

EXPLANATORY MEMORANDUM TO
THE SOLICITORS' RECOGNISED BODIES (AMENDMENT) ORDER 2009

2009 No. 500

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 This instrument is made as a consequence of the amendments to the incorporated practices provisions in section 9 of the Administration of Justice Act 1985 (“the 1985 Act”) made by paragraph 81 of Schedule 16 to the Legal Services Act 2007 (“the 2007 Act”). The Instrument amends the Solicitors' Incorporated Practices Order 1991 (“the 1991 Order”), to provide for enactments or instruments passed before the 2007 Act, which have effect in relation to solicitors, to apply also to recognised bodies. This Instrument updates the 1991 Order to take account of the new recognised body regime in section 9 as amended (in particular to reflect the fact that recognised bodies are no longer limited to bodies corporate) and to remove references to legislation that is no longer in force.

2.2 In summary, this instrument:

2.2.1 amends the citation of the original Solicitors' Incorporated Practices Order 1991 (S.I. 1991 No. 2684) to reflect the fact that partnerships (not just companies or limited liability partnerships as previously) may now become recognised bodies.

2.2.2 updates terminology in that order and other legislation in line with the provisions in section 9 of the 1985 Act (as amended by the 2007 Act), such as:

- removing references to (bodies) “corporate”;
- removing references to the “Council” (of the Law Society);
- inserting a reference to “partner” so that the Order applies to limited liability partnerships and;
- updating the definitions of “holding company” and “subsidiary” so that they refer to the most recent Companies Act.

2.2.3 removes references in the 1991 Order to legislation that is no longer in force, inserts the updated equivalent where applicable and amends any references that contain errors.

2.3 This instrument is timed to come into force in conjunction with provisions commenced by the Legal Services Act 2007 (Commencement No. 4, Transitory and Transitional Provisions and Appointed Day) Order 2009, anticipated on 31 March 2009, subject to parliamentary approval.

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

3.1 None.

4. Legislative Context

4.1 This Instrument amends the 1991 Order as a consequence of provisions of the 2007 Act (which received Royal Assent on 30 October 2007). To date, three commencement orders have been made under sections 211 and 208 of the 2007 Act.

4.2 The relevant provisions of the 2007 Act amend section 9 of, and insert a new section 9A into, the 1985 Act to expand the types of bodies which may be regulated by the Law Society as legal services bodies. These bodies may now include partnerships as well as bodies corporate (including limited liability partnerships) and are referred to in this Instrument as “recognised bodies” to reflect the fact that they are recognised by the Law Society as suitable to carry out regulated legal activities.

4.3 The Instrument is needed in order to facilitate the effective operation of the 1991 Order as a result of changes to the scope of bodies that may be regulated by the Law Society under the new section 9 of the 1985 Act.

4.4 This instrument is made under sections 9(7) of the 1985 Act and 208(2) of the 2007 Act. These provisions respectively empower the Lord Chancellor, by order to;

- provide for any enactment or instrument passed and having effect in relation to solicitors to have effect in relation to recognised bodies with such additions, omissions or other modifications as appear to the Lord Chancellor to be necessary or expedient, and
- make any supplementary, incidental or consequential provision and any transitory, transitional or saving provision which the Lord Chancellor considers necessary or expedient for the general purposes, or any particular purpose, of the 2007 Act, or in consequence of any provision made by or under it or for giving full effect to it.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- *What is being done and why*

7.1 Section 9 of the 1985 Act currently allows the Law Society to make provision as to the management and control by solicitors or registered European lawyers, or by such persons and other lawyers as permitted by rules made under that section, of bodies corporate. Those bodies may only carry on business consisting of the provision of professional services such as are provided by individuals practising as solicitors or lawyers of other jurisdictions.

7.2 Paragraph 81 of the 2007 Act amends this provision to substitute a new regime for the regulation of entities (as opposed to individuals) by the Law Society. The new provisions allow the Law Society to make rules about legal services bodies. These bodies are defined in a new section 9A of the 1985 Act, and may be recognised by the Law Society to undertake the provision of any solicitor services or other relevant legal services.

7.3 Such bodies must be managed and controlled in accordance with the conditions set out in the new section 9A which now refer to “legally qualified” persons (as defined in that section) rather than solicitors and lawyers of other jurisdictions, and may also include a limited proportion of persons who are not legally qualified. Furthermore, legal services bodies may be bodies corporate or unincorporate.

7.4 Given that the scope of bodies which may be recognised by the Law Society has been extended by the new section 9 and 9A provisions, it is necessary to amend the 1991 Order to ensure that it applies existing legislation appropriately to the new recognised body regime.

7.5 This instrument amends the citation of the 1991 order, so that the original Order may be cited as the Solicitors’ Recognised Bodies Order 1991, rather than the Solicitors’ Incorporated Practices Order. This is to reflect the fact that such bodies may be unincorporated, as well as incorporated.

7.6 In order to ensure that recognised body provisions currently applied to existing legislation is consistent with terminology used in the 2007 Act, the Instrument amends a number of terms in the 1991 Order. Principally, these are:

- To remove the words “corporate” and “the Council of” so that it no longer applies exclusively to bodies corporate (and can now include bodies unincorporate), and to reflect the fact that a result of the 2007 Act is that it is the Law Society, and not its Council, who recognises bodies. It also removes the term “corporate” from other legislation which also now applies to bodies unincorporate;
- To insert “or who is a partner”, so that it applies to limited liability partnerships;
- To refer to the current definitions of “holding company” and “subsidiary” as provided in the Companies Act 2006.

7.7 This Instrument also removes references to legislation that is no longer in force, setting out a schedule of the provisions to be removed, and where

appropriate, inserting the updated equivalent, and amending any references that contain errors.

- **Consolidation**

7.8 This Instrument amends the Solicitors' Incorporated Practices Order 1991 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 Trading¹, and published a report into competition and regulation in the legal services market.² Further to that, in 2003, Sir David Clementi was appointed by the Government to conduct an independent review of the regulation of legal services³, 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 are included in section 2 of the Regulatory Impact Assessment ('RIA') which is attached to this memorandum. A supplementary RIA was prepared in June 2007, updating and supplementing the full Impact Assessment of November 2006.

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.

8.4 In the course of preparing this instrument, the Solicitors Regulation Authority ("the SRA"), the regulatory arm of the Law Society, has been fully consulted and is in full support of the amendments proposed.

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*

9. Guidance

9.1 The SRA will be responsible for issuing guidance relating to rules applicable to recognised bodies, as it currently does so under the existing provisions.

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. Chapter 5 refers to Alternative Business Structures and specifically explores the benefits and costs of legal disciplinary practices.

10.2 Furthermore, provisions relating to the new legal services bodies (essentially LDPs as set out in the RIA) were subject to considerable Parliamentary debate. They were approved on the basis that extended the scope of existing provisions, and were still limited by management and control conditions set out in legislation.

11. Regulating small business

11.1 The 1991 Order relates to recognised bodies, which include small businesses. Section 9 of the Administration of Justice Act amends the scope of bodies that may be recognised by the Law Society, however there is no obligation for those bodies to change the way in which they operate, nor to the way in which the Law Society regulates them. They do provide the opportunity for firms to operate in new ways, but this is purely facilitative.

11.2 The provisions within this Instrument are consequential to changes in made through the 2007 Act and do not themselves affect the regulation of small business. The purpose of the Instrument is to update an existing order to take account of the amended recognised body regime, and allow for the new facilitative provisions to work effectively in accordance with existing legislation.

11.3 In developing the wider reforms of the 2007 Act, the regulation of small business was considered in detail. 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 Certain rules made by the Law Society are subject to the approval of the Lord Chancellor, pending the Legal Services Board assuming its statutory functions in this regard.

12.2 Should further amendments be made to the legal services body regime in the future, or we become aware of any new legislation which makes reference to recognised bodies, legal services bodies or any other terminology used within this Instrument, then we will ensure appropriate steps are taken to update the relevant Order.

13. Contact

Geraint Davies at the Ministry of Justice (Tel: 020 3334 4218 or email: geraint.davies@justice.gsi.gov.uk) can answer any queries regarding the instrument.