

LEGAL SERVICES ACT 2007

EXPLANATORY NOTES

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development, and agreed with the Government's earlier conclusion that the current regulatory framework was "inflexible, outdated and over-complex".³ Sir David highlighted concerns about the current: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,
 - reserved instrument activities,

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*

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

- 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*