

LEGAL SERVICES ACT 2007

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 9: General

485. This Part makes provision regarding offences committed by bodies corporate and unincorporated bodies. It makes provision setting out how notices issued pursuant to provision in the Act are to be given. It sets out the procedure for making orders under the Act. It specifies the extent of the Act and makes provision regarding the interpretation of terms used in the Act.

Section 197: Offences committed by bodies corporate and unincorporated bodies

486. This section provides that where an offence is committed by a body corporate or an unincorporated body, it will be possible, in certain circumstances, to prosecute both the body and the relevant officers.

Section 198: Local weights and measures authorities

487. This section replicates the provision made in section 22A of the Solicitors Act 1974. It provides local weights and measures authorities with powers to investigate and prosecute persons who carry on reserved instrument activities when not entitled to do so or through an employee or manager who is not entitled to do so.

Section 199: Protected functions of the Lord Chancellor

488. This section protects the functions of the Lord Chancellor set out in the Act and in the other Acts specified, so that those functions may only be carried out by the Lord Chancellor and cannot be transferred to another minister by means of an order under the Ministers of the Crown Act 1975.

Section 200: Notices and directions

489. This section makes provision requiring notices and directions given under provision made in the Act to be given in writing.

Section 201: Documents

490. This section defines the term “document” for the purposes of the Act. By virtue of this provision, “document” includes information recorded in any form. If the information is not in a legible form, references to the production of the information are to the production of it in a legible form or a form from which it can readily be produced in a legible form.

Section 202: The giving of notices, directions and other documents

491. This section makes provision about how notices, directions and other documents required to be given to a person under the Act may be given. Where the notice, direction

or document is to be given to a body corporate, a partnership, or some other form of unincorporated body, the section provides that it may be given to certain individuals connected with the body.

Section 203: The giving of notices, directions and other documents in electronic form

492. This section provides that where a notice, direction or other document is to be given pursuant to provision made in the Act, it may be given in an electronic format providing that certain conditions are met.
493. *Section 203(3)* provides that where the Board, the OLC or an ombudsman is the recipient of a notice, direction or other document, they must agree to the manner of its transmission and the form the document will take if it is to be sent electronically. The combined effect of *section 203(4)* and *section 203(5)* is that where the Board, the OLC or an ombudsman proposes to transmit a notice, direction or other document to another person electronically, the recipient must agree to the manner of transmission and the form the document will take. *Section 203(7)* provides that where the Board, the OLC or an ombudsman imposes any requirement regarding the electronic transmission of documents, it must publish that requirement.

Section 204: Orders, regulations and rules

494. This section sets out that any order or regulations made by the Lord Chancellor, must be done by statutory instrument. Any rules made by the Board must also be made by statutory instrument as if the Board were a Minister of the Crown, in accordance with the Statutory Instruments Act 1946. It also sets out further information as to what may be contained in the instrument.

Section 205: Consultation requirements for rules

495. This section requires the Board and the OLC to comply with certain consultation requirements before making rules under the Act. The rule-making body must publish a draft of any rules it proposes. The rule-making body must then consider any representations made. If, following representations, the rules differ from the original draft, it must publish the details of the difference. It must publish any rules it makes and can charge a fee to provide either the draft or final rules.

Section 206: Parliamentary control of orders and regulations

496. This section lists the orders which must be made under the negative Parliamentary procedure, those which require no Parliamentary procedure, and those which must be made under the affirmative procedure.

Section 207: Interpretation

497. This section defines the meaning of various words and phrases used in the Act.

Section 208: Minor and consequential provision etc

498. This section states that the Lord Chancellor may by order make supplementary, incidental or consequential provision and any transitory, transitional or saving provision.
499. **Schedule 21** contains minor and consequential amendments to other legislation.

Section 209: Transitional and transitory provision

500. This section introduces **Schedule 22**, which sets out provision made to avoid regulatory gaps during the transitional period between the current and new regulatory systems.

501. [Paragraphs 1 to 4](#) create a transitory power, similar to the power at section 69, for the Lord Chancellor to modify the functions of “designated regulators”, such as the Law Society and Bar Council, and other relevant bodies, such as the Solicitors Disciplinary Tribunal. This power will apply before the Board is established and therefore able to make recommendations under section 69. These provisions therefore set out different procedures for the making of an order, including the requirement at paragraph 3 that the Lord Chancellor invite the Lord Chief Justice and the Office of Fair Trading to provide advice on the draft provisions. Sub-paragraph (5) of paragraph 2 sets out the purposes for which orders may be made. These are similar to the purposes for which orders may be made under section 69 of the Act. Any orders made will be subject to the affirmative resolution procedure by virtue of section 206(4)(u).
502. [Paragraph 5](#) makes provision for the possibility that, before the principal provisions of the Act come into force, additional bodies will be designated as “authorised bodies” under section 27 or 28 of the Courts and Legal Services Act 1990 (bodies which can grant persons rights of audience or rights to conduct litigation), approved under paragraph 4 of Schedule 9 to that Act (bodies that can grant exemptions from prohibition on preparation of probate papers etc) or prescribed for the purposes of section 113 of that Act (bodies whose members are entitled to administer oaths etc). Paragraph 5 ensures that provision can be made in relation to these bodies, by order, which is equivalent to that already made by the Legal Services Act 2007 for bodies designated, approved or prescribed under these statutory provision before the beginning of the pre-commencement period.
503. Under the provision made in Schedule 17, the membership of the Conveyancing Licensing Council is to be appointed, where at present it is “elected or nominated”. Paragraph 6 makes transitional provision to ensure that the Council’s membership as “elected or nominated” under the present arrangements will continue to exercise the Council’s functions until such time as a new Council is appointed under the new arrangements. Schedule 17 to the Act repeals the provision in the Administration of Justice Act 1985 that provides for the endorsement of conveyancing licences. Paragraph 7 provides that endorsements of licences made under that provision will continue to have force until the expiry of the licences in question, notwithstanding the repeal of the enabling provision.
504. [Paragraph 9](#) makes provision for the ordinary members of the Board to exercise the Board’s functions under Schedule 1 and Schedule 15 in advance of the Board’s Chief Executive being appointed. For example, the ordinary members of the Board are able to appoint the OLC without waiting until the Board’s Chief Executive has been appointed.
505. [Paragraph 10](#) makes provision for the appointment of an Interim Chief Executive of the OLC by the Lord Chancellor. Sub-paragraph (2) states that the Lord Chancellor will determine the terms and conditions of the appointment. Sub-paragraphs (5) and (6) provide for the Interim Chief Executive to incur expenditure and do other things in the name of and on behalf of the OLC, including appointing staff and making arrangements for assistance. Sub-paragraphs (7) and (8) require the Interim Chief Executive to comply with supervisory directions made by the Lord Chancellor and subsequently by the Board. Sub-paragraphs (7) and (8) ensure appropriate lines of accountability between the Interim Chief Executive and the Lord Chancellor in the first instance and then, once appointed, the Board.

Section 212: Extent

506. [Section 212\(2\)](#) provides for sections 195 and section 196(1) and Schedule 20 to extend to Scotland only. [Section 212\(3\)](#) provides that an amendment or repeal has the same extent as the enactment to which the amendment or repeal relates.
507. Schedule 4 to the Legal Profession and Legal Aid (Scotland) Act 2007 makes a number of minor amendments and repeals, consequential on its provisions to the Solicitors (Scotland) Act 1980 and the Law Reform (Miscellaneous Provisions) (Scotland) Act

*These notes refer to the Legal Services Act 2007 (c.29)
which received Royal Assent on 30th October 2007*

1990. These are mainly concerned with the adjustment of statutory references, and the removal of unnecessary references, as a result of the introduction of the new arrangements for the handling of complaints against lawyers in Scotland following the creation of a Scottish Legal Complaints Commission.

508. Modifications made to the 1980 and 1990 Acts by Schedule 4 to the Legal Profession and Legal Aid (Scotland) Act 2007 apply only to the devolved aspects of such provisions and it has been necessary to preserve certain provisions to deal with reserved activities. Schedule 20 repeals such provisions and ensures that these modifications are comprehensive in nature, and extend to reserved aspects of both service and conduct complaints.