



The Law Society

The Legal Services Act 2007 – briefing

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SUPPORTING
solicitors

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Introduction

The Legal Services Act implements the biggest reform of the regulation of legal services in England and Wales for a generation. It passed its final legislative hurdle on 30 October 2007 when it received Royal Assent.

The Law Society welcomes the act, alongside many consumer groups and other lawyers' bodies. We lobbied successfully to secure key improvements to the original bill, through work with both the government and opposition parties. We believe the wording of the act now provides a sound basis for the regulation of legal services in England and Wales, and secures our standing as a highly-regarded and independent legal jurisdiction.

The reasons for reform

There are a high number of different bodies regulating different but often overlapping areas of the legal services market. This can be confusing to the public, especially as the market continues to diversify. There are many more kinds of legal professionals than in other jurisdictions, ranging from solicitors and barristers to legal executives, licensed conveyancers, and trademark attorneys, to name a few. The inevitable confusion, complexity and potential inconsistency clearly called for an oversight regulator such as the LSB.

Clients currently have to complain to several different bodies about services received on a single case, which is not convenient or efficient.

The market for legal services has grown in recent years and now requires common standards for professional practice.

In 2001, the Office for Fair Trading published a report entitled Competition in the Professions, calling for removal of anti-competitive and overly restrictive rules. The government then commissioned Sir David Clementi, former deputy governor of the Bank of England, to produce an independent review of the regulatory framework in England and Wales. In 2004, his report was published, which led via a white paper to the bill. Both the OFT and Clementi reports highlighted the over-complex and inconsistent system of oversight regulatory arrangements, and the need for the government to take action. The OFT report in particular identified a need to increase competition, flexibility and choice in the market for legal services.

The act's key measures

- It creates a single supervisory body, the Legal Services Board (LSB), to oversee the approved regulators such as the Law Society and the Bar Council.
- It creates a single point of entry for consumer complaints about legal services. This is the Office for Legal Complaints.
- It creates alternative business structures (ABSs), allowing lawyers to form partnerships with non-lawyers, and accept outside investment or operate under external ownership.
- It requires professional bodies to separate their regulatory and representative functions.
- It creates statutory objectives and duties for all regulatory bodies.

Major improvements

The Law Society undertook substantial lobbying to improve the proposals which were originally introduced to Parliament in the Legal Services Bill. This lobbying proved extremely successful and led to significant changes to the legislation. The amendments help to:

- preserve the independence of the legal profession from government
- avoid regulatory paralysis by ensuring that primary responsibility for regulation rests with the approved regulators. The LSB should only interfere when approved regulators act unreasonably
- bring the benefits of alternative business structures, while providing robust and effective safeguards to protect clients and the public

The Legal Services Board

Powers and duties

The LSB will oversee the whole regulatory framework in England and Wales, and all the approved regulators. Its statutory powers and duties include:

- authorising bodies to be approved regulators of legal services
- authorising bodies to license alternative business structures
- approving professional rules, and directing changes to them if this proves necessary and justifiable
- directing approved regulators to take a particular action, and applying sanctions if they do not
- commissioning, monitoring and investigating research into the legal services market
- recommending to the Lord Chancellor which services should be reserved services, and therefore compulsorily regulated

Relationship with approved regulators

The LSB is an overseer or supervisor, with the primary responsibility for regulation remaining with approved regulators, such as the Law Society. This is vital to allow for the day-to-day regulation of legal services without unnecessary interference.

Under the terms of the act, the LSB must seek to resolve matters informally before exercising its powers. It can only intervene in a decision of the approved regulator where its actions were plainly unreasonable. It must also exercise its functions according to the eight regulatory objectives, set out in Section 1 of the act, which include protecting and promoting the public interest, and promoting and maintaining adherence to the professional principles.

Safeguarding the independence of the profession

To safeguard the LSB's independence from government, the Lord Chancellor can only appoint its chair and members after proper consultation with the Lord Chief Justice.

The Lord Chancellor has a statutory duty to uphold the rule of law, and will also be expected to follow the Office for the Commissioner of Public Appointments' (OCPA) guidelines in appointments to the LSB. Even so, the involvement of the LCJ further helps to ensure that there can be no arbitrary elements in the procedure, and that no appointment is political in nature. Maintaining the independence of the profession is now one of the eight regulatory objectives for the LSB contained in the act.

Alternative business structures (ABSs)

ABSs will enable lawyers like solicitors, barristers and legal executives, to share management and control of the firm with non-lawyers such as accountants and estate agents in a new business entity. At present, solicitors may only practise in firms wholly owned and managed by other solicitors or registered European lawyers (REs), and similar restrictions apply to other types of lawyers.

ABSs will allow outside investment and ownership of law firms, making possible:

- increased efficiency and economies of scale
- increased access to finance for expansion and investment in big projects like IT
- a single point of convenient and potentially complementary services with banks, retailers and others
- the ability to reward good non-legal staff with partnership or share ownership in the same way as legal staff, so making it easier to recruit and retain such staff

Key safeguards

The Society believes that the entities through which solicitors can provide services should only be restricted by safeguards to protect clients and the public. Firstly, non-lawyer manager and shareholders must not be able to compromise the professional ethical duties of lawyers. Secondly, while ABS firms will doubtless wish to tap into lucrative areas of the legal services market, regulators must ensure that this does not mean that access to justice in other areas is reduced. Thirdly, ABSs must be regulated by the same standards and principles as other legal services providers.

The act guarantees all three:

Avoiding improper influence by non-lawyers

The act now includes specific measures to ensure this:

- Any firm with non-lawyer partners, directors or shareholders must be licensed as an ABS.
- All non-lawyers involved in an ABS have a statutory duty not to cause or contribute to a breach of legal professional duties by the firm or anyone within it.
- ABS regulators can ban defaulting non-lawyers from any future involvement in ABS firms, and even fine and revoke the licences of an ABS.
- Any shareholder, including a partner or director, wishing to own 10 per cent or more of an ABS must be certified as fit and proper by the regulatory body. The potential shareholder bears the burden of proof.
- ABS regulators can attach conditions to investors, or even divest them of their shares, if they fail to meet the prescribed standards.

Preserving access to justice

In licensing ABSs, the regulators must give consideration to access to justice. This ensures the public has continuing access to a wide range of services, and that ABSs do not simply lead to expansion in the most profitable areas of practice while unacceptably reducing access in other areas.

Common standards and principles for all regulators

The act states requirements for all licensed ABS firms, and common standards to be met by all ABS regulators. All bodies licensing ABSs must also be authorised as an approved regulator of legal services, so they will need to prove to the LSB that they are competent to regulate according to an effective set of professional rules. They

must also meet further licensing requirements imposed by Part 5 in relation to external shareholders, access to justice and other aspects of regulation.

Legal disciplinary practices

In advance of the introduction of ABSs, the Law Society, through the Solicitors Regulation Authority, can authorise legal disciplinary practices (LDPs). These are practices where up to 25 per cent of partners or equivalent managers are non-lawyers, without any external ownership. These are likely to be available from early 2009.

Office for Legal Complaints

The OLC will act as a single gateway for all complaints against all legal services providers, and will investigate and process them. Importantly, disciplinary matters remain the responsibility of individual approved regulators.

Compensation and costs

The act raises the upper limit for compensation for successful complaints from £15,000 to £30,000. The OLC will not be able to penalise respondents where they are not at fault. Provided a complaint has been dealt with properly in-house, the OLC cannot require a respondent to pay charges where a complaint has not been upheld.

Preparing the Law Society for the changes

The Law Society has already separated its regulatory and representative functions in preparation for the act. We have delegated day-to-day regulation of solicitors to the Solicitors Regulation Authority. This is funded by the Law Society, though it is functionally separate, with an independent board.

The Society's representational arm continues to focus on representing the interests of solicitors, both here and abroad, influencing law and procedure.

The Law Society will be formally designated as the approved regulator, in the terminology of the act, but the task of regulating will fall to the SRA.

The timetable

The LSB is not expected to be fully established before 2010, with the OLC following shortly afterwards. The chair and members of both boards should be appointed during 2008, but the LSB might not assume its powers before 2010, with the OLC becoming empowered shortly afterwards. The new ABS regime is unlikely to be available for adoption until 2011 or 2012, since this requires the LSB to be in place. Legal disciplinary practices are likely to be a possible option for solicitors and other lawyers from 2009.