

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

LEGAL SERVICES ACT 2007

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Legal Services Act which received Royal Assent on 30th October 2007. They have been prepared by the Ministry of Justice in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.

2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

OVERVIEW OF THE ACT

3. This Act has 214 sections and 24 Schedules. The explanatory notes are divided into nine Parts, reflecting the structure of the Act.

4. An overview of the Act is set out below. A detailed description of each Part is contained in the commentary. Terms used are defined in the text where they first appear, and Schedule 24 contains an index of defined expressions. An explanation to accompany each Schedule is contained within the section that introduces the Schedule.

TERRITORIAL EXTENT

5. This Act extends only to England and Wales, except for the provisions of sections 195 and 196(1) and Schedule 20 which extend to Scotland, and any amendments or repeals of legislation which extends to Scotland or Northern Ireland, which have the same extent as the enactment (or relevant part of the enactment) to which the amendment or repeal relates.

6. There is no effect on the National Assembly and no other effect specifically in relation to Wales.

SUMMARY

7. **Part 1: The Regulatory Objectives** sets out the eight regulatory objectives, which guide the Legal Services Board (the Board), the approved regulators, and the Office for Legal Complaints (OLC) in exercising their functions.

8. **Part 2: The Legal Services Board** sets out the structure and functions of the Board, including its duty to act compatibly with the regulatory objectives, to assist in the maintenance and development of standards in regulation, education and training and to establish a Consumer Panel. It also sets out the requirements for both appointment to, and membership of, the Board and the powers that the Lord Chancellor has in relation to these processes.

9. **Part 3: Reserved Legal Activities** lists and defines the reserved legal activities. It explains who is entitled to carry out these activities, and the penalties for those who carry out,

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or pretend to be entitled to carry out, these activities where they are not entitled. It provides for transitional arrangements for those currently allowed to carry on reserved legal activities. It also explains the process for altering the scope of the reserved legal activities. Approved regulators are the bodies that authorise and regulate persons to carry on reserved legal activities. This Part of the Act explains what an approved regulator is, lists those bodies designated by the Act as approved regulators, and explains how other bodies can become an approved regulator in the future.

10. **Part 4: Regulation of Approved Regulators** prescribes the general duties of approved regulators, and the powers that the Board has to ensure that these are being properly carried out. It details how the Board can intervene when there is a problem, the procedures that it must follow, and the persons that it must consult. The Board's powers include target-setting, censure, financial penalties, direct intervention in the approved regulator's regulation of its members, and, ultimately, the power to recommend to the Lord Chancellor that an order be made cancelling the approved regulator's designation.

11. **Part 5: Alternative Business Structures (ABS)** makes provision for the licensing of new business structures in legal services. These will allow lawyers and non-lawyers to work together to deliver legal and other services. This Part of the Act sets out the arrangements for authorisation, by the Board, of licensing authorities and how, in the absence of an appropriate licensing authority, the Board can license ABS firms directly. It makes provision for the regulation of ABS.

12. **Part 6: Legal Complaints** establishes an independent OLC, which is responsible for administering an ombudsman scheme, under which all complaints will be dealt with by a Chief Ombudsman, assistant ombudsmen, and staff appointed by the OLC. Part 6 removes the ability of approved regulators to provide redress to complainants, and grants this power to the ombudsman scheme. The OLC will draw up scheme rules setting out the detail of the ombudsman scheme. This Part makes provision for the appointment process and terms of office for members of the OLC Board and the Chief Ombudsman and the assistant ombudsmen. It also makes provision for the accountability of the OLC to the Board, the framework of rules by which the OLC will establish its operating procedures, and changes to the regulatory arrangements of approved regulators.

13. **Part 7: Further Provisions Relating to the Board and the OLC** makes provision as to the guidance that the Board may give. It also requires the Board to make rules providing for the payment by approved regulators of a levy, to recoup the expenditure of the Board and OLC. The rules may include provision as to the rate and times at which the levy is payable, and circumstances in which the levy may be waived. This section also makes provision for the Board to enter into voluntary arrangements with any person, for example to promote best regulatory practice.

14. **Part 8: Miscellaneous Provisions about Lawyers** makes provision for the following matters:

- the requirement for alteration of the rules of the Solicitors Disciplinary Tribunal to be approved by the Board, and empowering the Board to give a limited range of directions to the Tribunal;
- the maintenance of the register of trade mark attorneys and the register of patent attorneys;

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- the application of legal professional privilege in relation to authorised persons who are not barristers or solicitors;
- amendment of the Immigration and Asylum Act 1999 (which regulates the provision of immigration advice services) and the Compensation Act 2006 (which makes provision in relation to claims management services), in consequence of the new regime established by the Act;
- the making of costs orders in relation to *pro bono* legal representation; and
- conferring competence on the Scottish Legal Complaints Commission in respect of certain reserved matters.

15. **Part 9: General** makes provision regarding offences committed by bodies corporate and unincorporated bodies. It provides that certain functions conferred on the Lord Chancellor by the Act may not be transferred to another Minister by a transfer of functions order. It states how notices issued pursuant to provision made in the Act are to be given and makes provision governing the procedure for making orders and regulations under powers in the Act. It allows for minor and consequential amendments to be made by order, and makes provision regarding the extent, commencement and short title of the Act.

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

17. The Act makes provision for:

- **A new regulatory framework** that replaces the existing framework which comprises a number of oversight regulators with overlapping responsibilities.
- **The establishment of the Legal Services Board:** a single oversight body, independent both from Government and from the “front-line” approved regulators such as the Law Society and Bar Council. The Board has a duty to promote the regulatory objectives set out in Part 1.
- **The establishment of an independent Office for Legal Complaints:** a body with statutory power to establish a scheme for handling complaints about services provided by persons subject to oversight regulation by the Board, and to award redress in appropriate circumstances.
- **Alternative Business Structures** to enable lawyers and non-lawyers to work together to deliver legal and other services. New business structures are expected to give legal providers greater flexibility to respond to market demands, within the UK and overseas. Licences will be conferred by licensing authorities, with various safeguards in place.
- It is for the Board to advise the Government on any areas where it identifies problems within the legal services market, or “regulatory gaps”.

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BACKGROUND

18. In 2001 the Office of Fair Trading (OFT)¹ published a report recommending that rules governing the legal professions should be subject to competition law and that unjustified restrictions on competition be removed. Following this, the Government carried out a consultation, and published a report into competition and regulation in the legal services market.²

19. In 2003 Sir David Clementi was appointed by the Government to conduct an independent review of the regulation of legal services. He found that many areas were in need of restructuring and development, and agreed with the Government's earlier conclusion that the current regulatory framework was "inflexible, outdated and over-complex".³ Sir David highlighted concerns about the current:

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

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

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

21. The draft Legal Services Bill was published in May 2006 and was subject to pre-legislative scrutiny by a Joint Committee of both Houses of Parliament. The Joint Committee reported in July 2006, and the Government published its response to this in September of the same year.

The legal services sector prior to the Act

22. Six pre-existing forms of legal service or activity are covered by the Act. These are:

- the right of audience in the courts,
- the right to conduct litigation,

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

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

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

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

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- reserved instrument activities,
- probate activities,
- notarial activities,
- the administration of oaths.

23. Prior to the commencement of this Act, these services were regulated by legal professional bodies such as the Law Society or the Bar Council, as well as – to varying degrees – higher level regulators such as the Secretary of State, the Master of the Rolls and the OFT. In addition to these different regulators, there were also a range of major purchasers in the market who acted as quasi-regulators, by setting their own contract terms and prices – for example, the Legal Services Commission, and commercial organisations who operate “panel” systems. This Act does not directly affect these quasi-regulators.

24. Prior to commencement, there were a number of restrictions on the type of business structures through which legal services could be provided, mainly in regulators’ professional rules. Some existing regulators prohibited lawyers from entering into partnership with non-lawyers. They also placed restrictions on unregulated persons being formally involved in the management of these businesses, and unregulated persons having any stake in the ownership of such businesses. In many cases, these restrictions were at least partly due to the fact that legal regulators did not have the powers they needed to effectively regulate practices in which non-lawyers exercised some form of control. This generally meant that lawyers were limited in the extent to which they could form businesses with non-lawyers or with different types of lawyer. The Act seeks to facilitate a regulatory framework in which different types of lawyer and non-lawyer are able to form businesses together, and in which regulators can be given effective powers to regulate such businesses.

25. Previously, if consumers wished to complain about any of the legal services listed above, they needed to take that complaint up, in the first instance, with the person they were complaining about. If the complaint was not resolved in-house, consumers could then make a complaint to the regulatory body responsible for regulating the person providing the service (for example, the Law Society, the Bar Council). In the event that a complainant was not satisfied with the way in which a complaint has been handled by a regulatory body, the complainant was then able to refer the complaint to the Legal Services Ombudsman. The Ombudsman investigated the way in which the complaint was handled and the response from the professional body. If the Ombudsman believed that a complaint had not been investigated properly, they could require that the professional body look at the matter again. The Ombudsman also had powers to investigate individual complaints. In 2004, the Ombudsman exercised this power in less than 1% of cases.⁵

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

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SCHEDULES

26. Explanatory notes to accompany each Schedule are contained within the notes for the section introducing the Schedule.

COMMENTARY ON SECTIONS

PART 1: THE REGULATORY OBJECTIVES

Section 1: The regulatory objectives

27. This section sets out the eight regulatory objectives that the Board, the approved regulators and the OLC will be under a duty to observe when exercising their functions. These include promoting and maintaining adherence to the professional principles by those authorised to carry on reserved legal activities.

28. The Act does not rank these objectives and principles in order of importance. The Legal Services Board, the Office for Legal Complaints and the approved regulators will be best placed to consider how competing objectives are to be balanced in a particular instance. Section 3 sets out the Board's responsibilities in relation to the regulatory objectives. Sections 28 and 116 do the same in respect of the approved regulators and the Office for Legal Complaints.

PART 2: THE LEGAL SERVICES BOARD

29. This Part of the Act makes provision regarding the Board's constitution and its functions.

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.

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32. In his 2004 independent review of legal services,⁶ Sir David Clementi referred to observations that the current regulatory arrangements resembled a “maze” and stated that he agreed with the Government’s earlier statement⁷ 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*.⁸ 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.

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.

⁶ Clementi, 2004

⁷ Department for Constitutional Affairs, 2003

⁸ Department for Constitutional Affairs, 2005

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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.

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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.

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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.

PART 3: RESERVED LEGAL ACTIVITIES

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

61. This Part also defines what an approved regulator is, designates certain bodies as approved regulators, and makes provision allowing for other bodies to achieve this status in the future.

Background

62. The Act identifies six forms of legal activity which are reserved. These are:

- the exercise of a right of audience in the courts,
- the conduct of litigation,
- reserved instrument activities,
- probate activities,
- notarial services, and
- the administration of oaths.

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63. The existing regulators, which the Act recognises as approved regulators, are:

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

Section 12: Meaning of “reserved legal activities” and “legal activity”

64. This section lists the legal activities that are to be regulated under the Act (the “reserved legal activities”). **Schedule 2** sets out the meaning of each activity. The definition of “legal activity” is set out at *section 12(3)*, though not every legal activity is necessarily regulated under the Act. However, under section 24 the Lord Chancellor may, by order, amend section 12 and Schedule 2 so as to add any legal activity to the list of reserved legal activities for the purposes of the Act.

65. The “reserved legal activities” defined by section 12 are all activities that were regulated under previously enacted legislation.

Section 13: Entitlement to carry on a reserved legal activity

66. This section provides that a person (including a body corporate or an unincorporated body) is entitled to carry on a reserved legal activity only if the person is:

- an authorised person (see section 18), or
- an exempt person (see section 19).

67. This is subject to transitional protection for non-commercial bodies, which is provided for in section 23.

Section 14: Offence to carry on a reserved legal activity if not entitled

68. This section makes it an offence for a person who is not entitled to carry on a reserved legal activity to carry out that activity. Persons guilty of the offence may be liable to a term of imprisonment of up to two years and/or a fine.

69. A person who commits an offence in relation to rights of audience or rights to conduct litigation in relation to any proceedings (or contemplated proceedings) is also guilty of contempt of the court involved, and may be punished accordingly.

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

70. This section concerns the carrying on of reserved legal activities by employers and employees. *Section 15(2) to 15(3)*, together with *section 15(11)*, make it clear that where a person carries on an activity through an employee or manager both that person and the employee or manager are regarded as carrying on the activity and so both must be entitled to carry on the activity under the Act.

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71. *Section 15(4)*, together with *section 15(5)*, provides that where an individual employee carries out a service for an employer which would ordinarily be a reserved legal activity (for example, litigation services), the employer will not be treated as carrying out a reserved legal activity if the service is not provided to the public or a section of the public in the course of or as an aspect of the employer's business. The effect of this is, for example, that where a body employs lawyers to provide in-house legal services to that body or to certain persons connected to the body, but not to the public or a section of the public, the body in question will not need to be an authorised person. This does not alter the fact that any individual lawyers which the body employs to provide reserved activities will need to be authorised persons.

72. *Sections 15(6) to 15(8)* deal with trade unions. People who are provided with relevant services by virtue of membership (including the membership of another person, and former membership) do not constitute the public or a section of the public where legal services that the union is providing are excepted membership services. These are defined in *section 15(7)* as services related to a member's relevant activities, other activities arising from them, events that have occurred in the course of them, and activities that are connected with a person's union membership. The Lord Chancellor may specify other services by order and, under *section 15(8)*, may make orders about the circumstances in which services are connected with these matters. *Section 15(12)* defines relevant activities for trade union purposes as any employment, trade, occupation, or other activity to which union membership relates.

73. Under *section 15(9)* the Lord Chancellor may also by order make provision about what constitutes a "section of the public", and the circumstances in which the provision of services does or does not form "part of the employer's business". These orders can only be made on the Board's recommendation (*section 15(10)*).

Section 16: Offence to carry on a reserved legal activity through person not entitled

74. This section provides that if an employer carries on a reserved legal activity through a manager or employee who is not entitled to carry on that activity, the employer will commit an offence, even if the employer is so entitled, unless the employer has taken all reasonable precautions and exercised all due diligence to avoid committing the offence. This offence carries a maximum penalty of an unlimited fine and/or two years' imprisonment.

Section 17: Offence to pretend to be entitled

75. This section makes it an offence for a person who is not entitled to carry on a reserved legal activity, to pretend to be entitled to carry on that activity, or to use a name, title or description which implies that that person is so entitled. The penalties for committing this offence are the same as those for carrying on a reserved legal activity when not entitled.

Section 18: Authorised persons

76. A person is an "authorised person" in relation to a particular reserved legal activity if the person is authorised to carry on that activity by a relevant approved regulator (other than by virtue of a licence under Part 5) or the person is a licensable body and holds a licence under Part 5 which authorises the carrying on of the activity.

77. *Sections 18(3) and (4)* (together with Schedule 5 and Schedule 22) provide that certain existing bodies which would otherwise be required to obtain a licence under Part 5,

are either deemed to be authorised or treated as exempt persons during a transitional period, after which point such bodies will need to become licensed.

Section 19: Exempt persons

78. Section 19 introduces **Schedule 3** which makes provision exempting certain persons from the requirement to be authorised to conduct particular reserved legal activities. For example, an individual who carries on probate activities other than for fee, gain or reward is exempt. The Lord Chancellor may, by order, add or remove exempt persons from the Schedule. This may only be done on the recommendation of the Board.

Section 20: Approved regulators and relevant approved regulators

79. This section defines “approved regulator” and “relevant approved regulator”, and introduces **Schedule 4**, which concerns the designation of bodies as approved regulators.

80. Part 1 of Schedule 4 lists the bodies which automatically became approved regulators when the Act came into force. The regulatory arrangements for these bodies are to be treated as having been approved by the Board at the time paragraph 1 comes into force. Sub-paragraph (3) of paragraph 2 makes it clear that the Board may exercise its power to direct a regulator to alter its regulatory arrangements even where the regulator and its regulatory arrangements are approved under this paragraph.

81. Part 2 of the Schedule makes provision regarding the procedure to be followed by bodies applying for designation as an approved regulator in respect of a reserved legal activity.

82. The Schedule details the material that must accompany an application and provides that the application must be accompanied by a prescribed fee, set by the Board with the consent of the Lord Chancellor.

83. The Board is required to make rules setting out the criteria by which it may refuse to consider an application. Where the Board decides to refuse to consider the application further, it must give notice to the applicant of its decision and the reasons behind it.

84. Where the Board proceeds to consider the application, it has a duty to seek advice before granting the application. Paragraph 5 requires that the Board must give a copy of the application and accompanying material to:

- the Office of Fair Trading (OFT),
- the Consumer Panel,
- the Lord Chief Justice, and
- such other persons as the Board considers it reasonable to consult regarding the application.

85. Paragraphs 6 to 9 set out the duties of the consultees:

- The OFT and the Consumer Panel must give advice to the Board in respect of the application, as they think fit.
- The OFT must, in particular, consider whether granting an application would, or would be likely to, restrict, distort or prevent competition within the market for

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reserved legal services. The Consumer Panel must have regard to the likely impact that granting an application would have on consumers.

- Those other persons whom the Board considers it reasonable to consult may give advice in respect of the application.
- The Lord Chief Justice must then consider this advice, and give advice to the Board regarding whether the application should be granted. The Lord Chief Justice must, in particular, have regard to the likely impact of granting an application on the courts in England and Wales.

86. Paragraph 10 allows the consultees, for the purpose of giving advice, to ask that the applicant, or any other person, provide additional specified information.

87. The Board (which must make rules governing the making of representations) must give the applicant copies of any of the advice given by consultees. The applicant may make representations to the Board within the time period specified in paragraph 11.

88. Paragraph 12 of the Schedule explains that once the period for representations has passed, the Board must publish any advice provided by the consultees and any representations made. This does not prevent anyone who has given advice under paragraphs 6 to 9, or made a representation under paragraph 11, from publishing that material. Any publisher must, so far as practicable, exclude any matter which relates to the private affairs of a particular individual whose interests might be affected, seriously and prejudicially, by publication.

89. The Board must make rules specifying how it will determine applications. Paragraph 13 sets out the criteria that the Board must apply when determining an application.

90. Paragraph 14 sets out the procedure that the Board must follow in considering its decision. It must consider the advice and representations referred to in paragraph 85 of these Explanatory Notes, above, as well as any other information that it considers relevant, and then decide whether to grant the application. The Board may grant the application in whole or in part, and must give notice in writing of its decision to the applicant, and publish this notice.

91. Paragraph 15 states that the Board must give its decision within twelve months, beginning with the day on which the application is made to the Board. The Board may extend this decision period by issuing and publishing a notice, only after consultation with the OFT, the Consumer Panel, and the Lord Chief Justice.

92. Under paragraph 16, where an application is granted, the Board must recommend to the Lord Chancellor that an order be made designating the body as an approved regulator in relation to the appropriate reserved legal activity or activities. Where the application relates to more than one reserved legal activity, the Board may grant it in relation to all or some of those activities. The Board must publish its recommendation.

93. The Lord Chancellor may then make an order in accordance with the recommendation (or a part of it), or refuse to make such an order. Paragraph 17 sets out the procedure for doing this. If the Lord Chancellor decides not to make an order, the Lord Chancellor must give the applicant and the Board notice of that decision and of the reasons for it, and publish this notice.

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94. Part 3 of the Schedule sets out how alterations to the regulatory arrangements of an approved regulator must be approved. If an approved regulator alters its regulatory arrangements, the alteration will not have effect until it is approved for the purposes of this Act. An alteration can include an addition to the arrangements, or a revocation of any part. Paragraph 19 sets out the circumstances in which an alteration will be approved.

95. Paragraph 20 provides that the Board may make rules specifying the way in which an application by an approved regulator to alter its regulatory arrangements must be made, and makes certain requirements as to the material that must accompany the application. Paragraph 21 sets out what the Board must do on receipt of an application. It may grant the application, or it may issue and publish a notice stating that it is considering whether to refuse the application.

96. Under paragraph 22, where the Board has given the approved regulator a notice, it may invite such persons as it considers appropriate to give it advice regarding whether the application should be granted. The consultees may, for the purpose of giving advice, ask that the approved regulator, or any other person, to provide additional information.

97. The Board must give the approved regulator copies of any of the advice given above. The approved regulator may make representations to the Board within 28 days, or such longer period as the Board allows, as specified in paragraph 23 of the Schedule. The Board must make rules governing the making of representations.

98. Paragraph 24 of the Schedule requires that once the period for representations has passed, the Board must publish the advice and representations. This does not prevent anyone who has given advice under paragraph 22, or made a representation under paragraph 23, from publishing that material. Any publisher must, so far as practicable, exclude any matter which relates to the private affairs of a particular individual whose interests might be seriously and prejudicially affected by publication.

99. Paragraph 25 sets out the material that the Board is required to consider before deciding whether to grant the application. The Board may grant the application in whole or in part, and must give notice in writing of its decision to the applicant, and publish this notice. The Board may refuse the application only if it is satisfied that one of the conditions set out in sub-paragraph (3) of paragraph 25 is met. If the Board decides to refuse the application, it must specify the reasons in its published notice.

100. Paragraph 26 provides that if the Board does not give the approved regulator notice of its decision within the decision period (twelve months), then the application is deemed to have been granted. The Board may extend the decision period with the consent of the Lord Chancellor. The total decision period must not exceed eighteen months.

Section 21: Regulatory arrangements

101. This section defines the “regulatory arrangements” of bodies. These include the arrangements made for the body to authorise persons to carry on reserved legal activities, the body’s conduct rules, and disciplinary arrangements etc. The regulatory arrangements do not include arrangements which are made in connection with any role the body may have in representing or promoting the interests of persons regulated by it. This section also provides that regulatory arrangements include compensation and indemnification arrangements (and defines such arrangements).

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Section 22: Continuity of existing rights to carry on reserved legal activities

102. Part 1 of **Schedule 5**, which is introduced by this section, provides that for the purposes of determining whether a person is an authorised person as defined in section 18, it is immaterial whether a person's authorisation to exercise a right of audience or conduct litigation was granted by an approved regulator before or after the day upon which it is designated. Part 2 of the Schedule makes provision deeming certain categories of person to be authorised by an approved regulator to conduct certain reserved legal activities for the duration of the transitional period, or to be exempt during that period. The duration of the transitional period is to be determined by the Lord Chancellor. At the conclusion of the transitional period, unless a person is authorised or exempt under the Act, under section 14 the person will commit an offence if the person carries out a reserved legal activity.

103. This provision ensures that rights people have under the existing arrangements will be protected during the transitional period. Every barrister, qualified solicitor, legal partnership, legal executive authorised by ILEX, licensed conveyancer, duly certified notary public, registered patent attorney, registered trade mark attorney and law costs draftsmen is deemed to have been authorised to carry on certain reserved legal activities by their professional body, as listed in Part 2 of the Schedule.

Section 23: Transitional protection for non-commercial bodies

104. Section 23 ensures that, during a transitional period, non-commercial bodies (as defined by *section 23(2)*) are entitled to carry on reserved activities without committing an offence. Without this, they would be unable to operate before the ABS licensing regime came into effect.

Section 24: Extension of the reserved legal activities

105. This section allows the Lord Chancellor, by order, to extend the activities within the scope of the definition of "relevant legal activities", by amending section 12 or Schedule 2. The Lord Chancellor can make this order only on the recommendation of the Board. This will enable any legal services to be regulated at a later date where it would be in consumers' interests to do so.

106. **Schedule 6**, introduced by this section, sets out the procedure for adding new activities to the list of reserved legal activities. It also sets out the procedure for determining whether a recommendation should be made under section 26 (recommendations that activities should cease to be reserved legal activities).

107. The following individuals/bodies may request that the Board investigate whether the reserved legal activities should be extended, or whether an activity should cease to be a reserved legal activity:

- the Lord Chancellor,
- the OFT,
- the Consumer Panel, or
- the Lord Chief Justice.

108. Where such a request is made, preliminary inquiries for an investigation by the Board may take up to three months, although this can be extended by agreement with the Lord

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Chancellor. Anybody else may make a request of this kind, although in such cases the Board will not be obliged to make preliminary enquiries. The Board can also instigate investigations even if no request has been made.

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

110. Paragraph 6 states that, if the Board seeks the advice of the Lord Chief Justice, the Lord Chief Justice must consider any advice provided to the Board by the OFT and/or the Consumer Panel, and then give such advice to the Board as the Lord Chief Justice sees fit. In deciding what advice to give, the Lord Chief Justice must, in particular, have regard to the likely impact of the proposed change on the courts in England and Wales. The Board must consider, and publish, any advice given by those persons.

111. Under paragraph 8, if the Board receives an application by the Lord Chancellor, OFT, the Consumer Panel or the Lord Chief Justice to investigate whether the reserved legal activities should be extended, or whether an activity should cease to be a reserved legal activity, it may only refuse to undertake the investigation where:

- the Board has consulted, and received advice from, the OFT, the Consumer Panel or the Lord Chief Justice (sub-paragraph (3) of paragraph 8); and
- either,
 - the Lord Chancellor consents to the Board's refusal (sub-paragraph (4) of paragraph 8, or
 - the original request for investigation was made by the Lord Chancellor.

112. If the request proceeds to a full investigation, the Board must give notice of this to the Lord Chancellor, the OFT, the Consumer Panel, and the Lord Chief Justice. The Board must publish this notice.

113. Within twelve months the Board must produce and publish a report with its provisional recommendation and reasons, as stated in paragraph 10. The Board may extend this investigation period by issuing and publishing a notice, only after consultation with the OFT, the Consumer Panel, and the Lord Chief Justice.

114. The Board may make rules governing the making of representations and the giving of evidence. Paragraphs 12 to 15 set out what the Board must consider in making these rules, and the process by which such rules may be made. Paragraph 18 permits the Board to pay such costs of a person as the Board considers reasonable, for the purpose of facilitating the giving of oral evidence or representations.

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

- whether or not to make a recommendation to extend the reserved legal activities,

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

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

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

117. The Board must give a copy of this report to the Lord Chancellor, and publish it.

118. Section 24 provides that the Lord Chancellor must consider the report and publish a decision. Where the Lord Chancellor decides not to make an order that the Board has recommended, the Lord Chancellor must state reasons for this. The Lord Chancellor will not be able to make an order otherwise than on the Board’s recommendation, nor will the Lord Chancellor be able to amend an order that the Board has recommended. This Act does not give the Lord Chancellor the power to make changes on the Lord Chancellor’s own initiative (including amending Board recommendations as they are implemented).

Section 25: Provisional designation as approved regulators and licensing authorities

119. This provision enables the Lord Chancellor to determine applications by bodies for designation as an approved regulator or a licensing authority in respect of an activity which is a “provisional reserved legal activity”, that is, an activity which may become a reserved legal activity in the future.

Section 26: Recommendations that activities should cease to be reserved legal activities

120. This section enables the Board to recommend to the Lord Chancellor that an activity should cease to be a reserved legal activity. The applicable procedure is set out in Schedule 6. If the Lord Chancellor agrees with a recommendation by the Board that an activity should cease to be a reserved legal activity, there is no procedure under the Act to implement such a recommendation and it would be for the Lord Chancellor to pursue this by other means (for example, further primary legislation or, possibly, a regulatory reform order).

PART 4: REGULATION OF APPROVED REGULATORS

121. This Part of the Act sets out the duties of approved regulators, makes provision to ensure that approved regulators maintain an appropriate separation of their regulatory and representative functions, and confers powers on the Board to ensure that the approved regulators’ duties are being carried out appropriately. It details how the Board can intervene when there is a problem, the procedures that it must follow, and the bodies that it must consult before exercising its powers. The Board’s powers include target-setting, censure, financial penalties, a power of direction, direct intervention in the approved regulator’s regulation of its members, and in extreme cases the removal of a body’s authorisation.

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Background

122. As already stated in the background section to the Legal Services Board,⁹ Sir David Clementi's 2004 independent review of legal services referred to observations that the current regulatory arrangements resembled a "maze" and stated that he agreed with the Government's earlier statement¹⁰ that the existing regulatory system for legal services was "outdated, inflexible, over-complex and not accountable or transparent enough". He proposed that an independent oversight regulator be established to simplify regulation and ensure that the system was clear to consumers. The Government's White Paper, *The Future of Legal Services: Putting Consumers First*,¹¹ set out how it was envisaged that this oversight regulator should operate: it should authorise approved regulators to carry out day-to-day regulation, and it would also need to be able to act if these approved regulators failed.

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

Section 27: Regulatory and representative functions of approved regulators

124. This section defines what is meant by the regulatory and representative functions of an approved regulator under the Act.

Section 28: Approved regulator's duty to promote the regulatory objectives etc

125. When discharging its regulatory functions, an approved regulator will be under a duty to act in a way that is compatible with the regulatory objectives so far as it is reasonably practicable to do so. In addition, the approved regulator must have regard to principles of best regulatory practice.

Section 29: Prohibition on the Board interfering with representative functions

126. This section provides that the Board is not authorised to exercise its functions in relation to any representative function of an approved regulator. However, the Board is authorised to take action for the purpose of ensuring that the exercise of an approved regulator's regulatory functions is not prejudiced by its representative functions, and that decisions are taken independently of each other in relation to the regulatory and the representative functions.

⁹ Clementi, 2004

¹⁰ Department for Constitutional Affairs 2003

¹¹ Department for Constitutional Affairs, 2005

Section 30: Rules relating to the exercise of regulatory functions

127. This section requires the Board to make rules setting out requirements to be met by approved regulators for the purpose of ensuring that their regulatory and representative functions are appropriately separated (“internal governance rules”). The rules must include provision which ensures that persons exercising regulatory functions can, independently from any representative functions, make representations to the Board, the Consumer Panel, the OLC and other approved regulators (including notifying the Board if they feel that their independence or effectiveness is being compromised), and that they are appropriately resourced to carry out their functions.

Section 31: Performance targets and monitoring

128. The Board may set, or direct an approved regulator to set, performance targets relating to the performance of the approved regulator’s regulatory functions, as defined in section 27. For example, where an approved regulator is failing to deal with misconduct cases quickly enough, the Board may set targets in relation to how long consideration of a misconduct case should take. *Section 31(2)* sets out the thresholds that must be met before the Board can exercise this power, and in considering whether it is appropriate to take action, the Board must consider the impact of taking action on the other regulatory objectives.

Section 32: Directions

Section 33: Directions: procedure

Section 34: Enforcement of directions

129. Under section 32 the Board may use its power of direction where any of the threshold conditions in *section 32(1)* is satisfied, including that the Board has considered the impact of taking action on the other regulatory objectives.

130. In such circumstances, the Board may direct the approved regulator in question to take steps to remedy any failure or counter any adverse impact, mitigate its effect, or prevent its recurrence. It must publish any direction that it issues to a regulator.

131. *Section 32(4)* sets out the scope of a direction. A direction may only require an approved regulator to take steps which it has power to take, and it may require the regulator to take steps with a view to the modification of any part of its regulatory arrangements in order to achieve the desired effect.

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

133. Under section 33, when the Board gives a direction to a regulator to take specific steps, the procedure set out in **Schedule 7** will apply. Schedule 7 includes requirements for giving notice to the approved regulator, for consulting with the Lord Chancellor, the OFT, the Consumer Panel and the Lord Chief Justice, and for making representations.

134. Under section 34, where an approved regulator has failed to comply with a direction, the Board may make an application to the High Court. Upon such an application, if the High Court agrees that the approved regulator has failed to comply with the direction, it may make an order requiring the approved regulator to take such steps as it considers appropriate in order to ensure that direction is complied with.

Section 35: Public censure

Section 36: Public censure: procedure

135. Section 35 sets out the threshold conditions which must be met before the Board can exercise this power, including the requirement for the Board to consider the impact of taking action on the other regulatory objectives. Section 36 sets out the procedure that must be complied with before a statement of censure can be issued, and requires the Board to give prior notice of the terms of the proposed statement and other matters, and to consider any representations which are duly made before publishing the statement.

Section 37: Financial penalties

Section 38: Financial penalties: procedure

136. *Section 37(1)* sets out the threshold conditions that must be met before the Board can exercise its power to impose financial penalties. The Board is required to make rules by statutory instrument (subject to the negative resolution procedure – see section 206(6)), prescribing the maximum amount of the penalty that may be imposed and the Lord Chancellor’s consent to these rules is required. Section 38 sets out the procedure that applies to the imposition of financial penalties.

Section 39: Appeals against financial penalties

137. This section makes provision for an approved regulator to appeal against a financial penalty on the grounds set out at *section 39(2)*.

138. The appeal is by way of application to the High Court (to be made within three months of notification of the decision appealed against). The High Court can quash the penalty, substitute a different amount or, where the penalty is payable by instalments, vary the time by which the penalty must be paid (*section 39(4)*), and may make an order as to interest on any substituted penalty (*sections 39(5) and 39(6)*).

Section 40: Recovery of financial penalties

139. Where an approved regulator has not paid a financial penalty, the Board has the power to recover the penalty, and any interest, as a debt payable to the Board (*sections 40(3) and 40(4)*). If all or part of a penalty is not paid by the time specified, the unpaid balance carries interest (*section 40(1)*). Where an appeal is made by an approved regulator against a financial penalty, the penalty does not have to be paid until the appeal has been determined or withdrawn.

Section 41: Intervention directions

140. This section defines an intervention direction, and provides for the scope of such directions and the conditions under which the Board can impose such directions on an approved regulator in relation to its regulatory functions. An intervention direction (*section 41(2)*) is a direction that the Board, or the Board’s nominee, will exercise one or more of the approved regulator’s regulatory functions. Where the Board exercises its powers under an intervention direction, it will be able to nominate a person or persons to carry out the regulatory function. The Board may also require the approved regulator to comply with any instructions set by the Board or the nominated person.

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141. *Section 41(1)* sets out the threshold conditions which must be met before the Board can issue an intervention direction, which mirror those in *section 31(2)*, including the requirement for the Board to consider the impact of taking action on the other regulatory objectives. *Section 41(3)* additionally provides that the Board must not give an intervention direction unless it is satisfied that the approved regulator's act or omission cannot be adequately addressed by the exercise of the powers available under *sections 31 to 40*.

142. *Section 41(4)* refers to **part 1 of Schedule 8**, which sets out the procedure for giving an intervention direction. This includes procedures for giving notice to the approved regulator, for consulting with the Lord Chancellor, the OFT, the Consumer Panel and the Lord Chief Justice, and for making representations.

Section 42: Intervention directions: further provision

143. Where an intervention direction has been made and is in effect in relation to a function of an approved regulator, the approved regulator must give the Board, or a person nominated by the Board, all such assistance as it is reasonably able to give, to allow the Board, or nominated person, to pursue the direction through the exercise of the function to which the direction relates. Under *section 42(3)*, the Board, a person nominated by the Board or any such person's appointee may apply for a warrant authorising them to enter and search the approved regulator's premises and to seize the records it finds. *Section 42(6)* requires the Lord Chancellor to make regulations prescribing the criteria that will apply when deciding whether to issue a warrant.

Section 43: Intervention directions: enforcement

144. This section makes provision for the enforcement of intervention directions by way of application to the High Court.

Section 44: Revocation of intervention directions

145. *Section 44(1)* provides that an intervention direction has effect until such time as it is revoked by the Board. *Section 44(2)* refers to **Part 2 of Schedule 8**, which contains the procedure for revocation of an intervention direction. This includes procedures for giving notice to the approved regulator, for consulting with the Lord Chancellor, the OFT, the Consumer Panel and the Lord Chief Justice, and for making representations.

146. Paragraph 13 of the Schedule provides that where an intervention direction has effect in respect of a regulatory function of an approved regulator, the regulator can apply to the Board for the Board to revoke the direction, or the Board can give notice to the regulator that it intends to revoke the direction.

Section 45: Cancellation of designation as approved regulator

147. The Lord Chancellor may, by making an order, cancel a body's designation as an approved regulator in relation to one or more of the reserved legal activities for which it is designated (*section 45(1)*). But the Lord Chancellor may act only on the recommendation of the Board (*section 45(2)*).

148. Under *section 45(3)*, if a body applies to the Board to have its designation as an approved regulator cancelled, and the Board is satisfied that the rules that it has set for this process have been met, then the Board must make such a recommendation to the Lord Chancellor.

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149. The Board may also recommend that a cancellation order be made if it is satisfied that the conditions listed in *section 45(5)* (including the requirement for the Board to consider the impact of taking action on the other regulatory objectives) have been met and that the matter cannot be adequately addressed by the Board exercising its powers under sections 31 to 43. The Board must specify the reasons for suggesting cancellation when making its recommendation.

150. **Schedule 9**, introduced by this section, applies where the Board considers that it may be appropriate for it to make a recommendation under section 45(5). It requires the Board to notify the body of the proposed recommendation, and to seek advice in respect of the recommendation. This Schedule sets out the procedures for giving notice to the approved regulator, for consulting with the OFT, the Consumer Panel and the Lord Chief Justice, and for making representations.

Section 46: Cancellation of a designation: further provision

Section 47: The Board's power to recommend orders made under section 46

151. Section 46 allows the Lord Chancellor to make transfer arrangements by order when a body has its designation in relation to one or more reserved legal activities cancelled. The Lord Chancellor may make such an order only on the recommendation of the Board, and only in substantially the same form as recommended by the Board (*section 46(7)*). Section 47 sets out the procedure that the Board must follow when making a recommendation for the cancellation of an approved regulator's designation. This procedure requires the publication of a draft recommendation and order, and that the Board take account of any representations made. It also provides for re-publication of the recommendation and order, if the Board makes any amendments which it considers material after the initial publication.

152. The purpose of section 46 is to minimise disruption to the regulation of authorised persons following the cancellation of an approved regulator's designation. It allows for regulatory responsibility for the authorised persons concerned to be transferred to another approved regulator (assuming that the regulator in question consents to assuming such responsibility) or, where no suitable alternative approved regulator has been identified, to the Board, in its capacity as an approved regulator.

153. Where such a transfer takes place, the relevant regulated persons will be subject to the regulatory arrangements of the new regulator, or the Board, as appropriate.

154. Section 47 also allows money raised from practising fees and held by the old regulator (or a part of the money so held) to be paid to the new regulator and treated in the same way as if the money had been raised by the new regulator by way of practising fees.

Section 48: Cancellation of designation: powers of entry etc

155. This section applies where an approved regulator has had its designation removed. The old regulator must give reasonable assistance to the new regulator and Board for the continuation of regulation.

156. A person appointed by the Board to act on its behalf may apply to a judge of the High Court, a circuit judge or justice of the peace for a warrant authorising that person to enter and search the premises of the old regulator, and to take possession of written or electronic documents found there. The person may take copies of records found on a search, and the Board must make rules as to the persons it may appoint for these purposes.

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157. A warrant may not be issued unless it is necessary or desirable for the purpose of continuing regulation. The Lord Chancellor must make regulations specifying any further matters that the judge or justice of the peace must be satisfied of or have regard to before issuing a warrant, and regulating the exercise of a power conferred by the warrant. The regulations must be made in accordance with a recommendation of, or following consultation with, the Board. The regulations must in particular make provision as to the circumstances in which documents may be copied or must be returned.

Section 49: The Board's policy statements

Section 50: Policy statements: procedure

158. Section 49 requires the Board to prepare and issue a policy statement concerning its functions under sections 31, 32, 35, 37, 41, 45 and 76. The Board may also issue a statement of policy with respect to any other matter, where it considers it appropriate. In preparing a statement, the Board must have regard to the principle that its principal role is the oversight of approved regulators, and that it should not exercise its powers unless the act or omission of an approved regulator was unreasonable. The statement must take account of the desirability of resolving informally matters between the Board and the approved regulators, and specify how the Board will comply with the requirements of section 3(3). Any policy statement may be amended or replaced from time to time, and the Board must publish the new or amended statement. The Board must have regard to any relevant policy statement in exercising, or deciding whether to exercise, any of its functions (see *section 49(8)*).

159. Before the Board issues a policy statement, it must publish the proposed statement in draft, and allow representations to be made about it. Section 50 outlines the procedure for making policy statements.

Section 51: Control of practising fees charged by approved regulators

160. This section requires the Board to make rules setting out the purposes for which practising fees payable under the regulatory arrangements of approved regulators may be applied. These rules must allow for practising fees to be applied for the purposes set out at *section 51(4)*. This provision further provides that a practising fee charged by an approved regulator to the persons it authorises will only be payable if the Board has approved the level of the fee. The Board must also make rules setting out how it will deal with applications for the approval of practising fees.

Section 52: Regulatory conflict with approved regulators

161. This section deals with the possibility that conflicts between regulatory arrangements may arise where an approved regulator regulates entities comprising persons authorised by different approved regulators – for example, solicitors and barristers. Regulators of such entities will be required to take steps to prevent conflicts of this type in their rules, as set out at *section 52(1)*. In the event that a conflict does arise between the regulator of the entity, and another approved regulator who authorises persons practising within the entity, the conflict is to be resolved as set out at *section 52(4)*.

Section 53: Modification of provision made about regulatory conflict

162. To counter any imbalance arising from the outcome of the provision in section 52(4), section 53 provides that approved regulators whose members are affected by the rules of another approved regulator may ask that the Board exercise its powers under section 32 to

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direct that the approved regulator take steps to address the offending provision in its regulatory arrangements. *Section 53(3)* requires approved regulators to consider any request from persons authorised by them or a manager or employee of such persons to make such an application to the Board. The Board must consider representations from both regulators, and may consult others as appropriate, before making a decision over whether or not to modify the rules (see *section 53(5)*).

Section 54: Regulatory conflict with other regulatory regimes

163. This section places approved regulators under an obligation to make provision in their regulatory arrangements to prevent and resolve regulatory conflicts with external regulators, as well as to avoid unnecessary duplication of regulation. This applies to approved regulators who regulate entities involving persons regulated by an external, non-legal services regulator, for example, the Financial Services Authority. The Board must provide guidance to approved regulators on dealing with external regulatory conflicts. With the Board's consent, the approved regulator's regulatory arrangements may provide for the Board to act in the resolution of conflicts between the approved regulator and relevant external regulators.

Section 55: Provision of information to the Board

Section 56: Enforcement of notices under section 55

164. Section 55 confers power on the Board to require an approved regulator, by notice, to provide such information or produce such documents in such form, within such period and to such person nominated by the Board, as the Board specifies in the notice. Section 56 provides for enforcement in the event of an approved regulator failing to comply with such a notice. Enforcement is by way of application to the High Court for an order requiring the approved regulator to comply with the original notice that was issued by the Board.

Section 57: Reports by the OFT

Section 58: The Board's response to OFT report

Section 59: Referral of report by the Lord Chancellor to the Competition Commission

Section 60: Duties of the Competition Commission

Section 61: Lord Chancellor's power to give directions

165. These sections make provision conferring investigation powers and duties on the OFT and the Competition Commission in respect of regulatory arrangements of approved regulators where they in effect prevent, restrict or distort competition within the market for reserved legal services. Under section 57, the OFT may prepare a report if it believes that an approved regulator's regulatory arrangements (or any part of them) have this effect, or are likely to do so. The section also sets out the matters which the OFT's report should cover. It further provides that such reports attract absolute privilege for the purposes of the law of defamation.

166. Section 58 details how the Board should respond to a report from the OFT. It provides that the Board must allow at least 28 days for the approved regulator to make representations to the Board regarding the OFT's report. Section 58 further allows for the Consumer Panel to give such advice to the Board as it considers appropriate and requires the Board to have regard to any such representations and advice before informing the OFT what action (if any) it proposes to take.

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167. Section 59 and section 60 provide that, in the event that the OFT believes that the Board has not given the OFT's report full and proper consideration, the OFT may give a copy of the report to the Lord Chancellor, who must, in turn, give a copy of the report to the Competition Commission. The Competition Commission must then investigate the matter and make its own report (unless it judges that this would serve no useful purpose). Under *section 61*, the Lord Chancellor has the power to direct the Board to take action in connection with any matter raised in the OFT's report. Before giving a direction, the Lord Chancellor must consider any report given by the Competition Commission under *section 60*. Any direction given under *section 61* must be published

Section 62: The Board as an approved regulator

Section 63: The Board's designation under section 62(1)(a)

Section 64: Modification of the Board's functions under section 62(1)(b)

Section 65: Cancellation of the Board's designation under section 62(1)(c)

Section 66: The Board's power to recommend orders made under section 62

168. This group of sections make provision for the Board to be able to act as an approved regulator in relation to any one or more of the reserved legal activities. Section 62 provides that the Lord Chancellor may, by order:

- designate the Board as an approved regulator in relation to one or more reserved legal activities;
- modify the functions of the Board, with a view to enabling the Board to discharge its functions as an approved regulator effectively and efficiently; and
- cancel the Board's designation as an approved regulator in relation to one or more reserved legal activity.

169. Such an order may also modify other legislation as appears necessary or expedient to the Lord Chancellor (see *section 62(5)*). If the Board is designated by such an order, it must take the necessary action to ensure an appropriate financial and organisational separation between its functions as approved regulator and its other activities.

170. The Lord Chancellor's power to make such an order is exercisable only if the Board has made a recommendation for such an order; and it may not be used so as to make an order which differs materially from that recommended (*section 62(2)*). Section 66 makes provision about the Board's recommendations for orders under section 62. The Lord Chancellor is not bound to accept a recommendation, but must provide the Board with a notice stating reasons for refusal and must publish that notice (*section 62(3)*).

171. Section 63 provides that the Board may be designated as an approved regulator only in instances where an approved regulator's designation has been cancelled, or where the activity in question is a new reserved legal activity. By virtue of *section 63(3)*, the Board may be designated as an approved regulator in advance of either of these eventualities. The order designating the Board must also ensure that the Board acting as approved regulator is separate from the Board acting in its "general" capacity so that the Board as approved regulator may only make or modify its regulatory arrangements with the approval of the Board in its general capacity.

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172. Section 64 specifies some of the powers that may be conferred on the Board by an order made under section 62(1)(b) modifying the Board's functions in order to enable it to fulfil its role as an approved regulator more effectively.

173. Section 65 makes provision regarding the cancellation of the Board's designation as an approved regulator. In such cases, sections 46 and 47 which provide for "transfer arrangements") will apply in relation to the Board and persons authorised by it as they apply to an approved regulator whose designation is cancelled under section 45, and to persons authorised by that regulator.

174. Section 66 sets out the procedure that the Board must follow before making a recommendation for an order under section 62.

Section 68: Regulatory conflict and the Board as approved regulator

175. This section sets out how regulatory conflict will be resolved in instances where the Board acts as an approved regulator. It provides for requests to be made to the Board (in its capacity as an approved regulator) for it to reconsider the provision made by its regulatory arrangements, so as to prevent a conflict with another approved regulator. Such a request may be made by an approved regulator (on its own initiative) or following a request by an affected person (as defined by *section 68(11)*). Such a request may also be made by a person authorised by the Board (in its capacity as an approved regulator) to carry on a reserved legal activity or a manager or employee of such a person. Such a person may also apply to the Board in its capacity as an oversight regulator, requesting that it exercise its powers under section 32 to direct the approved regulator to take the appropriate action in respect of regulatory arrangements to resolve a regulatory conflict.

Section 69: Modification of the functions of approved regulators etc

Section 70: Procedural requirements relating to recommendations under section 69

176. Section 69 confers the power on the Lord Chancellor to make an order modifying or making other provision in relation to the functions of an approved regulator or other body other than the Board. Such an order may only be made following a recommendation by the Board, and such orders may only be made to achieve the purposes specified in *section 69(3)*, namely:

- to enable a body to become an approved regulator or licensing authority in relation to one or more reserved legal activities;
- to enable a body to regulate different categories of legal persons;
- to enable a body to carry out its role as an approved regulator/licensing authority more effectively or efficiently;
- to enable a body to become a qualifying regulator for immigration services; or
- (where the body is already a qualifying regulator) to enable it to authorise persons to provide any additional advice or services which amount to immigration advice or services.

177. Furthermore, the Board may only make a recommendation that such an order be made with the consent of the approved regulator to which the recommendation relates. Section 70 sets out the procedural requirements relating to the making of such recommendations.

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PART 5: ALTERNATIVE BUSINESS STRUCTURES

178. This Part of the Act makes provision for new alternative business structures as a vehicle for providing legal and other advice and services. It enables lawyers and non-lawyers to form legal partnerships and companies as vehicles for the provision of reserved legal services. Where non-lawyers are managers of, or have an interest in, such a body, the body must become a licensed body, licensed and regulated by a licensing authority, in accordance with the provisions of Part 5. Existing regulators of legal services may apply to the Board to become licensing authorities. If there are no other appropriate licensing authorities, the Board itself can act as a licensing authority.

179. Consumers can complain about matters relating to the services provided by ABS firms: first through in-house complaints arrangements, and if necessary, to the new ombudsman scheme that will be administered by the OLC.

Background

180. Historically, there have been a number of statutory restrictions on the type of business structures through which legal services may be provided. Some existing regulators have also prohibited lawyers from entering into partnership with non-lawyers. Certain regulators have also placed restrictions on the ways in which non-lawyers can participate in the management of firms. In other cases, regulators do not have the powers they need to regulate a more diverse range of business structures.

181. In March 2001, the OFT identified a number of rules of the legal profession that were potentially unduly restrictive, and that might have negative implications for consumers.¹² The OFT recommended that rules governing the legal professions should be fully subject to competition law and that unjustified restrictions on competition should be removed.

182. Following the 2004 Clementi Review,¹³ in 2005 the Government published a White Paper, *The Future of Legal Services: Putting Consumers First*.¹⁴ It proposed ABS, which would allow different types of lawyers and non-lawyers to work together in an ABS firm or company, and/or the possibility of non-lawyer ownership and investment. It identified potential benefits for both consumers and legal services providers.

“Potential benefits for consumers:

- more choice: consumers will have greater flexibility in deciding from where to obtain legal and some non-legal services;
- reduced prices: consumers should be able to purchase some legal services more cheaply. This should arise where ABS firms realise savings through economies of scale and reduce transaction costs where different types of legal professionals are part of the same firm;

¹² OFT, 2001

¹³ Clementi, 2004

¹⁴ Department for Constitutional Affairs, 2005

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- better access to justice: ABS firms might find it easier to provide services in rural areas or to less mobile consumers;
- improved consumer service: consumers may benefit from a better service where ABS firms are able to access external finance and specialist non-legal expertise;
- greater convenience: ABS firms can provide one-stop-shopping for related services, for example car insurance and legal services for accident claims; and
- increased consumer confidence: higher consumer protection levels and an increase in the quality of legal services could flow from ABS firms which have a good reputation in providing non-legal services. These firms will have a strong incentive to keep that reputation when providing legal services.

“Potential benefits for legal service providers:

- increased access to finance: at present, providers can face constraints on the amount of equity, mainly debt equity, they can raise. Allowing alternative business structures will facilitate expansion by firms (including into international markets) and investment in large-scale capital projects that increase efficiency;
- better spread of risk: a firm could spread its risk more effectively among shareholders. This will lower the required rate of return on any investment, facilitate investment and could deliver lower prices;
- increased flexibility: non-legal firms such as insurance companies, banks and estate agents will have the freedom to realise synergies with legal firms by forming ABS firms and offering integrated legal and associated services;
- easier to hire and retain high-quality non-legal staff: ABS firms will be able to reward non-legal staff in the same way as lawyers; and
- more choice for new legal professionals: ABS firms could contribute to greater diversity by offering those who are currently under-represented more opportunities to enter and remain within the profession.”

Section 71: Carrying on activities by licensed bodies

183. This section introduces Part 5. *Section 71(2)* defines “licensed body” as a body holding a licence under Part 5.

Section 72: “Licensable body”

184. This section defines licensable bodies. They are bodies that have at least one manager who is not an authorised person (as defined in section 111) or at least one person who has an interest or an indirect interest in shares in the body who is not an authorised person. Section 207 defines a manager as: a member, in relation to a body corporate whose affairs are managed by its members; a director, in relation to a body corporate if its affairs are not managed by its members; a partner, if the body is a partnership; and a member of its governing body, if it is an unincorporated body other than a partnership.

185. By *section 72(3)*, a person holds an interest in a body if he owns shares in it or is entitled to exercise or control the exercise of voting rights in it. By *section 72(6)*, “shares” means:

- where the body has share capital, allotted shares as defined in the Companies Acts;
- where it has capital but no share capital, the right to share in its capital; and
- where it has no capital, an interest with the right to share in profits or the liability to contribute to losses, or giving rise to an obligation to contribute to the body’s debts or expenses on winding up.

Section 73: Licensing authorities and relevant licensing authorities

186. This section provides that a licensing authority is either the Board or an approved regulator who is designated as a licensing authority under Part 1 of Schedule 10. Under *section 73(2)*, the Board is a licensing authority in relation to all reserved legal activities, but an approved regulator is only a licensing authority in relation to those reserved legal activities for which it has been designated under Schedule 10. By *section 73(3)* the Board may delegate its functions as licensing authority and must ensure that it appropriately separates its functions as licensing authority from its other functions.

Section 74: Designation of approved regulator as licensing authority

187. **Part 1 of Schedule 10**, introduced by this section, sets out the procedure to be followed when an approved regulator seeks designation as a licensing authority. It is similar to the procedure for a designation of a body as an approved regulator.

188. Paragraph 1 of the Schedule sets out certain requirements for applications for designation as a licensing authority.

189. Paragraph 11 obliges the Board to make rules governing the way it determines applications. Sub-paragraphs (2) and (3) of paragraph 11 sets out conditions that must be met (and must be reflected in the rules) before the Board can grant an application.

190. Paragraph 12 sets out the matters the Board must consider before deciding whether to grant the application in whole or (where it relates to more than one reserved legal activity) in respect of any of the activities in the application. The Board's decision notice must give reasons for any refusal and must be published.

191. Paragraph 13 provides that the deadline for deciding applications is 12 months from the day of the application. That period can be extended any number of times up to a maximum of 16 months, but only after consulting the OFT, the Consumer Panel and the Lord Chief Justice, and obtaining the Lord Chancellor's consent.

192. Paragraph 14 sets out the process by which the Board must make a recommendation to the Lord Chancellor to make an order designating the applicant as a licensing authority.

193. Paragraph 15 provides that when the Lord Chancellor receives a recommendation from the Board the Lord Chancellor may either make the recommended order or refuse to make it. If the applicant has also applied to be designated as an approved regulator, the Lord Chancellor must first make the appropriate order. If the Lord Chancellor makes a modified order, or declines to make an order, the reasons for that decision must be published. Paragraph 16 provides that the making of the order has the effect that the proposed licensing rules are treated as approved by the Board (but remain subject to the power of the Board to make directions under section 32).

Section 75: Automatic cancellation of designation as licensing authority

194. This section provides that if a licensing authority loses its status as an approved regulator, it automatically loses its status as a licensing authority.

Section 76: Cancellation of designation as licensing authority by order

195. This section sets out how the designation of a licensing authority may be cancelled in whole or in part. Cancellation is by the Lord Chancellor on the recommendation of the

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Board. The Board must recommend cancellation where the licensing authority requests it and adheres to the requirements under *section 76(3)*. Under *section 76(5)* the Board may make a recommendation for cancellation where 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 in all the circumstances of the case it is appropriate to cancel the designation. In considering whether it is appropriate to cancel the designation, the Board must consider the impact of taking action on the other regulatory objectives. By *section 76(6)* the Board may not exercise this power unless it is satisfied that the use of any of the powers set out in sections 31 to 43 (performance targets, directions and public censure) would not adequately deal with the situation. *Section 76(7)* introduces **Part 2 of Schedule 10**, which makes provision about recommendations under *section 76(5)*.

196. The Lord Chancellor may decide not to make the order recommended by the Board, but must give reasons and publish them.

197. Part 2 of Schedule 10 sets out the details of the procedure to be used when the Board is considering making a recommendation for cancellation under *section 76(5)*. Paragraph 18 provides that the Board must give the licensing authority a warning notice, setting out its reasons for cancellation, which it must publish. The licensing authority may then make written representations (or oral representations, if authorised by the Board) within 28 days or a longer period specified by the Board. The Board must publish a report about those representations after having regard to the licensing authority's comments about the draft report.

198. Paragraphs 19 to 24 set out the process whereby the Board must consult the OFT, the Consumer Panel, the Lord Chief Justice and such other persons that the Board considers reasonable to consult.

199. Paragraph 25 requires the Board to provide to the licensing authority a copy of any advice from those persons, and to publish that advice together with any representations made by the licensing authority under paragraph 18. The licensing authority and any body licensed by that authority may then make written representations and, if authorised by the Board, oral representations. The Board may also allow others to make written or oral representations. The remainder of the paragraph sets out related procedures.

Section 77: Cancellation of designation: further provision

200. This section allows consequential provision to be made by the Lord Chancellor where the designation of a licensing authority is cancelled. Two types of order are possible. The first, under *section 77(2)*, enables legislation etc to be modified to take account of the cancellation. The second, under *section 77(3)*, allows arrangements to be made transferring licensed bodies from the regulation of the original licensing authority to another that consents to act as their licensing authority. Such arrangements must include provision for placing the transferred bodies under the "new" licensing authority's rules (*section 77(6)(a)*) and may include provisions for transferring licensing fees to the new authority (*section 77(6)(b)*). *Section 77(8)* provides that the Lord Chancellor may only make an order under this section on the recommendation of the Board, and only one that is materially the same as the order drafted by the Board.

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Section 78: The Board's power to recommend orders made under section 77

201. This section provides for the process that must be followed by the Board if it wishes to make a recommendation that the Lord Chancellor exercise the powers conferred under section 77.

Section 79: Cancellation of designation: powers of entry etc

202. Where an approved regulator has its designation cancelled, this section provides for the Board to request assistance from the former licensing authority to enable regulation by the new licensing authority to continue. *Section 79(3) to 79(10)* make provision for the Board to obtain a warrant to enter and search the premises of the former licensing authority and to take possession of written or electronic records where necessary or desirable to enable regulation to continue. The Lord Chancellor must make regulations, either on the Board's recommendation or after consulting it, which specify further matters that the judge must take into account before issuing a warrant, which regulate the exercise of the warrant power and set out the circumstances in which records can be copied.

Section 80: Functions of appellate bodies

Section 81: Procedural requirements relating to recommendations under section 80

203. Section 80 allows the Lord Chancellor, on the Board's recommendation, to establish appellate bodies by order, or to modify the operation of the Solicitors Disciplinary Tribunal or the Discipline and Appeals Committee of the CLC, for the purposes of appeals under Part 5. The order may also make provision about fees and costs and may make modifications to any enactment. The order must be in a form that is not materially different from the draft attached to the recommendation by the Board under section 81.

204. Section 81 sets out procedural requirements about recommendations by the Board for an order under section 80.

Section 82: Licensing authority policy statement

205. Section 82 requires licensing authorities to issue and publish policy statements setting out how they will comply with the regulatory objectives when carrying out their functions under Part 5. These statements have to be approved by the Board, as do any amendments or replacement statements.

Section 83: Licensing rules

206. This section requires the Board, acting in its capacity as a licensing authority, to make suitable licensing rules (which mean suitable regulatory arrangements as defined in Schedule 12) within a period of 12 months from a decision of the Board under Schedule 12 that a licensable body is entitled to apply to it for a licence. Under Schedule 12, such a decision would be made because no other approved regulator has suitable regulatory arrangements in relation to the body in question, or in the case of certain non-commercial bodies (as listed in sub-paragraph (6) of paragraph 1 of Schedule 12), no other approved regulator is prepared to offer appropriate terms. Those rules must be made or modified by the Board acting as licensing authority, with the approval of the Board acting in its capacity as oversight regulator rather than licensing authority or approved regulator. *Section 83(3)* provides that licensing rules made by an approved regulator only have effect while that regulator is also a licensing authority. *Section 83(4)* defines licensing rules. *Section 83(5)* details the

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provisions that must be contained in licensing rules, including conduct, discipline and practice rules; appropriate provision requiring the licensing authority to take account of the objective of improving access to justice of a proposed application for a licence; the regulatory conflict provisions of sections 52 and 54; and the complaint handling provisions of sections 112 and 145. *Section 83(7)* introduces **Schedule 11**, which makes further provision as to licensing rules. *Sections 83(8) and 83(9)* provide that the licensing rule requirements in section 83(5) and Schedule 11 are subject to sections 105 and 106, which make special provision in relation to trade unions and other special bodies.

207. Schedule 11 describes licensing rules in detail. It has four parts, dealing with licensing procedure, the structural requirements of licensed bodies, the practice requirements of those bodies, and their regulation. Decisions about individual licences are taken by licensing authorities without reference to the Board or the Lord Chancellor.

208. Part 1 of this Schedule outlines licensing procedures.

209. Section 84 (described below) sets out the basic conditions for the way licensing authorities must deal with applications for licences. Part 1 of the Schedule makes detailed provision about licensing decisions. Under paragraphs 1 to 6 licensing rules must include provision about how an application for a licence, or for the modification of a licence, should be made, and they may include provision as to the period for which a licence is to remain in force and the renewal of licences.

210. Paragraphs 7 and 8 make provision in similar terms to that described above in relation to applications under section 106, which deals with the power to modify the application of licensing rules to the special bodies detailed in section 106. In particular, licensing rules must make provision obliging a special body to notify the licensing authority where it becomes a different kind of special body or ceases to be a special body, within 30 days or a longer period provided for in the licensing rules.

211. Part 2 of the Schedule outlines the three basic structural requirements that must be covered in the licensing rules. Paragraphs 9 and 10 require all licensed bodies to have at least one manager who is an authorised person, who can be either an individual or an entity (which is not a licensed body); prohibit a licensed body having a manager who is disqualified (provision about disqualification can be found in section 99); permit licensing rules to be made about managers; and prohibit licensing rules from specifying that all the managers must be authorised persons.

212. Paragraphs 11 and 12 require licensing rules to provide that licensed bodies must also have a designated Head of Legal Practice (HoLP) who is approved by the licensing authority, is an authorised person and not disqualified. Under sub-paragraph (4) of paragraph 11, a HoLP may be approved only if the person is fit and proper to undertake the duties set out in section 91. Paragraph 12 requires provision in the rules about the procedures and criteria that the licensing authority will apply in determining whether a person is fit and proper, and in determining whether to withdraw its approval of the person as fit and proper. It also requires that licensing authorities make provision for review of these decisions. Paragraph 12 also allows the rules to suspend the requirement to have a HoLP for a specified period, so long as the licensed body complies with other requirements set out in the rules.

213. Paragraphs 13 and 14 make similar provision in relation to the requirement to have a designated Head of Finance & Administration (“HoFA”) approved by the licensing authority.

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214. Part 3 of the Schedule outlines practice requirements. Licensing rules must cover four basic practice requirements:

- under paragraph 15 a licensed body that is not a company or limited liability partnership with its registered office in England or Wales must have a practising address which is a place in England & Wales where the body carries out some or all of the reserved legal activities for which it is licensed;
- under paragraph 16 licensed activities may be carried on only by or under the supervision of entitled persons;
- under paragraph 18 disqualified persons may not work in licensed bodies as employees or officers; and
- under paragraph 20 clients' money must be accounted for.

215. Paragraph 17 requires licensing rules to require licensed bodies to have suitable arrangements in place to ensure that:

- they, and their managers and employees, comply with the duties in section 176,
- they, and such of their managers and employees as are authorised persons, maintain the professional principles set out in section 1; and
- non-authorised persons subject to the duty in section 90 comply with it.

216. Paragraph 19 provides that for the purpose of giving effect to indemnity and compensation arrangements, licensing rules may make provision authorising or requiring funds to be maintained by the licensing authority, insurance to be taken out by the licensing authority, or insurance to be taken out by licensed bodies.

217. Under paragraph 21 of the Schedule, all licensed bodies must pay periodic licensing fees, although different fees can be set for different kinds of body.

218. Part 4 of the Schedule covers a number of areas of regulation of licensed bodies. Descriptions of the various paragraphs in this Part are included within the sections to which they relate.

Section 84: Application for licence

219. This section sets out the way licensing authorities must deal with applications for licences. Licensing authorities must determine applications that come from licensable bodies with the required fee and may not grant an application unless they are satisfied that the body will comply with licensing rules. Under *section 84(4)* licensing authorities must issue the licence as soon as reasonably practicable after the application has been granted and under *section 84(5)* the licence has effect from that date. Applications for licences may only be made to the Board (acting in its non-licensing authority capacity) under **Schedule 12**.

220. The Schedule deals with the limited circumstances in which licensable bodies can apply to the Board for a licence. That is when:

- there is no competent licensing authority, and none that is potentially competent (sub-paragraph (3) of paragraph 1) – “competent” and “potentially competent” are defined in paragraphs 5 and 6 as an approved licensing authority that is designated or which

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the Board anticipates becoming designated in relation to the reserved legal activities that the body proposes to carry out;

- no licensing authority or potential licensing authority has or plans to have suitable regulatory arrangements (sub-paragraph (4) of paragraph 1). Licensable bodies can apply to licensing authorities for determinations of this ground under paragraph 3, and paragraph 7 defines the factors to be taken into account in considering whether arrangements are suitable; or
- if the body is of a kind listed in sub-paragraph (6) of paragraph 1 (not for profit bodies, community interest companies, trade unions and prescribed bodies), no licensing authority has terms that are appropriate to it (sub-paragraph (5) of paragraph 1).

221. Paragraph 2 then specifies that the Board must determine whether the licensable body is entitled to apply to it for a licence and give reasons for its decision. Different timescales for the determination apply to each of the grounds (sub-paragraph (2) of paragraph 2). The Board is obliged to make rules providing for a review of its decision, in particular for cases where the ground for its decision no longer applies (sub-paragraphs (4) and (5) of paragraph 2).

Section 85: Terms of licence

222. This section prescribes what terms licences must contain when they are granted. Every licence must specify the reserved legal activities that the licensed body is licensed to carry on, and any conditions attached to the licence (*section 85(1)*). Under *sections 85(4) and 85(5)* one condition is obligatory: that the licensed body or any employee, manager etc, must comply with obligations imposed on them by the licensing rules or in legislation. The licensing authority may impose such other conditions as it considers appropriate (*section 85(6)*), including conditions as to the non-reserved activities that a licensed body may carry out (*section 85(7)*). If the body is one for which an order has been made under section 106, *section 85(2)* requires the licence also to set out the terms of the order.

Section 86: Modification of licence

223. This section provides for modification of licences where an application is made in accordance with licensing rules or where licensing rules allow modifications to be made in other circumstances (*section 86(1)*). Under *section 86(3)* modifications are made by notice in writing. Under *section 86(4)*, licensing authorities' powers are subject to the constraints as to conditions set out in section 85 and licensing rules about modification of licences.

Section 87: Registers of licensed bodies

224. This section sets out requirements for registers of licensed bodies. Each licensing authority must keep a register of the names and places of business of all the bodies that it licenses or has licensed (*section 87(1)*) and must make a note of any suspensions in that register (*section 87(2)*). The register must be available for inspection free of charge, during office hours (*section 87(3)*). The Board may make other rules about its own and licensing authorities' registers, in particular about other information that registers should contain (*sections 87(4) and 87(5)*).

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Section 88: Evidence of status

225. Under this section a signed certificate of a licensing authority stating that a person does or does not, or did or did not, hold a licence granted by the licensing authority, is evidence of those facts unless proved otherwise.

Section 89: Ownership of licensed bodies

226. **Schedule 13**, introduced by this section, deals with the ownership of licensed bodies. Section 105 provides that this Schedule does not apply to trade unions.

227. Schedule 13 imposes restrictions on the holding of certain types of interests in licensed bodies (restricted interests) by non-authorised persons. Any non-authorised persons holding, or seeking to hold, restricted interests, must be approved by the licensing authority before the body can be licensed. Once the body is licensed any further acquisition or holding of restricted interests by non-authorised persons must also be approved.

228. The main type of restricted interest is a material interest (Schedule 13, paragraph 3), which arises when a person:

- has an interest in at least 10% or more of the shares in it or in its parent company;
- can exercise or control the exercise of 10% of the voting rights in (or, in some cases, has power to direct the policy of) it or its parent company; or
- can exercise significant influence over the management of the company or its parent company by virtue of their shareholding or voting power in it.

229. If they wish, licensing authorities can make licensing rules specifying a lower proportion than 10% for defining material interest (sub-paragraph (2) of paragraph 3).

230. Licensing rules may provide for a second type of restricted interest, a “controlled interest”. This is a shareholding in the licensed body or a parent undertaking of a percentage specified in licensing rules, or an entitlement to exercise or control the exercise of voting power in a licensed body or parent undertaking of a percentage specified in licensing rules. Licensing rules may only specify a percentage which exceeds the percentage which constitutes a material interest.

231. For the purposes of deciding whether a person has material interest or a controlled interest in a licensed body, account may be taken of interests held by a person’s associates, who are defined in paragraph 5. The Lord Chancellor has power in paragraph 9 to change the definitions of “material interest” and “associate”, on the Board’s recommendation.

232. Paragraph 6 sets out the approval requirements. A non-authorised person’s holding of a restricted interest will be approved if the licensing authority is satisfied that it would not compromise the regulatory objectives or compliance by the licensed body and such of its managers and employees who are authorised persons with the duties in section 176. The licensing authority must also be satisfied that the person is a fit and proper person to hold the interest. Licensing rules must include criteria and procedure for making this decision.

233. Paragraph 7 provides that if a person holds a restricted interest by virtue of holding a certain percentage of a body’s shares or controlling a certain percentage of the voting power in a body, any restricted interest held by virtue of a lesser percentage of shares (where the approved interest is in the form of shares) or voting power (where the approved interest is in

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the form of voting power) is also treated as being approved by the licensing authority. For example, if the material interest threshold is a 10% shareholding and the controlled interest threshold is a 20% shareholding, a person who is approved to hold a controlled interest will also be approved in relation to the material interest.

234. Part 2 covers the identification to licensing authorities of non-authorised persons, and the approval of those persons. At the initial licensing stage, a body seeking a licence must identify any person that it knows holds a restricted interest or expects to hold one when the licence is issued, (sub-paragraphs (1) and (2) of paragraph 10). This includes telling the licensing authority if the identities of such people change after the application has been made (sub-paragraph (2) of paragraph 10). Failing to do so is an offence, punishable on summary conviction by a fine up to level 5 on the standard scale.

235. Under paragraph 13, the applicant body must also notify the non-authorised persons whom it has identified to the licensing authority. Failure to do this is also an offence, punishable in the same way. The notification must explain the effect of paragraph 14, which enables the licensing authority to seek more information from non-authorised persons who have been identified. The deliberate provision of false or misleading information is an offence, punishable by a fine not exceeding the statutory maximum on summary conviction or by a fine and/or two years in prison on conviction on indictment.

236. If the licensing authority is satisfied that the non-authorised person meets the approval requirements in paragraph 6, and that the person has not been disqualified, it may grant the application for a licence. The licensing authority may also approve the holding of the interest subject to conditions (paragraphs 17 and 18), or it may object to the holding of the interest (paragraphs 19 and 20).

237. After a licence has been granted, the acquisition of interests by non-authorised persons is still regulated in the manner set out in part 3 of the Schedule. Under paragraph 21, if an investor intends to take steps to acquire an interest in a licensed body that would give the investor a restricted interest in it, the investor must notify both the licensed body and the licensing authority. Where the investor acquires an interest without taking steps to do so – for instance, by inheriting it – the investor must give the notifications within a time limit set by the Lord Chancellor on the Board’s recommendation. Under paragraphs 22 and 23, failure to give notification is an offence, punishable on summary conviction by a fine of level 5 on the standard scale. Taking a proposed acquisition step without obtaining approval from a licensing authority is also an offence, punishable by a fine not exceeding the statutory maximum on summary conviction or by an unlimited fine and/or two years in prison on conviction on indictment (paragraph 24).

238. Again, the licensing authority may approve the holding of the interest, approve it subject to conditions, or object to it. The procedure and criteria for this are set out in paragraphs 25 to 32. Where the licensing authority approves a proposed interest (with or without conditions) it may specify a period within which the investor must acquire it. If it does not, the period is automatically one year from the date of the approval notice. If the investor does not acquire the interest by the deadline, the approval lapses (paragraph 30).

239. The licensing authority also has power to impose conditions on, or object to the holding of an interest after it has been acquired. The procedure and criteria for this are set out in paragraphs 33 to 37.

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240. Conditions imposed under either paragraph 28 or paragraph 33 may be varied or waived on application by the investor, (sub-paragraph (1) of paragraph 35). In addition, the licensing authority may cancel a condition on its own initiative, (sub-paragraph (2) of paragraph 35).

241. Part 4 of the Schedule enables licensing rules to be made specifying an upper “ceiling” limit for the holders of shares in licensed bodies by a non-authorised person. If such a limit is imposed, no non-authorised person may exceed it, regardless of whether or not they meet the approval requirements at paragraph 6.

242. Part 5 of the Schedule deals with enforcement. The “divestiture” provisions enable the court, on application of a licensing authority, to order the sale of shares held by a person who holds an interest in a licensed body. This may be done in the following circumstances:

- where an investor has taken steps to obtain an interest without the licensing authority’s approval – this can lead to divestiture even if the investor has not been charged with or convicted of the offence under paragraph 24;
- where an investor holds a restricted interest in breach of conditions imposed under paragraphs 17, 28 or 33; and
- where an investor holds an interest to which the licensing authority has objected under paragraphs 31 or 36.

243. The court may also order the sale of shares where a non-authorised person’s shareholding exceeds any ceiling imposed by licensing rules made under Part 4 of the Schedule.

244. Divestiture is limited by paragraph 41 to licensed bodies that are companies with shares. The number of shares the court may order to be sold is limited – essentially only as many as necessary to ensure that the person is no longer in breach of the requirements of the Schedule (sub-paragraphs (2) and (3) of paragraph 45). If the court orders shares to be sold, it may make whatever other orders it sees fit as to the sale or transfer of the shares (sub-paragraph (6) of paragraph 45). The proceeds of sale have to be paid into court for the benefit of whomever is beneficially interested in them – usually the investor – and any such person may apply for part or all of the proceeds. The cost of conducting the sale is first deducted from the proceeds (sub-paragraph (7) of paragraph 45).

245. Where the conditions for divestiture are satisfied, paragraph 44 allows the licensing authority to issue a restriction notice imposing certain restrictions on the shares. It is expected that a restriction notice will be issued when the licensing authority believes that it must act as a matter of urgency before an application for divestiture to the High Court. The restrictions which may be imposed are:

- any transfer of the shares or agreement to transfer them is void (including transfer of the right to receive unissued shares),
- the shares’ voting rights cannot be exercised,
- no further shares can be issued to the investor, or
- the investor cannot be paid any sums due on the shares (dividends etc), unless the company goes into liquidation.

*These notes refer to the Legal Services Act 2007 (c.29)
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246. A restriction notice ceases to have effect after a High Court order (the court may make such an order on an application for sale of the shares); if no application has been made to the court for divestiture within a prescribed time limit on the expiry of that time limit, or when the licensed body ceases to be licensed.

247. The court may also remove any restrictions imposed under paragraph 45, set out in sub-paragraph (4) of paragraph 46.

248. Divestiture will not always be possible. Paragraph 46 provides an alternative mechanism for enforcement in a case where a person holds a restricted interest in breach of any conditions imposed on the holding of that interest. The licensing authority may apply to the High Court for an order enforcing the conditions.

249. Paragraphs 47 to 50 provide for the Board to be notified of decisions under this Schedule to object to a person holding an interest, or to impose conditions on their holding it. Paragraph 51 requires the Board to maintain lists of persons who have been subject to objections and conditions, which will be available to licensing authorities and, will enable them to make informed regulatory decisions.

Section 90: Duties of non-authorised persons

250. Section 90 imposes a duty on non-authorised persons who are employees or managers of, or have certain interests in, a licensed body, not to do anything that would cause or substantially contribute to a breach by the licensed body or an authorised person within it of the duties in section 176. Section 176 requires persons regulated by an approved regulator to comply with the regulatory arrangements of that regulator.

Section 91: Duties of Head of Legal Practice

Section 92: Duties of Head of Finance and Administration

251. Sections 91 and 92 describe the duties of the HoLP and HoFA respectively, further provision about these roles is made in Schedule 11. The HoLP must take all reasonable steps to ensure compliance with the terms of the licensed body's licence, and that the licensed body and employees or managers of the body who are subject to the duties under section 176 comply with them, and to ensure that non-authorised persons comply with the duty under section 90. The HoLP must report any failures to do so to the licensing authority as soon as reasonably practicable.

252. The HoFA's duty under section 92 is to ensure that the licensed body complies with the accounts rules in the licensing rules; they must, like the HoLP, report failures to do as soon as practicable. *Section 91(2)* therefore excludes accounts rules from the HoLP's responsibilities.

Section 93: Information

Section 94: Enforcement of notices under section 93

253. These sections deal with the information that a licensing authority may require from a licensed body and others to determine whether the terms of its licence are being complied with. The licensing authority may require information or documents (*section 93(1)*) from the body itself and any manager, officer or employee, and from any non-authorised person who holds a material interest in the body, *section 93(2)*. Requests for information are made by notice, which can specify the form in which the information is to be provided and set a

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deadline for doing so, and also inform the provider of the information to whom it must be provided, as set out in *section 93(3)*.

254. The licensing authority can require those persons, or a representative, to give an explanation of that material (*section 93(4)*). It may pay reasonable expenses to cover the cost of providing information and of attending to provide an explanation (*section 93(5)*). It may also copy or take extracts from any documents it receives (*section 93(6)*).

255. If persons asked for information under section 93 cannot provide it, they must give the licensing authority an explanation (*section 94(1)*). If a person fails to comply with a request, the licensing authority may apply to the High Court for an order compelling that person to comply (*section 94(2)*).

Section 95: Financial penalties

256. This section allows licensing authorities to impose financial penalties for breaches of licences, up to a maximum set by the Board in rules made with the Lord Chancellor's consent. Penalties are payable to the licensing authority. Under paragraph 22 of Schedule 11, licensing rules must make provision as to the acts and omissions in respect of which the licensing authority may impose a penalty, and the criteria and procedure to be applied.

Section 96: Appeals against financial penalties

257. Licensed bodies may appeal to the relevant appellate body (defined in section 111) against financial penalties. Appeals have to be made within a deadline set by the Board in rules. There are limited grounds for appeal, (*section 96(2)*):

- that the imposition of the penalty was unreasonable in all the circumstances,
- that the amount of the penalty was unreasonable, and
- that the payment timetable was unreasonable.

258. The appellate body can quash the penalty, reduce it, or change the payment timetable (*section 96(3)*). If it reduces the penalty or changes the timetable, it may add interest to the whole of the penalty or part of it (*sections 96(4) and 96(5)*). Further appeals to the High Court on a point of law are possible under *section 96(6)*, and the High Court can then make any order it thinks fit (*section 96(7)*). *Section 96(8)* prevents penalties being challenged by any other means.

Section 97: Recovery of financial penalties

259. This section describes the process for recovering financial penalties that have not been paid on time. In general, if a payment is late, and so long as no appeal is pending, it is recoverable as a civil debt under *section 97(2)*. Interest is added automatically under *section 97(1)* and can be recovered alongside the basic penalty. All recovered penalties have to be paid into the Consolidated Fund (*section 97(3)*).

Section 98: Referral of employees etc to appropriate regulator

260. This section allows licensing authorities to refer the conduct of licensed bodies' employees, managers, HoLPs and HOFAs to appropriate regulators – any relevant approved regulators for authorised persons, and any other regulator for persons who are not. The licensing authority may also refer such conduct matters to the Board.

Section 99: Disqualification

261. This section provides that people can be disqualified from being employees or managers of licensed bodies, or from holding the HoLP or HoFA posts, if they breach the duties that the Act places on them or cause or contribute to breaches of the body's licence.

262. Under paragraph 23 of Schedule 11, licensing authorities must have rules about the criteria and procedure to be used when considering whether to disqualify someone under this section. This includes rules for reviewing disqualifications and how to determine whether they should cease to have effect.

Section 100: Lists of disqualified persons

263. This section requires the Board to keep lists of persons who are disqualified under section 99 and whose disqualification remains in force. *Section 100(3)* provides that a disqualification will no longer be in force if the appropriate licensing authority determines that it should not be, whether after a review or otherwise. If a person was disqualified by a regulator that is no longer a licensing authority, a successor authority can decide that the disqualification is no longer in force (*section 100(4)*). Under *section 100(5)*, the successor authority is either the licensing authority that currently licenses the body where the disqualified person was working, or (if that is impossible) another authority designated for the purpose by the Board on the disqualified person's application. *Section 100(6)* requires the Board to publish the lists.

Section 101: Suspension and revocation of licence

264. This section provides that a licensing authority can suspend or revoke any licensed body's licence. Paragraph 24 of Schedule 11 requires licensing rules to empower the licensing authority to do this in the following circumstances:

- paragraph 24, sub-paragraph (3): if a body is no longer a licensable body;
- paragraph 24, sub-paragraph (4): where the licensed body fails to comply with licensing rules, under paragraph 16 of Schedule 11 (reserved legal activities must be carried on through an entitled person);
- paragraph 24, sub-paragraph (5): where non-authorized persons hold interest in licensed bodies in breach of Schedule 13,
- paragraph 24, sub-paragraph (6): where a non-authorized person breaches the duties in section 90;
- paragraph 24, sub-paragraph (7): where an employee or manager who is an authorised person fails to comply with the duties under section 176;
- paragraph 24, sub-paragraph (8): where a licensed body has a manager or employee has been disqualified from acting as a manager or employee, on specified grounds; and
- paragraph 24, sub-paragraph (9): where a licensed body is unable to comply with the licensing rules about the HoLP or HoFA.

265. A licensing authority must give at least 28 days notice of its intention to suspend or revoke a licence, in accordance with sub-paragraphs (10) and (11) of paragraph 24.

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266. Paragraph 25 allows licensing authorities to make rules about other circumstances in which it may suspend or revoke a licence.

267. Under paragraph 26 licensing rules must also include provisions about the criteria and procedure to be used when deciding on any suspension or revocation under paragraphs 24 or 25, and must provide for a review of that decision.

Section 102: Intervention

268. This section introduces **Schedule 14** which makes provision about the circumstances in which a licensing authority may intervene in the practice of a licensed body, and the powers exercisable upon intervention. The intervention grounds and powers are based on those available to the Law Society and the Council for Licensed Conveyancers (CLC) under the Solicitors Act 1974 and Administration of Justice Act 1985 as amended by Schedules 16 and 17 of this Act.

269. Paragraph 1 of the Schedule provides that a licensing authority may intervene in a licensed body as set out in the Schedule where a licence granted to a body has expired or where one or more of the conditions set out at sub-paragraph (2) of paragraph 1 are satisfied.

270. Under sub-paragraphs (5) and (6) of paragraph 1, the powers in the Schedule are exercisable in relation to a body whose licence has been suspended or revoked, or whose licence has expired or ceased to have effect.

271. Paragraph 2 provides that a licensing authority can apply to the High Court for an order to prohibit a person who is holding money on behalf of a licensed body from making any payment of that money, unless they have the leave of the High Court to do so.

272. Under paragraph 3, certain sums of money held by or on behalf of the licensed body, and the right to recover or receive them, can be vested in the licensing authority for people who are beneficially entitled to them. The sums of money are then held on trust by the licensing authority for persons that are beneficially entitled to them, and for use in exercising its intervention powers. Sub-paragraphs (5) to (9) of paragraph 3 set out procedure relating to such vesting, and procedure by which the licensing authority must give the licensed body, and anyone else who has money that is subject to the decision, a copy of the decision and a notice prohibiting any payments out of the money. Sub-paragraph (6) of paragraph 3 allows the body and anyone else who receives the notice to apply to the High Court to contest the licensing authority's decision. If the licensed body or other person breaches the notice, it commits an offence and is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

273. Under paragraph 4, a licensing authority may decide that the right to recover debts of the licensed body should vest in it.

274. Paragraph 5 requires the licensing authority to put any money that it receives by virtue of these vesting powers into a special account in either its name or the name of a nominated person. The money is held on trust for persons beneficially entitled, and for use in exercising the intervention powers. Paragraph 6 enables the licensing authority to make rules governing the treatment of such money, particularly where, despite reasonable steps by the licensing authority, beneficiaries cannot be traced.

275. Paragraph 7 allows a licensing authority to apply to the High Court for an order requiring a person to give the licensing authority information about any money held by that

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person on behalf of a licensed body, and the accounts in which it is held. Licensing authorities may also require information that is relevant for tracing purposes.

276. A licensing authority may also give notice to a licensed body requiring it to produce all the documents in its possession or under its control relating to its activities as a licensed body, or to certain trusts. Paragraph 8 sets out what the notice may require. Sub-paragraph (4) of paragraph 8 makes it an offence to refuse, neglect or otherwise fail to comply with the notice. Under sub-paragraph (6) of paragraph 8, a person found guilty is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale. However, it is not an offence if the licensing authority has made an application to the High Court for the production or delivery of the documents. Paragraph 9 sets out the procedure to be followed by the High Court in considering and implementing an order. Paragraph 10 sets out the procedure that a licensing authority must follow if it takes possession of documents under notice or order, as detailed in paragraph 8 and 9.

277. Under paragraph 11, a licensing authority may apply to the High Court for a Communications Redirection Order for a period not exceeding 18 months, which causes mail, telephone and electronic communications to be directed to the licensing authority, or to a person appointed by the licensing authority, who may take possession or receipt of the communications. Sub-paragraph (8) of paragraph 11 allows the licensing authority to apply to the High Court to take steps in relation to a licensed body's website, for the purpose of protecting the public interest and/or the interests of any current, former or potential clients of the body. Sub-paragraph (10) of paragraph 11 prevents licensing authorities from applying for these powers where they have intervened on the grounds of undue delay.

278. Paragraph 12 allows a licensing authority in possession of documents acquired through notices, orders, or communications redirection (paragraphs 8, 9 or 11) to apply to the High Court for an order to dispose of, or destroy, the documents. The High Court may make any order it thinks fit. Under paragraph 13 a licensing authority may take copies of, or extracts from, documents acquired through notices, orders or communications redirection.

279. Where a licensed body, or one of its managers or employees, is the trustee of any trust, paragraph 14 allows the licensing authority to apply to the High Court to order the appointment of a new trustee in substitution for that person.

280. Paragraph 15 allows the powers conferred by this Schedule in relation to sums of money and documents to be exercised despite any lien on them or right to their possession. Paragraph 16 allows the licensing authority to do all things that are reasonably necessary to facilitate the exercise of its powers under this Schedule.

281. Paragraphs 17 and 18 set out how the licensing authority may recover its intervention costs from the licensed body. Under paragraph 18, the licensing authority can apply to the High Court to recover costs from certain persons where the Court is satisfied that the conduct that led to the intervention was carried on with the consent or connivance of, or was attributable to any neglect on the part of, those persons.

Section 103: Regulatory conflict and the Board as licensing authority

282. This section provides that the rules about regulatory conflict in sections 52, 54 and 68 apply to the Board in its capacity as a licensing authority.

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Section 104: Prevention of regulatory conflict: accounts rules

283. This section ensures that a licensing authority's accounts rules (made under Schedule 11) apply to licensed bodies that are carrying on business through solicitors or licensed conveyancers. It does this by replacing the rules under the Solicitors Act 1974 or the Administration of Justice Act 1985 that would otherwise apply.

Section 105: Trade union exemptions

Section 106: Power to modify application of licensing rules etc to special bodies

Section 107: Modifications under section 106: supplementary

Section 108: "Low risk body"

284. These sections provide that certain types of body are eligible to apply for certain statutory requirements and/or licensing rules to be waived or otherwise modified in relation to them. Modifications are given effect by orders made by licensing authorities. The bodies in question are:

- trade unions – from which section 105 removes the HoLP and HoFA requirements and the ownership provisions in Schedule 13;
- not for profit bodies, defined in section 207 by reference to their charitable or public purpose and prohibitions on distributing income or assets to members;
- community interest companies;
- low-risk bodies – bodies in which levels of non-authorized control falls under a *de minimis* threshold, defined in section 108 as bodies where fewer than 10% of the managers are non-authorized persons, and the proportion of shares and voting rights held by non-authorized persons in less than 10%; and
- other bodies of types set out in an order made by the Lord Chancellor on the Board's recommendation.

285. In considering whether modifications are appropriate, the licensing authority must consider the legal activities the body aims to carry on, the people to whom it plans to offer services, any non-authorized persons who part-own or manage the body, and any other factors set out in the authority's licensing rules, as laid out in section 106(5). Some provisions cannot be modified at all; others cannot be waived but may otherwise be modified. Otherwise, licensing authorities have discretion to modify requirements in licensing rules and the application of Schedule 13 (*section 106(3)*), and can make whatever modifications are appropriate, whether or not they were what the body asked for (*section 106(4)*). Section 107 then sets out the circumstances in which a licensing authority can change modifications. Where the licensed body is no longer one to which section 106 applies, the licensing authority must revoke the modification order. Otherwise, it may revoke or modify an order if the licensed body requests it or on its own motion.

Section 109: Foreign bodies

286. This section allows the Lord Chancellor to adapt provisions in this Part of the Act in their application to bodies formed under law outside of England and Wales. A company formed under the law of a foreign country might, for example, have different ownership structures for which the Part 5 provisions need to be adapted.

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Section 110: Reporting requirements relating to Part 5

287. Section 110 obliges the Board to include in its annual report (section 6) an assessment of how the activities of licensing authorities and licensed bodies have affected the regulatory objectives. The requirement is not imposed from the first annual report but instead takes effect in the first financial year in which an ABS licence is issued.

Section 111: Interpretation of Part 5

288. This section defines some provisions for the purposes of Part 5.

PART 6: LEGAL COMPLAINTS

289. This Part of the Act establishes an independent Office for Legal Complaints (OLC), which administers an ombudsman scheme that is empowered to deal with all complaints about lawyers and where appropriate, provide redress to complainants of up to £30,000. The ombudsman scheme operates by reference to rules devised by the OLC and approved by the LSB – “scheme rules”. Prior to commencement of the Act, approved regulators had the ability to provide redress to complainants. The Act removes this ability and confers it on ombudsmen. The ombudsman scheme is expressly prohibited from taking any disciplinary action against a lawyer, the power to do so remains solely with the approved regulators.

290. In this Part, provision is made for the appointment process and necessary qualifications of the members and staff of the OLC, and the Chief Ombudsman and assistant ombudsmen responsible for making determinations under the ombudsman scheme. Provision is also made for the accountability of the OLC through the Board, the framework of rules for the OLC’s operating procedures and the changes to the regulatory arrangements of approved regulators necessary in consequence.

291. The OLC’s membership must bring together a wide range of expertise and backgrounds. The OLC has a chairman and between six and eight members. The OLC is chaired by a lay person and the majority of its members are also lay persons. The OLC is responsible for administering the ombudsman scheme and it sets policy and rules in relation to complaints handling to ensure that best practice is promoted.

292. The OLC is accountable to the Board in respect of its targets and funding. OLC members are appointed by the Board (in the case of the chairman, with the Lord Chancellor’s consent and, in the case of other members, after consultation with the chairman). In order to establish the ombudsman scheme the OLC must draw up draft scheme rules to be approved by the Board. The OLC itself appoints the Chief Ombudsman, and, with the consent of the Chief Ombudsman, may also appoint assistant ombudsmen as necessary.

Complaints Handling – the previous position

293. Prior to commencement of the Act, each of the approved regulators maintained its own complaints handling and disciplinary arrangements. A complainant who was dissatisfied with the way in which a complaint had been handled could refer the complaint to the Legal Services Ombudsman (LSO), who could ask an approved regulator to reconsider a complaint.

294. The following bodies were subject to the jurisdiction of the LSO:

- the Law Society (also subject to the jurisdiction of Legal Services Complaints Commissioner),

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- the Bar Council,
- the Council for Licensed Conveyancers,
- the Institute of Legal Executives,
- the Institute of Trade Mark Attorneys, and
- the Chartered Institute of Patent Attorneys.

295. Under the previous complaints system, anyone who wished to complain about a person regulated by any of the organisations listed above would need to establish and make contact with the appropriate regulatory body. In the event that a complainant was not satisfied with the way in which a complaint had been handled by the appropriate regulatory body they could refer their complaint to the LSO. The LSO investigated the way in which the complaint was handled and the response from the professional body. If the LSO believed that a complaint had not been investigated properly, they could recommend that the professional body looked at the matter again. The LSO also had the power to re-investigate a complaint – in 2006 the LSO widened an investigation to look at the original complaint in less than 1% of cases.¹⁵

296. Sir David Clementi's *Review of the Regulatory Framework for Legal Services in England and Wales*, published in 2004,¹⁶ observed that there were a number of issues which arise from the manner in which complaints were dealt with under those previous arrangements:

- the record of complaints handling by the approved bodies – substantial delays and questionable quality in terms of outcome,
- the low level of consumer confidence in the independence of the system,
- the inconsistency and lack of clarity for redress arrangements for consumers in respect of regulatory bodies with overlapping activities, and
- the overlaps in the oversight regime.

297. Sir David concluded:

“There is a considerable concern about how complaints are dealt with. The concern arises at a number of levels: at an operating level there is an issue about the efficiency with which the systems are run; at an oversight level there is a concern about the overlapping powers of the oversight bodies; and at a level of principle, there is an issue about whether systems for complaints against lawyers, run by lawyers themselves, can achieve consumer confidence.”¹⁷

¹⁵ Legal Services Ombudsman, 2005

¹⁶ Clementi, 2004

¹⁷ Clementi, 2004

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298. The Government's 2005 White Paper, *The Future of Legal Services: Putting Consumers First*¹⁸ proposed the creation of an independent Office for Legal Complaints (OLC), which would be comprised of a management Board and a single complaints handling body that would provide redress for consumers, both of which would enhance consumer confidence in the complaints process.

Complaints Handling – the new system

299. The OLC and ombudsman scheme have clearly defined powers. The ombudsman scheme can deal with consumer complaints about any services provided by authorised persons – that is persons (including bodies) regulated (in relation to a reserved legal activity) by approved regulators. Ombudsman and/or OLC staff investigate complaints, and must refer any indication or allegation of misconduct to the relevant approved regulator (which retains power to take disciplinary action). The ombudsmen may monitor the decisions that are made in respect of the alleged misconduct, but are not able to take any disciplinary action themselves. If necessary, an ombudsman may report any concerns to the Board for its consideration.

300. All authorised persons are required to maintain in-house complaints handling arrangements. These are the first port of call for a consumer, and the ombudsman scheme does not consider complaints that have not been considered in-house in the first instance, except in very limited circumstances as may be set out in scheme rules. If the complaint is not resolved satisfactorily in-house, the consumer is able to bring complaints to the ombudsman scheme free of charge.

301. The handling of complaints is the responsibility of the ombudsmen (headed by the Chief Ombudsman), although the Act enables certain functions, for example, investigations, to be delegated to members of staff who are not ombudsmen. However, the determination of complaints cannot be delegated. The OLC is responsible for making scheme rules by which the complaints handling scheme operates, but the Act generally envisages that, in the first instance, a complaint will be allocated to a case worker who will investigate and attempt to mediate the complaint.

302. The Chief Ombudsman and assistant ombudsmen become involved where mediation by a caseworker has not been successful, in which case, an ombudsman is responsible for making a final determination which, if accepted by the complainant, is final and becomes binding on all parties to the complaint.

303. When determining a complaint, the ombudsman may direct the respondent to do one or more of the following:

- apologise to the complainant;
- forego all or part of the respondent's fee;

¹⁸ Department for Constitutional Affairs, 2005

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- pay the complainant a determined amount to compensate for any loss, inconvenience or distress;
- correct or redo any work responsible for any error, omission or deficiency at their own expense (with no charge to the complainant); or
- at their own expense, take such other action as is specified in the direction and in the interest of the complainant.

304. The “total value” of the orders together cannot exceed more than £30,000 (not including any amount by way of repayment of fees, or any interest, the rates for which will be set out in scheme rules).

305. The costs of the OLC and the ombudsman scheme are recouped from the legal professions by a combination of a general levy on approved regulators, and case fees payable in circumstances specified in scheme rules by individual respondents to complaints.

306. The detail of the way in which complaints will be dealt with under the ombudsman scheme is set out in scheme rules (the power to make those rules is set out at section 133).

Section 112: Complaints procedures of authorised persons

307. This section provides that each approved regulator must require each authorised person subject to its regulation to maintain in-house complaints procedures, and must make provision for the enforcement of this requirement. The provisions made by the approved regulator must satisfy any requirements specified by the Board.

Section 113: Overview of the scheme

308. *Section 113(1)* describes the purpose of the ombudsman scheme which is to be established; namely the resolution of complaints which relate to an act or omission of a person in carrying out an activity and which are within the jurisdiction of the scheme (as defined by section 125).

309. *Section 113(2) to 113(4)* define the boundary between the ombudsman scheme and the regulatory arrangements of an approved regulator or the Board (in its capacity as a licensing authority). Awarding redress to a complainant is reserved to the ombudsman scheme (section 157), and the taking of disciplinary action is reserved to the approved regulators (or the Board when acting in that capacity).

Section 114: The Office for Legal Complaints

310. This section provides for the establishment of the OLC.

311. **Schedule 15** makes provision for such structural matters as the membership of the OLC, the terms of appointment and tenure of members, staffing, committees, the delegation of functions, the OLC’s status, budget and accounting requirements, and the initial location of its principal office.

312. Sub-paragraph (1) of paragraph 1 of the Schedule provides for the OLC to consist of a chairman appointed by the Board with the approval of the Lord Chancellor, and between six and eight other persons appointed by the Board following consultation with the chairman.

313. Paragraph 2 provides for the OLC to have a lay chairman and a lay majority, a lay person being defined as someone who has never been an authorised person. An “authorised

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person” for this purpose includes, by virtue of section 161, a person authorised by the claims management regulator under Part 2 of the Compensation Act 2006 to provide regulated claims management services. Under paragraph 3, an ombudsman may be a member (but not chairman) of the OLC, but ombudsmen must not make up the majority of the Board. In appointing members of the OLC, the Board must have regard to the desirability of securing that the OLC includes members who (between them) have experience in or knowledge of a range of the matters. Paragraph 4 lists these.

314. Terms of appointment for OLC members are set out in paragraphs 5 to 9, and are similar to those for members of the Board. Members must be appointed for a fixed period, which must not exceed five years. A person can be re-appointed once only. A lay member of the OLC who becomes an authorised person will for that reason cease to be a member of the OLC. The chairman may be removed from office by the Board, with the approval of the Lord Chancellor. The Board may also remove other OLC members, but only after consultation with the chairman. Sub-paragraph (2) of paragraph 8 limits the circumstances in which the Board can remove OLC members, essentially to those indicating unfitness or inability to discharge the functions of office.

315. 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 members in certain circumstances.

316. Paragraphs 13 to 17 enable the OLC to appoint staff to assist in the performance of its functions, and makes provision for their terms and conditions.

317. Paragraph 18 allows the OLC to make arrangements with those it considers appropriate to provide assistance to it or to the ombudsman. Arrangements can be made with approved regulators and include arrangements for assistance to be provided to an ombudsman in relation to the investigation and consideration of a complaint. In making such arrangements the OLC may pay those persons providing assistance.

318. Paragraphs 19 to 21 allow the OLC to establish committees and sub-committees to carry out any of its functions, and provide that a vacancy in any office or a defect in the appointment, or disqualification, of the chairman or any member is not to affect the validity of any act of the OLC.

319. Under paragraph 22 the OLC may delegate specified functions to any member of the OLC, any staff member of the OLC or any committee or sub-committee. However, the OLC will retain accountability for the exercise of its statutory functions.

320. Paragraph 23 sets out the arrangements for the OLC’s budget, which must be approved in advance by the Board. Paragraph 25 confers restricted borrowing powers on the OLC with the result that it can borrow money only with the consent of the Board or in accordance with general authorisation given by the Board. The Board can give the OLC consent, or a general authorisation, only with the consent of the Lord Chancellor.

321. By virtue of paragraph 24, the OLC must not acquire or dispose of an interest in land without the consent of the Lord Chancellor. Paragraph 24 applies for five years beginning with the day on which the first interim Chief Executive of the OLC is appointed under paragraph 10 of Schedule 22, or the first member of the OLC is appointed, whichever is first.

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322. Paragraph 26 sets out the requirements for the OLC's accounts. The OLC must keep proper accounts and proper records, and prepare an annual financial statement of accounts, with oversight by the Comptroller and Auditor General and ultimately Parliament.

323. Paragraph 27 sets out the OLC's status. As an independent body it is not to be regarded as having the same status as the Crown. The staff appointed under paragraph 13 are not to be regarded as servants or agents of the Crown or as enjoying the same status.

324. Paragraphs 31 to 33 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.

325. Paragraph 34 exempts the OLC, any member of the OLC, any ombudsman and any member of the OLC's staff from being liable for damages for anything done in the exercise of their functions. This exemption does not apply to anything done in bad faith or prevent an award of damages in respect of act which is unlawful as a result of section 6(1) of the Human Rights Act 1998.

Section 116: General obligations

326. The OLC, like the Board and the approved regulators, has a duty to act compatibly with the regulatory objectives in section 1, and to act in a way which it considers most appropriate to meet those objectives. It also has to have regard to the principles of best practice in relation to the administration of ombudsman schemes.

Section 117: Corporate governance

327. This section requires the OLC to have regard to generally accepted principles of good corporate governance in managing its affairs.

Section 118: Annual report

328. This section places a duty on the OLC to produce an annual report to be sent to the Board, reporting the extent to which, in the OLC's opinion, it has met the regulatory objectives. The report must include a copy of the annual report prepared by the Chief Ombudsman under section 123. This report will be laid before Parliament by the Lord Chancellor.

Section 119: Supplementary powers

329. This section makes standard provision empowering the OLC to do anything necessary for carrying out its functions.

Section 120: Reporting to the Board

330. This section empowers the Board to require a report from the OLC, separately from the annual report. This enables the Board to, for example, monitor the OLC's performance or to seek its views on a particular issue. The Board has a duty to publish any report made by the OLC under this section.

Section 121: Performance targets and monitoring

331. This section empowers the Board to set performance targets for the OLC in relation to any of its functions, or to direct it to set its own targets relating to its functions. *Sections*

*These notes refer to the Legal Services Act 2007 (c.29)
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121(3) and 121(4) state that any targets must be published. *Section 121(5)* allows the Board to monitor the extent to which the OLC has met these targets.

Section 122: Appointment of Chief Ombudsman and assistant ombudsmen

332. This section sets out the appointment process whereby the OLC must appoint a person (who must be a lay person, and who will cease to hold office if that person ceases to be a lay person) to act as Chief Ombudsman. The OLC may also appoint assistant ombudsmen with the consent of the Chief Ombudsman. Any person appointed must (by virtue of *section 122(4)*) have appropriate qualifications and experience. Although assistant ombudsmen, unlike the Chief Ombudsman, are not required to be lay persons, *section 122(3)* specifies that assistant ombudsmen must not carry out any reserved legal activity for reward during their period of appointment and *section 122(7)* requires the assistant ombudsman's terms and conditions to set out what consequences may ensue on breach of this condition. *Section 122(8)* makes provision for the terms and conditions of any ombudsman's appointment to be such as will ensure their independence, and *section 122(9)* (related to paragraph 27 of Schedule 15) makes it clear that an ombudsman is not a Crown servant.

Section 123: Annual report of Chief Ombudsman

333. *Section 123* requires the Chief Ombudsman to prepare a report each financial year on the discharge of the functions of the ombudsmen. The report is to comply with any requirements specified by the OLC (which the OLC must publish), and is to be included in the annual report which the OLC is required to produce by virtue of *section 118*.

Section 124: Additional reports of Chief Ombudsman

334. *Section 124* enables the OLC to require the Chief Ombudsman to prepare a report in respect of any other specified matter relating to the functions of the ombudsmen, as the OLC considers necessary.

Section 125: Jurisdiction of the ombudsman scheme

335. This section broadly defines what types of person are eligible to bring complaints to the OLC and who may be the subject of a complaint. A complaint will fall within the jurisdiction of the ombudsman scheme if:

- it is not excluded under *sections 126* or *127* (because the respondent's "in-house" complaints procedures have not been used, or the complaint is otherwise excluded by provision made in the scheme rules);
- if the respondent falls within *section 128* (i.e. the respondent was an authorised person at the relevant time); and
- the complainant falls within *section 128* and wishes to have the complaint dealt with under the scheme.

336. *Section 125(3)* prevents an authorised or other person from restricting in any contract or notice the right of a person to bring a complaint.

Section 126: Complaints excluded because respondent's complaints procedures not used

337. *Section 126(1)* provides that a complaint does not fall within the jurisdiction of the ombudsman scheme unless the complainant has first used the respondent's in-house

complaints procedure (defined in *section 126(2)*). *Section 126(3)* allows for the scheme rules to disapply *section 126(1)* in certain circumstances.

Section 127: Complaints excluded by scheme rules

338. *Section 127(1)* provides that the scheme rules may exclude certain described complaints from the jurisdiction of the scheme. *Section 127(2)* states that complaints cannot be excluded on the ground that they relate to any matter which could be dealt with under an authorised body's disciplinary arrangements.

Section 128: Parties

339. This section sets out further conditions as to the parties to a complaint to be handled by the ombudsman scheme. *Section 128(1)* defines the respondent as an authorised person in relation to a reserved legal activity; but it does not matter if the matter being complained about relates to a reserved legal activity or not. *Section 128(2) to 128(4)* set out the conditions for a complainant to be eligible. The first condition (*section 128(3)*) is that the complainant is not excluded (see *section 128(5)*) and is either:

- an individual, or
- a person (other than an individual) described in an order made by the Lord Chancellor, pursuant to a recommendation under *section 130*.

340. In addition to this, a complainant must also show that (*section 128(4)*):

- the respondent provided the services being complained about to the complainant directly;
- the respondent provided the services being complained about to an authorised person who procured them on the complainant's behalf (for example, where a solicitor instructs counsel);
- the respondent provided the services being complained about in their capacity as a personal representative or trustee and the complainant is the beneficiary of the property or trust;
- the respondent provided the services being complained about to a person acting on behalf of the complainant as their personal representative or trustee and the complainant is the beneficiary of the property or trust; or
- the complainant meets such other conditions as set out in an order made by the Lord Chancellor pursuant to a recommendation under *section 130*.

341. Under *section 128(5)*, a complainant is excluded from the ombudsman scheme if:

- the complainant is an authorised person in relation to a reserved legal activity, and procured the services to which the complaint relates on behalf of another person, (so that, for example, a solicitor who instructs counsel on behalf of a client may not complain about counsel),
- the complainant is a public body (defined in *section 128(7)*), or
- the complainant falls within an order made by the Lord Chancellor pursuant to a recommendation made under *section 130*.

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Section 129: Pre-commencement acts and omissions

342. This section makes transitional provision to cover cases where the act or omission complained of took place before commencement of the ombudsman scheme, so that the respondent will not have been an authorised person within the terms of the Act. Its effect is that the complaint will be within the jurisdiction of the scheme as long as the respondent was at the time a person who, after commencement, comes within the definition of “authorised person”.

Section 130: Orders under section 128

343. The Lord Chancellor is empowered to make an order under section 128(3)(b), (4)(d) or (5)(c) only on the recommendation of an interested body. The effect of these orders is for new categories of complainants or complaints to be included in or excluded from the scope of the ombudsman scheme’s jurisdiction. For these purposes the “interested bodies” are the OLC, the Board and the Consumer Panel. The Lord Chancellor may require those bodies to consider making a recommendation under this section. If the Lord Chancellor declines to accept a recommendation, the Lord Chancellor must publish reasons for doing so.

Section 131: Acts and omissions by employees etc

344. This section establishes vicarious responsibility in respect of matters which are the subject of complaints. Any act or omission by an employee which is in the course of their employment will, for the purposes of the ombudsmen scheme, be treated as an act or omission on the part of the employer as well as the employee. Similarly, an act or omission by a partner in a partnership, in the course of carrying on the partnership’s normal business in the usual way, will be treated as an act or omission of the partnership, unless the partner had no authority to act for the partnership and this was known to the person seeking to rely on the partnership’s liability.

Section 132: Continuity of complaints

345. This section makes provision to ensure that a complaint does not fail simply because of a change in membership of the partnership or body against which the complaint is made. This section also requires the OLC to make rules setting out the circumstances in which complaints can be continued where a legal person ceases to exist (for example, where a partnership is dissolved) but another person succeeds to the business, and for the continuation of a complaint by persons specified in scheme rules where a complainant dies or becomes unable to act.

Section 133: Operation of the ombudsman scheme

346. This section provides for the detailed framework for the ombudsman scheme to be determined by the OLC in scheme rules. It allows the OLC the flexibility to adapt its procedures in line with changing notions of best practice. The rules made by the OLC under this section will determine how complaints are to be made and how they are investigated, considered and determined by the ombudsman. Procedures for making scheme rules, including requirements as to consent and prior consultation, are set out in sections 155 and 205.

347. *Section 133(1)* provides a broad duty to make scheme rules. *Section 133(2)* requires scheme rules to establish time limits for the making of complaints, and allows for the possibility of extension in circumstances specified in the rules. *Section 133(3)* lists areas in

which the OLC may wish to make rules. This list is intended purely as an indicative one, and not to limit the breadth of the OLC's power to make rules in other areas or to require them to make rules in the areas specified. *Section 133(4)* provides further detail about the circumstances in which rules may provide for complaints to be summarily dismissed (one of the matters listed in *section 133(3)*). *Section 133(5)* prevents the power to make scheme rules from being used to compel disclosure where a person could not be so compelled in civil proceedings before the High Court. *Section 133(6)* enables scheme rules to provide for awards of costs to bear interest at such rate as specified in or determined in accordance with the rules.

Section 134: Delegation of an ombudsman's functions

348. This section enables the delegation of the ombudsman's functions to a member of the OLC's staff, with two exceptions: staff to whom these functions are delegated may investigate or consider a complaint, but they may not make a determination, nor may they dismiss a complaint summarily in the terms prescribed by *section 133(3)(a)*. This will enable OLC staff to carry out initial handling of complaints, and work directed to mediation, with the Chief Ombudsman and assistant ombudsmen becoming directly involved with a complaint if the parties do not accept the caseworker's solution. In this instance the caseworker would submit the complaint to an ombudsman for a binding determination under *section 137*. Similarly, if on initial investigation a complaint appears manifestly unfounded or frivolous, the caseworker would refer it to an ombudsman to consider dismissal (in accordance with *section 133(3)(a)*). The Chief Ombudsman's powers of delegation are further restricted, in that they may not delegate powers of consent to the appointment of an assistant ombudsman, or the duties imposed to produce an annual report.

Section 135: Notification requirements

349. This section makes provision to the effect that if a complaint is excluded, dismissed, referred to another scheme, settled, withdrawn or abandoned, then the ombudsman must inform the complainant, the respondent and any relevant authorising body in relation to the respondent. If a complaint is dismissed, referred to another body or excluded, the ombudsman must give reasons for doing so.

Section 136: Charges payable by respondents

350. The OLC will be partly funded through "case fees" payable, subject to the exceptions set out below, by respondents (i.e. those legal professionals who are the subject of complaints). By *section 136(2)*, scheme rules must provide for fees to be waived or wholly refunded where:

- the complaint is determined or otherwise resolved in favour of the respondent; and
- where the ombudsman is satisfied that the respondent took all reasonable steps to try and resolve the complaint under the respondent's complaints procedures.

351. *Section 136(4)* defines the scope of the respondent's complaints procedures.

352. In accordance with *section 136(5)*, scheme rules may also provide for case fees to be reduced, waived or refunded in other circumstances. This subsection also allows the rules to set different charges for different stages of a complaint.

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353. Scheme rules can provide that unpaid case fees incur interest and, by virtue of *section 136(6)*, unpaid case fees can be recovered by the OLC as a debt.

354. The OLC will, as is the procedure with all scheme rules, be obliged to consult and gain the Board's approval before making rules on case fees under this section and, in addition, (by virtue of *section 155*) must also obtain the consent of the Lord Chancellor.

Section 137: Determination of complaints

355. This section makes provision for the ombudsman's powers in making a determination. The governing principle, set out in *section 137(1)*, is that the ombudsman must determine a complaint according to what is fair and reasonable in all the circumstances of the case. *Sections 137(2) and 137(3)* set out the directions which the ombudsman may make in a determination, namely:

- that the respondent make an apology to the complainant;
- that the respondent's fees for the services to which the complaint relates are limited to a specified amount (and any other action be taken, such as a refund, which may be necessary to give effect to this);
- that the respondent pay compensation for loss, inconvenience or distress;
- that the respondent at their own expense secure rectification of any specified error, omission or other deficiency in connection with the matter under complaint; or
- that the respondent at their own expense take such other action in the interests of the complainant as the direction may specify.

356. *Section 137(4)* allows for any amount payable pursuant to a determination to bear interest. *Section 137(5)* provides that the powers of the ombudsman in making a determination are not confined to cases where the complainant may have a cause of action in negligence (and so may be available in cases of "simple" inadequate professional service).

Section 138: Limitation on value of directions under the ombudsman scheme

357. This section ensures the total value of the directions made under *section 137(2)(c) to (e)* on the determination of a complaint under the ombudsman scheme does not exceed £30,000 (excluding interest – see subsection (3)). Prior to the commencement of the Act, the highest level of compensation in the legal sector was £15,000.

358. *Section 138(2)* explains "total value" as the aggregate of the amount of any compensation payable, plus the amount of expenses reasonably incurred by the respondent in rectifying any specified error, omission or deficiency. It does not include any reduction in the level of fees payable, or associated refund etc, by virtue of a direction under *section 137(2)(b)*.

Section 139: Alteration of limit

359. This section empowers the Lord Chancellor, by order, to amend the limit on the total value of directions imposed by *section 138*, on the recommendation of an "interested body" (the OLC, the Board or the Consumer Panel). The body recommending alteration of the limit must first publish its proposed recommendation and consider representations made in respect of it. If asked to do so by the Lord Chancellor, an interested body must consider whether it is appropriate to make a recommendation under this section.

Section 140: Acceptance or rejection of determination

360. In determining a complaint the ombudsman is required to prepare a written statement of the determination (*section 140(1)*). *Section 140(2)* sets out the detail of what should be included in this statement, and *section 140(3)* lists the people and bodies to whom the statement must be supplied. If the determination is accepted by the complainant, it is binding on both parties (*section 140(4)*), and no further legal proceedings can be instituted with regard to the matter that was the subject of the complaint (*section 140(11)*); but if the complainant does not notify acceptance within the time specified for this purpose, the complainant is to be taken as having rejected the determination (*section 140(5) and 140(8)*). However, there may be circumstances where a person is unable to reply to the determination within the time specified and *sections 140(6) and 140(7)* provide for this. On acceptance or rejection by the complainant, the ombudsman must give notice to those parties set out in *section 140(7)*, and the ombudsman's certificate of determination is evidence that the determination was duly made under the scheme (*sections 140(9) and 140(10)*).

Section 141: Enforcement by complainant of directions under section 137

361. This section makes provision for enforcement of directions made by an ombudsman. The complainant or an ombudsman can apply to the High Court or a county court. The court may order that any amount due under a direction to refund fees or pay compensation, including interest, is recoverable as if the amount were payable under an order of the court. If the respondent fails to comply with any other direction pursuant to a determination, the court may, on the application of the complainant or an ombudsman, order the respondent to take such steps as the court directs to comply with it. An ombudsman may only make an application with the complainant's consent and only in circumstances specified by scheme rules (*section 141(5)*).

Section 142: Reporting court orders made against authorised persons

362. This section makes provision governing reporting of any order for enforcement of directions made by a court under *section 141*. The court must give the OLC notice of any order made against a person, and the OLC in turn must make arrangements to inform any relevant approved regulators, and may require the approved regulator to report on what action it has taken. If, in such a case, an ombudsman is not satisfied with the action taken, then it may inform the Board.

Section 143: Reporting possible misconduct to approved regulators

363. In the course of consideration of a complaint, it may become apparent that there is a possibility that a respondent, or other person in relation to the matter concerned, has breached their regulator's rules of conduct. Where the ombudsman is of such an opinion, this section allows the ombudsman to notify that person's regulator, and to notify the complainant that they have done this. The regulator can be required to report to the ombudsman on the actions it takes. If the ombudsman, on studying the report, is of the opinion that the approved regulator is seriously or persistently failing to enforce its rules of conduct, the ombudsman may report this to the Board.

Section 144: Duties to share information

364. *Section 144(1)* requires scheme rules to set out that the OLC, an ombudsman or a member of the OLC's staff must disclose information to an approved regulator. The

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information to be disclosed must be specified in the rules, as must the circumstances in which it must be disclosed. Each approved regulator must provide in its regulatory arrangements for the provision of information to the OLC, an ombudsman or members of the OLC's staff, of such description and in such circumstances as may be specified in the arrangements (*section 144(2)*). The Board may specify requirements which arrangements under *section 144(2)* or rules under *section 144(1)* must fulfil (and must publish any such requirements). In specifying those requirements, the Board must take into account the need, so far as is reasonably practicable, to avoid duplication of investigations and to ensure that the OLC assists approved regulators and vice versa (*section 144(4) to 144(6)*). *Sections 144(7) and 144(8)* impose a mutual obligation on the OLC and on approved regulators to consult one another in relation to draft rules/provisions of the kind described in *sections 144(1) and 144(2)*, and, when seeking the Board's consent to those rules/provisions, to identify any ongoing objections on the part of the other party.

Section 145: Duties of authorised persons to co-operate with investigations

365. *Section 145(1)* requires each approved regulator to make provision in its regulatory arrangements that all authorised persons regulated by it must provide co-operation and assistance to the ombudsmen in relation to an investigation, consideration or determination of a complaint; and this must include provision for enforcing that requirement. The Board may specify requirements which such provision must satisfy (*subsection 145(2)*), and must publish any such requirements (*subsection 145(3)*).

Section 146: Reporting failures to co-operate with an investigation to approved regulators

366. Where an authorised person fails to co-operate with an ombudsman as stated in *section 146* the ombudsman can notify that person's approved regulator. The regulator may be required to report to the ombudsman on the action it takes; and if the ombudsman is of the opinion that the approved regulator is seriously or persistently failing to enforce its rules of conduct, the ombudsman may report this to the Board (and may do so even if the complaint is subsequently withdrawn).

Section 147: Information and documents

367. This section empowers an ombudsman to require such information and/or documents from parties to a complaint as the ombudsman may specify, before the end of such period (which must be a reasonable period) as the ombudsman may specify, and in such manner or form as the ombudsman may specify (*sections 147(1) and 147(2)*); provided that the ombudsman considers that the information necessary to determine the complaint (*section 147(3)*). The ombudsman may take copies of or extracts from a document and, in the absence of a document may require the person asked to produce it to state to the best of that person's knowledge and belief where it is (*sections 147(4) and 147(5)*). None of these powers may be used to compel disclosure which could not be compelled in civil proceedings before the High Court (*section 147(6)*).

Section 148: Reporting failures to provide information or produce documents

368. This section follows the approach and structure of *sections 142* and *section 146*. Where the ombudsman considers that an authorised person has failed to co-operate with an ombudsman as required by *section 147*, the ombudsman can notify that person's authorising

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body, which can be required to report to the ombudsman on the actions it takes. If the ombudsman is of the opinion that the authorising body is seriously or persistently failing to enforce its rules of conduct, the ombudsman may report this to the Board (and may do so even if the complaint is subsequently withdrawn).

Section 149: Enforcement of requirements to provide information or produce documents

369. This section applies if a party, other than the authorised person (the defaulter), has failed to co-operate with an ombudsman as required by section 147. In such a case, the ombudsman may inform the court (which in this case means the High Court –*section 149(7)*) of the person’s failure to comply with the request for information. However (by virtue of *sections 149(5) and 149(6)*), where the defaulter is an authorised person, the ombudsman must first be satisfied that each relevant authorising body to which a report was made under section 148 has been given a reasonable opportunity to take action, and that the defaulter has continued to be in default. The High Court may thereupon enquire into the case, and if satisfied that the defaulter has failed without reasonable excuse to comply with the requirement, it may deal with the defaulter (and, in the case of bodies corporate and other legal persons, any directors or similar persons) as if the defaulter were in contempt (*section 149(4)*).

Section 150: Reports of investigations

370. The OLC may publish a report about the investigation, consideration and determination of any particular case if it considers it appropriate. The report may not contain the complainant’s name or any other identifying information, unless the complainant consents to the inclusion of that information.

Section 151: Restricted information

371. Under this section, “restricted information” is any information that has been collected during an investigation of a complaint. This section protects the complainant in that all such information is classed as confidential and, except as listed under section 152, must not be disclosed except to the extent that it is excluded information. Excluded information is information which was obtained more than 70 years before the date of disclosure, or which is already available to the public, or which is in an appropriately “anonymised” form so that information relating to a particular individual cannot be ascertained from it.

Section 152: Disclosure of restricted information

372. This section makes exceptions to section 151. First, one restricted person (i.e. the OLC, an ombudsman or a member of the OLC’s staff – see section 151(2)) may disclose restricted information to another restricted person (*section 152(1)*). Second, 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 (*section 152(2)*); and third, restricted information may be disclosed for a variety of specific and limited purposes listed in *section 152(3)*, with the possibility (*section 152(3)(g)*) of additional purposes being added by order made by the Lord Chancellor.

373. The section also confers on the Lord Chancellor a power to make an order preventing the disclosure of information in circumstances or for purposes prescribed in the order.

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Section 153: Data protection

374. This section amends the Data Protection Act 1998 to ensure that Part 6 of the Legal Services Act is able to operate compatibly with it by exempting personal data processed by the OLC in complaints handling from the subject information provisions where application of those provisions would prejudice the proper discharge of the complaints handling functions. This will ensure that frivolous applications do not impact adversely on the ombudsman scheme. This amendment is similar to provision made in the 1998 Act for certain other regulators and ombudsmen and will ensure that privileged information may be disclosed in certain specific situations.

Section 154: Protection from defamation claims

375. This section makes provision placing OLC proceedings and publications on a par with court proceedings for the purposes of the law of defamation.

Section 155: Consent requirements for rules

376. This section requires the consent of the Board prior to any scheme rules being made or modified by the OLC. It also specifically requires the consent of the Lord Chancellor to rules under section 136 which impose charges on respondents to complaints. The OLC is required to consult on its proposed rules before seeking the necessary consent: the consultation requirements are in section 205.

Section 156: The Board's powers in respect of rules

377. Under this section the Board has the power to direct the OLC to amend any of its rules. The direction may be in general terms or it may require a specific modification. Before making a direction under *section 156(1)(b)* to make a specific modification, the Board must give the OLC a formal notice that gives details of the proposed modifications, and must publish that notice and take account of any representations made (*section 156(2)*). In such a case the consultation procedure under section 205 is disapplied, as is the requirement to obtain the Board's consent (*section 156(3)*).

Section 157: Approved regulators not to make provision for redress

378. The OLC is to be the single point of entry for all complaints. This is subject to the requirement, in section 126, that complaints (except in specified circumstances) must, in the first place, be considered under the respondent's internal complaints procedures.

379. The OLC will investigate complaints and provide redress, but it will report any possible misconduct to the relevant approved regulator, which will take any necessary disciplinary action. There is therefore a clear split between the power to consider redress (OLC), and consideration of disciplinary action (approved regulators). As part of the provision for this split, this section prohibits approved regulators from including in their regulatory arrangements any provision relating to redress (defined in *section 157(4)*).

380. In accordance with *section 157(5)* the prohibition on provision relating to redress does not prevent provision for certain types of arrangements: compensation arrangements, indemnification arrangements and certain regulatory arrangements (as specified in section 158).

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381. Transitional arrangements cover proceedings in respect of complaints under way at the date of commencement of the OLC's operations, which are made by order under section 211 (*sections 157(2) and 157(3)*).

Section 158: Regulatory arrangements not prohibited by section 157

382. Section 158 makes clear that section 157 does not prohibit approved regulators from making provision in their regulatory arrangements requiring, or authorising the approved regulator to require, an authorised person to take certain action of a type described in *sections 158(1)(a) to (f)*. That action is to investigate whether there are any persons who may have a claim for redress against the relevant authorised person (section 158(1)(a)), to report back to the approved regulator on the outcome (section 158(1)(b)), to identify any affected persons who may have a claim and notify them that they may have a claim (sections 158(1)(c) and (d)), and to provide any affected persons with information about the authorised person's complaints procedures and the ombudsman scheme and ensure that the complaints procedures operate as if the affected person had made a formal complaint (sections 158(1)(e) and (f)). The intention behind the section is to ensure that approved regulators are not prevented by section 157 from making provisions – subject to the Board's approval – requiring authorised persons to take proactive steps in cases where a number of clients may have been affected by the relevant authorised persons' acts or omissions and may have a claim for redress against them.

Section 159: Legal Services Complaints Commissioner and Legal Services Ombudsman

383. This section abolishes the offices of Legal Services Complaints Commissioner and Legal Services Ombudsman. Until this section is commenced, the Legal Services Ombudsman will examine the handling of individual complaints by legal professional bodies on behalf of members of the public, and the Legal Services Complaints Commissioner will examine the Law Society's capability to handle complaints made about its members efficiently and effectively. The complaints handling scheme which this Act establishes replaces these offices.

Section 161: Extension of Part 6 to claims management services

384. This section extends Part 6 of the Act to bring claims management services within the ombudsman scheme complaints handling jurisdiction. Although the provision of regulated claims management services is not designated as a reserved legal activity, this section brings those persons authorised under Part 2 of the Compensation Act 2006 within the ombudsman scheme's jurisdiction on the same basis as authorised persons in relation to an activity which is a reserved legal activity.

385. For the purposes of Part 6, the claims management regulator is treated as an approved regulator, and regulated claims management services are treated as a reserved legal activity. This affects, among other things, the definition of a lay person in Schedule 15, which is to be read as excluding a person authorised under Part 2 of the 2006 Act (so that a person who is or has been authorised under Part 2 of the 2006 Act may not be appointed as Chief Ombudsman).

PART 7: FURTHER PROVISIONS RELATING TO THE BOARD AND THE OLC

386. This Part of the Act makes provision for the funding of the Board and OLC by way of levy on the approved regulators, including requirements for rules to be made by the Board

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clarifying when the levy is to be made payable, and the amount payable as well as the circumstances in which the levy may be waived.

387. It also defines the type of guidance that the Board may give. It makes provision allowing the Board to enter into voluntary arrangements for the purpose of improving standards in the provision of legal services, and provision for extending the jurisdiction of the OLC to a further range of complaints. This Part also provides that 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 any purpose connected to the exercise of its functions.

Section 162: Guidance

388. *Section 162(1)* sets out a non-exhaustive list of matters about which the Board may give guidance. This guidance may include information or advice, and *section 162(3)* allows the Board to give financial or other assistance to persons who provide that information or advice. The Board will be able to publish its guidance and offer copies for sale. Following any guidance being issued, the Board may consider the extent to which an approved regulator has complied with such guidance when exercising its regulatory functions. *Section 162(6)* requires that, when the Board acts as approved regulator or a licensing authority under Part 5 of the Act, it must have regard to any guidance it has issued under this section.

Section 163: Voluntary arrangements

389. This section allows the Board to enter into voluntary arrangements with any person for the purposes of improving standards and promoting best practice in the legal services sector.

Section 164: Power to establish voluntary scheme for resolving complaints

390. This section gives the OLC a power, subject to an order made by the Lord Chancellor, to establish a complaints scheme which is separate from the ombudsman scheme under Part 6. A scheme set up under this section can make provision in relation to complaints about acts or omissions of persons providing legal services who are not authorised persons. Such a scheme is referred to as a “voluntary scheme” and the rules under this section are referred to as “voluntary scheme rules”. The Lord Chancellor’s order can limit the kinds of complaint that come within the scheme by reference to the description of the complainant, the respondent, or the legal services to which the complaint relates. The voluntary scheme can provide redress to consumers but cannot be used to discipline respondents. *Section 164(9)* makes clear that the consent requirements and the Board’s powers in respect of rules (in sections 155 and 156 respectively) apply to voluntary scheme rules in the same way as they apply to scheme rules. *Section 164(8)* makes clear that section 131, which establishes vicarious responsibility in respect of matters which are the subject of complaints, applies for the purposes of the voluntary scheme as it applies for the purposes of the ombudsman scheme.

Section 165: Procedure for making orders under section 164

391. This section sets out the procedure for making an order under *section 164(2)*. The Lord Chancellor can only make such an order upon recommendation by one of the interested bodies (the OLC, the Board or the Consumer Panel). Following a request from the Lord Chancellor an interested body must consider whether it is appropriate to make a

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recommendation. Before making a recommendation, an interested body must publish the draft recommendation and invite and consider representations from the public. Upon receipt of a recommendation the Lord Chancellor must consider whether to follow it. If the Lord Chancellor decides not to follow a recommendation the Lord Chancellor must publish reasons for this.

Section 166: Operation of voluntary scheme

392. This section sets out the circumstances in which complaints may be determined and provides for a way in which further detail of the voluntary scheme is provided. A complaint may be determined under the voluntary jurisdiction scheme only if the complainant falls within a class of persons specified in voluntary scheme rules, if the complainant wants the voluntary scheme to deal with their complaint, if (at the time of the act or omission complained of) the respondent was participating in the scheme and if (when the complaint is made) the respondent has not withdrawn from the scheme.

393. Further, complaints received and determined under the auspices of the voluntary jurisdiction scheme will be dealt with in accordance with standard terms fixed by the OLC with the Board's consent. In particular, standard terms may provide for the payment of a fee to the OLC by persons participating in the scheme and/or awards of costs on the determination of a complaint (including awards in favour of the OLC to provide a contribution to its costs in dealing with the complaint).

Section 167: Restricted Information

394. Under this section, "restricted information" is any information obtained by the Board in the exercise of its functions. A restricted person is the Board (including in its capacity as approved regulator or licensing authority) or a person authorised by the Board to carry out its functions. Restricted information must not be disclosed by a restricted person or by any person who has received the information from a restricted person. Section 168 provides an exception to this rule. Restricted information does not include "excluded information", namely information which was obtained more than 70 years before the date of disclosure, or which is already available to the public, or which is in an appropriately "anonymised" form so that information relating to a particular individual cannot be ascertained from it.

Section 168: Disclosure of restricted information

395. This section makes exceptions to section 167. The first is that a restricted person may disclose restricted information to another restricted person. The second is that restricted information may be disclosed for the purposes of enabling the Board to exercise its functions. *Section 168(3)* sets out a list of further specific and limited circumstances in which restricted information may be disclosed, with the possibility (section 168(3)(g)) of additional purposes being added by order made by the Lord Chancellor. Such orders may only be made in order to allow disclosure to persons (other than approved regulators) who exercise regulatory functions. The section also allows the Lord Chancellor to prevent the disclosure of restricted information under section 167 by order for the purposes prescribed in that order.

Section 169: Disclosure of information to the Board

396. This section sets out a list of permitted persons and allows for the disclosure of information by them to the Board to enable or assist it in exercising its functions. The section prohibits the disclosure of information where it contravenes the Data Protection Act 1988,

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where it is prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000 or, if it is being disclosed on behalf of the Commissioners for Her Majesty's Revenue and Customs, where it has not been authorised by the Commissioners. The section allows the Lord Chancellor to designate other persons as persons who can disclose information to the Board, where their functions are of a public nature.

Section 170: Data protection

397. This section amends the Data Protection Act 1998 to ensure that the Legal Services Act 2007 is able to operate compatibly with it by exempting personal data processed by the Legal Services Board from the subject information provisions, where application of those provisions would prejudice the proper discharge of the functions. This will ensure that the Board is able to use its information powers to the benefit of the public by highlighting areas of concern. This amendment is similar to provision made in the 1998 Act for certain other regulators and ombudsmen, for example the Financial Services Authority.

Section 172: Funding

398. This section sets out the mechanism by which the Board and the OLC receive funding to meet their expenditure in carrying out their functions. The Lord Chancellor may pay sums to the Board or the OLC to cover their expenditure under or for the purposes of the Act. The Lord Chancellor may also pay sums to the Board to cover expenditure for the purposes of its functions under any other enactment. This is to ensure that the Board can, via the levy, recover amounts in respect of expenditure resulting from functions which it has under other Acts by virtue of amendments made by this Act. The Lord Chancellor may determine the manner in which, and times at which, sums are to be paid and may impose conditions on the payments.

Section 173: The levy

399. This section makes provision for a levy. The purpose of the levy is to cover:

- expenditure by the Board under or for the purposes of the Act or any other enactment;
- expenditure by the OLC under or for the purposes of the Act; and
- expenditure of the Lord Chancellor on the establishment of the Board and the OLC.

400. This expenditure is met in the first instance by sums paid by the Lord Chancellor's grant under section 172. The levy, which is paid into the Consolidated Fund, recoups this expenditure from the "leviable bodies". The leviable bodies are the approved regulators, the person designated as the regulator in relation to claims management services under the Compensation Act 2006, and such other persons as the Lord Chancellor may prescribe by order (*section 173(5)*). The Board must be satisfied that the rules concerning the apportionment of the levy are fair and proportionate. To ensure that expenditure is not recovered twice, the expenditure to which the levy relates is the difference between the total of the expenditure of the Board and OLC and the expenditure of the Lord Chancellor (for the establishment of the Board and OLC) and the total of any sums received by the Board and OLC as:

- application fees;
- charges for providing statements, guidance, rules;

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- sums received in the Board's capacity as approved regulator;
- sums received in the Board's capacity as licensing authority;
- amounts received by the OLC by way of charges paid by respondents;
- costs paid to the OLC in relation to complaints;
- amounts paid to the Board in respect of voluntary arrangements; and
- amounts paid to the Board under paragraph 7(g) of the Schedule to the Compensation Act 2006.

401. The OLC's leviable expenditure excludes any cost incurred that may reasonably be attributed to the exercise of its functions under sections 164, 165 and 166.

Section 174: The levy: supplementary provisions

402. In addition, the levy rules require the Board to calculate the apportionment of the levy among the bodies which are required to pay it, and to notify those bodies of their liability to pay the levy and of the times it is payable.

403. In addition, the levy rules require the Board to calculate the apportionment of the levy among approved regulators and to notify approved regulators of their liability to pay the levy and the times at which it is to be paid.

Section 175: Amounts payable into the Consolidated Fund

404. All monies received by the Board or the OLC must be paid into the Consolidated Fund. This section lists the different sources of income of the Board and OLC that must be paid into the Consolidated Fund.

PART 8: MISCELLANEOUS AND GENERAL PROVISIONS ABOUT LAWYERS

405. This Part makes provision regarding the Board's relationship with the Solicitors Disciplinary Tribunal. This Part also makes provision regarding the register of trade mark attorneys and the register of patent attorneys. It makes provision about legal professional privilege and amendments to the Immigration and Asylum Act 1999. It furthermore provides for the amendment of legislation relating to the Law Society and the Council for Licensed Conveyancers.

Section 176: Duties of regulated persons

406. Under this section all authorised persons, and all managers and employees of authorised persons, have a statutory duty to comply with the regulatory arrangements applicable to them. *Section 176(3)* confirms that regulatory arrangements include those that the Board makes in its capacity as licensing authority.

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

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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 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

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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%

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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.

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

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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

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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 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.

Section 178: The Solicitors Disciplinary Tribunal: approval of rules

435. This section is the first of three which make provision in respect of the Solicitors Disciplinary Tribunal, so that the Tribunal's position, as a body statutorily separate from the Law Society but performing functions which are part of the Law Society's regulatory structure, may be properly reflected. The approach is in essence to apply to the Tribunal certain provisions which apply to approved regulators, with modifications and/or exclusions to reflect the Tribunal's particular role and position. This section makes provision bringing the Tribunal's rules within the structure of consent requirements for regulatory arrangements, so that there is a degree of monitoring by the Board, but this is kept to the minimum necessary. Accordingly, subsection (1) provides for any alteration of the Tribunal's rules under section 46(9)(b) of the Solicitors Act 1974 to require approval by the Board, unless it is exempt; and *section 178(2) to 178(6)* set out the procedures for approval, should an alteration be made.

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Section 179: Board's power to give directions to the Tribunal

436. This section applies the Board's power to give directions to an approved regulator under sections 32 to 34 to the Tribunal. The power is considerably restricted, however, to reflect the fact that the Tribunal is not itself an approved regulator, but is a statutorily independent body which performs functions which form a part of the regulatory structure of the Law Society. The circumstances in which the Board can direct the Tribunal are limited to those in which the Tribunal has failed to perform any of its functions to an adequate standard (or at all). As is the case for directions to approved regulators, under section 32(4) the Board will not have the power to direct the Tribunal in respect of specific disciplinary cases or proceedings.

Section 180: Functions of the Tribunal

437. This section applies sections 69 and 70 to the Tribunal with limitations to reflect the Tribunal's particular position and so enables the Lord Chancellor to modify the functions of the Tribunal for certain limited purposes on the recommendation of the Board and with the consent of the Tribunal (and in particular enables amendment of the statutory provisions governing the Tribunal at the Tribunal's request).

Section 181: Unqualified person not to pretend to be a barrister

438. This section makes it an offence for any person who is not a barrister (as defined in section 207) to pretend to be a barrister, and sets out the penalties that may be imposed on such persons for doing so.

Section 182: Licensed conveyancers

439. This section introduces **Schedule 17** which makes a number of amendments to provisions relating to licensed conveyancers, conveyancing services, and the CLC, which is an approved regulator and is listed in Part 1 of Schedule 4. Schedule 17 amends the Administration of Justice Act 1985 and the Courts and Legal Services Act 1990.

440. Paragraphs 1 to 7 deal with the issuing of conveyancing licences. Paragraph 2 amends the definition of conveyancing services to ensure that it includes all the activities contained in the definition of "reserved instrument activities" in the Legal Services Act 2007. The CLC is an approved regulator under the 2007 Act in relation to reserved instrument activities. Paragraph 4 amends section 15 of the 1985 Act so as to allow the CLC discretion as to the duration of a conveyancing licence. Paragraph 4 further amends section 15 of the 1985 Act so as to allow the CLC 42 days in which to determine applications for licences (prior to the 2007 Act, the period was 21 days).

441. Paragraphs 5 to 8 deal with the imposition of conditions on a licence. Conditions can, for example, be imposed where the Council has required an accountants report to be delivered within a specified time-frame and this has not been done. Provision is made enabling the CLC to impose an additional fee in certain cases to recover the additional costs in dealing with certain applications. In addition amendments made here allow for a condition to be put on a licence as a result of an order made by the Investigating Committee under their new powers. Paragraph 7 amends section 17 of the 1985 Act by prescribing additional circumstances in which the Council may direct that a licensed conveyancer's licence shall have effect subject to conditions.

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442. Paragraph 8 inserts a new section into the 1985 Act to allow the CLC to remove or vary conditions on a licensed conveyancer's licence.

443. Paragraph 9 amends section 18 of the 1985 Act, in order to provide for the immediate suspension of a licensed conveyancer's licence in instances where the Council exercises certain powers of intervention in respect of a licensed conveyancer's practice in certain defined circumstances.

444. Paragraphs 12 and 13 operate to amend the provisions that provide for the CLC's current disciplinary arrangements. The effect of these paragraphs is to allow the Investigating Committee, which previously had only an investigative role, to make a determination on minor infractions of the Council's rules and to fine a licensed conveyancer an amount to be specified in the Council's rules (not to exceed the sum of £1,000). Paragraph 32 makes similar amendments to the equivalent provisions relating to recognised bodies.

445. Paragraph 12 (sub-paragraph (8)), paragraph 13 paragraph 15 (sub-paragraph (4)), paragraph 16, paragraph 17, paragraph 32 (sub-paragraphs (5), (6), (7), (9) and (10)) and paragraph 35 (sub-paragraph (7)) amend the 1985 Act and the 1990 Act, in order to enable the Investigating Committee and the Discipline and Appeals Committee to make orders for the payment of costs. The order may relate to all or part of the costs. A successful party would not be entitled to costs as of right: the award will be at the discretion of the committees.

446. Sub-paragraph (3) of paragraph 15 amends section 26 of the 1985 Act, which makes provision regarding the fining power of the CLC. Previously, the CLC could fine a licensed conveyancer no more than £3,000. The amendment to section 26 allows the CLC to make rules setting its own limit (subject to the approval of the Board). At sub-paragraph 6 of paragraph 32 of Schedule 17 to the 2007 Act, an amendment is made to the equivalent provision relating to recognised bodies (paragraph 4 of Schedule 6 to the 1985 Act). Paragraphs 13 and 15 of Schedule 17 to the 2007 Act allow the Investigating Committee and the Discipline and Appeals Committee respectively to make orders for costs in relation to proceedings before them.

447. Paragraphs 20 to 21 make amendments to the CLC's powers that are similar to the amendments to the Law Society's powers under section 9 and new section 9A of the 1985 Act. These paragraphs amend section 32 of the 1985 Act and add new section 32A to allow that the CLC may "recognise" and regulate new forms of bodies, including partnerships and unincorporated bodies, and including bodies that carry out not just conveyancing services but also other legal services carried out by "authorised persons" under the 2007 Act. These amendments also allow the CLC to make rules applicable to managers and employees of the bodies that it recognises, and make consequential changes to a number of related provisions in Schedule 6 (see paragraph 32 of the Schedule). Amendments to Schedule 6 also give the Discipline and Appeals Committee additional order-making powers to reflect the fact that managers and employees may be found in breach of rules applicable to them.

448. Paragraph 22 amends section 33 of the 1985 Act to ensure that the legal professional privilege of clients of recognised bodies that are actually "licensable bodies" (and that will therefore need to be licensed under Part 5 of the 2007 Act), is governed by the same provision as that for other licensed bodies: section 190 of the 2007 Act.

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449. Paragraph 23 inserts a new section 33A into the Administration of Justice Act 1985 to confer on the CLC the power to make arrangements for authorising licensed conveyancers to administer oaths. Under the 2007 Act, the CLC is an approved regulator in relation to authorising persons to administer oaths (see part 1 of Schedule 4).

450. Paragraph 25 amends section 35 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.

451. Paragraph 29 amends Schedule 3 to the 1985 Act to allow CLC members to be appointed as opposed to “elected or nominated”. Paragraph 30 amends paragraph 1 of Schedule 4 to the 1985 Act so as to remove the requirement that the rules made by the CLC regarding the procedure and practice of the Discipline and Appeals Committee shall not come into force until approved by the Lord Chancellor.

452. Paragraph 31 amends Schedule 5 to the 1985 Act, which provides the CLC with intervention powers, to achieve similar outcomes for the CLC as those made to the Law Society’s intervention powers by virtue of amendments to Schedule 1 to the 1974 Act and Schedule 2 to the 1985 Act.

453. Paragraph 32, amongst other things, amends paragraph 14 of Schedule 6 to the 1985 Act to allow the CLC to require the production of information to a person appointed by the Investigating Committee for the purpose of investigating an allegation of failing to comply with rules a licensed conveyancer must adhere to.

454. Part 2 of Schedule 17 amends the 1990 Act to allow the CLC to apply to become an approved regulator of reserved legal activities such as probate activities or the exercise of a right of audience.

455. It also brings the 1990 Act into line with the 1985 Act as amended and the 2007 Act by updating the Council’s powers in respect of, for example, the new disciplinary powers conferred on the Investigating Committee and the Discipline and Appeals Committee under sections 24A and 26 of the 1985 Act.

Section 183: Commissioners for oaths

456. This section provides that legislative references to “commissioners for oaths” include persons authorised under the Act to conduct the reserved legal activity of administering oaths. It also confers upon such persons the right to use the title “Commissioner for Oaths.”

457. It further sets out the circumstances in which an authorised person’s right to administer oaths is proscribed, makes certain requirements relating to the way in which the oath or affidavit is taken and proved. The section also sets out the mechanism by which the fees charged by authorised persons for the administration of oaths and taking of affidavits may be determined by the Lord Chancellor.

Section 184: Trade mark attorneys

Section 185: Patent attorneys

458. These sections provide for amendments to the Trade Marks Act 1994 and the Copyright, Designs and Patents Act 1998. These amendments transfer the Secretary of State’s functions in respect of the registers of trade mark attorneys and patent attorneys to the Institute of Trade Mark Attorneys (ITMA) and the Chartered Institute of Patent Agents

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(CIPA) respectively, and allow for both bodies to make regulations in respect of the registration of trade mark attorneys and patent agents. These regulations may provide for the payment of registration fees and the removal of names from the register. The Secretary of State may make an order, subject to the affirmative resolution procedure, transferring responsibility for the register to a new person. For example, should ITMA and CIPA merge, their responsibilities in respect of the registers could be transferred to the merged body.

459. These amendments confer statutory powers on ITMA and CIPA. They allow ITMA to make regulations governing the carrying on of trade mark attorney work by registered trade mark attorneys and CIPA to make regulations governing the carrying on of registered patent attorney work by registered patent attorneys. This represents a significant expansion of CIPA and ITMA's powers. All regulations made under these provisions are subject to the Board's oversight whether or not they are "regulatory arrangements" as defined by section 21.

Section 186: Immigration advisers and immigration service providers

460. This section introduces **Schedule 18**, which amends the Immigration and Asylum Act 1999. Under the 1999 Act, two categories of person may provide immigration services: persons registered with Immigration Services Commissioner, and persons authorised by a designated professional body. The amendments to the 1999 Act effected by Schedule 18 introduce a third category of person who may provide immigration services: persons authorised by a designated qualifying regulator. The Law Society, the Institute of Legal Executives and the General Council of the Bar are all designated qualifying regulators by virtue of Schedule 18. Prior to commencement of the Schedule, these bodies were designated professional bodies. For other bodies, becoming a designated qualifying regulator is a two-step process: first the Board must grant the body's application to become a "qualifying regulator" under part 1 of Schedule 18, then the Secretary of State must make an order under section 86A(6) of the 1999 Act making it a "designated qualifying regulator". Designated professional bodies are subject to the oversight of the Immigration Services Commissioner, whereas designated qualifying regulators will be subject to the oversight of the Board. Where the Board is of the view that a designated qualifying regulator is failing to regulate the provision of immigration services effectively, the Board may report its view to the Lord Chancellor and to the Secretary of State. The Secretary of State has the power to remove a body's status as a designated qualifying regulator, and a body will also cease to have that status if it ceases to be an approved regulator under the Legal Services Act 2007. The intention of the provision under sub-paragraph (4)(c) of paragraph 3 for fees to cover the reasonable costs associated with the application, etc, to which they relate.

461. Part 1 of Schedule 18 sets out the procedure by which a body may apply to the Board to become a "qualifying regulator". Only "qualifying regulators" may become designated qualifying regulators. Part 2 of the Schedule sets out the amendments to Part 5 of the 1999 Act that are required in order to establish the new framework. Part 3 of the Schedule makes transitional provision protecting persons presently authorised to provide immigration services by those designated professional bodies that will become designated qualifying regulators under the new framework.

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Section 187: Claims management services

462. **Schedule 19** makes amendment to Part 2 of the Compensation Act 2006. The amendments provide for regulatory oversight functions of the Claims Management regulator to transfer from the Secretary of State to the Board. This includes ensuring that a regulator can only be designated by the Secretary of State on the recommendation of the Board, and that any regulations made by the Secretary of State are on the recommendation, or in consultation with, the Board. Section 161 provides for complaints handling to come under the jurisdiction of the Office for Legal Complaints.

Section 188: Duties of advocates and litigators

463. This section reproduces the effect of sections 27(2A) and 28(2A) of the Courts and Legal Services Act 1990, which are repealed by the Legal Services Act 2007. Authorised persons who exercise rights of audience or rights to conduct litigation have a duty to the court to act with independence in the interests of justice, and a duty to comply with conduct rules applicable to them. These duties override any other obligations that the persons may have (otherwise than under the criminal law) if they are inconsistent with them.

Section 189: Employed advocates

464. This section replicates section 31A of the Courts and Legal Services Act 1990 which is repealed by the Legal Services Act 2007. It ensures that qualification regulations and conduct rules which apply to the exercise of a right of audience by a person employed as a Crown Prosecutor or in any other employment are not more restrictive than the regulations and rules applying to other persons exercising that right.

Section 190: Legal professional privilege

465. This section states that legal professional privilege (“LPP”) applies to any communication, document, material or information relating to a service provided by an individual who is not a barrister or solicitor at any time when the individual is providing advocacy services, litigation services, conveyancing services or probate services in the individual’s capacity as an authorised person. Such a communication is to be treated as if it were a communication made by a solicitor for the purposes of disclosure. This section reproduces the effect of section 63 of the Courts and Legal Services Act 1990.

466. *Section 190(3) to 190(5)* provide that communications made by a licensed body in legal proceedings will be privileged to the same extent that they would be privileged had they been made by a “relevant lawyer”, provided that the communications in question are made through, or under the supervision of, a “relevant lawyer”. “Relevant lawyer” means a barrister, solicitor, or person otherwise entitled to conduct reserved legal activities. These provisions ensure that the clients of certain legal services providers (such as authorised litigators and advocates, recognised bodies, licensed conveyancers, trade mark and patent firms and Alternative Business Structures) have similar LPP protection to clients of solicitors under the common law.

Section 191: Rights of audience etc of employees of housing management bodies

467. This section amends the County Courts Act 1984 by inserting a new section 60A. Section 60A now gives a right of audience in certain county court proceedings, and a right to conduct litigation in relation to those proceedings, to employees of a housing management body who have written authorisation from that body. Section 60A applies to proceedings that

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are within *sub section (3)* of the new *section 60A* – for example proceedings for demotion, possession and injunctions on grounds of anti-social behaviour – brought by a housing management body on behalf of the local housing authority by virtue of a housing management agreement under *section 27* of the Housing Act 1985.

Section 192: Powers of court in respect of rights of audience and conduct litigation

468. This section preserves the rights of courts to refuse to hear persons who would otherwise have a right of audience before them. It replicates provision to the same effect in *sections 27 and 28* of the Courts and Legal Services Act 1990. Those sections are repealed by the Legal Services Act 2007.

Section 193: Solicitors to public departments and the City of London

469. This section provides that nothing in the Act shall prejudice or affect the rights or privileges of the Treasury Solicitor and certain other office holders. It also provides that such clerks and officers are not required to be admitted or enrolled, or to hold a practising certificate under the Solicitors Act 1974 in order to conduct a reserved legal activity, if they would have been able to conduct that activity without a practising certificate by virtue of *section 88* of the Solicitors Act 1974, had the provision in the Legal Services Act 2007 not been made. *Section 193(4)* preserves the rights and privileges enjoyed by the Solicitor of the City of London.

470. This section also imposes a duty on persons exercising rights of audience or the right to conduct litigation by virtue of this section to act with independence in the interests of justice. This duty overrides any obligations which such a person may have (otherwise than under the criminal law) if it is inconsistent with them.

Section 194: Payments in respect of pro bono representation

471. This section enables a court to make an order in civil cases requiring a person to make a payment where a party to the proceedings was represented by a legal representative whose services were provided *pro bono* (i.e. free of charge). Under the previous costs law, an unsuccessful party would not have been required to pay any amount in respect of that representation because the services were provided free of charge and so there were no costs. Under this section, awards will be at the discretion of the court and will be paid directly to a designated charitable body, established to administer and distribute the monies to organisations who conduct *pro bono* work.

Section 195: Application of the Legal Profession and Legal Aid (Scotland) Act 2007

472. The Legal Profession and Legal Aid (Scotland) Act 2007 establishes a Scottish Legal Complaints Commission, and provides for the Commission's main functions to be to handle consumer complaints about the service provided by legal practitioners and to oversee the handling of conduct complaints by the legal professional bodies in Scotland. This section extends the remit of that body to areas which are reserved to the UK Parliament.

473. Regulation of the legal profession in Scotland is devolved by the Scotland Act 1998 (Schedule 5, head C3), but there are a few areas where the Scottish legal professional bodies are the regulatory body or co-regulatory body in terms of a UK statute, the subject matter of which is reserved. The areas in question are consumer credit, insolvency, immigration and financial services.

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474. To ensure that the Legal Profession and Legal Aid (Scotland) Act 2007 fell within devolved competence, it was necessary to exclude these reserved areas from the remit of that Act, which is achieved by section 47 of that Act.

475. *Section 195(1)* applies the provisions of the Legal Profession and Legal Aid (Scotland) Act 2007 to:

- any element of a complaint relating to advice, services or activities in the reserved areas specified in *section 195(2)*, and
- the provision by a practitioner of such advice, services or activities.

476. The advice, services or activities in question fall within areas reserved to the UK Parliament and also the competence of the Scottish Parliament.

477. *Section 195(2)* defines such advice, services and activities to be:

- Consumer credit services: activities carried out by virtue of a group licence under section 22(1)(b) of the Consumer Credit Act 1974. The Law Society of Scotland holds such a licence which is granted by the Office of Fair Trading (OFT). The licence enables members of the Society to provide services in the areas of consumer credit, credit brokerage, debt-adjusting and debt-counselling and debt-collecting.
- Insolvency services: activities of an insolvency practitioner within the meaning of Part 13 of the Insolvency Act 1986. The Law Society of Scotland is a recognised professional body under the 1986 Act and issues licences to Scottish solicitors who wish to be appointed as insolvency practitioners.
- Immigration advice or immigration services: the Law Society of Scotland and the Faculty of Advocates are designated professional bodies under the Immigration and Asylum Act 1999. Designation under the Act removes the need for Scottish solicitors and advocates to be individually registered with the Immigration Services Commissioner. The Commissioner has the power to receive complaints against Scottish solicitors giving immigration advice and is required to monitor how any complaints which are passed to the Law Society of Scotland or the Faculty of Advocates are handled (Schedule 5, paragraph 10 of the 1999 Act). The Commissioner is required to review the list of designated professional bodies and report to Scottish Ministers if a designated professional body in Scotland is failing to provide effective regulation of its members.
- Financial services:
 - Activities mentioned in sub-paragraph (1)(a) of paragraph 5 of Schedule 3 to the Financial Services Act 1986. The Law Society of Scotland was a recognised professional body under the 1986 Act and still retains the function of dealing with complaints against Scottish solicitors in relation to investment business carried on under the 1986 Act. This function of recognised professional bodies was saved, on the repeal of the 1986 Act.
 - Regulated activity within the meaning of section 22 of the Financial Services and Markets Act 2000, other than activities falling within paragraph (f) of subsection (2), in respect of which the Financial Services Authority has by virtue of Part 20

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of that Act arranged for its regulatory role to be carried out by the Law Society of Scotland.

- Exempt regulated activities within the meaning of section 325(2) of the Financial Services and Markets Act 2000. Since 30th November 2001 the Law Society of Scotland has been a designated professional body under the Financial Services and Markets Act 2000 and responsible for the licensing and regulating of solicitor firms which conduct incidental investment business (i.e. investment work which is incidental and complementary to the provision of legal services). The Financial Services Authority has been responsible since that date for the authorisation and direct regulation of solicitor firms in Scotland which wish to conduct mainstream investment business under the 2000 Act.

478. *Section 195(3)* provides for references to “complaint” and “practitioner” to have the same meaning as in Part 1 of the Legal Profession and Legal Aid (Scotland) Act 2007. “Complaint” is defined by that Act to include any expression of dissatisfaction. “Practitioner” is defined to cover:

- an advocate,
- a conveyancing practitioner
- an executry practitioner
- a firm of solicitors
- an incorporated practice
- a person exercising a right to conduct litigation or a right of audience acquired by virtue of section 27 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990, and
- a solicitor.

479. *Section 195(4)* repeals section 77 of the Legal Profession and Legal Aid (Scotland) Act 2007, which is no longer required as the Legal Services Act 2007 provides full competence for the Scottish Legal Complaints Commission in relation to both reserved and devolved areas.

480. *Section 195(5)* introduces **Schedule 20** to the Legal Services Act 2007 which sets out minor and consequential amendments in relation to the Legal Profession and Legal Aid (Scotland) Act 2007.

Section 196: Scottish legal services ombudsman: functions

481. *Section 196(1)* disapplies the functions of the Scottish Legal Services Ombudsman in relation to advice, services and activities mentioned in *section 195(2)*. The Legal Profession and Legal Aid (Scotland) Act 2007 effects the repeal of those functions of the Ombudsman which fall within devolved competence. It provides a power for Scottish Ministers to modify the functions of the Scottish Legal Services Ombudsman by order; and to abolish that office by order when the Ombudsman has no remaining functions.

482. *Section 196(2)* makes consequential amendments to the Immigration and Asylum Act 1999. The Office of the Immigration Services Commissioner retains its oversight function in

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relation to the Law Society of Scotland and the Faculty of Advocates which are “designated professional bodies” in terms of section 86(1)(c) of the Immigration and Asylum Act 1999.

483. Where the Lord Chancellor is proposing to de-designate a professional body in terms of section 86(2) of the 1999 Act, the Lord Chancellor must consult the Scottish Legal Services Ombudsman, if the proposed order would affect a designated professional body in Scotland. Section 196(2) amends the reference in section 86(4)(c) of the Immigration and Asylum Act 1999 to require that consultation to be with the Scottish Legal Complaints Commission instead of the Scottish Legal Services Ombudsman.

484. Where the Lord Chancellor proposes to apply the code of conduct for immigration advisers to members of a designated professional body in Scotland, the Lord Chancellor is required by sub-paragraph (2)(c) of paragraph 4 of Schedule 5 to the 1999 Act to consult the Scottish Legal Services Ombudsman. Section 196(2) substitutes a reference to the Scottish Legal Complaints Commission for the existing reference to the Scottish Legal Services Ombudsman.

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

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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.

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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.

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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 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.

COMMENCEMENT

509. Section 211 specifies that certain sections in the Act will come in to force on the day that the Act is passed. The remaining sections will come into force on such day as the Lord Chancellor appoints by order.

HANSARD REFERENCES

510. The following table sets out the dates and Hansard references for each stage of this Act’s passage through Parliament.

Stage	Date	Hansard reference
<i>House of Lords</i>		
Introduction	23rd November 2006	Vol. 687, Col. 430
Second Reading	6th December 2006	Vol. 687, Cols. 1161-1213
Committee	9th January 2007	Vol. 688, Cols. 116-179
	22nd January 2007	Vol. 688, Cols. 896-961, 972-994
	23rd January	Vol. 688, Cols. 1004-1066, 1077-

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	6th February 2007 21st February 2007 6th March 2007	1094 Vol. 689, Cols. 616-665, 682-700 Vol. 689, Cols. 1088-1136, 1148-1168 Vol. 690, Cols. 147-218
Report	16th April 2007 18th April 2007 8th May 2007	Vol. 691, Cols. 11-25, 39-73, 91-110 Vol. 691, Cols. 223-280, 297-320 Vol. 691, Cols. 1272-1296, 1310-1337, 1355-1438
Third Reading	15th May 2007	Vol. 692, Cols. 219-157
<i>House of Commons</i>		
Introduction	16th May 2007	No debate
Second Reading	4th June 2007	Vol. 461, Cols. 24-106
Committee	12th to 26th June 2007	Hansard Public Bill Committee (Bill 108)
Report and Third Reading	15th October 2007	Vol. 464, Cols. 571-668
<i>Ping pong</i>		
Lords Consideration of Commons Amendments	17th October 2007	Vol. 695, Cols. 713-761
Commons Consideration of Lords Message	24th October 2007	Vol. 465, Cols. 295-312
Lords Consideration of Commons Amendments	25th October 2007	Vol. 695, Cols. 1142-1153

Royal Assent – 30th October 2007 House of Lords Hansard: Vol.695, Col.1293

House of Commons Hansard: Vol.465, Col.629

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