

EXPLANATORY MEMORANDUM TO
THE LEGAL SERVICES ACT 2007 (COMMENCEMENT No.11, TRANSITORY
AND TRANSITIONAL PROVISIONS AND RELATED AMENDMENTS)
ORDER 2011

2011 No. 2196 (C.79)

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 purpose of this instrument is to commence provisions in the Legal Services Act 2007 (“the 2007 Act”) which establish the arrangements by which a licensing authority may license a body which is partly or wholly owned or controlled by non-lawyers to provide legal services or a mixture of legal and non-legal services. It also commences other, minor, provisions of the 2007 Act.
 - 2.2 In addition, this instrument also makes transitory and transitional provision and alters the transitory provision made in previous orders.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None.
4. **Legislative Context**
 - 4.1 The 2007 Act sets out a framework for the regulation of legal services in England and Wales. The 2007 Act establishes the Legal Services Board (“the Board”) as the oversight regulator for this new framework. It requires certain legal services (“reserved legal activities”) to be carried out by those who are authorised to do so or exempt from authorisation. It also makes provision for the regulation by approved regulators of those providing reserved legal services. A list of approved regulators is set out in paragraph 1 of Schedule 4 to the 2007 Act.
 - 4.2 Part 5 of the 2007 Act sets out arrangements under which licensing authorities may license firms (“licensed bodies”) which are partly or wholly owned or controlled by non-lawyers to provide legal services, or a mixture of legal and non-legal services. Part 1 of Schedule 10 to the 2007 Act allows the Lord Chancellor, on the recommendation of the Board, to designate approved regulators as licensing authorities for the purposes of Part 5. *The Legal Services Act 2007 (Designation as a Licensing Authority) Order 2011*(which is due to come into force 12 September 2011) designates the Council for Licensed Conveyancers as a licensing authority under that Schedule.
 - 4.3 To date, ten commencement orders have been made in relation to the 2007 Act. Provisions preliminary to the introduction of the licensing regime were included in *The Legal Services Act 2007 (Commencement No.3 and Transitory Provisions) Order 2008*, *The Legal Services Act 2007 (Commencement No7) Order 2010* and *The Legal Services Act 2007 (Commencement No.9) Order 2010*. This instrument commences provisions that are necessary to enable that regime to become operational.

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 The introduction of the licensing regime in Part 5 of the 2007 Act will relax the historical restrictions on law firm structure and ownership. Under this new regime, different types of lawyers can work together and with other professionals as one entity to provide a range of legal and non-legal services. These licensed bodies will also be able to operate with non-lawyer ownership and investment.

7.2 The new licensing regime is expected to lead to greater competition, choice and opportunity in the legal services market. Enabling lawyers to work together with other professionals should allow them to explore new ways of structuring their businesses to be more cost-effective, efficient and innovative. Increased competition should also lead to improved standards of service for consumers and may help to reduce the cost of legal services. Consumers would also have the choice of having their legal and other professional services dealt with by one entity.

7.3 Commencing the provisions in this instrument will allow existing regulators which have been designated as licensing authorities to regulate licensed bodies in accordance with the statutory framework of the 2007 Act and also in accordance with the licensing rules of each licensing authority. Prior to the commencement of the new licensing regime, a programme of work has been underway to put in place the underpinning regulatory arrangements to ensure that robust safeguards exist before the new regime becomes operational. Currently, in addition to the Council for Licensed Conveyancers referred to above, the Law Society of England and Wales has applied to become a licensing authority.

7.4 As well as commencing the provisions for the new licensing regime, the instrument also make provision as follows:

- Article 3 makes transitional provisions to prevent any licence issued under Part 5 of the 2007 Act from having effect until such time as licensed bodies become authorised to offer services which constitute reserved legal activities (upon the commencement of section 18(1)(b) of the 2007 Act).
- Article 4 makes transitory provision by removing references in the 2007 Act to the Legal Services Board (“the Board”) as a licensing authority until the provisions of the 2007 Act providing for the Board to act as a licensing authority are commenced.
- Articles 5 and 6 alter the transitory provision made in *The Legal Services Act 2007 (Commencement No. 6, Transitory, Transitional and Saving Provisions) Order 2009* and *The Legal Services Act 2007 (Commencement No. 8, Transitory and Transitional Provision) Order 2010*. This is so that certain transitory provision made by these two instruments does not come to an end until the provisions allowing the Board to act a licensing authority are commenced.

- *Consolidation*

7.5 There are no issues relating to consolidation

8. Consultation outcome

- 8.1 The Board has held a series of public consultations covering a range of proposals relating to the licensing arrangements contained in Part 5 of the 2007 Act. In May 2009, the Board issued a public discussion paper, '*Wider Access, Better Value, Strong Protection*' that identified key areas for discussion about the new regime. There was a good degree of interest generating 40 responses. Further thinking and analysis of those responses led to the Board to issue a consultation paper in November 2009, '*Alternative business structures: Approaches to Licensing*', which set out the proposed approach to licensing authorities' licensing rules. That consultation received 48 responses.
- 8.2 The Board also consulted on its approach to considering applications to become a licensing authority and the process to cease to be a licensing authority. In addition, the Board undertook consultation on specific parts of the new regime including rules for the maximum amount for a financial penalty, appeal arrangements and other rules relating to disqualification. Each of these consultations covered a wide range of issues and proposals. Some modification of the Board's position was needed as a result of consultation. Overall, there was broad support for the provisions in Part 5 of the 2007 Act. The Board also issued guidance on the content of licensing rules in March 2010. These consultations and the responses are available on the Board's website: http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/index.htm
- 8.3 The progress of work to introduce the licensing regime has also been informed by significant input from the "ABS Implementation Group". This group was set up by the Board and comprised representatives from all the approved regulators, the Ministry of Justice and the Board.
- 8.4 The Ministry of Justice has consulted the Board and all the approved regulators about this instrument and shared a draft for consideration and comment.

9. Guidance

- 9.1 During the course of developing its proposals, the Board has issued guidance in accordance with the statutory requirements, which is available on its website: www.legalservicesboard.org.uk.
- 9.2 Each applicant to become licensing authority has also consulted on its approach, rules and guidance. This information can be found on the website of the Council for Licensed Conveyancers: <https://www.clc-uk.org/consultations9.php> and the website of the Solicitors Regulation Authority (which is the regulatory arm of the Law Society): <http://www.sra.org.uk/sra/consultations.page>
- 9.3 The Board and the prospective licensing authorities have also undertaken public information road shows around the country. In general, licensing authorities will be responsible for issuing further guidance to licensed bodies and for ensuring that licensed bodies are complying with licensing rules.

10. Impact

- 10.1 A full Regulatory Impact Assessment (RIA) was prepared for the Legal Services Bill in November 2006, at: <http://www.dca.gov.uk/risk/ria-legal-services.pdf> . A supplementary memorandum was published in June 2007, which can be found at: <http://www.justice.gov.uk/docs/RIA-supplementv021.pdf>
- 10.2 An Impact Assessment (IA) has been prepared specifically for this instrument. The IA identified that the costs and benefits are likely to be influenced by two factors:
- The number of firms that enter the legal services market to operate as a licensed body.
 - The different types of business models that are utilised in terms of the mixture of lawyer and non-lawyer ownership and the range of legal and non-legal services provided.

Both of the above factors are uncertain and therefore the costs and benefits cannot be fully quantified. In the absence of sufficient data it is not possible to reliably quantify the precise impact of implementing the licensing regime and therefore the IA primarily analyses the qualitative effects. The rationale for commencing Part 5 of the 2007 Act is based primarily on efficiency savings as a result of opening up the legal services market to greater competition and choice to benefit providers and consumers of legal services.

11. Regulating small business

- 11.1 There is expected to be some impact on small businesses. The RIA recognised that the introduction of the new regime may lead to increased competition in the legal services market and this could lead to the closure of small, inefficient legal suppliers in some locations. However, it is considered that this risk will be mitigated by the opportunity presented by the licensing regime for practitioners from different professions to join up to provide services and therefore gain from efficiency savings.
- 11.2 The IA has shown that the impact on small firms will depend on the take up levels of the new opportunities, which is unknown at the present time. If the take up of the new business structures is high it may result in a notable change to operation and structure of the legal services market, and the impact could be felt more acutely by smaller firms. However, if take up is low, there is likely to be little impact on smaller firms.

12. Monitoring & review

- 12.1 The Board plans to undertake a post implementation review three years after commencement of the licensing regime. The basis of the review will be to assess the impact of liberalisation of the legal services market.
- 12.2 On 12 August 2011, the Board published its research report on the legal services market and the likely impact of the new licensing regime. This document captures current trends, against which future developments can be assessed and is available at: http://www.legalservicesboard.org.uk/news_publications/latest_news/2011/120811.htm

13. Contact

- 13.1 Please contact Surinder Sawali at the Ministry of Justice (by Tel: 020 3334 3142 or Email: surinder.sawali@justice.gsi.gov.uk) about any queries regarding this instrument.