

# LEGAL SERVICES ACT 2007

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 8: Miscellaneous and General Provisions about Lawyers**

##### *Section 177: The Law Society, solicitors, recognised bodies and foreign lawyers*

407. This section introduces **Schedule 16** which amends the Solicitors Act 1974, the Administration of Justice Act 1985 and the Courts and Legal Services Act 1990 to update the Law Society's regulatory framework and powers. Part 1 of Schedule 16 amends the 1974 Act; Part 2 amends the 1985 Act; and Part 3 amends the 1990 Act. A large number of the amendments are minor and consequential changes so that the terminology of the three Acts being amended is consistent with the Legal Services Act 2007, along with changes of references to the Council of the Law Society so that they refer to the Law Society, as the approved regulator, which follows on from the requirement in section 30 to maintain arrangements providing for an appropriate separation between the representative and regulatory roles. The notes below do not deal in detail with the paragraphs which solely or mainly make such amendments, but concentrate on those paragraphs making more substantive changes.
408. As part of the change to a new structure with the Board as oversight regulator, the functions of the Master of the Rolls in respect of the approval of rules and regulations made by the Law Society, and as an appellate authority in relation to certain Law Society decisions, are removed (provision for the necessary amendments to the 1974 Act, among other things, is made by paragraphs 4, 5, 8, 16, 17, 20, 30, 31, 32, 34, 38, 41, 47 and 51). As the relevant rules fall within the definition of regulatory arrangements, as set out at section 21 of the Legal Services Act 2007, they must be approved by the Board under the provision made in Schedule 4; and the route of appeal for decisions previously appealed to the Master of the Rolls is instead to the High Court.
409. **Paragraph 3**, along with paragraphs 15, 22 and 36 expand the regulatory remit of the Law Society to enhance its powers over Sole Practitioners and give it new powers over employees of solicitors or recognised bodies. They require a Sole Practitioner to be approved for status as such by virtue of an application for an endorsement on their practising certificate to that effect. They also make related regulatory provisions which allow the Law Society to place conditions on a Sole Practitioner's practising rights and to suspend recognition as a sole practitioner. This will allow the Society to specify, for example, that a Sole Practitioner is not allowed to provide a specific type of legal service or to suspend their Sole Practitioner status if the Society considers it is no longer appropriate for him to be recognised as such. Various other minor amendments related to these substantive changes have been included in Schedule 16 in recognition of these enhanced powers (for example, new section 10A(2)(b) of the 1974 Act (contained in paragraph 10)).
410. Employees of solicitors are covered in paragraph 36. This allows the Law Society regulatory control over employees of solicitors in respect of professional practice, conduct and discipline. For example, if an employee breaches the rules under section 34

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of the 1974 Act (as amended) in relation to accountants' reports, the Law Society can make a complaint to the Solicitor's Disciplinary Tribunal in respect of that employee. Under paragraph 46 of Schedule 16 (new section 44D of the 1974 Act or paragraph 103 of Schedule 16 (new section 14B) to the 1985 Act), action can be taken against an employee of a solicitor.

411. [Paragraph 4](#) removes the requirement in section 2 of the 1974 Act that the Lord Chancellor and the Master of the Rolls must approve the training regulations made by the Law Society. It also removes references to training "articles" from section 2.
412. [Paragraph 5](#) amends section 3 of the 1974 Act so as to transfer the Master of the Rolls' functions in respect of the admission of solicitors to the Law Society. Paragraph 8 amends section 8 of the 1974 Act so as to transfer to the High Court the Master of the Rolls' appellate functions in respect of Law Society decisions concerning the restoration of a solicitor's name to the roll.
413. [Paragraphs 9 and 10](#) substitute new provisions for the existing sections 9 and 10 of the 1974 Act, which deal with applications for and the issuing of practising certificates. The new provisions provide that certificates will only be issued in accordance with regulations made by the Law Society under section 28 of the 1974 Act. A new section 10A requires the Law Society to keep a register of all solicitors holding practising certificates.
414. [Paragraph 14](#) replaces section 13 of the 1974 Act with a new provision that provides that the High Court will have jurisdiction in respect of appeals in connection with the issue of practising certificates. Paragraphs 16 and 17 amend sections 13A and 13B of the 1974 Act so as to transfer from the Master of the Rolls to the High Court responsibility for handling appeals against the imposition of conditions on practising certificates and the suspension of practising certificates.
415. [Paragraph 21](#) amends section 17 of the 1974 Act so as to remove the requirement that the Law Society publish details of the termination of the suspension of a solicitor's practising certificate in the London Gazette on the application of the solicitor in question. Paragraph 30 amends section 28 of the 1974 Act so as to allow the Law Society to make regulations covering a broad range of matters relating to the right to practise as a solicitor.
416. [Paragraph 31](#) amends section 31 of the 1974 Act so as to allow the Law Society to make rules regarding the fitness to practise of solicitors, and to remove the requirement that rules made regarding the professional practice, conduct and discipline of solicitors be approved by the Master of the Rolls in order to have effect. The Board takes over the Master of the Rolls' function in this regard.
417. [Paragraphs 33 to 35](#) cover sections 33, 33A and 34 of the 1974 Act, which deal with matters relating to solicitors' accounts. These provisions have been amended in order to transfer certain rule-making powers from the Law Society Council to the Law Society itself, and to broaden the scope of these powers.
418. [Paragraph 37](#) makes provision to allow the Law Society to make rules about how its compensation arrangements (including but not limited to the compensation fund) will operate. This removes the previous restrictions in the Solicitors Act 1974 so that there is greater flexibility about the circumstances in which grants of compensation may be made, what payments may be used for, and how monies may be collected.
419. [Paragraph 41](#) amends section 41 of the 1974 Act so as to transfer to the High Court the Master of the Rolls' functions in respect of appeals against decisions of the Law Society prohibiting a solicitor from employing certain persons. Paragraph 41 also widens the range of sanctions that can be imposed where a solicitor acts in contravention of section 41 of the 1974 Act.

420. [Paragraph 43](#) extends the order-making powers of the Law Society and the Solicitors Disciplinary Tribunal under section 44 of the 1974 Act. The new order-making powers are consequent on the new forms of bodies that the Law Society may recognise and regulate under amendments to section 9 of the Administration of Justice Act 1985, found at paragraph 81 of this Schedule. The Law Society can now decide whether or not to order that non-solicitors are prohibited from being employed or remunerated by solicitors, registered European lawyers and recognised bodies, and also that they are prohibited from being managers of or from having an interest in recognised bodies. This flexibility will also ensure that, during the interim period before Part 5 of the Act (Alternative Business Structures) is fully commenced, the Law Society has the appropriate regulatory control over the up-to-25% non-lawyer managed legal disciplinary partnerships that are permitted by Schedule 16 amendments to previous legislation (see paragraph 430 of these Explanatory Notes, below).
421. Section 44(1) of the 1974 Act makes it an offence for any person in respect of whom a section 43 order is made, to seek employment or remuneration from a solicitor or recognised body, or to seek or acquire an interest in a recognised body. Section 44(2) of the 1974 Act, together with sub-paragraph (1)(d) of paragraph 16 and new sub-paragraph (1A)(d) of paragraph 16 (see amendment below) of Schedule 2 to the Administration of Justice Act 1985, and together with new sub-paragraph (3A) of paragraph 15 of the Courts and Legal Services Act 1990, allow complaints to be made to the Solicitors Disciplinary Tribunal where a solicitor, registered foreign lawyer, registered European lawyer, recognised body, or manager or employee or interest-holder in a recognised body breaches the section 43(2) order.
422. [Paragraph 44](#) sets out a new section 44B of the 1974 Act which provides for new powers for the Society to require information and documents for the purpose of investigating whether there has been misconduct by a solicitor, employee of a solicitor, recognised body or employee of a recognised body, or where that person or body has failed to comply with requirements under statute or rules made by the Society. A new paragraph 44BA of the 1974 Act provides the Society with the power to require an explanation of the information provided under 44B, and a new paragraph 44BB provides that the High Court may, on an application by the Law Society, order other persons to provide information and documents relating to an investigation under 44B. A new paragraph 44BC makes it an offence for persons to falsify, conceal or destroy information that may be relevant to an investigation under 44B, and if found guilty, that person is liable to imprisonment or a fine or both. Paragraph 45 sets out a new section 44C which provides that the Law Society may charge for the costs of disciplinary investigations.
423. [Paragraph 46](#) sets out a new section 44D of the 1974 Act which provides the Law Society with the power to rebuke and/or impose a limited fine on a solicitor or an employee of a solicitor where that person has failed to comply with requirements or rules, or there has been misconduct by a solicitor. It also provides for an appeal route for those persons to the Solicitors Disciplinary Tribunal, and an appeal route from the Tribunal to the High Court under the new section 44E.
424. [Paragraph 54](#) amends section 56 of the 1974 Act so as to require that the committee established under section 56(1) of that provision include members of the Board. Paragraph 54 also makes provision amending the purposes for which orders may be made under section 56.
425. Section 60(5) of the 1974 Act provides that a provision of a contentious business agreement is void if it provides that the solicitor is not liable for negligence. Paragraph 56 amends that section so as to disapply this provision if the client entering into the agreement does so for purposes of the client's trade, business or profession. In relation to other clients such provision continues to be void.
426. [Paragraph 64](#) amends section 69 of the 1974 Act so that solicitors may bill their clients electronically. Previously, solicitors could bill clients only in hard copy form.

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427. [Paragraph 71](#) replaces the previous section 79 of the 1974 Act with a new provision regarding the ability of the Council of the Law Society to delegate its functions, and for persons whom to the Council has delegated such functions to further delegate to other persons, providing such delegation is in accordance with the provision made in that section. Under the previous section 80, functions could only be delegated in respect of the 1974 Act or any instrument made under it. The new provision extends this to other enactments.
428. [Paragraphs 77 and 119 to 122](#) amend Schedule 1 to the 1974 Act and paragraphs 32 to 35 of Schedule 2 to the 1985 Act, in order to modify certain intervention powers of the Law Society. These amendments add to the grounds upon which the Law Society may intervene in solicitors' and recognised bodies' practices: where it is necessary to protect the interests of current, former or potential clients or the beneficiaries of trusts of which the solicitor, the recognised body or one of its managers or employees is or was a trustee. The Law Society's intervention powers have also been extended in certain respects. For example, the Law Society can decide not only to have sums of money vest in it, but also the right to recover the solicitor's or the recognised body's debts. It can also now make rules about what to do with any money received under these powers when beneficiaries cannot be traced, after reasonable steps have been taken. The Law Society's power to compel production and take possession of documents, upon High Court authorisation in certain circumstances, has been extended to include electronic documents and to allow it to take possession of property, including computers, in order to access information. The Law Society's power, also upon High Court authorisation, to have mail redirected has also been extended to include electronic documents and other communications. The Law Society can also apply to the High Court in order to take steps with respect to solicitors' and recognised bodies' websites. The amendments also enable the Law Society to recover their costs of intervention from certain persons where the conduct that led to the intervention was carried on with the consent or connivance of, or was attributable to the neglect of those persons. These amendments also allow for the exercise of certain powers against the managers and employees of recognised bodies, to reflect the fact that these individuals sometimes hold client money, or are trustees in their capacity of managers and employees of recognised bodies. The amendments made to the Council for Licensed Conveyancers' intervention powers (see paragraphs 1 to 6 of Schedule 17) are consistent with these changes; and the intervention powers given to licensing authorities in Schedule 14 are also consistent with these updated powers.
429. [Paragraphs 80 to 123](#) amend the 1985 Act and in doing so extend the Law Society's power to regulate entities. Under the previous section 9 of the 1985 Act, the Law Society already had the power to regulate bodies corporate, including LLPs, that it "recognises" as suitable to carry on certain services. This power has now been extended to include other entities through which solicitors practice, such as partnerships and unincorporated bodies, and to allow legal disciplinary practices (LDPs). The rule-making powers under section 9 of the 1985 Act have also been enhanced to enable the Society to impose conditions upon a recognition granted to a body. A new section 9A has also been added to the 1985 Act, to set certain requirements for legal disciplinary practices i.e. firms or companies that include solicitors and other legal practitioners or bodies that are "authorised persons" under the provisions of the 2007 Act.
430. The amendments to section 9 and the new section 9A also allow limited forms of ABS. These bodies will be LDPs and they will be restricted to the provision of legal services, but permitted to have up to 25% non-lawyer managers before the full ABS regime is available. These amendments allow the Law Society to regulate LDPs and various regulatory powers over LDPs, for example, the Society is able to make rules which can require a body to have less than 25% non-lawyer involvement or to appoint a person similar to a Head of Legal Practice in Part 5 of the Act.
431. These bodies will be licensable bodies and as such, will have to apply for a licence to practice as an ABS after Part 5 has become fully operational and the entire range of ABS is available as an option for legal professionals. These amendments also allow the

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Law Society to apply rules to managers (as defined in the 2007 Act) and employees within them. Amendments are also made to Schedule 2 to the 1985 Act, and to sections 43 to 44 of the 1974 Act (as described above) to reflect the fact that individuals within recognised bodies – whether solicitors or not – are subject to rules and to sanctions for breach of rules. The changes include new order-making powers for the Solicitors Disciplinary Tribunal, new powers to require information from recognised bodies and their managers and employees in order to investigate a body's suitability to remain recognised, and consequential amendments as a result of changes made to the 1974 Act (for example in relation to intervention powers and compensation).

432. [Paragraph 83](#) amends section 10 of the 1985 Act, which relates to the offence of pretending to be a recognised body, to cover the different forms of entity which may now be recognised bodies. Paragraph 103 provides the Society with powers to rebuke and/or impose a limited fine on recognised bodies, or a manager or employee of a recognised body where they have failed to comply with requirements or rules applicable to them. It also provides for an appeal route for those persons to the Tribunal, and an appeal from the Tribunal to the High Court.
433. [Paragraphs 124 to 138](#) make amendments to provisions in section 89 and Schedule 14 to the 1990 Act related to registered foreign lawyers, in order to achieve consistency with provision made elsewhere (for example, reading across, in relation to compensation arrangements, to the new provision introduced into the 1974 Act by paragraph 37).
434. [Paragraph 111](#) amends paragraph 24 of Schedule 2 to the 1985 Act to remove the automatic void of any provision within a contentious business agreement that a body shall not be liable for negligence, so long as a person entering into the agreement does so for purposes of their trade, business or profession. Any such provision relating to persons not acting under this capacity will still be automatically void.