determined a complaint the ombudsman must prepare a written statement of the determination. 5
- (2) The statement must –
 - (a) give the ombudsman’s reasons for the determination,
 - (b) be signed by the ombudsman, and
 - (c) require the complainant to notify the ombudsman, before a time specified in the statement (“the specified time”), whether the complainant accepts or rejects the determination. 10
- (3) The ombudsman must give a copy of the statement to –
 - (a) the complainant,
 - (b) the respondent, and
 - (c) any relevant authorising body in relation to the respondent. 15
- (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.
- (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. 20
- (6) But if –
 - (a) the complainant notifies the ombudsman after the specified time that the determination is accepted by the complainant,
 - (b) the complainant has not previously notified the ombudsman of the complainant’s rejection of the determination, and 25
 - (c) the ombudsman is satisfied that such conditions as may be prescribed by the scheme rules for the purposes of this subsection are satisfied, the determination is treated as if it had never been rejected by virtue of subsection (5). 30
- (7) The ombudsman must give notice of the outcome to –
 - (a) the complainant,
 - (b) the respondent, and
 - (c) any relevant authorising body in relation to the respondent.
- (8) Where a determination is rejected by virtue of subsection (5), that notice must contain a general description of the effect of subsection (6). 35
- (9) A copy of the determination on which appears a certificate signed by an ombudsman is evidence that the determination was made under the scheme.
- (10) Such a certificate purporting to be signed by an ombudsman is to be taken to have been duly signed unless the contrary is shown. 40
- (11) 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.

138 Enforcement by complainant of directions under section 134

- (1) This section applies where—
 - (a) a determination is made in respect of a complaint under the ombudsman scheme,
 - (b) one or more directions are made under section 134(2), and 5
 - (c) the determination is final by virtue of section 137(4).
- (2) An amount payable in accordance with—
 - (a) a direction under subsection (2)(b) of section 134 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 10
 - (b) a direction under subsection (2)(c) of that section, including any interest payable by virtue of subsection (4) of that section, is recoverable, if a court so orders on the application of the complainant, as if it were payable under an order of that court.
- (3) If the respondent fails to comply with any other direction under section 134(2), the complainant may make an application to the court under this subsection. 15
- (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. 20
- (5) In this section “court” means the High Court or the county court.

139 Reporting court orders made against authorised persons

- (1) Where a court makes an order under section 138, it must give the OLC notice to that effect.
- (2) Where the order is made against a person who is an authorised person in relation to any activity which is a reserved legal activity, 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. 25
- (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. 30
- (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— 35
 - (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, 40
 the ombudsman may make a report to that effect to the Board.

Reporting misconduct

140 Reporting possible misconduct to approved regulators

- (1) This section applies where –
 - (a) an ombudsman is dealing, or has dealt, with a complaint under the ombudsman scheme, and 5
 - (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.
- (2) The ombudsman must give the relevant authorising body a report which – 10
 - (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. 15
- (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 – 20
 - (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, 25the ombudsman may make a report to that effect to the Board.

Co-operation with investigations

141 Duties to share information

- (1) Scheme rules must make provision requiring persons within subsection (3) to disclose to an approved regulator information of such description as may be specified in the rules, in such circumstances as may be so specified. 30
- (2) The regulatory arrangements of an approved regulator must make provision requiring the approved regulator to disclose to persons within subsection (3) information of such description as may be specified in the arrangements, in such circumstances as may be so specified. 35
- (3) The persons are –
 - (a) the OLC;
 - (b) an ombudsman;
 - (c) a member of the OLC’s staff appointed under paragraph 11 of Schedule 15. 40
- (4) Provision made under subsection (1) or (2) must satisfy such requirements as the Board may, from time to time, specify.

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- (5) In specifying requirements under subsection (4) the Board must have regard to—
- (a) the need to ensure that duplication of investigations is avoided so far as practicable;
 - (b) the desirability of the OLC assisting approved regulators to carry out their regulatory functions, and of approved regulators assisting with the investigation, consideration and determination of complaints under the ombudsman scheme. 5
- (6) The Board must publish any requirements specified by it under subsection (4).
- (7) This section applies to the Board in its capacity as a licensing authority and licensing rules made by the Board as it applies to an approved regulator and its regulatory arrangements; and for this purpose the reference in subsection (5)(b) to “regulatory functions” is to be read as a reference to the Board’s functions under its licensing rules. 10
- 142 Duties of authorised persons to co-operate with investigations 15**
- (1) The regulatory arrangements of an approved regulator, and licensing rules made by the Board in its capacity as a licensing authority, 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 20
 - (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. 25
- (3) The Board must publish any requirements specified by it under subsection (2).
- (4) In this section “relevant authorised person”—
- (a) in relation to an approved regulator, has the same meaning as in section 109, and
 - (b) in relation to the Board in its capacity as a licensing authority, means a person licensed by the Board under Part 5. 30
- 143 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 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. 35
- (2) The ombudsman must give each relevant authorising body, in relation to that person, a report which—
- (a) states that the ombudsman is of that opinion, and 40
 - (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. 45

- (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
 - (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 10
- (6) In this section “authorised person” means an authorised person in relation to any activity which is a reserved legal activity.

Information

144 Information and documents 15

- (1) An ombudsman may, by notice, require a party to a complaint under the ombudsman scheme –
 - (a) to produce documents, or documents of a description, specified in the notice, or
 - (b) to provide information, or information of a description, specified in the notice. 20
- (2) A notice under subsection (1) may require the information or documents to be provided or produced –
 - (a) before the end of such reasonable period as may be specified in the notice, and
 - (b) in the case of information, in such manner or form as may be so specified. 25
- (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. 30
- (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. 35
- (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 –
 - (a) to provide any information which that person could not be compelled to provide or give 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. 40

- (7) In this section “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.
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145 Reporting failures to provide information or produce documents

- (1) This section applies where an ombudsman is of the opinion that an authorised person has failed to comply with a requirement imposed under section 144(1).
- (2) The ombudsman must give each relevant authorising body, in relation to that person, a report which –
- (a) states that the ombudsman is of that opinion, and
 - (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.
- (4) 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 144(1).
- (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
 - (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.
- (6) In this section “authorised person” means an authorised person in relation to any activity which is a reserved legal activity.
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146 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 144(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 –
- (a) the defaulter, and
 - (b) in the case of a body, any manager of the body, as if that person were in contempt.
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- (5) Subsection (6) applies in a case where the defaulter is an authorised person in relation to any activity which is a reserved legal activity.
- (6) 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 145(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 144 related.
- (7) In this section “court” means the High Court.

147 Reports of investigations

- (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.

148 Restricted information

- (1) Except as provided by section 149, 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 149 –
 - “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 person who exercises functions delegated under paragraph 19 of Schedule 15.
- (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.

149 Disclosure of restricted information

- (1) A restricted person may disclose restricted information to another restricted person. 5
- (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.
- (3) Section 148 also does not preclude the disclosure of restricted information –
- (a) in a report made under –
 - (i) section 140(2) (report of possible misconduct to approved regulators), 10
 - (ii) section 143(2) (report of failure to co-operate with investigation),
 - (iii) section 145 (reporting failures to provide information or produce documents), or 15
 - (iv) section 147 (reports of investigations),
 - (b) for the purposes of enabling or assisting the Board to exercise any of its functions,
 - (c) to an approved regulator for the purposes of enabling or assisting the approved regulator to exercise any of its regulatory functions, 20
 - (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,
 - (f) where the disclosure is required by or by virtue of any provision made by or under this Act or any other enactment or other rule of law, 25
 - (g) to such persons as may be prescribed by order made by the Secretary of State for such purposes as may be so prescribed.
- (4) Subsections (2) and (3) are subject to subsection (5).
- (5) The Secretary of State may by order prevent the disclosure of restricted information by virtue of subsection (2) or (3) in such circumstances, or for such purposes, as may be prescribed in the order. 30

150 Data protection

- In section 31 of the Data Protection Act 1998 (c. 29) (regulatory activity), after subsection (4B) (inserted by section 163) insert – 35
- “(4C) 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 2007 (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.” 40

Defamation

151 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 5
- (b) the publication of any matter by the OLC under this Part is absolutely privileged.

Scheme rules

152 Consent requirements for rules

- (1) Before making scheme rules under any provision of this Part, the OLC must obtain – 10
 - (a) the consent of the Board, and
 - (b) in the case of rules under section 133 (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. 15

153 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 scheme rules in accordance with such general requirements as are specified in the direction, or 20
 - (b) to make a specified modification to its scheme 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, 25
 - (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 152(1)(a) (requirement to obtain the Board’s consent to rules); 30
 - (b) section 195 (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.

Effect on existing arrangements for redress etc 35

154 Approved regulators not to make provision for redress

- (1) The regulatory arrangements of an approved regulator must not include any provision relating to redress.

- (2) If at the time this subsection 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 201 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. 5
This subsection is without prejudice to any other transitional provision which may be made by or under this Act. 10
- (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 prevents an approved regulator making – 15
(a) provision in its regulatory arrangements of the kind required by section 109 (requirement for authorised persons to have complaints procedures), or
(b) indemnification arrangements or compensation arrangements.
- (6) In subsection (4) “authorised person” means an authorised person in relation to any activity which is a reserved legal activity. 20
- (7) This section applies to licensing rules made by the Board in its capacity as a licensing authority as it applies in relation to the regulatory arrangements of an approved regulator.
- 155 Legal Services Complaints Commissioner and Legal Services Ombudsman 25**
- (1) The offices of Legal Services Complaints Commissioner and Legal Services Ombudsman are abolished.
- (2) Accordingly –
(a) sections 51 and 52 of, and Schedule 8 to, the Access to Justice Act 1999 (c. 22), and 30
(b) sections 21 to 26 of, and Schedule 3 to, the Courts and Legal Services Act 1990 (c. 41),
are repealed.

Interpretation

- 156 Interpretation of Part 6 35**
- In this Part –
“complainant”, in relation to a complaint, means the person who makes the complaint;
“relevant authorising body”, in relation to a person, means – 40
(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;

“respondent”, in relation to a complaint, is to be construed in accordance with section 122 (except that, where scheme rules of the kind mentioned in section 130(3)(c) have effect, references to the “respondent” include a person treated as a co-respondent under those rules).

5

Claims management services

157 Extension of Part 6 to claims management services

- (1) For the purposes of this Part (and sections 1, 20 and 26 as they apply in relation to this Part) –
 - (a) the Claims Management Services Regulator is to be treated as an approved regulator; 10
 - (b) regulated claims management services are to be treated as a reserved legal activity;
 - (c) a person authorised by the Claims Management Services Regulator, under Part 2 of the Compensation Act 2006 (c. 29), to provide regulated claims management services is to be treated as an authorised person in relation to that activity; 15
 - (d) the Claims Management Services Regulator is to be treated as a relevant authorising body in relation to such a person; and
 - (e) regulations under section 9 of, and the Schedule to, the Compensation Act 2006 (regulations about the functions of the Claims Management Services Regulator etc) are to be treated as regulatory arrangements of the Claims Management Services Regulator. 20
- (2) For the purposes of sections 109 and 142 (as extended by this section) a person authorised by the Claims Management Services Regulator under Part 2 of the Compensation Act 2006 to provide regulated claims management services is to be treated as a “relevant authorised person” in relation to the Regulator. 25
- (3) Section 9 of, and the Schedule to, the Compensation Act 2006 (regulations about the functions of the Claims Management Regulator etc) are subject to any requirements imposed by this Part in relation to the regulatory arrangements of the Claims Management Regulator. 30
- (4) In this section –
 - “Claims Management Services Regulator” means –
 - (a) the person designated under section 5(1) of the Compensation Act 2006, or 35
 - (b) at a time when no person is so designated, the Board;
 - “regulated claims management services” has the same meaning as in Part 2 of the Compensation Act 2006.

PART 7

FURTHER PROVISIONS RELATING TO THE BOARD AND THE OLC

Guidance

158 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 61(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

159 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

Disclosure and use of information

160 Restricted information

- (1) Except as provided by section 161, restricted information must not be disclosed – 10
 - (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 161 – 15
 - “restricted information” means information (other than excluded information) which is obtained by the Board in the exercise of its functions;
 - “restricted person” means –
 - (a) the Board (including the Board in its capacity as an approved regulator or a licensing authority), 20
 - (b) a person who exercises functions delegated under paragraph 20 of Schedule 1 or section 72 or by virtue of section 63(2)(k).
- (3) For the purposes of subsection (2) “excluded information” means – 25
 - (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. 30

161 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 enabling or assisting the Board to exercise its functions (whether as an approved regulator, a licensing authority or otherwise). 35
- (3) Section 160 also does not preclude the disclosure of restricted information –
 - (a) where the disclosure is a result of the Board exercising any power to publish information under this Act;
 - (b) for the purposes of enabling or assisting the OLC, ombudsmen or persons who exercise functions delegated under paragraph 19 of Schedule 15, to exercise any of its or their functions, 40
 - (c) to an approved regulator for the purposes of enabling or assisting the approved regulator to exercise any of its 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,
 - (f) where the disclosure is required by or by virtue of any provision made by or under this Act or any other enactment or other rule of law, or
 - (g) to such persons as may be prescribed by order made by the Secretary of State for such purposes as may be so prescribed. 5
- (4) Subsections (2) and (3) are subject to subsection (5).
- (5) The Secretary of State may by order prevent the disclosure of restricted information by virtue of subsection (2) or (3) in such circumstances, or for such purposes, as may be prescribed in the order. 10

162 Disclosure of information to the Board

- (1) Information which is held by or on behalf of a permitted person (whether obtained before or after this section comes into force) may be disclosed to the Board for the purposes of enabling or assisting the Board to exercise its functions (whether as an approved regulator, a licensing authority or otherwise). 15
- (2) A disclosure under this section is not to be taken to breach any restriction on the disclosure of information (however imposed). 20
- (3) But nothing in this section authorises the making of a disclosure –
- (a) which contravenes the Data Protection Act 1998 (c. 29), or
 - (b) which is prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000 (c. 23).
- (4) This section does not affect a power to disclose which exists apart from this section. 25
- (5) The following are permitted persons –
- (a) a chief officer of police of a police force in England and Wales;
 - (b) a chief constable of a police force in Scotland;
 - (c) the Chief Constable of the Police Service of Northern Ireland;
 - (d) the Director General of the Serious Organised Crime Agency;
 - (e) the Commissioners for Her Majesty’s Revenue and Customs;
 - (f) the Financial Services Authority. 30
- (6) The Secretary of State may by order designate as permitted persons other persons who exercise functions which the Secretary of State considers are of a public nature (including a person discharging regulatory functions in relation to any description of activities). 35
- (7) Information must not be disclosed under this section on behalf of the Commissioners for Her Majesty’s Revenue and Customs unless the Commissioners authorise the disclosure. 40
- (8) The power to authorise a disclosure under subsection (7) may be delegated (either generally or for a specific purpose) to an officer of Revenue and Customs.

163 Data protection

In section 31 of the Data Protection Act 1998 (c. 29) (regulatory activity), after subsection (4A) insert –

“(4B) Personal data processed for the purposes of discharging any function of the Legal Services Board 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.” 5

164 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. 10

Payments by Secretary of State

165 Funding 15

- (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 20
 - (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.
- (2) The Secretary of State may – 25
 - (a) determine the manner in which and times at which the sums mentioned in subsection (1) are to be paid, and
 - (b) impose conditions on the payment of those sums.

The levy

166 The levy 30

- (1) The Board must make rules providing for the imposition of a levy on leviable bodies for the purpose of raising an amount corresponding to the aggregate of –
 - (a) the leviable Board expenditure,
 - (b) the leviable OLC expenditure, and 35
 - (c) the leviable Secretary of State expenditure.
- (2) A levy imposed under this section is payable to the Board.
- (3) Before making rules under this section, the Board must satisfy itself that the apportionment of the levy as between different leviable bodies will be in accordance with fair principles. 40

- (4) The Board may not make rules under this section except with the consent of the Secretary of State.
- (5) “Leviable body” means –
- (a) an approved regulator,
 - (b) the person designated under section 5(1) of the Compensation Act 2006 (c. 29) (the Regulator in relation to claims management services), or
 - (c) any other person prescribed by the Secretary of State by order.
- (6) The “leviable Board expenditure” means the difference between –
- (a) the expenditure of the Board incurred under or for the purposes of this Act or the Compensation Act 2006 (including any expenditure incurred in connection with its establishment and 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 168(1)(a), (c) to (e) and (j) to (l) or by virtue of regulations under paragraph 7(g) of the Schedule to the Compensation Act 2006.
- (7) The “leviable OLC expenditure” means the difference between –
- (a) the expenditure of the OLC incurred under or for the purposes of this Act (including any expenditure incurred in connection with its establishment), and
 - (b) the aggregate of the amounts which the OLC pays into the Consolidated Fund under section 168(1)(g), (h) or (m).
- (8) The “leviable Secretary of State expenditure” means any expenditure incurred by the Secretary of State in connection with the establishment of the Board or the OLC (including expenditure incurred under or for the purposes of paragraph 4 of Schedule 22 (Interim Chief Executive of the OLC)).
- (9) But the leviable Secretary of State expenditure does not include any expenditure under section 165 (funding of Board and OLC).
- (10) In subsection (5) the reference to “an approved regulator” does not include the Board where it is designated as an approved regulator under section 61.

167 The levy: supplementary provisions

- (1) In this section –
- “leviable body” has the meaning given by section 166;
 - “the levy” means the levy payable by virtue of that section;
 - “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 –
- (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.
- (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 – 5
 - (a) to calculate the amount of the levy payable by each leviable body,
 - (b) to notify each leviable body of its liability to pay an amount of levy and the time or times at which it becomes payable.
- (7) Without prejudice to subsections (2) to (6), the levy rules may – 10
 - (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. 15

Payments into the Consolidated Fund

168 Amounts payable into the Consolidated Fund

- (1) The following must be paid into the Consolidated Fund – 20
 - (a) any application fee received by the Board;
 - (b) any sum received by the Board under sections 36 to 39 (financial penalties and interest);
 - (c) amounts paid to the Board under section 48(8) or 49(5) (charges for providing draft and final policy statements);
 - (d) any sums received by the Board in its capacity as an approved regulator by virtue of rules within section 63(2)(f) (practising fees etc); 25
 - (e) any sums received by the Board in its capacity as a licensing authority by virtue of its licensing rules within paragraph 1, 4, 6, 7 or 21 of Schedule 11 or by virtue of paragraph 17 or 18 of Schedule 14;
 - (f) any sums received by the Board in its capacity as a licensing authority under sections 93 to 95 (financial penalties and interest); 30
 - (g) any charges received by the OLC by virtue of rules under section 133 (charges payable by respondents), together with any interest payable in accordance with those rules;
 - (h) any amount payable to the OLC in accordance with scheme rules within subsection (3)(i) of section 130 (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 (6) of that section; 35
 - (i) any sum received by the Board in accordance with rules under section 166 (the levy); 40
 - (j) amounts paid to the Board under section 158(4)(c) (charges for providing copies of guidance);
 - (k) any amount payable to the Board under arrangements entered under section 159 (voluntary arrangements); 45
 - (l) amounts paid to the Board under subsection (7) of section 195 (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—
- (a) paragraph 3(3)(d) of Schedule 4 (application fees in respect of designation as approved regulator);
 - (b) section 44(3)(b) (application fees in respect of cancellation of designation as approved regulator); 5
 - (c) paragraph 1(4)(d) of Schedule 10 (application fees in respect of designation as licensing authority);
 - (d) section 75(3)(b) (application fees in respect of cancellation of designation as licensing authority); 10
 - (e) paragraph 2(4)(c) of Schedule 18 (application fees in respect of designation as qualifying regulator for the purposes of Part 5 of the Immigration and Asylum Act 1999 (c. 33)).

PART 8

MISCELLANEOUS PROVISIONS ABOUT LAWYERS ETC 15

Duties of regulated persons

169 Duties of regulated persons

- (1) A person who is a regulated person in relation to an approved regulator has a duty to comply with the regulatory arrangements of the approved regulator as they apply to that person. 20
- (2) A person is a regulated person in relation to an approved regulator if the person—
 - (a) is authorised by the approved regulator to carry on an activity which is a reserved legal activity, or
 - (b) is not so authorised, but is a manager or employee of a person (other than an individual) who is so authorised. 25
- (3) This section applies in relation to the Board in its capacity as a licensing authority and its licensing rules, as it applies in relation to an approved regulator and its regulatory arrangements.

Solicitors, the Law Society and the Disciplinary Tribunal 30

170 The Law Society, solicitors, recognised bodies and foreign lawyers

Schedule 16 contains amendments of—

- (a) the Solicitors Act 1974 (c. 47),
- (b) Part 1 of the Administration of Justice Act 1985 (c. 61) (recognised bodies), and 35
- (c) Schedule 14 to the Courts and Legal Services Act 1990 (c. 41) (foreign lawyers: partnerships and recognised bodies).

171 The Solicitors Disciplinary Tribunal: approval of rules

- (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” 40

- rules”), the alteration does not have effect unless it is approved for the purposes of this Act.
- (2) An alteration is approved for the purposes of this Act if—
- (a) it is approved by the Board under Part 3 of Schedule 4 (alteration of approved regulator’s regulatory arrangements), 5
 - (b) it is an exempt alteration, or
 - (c) it is an alteration made in compliance with a direction under section 31 (given by virtue of section 172).
- (3) For the purposes of subsection (2)(a), paragraphs 20 to 27 of Schedule 4 (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— 10
- (a) paragraph 23 of that Schedule applied in relation to the Law Society as well as the Tribunal, 15
 - (b) in paragraph 25(3) (grounds for refusal of application), paragraphs (d) and (e) were omitted, and
 - (c) in paragraph 27(3) the reference to section 31 were a reference to that section as applied (with modifications) by section 172. 20
- (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. 25
- (6) In this section references to an “alteration” of the tribunal rules include the making of such rules and the modification of such rules.

172 Board’s power to give directions to the Tribunal

- Sections 31 to 33 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— 30
- (a) in section 31(1)—
 - (i) paragraphs (a) and (c) were omitted, and
 - (ii) in paragraph (b) after “failed” there were inserted “to perform any of its functions to an adequate standard (or at all) or”, 35
 - (b) in subsection (3)(b) of that section for “regulatory arrangements” there were substituted “rules under section 46(9)(b) of the Solicitors Act 1974”,
 - (c) section 33(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 31. 40

173 Functions of the Tribunal

Sections 68 and 69 (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 68(3) (purpose for which modifying order may be made) there were substituted – 5
 - “(3) The Board may make a recommendation under this section only with a view to an order being made which enables the Tribunal to carry out its role more effectively or efficiently.”, and
- (b) subsections (4), (5) and (7) of that section were omitted. 10

Other lawyers

174 Licensed conveyancers

Schedule 17 contains amendments relating to the Council for Licensed Conveyancers, licensed conveyancers and bodies recognised under section 32 of the Administration of Justice Act 1985 (c. 61). 15

175 Commissioners for oaths

- (1) For the purposes of any enactment or instrument (including an enactment passed or instrument made after the passing of this Act) “commissioner for oaths” includes an authorised person in relation to the administration of oaths (“a relevant authorised person”). 20
- (2) A relevant authorised person has the right to use the title “Commissioner for Oaths”.
- (3) A relevant authorised person may not carry on the administration of oaths in any proceedings in which that person represents any of the parties or is interested. 25
- (4) A relevant authorised person before whom an oath or affidavit is taken or made must state in the jurat or attestation at which place and on what date the oath or affidavit is taken or made.
- (5) A document containing such a statement and purporting to be sealed or signed by a relevant authorised person must be admitted in evidence without proof of the seal or signature, and without proof that that person is a relevant authorised person. 30
- (6) The Secretary of State may by order prescribe the fees to be charged by relevant authorised persons in respect of the administration of an oath or the taking of an affidavit. 35
- (7) The Secretary of State may make an order under subsection (6) only –
 - (a) after consultation with the Board, and
 - (b) with the consent of the Lord Chief Justice and the Master of the Rolls.
- (8) In this section “affidavit” has the same meaning as in the Commissioners for Oaths Act 1889 (c. 10). 40

176 Trade mark attorneys

- (1) The Trade Marks Act 1994 (c. 26) is amended as follows.
- (2) In section 82 (recognition of agents) after “rules” insert “and subject to the Legal Services Act 2007”.
- (3) For section 83 (the register of trade mark agents) substitute – 5

“83 The register of trade mark attorneys

- (1) There is to continue to be a register of persons who act as agent for others for the purpose of applying for or obtaining the registration of trade marks.
- (2) In this Act a registered trade mark attorney means an individual whose name is entered on the register kept under this section. 10
- (3) The register is to be kept by the Institute of Trade Mark Attorneys.
- (4) The Secretary of State may, by order, amend subsection (3) so as to require the register to be kept by the person specified in the order.
- (5) Before making an order under subsection (4), the Secretary of State must consult the Legal Services Board. 15
- (6) An order under this section must be made by statutory instrument.
- (7) A statutory instrument containing an order under this section is subject to annulment in pursuance of a resolution of either House of Parliament. 20

83A Regulation of trade mark attorneys

- (1) The person who keeps the register under section 83 may make regulations which regulate –
 - (a) the keeping of the register and the registration of persons;
 - (b) the carrying on of trade mark attorney work by registered persons. 25
- (2) Those regulations may, amongst other things, make –
 - (a) provision as to the educational and training qualifications, and other requirements, which must be satisfied before an individual may be registered or for an individual to remain registered; 30
 - (b) provision as to the requirements which must be met by a body (corporate or unincorporate) before it may be registered or for it to remain registered, including provision as to the management and control of the body; 35
 - (c) provision as to the educational, training or other requirements to be met by regulated persons;
 - (d) provision regulating the practice, conduct and discipline of registered persons or regulated person;
 - (e) provision authorising in such cases as may be specified in the regulations the erasure from the register of the name of any person registered in it, or the suspension of a person’s registration; 40

-
- (f) provision requiring the payment of such fees as may be specified in or determined in accordance with the regulations;
- (g) provision about the provision to be made by registered persons in respect of complaints made against them;
- (h) provision about the keeping of records and accounts by registered persons or regulated persons; 5
- (i) provision for reviews of or appeals against decisions made under the regulations;
- (j) provision as to the indemnification of registered persons or regulated persons against losses arising from claims in respect of civil liability incurred by them. 10
- (3) Regulations under this section may make different provision for different purposes.
- (4) Regulations under this section which are not regulatory arrangements within the meaning of the Legal Services Act 2007 are to be treated as such arrangements for the purposes of that Act. 15
- (5) Before the appointed day, regulations under this section may be made only with the approval of the Secretary of State.
- (6) The powers conferred to make regulations under this section are not to be taken to prejudice – 20
- (a) any other power which the person who keeps the register may have to make rules or regulations (however they may be described and whether they are made under an enactment or otherwise);
- (b) any rules made by that person under any such power. 25
- (7) In this section –
- “appointed day” means the day appointed for the coming into force of paragraph 1 of Schedule 4 to the Legal Services Act 2007;
- “manager”, in relation to a body, means a person who – 30
- (a) if the body is a body corporate whose affairs are managed by its members, is a member of the body,
- (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 35
- (d) if the body is an unincorporated body (other than a partnership), is a member of its governing body;
- “registered person” means –
- (a) a registered trade mark attorney, or
- (b) a body (corporate or unincorporate) registered in the register kept under section 83; 40
- “regulated person” means a person who is not a registered person but is a manager or employee of a body which is a registered person;
- “trade mark attorney work” means work done in the course of carrying on the business of acting as agent for others for the purpose of – 45
- (a) applying for or obtaining the registration of trade marks in the United Kingdom, or

- (b) conducting proceedings before the Comptroller relating to applications for or otherwise in connection with the registration of trade marks.”
- (4) In section 84 (unregistered persons not to be described as registered trade mark agents) – 5
- (a) in subsection (2) –
- (i) after “partnership” (in the first place) insert “or other unincorporated body”, and
- (ii) for “all the partners” to the end substitute “the partnership or other body is a registered in the register kept under section 83.”, 10
and
- (b) in subsection (3) for “all the directors” to the end substitute “the body corporate is registered in the register kept under section 83.”
- (5) Omit section 85 (power to prescribe conditions etc for mixed partnerships and bodies corporate). 15
- (6) In section 87 (privilege for communications with registered trade mark attorneys), in subsection (3)(c) at the beginning insert “any other unincorporated body or”.
- 177 Patent attorneys**
- (1) The Copyright, Designs and Patents Act 1988 (c. 48) is amended as follows. 20
- (2) In section 274 (persons permitted to carry on business of a patent agent) in subsection (1) after “this Part” insert “and to the Legal Services Act 2007”.
- (3) For section 275 (the register of patent agents) substitute –
- “275 The register of patent attorneys**
- (1) There is to be a register of persons who act as agent for others for the purpose of applying for or obtaining patents. 25
- (2) In this Part a registered patent attorney means an individual whose name is entered on the register kept under this section.
- (3) The register is to be kept by the Chartered Institute of Patent Attorneys.
- (4) The Secretary of State may, by order, amend subsection (3) so as to require the register to be kept by the person specified in the order. 30
- (5) Before making an order under subsection (4), the Secretary of State must consult the Legal Services Board.
- (6) An order under this section must be made by statutory instrument.
- (7) A statutory instrument containing an order under this section is subject to annulment in pursuance of a resolution of either House of Parliament. 35
- 275A Regulation of patent attorneys**
- (1) The person who keeps the register under section 275 may make regulations which regulate – 40
- (a) the keeping of the register and the registration of persons;
- (b) the carrying on of patent attorney work by registered persons.

- (2) Those regulations may, amongst other things, make—
- (a) provision as to the educational and training qualifications, and other requirements, which must be satisfied before an individual may be registered or for an individual to remain registered; 5
 - (b) provision as to the requirements which must be met by a body (corporate or unincorporate) before it may be registered, or for it to remain registered, including provision as to the management and control of the body;
 - (c) provision as to the educational, training and other requirements to be met by regulated persons; 10
 - (d) provision regulating the practice, conduct and discipline of registered persons or regulated persons;
 - (e) provision authorising in such cases as may be specified in the regulations the erasure from the register of the name of any person registered in it, or the suspension of a person's registration; 15
 - (f) provision requiring the payment of such fees as may be specified in or determined in accordance with the regulations;
 - (g) provision about the provision to be made by registered persons in respect of complaints made against them; 20
 - (h) provision about the keeping by registered persons or regulated persons of records and accounts;
 - (i) provision for reviews of or appeals against decisions made under the regulations; 25
 - (j) provision as to the indemnification of registered persons or regulated persons against losses arising from claims in respect of civil liability incurred by them.
- (3) Regulations under this section may make different provision for different purposes. 30
- (4) Regulations under this section which are not regulatory arrangements within the meaning of the Legal Services Act 2007 are to be treated as such arrangements for the purposes of that Act.
- (5) Before the appointed day, regulations under this section may be made only with the approval of the Secretary of State. 35
- (6) The powers conferred to make regulations under this section are not to be taken to prejudice—
- (a) any other power which the person who keeps the register may have to make rules or regulations (however they may be described and whether they are made under an enactment or otherwise); 40
 - (b) any rules made by that person under any such power.
- (7) In this section—
- “appointed day” means the day appointed for the coming into force of paragraph 1 of Schedule 4 to the Legal Services Act 2007; 45
 - “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,

- (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; 5
- “patent attorney work” means work done in the course of carrying on the business of acting as agent for others for the purpose of –
 - (a) applying for or obtaining patents, in the United Kingdom or elsewhere, or
 - (b) conducting proceedings before the comptroller relating to applications for, or otherwise in connection with, patents; 10
- “registered person” means –
 - (a) a registered patent attorney, or
 - (b) a body (corporate or unincorporate) registered in the register kept under section 275; 15
- “regulated person” means a person who is not a registered person but is a manager or employee of a body which is a registered person.”
- (4) In section 276 (persons entitled to describe themselves as patent attorneys) – 20
 - (a) in subsection (2) –
 - (i) after “partnership” (in the first place) insert “or other unincorporated body”, and
 - (ii) for “all the partners” to the end substitute “the partnership or other body is registered in the register kept under section 275”, 25
 - (b) in subsection (3) for “all the directors” to the end substitute “the body corporate is registered in the register kept under section 275.”
- (5) Omit section 279 (power to prescribe conditions etc for mixed partnerships and bodies corporate).
- (6) In section 280 (privilege for communications with patent agents), in subsection (3), at the end of paragraph (b) insert – 30
 - “(ba) an unincorporated body (other than a partnership) entitled to describe itself as a patent attorney, or”.

178 Immigration advisers and immigration service providers

- (1) Schedule 18 makes provision relating to Part 5 of the Immigration and Asylum Act 1999 (c. 33) (immigration advisers and immigration service providers). 35
- (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, 40
 - (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
 - (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. 45

179 Claims management services

Schedule 19 contains amendments of Part 2 of the Compensation Act 2006 (c. 29) (claims management services).

Advocates and litigators

180 Duties of advocates and litigators

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- (1) This section applies to a person who –
 - (a) exercises before any court a right of audience, or
 - (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) A person to whom this section applies has a duty to the court in question to act with independence in the interests of justice. 10
- (3) That duty, and the duty to comply with relevant conduct rules imposed on the person by section 169(1), override any obligations which the person may have (otherwise than under the criminal law) if they are inconsistent with them.
- (4) “Relevant conduct rules” are the conduct rules of the relevant authorising body which relate to the exercise of a right of audience or the conduct of litigation. 15
- (5) The relevant authorising body is –
 - (a) the approved regulator by which the person is authorised to exercise the right of audience or conduct the litigation, or
 - (b) where the person is authorised to exercise the right of audience or conduct the litigation by the Board in its capacity as a licensing authority, the Board. 20

181 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. 25
- (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 –
 - (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 30
 - (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. 35

Legal professional privilege

182 Legal professional privilege

- (1) Subsection (2) applies to any communication made to or by an individual (“P”) who is not a barrister or solicitor at any time when P is –
 - (a) providing advocacy services as an authorised person in relation to the exercise of rights of audience, 5
 - (b) providing litigation services as an authorised person in relation to the conduct of litigation,
 - (c) providing conveyancing services as an authorised person in relation to reserved instrument activities, or 10
 - (d) providing probate services as an authorised person in relation to probate activities.
- (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. 15
- (3) Subsection (4) applies where –
 - (a) a communication is made to or by a licensed body (“B”) at a time when the body is providing services to a client, and
 - (b) the individual (“E”) through whom the body provides those services –
 - (i) is a relevant lawyer, or 20
 - (ii) acts at the direction and under the supervision of a relevant lawyer (“the supervisor”).
- (4) The communication is, in any legal proceedings, to be privileged from disclosure only if, and to the extent that, it would have been privileged from disclosure if –
 - (a) the services had been provided by E or, if E is not a relevant lawyer, by the supervisor,
 - (b) the communication had been to or by E, and
 - (c) at all material times the client had been the client of E or, if E is not a relevant lawyer, of the supervisor. 30
- (5) “Relevant lawyer” means an individual who is –
 - (a) a solicitor;
 - (b) a barrister;
 - (c) a solicitor in Scotland;
 - (d) an advocate in Scotland; 35
 - (e) a solicitor of the Court of Judicature of Northern Ireland;
 - (f) a member of the Bar of Northern Ireland;
 - (g) a registered foreign lawyer (within the meaning of section 89 of the Courts and Legal Services Act 1990 (c. 41));
 - (h) an individual not within paragraphs (a) to (g) who is an authorised person in relation to an activity which is a reserved legal activity; or 40
 - (i) entitled to carry on an activity which is a reserved legal activity by virtue of paragraph 7 of Schedule 3.
- (6) 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 45

- of audience in relation to any proceedings, or contemplated proceedings, to provide;
- “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; 5
- “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;
- “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. 10
- (7) This section is without prejudice to any other enactment or rule of law by virtue of which a communication is privileged from disclosure. 15

Savings

183 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. 20
- (2) Where a court refuses to hear a person as mentioned in subsection (1), it must give its reasons for refusing.
- (3) Where—
- (a) immediately before the commencement of section 13 (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. 30
- (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. 35
- (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. 40

184 Solicitors to public departments and the City of London

- (1) Nothing in this Act is to prejudice or affect any rights or privileges of—
- (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 entitled to carry on 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. 5
- (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. 10
- (4) Nothing in section 16 (offence to pretend to be entitled) applies to a person to whom subsection (1) applies, or any clerk or officer appointed to act for such a person, or to the Solicitor of the City of London. 15
- (5) A person who –
- (a) exercises before any court a right of audience, or
 - (b) conducts litigation in relation to proceedings in any court,
- by virtue of this section has a duty to the court in question to act with independence in the interests of justice. 20
- (6) That duty overrides any obligations which the person may have (otherwise than under the criminal law) if it is inconsistent with them.

Pro bono representation

185 Payments in respect of pro bono representation

- (1) This section applies to proceedings in a civil court in which – 25
- (a) a party to the proceedings (“P”) is or was represented by a legal representative (“R”), and
 - (b) R’s representation of P is or was provided free of charge, in whole or in part.
- (2) This section applies to such proceedings even if P is or was also represented by a legal representative not acting free of charge. 30
- (3) The court may order any person to make a payment to the prescribed charity in respect of R’s representation of P (or, if only part of R’s representation of P was provided free of charge, in respect of that part).
- (4) In considering whether to make such an order and the terms of such an order, the court must have regard to – 35
- (a) whether, had R’s representation of P not been provided free of charge, it would have ordered the person to make a payment to P in respect of the costs payable to R by P in respect of that representation, and
 - (b) if it would, what the terms of the order would have been. 40
- (5) The court may not make an order under subsection (3) against a person represented in the proceedings if the person’s representation was at all times within subsection (6).

- (6) Representation is within this subsection if it is –
- (a) provided by a legal representative acting free of charge, or
 - (b) funded by the Legal Services Commission as part of the Community Legal Service.
- (7) Rules of court may make further provision as to the making of orders under subsection (3), and may in particular –
- (a) provide that such orders may not be made in civil proceedings of a description specified in the rules;
 - (b) make provision about the procedure to be followed in relation to such orders;
 - (c) specify matters (in addition to those mentioned in subsection (4)) to which the court must have regard in deciding whether to make such an order, and the terms of any order.
- (8) “The prescribed charity” means the charity prescribed by order made by the Secretary of State.
- (9) An order under subsection (8) may only prescribe a charity which –
- (a) is registered under section 3 of the Charities Act 1993 (c. 10), and
 - (b) provides financial support to persons who provide, or organise or facilitate the provision of, legal advice or assistance (by way of representation or otherwise) which is free of charge.
- (10) In this section –
- “legal representative”, in relation to a party to proceedings, means a person exercising a right of audience or conducting litigation on the party’s behalf;
- “civil court” means the civil division of the Court of Appeal, the High Court, or any county court;
- “free of charge” means otherwise than for or in expectation of fee, gain or reward.
- (11) This section applies only in relation to proceedings commenced after it comes into force.

Scotland

186 Application of the Legal Profession and Legal Aid (Scotland) Act 2006

- (1) The Legal Profession and Legal Aid (Scotland) Act 2006 (“the 2006 Act”) applies to –
- (a) any element of a complaint relating to,
 - (b) the provision by a practitioner of,
- the advice, services and activities mentioned in subsection (2) as it applies to any other advice, services and activities provided by a practitioner.
- (2) The advice, services and activities are –
- (a) activities carried out by virtue of a group licence issued under section 22(1)(b) of the Consumer Credit Act 1974 (c. 39);
 - (b) activities of an insolvency practitioner within the meaning of Part 13 of the Insolvency Act 1986 (c. 45);
 - (c) activities mentioned in paragraph (a) of paragraph 5(1) of Schedule 3 to the Financial Services Act 1986 (c. 60);

- (d) immigration advice or immigration services;
 - (e) regulated activity within the meaning of section 22 of the Financial Services and Markets Act 2000 (c. 8), other than activity falling within paragraph (f) below, in respect of which the Financial Services Authority has by virtue of Part 20 of that Act arranged for its regulatory role to be carried out by the Law Society of Scotland; 5
 - (f) exempt regulated activities within the meaning of section 325(2) of the Financial Services and Markets Act 2000.
- (3) In subsection (1), “complaint” and “practitioner” have the same meaning as in Part 1 of the 2006 Act. 10
 - (4) Omit section 47 of the 2006 Act (advice services and activities to which Act does not apply).
 - (5) Schedule 20 contains minor and consequential amendments in connection with the application of the 2006 Act by virtue of this section.
- 187 Scottish legal services ombudsman: functions** 15
- (1) The functions of the Scottish legal services ombudsman cease to be exercisable in relation to the advice, services and activities mentioned in section 186(2).
 - (2) In the Immigration and Asylum Act 1999 (c. 33) –
 - (a) in section 86(4)(c) (designated professional bodies), for “Scottish Legal Services Ombudsman” substitute “Scottish Legal Complaints Commission”, and 20
 - (b) in paragraph 4(2)(c) of Schedule 5 (the Immigration Services Commissioner), for “Scottish Legal Services Ombudsman” substitute “Scottish Legal Complaints Commission”.
- PART 9** 25
- GENERAL
- Offences*
- 188 Offences committed by bodies corporate and unincorporated bodies**
- (1) Where an offence committed by a body corporate 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. 30
 - (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. 35
 - (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. 40

- (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.
- (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. 5
- (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 unincorporated body is guilty of the offence and liable to be proceeded against and punished accordingly. 10
- (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. 15
- (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. 20

189 Local weights and measures authorities

- (1) A local weights and measures authority may institute proceedings for an offence under section 14 if the activity which it is alleged that the accused was not entitled to carry on constitutes reserved instrument activities. 25
- (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). 30
- (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; 35
 (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; 40
 (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. 45

- (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—
- (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 5
 - (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 would not be produced but would be removed from the premises or hidden, tampered with or destroyed. 10
- (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— 15
- (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”)— 20
- (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; 25
 - (c) to fail, without reasonable excuse, to give 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 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. 30
- (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. 35
- (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

- 190 Notices and directions** 40
- (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. 45

- (4) Subsection (3) does not apply to the power conferred on an ombudsman to give a direction under section 134 (directions on a determination of a complaint).

191 Documents

- (1) In this Act “document” includes anything in which information is recorded in any form. 5
- (2) In relation to a document in which information is recorded otherwise than in a legible form, any reference to the production of the document is a reference to the production of the information in a legible form or in a form from which it can readily be produced in a legible form.

192 The giving of notices, directions and other documents 10

- (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 – 15
- (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.
- (4) The notice, direction or document may be given to a partnership by being given to – 20
- (a) a partner in the partnership, or
 - (b) a person having the control or management of the partnership business.
- (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. 25
- (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 – 30
- (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;
 - (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; 35
 - (d) in any other case, the last known address of the person in question.
- (7) In the case of – 40
- (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).

- (8) This section has effect subject to section 193 (notices, directions and documents in electronic form).

193 The giving of notices, directions and other documents in electronic form 5

- (1) This section applies where –
- (a) section 192 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 –
 - (i) by means of an electronic communications network, or 10
 - (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. 15
- (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),
 - (b) the transmission must be made in such manner, and satisfy such other conditions as the recipient may require, and 20
 - (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 – 25
- (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 – 30
- (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. 35
- (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;
 - (b) may be a general indication or one that is limited to notices or documents of particular descriptions; 40
 - (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;
 - (d) may be modified or withdrawn at any time by a notice given to that person in such manner as that person may require. 45

- (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.
- (8) In this section “electronic communications network” has the same meaning as in the Communications Act 2003 (c. 21). 5

Orders, rules etc

194 Orders, regulations and rules

- (1) Any order or regulations made by the Secretary of State under this Act must be made by statutory instrument.
- (2) An instrument to which this subsection applies may – 10
- (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 subject to exceptions or only in relation to specified cases; 15
 - (e) make different provision for different cases or circumstances or for different purposes.
- (3) Subsection (2) applies to –
- (a) any order or regulations made by the Secretary of State,
 - (b) any rules or regulations made by the Board, and 20
 - (c) any rules made by the OLC,
- under or by virtue of this Act.

195 Consultation requirements for rules

- (1) This section applies in relation to – 25
- (a) rules made by the Board under this Act, and
 - (b) rules made by the OLC under Part 6,
- other 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. 30
- (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. 35
- (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 – 40

- (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, 5
 - (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 15;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. 10
 - (9) This section is subject to section 153(3) (which disapplies this section to OLC rules made in response to a Board direction under section 153(1)(b)).
- 196 Parliamentary control of orders and regulations** 15
- (1) A statutory instrument containing an order or regulations made by the Secretary of State under this Act is subject to annulment in pursuance of a resolution of either House of Parliament.
 - (2) Subsection (1) is subject to subsections (3) and (4).
 - (3) Subsection (1) does not apply to an order if it contains only provision made under one or more of the following – 20
 - (a) section 22(3)(b) (day appointed as end of transitional period relating to non-commercial bodies);
 - (b) section 29(4) (appointed day before which first set of rules must be made under section 29); 25
 - (c) section 81(1)(a) (day appointed as beginning of 12 month period during which Board must make licensing rules);
 - (d) section 201 (commencement);
 - (e) paragraph 3(1)(b) of Schedule 5 (day appointed as end of transitional period during which rights conferred by virtue of Part 2 of that Schedule); 30
 - (f) paragraph 17(1)(b) of Schedule 18 (day appointed as end of transitional period during which rights conferred by virtue of Part 3 of that Schedule).
 - (4) Subsection (1) does not apply to an order or regulations which contains (whether alone or together with other provision) provision made under any of the following – 35
 - (a) section 23(1) (orders adding to reserved legal activities);
 - (b) section 24(1) or (3) (provisional designation of approved regulators);
 - (c) section 41(6) (regulations relating to warrants under section 41); 40
 - (d) section 44(1) (cancellation of designation as approved regulator);
 - (e) section 45 (transitional arrangements following cancellation under section 44);
 - (f) section 47(6) (regulations relating to warrants under section 47);
 - (g) section 61(1) (power to designate Board as an approved regulator, modify its functions or cancel its designation); 45

- (h) section 68(1) (modification of functions of approved regulators);
 - (i) section 75(1) (cancellation of designation as licensing authority);
 - (j) section 76 (transitional arrangements following cancellation under section 75);
 - (k) section 78(6) (regulations relating to warrants under section 78); 5
 - (l) section 104(1)(e) (power to prescribe bodies as bodies to which section 104 applies);
 - (m) section 166(5)(c) (power to prescribe persons as leviable bodies);
 - (n) section 198(3) (power to make consequential provision etc by amending enactments); 10
 - (o) paragraph 8(1) of Schedule 3 (modification of exempt persons);
 - (p) paragraph 17 of Schedule 4 (designation of approved regulators);
 - (q) paragraph 9 of Schedule 13 (power to modify definitions of “material interest” and “associates”).
- (5) An order or regulations within subsection (4) may not be made unless a draft of the order or regulations has been laid before, and approved by a resolution of, each House of Parliament. 15

Interpretation

197 Interpretation

- (1) In this Act, except where the context otherwise requires – 20
- “consumers” means (subject to subsection (3)) persons –
- (a) who use, have used or are or may be contemplating using, 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 25
 - (c) who have rights or interests which may be adversely affected by 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 section 11(3) of that Act); 30
- “court” has the same meaning as in the Courts and Legal Services Act 1990 (c. 41) except that in this Act “court” includes any ecclesiastical court (including the Court of Faculties); 35
- “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);
- “manager”, in relation to a body, means a person who – 40
- (a) if the body is a body corporate whose affairs are managed by its members, is a member of the body,
 - (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 45
 - (d) if the body is an unincorporated body (other than a partnership), is a member of its governing body;

- “modify” includes amend, add to or revoke, and references to “modifications” are to be construed accordingly;
- “non-commercial 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, a community interest company or a trade union;
- “not for profit body” means a body which, by or by virtue of its constitution or any enactment –
- (a) is required (after payment of outgoings) to apply the whole of its income, and any capital which it expends, for charitable or public purposes, and
 - (b) is prohibited from directly or indirectly distributing amongst its members any part of its assets (otherwise than for charitable or public purposes);
- “the OFT” means the Office of Fair Trading;
- “person” includes a body of persons (corporate or unincorporate);
- “reserved legal services” means services provided by a person which consist of or include reserved legal activities carried on by, or on behalf of, that person;
- “solicitor” means solicitor of the Senior Courts;
- “trade union” means a trade union for the time being included in the list of trade unions kept under section 2 of the Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52).
- (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.
- (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
 - (b) a person who deals with another person (“B”) 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 (other than section 186) to the provision of immigration advice or immigration services are to the provision of such advice or services by a person –
- (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.
- (5) In this section “enactment” means a provision of –
- (a) an Act of Parliament;
 - (b) an Act of the Scottish Parliament;
 - (c) a Measure or Act of the National Assembly for Wales;
 - (d) Northern Ireland legislation.

Miscellaneous and supplementary

- 198 Minor and consequential provision etc**
- (1) Schedule 21 contains minor and consequential amendments.
 - (2) 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 – 5
 - (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.
 - (3) An order under this section may make provision amending, repealing or revoking (with or without savings) any provision of – 10
 - (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.
 - (4) 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. 15
 - (5) Provision made under this section is additional, and without prejudice, to that made by or under any other provision of this Act.
- 199 Transitional provision**
- Schedule 22 contains transitional provision. 20
- 200 Repeals**
- Schedule 23 contains repeals (including repeals of spent provisions).
- 201 Commencement**
- (1) This section and sections 198(2) to (5), 202 and 204 come into force on the day this Act is passed. 25
 - (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.
- 202 Extent**
- (1) Subject to subsections (2) and (3), this Act extends to England and Wales only.
 - (2) Sections 186 and 187(1) and Schedule 20 extend to Scotland only (and, for the purposes of those provisions, this Part also extends there). 30
 - (3) An amendment or repeal contained in this Act (and, for the purposes of such an amendment or repeal, this Part) has the same extent as the enactment or relevant part of the enactment to which the amendment or repeal relates.
- 203 Index of defined expressions** 35
- Schedule 24 lists the places where expressions used in this Act are defined or otherwise explained.

204 Short title

This Act may be cited as the Legal Services Act 2007.

Legal Services Bill [HL]

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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; to make provision about claims management services and about immigration advice and immigration services; to make provision in respect of legal representation provided free of charge; to make provision about the application of the Legal Profession and Legal Aid (Scotland) Act 2006; to make provision about the Scottish legal services ombudsman; and for connected purposes.

The Lord Falconer of Thoroton

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