

**EXPLANATORY MEMORANDUM TO**  
**THE LEGAL SERVICES ACT 2007 (COMMENCEMENT No.3 AND**  
**TRANSITORY PROVISIONS) ORDER 2008**

**2008 No. 3149 (C. 137)**

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

2. **Purpose of the instrument**

2.1 The instrument commences a range of provisions in the Legal Services Act 2007 ('the 2007 Act') which, among other things, enable both the Legal Services Board ('the Board') and the Office for Legal Complaints ('the OLC') to develop and consult on rules necessary prior to assuming their full statutory functions. This instrument will also commence provisions enabling these bodies to appoint ombudsmen to administer the ombudsman scheme and a Consumer Panel to advise and assist the Board.

2.2 This instrument is made under sections 204, 208(2) and (4) and 211(2) of the 2007 Act. These sections enable provisions in this legislation to come into force on such day as may be appointed by order of the Lord Chancellor and also enable transitory provision, necessary prior to the full regime of the 2007 Act coming into force.

2.3 Amongst other powers, this instrument:

2.3.1 enables the Board to appoint a 'Consumer Panel' under section 8 of the 2007 Act, to represent the interests of consumers. The OLC will also be able to appoint ombudsmen and staff to administer in due course the ombudsman scheme;

2.3.2 enables the Board to prepare and consult upon rules under section 30 of the 2007 Act, in relation to the internal governance of approved regulators like the Law Society and Institute of Legal Executives, specifically the separation of their representative and regulatory functions;

2.3.3 enables the Board to prepare and consult upon rules under sections 37 and 95, prescribing the maximum financial penalties imposed on either an approved regulator or a licensing authority;

2.3.4 enables the Board to prepare and consult upon rules under sections 173 and 174 of the 2007 Act, in relation to the levy on leviable bodies, for example, approved regulators;

2.3.5 enables the Board to prepare and consult upon rules relating to the procedure associated with alternative business structures ('ABS'), which will enable new forms of legal practices;

2.3.6 enables the OLC to develop 'scheme rules' necessary for the administration of the ombudsman scheme for handling complaints against the providers of legal services;

2.4 This instrument also makes transitory provision to ensure that certain provisions will have effect prior to the 2007 Act being fully commenced. Such provision has been made with reference, for example, to appointments to the Consumer Panel and those legal regulators to which the levy rules will apply.

### **3. Matters of special interest to the Joint Committee on Statutory Instrument**

3.1 None

### **4. Legislative Context**

4.1 This instrument commences provisions of the 2007 Act which received Royal Assent on 30 October 2007. To date, two commencement orders have been made under sections 211 and 208 of the 2007 Act in respect of the Board, the OLC and legislation relating to regulatory bodies. These were the Legal Services Act (Commencement No. 1 and Transitory Provisions) Order 2008 (No. 222) and Legal Services Act (Commencement No. 2 and Transitory Provisions) Order 2008 (No. 1436).

4.2 A key aim of the legislation is to simplify the existing regulatory framework, which has a number of oversight regulators, including the Master of the Rolls and the Secretary of State of Justice. The Board, as oversight regulator, will be able to ensure greater consistency of standards across the legal sector, while approved regulators will be responsible for day-to-day regulation. Another driver for change was the need to improve the way in which complaints are dealt with and to improve consumer confidence. The OLC will be an independent body that will administer an ombudsman scheme which will deal with consumer complaints about legal services providers. The scheme will be able to provide quick and fair redress. Furthermore, the 2007 Act facilitates ABS which offers greater choice for the legal profession and consumers about the way that services are provided, including permitting different kinds of lawyers and non-lawyers to work together, and allowing for external investment.

### **5. Territorial Extent and Application**

5.1 This instrument applies to England and Wales

### **6. European Convention on Human Rights**

The Parliamentary Under Secretary of State, Bridget Prentice, has made the following statement regarding Human Rights:

In my view the provisions of the Legal Services Act 2007 (Commencement No.3 and Transitory Provisions) Order 2008 are compatible with the Convention rights.

### **7. Policy background**

- ***What is being done and why***

7.1 The 2007 Act reforms the way in which legal services are regulated in England & Wales. The aims of the Act are to simplify the existing regulatory framework by establishing an oversight regulator, the Board and improving consumer confidence and the way in which complaints are dealt with by establishing an independent complaints handling body; the OLC.

7.2 The 2007 Act also provides greater choice and flexibility for consumers, and more innovative and efficient organisation of legal practices by providing for alternative business structures (“ABS”). The ABS framework set out in Part 5 of the 2007 Act permits different kinds of lawyers and non-lawyers to work together, and allows for external investment. This will be subject to a licensing regime set out by the Board.

7.3 It is anticipated that the Board and the OLC will not be fully operational until 2010. The purpose of this instrument is therefore to enable the Board and OLC to develop rules and make crucial appointments prior to the bodies assuming their full statutory functions.

7.4 This instrument will enable the Board to develop rules relating to applications procedures, financial penalties, alternative business structures and the levy on the legal profession, which finances the OLC and the Board. This instrument will not, however, require payment of the levy. Furthermore, the Board will be able to issue Policy Statements and Guidance, by virtue of the powers commenced in this order. The 2007 Act provides that the Board must also make rules ensuring a separation of the representative and regulatory functions of approved regulators. This instrument will enable these rules to be developed by the Board. This order will also enable the Board to appoint a Consumer Panel, which will act in an advisory capacity to the Board, representing the interests of consumers.

7.5 This instrument will also enable the OLC to develop the rules under which the ombudsman scheme will be administered, in independently handling complaints relating to legal services. Scheme rules will touch on a number of issues, including those complaints within the scope of the rules and charges payable by Respondents to complaints. The OLC will also be able to appoint a Chief Ombudsman, assistant ombudsmen and staff, who will ultimately be responsible for administering the ombudsman scheme.

7.6 This instrument will commence provisions ensuring that in the course of developing policy and rules, the Board and OLC comply with appropriate publicity, consultation and approval requirements, as provided for in the 2007 Act. All rules are subject to general consultation, whilst certain rules, such as those relating to financial penalties and the levy on the legal profession must receive the consent of the Lord Chancellor. These particular rules must also be laid before Parliament as a Statutory Instrument, as if the Board were a Minister of the Crown, under section 204 of the 2007 Act.

7.7 Whilst this instrument commences powers enabling the development of policy and rules, the powers to enforce these rules are not commenced in this Order. The rules formulated both by the Board and the OLC will only be applicable to legal regulators upon their assumption of their full statutory functions in 2010.

7.8 Finally, this Instrument incorporates transitory provision in respect of levy rules. At present, the definition of “leviable body” is limited to those currently listed in paragraph 1 of Schedule 4 to the Act or designated by Order of the Lord Chancellor. This table does not currently include those designated subsequently, as has been the case for the Institute of Chartered Accountants for Scotland (ICAS), for example, who will ultimately be leviable bodies under the 2007 Act. To enable the Board to develop levy rules relating to all bodies that will be approved regulators when the regime is fully operational, a transitory definition is to be employed. It is anticipated that these bodies will be added to the table in paragraph 1 of schedule 4 by Order of the Lord Chancellor, before this provision is commenced. Similarly, transitory provision is included in relation to appointments to the Consumer Panel and also to ensure that all relevant bodies are consulted in respect of rules.

- **Consolidation**

7.9 This Instrument commences provisions in the 2007 Act and there are therefore no issues relating to consolidation.

## **8. Consultation outcome**

8.1 The 2007 Act is the result of extensive consultation both before and during the Parliamentary process. The key groups that were consulted were consumer organisations, regulatory bodies, other professional representative bodies and other key stakeholders, such as the Offices of the Legal Services Ombudsman and Legal Services Complaints Commissioner. In particular, the Government consulted following the 2001 report on competition in the professions by the Office of Fair Trading<sup>1</sup>, and published a report into competition and regulation in the legal services market.<sup>2</sup> Further to that, in 2003, Sir David Clementi was appointed by the Government to conduct an independent review of the regulation of legal services<sup>3</sup>, which was the basis for the proposals set out in the Government’s White Paper, *The Future of Legal Services: Putting Consumers First*, published in October 2005. A summary of the responses to the White Paper is included in section 2 of the Regulatory Impact Assessment (‘RIA’). A supplementary RIA was prepared in June 2007, updating and supplementing the full Impact Assessment of November 2006.

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

<sup>2</sup> Department for Constitutional Affairs, 2003, *Competition and Regulation in the Legal Services Market – A Report Following the Consultation “In the Public Interest?”*

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

8.2 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.

8.3 The Secretary of State's Consumer Advisory Panel was also established in 2005 to advise on the development of the 2007 Act, and it continues to advise on the implementation of the legislation. In addition, the Government continues to consult with relevant stakeholders during the commencement of the legislation and has set up the Implementation Working Group (established in April 2006) which includes representatives from existing legal regulators and consumer groups, amongst others.

## **9. Guidance**

9.1 The instrument relates to an order which commences rule-making powers of the Board and OLC, whilst also enabling appointments to be made by these bodies. Officials from the Board and OLC have been fully consulted and engaged in the preparation of this instrument and therefore no further guidance is needed as to the operation of the provisions within the instrument.

## **10. Impact**

10.1 A full regulatory impact assessment was prepared for the Legal Services Bill in November 2006, and a supplementary memorandum was published in June 2007. The full RIA can be found at <http://www.dca.gov.uk/risk/ria-legal-services.pdf> and the supplementary memorandum can be found at <http://www.justice.gov.uk/docs/RIA-Supplement-v021.pdf>. The full RIA includes sections 4-6, which examine the options considered and our reasoning for the final recommendations which were brought forward in the 2007 Act.

## **11. Regulating small business**

11.1 The legislation applies to small business.

11.2 Section 7 of the full RIA sets out the Small Firms Impact Test, in particular relating to the Board and ABS. In developing the Impact Test, the Small Business Service and Federation of Small Businesses were consulted and were content with the approach.

## **12. Monitoring & review**

12.1 The Lord Chancellor will be responsible for approving certain rules formulated by powers commenced by virtue of this instrument. These rules will also be subject to formal public consultation and advice.

12.2 This instrument commences section 118 of the 2007 Act, providing for the OLC's annual report, which is laid before Parliament. Similarly, paragraph

26 of Schedule 15 to the 2007 Act commences the OLC's financial accounting obligations, whereby an annual statement of accounts will also be laid before Parliament. The accountability obligations of the Board were commenced by virtue of the Legal Services Act (Commencement No. 1 and Transitory Provisions) Order 2008 (No. 222).

**13. Contact**

Alexander Faulkner at the Ministry of Justice (Tel: 020 3334 4226 or email: alex.faulkner@justice.gsi.gov.uk) can answer any queries regarding the instrument.