

Legal Services Act 2007

2008 CHAPTER 29

An Act to make provision for the establishment of the Legal Services Board and in respect of its functions; to make provision for, and in connection with, the regulation of persons who carry on certain legal activities; to make provision for the establishment of the Office for Legal Complaints and for a scheme to consider and determine legal complaints; to make provision about claims management services and about immigration advice and immigration services; to make provision in respect of legal representation provided free of charge; to make provision about the application of the Legal Profession and Legal Aid (Scotland) Act 2007; to make provision about the Scottish legal services ombudsman; and for connected purposes.

[30th October 2007]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:–

Part 1

THE REGULATORY OBJECTIVES

1 The regulatory objectives

(1) In this Act a reference to “the regulatory objectives” is a reference to the objectives of—

- (a) protecting and promoting the public interest;
- (b) supporting the constitutional principle of the rule of law;
- (c) improving access to justice;
- (d) protecting and promoting the interests of consumers;
- (e) promoting competition in the provision of services within subsection (2);
- (f) encouraging an independent, strong, diverse and effective legal profession;
- (g) increasing public understanding of the citizen's legal rights and duties;
- (h) promoting and maintaining adherence to the professional principles.

(2) The services within this subsection are services such as are provided by authorised persons (including services which do not involve the carrying on of activities which are reserved legal activities).

(3) The “professional principles” are—

- (a) that authorised persons should act with independence and integrity,
- (b) that authorised persons should maintain proper standards of work,
- (c) that authorised persons should act in the best interests of their clients,
- (d) that persons who exercise before any court a right of audience, or conduct litigation in relation to proceedings in any court, by virtue of being authorised persons should comply with their duty to the court to act with independence in the interests of justice, and
- (e) that the affairs of clients should be kept confidential.

(4) In this section “authorised persons” means authorised persons in relation to activities which are reserved legal activities.

Introductory Note:

This section defines “regulatory objectives” for the purpose of this Act.

Note:

The Legal Services Board, the Office for Legal Complaints and the approved regulators have a duty to observe the regulatory objectives when exercising their functions.

The Board – the Legal Services Board – see s.2 and Sch.1.

Office for Legal Complaints - see s.114 and Sch.5.

Approved regulator – see s.20

Subsection (1):

Note:

The regulatory objectives are not ranked in an order of importance. The Government's Explanatory Notes (see General Note: Explanatory Notes) say (para.28):

“The Act does not rank these objectives and principles in order of importance. The Legal Services Board, the Office for Legal Complaints and the approved regulators will be best placed to consider how competing objectives are to be balanced in a particular instance.”

For the Legal Services Board’s responsibilities on regulatory objectives - see s.3.

For the Office for Legal Complaints’ responsibilities on regulatory objectives - see s.116.

For the approved regulator’s responsibilities on regulatory objectives - see s.28.

Pepper v Hart Note (see General Note: Pepper v Hart):

In the Public Bill Committee's examination of the Bill for this Act the Parliamentary Under-Secretary of State for Justice (Bridget Prentice) said the following:

“The promotion of competition encourages innovative and more efficient ways of providing legal services and firms to address the needs of the consumer in the legal sector. Therefore, it is right that we encourage firms to be responsive to consumers’ needs with respect to price, quality and variety. For that reason, the competition objective in clause 1 is consistent with both the public and the consumer interest. I do not agree that it should be seen as of lesser importance than any of the other objectives ... the Government are opposed to ranking the objectives in any way. It would be against the recommendations of Sir David Clementi who proposed that the regulator should be able to balance the objectives on a case-by-case basis. The Bill realises that recommendation and establishes a risk-based and proportionate regulatory structure in which the board, approved regulators and the Office for Legal Complaints can look at how each of the objectives applies in any given situation. We have consistently said that

the objectives should not be weighted in any way, and we have resisted the call from some in the consumer arena who said that the consumer objective should take preference. I resisted that, despite the fact that I say consistently that the consumer is at the heart of this Bill. We have also resisted similar arguments from the legal profession saying that one or other of the legal objectives should be right at the top. The Joint Committee suggested that, in the explanatory notes, the objectives should not be listed in order of importance. We agreed with that recommendation and have not listed them in that way.”

(*Hansard*, Public Bill Committee, 1st Sitting, col.12 (June 12, 2007))

<http://www.publications.parliament.uk/pa/cm200607/cmpublic/legal/070612/am/70612s01.htm>

Pepper v Hart Note (see General Note: Pepper v Hart):

In the Public Bill Committee's examination of the Bill for this Act the Parliamentary Under-Secretary of State for Justice (Bridget Prentice) said the following:

“... any conflict between an authorised person’s interests and those of a client is already prohibited under clause 1(3)(c), which requires the authorised person to act in the best interests of their clients. If there were two clients with conflicting interests, it would be impossible for the authorised person to act in the best interests of both.”

Pepper v Hart Note (see General Note: Pepper v Hart):

In the Public Bill Committee's examination of the Bill for this Act the Parliamentary Under-Secretary of State for Justice (Bridget Prentice) said the following:

“The regulatory objectives were put at the beginning of the Bill because of their importance across the whole regulatory framework: they cover the board, the approved regulators and the Office for Legal Complaints, all of which have duties to act in a way that is compatible with the objectives. Those key principles, which underpin the rest of the Bill, were put at the beginning to show their importance.”

Pepper v Hart Note (see General Note: Pepper v Hart):

In the Public Bill Committee's examination of the Bill for this Act the Parliamentary Under-Secretary of State for Justice (Bridget Prentice) said the following:

“... The public interest objective was inserted in [the House of Lords], and was included to ensure that the board, the OLC and the regulators consider the public interest when discharging their functions.”

Subsection (2):

Authorised person- see s.18.

Reserved legal activity- see s.12.

Subsection (3):

Court- see s.207.

Right of audience- see Sch.2, para.3.

Part 2
THE LEGAL SERVICES BOARD
Constitution

2 The Legal Services Board

- (1) There is to be a body corporate called the Legal Services Board (“ the Board”).
- (2) Schedule 1 is about the Board.

Introduction:

This section establishes the Legal Services Board, which will act as an oversight regulator and head the new regulatory framework.

The Government’s Explanatory Notes (see General Note: Explanatory Notes) say:

“a single oversight body independent both from the Government and from the “front-line” approved regulators such as the Law Society and Bar Council.”.

Note:

The Legal Services Board was formed to remove the inefficiencies of the previous regulatory arrangement, described by the Government as “outdated, inflexible, over-complex and not accountable or transparent enough” see Department for Constitutional Affairs, 2003, Competition and Regulation in the Legal Services Market — A Report Following the Consultation “In the Public Interest?”.

The move for reform came, following an independent report by Sir David Clementi in 2004, where he referred to the previous regulatory arrangement as a “maze” see Clementi, Sir David, 2004, Review of the Regulatory Framework for Legal Services in England and Wales — Final Report. In response, the Government published a White Paper, detailing the arrangements for the new regulatory framework see Department for Constitutional Affairs, 2005, The Future of Legal Services: Putting Consumers First.

Subsection (1):

See General Note: Bodies Corporate

General functions

3 The Board's duty to promote the regulatory objectives etc

- (1) In discharging its functions the Board must comply with the requirements of this section.
- (2) The Board must, so far as is reasonably practicable, act in a way—
 - (a) which is compatible with the regulatory objectives, and
 - (b) which the Board considers most appropriate for the purpose of meeting those objectives.
- (3) The Board must have regard to—
 - (a) the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, and
 - (b) any other principle appearing to it to represent the best regulatory practice.

Introduction:

This section sets out the Legal Services Board's duty to act in a way which promotes the regulatory objectives.

Subsection (1):

The Board – the Legal Services Board – see s.2 and Sch.1.

Functions- see s.207.

Subsection (2):

Regulatory objective- see s.1.

“So far as is reasonably practicable” - Pepper v Hart Note (see General Note: Pepper v Hart): In the Public Bill Committee's examination of the Bill for this Act the Parliamentary Under-Secretary of State for Justice (Bridget Prentice) said the following (responding to an amendment to leave out these words):

“The Government did not want to put an absolute requirement on the board and on the regulator to act in such a way as to be fully compatible with all the regulatory objectives all the time, because that could result in greater cost and bureaucracy, and probably in greater intervention by the board in the regulatory activities of the approved regulators—not least because there would then be a risk of judicial review if they did not so act. The flexible and risk-based approach that Sir David Clementi advocated was the reason for drafting the clause as it is, such that the right way forward is to deal with matters on a case-by-case basis. The wording of clauses 3 and 28 therefore tries to recognise that the objectives might

apply to a greater or lesser extent in the carrying out of functions, or even, sometimes, not at all.”

Subsection (3):

Proportionate – see General Note: Proportionality.

See General Note: Have Regard To.

4 Standards of regulation, education and training

The Board must assist in the maintenance and development of standards in relation to—

- (a) the regulation by approved regulators of persons authorised by them to carry on activities which are reserved legal activities, and
- (b) the education and training of persons so authorised.

Introduction:

This section requires the Legal Services Board to help maintain standards of regulation and education for reserved legal activities.

The Board – the Legal Services Board – see s.2 and Sch.1.

“Assist” - **Pepper v Hart Note** (see General Note: Pepper v Hart): In the Public Bill Committee's examination of the Bill for this Act the Parliamentary Under-Secretary of State for Justice (Bridget Prentice) said the following:

“I think that it is appropriate to use the word “assist” because it is about proportionate regulation. We have discussed proportionality during the proceedings of the Bill. The same must apply in this area. If we said that the board had a duty to “ensure” the development and maintenance of those standards, it would become a more interventionist approach. I am not sure that that sits comfortably with effective oversight regulation.”

Reserved legal activity- see s.12.

Approved regulator- see s.20.

See General Note: Person.

5 Corporate governance

In managing its affairs, the Board must have regard to such generally accepted principles of good corporate governance as it is reasonable to regard as applicable to it.

Introduction:

This section requires the Legal Services Board to take into account the principle of good corporate governance in managing its affairs.

The Board – the Legal Services Board – see s.2 and Sch.1.

See General Note: Have Regard To.

6 Annual report

- (1) The Board must prepare a report (“ the annual report”) for each financial year.
- (2) The annual report must deal with–
 - (a) the discharge of the Board's functions,
 - (b) the extent to which, in the Board's opinion, the Board has met the regulatory objectives, and
 - (c) such other matters as the Lord Chancellor may from time to time direct.
- (3) As soon as reasonably practicable after the end of each financial year, the Board must give the Lord Chancellor a copy of the annual report prepared for that year.
- (4) The Lord Chancellor must lay a copy of the annual report before Parliament.
- (5) In this section “ financial year” means–
 - (a) the period beginning with the day on which the Board is established and ending with the next following 31 March, and
 - (b) each successive period of 12 months.

Introduction:

This section imposes a duty on the Legal Services Board to prepare an annual report for each financial year, which must include the extent to which the Legal Services Board has discharged its functions and the regulatory objectives.

For the Legal Services Board’s financial accountability on accounts – see Sch.1 para.25.

Subsection (1):

The Board – the Legal Services Board – see s.2 and Sch.1.

Subsection (2):

Regulatory objective- see s.1.

Functions- see s.207.

Direct – Section 200(2) requires a direction under this Act to be in writing (see General Note: Writing). Sections 202 and 203 make provision about service and form of directions. Section 200(3) expressly confers a power to revoke a direction (but not to vary – although the same result could at least sometimes be achieved by revoking and re-issuing).

Subsection (4):

See General Note: Laying before Parliament.

7 Supplementary powers

The Board may do anything calculated to facilitate, or incidental or conducive to, the carrying out of any of its functions.

Introduction:

This section gives the Legal Services Board wide ancillary powers in connection with its functions.

Note:

This power is constrained by the overriding regulatory objectives. Regulatory objectives- see s.1.

The Board – the Legal Services Board – see s.2 and Sch.1.

Functions- see s.207.

Consumer Panel

8 The Consumer Panel

- (1) The Board must establish and maintain a panel of persons (to be known as “ the Consumer Panel”) to represent the interests of consumers.
- (2) The Consumer Panel is to consist of such consumers, or persons representing the interests of consumers, as the Board may appoint with the approval of the Lord Chancellor.
- (3) The Board must appoint one of the members of the Consumer Panel to be the chairman of the Panel.
- (4) The Board must secure that the membership of the Consumer Panel is such as to give a fair degree of representation to both–
 - (a) those who are using (or are or may be contemplating using), in connection with businesses carried on by them, services provided by persons who are authorised persons in relation to activities which are reserved legal activities, and
 - (b) those who are using (or are or may be contemplating using) such services otherwise than in connection with businesses carried on by them.
- (5) The Consumer Panel must not include any person who is–
 - (a) a member of the Board or of its staff;
 - (b) a member of the Office for Legal Complaints (see Part 6), an ombudsman appointed by it or a member of its staff appointed under paragraph 13 of Schedule 15;
 - (c) a member of the governing body, or of the staff, of an approved regulator;
 - (d) an authorised person in relation to an activity which is a reserved legal activity;
 - (e) a person authorised, by a person designated under section 5(1) of the Compensation Act 2006 (c. 29), to provide services which are regulated claims management services (within the meaning of that Act);
 - (f) an advocate in Scotland;
 - (g) a solicitor in Scotland;
 - (h) a member of the Bar of Northern Ireland; or
 - (i) a solicitor of the Court of Judicature of Northern Ireland.
- (6) The chairman and other members of the Consumer Panel are to be–
 - (a) appointed for a fixed period, and on other terms and conditions, determined by the Board, and
 - (b) paid by the Board in accordance with provision made by or under the terms of appointment.

(7) But a person may be removed from office in accordance with those terms and conditions only with the approval of the Lord Chancellor.

(8) A person who ceases to be chairman or another member of the Consumer Panel may be re-appointed.

Introduction:

This section requires the Legal Services Board to set up and maintain a Consumer Panel, which will represent the interest of consumers.

Subsection (1):

See General Note: Person.

Consumer- see s.207.

The Board – the Legal Services Board – see s.2 and Sch.1.

Subsection (4):

Authorised person- see s.18.

Reserved legal activity- see s.12.

Subsection (5):

Office for Legal Complaints- see s.114 and Sch.5.

Approved regulator- see s.20.

Claims management services- see s.161.

Solicitor- see s.207.

9 Committees and the procedure of the Consumer Panel

- (1) The Consumer Panel may make such arrangements as it thinks fit for committees established by the Panel to give advice to the Panel about matters relating to the carrying out of the Panel's functions.
- (2) The Consumer Panel may make such other arrangements for regulating its own procedure, and for regulating the procedure of the committees established by it, as it thinks fit.
- (3) Those arrangements may include arrangements as to quorums and as to the making of decisions by a majority.
- (4) The committees established by the Consumer Panel may include committees the membership of which includes persons who are not members of the Panel.
- (5) The membership of every committee established by the Consumer Panel must contain at least one person who is a member of the Panel.
- (6) Where a person who is not a member of the Consumer Panel is a member of a committee established by it, the Board may pay to that person such remuneration and expenses as the Board may determine.

Introduction:

This section allows the Consumer Panel to make arrangements to receive advice from committees, established by it, on carrying out Consumer Panel functions.

Subsection (1):

Consumer Panel - see s.8.

Functions- see s.207.

Subsection (4):

See General Note: Person.

Subsection (6):

The Board – the Legal Services Board – see s.2 and Sch.1.

10 Representations by the Consumer Panel

- (1) The Board must consider any representations made to it by the Consumer Panel.
 - (2) If the Board disagrees with a view expressed, or proposal made, in the representations, it must give the Consumer Panel a notice to that effect stating its reasons for disagreeing.
 - (3) The Consumer Panel may publish such information as it thinks fit about any representations made by it to the Board.
 - (4) Where the Consumer Panel publishes information about any representations made by it, the Board must publish any notice it gives under subsection (2) in respect of those representations.
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Introduction:

This section requires the Legal Services Board to consider any representations made to it by the Consumer Panel.

Subsection (1):

The Board – the Legal Services Board – see s.2 and Sch.1.

Consumer Panel- see s.8.

Consider – see General Note: Have Regard To.

Subsection (2):

Notice – section 200(1) requires notices and notifications under this Act to be in writing (see General Note: Writing). Sections 202 and 203 make provision about service and form of notices. Sections 202 and 203 make provision about service and form of notices.

11 Advice and research functions of the Consumer Panel

- (1) The Consumer Panel may, at the request of the Board—
 - (a) carry out research for the Board;
 - (b) give advice to the Board.
 - (2) The Board must consider any advice given and the results of any research carried out under this section.
 - (3) The Consumer Panel may publish such information as it thinks fit about advice it gives, and about the results of research carried out by it, under this section.
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Introduction:

This section allows the Legal Services Board to request the Consumer Panel to carry out research and give advice.

Subsection (1):

The Board – the Legal Services Board – see s.2 and Sch.1.

Consumer Panel- see s.8.

Subsection (2):

Consider – see General Note: Have Regard To.

Pepper v Hart Note (see General Note: Pepper v Hart):

In the Public Bill Committee's examination of the Bill for this Act the Parliamentary Under-Secretary of State for Justice (Bridget Prentice) said the following on this section:

“I wish to put on record that it should be clear from the very fact that we are establishing a consumer panel that we want it to be furnished with the information that it needs. It is fundamental that the organisation that makes representations to, and consults with, the Board conducts research, gives advice as requested and receives the information that it requires. How else could it achieve the aims that we have set out? ... On access to information, a client should be entitled to the file that relates to their case. Under the Bill, if they are not satisfied with the service provided by a lawyer, they can go to the Office for Legal Complaints. The ombudsman will have the power to require a party to a complaint to provide all the documents and information necessary to consider it, which is a wide-ranging power.”

Part 3 RESERVED LEGAL ACTIVITIES

Reserved legal activities

12 Meaning of “reserved legal activity” and “legal activity”

- (1) In this Act “reserved legal activity” means—
 - (a) the exercise of a right of audience;
 - (b) the conduct of litigation;
 - (c) reserved instrument activities;
 - (d) probate activities;
 - (e) notarial activities;
 - (f) the administration of oaths.
- (2) Schedule 2 makes provision about what constitutes each of those activities.
- (3) In this Act “legal activity” means—
 - (a) an activity which is a reserved legal activity within the meaning of this Act as originally enacted, and
 - (b) any other activity which consists of one or both of the following—
 - (i) the provision of legal advice or assistance in connection with the application of the law or with any form of resolution of legal disputes;
 - (ii) the provision of representation in connection with any matter concerning the application of the law or any form of resolution of legal disputes.
- (4) But “legal activity” does not include any activity of a judicial or quasi-judicial nature (including acting as a mediator).
- (5) For the purposes of subsection (3) “legal dispute” includes a dispute as to any matter of fact the resolution of which is relevant to determining the nature of any person's legal rights or liabilities.
- (6) Section 24 makes provision for adding legal activities to the reserved legal activities.

Introduction:

This section defines and lists reserved legal activities and legal activities.

Subsection (1):

Reserved legal activities are legal activities which are regulated under this Act. The Government's Explanatory Notes (see General Note: Explanatory Notes) say, “[t]he “reserved legal activities” defined by section 12 are all activities that were regulated under previously enacted legislation.”

Administration of oaths- see Sch.2.

Conduct of litigation- see Sch.2.

Notarial activities- see Sch.2. Note that in the Public Bill Committee for the Bill to this Act the Minister was asked to define notarial activities (since the Sch.2 approach is somewhat circular) and responded as follows:

“... there is in fact no statutory definition of notarial activities. The requirement is not one that derives from English law, but from foreign jurisdictions – not from England and Wales or Scotland, but mostly from Latin countries such as Spain or Italy. They are the jurisdictions in which notarial activities are needed. To make things even more exciting, I shall give the hon. Gentleman an example of those activities. They include matters such as the certification of a ship’s manifest.”

Probate activities- see Sch.2.

Reserved instrument activities- see Sch.2.

Right of audience- see Sch.2.

Subsection (3):

Not every legal activity is regulated under this Act – see in particular subsection (4).

Pepper v Hart Note (see General Note: Pepper v Hart):

As to the absence of will-writing in the list - In the Public Bill Committee's examination of the Bill for this Act the Parliamentary Under-Secretary of State for Justice (Bridget Prentice) said the following:

“... in essence, will writing sounds like something that could or should be considered a reserved legal activity. ... we have worked with consumer bodies and we have asked the Office of Fair Trading to review the matter. The OFT, consumer bodies and the current providers of will-writing services were asked to provide us with robust evidence that might be suggestive of systematic failure in the current system that could put consumers at risk.... Lots of opinions were expressed about will writing, but no evidence has been supplied to support the idea that regulation is the way forward at present.”

Subsection (5):

See General Note: Person.

Carrying on the activities

13 Entitlement to carry on a reserved legal activity

(1) The question whether a person is entitled to carry on an activity which is a reserved legal activity is to be determined solely in accordance with the provisions of this Act.

(2) A person is entitled to carry on an activity (“ the relevant activity”) which is a reserved legal activity where–

(a) the person is an authorised person in relation to the relevant activity, or

(b) the person is an exempt person in relation to that activity.

(3) Subsection (2) is subject to section 23 (transitional protection for noncommercial bodies).

(4) Nothing in this section or section 23 affects section 84 of the Immigration and Asylum Act 1999 (c. 33) (which prohibits the provision of immigration advice and immigration services except by certain persons).

Introduction:

This section states that a person is entitled to carry on a reserved legal activity only if they are an authorised person or an exempt person.

Subsection (1):

See General Note: Person.

Reserved legal activity- see s.12.

Subsection (2):

Authorised person- see s.18.

Exempt person- see s.19, Sch.3 and Sch.5.

Offences

14 Offence to carry on a reserved legal activity if not entitled

- (1) It is an offence for a person to carry on an activity (“ the relevant activity”) which is a reserved legal activity unless that person is entitled to carry on the relevant activity.
- (2) In proceedings for an offence under subsection (1), it is a defence for the accused to show that the accused did not know, and could not reasonably have been expected to know, that the offence was being committed.
- (3) A person who is guilty of an offence under subsection (1) is liable–
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both), and
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both).
- (4) A person who is guilty of an offence under subsection (1) by reason of an act done in the purported exercise of a right of audience, or a right to conduct litigation, in relation to any proceedings or contemplated proceedings is also guilty of contempt of the court concerned and may be punished accordingly.
- (5) In relation to an offence under subsection (1) committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (c. 44), the reference in subsection (3)(a) to 12 months is to be read as a reference to 6 months.

Introduction:

This section makes it an offence to carry on a reserved legal activity when one is not entitled to do so.

Subsection (1):

Reserved legal activity- see s.12.

See General Note: Person.

Subsection (3):

See General Notes: Offences: Summary; Offences: Statutory Maximum; Offences: Indictment.

Subsection (4):

Court- see s.207.

Right of audience- see Sch.2.

Subsection (5):

See General Note: Criminal Justice Act 2003, s.154.

15 Carrying on of a reserved legal activity: employers and employees etc

- (1) This section applies for the interpretation of references in this Act to a person carrying on an activity which is a reserved legal activity.
- (2) References to a person carrying on an activity which is a reserved legal activity include a person (“ E”) who–
- (a) is an employee of a person (“ P”), and
 - (b) carries on the activity in E's capacity as such an employee.
- (3) For the purposes of subsection (2), it is irrelevant whether P is entitled to carry on the activity.
- (4) P does not carry on an activity (“ the relevant activity”) which is a reserved legal activity by virtue of E carrying it on in E's capacity as an employee of P, unless the provision of relevant services to the public or a section of the public (with or without a view to profit) is part of P's business.
- (5) Relevant services are services which consist of or include the carrying on of the relevant activity by employees of P in their capacity as employees of P.
- (6) Where P is an independent trade union, persons provided with relevant services do not constitute the public or a section of the public where–
- (a) the persons are provided with the relevant services by virtue of their membership or former membership of P or of another person's membership or former membership of P, and
 - (b) the services are excepted membership services.
- (7) Subject to subsection (8), “ excepted membership services” means relevant services which relate to or have a connection with–
- (a) relevant activities of a member, or former member, of the independent trade union;
 - (b) any other activities carried on for the purposes of or in connection with, or arising from, such relevant activities;
 - (c) any event which has occurred (or is alleged to have occurred) in the course of or in connection with such relevant activities or activities within paragraph (b);
 - (d) activities carried on by a person for the purposes of or in connection with, or arising from, the person's membership of the independent trade union; and such other relevant services as the Lord Chancellor may by order specify.
- (8) The Lord Chancellor may by order make provision about the circumstances in which relevant services do or do not relate to, or have a connection with, the matters mentioned in paragraphs (a) to (d) of subsection (7).
- (9) Subject to that, the Lord Chancellor may by order make provision about–
- (a) what does or does not constitute a section of the public;

(b) the circumstances in which the provision of relevant services to the public or a section of the public does or does not form part of P's business.

(10) The Lord Chancellor may make an order under subsection (7), (8) or (9) only on the recommendation of the Board.

(11) If P is a body, references to an employee of P include references to a manager of P.

(12) In subsection (7), “relevant activities”, in relation to a person who is or was a member of an independent trade union, means any employment (including self-employment), trade, occupation or other activity to which the person's membership of the trade union relates or related.

Introduction:

This section is about the carrying on of reserved legal activities by employers and employees.

Subsection (1):

Reserved legal activity- see s.12.

See General Note: Person.

Subsections (2), (3) and (11):

The cumulative effect of subs.(2), (3) and (11) is that when a person carries on a reserved legal activity through an employee or manager, the person and the employee or manager are all considered to be carrying on the reserved legal activity and must all be entitled to carry on the reserved legal activity.

Subsection (4) and (5):

The cumulative effect of subs.(4) and (5) is that where an employee carries on a reserved legal activity, the employer will not be considered to be carrying on a reserved legal activity, if the employee's service is not provided to the public or section of the public as part of the employer's business.

The Government's Explanatory Notes (see General Note: Explanatory Notes) say:

“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.”

Subsection (6) and (7):

The cumulative effect of subss.(6) and (7) is that, persons who receive relevant services by virtue of membership and those services are excepted membership services, are not considered the public or a section of the public.

Pepper v Hart Note (see General Note: Pepper v Hart):

In the Public Bill Committee's examination of the Bill for this Act the Parliamentary Under-Secretary of State for Justice (Bridget Prentice) said the following:

“It will be primarily up to the trade unions themselves to decide who is a member and to whom they will make those services available. If they want to include associate members, they can, based on the decision whether they can afford to offer to more people services funded from union dues.... The definition will be in each trade union’s rulebook – it will be their definition of membership. I do not think that there will be a problem with associate members, because I do not think that trade unions will want to extend their union funds to cover a much wider group of people. Of course, they must also be careful not to put themselves into a position where they are seen to be offering services to the general public. Once they do that, they will lose exemption under clause 15.”

Subsection (6):

Independent trade union- see s.207.

Subsection (10):

The Board – the Legal Services Board – see s.2 and Sch.1.

Subsection (11):

Manager- see s.207.

Pepper v Hart Note (see General Note: Pepper v Hart):

In the Public Bill Committee's examination of the Bill for this Act the Parliamentary Under-Secretary of State for Justice (Bridget Prentice) said the following:

“There may have been some confusion about what an “employed lawyer” is. In clause 15 it means someone who is an employee of the union. If the union has an arrangement with an outside firm, which most of them tend to do, it may be said to be employing the firm’s services. However, that is not a contract of employment... The firm’s client is the member, not the union. Perhaps it would be better to describe the firm as being engaged rather than employed.”

16 Offence to carry on reserved legal activity through person not entitled

- (1) Where subsection (2) applies it is an offence for a person (“ P”) to carry on an activity (“ the relevant activity”) which is a reserved legal activity, despite P being entitled to carry on the relevant activity.
- (2) This subsection applies if–
- (a) P carries on the relevant activity by virtue of an employee of P (“ E”) carrying it on in E's capacity as such an employee, and
 - (b) in carrying on the relevant activity, E commits an offence under section 14.
- (3) If P is a body, references in subsection (2) to an employee of P include references to a manager of P.
- (4) In proceedings for an offence under subsection (1), it is a defence for the accused to show that the accused took all reasonable precautions and exercised all due diligence to avoid committing the offence.
- (5) A person who is guilty of an offence under subsection (1) is liable–
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both), and
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both).
- (6) A person who is guilty of an offence under subsection (1) by reason of an act done in the purported exercise of a right of audience, or a right to conduct litigation, in relation to any proceedings or contemplated proceedings is also guilty of contempt of the court concerned and may be punished accordingly.
- (7) In relation to an offence under subsection (1) committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (c. 44), the reference in subsection (5)(a) to 12 months is to be read as a reference to 6 months.

Introduction:

This section makes it an offence to carry on a reserved legal activity through a person who is not entitled to carry out the activity.

Subsection (1):

Reserved legal activity- see s.12.

See General Note: Person.

Subsection (3):

Manager- see s.207.

Subsection (1)-(4):

The Government's Explanatory Notes say:

“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.”

See General Note: Explanatory Notes.

Subsection (6):

Court- see s.207.

Right of audience- see Sch.2.

Subsection (7):

See General Note: Criminal Justice Act 2003, s.154.

17 Offence to pretend to be entitled

- (1) It is an offence for a person–
 - (a) wilfully to pretend to be entitled to carry on any activity which is a reserved legal activity when that person is not so entitled, or
 - (b) with the intention of implying falsely that that person is so entitled, to take or use any name, title or description.
 - (2) A person who is guilty of an offence under subsection (1) is liable–
 - (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both), and
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both).
 - (3) In relation to an offence under subsection (1) committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (c. 44), the reference in subsection (2)(a) to 12 months is to be read as a reference to 6 months.
-

Introduction:

This section makes it an offence for a person to pretend to be entitled to carry on the reserved legal services or to use a name, title or description which implies the entitlement.

Subsection (1):

Reserved legal activity- see s.12.

See General Note: Person.

Subsection (3):

See General Note: Criminal Justice Act 2003, s.154.

Interpretation

18 Authorised persons

(1) For the purposes of this Act “ authorised person” , in relation to an activity (“ the relevant activity”) which is a reserved legal activity, means–

(a) a person who is authorised to carry on the relevant activity by a relevant approved regulator in relation to the relevant activity (other than by virtue of a licence under Part 5), or

(b) a licensable body which, by virtue of such a licence, is authorised to carry on the relevant activity by a licensing authority in relation to the reserved legal activity.

(2) A licensable body may not be authorised to carry on the relevant activity as mentioned in subsection (1)(a).

(3) But where a body (“ A”) which is authorised as mentioned in subsection (1)(a) becomes a licensable body, the body is deemed by virtue of this subsection to continue to be so authorised from that time until the earliest of the following events–

(a) the end of the period of 90 days beginning with the day on which that time falls;

(b) the time from which the relevant approved regulator determines this subsection is to cease to apply to A;

(c) the time when A ceases to be a licensable body.

(4) Subsection (2) is subject to Part 2 of Schedule 5 (by virtue of which licensable bodies may be deemed to be authorised as mentioned in subsection (1)(a) in relation to certain activities during a transitional period).

(5) A person other than a licensable body may not be authorised to carry on the relevant activity as mentioned in subsection (1)(b).

(6) But where a body (“ L”) which is authorised as mentioned in subsection (1)(b) ceases to be a licensable body, the body is deemed by virtue of this subsection to continue to be so authorised from that time until the earliest of the following events–

(a) the end of the period of 90 days beginning with the day on which that time falls;

(b) the time from which the relevant licensing authority determines this subsection is to cease to apply to L;

(c) the time when L becomes a licensable body.

Introduction:

This section defines “authorised persons” for the purposes of this Act.

Subsection (1):

Reserved legal activity- see s.12.

See General Note: Person.

Relevant approved regulator- see s.20.

Licensable body- see s.72.

Licensing authority- see s.73.

Subsections (3) and (4):

The Government’s Explanatory Notes (see General Note: Explanatory Notes) say:

“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.”

Subsection (6):

Relevant licensing authority- see s.73.

19 Exempt persons

In this Act, “ exempt person” , in relation to an activity (“ the relevant activity”) which is a reserved legal activity, means a person who, for the purposes of carrying on the relevant activity, is an exempt person by virtue of–

- (a) Schedule 3 (exempt persons), or
- (b) paragraph 13 or 18 of Schedule 5 (additional categories of exempt persons during transitional period).

Introduction:

This section defines “exempt persons” for the purposes of this Act.

Subsection (1):

Reserved legal activity- see s.12.

See General Note: Person.

20 Approved regulators and relevant approved regulators

(1) In this Act, the following expressions have the meaning given by this section–

“ approved regulator” ;

“ relevant approved regulator” .

(2) “ Approved regulator” means–

(a) a body which is designated as an approved regulator by Part 1 of Schedule 4 or under Part 2 of that Schedule (or both) and whose regulatory arrangements are approved for the purposes of this Act, and

(b) if an order under section 62(1)(a) has effect, the Board.

(3) An approved regulator is a “ relevant approved regulator” in relation to an activity which is a reserved legal activity if–

(a) the approved regulator is designated by Part 1, or under Part 2, of Schedule 4 in relation to that reserved legal activity, or

(b) where the approved regulator is the Board, it is designated in relation to that reserved legal activity by an order under section 62(1)(a).

(4) An approved regulator is a “ relevant approved regulator” in relation to a person if the person is authorised by the approved regulator to carry on an activity which is a reserved legal activity.

(5) Schedule 4 makes provision with respect to approved regulators other than the Board.

In that Schedule–

(a) Part 1 designates certain bodies as approved regulators in relation to certain reserved legal activities,

(b) Part 2 makes provision for bodies to be designated by order as approved regulators in relation to one or more reserved legal activities, and

(c) Part 3 makes provision relating to the approval of changes to an approved regulator's regulatory arrangements.

(6) An approved regulator may authorise persons to carry on any activity which is a reserved legal activity in respect of which it is a relevant approved regulator.

Introduction:

This section defines “approved regulators” and “relevant approved regulators” for the purposes of this Act.

Subsection (2):

The Board – the Legal Services Board – see s.2 and Sch.1.

Regulatory arrangements- see s.21.

Subsection (3):

Reserved legal activity- see s.12.

21 Regulatory arrangements

- (1) In this Act references to the “ regulatory arrangements” of a body are to–
- (a) its arrangements for authorising persons to carry on reserved legal activities,
 - (b) its arrangements (if any) for authorising persons to provide immigration advice or immigration services,
 - (c) its practice rules,
 - (d) its conduct rules,
 - (e) its disciplinary arrangements in relation to regulated persons (including its discipline rules),
 - (f) its qualification regulations,
 - (g) its indemnification arrangements,
 - (h) its compensation arrangements,
 - (i) any of its other rules or regulations (however they may be described), and any other arrangements, which apply to or in relation to regulated persons, other than those made for the purposes of any function the body has to represent or promote the interests of persons regulated by it, and
 - (j) its licensing rules (if any), so far as not within paragraphs (a) to (i),

(whether or not those arrangements, rules or regulations are contained in, or made under, an enactment).

- (2) In this Act–

“ compensation arrangements” , in relation to a body, means arrangements to provide for grants or other payments for the purposes of relieving or mitigating losses or hardship suffered by persons in consequence of–

(a) negligence or fraud or other dishonesty on the part of any persons whom the body has authorised to carry on activities which constitute a reserved legal activity, or of employees of theirs, in connection with their activities as such authorised persons, and

(b) failure, on the part of regulated persons, to account for money received by them in connection with their activities as such regulated persons;

“ conduct rules” , in relation to a body, means any rules or regulations (however they may be described) as to the conduct required of regulated persons;

“ discipline rules” , in relation to a body, means any rules or regulations (however they may be described) as to the disciplining of regulated persons;

“ indemnification arrangements” , in relation to a body, means arrangements for the purpose of ensuring the indemnification of those who are or were regulated

persons against losses arising from claims in relation to any description of civil liability incurred by them, or by employees or former employees of theirs, in connection with their activities as such regulated persons;

“ practice rules” , in relation to a body, means any rules or regulations (however they may be described) which govern the practice of regulated persons;

“ qualification regulations” , in relation to a body, means–

(a) any rules or regulations relating to–

(i) the education and training which persons must receive, or

(ii) any other requirements which must be met by or in respect of them,

in order for them to be authorised by the body to carry on an activity which is a reserved legal activity,

(b) any rules or regulations relating to–

(i) the education and training which persons must receive, or

(ii) any other requirements which must be met by or in respect of them,

in order for them to be authorised by the body to provide immigration advice or immigration services, and

(c) any other rules or regulations relating to the education and training which regulated persons must receive or any other requirements which must be met by or in respect of them,

(however they may be described).

(3) In this section “ regulated persons” , in relation to a body, means any class of persons which consists of or includes–

(a) persons who are authorised by the body to carry on an activity which is a reserved legal activity;

(b) persons who are not so authorised, but are employees of a person who is so authorised.

(4) In relation to an authorised person other than an individual, references in subsection (2) and (3) to employees of the person include managers of the person.

Introduction:

This section defines “regulatory arrangements” for the purposes of this Act.

Subsection (1):

Reserved legal activity- see s.12.

Immigration advice and Immigration services- see s.207 and Sch. 18.

See General Note: Person.

Functions- see s.207.

Licensing rules- see s.83.

Subsection (4):

Manager- see s.207.

Continuity of existing rights and transitional protection

22 Continuity of existing rights to carry on reserved legal activities

Schedule 5 makes provision for the continuity of existing rights and for certain persons to be deemed, during a transitional period, to be authorised by approved regulators to carry on certain activities.

Introduction:

This section introduces Sch.5 which makes provisions for the continuity of existing rights and the deemed authorisation of certain persons, to carry on reserved legal activities during the transitional period.

Reserved legal activity- see s.12.

See General Note: Person.

Approved regulator- see s.20.

23 Transitional protection for non-commercial bodies

- (1) During the transitional period, a body within subsection (2) is entitled to carry on any activity which is a reserved legal activity.
 - (2) The bodies are—
 - (a) a not for profit body,
 - (b) a community interest company, or
 - (c) an independent trade union.
 - (3) The transitional period is the period which—
 - (a) begins with the day appointed for the coming into force of section 13, and
 - (b) ends with the day appointed by the Lord Chancellor by order for the purposes of this paragraph.
 - (4) Different days may be appointed under subsection (3)(b) for different purposes.
 - (5) An order may be made under subsection (3)(b) only on the recommendation of the Board.
-

Introduction:

This section gives protection to non-commercial bodies to carry on reserved legal activities during the transitional period.

Subsection (1):

Reserved legal activity- see s.12.

The Government's Explanatory Notes (see General Note: Explanatory Notes) say, "[w]ithout this, they (the non-commercial bodies) would be unable to operate before the ABS licensing regime came into effect."

Subsection (2):

Independent trade union- see s.207.

Not for profit body- see s.207.

Subsection (3):

By order – by statutory instrument (s.204(1)) with no express provision for Parliamentary scrutiny (s.206(3)).

See General Note: Lord Chancellor.

Subsection (4):

See General Note: Statutory Instruments: Different Provision for Different Purposes.

Subsection (5):

The Board – the Legal Services Board – see s.2 and Sch.1.

Alteration of reserved legal activities

24 Extension of the reserved legal activities

(1) The Lord Chancellor may, by order, amend section 12 or Schedule 2 (reserved legal activities) so as to add any legal activity to the activities which are reserved legal activities for the purposes of this Act.

(2) An order under subsection (1) may be made only on the recommendation of the Board.

(3) Schedule 6 makes provision about the making of recommendations for the purposes of this section.

(4) Where a recommendation is made in relation to an activity, the Lord Chancellor must—

(a) consider the report containing the recommendation given to the Lord Chancellor under paragraph 16(3)(a) of that Schedule,

(b) decide whether or not to make an order under this section in respect of the activity, and

(c) publish a notice of that decision,

within the period of 90 days beginning with the day on which the report was given to the Lord Chancellor.

(5) Where the Lord Chancellor decides not to make an order under this section in respect of an activity, the notice under subsection (4)(c) must state the reasons for that decision.

Introduction:

This section allows the Lord Chancellor to amend s.12 or Sch. 2 to extend the list of reserved legal activities.

The Government's Explanatory Notes say:

“This will enable any legal services to be regulated at a later date where it would be in consumers' interests to do so.” See General Notes: Explanatory Notes.

Subsection (1):

See General Note: Lord Chancellor.

By order - by statutory instrument (s.204(1)) subject to draft affirmative resolution (s. 206(4)).

Reserved legal activity- see s.12.

Legal activity- see s.12.

Subsection (2):

The Board – the Legal Services Board – see s.2 and Sch.1.

Subsection (4):

Consider – see General Note: Have Regard To.

Notice – Section 200(1) requires notices and notifications under this Act to be in writing (see General Note: Writing). Sections 202 and 203 make provision about service and form of notices.

25 Provisional designation as approved regulators and licensing authorities

- (1) The Lord Chancellor may, by order, make provision–
- (a) enabling applications to be made, considered and determined under Part 2 of Schedule 4 or Part 1 of Schedule 10 in relation to a provisional reserved activity, as if the activity were a reserved legal activity;
 - (b) enabling provisional designation orders to be made by the Lord Chancellor in respect of a provisional reserved activity, as if the activity were a reserved legal activity.
- (2) An order under subsection (1) may, in particular, provide that Part 2 of Schedule 4 or Part 1 of Schedule 10 is to apply, in relation to such cases as may be specified by the order, with such modifications as may be so specified.
- (3) The Lord Chancellor may also, by order, make provision–
- (a) for the purpose of enabling applications for authorisation to carry on an activity which is a provisional reserved activity to be made to and considered and determined by–
 - (i) a body in respect of which a provisional designation order is made, or
 - (ii) the Board in its capacity as a licensing authority;
 - (b) for the purpose of enabling persons to be deemed to be authorised to carry on an activity which is a new reserved legal activity by a relevant approved regulator in relation to the activity, or by the Board in its capacity as a licensing authority, for a period specified in the order.
- (4) For this purpose–
- “provisional reserved activity” means an activity in respect of which a provisional report under paragraph 10 of Schedule 6 states that the Board is minded to make a recommendation for the purposes of section 24;
 - “provisional designation order” means an order made by the Lord Chancellor under Part 2 of Schedule 4 or Part 1 of Schedule 10 which is conditional upon the Lord Chancellor making an order under section 24 in respect of the provisional reserved activity, pursuant to a recommendation made by the Board following the provisional report;
 - “new reserved legal activity” means a legal activity which has become a reserved legal activity by virtue of an order under section 24.

Introduction:

The Government's Explanatory Notes (see General Note: Explanatory Notes) say (para.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.”

Subsection (1):

See General Note: Lord Chancellor.

By order - by statutory instrument (s.204(1)) subject to draft affirmative resolution (s.206(4)).

Reserved legal activity – see s.12.

Subsection (2):

Modify- see s.207.

Subsection (3):

The Board – the Legal Services Board – see s.2 and Sch.1.

Licensing authority- see s.73.

Relevant approved regulator- see s.20.

Subsection (4):

Legal activity- see s.12.

26 Recommendations that activities should cease to be reserved legal activities

- (1) The Board may recommend that an activity should cease to be a reserved legal activity.
 - (2) Schedule 6 makes provision about the making of recommendations for the purposes of this section.
 - (3) The Lord Chancellor must consider any recommendation made by the Board for the purposes of this section (but nothing in section 208 (minor and consequential provision etc) authorises the Lord Chancellor to give effect to such a recommendation).
 - (4) Where the Lord Chancellor disagrees with a recommendation (or any part of it), the Lord Chancellor must publish a notice to that effect which must include the Lord Chancellor's reasons for disagreeing.
-

Introduction:

This section allows the Legal Services Board to recommend the removal of activities from the list of reserved legal activities.

Subsection (1):

Reserved legal activity- see s.12.

The Board – the Legal Services Board – see s.2 and Sch.1.

Subsection (3):

See General Note: Lord Chancellor.

Consider – see General Note: Have Regard To.

Subsection (4):

Notice – Section 200(1) requires notices and notifications under this Act to be in writing (see General Note: Writing). Sections 202 and 203 make provision about service and form of notices.

Part 4 REGULATION OF APPROVED REGULATORS

Introductory

27 Regulatory and representative functions of approved regulators

(1) In this Act references to the “regulatory functions” of an approved regulator are to any functions the approved regulator has–

- (a) under or in relation to its regulatory arrangements, or
- (b) in connection with the making or alteration of those arrangements.

(2) In this Act references to the “representative functions” of an approved regulator are to any functions the approved regulator has in connection with the representation, or promotion, of the interests of persons regulated by it.

Introduction:

This section defines “regulatory functions” and “representative function” for the purposes of this Act.

Subsection (1):

Approved regulator- see s.20.

Regulatory arrangements- see s.21.

Functions- see s.207.

Subsection (2):

See General Note: Person.

General duties of approved regulators

28 Approved regulator's duty to promote the regulatory objectives etc

- (1) In discharging its regulatory functions (whether in connection with a reserved legal activity or otherwise) an approved regulator must comply with the requirements of this section.
- (2) The approved regulator must, so far as is reasonably practicable, act in a way–
 - (a) which is compatible with the regulatory objectives, and
 - (b) which the approved regulator considers most appropriate for the purpose of meeting those objectives.
- (3) The approved regulator must have regard to–
 - (a) the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, and
 - (b) any other principle appearing to it to represent the best regulatory practice.

Introduction:

This section requires an approved regulator to act in a way which is compatible with the regulatory objectives and best regulatory practice.

Subsection (1):

Approved regulator- see s.20.

Regulatory functions- see s.27.

Reserved legal activity- see s.12.

Subsection (2):

Regulatory objectives- see s.1.

Subsection (3):

See General Note: Have Regard To.

See General Note: Proportionate.

Pepper v Hart Note (see General Note: Pepper v Hart):

“Transparent” - In the Public Bill Committee's examination of the Bill for this Act the Parliamentary Under-Secretary of State for Justice (Bridget Prentice) was asked, “[w]ill the Minister clarify that “transparent” includes transparent to consumers and complainants, as well as to regulators and the

board?” and answered, “I can absolutely assure my hon. Friend and guarantee that “transparent” applies so that the consumers as well as the regulators are clear about what is going on.”

Separation of regulatory and representative functions

29 Prohibition on the Board interfering with representative functions

- (1) Nothing in this Act authorises the Board to exercise its functions in relation to any representative function of an approved regulator.
 - (2) But subsection (1) does not prevent the Board exercising its functions for the purpose of ensuring–
 - (a) that the exercise of an approved regulator's regulatory functions is not prejudiced by its representative functions, or
 - (b) that decisions relating to the exercise of an approved regulator's regulatory functions are, so far as reasonably practicable, taken independently from decisions relating to the exercise of its representative functions.
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Introduction:

This section prevents the Legal Services Board interfering with an approved regulator's representative functions.

Note:

The Government's White Paper, detailed how the oversight regulator should operate. The main aim was to authorise the approved regulators to carry out day to day regulation, allow the Legal Services Board to work alongside them and to step in when the approved regulators failed – see Department for Constitutional Affairs, 2005, *The Future of Legal Services: Putting Consumers First*.

Subsection (1):

The Board – the Legal Services Board – see s.2 and Sch.1.

Representative functions- see s.27.

Approved regulator- see s.20.

Functions- see s.207.

Subsection (2):

Regulatory functions- see s.27.

Subsection (2)(a):

Pepper v Hart Note (see General Note: *Pepper v Hart*):

“Prejudiced” –In the Public Bill Committee's examination of the Bill for this Act the Parliamentary Under-Secretary of State for Justice (Bridget Prentice) said the following:

“A lot of consideration has gone into the use of the word “prejudiced” in the clause. It has been argued that it would not be unusual for representative bodies to seek to influence regulatory decisions, if it is in the interests of their members to do so. As the approved regulator is the body recognised in the Bill as responsible for both representative and regulatory functions, I would argue that it should accept certain responsibilities as part of that role. It might be reasonable for the representative arm to try to influence regulatory decisions, but it is important that the board is able to take appropriate action where it considers that the approved regulator is allowing representational interests to prejudice the exercise of regulatory functions. It is important to ensure that the board is able to act where, for example, the actions of the representative side discredit the regulatory arm, resulting in damage to consumer confidence. Clause 29(2) is necessarily and deliberately wide in definition to ensure that the board is not prevented from taking such appropriate action. Therefore the use of the word “prejudiced” is correct in the context. ...I understand that these are often very fine definitions, but “prejudiced” is more appropriate than “improperly constrained or influenced”, because the latter wording would narrow the definition just a little bit too much.”

30 Rules relating to the exercise of regulatory functions

- (1) The Board must make rules (“internal governance rules”) setting out requirements to be met by approved regulators for the purpose of ensuring–
 - (a) that the exercise of an approved regulator's regulatory functions is not prejudiced by its representative functions, and
 - (b) that decisions relating to the exercise of an approved regulator's regulatory functions are so far as reasonably practicable taken independently from decisions relating to the exercise of its representative functions.
- (2) The internal governance rules must require each approved regulator to have in place arrangements which ensure–
 - (a) that the persons involved in the exercise of its regulatory functions are, in that capacity, able to make representations to, be consulted by and enter into communications with the Board, the Consumer Panel, the OLC and other approved regulators, and
 - (b) that the exercise by those persons of those powers is not prejudiced by the approved regulator's representative functions and is, so far as reasonably practicable, independent from the exercise of those functions.
- (3) The internal governance rules must also require each approved regulator–
 - (a) to take such steps as are reasonably practicable to ensure that it provides such resources as are reasonably required for or in connection with the exercise of its regulatory functions;
 - (b) to make such provision as is necessary to enable persons involved in the exercise of its regulatory functions to be able to notify the Board where they consider that their independence or effectiveness is being prejudiced.
- (4) The first set of rules under this section must be made before the day appointed by the Lord Chancellor by order for the purposes of this section.

Introduction:

This section requires the Legal Services Board to create “internal governance rules”, to be followed by approved regulators which would ensure that their regulatory and representative functions are appropriately separated. See Explanatory Notes: para.127. See General Note: Explanatory Notes.

Subsection (1):

The Board – the Legal Services Board – see s.2 and Sch.1.

Approved regulator- see s.20.

Representative functions- see s.27.

Regulatory functions- see s.27.

Subsection (2):

See General Note: Person

See General Note: Consultation.

Consumer Panel- see s.8.

OLC – the Office for Legal Complaints - see s.114.

Functions- see s.207.

Subsection (4):

See General Note: Lord Chancellor.

By order - by statutory instrument (s.204(1)) subject to no express procedure for Parliamentary scrutiny (s.206(3)).

Performance targets

31 Performance targets and monitoring

- (1) The Board may—
 - (a) set one or more performance targets relating to the performance by an approved regulator of any of its regulatory functions, or
 - (b) direct an approved regulator to set one or more performance targets relating to the performance by the approved regulator of any of its regulatory functions,if the Board is satisfied that the conditions in subsection (2) are satisfied.
 - (2) Those conditions are—
 - (a) that an act or omission of the approved regulator (or a series of such acts or omissions) has had, or is likely to have, an adverse impact on one or more of the regulatory objectives, and
 - (b) that it is appropriate to take the action proposed under subsection (1) in all the circumstances of the case (including in particular the impact of taking the action on the other regulatory objectives).
 - (3) A direction under subsection (1)(b) may impose conditions with which the performance targets must conform.
 - (4) If the Board proposes to take action under this section in respect of an approved regulator it must give notice to the approved regulator—
 - (a) describing the action it proposes to take,
 - (b) specifying the acts or omissions to which the proposed action relates and any other facts which, in the opinion of the Board, justify the taking of that action, and
 - (c) specifying the time (not being earlier than the end of the period of 28 days beginning with the day on which the notice is given) before which representations with respect to that action may be made.
 - (5) Before taking action under this section, the Board must consider any representations which are duly made.
 - (6) In exercising its regulatory functions, an approved regulator must seek to meet any performance target set for or by it under this section.
 - (7) The Board must publish any target set or direction given by it under this section.
 - (8) An approved regulator must publish any target set by it pursuant to a direction under subsection (1)(b).
 - (9) The Board may take such steps as it regards as appropriate to monitor the extent to which any performance target set under this section is being, or has been, met.
-

Introduction:

This section allows the Legal Services Board to set, or direct an approved regulator to set, performance targets for the approved regulator’s regulatory functions.

The Government’s Explanatory Notes (see General Notes: Explanatory Notes) say:

“For example, where an approved regulator is failing to deal with misconduct cases quickly enough, the Board may set targets in relation to how long consideration of a misconduct case should take.”

Subsection (1):

The Board – the Legal Services Board – see s.2 and Sch.1..

Approved regulator- see s.20.

Regulatory functions- see s.27.

Direct – Section 200(2) requires a direction under this Act to be in writing (see General Note: Writing). Sections 202 and 203 make provision about service and form of directions. Section 200(3) expressly confers a power to revoke a direction (but not to vary – although the same result could at least sometimes be achieved by revoking and re-issuing).

Subsection (2):

Regulatory objectives- see s.1.

Subsection (4):

Notice – Section 200(1) requires notices and notifications under this Act to be in writing (see General Note: Writing). Sections 202 and 203 make provision about service and form of notices.

Directions

32 Directions

- (1) This section applies if the Board is satisfied—
 - (a) that an act or omission of an approved regulator (or a series of such acts or omissions) has had, or is likely to have, an adverse impact on one or more of the regulatory objectives,
 - (b) that an approved regulator has failed to comply with any requirement imposed on it by or under this Act (including this section) or any other enactment, or
 - (c) that an approved regulator—
 - (i) has failed to ensure that the exercise of its regulatory functions is not prejudiced by any of its representative functions, or
 - (ii) has failed to ensure that decisions relating to the exercise of its regulatory functions are, so far as reasonably practicable, taken independently from decisions relating to the exercise of its representative functions.
- (2) If, in all the circumstances of the case, the Board is satisfied that it is appropriate to do so, it may direct the approved regulator to take—
 - (a) in a case within subsection (1)(a), such steps as the Board considers will counter the adverse impact, mitigate its effect or prevent its occurrence or recurrence;
 - (b) in a case within subsection (1)(b) or (c), such steps as the Board considers will remedy the failure, mitigate its effect or prevent its recurrence.
- (3) In a case within subsection (1)(a), before giving a direction under subsection (2) the Board must in particular consider the impact of giving the direction on the other regulatory objectives.
- (4) A direction under subsection (2)—
 - (a) may only require an approved regulator to take steps which it has power to take;
 - (b) may require an approved regulator to take steps with a view to the modification of any part of its regulatory arrangements.
- (5) The Board may not exercise its powers under this section so as to give a direction requiring an approved regulator to take steps in respect of a specific disciplinary case or other specific regulatory proceedings (as opposed to all, or a specified class of, such cases or proceedings).
- (6) For the purposes of this section a direction to take steps includes a direction which requires an approved regulator to refrain from taking a particular course of action.
- (7) The power to give a direction under this section is subject to any provision made by or under any other enactment.

(8) The Board may take such steps as it regards as appropriate to monitor the extent to which a direction under this section is being, or has been, complied with.

(9) Where the Board revokes a direction under this section, it must—

- (a) give the approved regulator to whom the direction was given notice of the revocation, and
- (b) publish that notice.

Introduction:

This section gives the Legal Services Board the power to give direction to the approved regulator to act in a way so as to remedy, mitigate, or prevent, acts or omissions, failures to comply with set requirements or failures resulting from the regulatory and representative functions.

Subsection (1):

The Board – the Legal Services Board – see s.2 and Sch.1.

Approved regulator- see s.20.

Regulatory objectives- see s.1.

See General Note: Enactment.

Representative functions- see s.27.

Regulatory functions- see s.27.

Subsection (2):

See General Note: Direction.

Direct – Section 200(2) requires a direction under this Act to be in writing (see General Note: Writing). Sections 202 and 203 make provision about service and form of directions. Section 200(3) expressly confers a power to revoke a direction (but not to vary – although the same result could at least sometimes be achieved by revoking and re-issuing).

Subsection (4):

Regulatory arrangements- see s.21.

Modify- see s.207.

Subsection (9):

The power to revoke derives from s.200(3).

Notice – section 200(1) requires notices and notifications under this Act to be in writing (see General Note: Writing). Sections 202 and 203 make provision about service and form of notices.

33 Directions: procedure

Schedule 7 makes provision about the procedure which must be complied with before a direction is given under section 32.

Introduction:

This section introduces Sch.7 which sets out a procedure for directions under s.32.

34 Enforcement of directions

(1) If at any time it appears to the Board that an approved regulator has failed to comply with a direction given under section 32, the Board may make an application to the High Court under this section.

(2) If, on an application under this section, the High Court decides that the approved regulator has failed to comply with the direction in question, it may order the approved regulator to take such steps as the High Court directs for securing that the direction is complied with.

(3) This section is without prejudice to any other powers conferred on the Board by this Part.

Introduction:

This section allows the Legal Services Board to make an application to the High Court on the failure of the approved regulator to comply with the directions under s.32.

Subsection (1):

The Board – the Legal Services Board – see s.2 and Sch.1.

Approved regulator- see s.20.

See General Note: High Court.

Censure

35 Public censure

- (1) This section applies if the Board is satisfied—
 - (a) that an act or omission of an approved regulator (or a series of such acts or omissions) has had, or is likely to have, an adverse impact on one or more of the regulatory objectives, and
 - (b) that it is appropriate to act under this section in all the circumstances of the case (including in particular the impact of so acting on the other regulatory objectives).
 - (2) The Board may publish a statement censuring the approved regulator for the act or omission (or series of acts or omissions).
-

Introduction:

This section allows the Legal Services Board to publish a statement of censure for an act or omission of an approved regulator.

Note:

On the face of it the Legal Services Board does not require statutory permission to publish a statement about the behaviour of an approved regulator. The supplementary powers under s.7 would provide the necessary vires. But presumably the provisions of ss.35 and 36 achieve two things. First, they would in effect define the extent of qualified privilege from actions for defamation that arises by necessary implication from the regulatory function. Secondly, they provide procedural conditions which would therefore have to be satisfied before the Board could rely on the protection of the implied qualified privilege. Compare the absolute privilege from action for defamation conferred by s.57(6) or 154.

Subsection (1):

The Board – the Legal Services Board – see s.2 and Sch.1.

Approved regulator - see s.20.

Regulatory objectives - see s.1.

36 Public censure: procedure

- (1) If the Board proposes to publish a statement under section 35 in respect of an approved regulator, it must give notice to the approved regulator–
 - (a) stating that the Board proposes to publish such a statement and setting out the terms of the proposed statement,
 - (b) specifying the acts or omissions to which the proposed statement relates, and
 - (c) specifying the time (not being earlier than the end of the period of 28 days beginning with the day on which the notice is given to the approved regulator) before which representations with respect to the proposed statement may be made.
- (2) Before publishing the statement, the Board must consider any representations which are duly made.
- (3) Before varying any proposed statement set out in a notice under subsection (1)(a), the Board must give notice to the approved regulator–
 - (a) setting out the proposed variation and the reasons for it, and
 - (b) specifying the time (not being earlier than the end of the period of 28 days beginning with the day on which the notice is given to the approved regulator) before which representations with respect to the proposed variation may be made.
- (4) Before varying the proposal, the Board must consider any representations which are duly made.

Introduction:

This section sets out the procedure which must be followed before a statement of censure is published.

Subsection (1):

The Board – the Legal Services Board – see s.2 and Sch.1.

Approved regulator- see s.20.

Notice – Section 200(1) requires notices and notifications under this Act to be in writing (see General Note: Writing). Sections 202 and 203 make provision about service and form of notices.

Subsection (3):

Notice – Section 200(1) requires notices and notifications under this Act to be in writing (see General Note: Writing). Sections 202 and 203 make provision about service and form of notices.

Financial penalties

37 Financial penalties

- (1) This section applies if the Board is satisfied–
 - (a) that an approved regulator has failed to comply with a requirement to which this section applies, and
 - (b) that, in all the circumstances of the case, it is appropriate to impose a financial penalty on the approved regulator.
- (2) This section applies to any requirement imposed on the approved regulator–
 - (a) by rules under section 30 (internal governance rules),
 - (b) by a direction given under section 32 (Board directions), or
 - (c) by section 51 (control of practising fees charged by approved regulators) or by rules under that section.
- (3) The Board may impose a penalty, in respect of the failure, of such an amount as it considers appropriate, but not exceeding the maximum amount prescribed under subsection (4).
- (4) The Board must make rules prescribing the maximum amount of a penalty which may be imposed under this section.
- (5) Rules may be made only under subsection (4) with the consent of the Lord Chancellor.
- (6) A penalty under this section is payable to the Board.
- (7) In sections 38 to 40 references to a “penalty” are to a penalty under this section.

Introduction:

This section allows the Legal Services Board to impose financial penalties on the approved regulator in specified circumstances.

See General Note: Civil Penalties.

Subsection (1):

The Board – the Legal Services Board – see s.2 and Sch.1.

Approved regulator- see s.20.

Subsection (4):

Rules are to be made by statutory instrument (s.204(2)) subject to negative resolution procedure (s.206(6)).

Subsection (5):

See General Note: Lord Chancellor.

Subsection (6):

The Board may recover a penalty as if it were a debt – see s.40.

38 Financial penalties: procedure

- (1) If the Board proposes to impose a penalty on an approved regulator, it must give notice to the approved regulator—
 - (a) stating that the Board proposes to impose a penalty and the amount of the penalty proposed to be imposed,
 - (b) specifying the failure to which the proposed penalty relates,
 - (c) specifying the other facts which, in the Board's opinion, justify the imposition of a penalty and the amount of the penalty, and
 - (d) specifying the time (not being earlier than the end of the period of 21 days beginning with the day on which the notice is published under subsection (8)) before which representations with respect to the proposed penalty may be made.
- (2) Before imposing a penalty on an approved regulator, the Board must consider any representations which are duly made.
- (3) Where the Board proposes to vary the amount of a proposed penalty stated in a notice under subsection (1)(a), the Board must give notice to the approved regulator—
 - (a) setting out the proposed variation and the reasons for it, and
 - (b) specifying the time (not being earlier than the end of the period of 21 days beginning with the day on which the notice is published under subsection (8)) before which representations with respect to the proposed variation may be made.
- (4) Before varying the proposal, the Board must consider any representations which are duly made.
- (5) As soon as practicable after imposing a penalty, the Board must give notice to the approved regulator—
 - (a) stating that it has imposed a penalty on the approved regulator and its amount,
 - (b) specifying the failure to which the penalty relates,
 - (c) specifying the other facts which, in the Board's opinion, justify the imposition of the penalty and its amount, and
 - (d) specifying a time (not being earlier than the end of the period of 3 months beginning with the day on which the notice is given to the approved regulator), before which the penalty is required to be paid.
- (6) The approved regulator may, within the period of 21 days beginning with the day on which it is given the notice under subsection (5), make an application to the Board for it to specify different times by which different portions of the penalty are to be paid.
- (7) If an application is made under subsection (6) in relation to a penalty, the penalty

is not required to be paid until the application has been determined.

(8) The Board must publish any notice given under this section.

Introduction:

This section sets out the procedure for imposing financial penalties under s.37.

Subsection (1):

The Board – the Legal Services Board – see s.2 and Sch.1.

Penalty – under s.37 – see s.37(7).

Approved regulator- see s.20.

Notice – Section 200(1) requires notices and notifications under this Act to be in writing (see General Note: Writing). Sections 202 and 203 make provision about service and form of notices.

Subsection (2):

Consider – see General Note: Have Regard To.

39 Appeals against financial penalties

- (1) An approved regulator on whom a penalty is imposed may appeal to the court on one or more of the appeal grounds.
- (2) The appeal grounds are—
 - (a) that the imposition of the penalty was not within the power of the Board under section 37;
 - (b) that any of the requirements of section 38 have not been complied with in relation to the imposition of the penalty and the interests of the approved regulator have been substantially prejudiced by the non-compliance;
 - (c) that the amount of the penalty is unreasonable;
 - (d) that it was unreasonable of the Board to require the penalty imposed or any portion of it to be paid by the time or times by which it was required to be paid.
- (3) An appeal under subsection (1) must be made—
 - (a) within the period of 3 months beginning with the day on which the notice under section 38(5) is given to the approved regulator in respect of the penalty, or
 - (b) where the appeal relates to a decision of the Board on an application by the approved regulator under section 38(6), within the period of 3 months beginning with the day on which the approved regulator is notified of the decision.
- (4) On any such appeal, where the court considers it appropriate to do so in all the circumstances of the case and is satisfied of one or more of the appeal grounds, the court may—
 - (a) quash the penalty,
 - (b) substitute a penalty of such lesser amount as the court considers appropriate, or
 - (c) in the case of the appeal ground in subsection (2)(d), substitute for any time imposed by the Board a different time or times.
- (5) Where the court substitutes a penalty of a lesser amount it may require the payment of interest on the substituted penalty at such rate, and from such time, as it considers just and equitable.
- (6) Where the court specifies as a time by which the penalty, or a portion of the penalty, is to be paid a time before the determination of the appeal under this section, it may require the payment of interest on the penalty, or portion, from that time at such rate as it considers just and equitable.
- (7) Except as provided by this section, the validity of a penalty is not to be questioned by any legal proceedings whatever.
- (8) In this section “the court” means the High Court.

Introduction:

This section allows an approved regulator to appeal against a financial penalty under s.37.

Subsection (1):

Approved regulator- see s.20.

Penalty – under s.37 – see s.37(7).

The court – the High Court – see subs.(8).

Subsection (2):

The Board – the Legal Services Board – see s.2 and Sch.1.

Subsection (7):

This prohibition is unlikely to be taken by the courts at face value: in particular, it is unlikely to stop the courts considering an application for judicial review in an appropriate case. See General Note: Ouster Clauses.

Subsection (8):

See General Note: High Court.

40 Recovery of financial penalties

- (1) If the whole or any part of a penalty is not paid by the time by which it is required to be paid, the unpaid balance from time to time carries interest at the rate for the time being specified in section 17 of the Judgments Act 1838 (c. 110).
- (2) If an appeal is made under section 39 in relation to a penalty, the penalty is not required to be paid until the appeal has been determined or withdrawn.
- (3) If the Board grants an application under subsection (6) of section 38 in relation to a penalty but any portion of the penalty is not paid by the time specified in relation to it by the Board under that subsection, the Board may where it considers it appropriate require so much of the penalty as has not already been paid to be paid immediately.
- (4) Where a penalty, or any portion of it, has not been paid by the time when it is required to be paid and—
- (a) no appeal relating to the penalty has been made under section 39 during the period within which such an appeal can be made, or
 - (b) an appeal has been made under that section and determined or withdrawn,
- the Board may recover from the approved regulator, as a debt due to the Board, any of the penalty and any interest which has not been paid.

Introduction:

This section deals with enforcement of financial penalties under s.37.

Subsection (1):

Penalty – under s.37 – see s.37(7).

See General Note: Judgments Act 1838, s.17.

Subsection (2):

Since the penalty is not “required to be paid” (subs. (1)) while the appeal is pending, even if the appeal is dismissed interest will not then run retrospectively from the time of the imposition of the penalty, but will run only from the time of dismissal of the appeal.

Subsection (3):

The Board – the Legal Services Board – see s.2 and Sch.1.

Section 38(6) – payment in instalments; so if an instalment is missed the Board can call in the whole penalty – there does not appear to be provision for re-scheduling the instalments. A new application under s.38(6) could not be made because the 21-day limit has expired. But since this subsection confers a discretionary power it is presumably open to the Board to agree not to exercise

the power if and for so long as the penalty is paid in accordance with new instalments informally agreed.

Subsection (4):

Approved regulator- see s.20.

Intervention

41 Intervention directions

- (1) The Board may give an approved regulator an intervention direction in relation to any of the approved regulator's regulatory functions if the Board is satisfied—
 - (a) that an act or omission of an approved regulator (or a series of such acts or omissions) has had, or is likely to have, an adverse impact on one or more of the regulatory objectives, and
 - (b) that it is appropriate to give the intervention direction in all the circumstances of the case (including in particular the impact of giving the direction on the other regulatory objectives).
- (2) An intervention direction, in relation to a regulatory function of an approved regulator, is a direction—
 - (a) that the regulatory function is to be exercised by the Board or a person nominated by it, and
 - (b) that the approved regulator must comply with any instructions of the Board or its nominee in relation to the exercise of the function.
- (3) The Board may not determine that it is appropriate to give an intervention direction unless it is satisfied that the matter cannot be adequately addressed by the Board exercising the powers available to it under sections 31 to 40.
- (4) Part 1 of Schedule 8 makes provision about the procedure which must be complied with before an intervention direction is given and the manner in which such a direction is to be given.
- (5) The Board must make rules as to the persons it may nominate for the purposes of subsection (2)(a).

Introduction:

This section allows the Legal Services Board to give “intervention directions” to an approved regulator about the exercise of its regulatory functions.

Pepper v Hart Note (see General Note: Pepper v Hart):

In the Public Bill Committee's examination of the Bill for this Act the Parliamentary Under-Secretary of State for Justice (Bridget Prentice) said the following:

“The hon. Member for Birmingham, Yardley was concerned about the direction power being used against individuals. Clause 41 allows the LSB to direct the approved regulator, but after only ensuring that none of the powers under clauses 31 to 40 have been used to correct the failure. That power cannot be used directly, over individual lawyers. I hope that that gives the hon. Gentleman some reassurance.”

Subsection (1):

Note: the threshold conditions under this subsection mirror those in s.31(2) for performance targets.

The Board – the Legal Services Board – see s.2 and Sch.1.

Approved regulator- see s.20.

Regulatory functions- see s.27.

Regulatory objectives- see s.1.

Subsection (2):

Direction – Section 200(2) requires a direction under this Act to be in writing (see General Note: Writing). Sections 202 and 203 make provision about service and form of directions. Section 200(3) expressly confers a power to revoke a direction (but not to vary – although the same result could at least sometimes be achieved by revoking and re-issuing).

See General Note: Person.

Functions- see s.207.

Subsection (3):

Satisfied – see General Note: Levels of Certainty.

Subsection (5):

Rules – not in this case to be made by statutory instrument: see s.204(2). But the powers in s.204(3) will apply – s.204(4)(b), as will the consultation requirements of s.205. In other respects, the rules will be wholly informal; a requirement to publish in some form or another is, however, likely to be implicit.

42 Intervention directions: further provision

- (1) This section applies where an intervention direction has effect in respect of a function of an approved regulator (“ the relevant function”).
 - (2) The approved regulator must give the specified person all such assistance, in connection with the proposed exercise of the relevant function by the specified person in pursuance of the direction, as the approved regulator is reasonably able to give.
 - (3) On an application by the specified person (or a person appointed by the specified person to act on its behalf) a judge of the High Court, Circuit judge or justice of the peace may issue a warrant authorising that person to—
 - (a) enter and search the premises of the approved regulator, and
 - (b) take possession of any written or electronic records found on the premises.
 - (4) The person so authorised may, for the purpose of the exercise by the specified person of the relevant function, take copies of written or electronic records found on a search carried out by virtue of the warrant.
 - (5) The judge or justice of the peace may not issue the warrant unless satisfied that its issue is necessary or desirable for the exercise by the specified person of the relevant function.
 - (6) The Lord Chancellor must make regulations—
 - (a) specifying further matters which a judge or justice of the peace must be satisfied of, or matters which a judge or justice of the peace must have regard to, before issuing a warrant, and
 - (b) regulating the exercise of a power conferred by a warrant issued under subsection (3) or by subsection (4) (whether by restricting the circumstances in which a power may be exercised, by specifying conditions to be complied with in the exercise of a power, or otherwise).
 - (7) Regulations under subsection (6)(b) must in particular make provision as to the circumstances in which written or electronic records of which a person has taken possession by virtue of a warrant issued under subsection (3) may be copied or must be returned.
 - (8) But the Lord Chancellor may not make regulations under subsection (6) unless—
 - (a) they are made in accordance with a recommendation made by the Board, or
 - (b) the Lord Chancellor has consulted the Board about the making of the regulations.
 - (9) In this section “ the specified person” means the Board or, where a person is nominated by it as mentioned in section 41(2), that person.
 - (10) The Board must make rules as to the persons a specified person may appoint for the purposes of subsection (3).
-

Introduction:

This section deals with enforcement of an intervention direction under s.41.

Subsection (1):

Intervention direction- see s.41.

Approved regulator- see s.20.

Functions- see s.207.

Subsection (2):

See General Note: Person.

For enforcement of this obligation see s.43.

Subsection (3):

See General Note: High Court.

See General Note: Circuit Judge.

See General Note: Justice of the Peace.

See General Note: Written / Writing.

“Electronic records found on the premises” – it is of course not always easy to know where electronic records “are”; they may be stored on a server in one part of the world but designed for access in another. Nor is it clear what would be meant by taking possession of records in those circumstances. A pragmatic construction of this provision would presumably allow a warrant to permit the downloading of records habitually accessed from the searched premises.

Subsection (6):

See General Note: Lord Chancellor.

Regulations – by statutory instrument (s.204(1)) subject to draft affirmative resolution procedure (s.206(4) and (5)).

Satisfied: see General Note: Levels of Certainty.

See General Note: Have Regard To.

Subsection (8):

The Board – the Legal Services Board – see s.2 and Sch.1.

See General Note: Consultation.

Subsection (10):

Rules – not in this case to be made by statutory instrument: see s.204(2). But the powers in s.204(3) will apply – s.204(4)(b), as will the consultation requirements of s.205. In other respects, the rules will be wholly informal; a requirement to publish in some form or another is, however, likely to be implicit.

43 Intervention directions: enforcement

- (1) If at any time it appears to the Board that an approved regulator has failed to comply with an obligation imposed on it by, or by virtue of, an intervention direction or section 42(2), the Board may make an application to the High Court under this section.
- (2) If, on an application under subsection (1), the High Court decides that the approved regulator has failed to comply with the obligation in question, it may order the approved regulator to take such steps as the High Court directs for securing that the obligation is complied with.
- (3) This section is without prejudice to any other powers conferred on the Board by this Part.

Introduction:

This section allows the Legal Services Board to make an application to the High Court on the failure of the approved regulator to comply with the intervention direction or s.42(2).

Subsection (1):

It appears – see General Note: Levels of Certainty.

The Board – the Legal Services Board – see s.2 and Sch.1.

Approved regulator- see s.20.

Intervention direction- see s.41.

Section 42(2) – requirement to give assistance.

See General Note: High Court.

Subsection (2):

Directs – Section 200(2) requires a direction under this Act to be in writing (see General Note: Writing). Sections 202 and 203 make provision about service and form of directions. Section 200(3) expressly confers a power to revoke a direction (but not to vary – although the same result could at least sometimes be achieved by revoking and re-issuing).

Subsection (3):

The significance of this subsection is presumably to avoid arguments of double jeopardy where the Board seeks to exercise a regulatory power under this Part by reference to a failure to comply with intervention directions. See General Note: Double Jeopardy.

44 Revocation of intervention directions

- (1) An intervention direction has effect until such time as it is revoked by the Board (whether on the application of the approved regulator or otherwise).
 - (2) Part 2 of Schedule 8 makes provision about the procedure which must be complied with before an intervention direction is revoked and the manner in which notice of the revocation is to be given.
-

Introduction:

This section provides that an intervention direction under s.41 continues to have effect until it is revoked in accordance with a procedure prescribed by Sch.8.

Subsection (1):

Intervention direction- see s.41.

The Board – the Legal Services Board – see s.2 and Sch.1.

Approved regulator- see s.20.

Cancellation of approval

45 Cancellation of designation as approved regulator

(1) The Lord Chancellor may by order cancel a body's designation as an approved regulator—

- (a) in relation to all the reserved legal activities in relation to which it is an approved regulator, or
- (b) in relation to one or more, but not all, of those reserved legal activities,

with effect from a date specified in the order.

(2) But the Lord Chancellor may only make an order under subsection (1) in accordance with a recommendation made by the Board under subsection (3) or (5).

(3) The Board must recommend that an order is made cancelling a body's designation as an approved regulator in relation to one or more reserved legal activities, if—

- (a) the body applies to the Board for such a recommendation to be made,
- (b) the application is made in such form and manner as may be prescribed by rules made by the Board, and is accompanied by the prescribed fee, and
- (c) the body publishes a notice giving details of the application in accordance with such requirements as may be specified in rules made by the Board.

(4) In this section “ the prescribed fee” , in relation to an application, means the fee specified in, or determined in accordance with, rules made by the Board, with the consent of the Lord Chancellor.

(5) The Board may recommend that an order is made cancelling a body's designation as an approved regulator in relation to one or more reserved legal activities if it is satisfied—

- (a) that an act or omission of an approved regulator (or a series of such acts or omissions) has had, or is likely to have, an adverse impact on one or more of the regulatory objectives, and
- (b) that it is appropriate to cancel the body's designation in relation to the activity or activities in question in all the circumstances of the case (including in particular the impact of cancelling the designation on the other regulatory objectives).

(6) The Board may not determine that it is appropriate to cancel a body's designation in relation to an activity or activities unless it is satisfied that the matter cannot be adequately addressed by the Board exercising the powers available to it under sections 31 to 43. (7) Schedule 9 makes further provision about the making of recommendations under subsection (5).

(8) If the Lord Chancellor decides not to make an order in response to a recommendation made under subsection (3) or (5), the Lord Chancellor must give the Board notice of the decision and the reasons for it.

(9) The Lord Chancellor must publish a notice given under subsection (8).

(10) The Board may not make a recommendation under subsection (5) in respect of a body's designation as an approved regulator in relation to a reserved legal activity at any time when, by virtue of Part 2 of Schedule 5 (protection of rights during a transitional period), any person is being treated as authorised by the body to carry on that activity.

Introduction:

This section allows the Lord Chancellor to cancel a body's designation as an approved regulator, on the recommendation of the Legal Services Board.

Subsection (1):

See General Note: Lord Chancellor.

By order – by statutory instrument (s.204(1)) subject to draft affirmative resolution procedure (s.206(4) and (5)).

Approved regulator- see s.20.

Reserved legal activity- see s.12.

Subsection (2):

The Board – the Legal Services Board – see s.2 and Sch.1.

Subsection (3)(c):

Notice – s.200(1) requires notices and notifications under this Act to be in writing (see General Note: Writing). Sections 202 and 203 make provision about service and form of notices.

Subsection (4):

Rules – not in this case to be made by statutory instrument: see s.204(2). But the powers in s.204(3) will apply – s.204(4)(b), as will the consultation requirements of s.205. In other respects, the rules will be wholly informal; a requirement to publish in some form or another is, however, likely to be implicit.

“Specified in, or determined in accordance with” – so the rules may either set out a list of charges or prescribe formulae for determining fees.

Subsection (5):

Subsection (3) gives mandatory grounds for recommending cancellation: this subsection gives discretionary grounds.

Satisfied – see General Note: Levels of Certainty.

Regulatory objectives- see s.1.

Subsection (7):

The Government's Explanatory Notes (see General Note: Explanatory Notes) say:

“Schedule 9, introduced by this section, applies where the Board considers that it may be appropriate for it to make a recommendation under section 45(5).”

Subsection (8):

Notice – Section 200(1) requires notices and notifications under this Act to be in writing (see General Note: Writing). Sections 202 and 203 make provision about service and form of notices.

Subsection (10):

See General Note: Person.

46 Cancellation of designation: further provision

(1) This section applies where a body (“ the former regulator”) has its designation in relation to one or more reserved legal activities cancelled by an order under section 45.

(2) The Lord Chancellor may by order make–

(a) such modifications of provisions made by or under any enactment (including this Act or any enactment passed after this Act), prerogative instrument or other instrument or document, and

(b) such transitional or consequential provision,

as the Lord Chancellor considers necessary or expedient in consequence of the cancellation.

(3) The Lord Chancellor may, by order, make transfer arrangements.

(4) “ Transfer arrangements” are arrangements in accordance with which each person authorised by the former regulator who consents to the arrangements is, from the time the cancellation takes effect, treated as being authorised to carry on each protected activity by either–

(a) a relevant approved regulator, in relation to the protected activity, who consents to the transfer arrangements, or

(b) the Board acting in its capacity as a relevant approved regulator in relation to the protected activity by virtue of an order made under section 62.

(5) The transfer arrangements–

(a) must make such provision as is necessary to ensure that, where a person is treated under those arrangements as being authorised to carry on a protected activity by the new regulator, that person is subject to the regulatory arrangements of the new regulator;

(b) may make provision requiring amounts held by the former regulator which represent amounts paid to it by way of practising fees by the persons to whom the transfer arrangements apply (or a part of the amounts so held) to be paid to the new regulator and treated as if they were amounts paid by those persons by way of practising fees to the new regulator.

(6) Subsection (5)(a) is subject to any transitional provision which may be made by the transfer arrangements, including provision modifying the regulatory arrangements of the new regulator as they apply to persons to whom the transfer arrangements apply. (7) The Lord Chancellor may make an order under this section only if–

(a) the Board has made a recommendation in accordance with section 47, and

(b) the order is in the same form as, or in a form which is not materially different from, the draft order annexed to that recommendation.

(8) For the purposes of this section–

(a) a person is “ authorised by the former regulator” if immediately before the time the cancellation takes effect the person is authorised by the former regulator (other than by virtue of a licence under Part 5) to carry on an activity which is a reserved legal activity to which the cancellation relates, and

(b) in relation to that person–

(i) the activity which that person is authorised to carry on as mentioned in paragraph (a) is a “ protected activity” , and

(ii) “ the new regulator” means the approved regulator within paragraph (a) or (b) of subsection (4).

(9) In this section “ practising fee” , in relation to an approved regulator, means a fee payable by a person under the approved regulator's regulatory arrangements in circumstances where the payment of the fee is a condition which must be satisfied for that person to be authorised by the approved regulator to carry on one or more activities which are reserved legal activities.

(10) But for the purposes of this section “ practising fee” does not include a fee payable by a licensed body to its licensing authority under licensing rules.

Introduction:

This section allows the Lord Chancellor to make transfer arrangements when a body’s designation as an approved regulator is cancelled under s.45.

The Government’s Explanatory Notes (see General Note: Explanatory Notes) say:

“The purpose of section 46 is to minimise disruption to the regulation of authorised persons following the cancellation of an approved regulator's designation. It allows for regulatory responsibility for the authorised persons concerned to be transferred to another approved regulator (assuming that the regulator in question consents to assuming such responsibility) or, where no suitable alternative approved regulator has been identified, to the Board, in its capacity as an approved regulator.”

Subsection (1):

Reserved legal activity- see s.12.

Subsection (2):

See General Note: Lord Chancellor.

By order - by statutory instrument (s.204(1)) subject to draft affirmative resolution procedure (s.206(4) and (5)).

See General Note: Enactment.

Document- see s.201.

Modify- see s.207.

See General Note: Necessary or Expedient. It is unlikely that a substantive contrast between “necessary or desirable” in s.48(5) is intended.

Subsection (4):

See General Note: Person.

Relevant approved regulator- see s.20.

The Board – the Legal Services Board – see s.2 and Sch.1.

Subsection (5):

Regulatory arrangements- see s.21.

Subsection (7):

What would amount to a material difference would be a matter of fact and degree: in practice the Lord Chancellor would presumably be reluctant to make any change that could be seen as having substantive effect, for fear of the order being challenged, and would be more likely to encourage the Legal Services Board to make a new recommendation.

Subsection (8):

Approved regulator- see s.20.

Subsection (10):

Licensing authority- see s.73.

Licensed body- see s.71(2).

Licensing rules- see s.83.

47 The Board's power to recommend orders made under section 46

- (1) The Board may recommend to the Lord Chancellor that the Lord Chancellor make an order under section 46 in the form of a draft order prepared by the Board and annexed to the recommendation.
- (2) Before making a recommendation under this section, the Board must publish a draft of–
 - (a) the proposed recommendation, and
 - (b) the proposed draft order.
- (3) The draft must be accompanied by a notice which states that representations about the proposals may be made to the Board within a specified period.
- (4) Before making the recommendation, the Board must have regard to any representations duly made.
- (5) If the draft order to be annexed to the recommendation differs from the draft published under subsection (2)(b) in a way which in the opinion of the Board is material, the Board must, before making the recommendation, publish the draft order along with a statement detailing the changes made and the reasons for those changes.

Introduction:

This section sets out the procedure the Legal Services Board must follow when making a recommendation to cancel an approved regulator's designation under s.46.

The Government's Explanatory Notes (see General Note: Explanatory Notes) say:

"This procedure requires the publication of a draft recommendation and order, and that the Board take account of any representations made. It also provides for re-publication of the recommendation and order, if the Board makes any amendments which it considers material after the initial publication."

Subsection (1):

The Board – the Legal Services Board – see s.2 and Sch.1.

Subsection (3):

Notice – Section 200(1) requires notices and notifications under this Act to be in writing (see General Note: Writing). Sections 202 and 203 make provision about service and form of notices.

Subsection (4):

See General Note: Have Regard To.

"Duly made" – that is to say, within the period specified under subsection (3).

48 Cancellation of designation: powers of entry etc

- (1) This section applies where a body (“ the former regulator”) has its designation in relation to one or more reserved legal activities cancelled by an order under section 45.
- (2) The Board may request the former regulator to provide assistance to the new regulator and the Board, for the purpose of continuing regulation.
- (3) On an application by a person appointed by the Board to act on its behalf, a judge of the High Court, Circuit judge or justice of the peace may issue a warrant authorising that person to–
- (a) enter and search the premises of the former regulator, and
 - (b) take possession of any written or electronic records found on the premises.
- (4) A person so authorised may, for the purpose of continuing regulation, take copies of written or electronic records found on a search carried out by virtue of the warrant.
- (5) The judge or justice of the peace may not issue the warrant unless satisfied that its issue is necessary or desirable for the purpose of continuing regulation.
- (6) The Lord Chancellor must make regulations–
- (a) specifying further matters which a judge or justice of the peace must be satisfied of, or matters which a judge or justice of the peace must have regard to, before issuing a warrant, and
 - (b) regulating the exercise of a power conferred by a warrant issued under subsection (3) or by subsection (4) (whether by restricting the circumstances in which a power may be exercised, by specifying conditions to be complied with in the exercise of a power, or otherwise).
- (7) Regulations under subsection (6)(b) must in particular make provision as to circumstances in which written or electronic records of which a person has taken possession by virtue of a warrant issued under subsection (3) may be copied or must be returned.
- (8) But the Lord Chancellor may not make regulations under subsection (6) unless–
- (a) they are made in accordance with a recommendation made by the Board, or
 - (b) the Lord Chancellor has consulted the Board about the making of the regulations.
- (9) The Board must make rules as to the persons it may appoint for the purposes of subsection (3).
- (10) For the purposes of this section–
- “ authorised by the former regulator” , “ protected activity” and “ new regulator” have the same meaning as for the purposes of section 46;
 - “ the purpose of continuing regulation” means the purpose of enabling persons

authorised by the former regulator to continue to be authorised and regulated in relation to the protected activity.

Introduction:

This section provides for the continuity of regulation where a body's designation as an approved regulator is cancelled under s.45.

Subsection (1):

Reserved legal activity- see s.12.

Subsection (2):

The Board – the Legal Services Board – see s.2 and Sch.1.

Subsection (3):

See General Note: Person.

See General Note: High Court.

See General Note: Circuit Judge.

See General Note: Justice of the Peace.

See General Note: Written / Writing.

“Electronic records found on the premises” – it is of course not always easy to know where electronic records “are”; they may be stored on a server in one part of the world but designed for access in another. Nor is it clear what would be meant by taking possession of records in those circumstances. A pragmatic construction of this provision would presumably allow a warrant to permit the downloading of records habitually accessed from the searched premises.

Subsection (5):

Satisfied – see General Note: Levels of Certainty.

See General Note: Necessary or Desirable. It is unlikely that a substantive contrast between “necessary or expedient” in s.46(2) is intended.

Subsection (6):

Regulations – by statutory instrument (s.204(1)) subject to draft affirmative resolution procedure (s.206(4) and (5)).

See General Note: Have Regard To.

Subsection (8):

See General Note: Consultation.

Subsection (9):

Rules – not in this case to be made by statutory instrument: see s.204(2). But the powers in s.204(3) will apply – s.204(4)(b), as will the consultation requirements of s.205. In other respects, the rules will be wholly informal; a requirement to publish in some form or another is, however, likely to be implicit.

Policy statements

49 The Board's policy statements

(1) The Board must prepare and issue a statement of policy with respect to the exercise of its functions under–

- (a) section 31 (performance targets and monitoring);
- (b) section 32 (directions);
- (c) section 35 (public censure);
- (d) section 37 (financial penalties);
- (e) section 41 (intervention directions);
- (f) section 45 (cancellation of designation as approved regulator);
- (g) section 76 (cancellation of designation as licensing authority by order).

(2) The Board may prepare and issue a statement of policy with respect to any other matter.

(3) In preparing a statement of policy, the Board must have regard to the principle that its principal role is the oversight of approved regulators.

(4) The statement of policy prepared under subsection (1) must–

- (a) take account of the desirability of resolving informally matters which arise between the Board and an approved regulator, and
- (b) specify how, in exercising the functions mentioned in that subsection, the Board will comply with the requirements of section 3(3) (regulatory activities to be proportionate, consistent and targeted only at cases in which action is needed, etc),

and, in preparing that statement, the Board must have regard to the principle that the Board should not exercise any of those functions by reason of an act or omission of an approved regulator unless the act or omission was unreasonable.

(5) The Board's policy in determining what the amount of a penalty under section 37 should be must include having regard to–

- (a) the seriousness of the failure in question, and

(b) the extent to which it was deliberate or reckless. (6) The Board may at any time alter or replace any statement issued under this section.

(7) If a statement is altered or replaced, the Board must issue the altered or replacement statement.

(8) In exercising or deciding whether to exercise any of its functions, the Board must have regard to any relevant policy statement published under this section.

(9) The Board must publish a statement issued under this section.

(10) The Board may make a reasonable charge for providing a person with a copy of

a statement.

Introduction:

This section requires the Legal Services Board to make policy statements for its functions under ss.31, 32, 35, 37, 41, 45 and 76.

Subsection (1):

The Board – the Legal Services Board – see s.2 and Sch.1.

Functions- see s.207.

Subsection (2):

The discretionary power to issue other statements of policy is subject to the rule of administrative law that a person in whom a discretionary function is vested may not fetter the exercise that discretion (that is to say in this case, may not issue a statement of inflexible policy which prevents the person from considering how the function should be exercised in all the circumstances of a particular case).

Subsection (3):

Approved regulator- see s.20.

See General Note: Have Regard To.

Subsection (4):

See General Note: Proportionality.

Subsection (5):

This appears to be framed as a requirement for the content of the statement of policy (“must include”) rather than as an over-arching directly effective requirement.

Subsection (5)(b):

A failure could, of course, be neither: in particular, it could be wholly inadvertent.

Subsection (6):

Not being statutory instruments, the implied power to amend and revoke in s.14 of the Interpretation Act 1978 will not apply, which is why this subsection is necessary.

50 Policy statements: procedure

- (1) Before issuing a statement under section 49, the Board must publish a draft of the proposed statement.
 - (2) The draft must be accompanied by a notice which states that representations about the proposals may be made to the Board within a specified period.
 - (3) Before issuing the statement, the Board must have regard to any representations duly made.
 - (4) If the statement differs from the draft published under subsection (1) in a way which is, in the opinion of the Board, material, the Board must publish details of the differences.
 - (5) The Board may make a reasonable charge for providing a person with a copy of a draft published under subsection (1).
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Introduction:

This section sets out the procedure for making the policy statements.

Subsection (1):

The Board – the Legal Services Board – see s.2 and Sch.1.

Subsection (2):

Notice – Section 200(1) requires notices and notifications under this Act to be in writing (see General Note: Writing). Sections 202 and 203 make provision about service and form of notices.

Subsection (3):

See General Note: Have Regard To.

“Duly made” – that is to say, within the period specified under subsection (2).

The remainder of this Act has not been reproduced for the purposes of this sample.