

LEGAL SERVICES ACT 2007

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: the Legal Services Board

Background

30. **Part 3** of the Act identifies the “reserved legal activities”, that is the forms of legal activities or services the provision of which is subject to the new regulatory regime.
31. Prior to commencement of the Act, regulators, such as the Law Society and the Bar Council, regulated the practitioners providing these services. In addition to these regulators, the system involved a number of other bodies acting in a regulatory capacity, including:
- the Secretary of State,
 - the Master of the Rolls,
 - the higher judiciary,
 - the Legal Services Ombudsman,
 - the Legal Services Complaints Commissioner,
 - the Immigration Services Commissioner,
 - the Home Secretary,
 - the Department for Trade and Industry,
 - the Office of Fair Trading,
 - the Financial Services Authority, and
 - the Archbishop of Canterbury.
32. In his 2004 independent review of legal services,¹ Sir David Clementi referred to observations that the current regulatory arrangements resembled a “maze” and stated that he agreed with the Government’s earlier statement² that the existing regulatory system for legal services was “outdated, inflexible, over-complex and not accountable or transparent enough”. In 2005, following Sir David’s report, the Department for Constitutional Affairs published a White Paper, *The Future of Legal Services: Putting Consumers First*.³ The White Paper detailed proposals to reform the current system by implementing a new regulatory framework that would remove the “regulatory maze” of oversight regulators.

¹ Clementi, 2004

² Department for Constitutional Affairs, 2003

³ Department for Constitutional Affairs, 2005

33. This Part of the Act establishes the Legal Services Board which acts as an independent oversight regulator. It sits at the head of the new regulatory framework. The Board oversees the new approved regulators, and seeks to ensure that they carry out their regulatory functions to the required standards. Both the Board and the approved regulators must have regard to the regulatory objectives when exercising their functions.
34. This Part of the Act sets out the structure and functions of the Board. It outlines the functions that the Board has in relation to the regulatory objectives, and the ways that it will maintain these objectives. It also sets out the requirements for both appointment to and dismissal from the Board and the powers that the Lord Chancellor will have in relation to these processes.

Section 2: The Legal Services Board

35. This section establishes a corporate body called the Legal Services Board to act as an independent oversight regulator.
36. **Schedule 1** is about the Board and includes:
 - the membership of the Board,
 - the terms of appointment and tenure of members,
 - staffing,
 - committees,
 - the Board's powers of delegation, and
 - borrowing and accounts rules in relation to the Board.
37. Sub-paragraph (1) of paragraph 1 provides that the Board is to be constituted by a chairman, a Chief Executive and between seven and ten other persons. The Lord Chancellor will appoint all Board members other than the Chief Executive, following consultation with the Lord Chief Justice. The Board will appoint the Chief Executive.
38. The chairman and the majority of the Board must be a lay as defined by sub-paragraph (4) of paragraph 2 of Schedule 1. "Lay persons" are persons who have never been authorised to conduct activities that are reserved legal activities under the Act. Claims managers and Scottish and Northern Irish lawyers also fall outside the definition of "lay person".
39. **Paragraph 3** makes provision regarding criteria the Lord Chancellor must have regard to when appointing "ordinary" Board members. "Ordinary members" are members of the Board other than the Chief Executive.
40. As required by the Commissioner for Public Appointments, all Ministerial appointments to the Board must be made in accordance with the Commissioner's Code of Practice. As part of the planning of the appointments process, the Lord Chancellor will seek the views of interested parties on issues such as selection criteria and the diversity of skills and experience needed on the Board. The Lord Chief Justice will also be consulted on the appointments process (sub-paragraph (3) of paragraph 1). In accordance with the Commissioner's Code of Practice, a selection panel, including, amongst others, a representative from the public body itself and an independent assessor will conduct the key stages of the appointments process. The outcome of the Panel's deliberations will form a recommendation to be made to the Lord Chancellor, who will then consult the Lord Chief Justice.
41. Terms of appointment are set out in paragraphs 4 to 9 of the Schedule. An ordinary member must be appointed for a fixed period, which must not exceed five years. A person may only be re-appointed once for a further period not exceeding five years.

42. [Paragraph 7](#) of Schedule 1 sets out the circumstances in which the Lord Chancellor may remove ordinary Board members. Where the Lord Chancellor wishes to remove an ordinary Board member, the Lord Chancellor must first consult with the Lord Chief Justice. Where the member is not the chairman, the Lord Chancellor must also consult the chairman.
43. The chairman or other members may also resign by giving notice to the Lord Chancellor. These provisions do not apply to the Chief Executive who is appointed by the Board.
44. [Paragraphs 10 to 12](#) set out the terms of remuneration of members. The Board is able, if it is considered necessary, to pay pensions, allowances or gratuities to the chairman and other ordinary members of the Board. The Board may also pay compensation to the chairman or other ordinary members in certain circumstances.
45. [Paragraphs 13 to 18](#) make provision regarding the appointment of staff members by the Board. The Board must appoint a Chief Executive, and may appoint any other staff that it considers appropriate to assist in the performance of its functions. Paragraph 17 allows the Board to pay compensation to its staff or former staff for loss of employment. Paragraph 18 provides that a member of staff may also be a member of the Board, but may not be the chairman.
46. [Paragraph 20](#) sets out the Board's powers to form committees which may in turn form sub-committees. Paragraphs 21 and 22 enable the Board to regulate its own proceedings and those of its committees.
47. [Paragraph 23](#) allows the Board to authorise individual Board members, committees and sub-committees of the Board and members of the Board's staff to carry out the Board's functions on its behalf. The Board may not delegate its rule-making functions under the Act, save for any rule-making functions it has in respect of its own procedures, the procedures of its committees and sub-committees and in its capacity as an approved regulator or a licensing authority.
48. [Paragraph 24](#) allows the Board to borrow money, subject to the authorisation of the Lord Chancellor.
49. [Paragraph 25](#) requires the Board to keep proper financial accounts. Requirements to produce an annual report are set out in section 6. At the end of each financial year the Lord Chancellor must lay before Parliament a copy of the statement of accounts for that year and a copy of the Comptroller and Auditor General's report on that statement.
50. [Paragraph 26](#) states that the Board is not to be regarded as having the same status as the Crown. Accordingly, the Board's property is not to be regarded as property held on behalf of the Crown and staff are not to be regarded as servants or agents of the Crown or as enjoying the same status.
51. [Paragraphs 30 to 32](#) make provision for amendments to the House of Commons Disqualification Act 1975, the Northern Ireland Assembly Disqualification Act 1975, the Freedom of Information Act 2000 and the Public Records Act 1958. These are standard provisions which apply to many public bodies.
52. [Paragraph 33](#) provides that the Board, its members and its staff will not be held liable for any damages resulting from the exercise of the Board's functions, except in the cases where an act or omission is carried out in bad faith or was unlawful in accordance with section 6(1) of the Human Rights Act 1998.

Section 3: Board's duty to promote regulatory objectives etc

53. This section states that the Board must, so far as reasonably practicable, act in a way that is compatible with the regulatory objectives. It also requires the Board to have regard to the principles of best regulatory practice. Specifically, the section refers to

the importance of regulatory activities being transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed.

Section 4: Standards of regulation, education and training

54. This section imposes a duty on the Board to assist in the maintenance and development of standards of regulation by approved regulators of regulated persons and also the education and training of those persons. For example, the Board may issue guidance on, or disseminate examples of, good education and training practices or principles of professional conduct that have been developed for a reserved legal activity by one approved regulator to all approved regulators.

Section 5: Corporate governance

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

Section 6: Annual report

56. This section states that the Board must prepare an annual report on the discharge of its functions. This will be laid before Parliament. It will include the extent to which, in the Board's opinion, the Board has met the regulatory objectives.
57. [Paragraph 25](#) of Schedule 1 sets out the nature of financial accountability in relation to the Board's accounts.

Section 8: The Consumer Panel

Section 9: Committees and the procedure of the Consumer Panel

Section 10: Representations by the Consumer Panel

Section 11: Advice and research functions of the Consumer Panel

58. [Section 8](#) requires the Board to set up and maintain a Consumer Panel – a Panel of persons whose task will be to represent the interests of consumers (as defined in section 207). Appointments to the Panel will be made by the Board with the approval of the Lord Chancellor, and one of the Panel members will be appointed as chairman of the Panel by the Board. Section 8 also sets out the categories of person who may not sit on the Panel.
59. [Section 9](#) enables the Panel to make arrangements for committees established by it to provide advice to it. [Section 10](#) provides that the Board must consider representations made to it by the Consumer Panel and must publish a notice where it disagrees with the Panel's advice. Under section 11, at the Board's request, the Panel may also carry out research for the Board and provide the Board with advice.