

LEGAL SERVICES ACT 2007

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

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.
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.
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.

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

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 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.

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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.
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).

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

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

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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).