

LEGAL SERVICES ACT 2007

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 8: Miscellaneous and General Provisions about Lawyers

405. This Part makes provision regarding the Board's relationship with the Solicitors Disciplinary Tribunal. This Part also makes provision regarding the register of trade mark attorneys and the register of patent attorneys. It makes provision about legal professional privilege and amendments to the Immigration and Asylum Act 1999. It furthermore provides for the amendment of legislation relating to the Law Society and the Council for Licensed Conveyancers.

Section 176: Duties of regulated persons

406. Under this section all authorised persons, and all managers and employees of authorised persons, have a statutory duty to comply with the regulatory arrangements applicable to them. [Section 176\(3\)](#) confirms that regulatory arrangements include those that the Board makes in its capacity as licensing authority.

Section 177: The Law Society, solicitors, recognised bodies and foreign lawyers

407. This section introduces [Schedule 16](#) which amends the Solicitors Act 1974, the Administration of Justice Act 1985 and the Courts and Legal Services Act 1990 to update the Law Society's regulatory framework and powers. Part 1 of Schedule 16 amends the 1974 Act; Part 2 amends the 1985 Act; and Part 3 amends the 1990 Act. A large number of the amendments are minor and consequential changes so that the terminology of the three Acts being amended is consistent with the Legal Services Act 2007, along with changes of references to the Council of the Law Society so that they refer to the Law Society, as the approved regulator, which follows on from the requirement in section 30 to maintain arrangements providing for an appropriate separation between the representative and regulatory roles. The notes below do not deal in detail with the paragraphs which solely or mainly make such amendments, but concentrate on those paragraphs making more substantive changes.
408. As part of the change to a new structure with the Board as oversight regulator, the functions of the Master of the Rolls in respect of the approval of rules and regulations made by the Law Society, and as an appellate authority in relation to certain Law Society decisions, are removed (provision for the necessary amendments to the 1974 Act, among other things, is made by paragraphs 4, 5, 8, 16, 17, 20, 30, 31, 32, 34, 38, 41, 47 and 51). As the relevant rules fall within the definition of regulatory arrangements, as set out at section 21 of the Legal Services Act 2007, they must be approved by the Board under the provision made in Schedule 4; and the route of appeal for decisions previously appealed to the Master of the Rolls is instead to the High Court.
409. [Paragraph 3](#), along with paragraphs 15, 22 and 36 expand the regulatory remit of the Law Society to enhance its powers over Sole Practitioners and give it new powers over employees of solicitors or recognised bodies. They require a Sole Practitioner to be approved for status as such by virtue of an application for an endorsement on their

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practising certificate to that effect. They also make related regulatory provisions which allow the Law Society to place conditions on a Sole Practitioners practising rights and to suspend recognition as a sole practitioner. This will allow the Society to specify, for example, that a Sole Practitioner is not allowed to provide a specific type of legal service or to suspend their Sole Practitioner status if the Society considers it is no longer appropriate for him to be recognised as such. Various other minor amendments related to these substantive changes have been included in Schedule 16 in recognition of these enhanced powers (for example, new section 10A(2)(b) of the 1974 Act (contained in paragraph 10)).

410. Employees of solicitors are covered in paragraph 36. This allows the Law Society regulatory control over employees of solicitors in respect of professional practice, conduct and discipline. For example, if an employee breaches the rules under section 34 of the 1974 Act (as amended) in relation to accountants' reports, the Law Society can make a complaint to the Solicitor's Disciplinary Tribunal in respect of that employee. Under paragraph 46 of Schedule 16 (new section 44D of the 1974 Act or paragraph 103 of Schedule 16 (new section 14B) to the 1985 Act), action can be taken against an employee of a solicitor.
411. [Paragraph 4](#) removes the requirement in section 2 of the 1974 Act that the Lord Chancellor and the Master of the Rolls must approve the training regulations made by the Law Society. It also removes references to training "articles" from section 2.
412. [Paragraph 5](#) amends section 3 of the 1974 Act so as to transfer the Master of the Rolls' functions in respect of the admission of solicitors to the Law Society. Paragraph 8 amends section 8 of the 1974 Act so as to transfer to the High Court the Master of the Rolls' appellate functions in respect of Law Society decisions concerning the restoration of a solicitor's name to the roll.
413. [Paragraphs 9 and 10](#) substitute new provisions for the existing sections 9 and 10 of the 1974 Act, which deal with applications for and the issuing of practising certificates. The new provisions provide that certificates will only be issued in accordance with regulations made by the Law Society under section 28 of the 1974 Act. A new section 10A requires the Law Society to keep a register of all solicitors holding practising certificates.
414. [Paragraph 14](#) replaces section 13 of the 1974 Act with a new provision that provides that the High Court will have jurisdiction in respect of appeals in connection with the issue of practising certificates. Paragraphs 16 and 17 amend sections 13A and 13B of the 1974 Act so as to transfer from the Master of the Rolls to the High Court responsibility for handling appeals against the imposition of conditions on practising certificates and the suspension of practising certificates.
415. [Paragraph 21](#) amends section 17 of the 1974 Act so as to remove the requirement that the Law Society publish details of the termination of the suspension of a solicitor's practising certificate in the London Gazette on the application of the solicitor in question. Paragraph 30 amends section 28 of the 1974 Act so as to allow the Law Society to make regulations covering a broad range of matters relating to the right to practise as a solicitor.
416. [Paragraph 31](#) amends section 31 of the 1974 Act so as to allow the Law Society to make rules regarding the fitness to practise of solicitors, and to remove the requirement that rules made regarding the professional practice, conduct and discipline of solicitors be approved by the Master of the Rolls in order to have effect. The Board takes over the Master of the Rolls' function in this regard.
417. [Paragraphs 33 to 35](#) cover sections 33, 33A and 34 of the 1974 Act, which deal with matters relating to solicitors' accounts. These provisions have been amended in order to transfer certain rule-making powers from the Law Society Council to the Law Society itself, and to broaden the scope of these powers.

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418. [Paragraph 37](#) makes provision to allow the Law Society to make rules about how its compensation arrangements (including but not limited to the compensation fund) will operate. This removes the previous restrictions in the Solicitors Act 1974 so that there is greater flexibility about the circumstances in which grants of compensation may be made, what payments may be used for, and how monies may be collected.
419. [Paragraph 41](#) amends section 41 of the 1974 Act so as to transfer to the High Court the Master of the Rolls' functions in respect of appeals against decisions of the Law Society prohibiting a solicitor from employing certain persons. Paragraph 41 also widens the range of sanctions that can be imposed where a solicitor acts in contravention of section 41 of the 1974 Act.
420. [Paragraph 43](#) extends the order-making powers of the Law Society and the Solicitors Disciplinary Tribunal under section 44 of the 1974 Act. The new order-making powers are consequent on the new forms of bodies that the Law Society may recognise and regulate under amendments to section 9 of the Administration of Justice Act 1985, found at paragraph 81 of this Schedule. The Law Society can now decide whether or not to order that non-solicitors are prohibited from being employed or remunerated by solicitors, registered European lawyers and recognised bodies, and also that they are prohibited from being managers of or from having an interest in recognised bodies. This flexibility will also ensure that, during the interim period before Part 5 of the Act (Alternative Business Structures) is fully commenced, the Law Society has the appropriate regulatory control over the up-to-25% non-lawyer managed legal disciplinary partnerships that are permitted by Schedule 16 amendments to previous legislation (see paragraph 430 of these Explanatory Notes, below).
421. Section 44(1) of the 1974 Act makes it an offence for any person in respect of whom a section 43 order is made, to seek employment or remuneration from a solicitor or recognised body, or to seek or acquire an interest in a recognised body. Section 44(2) of the 1974 Act, together with sub-paragraph (1)(d) of paragraph 16 and new sub-paragraph (1A)(d) of paragraph 16 (see amendment below) of Schedule 2 to the Administration of Justice Act 1985, and together with new sub-paragraph (3A) of paragraph 15 of the Courts and Legal Services Act 1990, allow complaints to be made to the Solicitors Disciplinary Tribunal where a solicitor, registered foreign lawyer, registered European lawyer, recognised body, or manager or employee or interest-holder in a recognised body breaches the section 43(2) order.
422. [Paragraph 44](#) sets out a new section 44B of the 1974 Act which provides for new powers for the Society to require information and documents for the purpose of investigating whether there has been misconduct by a solicitor, employee of a solicitor, recognised body or employee of a recognised body, or where that person or body has failed to comply with requirements under statute or rules made by the Society. A new paragraph 44BA of the 1974 Act provides the Society with the power to require an explanation of the information provided under 44B, and a new paragraph 44BB provides that the High Court may, on an application by the Law Society, order other persons to provide information and documents relating to an investigation under 44B. A new paragraph 44BC makes it an offence for persons to falsify, conceal or destroy information that may be relevant to an investigation under 44B, and if found guilty, that person is liable to imprisonment or a fine or both. Paragraph 45 sets out a new section 44C which provides that the Law Society may charge for the costs of disciplinary investigations.
423. [Paragraph 46](#) sets out a new section 44D of the 1974 Act which provides the Law Society with the power to rebuke and/or impose a limited fine on a solicitor or an employee of a solicitor where that person has failed to comply with requirements or rules, or there has been misconduct by a solicitor. It also provides for an appeal route for those persons to the Solicitors Disciplinary Tribunal, and an appeal route from the Tribunal to the High Court under the new section 44E.
424. [Paragraph 54](#) amends section 56 of the 1974 Act so as to require that the committee established under section 56(1) of that provision include members of the Board.

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Paragraph 54 also makes provision amending the purposes for which orders may be made under section 56.

425. Section 60(5) of the 1974 Act provides that a provision of a contentious business agreement is void if it provides that the solicitor is not liable for negligence. Paragraph 56 amends that section so as to disapply this provision if the client entering into the agreement does so for purposes of the client's trade, business or profession. In relation to other clients such provision continues to be void.
426. [Paragraph 64](#) amends section 69 of the 1974 Act so that solicitors may bill their clients electronically. Previously, solicitors could bill clients only in hard copy form.
427. [Paragraph 71](#) replaces the previous section 79 of the 1974 Act with a new provision regarding the ability of the Council of the Law Society to delegate its functions, and for persons whom to the Council has delegated such functions to further delegate to other persons, providing such delegation is in accordance with the provision made in that section. Under the previous section 80, functions could only be delegated in respect of the 1974 Act or any instrument made under it. The new provision extends this to other enactments.
428. [Paragraphs 77 and 119 to 122](#) amend Schedule 1 to the 1974 Act and paragraphs 32 to 35 of Schedule 2 to the 1985 Act, in order to modify certain intervention powers of the Law Society. These amendments add to the grounds upon which the Law Society may intervene in solicitors' and recognised bodies' practices: where it is necessary to protect the interests of current, former or potential clients or the beneficiaries of trusts of which the solicitor, the recognised body or one of its managers or employees is or was a trustee. The Law Society's intervention powers have also been extended in certain respects. For example, the Law Society can decide not only to have sums of money vest in it, but also the right to recover the solicitor's or the recognised body's debts. It can also now make rules about what to do with any money received under these powers when beneficiaries cannot be traced, after reasonable steps have been taken. The Law Society's power to compel production and take possession of documents, upon High Court authorisation in certain circumstances, has been extended to include electronic documents and to allow it to take possession of property, including computers, in order to access information. The Law Society's power, also upon High Court authorisation, to have mail redirected has also been extended to include electronic documents and other communications. The Law Society can also apply to the High Court in order to take steps with respect to solicitors' and recognised bodies' websites. The amendments also enable the Law Society to recover their costs of intervention from certain persons where the conduct that led to the intervention was carried on with the consent or connivance of, or was attributable to the neglect of those persons. These amendments also allow for the exercise of certain powers against the managers and employees of recognised bodies, to reflect the fact that these individuals sometimes hold client money, or are trustees in their capacity of managers and employees of recognised bodies. The amendments made to the Council for Licensed Conveyancers' intervention powers (see paragraphs 1 to 6 of Schedule 17) are consistent with these changes; and the intervention powers given to licensing authorities in Schedule 14 are also consistent with these updated powers.
429. [Paragraphs 80 to 123](#) amend the 1985 Act and in doing so extend the Law Society's power to regulate entities. Under the previous section 9 of the 1985 Act, the Law Society already had the power to regulate bodies corporate, including LLPs, that it "recognises" as suitable to carry on certain services. This power has now been extended to include other entities through which solicitors practice, such as partnerships and unincorporated bodies, and to allow legal disciplinary practices (LDPs). The rule-making powers under section 9 of the 1985 Act have also been enhanced to enable the Society to impose conditions upon a recognition granted to a body. A new section 9A has also been added to the 1985 Act, to set certain requirements for legal disciplinary practices i.e. firms or companies that include solicitors and other legal practitioners or bodies that are "authorised persons" under the provisions of the 2007 Act.

430. The amendments to section 9 and the new section 9A also allow limited forms of ABS. These bodies will be LDPs and they will be restricted to the provision of legal services, but permitted to have up to 25% non-lawyer managers before the full ABS regime is available. These amendments allow the Law Society to regulate LDPs and various regulatory powers over LDPs, for example, the Society is able to make rules which can require a body to have less than 25% non-lawyer involvement or to appoint a person similar to a Head of Legal Practice in Part 5 of the Act.
431. These bodies will be licensable bodies and as such, will have to apply for a licence to practice as an ABS after Part 5 has become fully operational and the entire range of ABS is available as an option for legal professionals. These amendments also allow the Law Society to apply rules to managers (as defined in the 2007 Act) and employees within them. Amendments are also made to Schedule 2 to the 1985 Act, and to sections 43 to 44 of the 1974 Act (as described above) to reflect the fact that individuals within recognised bodies – whether solicitors or not – are subject to rules and to sanctions for breach of rules. The changes include new order-making powers for the Solicitors Disciplinary Tribunal, new powers to require information from recognised bodies and their managers and employees in order to investigate a body's suitability to remain recognised, and consequential amendments as a result of changes made to the 1974 Act (for example in relation to intervention powers and compensation).
432. [Paragraph 83](#) amends section 10 of the 1985 Act, which relates to the offence of pretending to be a recognised body, to cover the different forms of entity which may now be recognised bodies. [Paragraph 103](#) provides the Society with powers to rebuke and/or impose a limited fine on recognised bodies, or a manager or employee of a recognised body where they have failed to comply with requirements or rules applicable to them. It also provides for an appeal route for those persons to the Tribunal, and an appeal from the Tribunal to the High Court.
433. [Paragraphs 124 to 138](#) make amendments to provisions in section 89 and Schedule 14 to the 1990 Act related to registered foreign lawyers, in order to achieve consistency with provision made elsewhere (for example, reading across, in relation to compensation arrangements, to the new provision introduced into the 1974 Act by [paragraph 37](#)).
434. [Paragraph 111](#) amends paragraph 24 of Schedule 2 to the 1985 Act to remove the automatic void of any provision within a contentious business agreement that a body shall not be liable for negligence, so long as a person entering into the agreement does so for purposes of their trade, business or profession. Any such provision relating to persons not acting under this capacity will still be automatically void.

Section 178: The Solicitors Disciplinary Tribunal: approval of rules

435. This section is the first of three which make provision in respect of the Solicitors Disciplinary Tribunal, so that the Tribunal's position, as a body statutorily separate from the Law Society but performing functions which are part of the Law Society's regulatory structure, may be properly reflected. The approach is in essence to apply to the Tribunal certain provisions which apply to approved regulators, with modifications and/or exclusions to reflect the Tribunal's particular role and position. This section makes provision bringing the Tribunal's rules within the structure of consent requirements for regulatory arrangements, so that there is a degree of monitoring by the Board, but this is kept to the minimum necessary. Accordingly, subsection (1) provides for any alteration of the Tribunal's rules under section 46(9) (b) of the Solicitors Act 1974 to require approval by the Board, unless it is exempt; and [section 178\(2\) to 178\(6\)](#) set out the procedures for approval, should an alteration be made.

Section 179: Board's power to give directions to the Tribunal

436. This section applies the Board's power to give directions to an approved regulator under sections 32 to 34 to the Tribunal. The power is considerably restricted, however, to

reflect the fact that the Tribunal is not itself an approved regulator, but is a statutorily independent body which performs functions which form a part of the regulatory structure of the Law Society. The circumstances in which the Board can direct the Tribunal are limited to those in which the Tribunal has failed to perform any of its functions to an adequate standard (or at all). As is the case for directions to approved regulators, under section 32(4) the Board will not have the power to direct the Tribunal in respect of specific disciplinary cases or proceedings.

Section 180: Functions of the Tribunal

437. This section applies sections 69 and 70 to the Tribunal with limitations to reflect the Tribunal's particular position and so enables the Lord Chancellor to modify the functions of the Tribunal for certain limited purposes on the recommendation of the Board and with the consent of the Tribunal (and in particular enables amendment of the statutory provisions governing the Tribunal at the Tribunal's request).

Section 181: Unqualified person not to pretend to be a barrister

438. This section makes it an offence for any person who is not a barrister (as defined in section 207) to pretend to be a barrister, and sets out the penalties that may be imposed on such persons for doing so.

Section 182: Licensed conveyancers

439. This section introduces **Schedule 17** which makes a number of amendments to provisions relating to licensed conveyancers, conveyancing services, and the CLC, which is an approved regulator and is listed in Part 1 of Schedule 4. Schedule 17 amends the Administration of Justice Act 1985 and the Courts and Legal Services Act 1990.
440. **Paragraphs 1 to 7** deal with the issuing of conveyancing licences. Paragraph 2 amends the definition of conveyancing services to ensure that it includes all the activities contained in the definition of "reserved instrument activities" in the Legal Services Act 2007. The CLC is an approved regulator under the 2007 Act in relation to reserved instrument activities. Paragraph 4 amends section 15 of the 1985 Act so as to allow the CLC discretion as to the duration of a conveyancing licence. Paragraph 4 further amends section 15 of the 1985 Act so as to allow the CLC 42 days in which to determine applications for licences (prior to the 2007 Act, the period was 21 days).
441. **Paragraphs 5 to 8** deal with the imposition of conditions on a licence. Conditions can, for example, be imposed where the Council has required an accountants report to be delivered within a specified time-frame and this has not been done. Provision is made enabling the CLC to impose an additional fee in certain cases to recover the additional costs in dealing with certain applications. In addition amendments made here allow for a condition to be put on a licence as a result of an order made by the Investigating Committee under their new powers. Paragraph 7 amends section 17 of the 1985 Act by prescribing additional circumstances in which the Council may direct that a licensed conveyancer's licence shall have effect subject to conditions.
442. **Paragraph 8** inserts a new section into the 1985 Act to allow the CLC to remove or vary conditions on a licensed conveyancer's licence.
443. **Paragraph 9** amends section 18 of the 1985 Act, in order to provide for the immediate suspension of a licensed conveyancer's licence in instances where the Council exercises certain powers of intervention in respect of a licensed conveyancer's practice in certain defined circumstances.
444. **Paragraphs 12 and 13** operate to amend the provisions that provide for the CLC's current disciplinary arrangements. The effect of these paragraphs is to allow the Investigating Committee, which previously had only an investigative role, to make a determination on minor infractions of the Council's rules and to fine a licensed conveyancer an amount

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to be specified in the Council's rules (not to exceed the sum of £1,000). Paragraph 32 makes similar amendments to the equivalent provisions relating to recognised bodies.

445. [Paragraph 12](#) (sub-paragraph (8)), paragraph 13 paragraph 15 (sub-paragraph (4)), paragraph 16, paragraph 17, paragraph 32 (sub-paragraphs (5), (6), (7), (9) and (10)) and paragraph 35 (sub-paragraph (7)) amend the 1985 Act and the 1990 Act, in order to enable the Investigating Committee and the Discipline and Appeals Committee to make orders for the payment of costs. The order may relate to all or part of the costs. A successful party would not be entitled to costs as of right: the award will be at the discretion of the committees.
446. Sub-paragraph (3) of paragraph 15 amends section 26 of the 1985 Act, which makes provision regarding the fining power of the CLC. Previously, the CLC could fine a licensed conveyancer no more than £3,000. The amendment to section 26 allows the CLC to make rules setting its own limit (subject to the approval of the Board). At sub-paragraph 6 of paragraph 32 of Schedule 17 to the 2007 Act, an amendment is made to the equivalent provision relating to recognised bodies (paragraph 4 of Schedule 6 to the 1985 Act). Paragraphs 13 and 15 of Schedule 17 to the 2007 Act allow the Investigating Committee and the Discipline and Appeals Committee respectively to make orders for costs in relation to proceedings before them.
447. [Paragraphs 20 to 21](#) make amendments to the CLC's powers that are similar to the amendments to the Law Society's powers under section 9 and new section 9A of the 1985 Act. These paragraphs amend section 32 of the 1985 Act and add new section 32A to allow that the CLC may "recognise" and regulate new forms of bodies, including partnerships and unincorporated bodies, and including bodies that carry out not just conveyancing services but also other legal services carried out by "authorised persons" under the 2007 Act. These amendments also allow the CLC to make rules applicable to managers and employees of the bodies that it recognises, and make consequential changes to a number of related provisions in Schedule 6 (see paragraph 32 of the Schedule). Amendments to Schedule 6 also give the Discipline and Appeals Committee additional order-making powers to reflect the fact that managers and employees may be found in breach of rules applicable to them.
448. [Paragraph 22](#) amends section 33 of the 1985 Act to ensure that the legal professional privilege of clients of recognised bodies that are actually "licensable bodies" (and that will therefore need to be licensed under Part 5 of the 2007 Act), is governed by the same provision as that for other licensed bodies: section 190 of the 2007 Act.
449. [Paragraph 23](#) inserts a new section 33A into the Administration of Justice Act 1985 to confer on the CLC the power to make arrangements for authorising licensed conveyancers to administer oaths. Under the 2007 Act, the CLC is an approved regulator in relation to authorising persons to administer oaths (see part 1 of Schedule 4).
450. [Paragraph 25](#) amends section 35 of the 1985 Act, which relates to the offence of pretending to be a recognised body, to cover the different forms of entity which may now be recognised bodies.
451. [Paragraph 29](#) amends Schedule 3 to the 1985 Act to allow CLC members to be appointed as opposed to "elected or nominated". Paragraph 30 amends paragraph 1 of Schedule 4 to the 1985 Act so as to remove the requirement that the rules made by the CLC regarding the procedure and practice of the Discipline and Appeals Committee shall not come into force until approved by the Lord Chancellor.
452. [Paragraph 31](#) amends Schedule 5 to the 1985 Act, which provides the CLC with intervention powers, to achieve similar outcomes for the CLC as those made to the Law Society's intervention powers by virtue of amendments to Schedule 1 to the 1974 Act and Schedule 2 to the 1985 Act.
453. [Paragraph 32](#), amongst other things, amends paragraph 14 of Schedule 6 to the 1985 Act to allow the CLC to require the production of information to a person appointed by

the Investigating Committee for the purpose of investigating an allegation of failing to comply with rules a licensed conveyancer must adhere to.

454. **Part 2** of Schedule 17 amends the 1990 Act to allow the CLC to apply to become an approved regulator of reserved legal activities such as probate activities or the exercise of a right of audience.
455. It also brings the 1990 Act into line with the 1985 Act as amended and the 2007 Act by updating the Council's powers in respect of, for example, the new disciplinary powers conferred on the Investigating Committee and the Discipline and Appeals Committee under sections 24A and 26 of the 1985 Act.

Section 183: Commissioners for oaths

456. This section provides that legislative references to "commissioners for oaths" include persons authorised under the Act to conduct the reserved legal activity of administering oaths. It also confers upon such persons the right to use the title "Commissioner for Oaths."
457. It further sets out the circumstances in which an authorised person's right to administer oaths is proscribed, makes certain requirements relating to the way in which the oath or affidavit is taken and proved. The section also sets out the mechanism by which the fees charged by authorised persons for the administration of oaths and taking of affidavits may be determined by the Lord Chancellor.

Section 184: Trade mark attorneys

Section 185: Patent attorneys

458. These sections provide for amendments to the Trade Marks Act 1994 and the Copyright, Designs and Patents Act 1998. These amendments transfer the Secretary of State's functions in respect of the registers of trade mark attorneys and patent attorneys to the Institute of Trade Mark Attorneys (ITMA) and the Chartered Institute of Patent Agents (CIPA) respectively, and allow for both bodies to make regulations in respect of the registration of trade mark attorneys and patent agents. These regulations may provide for the payment of registration fees and the removal of names from the register. The Secretary of State may make an order, subject to the affirmative resolution procedure, transferring responsibility for the register to a new person. For example, should ITMA and CIPA merge, their responsibilities in respect of the registers could be transferred to the merged body.
459. These amendments confer statutory powers on ITMA and CIPA. They allow ITMA to make regulations governing the carrying on of trade mark attorney work by registered trade mark attorneys and CIPA to make regulations governing the carrying on of registered patent attorney work by registered patent attorneys. This represents a significant expansion of CIPA and ITMA's powers. All regulations made under these provisions are subject to the Board's oversight whether or not they are "regulatory arrangements" as defined by section 21.

Section 186: Immigration advisers and immigration service providers

460. This section introduces **Schedule 18**, which amends the Immigration and Asylum Act 1999. Under the 1999 Act, two categories of person may provide immigration services: persons registered with Immigration Services Commissioner, and persons authorised by a designated professional body. The amendments to the 1999 Act effected by Schedule 18 introduce a third category of person who may provide immigration services: persons authorised by a designated qualifying regulator. The Law Society, the Institute of Legal Executives and the General Council of the Bar are all designated qualifying regulators by virtue of Schedule 18. Prior to commencement of the Schedule, these bodies were designated professional bodies. For other bodies, becoming a

designated qualifying regulator is a two-step process: first the Board must grant the body's application to become a "qualifying regulator" under part 1 of Schedule 18, then the Secretary of State must make an order under section 86A(6) of the 1999 Act making it a "designated qualifying regulator". Designated professional bodies are subject to the oversight of the Immigration Services Commissioner, whereas designated qualifying regulators will be subject to the oversight of the Board. Where the Board is of the view that a designated qualifying regulator is failing to regulate the provision of immigration services effectively, the Board may report its view to the Lord Chancellor and to the Secretary of State. The Secretary of State has the power to remove a body's status as a designated qualifying regulator, and a body will also cease to have that status if it ceases to be an approved regulator under the Legal Services Act 2007. The intention of the provision under sub-paragraph (4)(c) of paragraph 3 for fees to cover the reasonable costs associated with the application, etc, to which they relate.

461. **Part 1** of Schedule 18 sets out the procedure by which a body may apply to the Board to become a "qualifying regulator". Only "qualifying regulators" may become designated qualifying regulators. Part 2 of the Schedule sets out the amendments to Part 5 of the 1999 Act that are required in order to establish the new framework. Part 3 of the Schedule makes transitional provision protecting persons presently authorised to provide immigration services by those designated professional bodies that will become designated qualifying regulators under the new framework.

Section 187: Claims management services

462. **Schedule 19** makes amendment to Part 2 of the Compensation Act 2006. The amendments provide for regulatory oversight functions of the Claims Management regulator to transfer from the Secretary of State to the Board. This includes ensuring that a regulator can only be designated by the Secretary of State on the recommendation of the Board, and that any regulations made by the Secretary of State are on the recommendation, or in consultation with, the Board. Section 161 provides for complaints handling to come under the jurisdiction of the Office for Legal Complaints.

Section 188: Duties of advocates and litigators

463. This section reproduces the effect of sections 27(2A) and 28(2A) of the Courts and Legal Services Act 1990, which are repealed by the Legal Services Act 2007. Authorised persons who exercise rights of audience or rights to conduct litigation have a duty to the court to act with independence in the interests of justice, and a duty to comply with conduct rules applicable to them. These duties override any other obligations that the persons may have (otherwise than under the criminal law) if they are inconsistent with them.

Section 189: Employed advocates

464. This section replicates section 31A of the Courts and Legal Services Act 1990 which is repealed by the Legal Services Act 2007. It ensures that qualification regulations and conduct rules which apply to the exercise of a right of audience by a person employed as a Crown Prosecutor or in any other employment are not more restrictive than the regulations and rules applying to other persons exercising that right.

Section 190: Legal professional privilege

465. This section states that legal professional privilege ("LPP") applies to any communication, document, material or information relating to a service provided by an individual who is not a barrister or solicitor at any time when the individual is providing advocacy services, litigation services, conveyancing services or probate services in the individual's capacity as an authorised person. Such a communication is to be treated as if it were a communication made by a solicitor for the purposes of disclosure. This section reproduces the effect of section 63 of the Courts and Legal Services Act 1990.

466. *Section 190(3) to 190(5)* provide that communications made by a licensed body in legal proceedings will be privileged to the same extent that they would be privileged had they been made by a “relevant lawyer”, provided that the communications in question are made through, or under the supervision of, a “relevant lawyer”. “Relevant lawyer” means a barrister, solicitor, or person otherwise entitled to conduct reserved legal activities. These provisions ensure that the clients of certain legal services providers (such as authorised litigators and advocates, recognised bodies, licensed conveyancers, trade mark and patent firms and Alternative Business Structures) have similar LPP protection to clients of solicitors under the common law.

Section 191: Rights of audience etc of employees of housing management bodies

467. This section amends the County Courts Act 1984 by inserting a new section 60A. Section 60A now gives a right of audience in certain county court proceedings, and a right to conduct litigation in relation to those proceedings, to employees of a housing management body who have written authorisation from that body. Section 60A applies to proceedings that are within *sub section (3)* of the new *section 60A* – for example proceedings for demotion, possession and injunctions on grounds of anti-social behaviour – brought by a housing management body on behalf of the local housing authority by virtue of a housing management agreement under section 27 of the Housing Act 1985.

Section 192: Powers of court in respect of rights of audience and conduct litigation

468. This section preserves the rights of courts to refuse to hear persons who would otherwise have a right of audience before them. It replicates provision to the same effect in sections 27 and 28 of the Courts and Legal Services Act 1990. Those sections are repealed by the Legal Services Act 2007.

Section 193: Solicitors to public departments and the City of London

469. This section provides that nothing in the Act shall prejudice or affect the rights or privileges of the Treasury Solicitor and certain other office holders. It also provides that such clerks and officers are not required to be admitted or enrolled, or to hold a practising certificate under the Solicitors Act 1974 in order to conduct a reserved legal activity, if they would have been able to conduct that activity without a practising certificate by virtue of section 88 of the Solicitors Act 1974, had the provision in the Legal Services Act 2007 not been made. *Section 193(4)* preserves the rights and privileges enjoyed by the Solicitor of the City of London.
470. This section also imposes a duty on persons exercising rights of audience or the right to conduct litigation by virtue of this section to act with independence in the interests of justice. This duty overrides any obligations which such a person may have (otherwise than under the criminal law) if it is inconsistent with them.

Section 194: Payments in respect of pro bono representation

471. This section enables a court to make an order in civil cases requiring a person to make a payment where a party to the proceedings was represented by a legal representative whose services were provided *pro bono* (i.e. free of charge). Under the previous costs law, an unsuccessful party would not have been required to pay any amount in respect of that representation because the services were provided free of charge and so there were no costs. Under this section, awards will be at the discretion of the court and will be paid directly to a designated charitable body, established to administer and distribute the monies to organisations who conduct *pro bono* work.

Section 195: Application of the Legal Profession and Legal Aid (Scotland) Act 2007

472. The Legal Profession and Legal Aid (Scotland) Act 2007 establishes a Scottish Legal Complaints Commission, and provides for the Commission’s main functions to be to

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

handle consumer complaints about the service provided by legal practitioners and to oversee the handling of conduct complaints by the legal professional bodies in Scotland. This section extends the remit of that body to areas which are reserved to the UK Parliament.

473. Regulation of the legal profession in Scotland is devolved by the Scotland Act 1998 (Schedule 5, head C3), but there are a few areas where the Scottish legal professional bodies are the regulatory body or co-regulatory body in terms of a UK statute, the subject matter of which is reserved. The areas in question are consumer credit, insolvency, immigration and financial services.
474. To ensure that the Legal Profession and Legal Aid (Scotland) Act 2007 fell within devolved competence, it was necessary to exclude these reserved areas from the remit of that Act, which is achieved by section 47 of that Act.
475. *Section 195(1)* applies the provisions of the Legal Profession and Legal Aid (Scotland) Act 2007 to:
- any element of a complaint relating to advice, services or activities in the reserved areas specified in *section 195(2)*, and
 - the provision by a practitioner of such advice, services or activities.
476. The advice, services or activities in question fall within areas reserved to the UK Parliament and also the competence of the Scottish Parliament.
477. *Section 195(2)* defines such advice, services and activities to be:
- Consumer credit services: activities carried out by virtue of a group licence under section 22(1)(b) of the Consumer Credit Act 1974. The Law Society of Scotland holds such a licence which is granted by the Office of Fair Trading (OFT). The licence enables members of the Society to provide services in the areas of consumer credit, credit brokerage, debt-adjusting and debt-counselling and debt-collecting.
 - Insolvency services: activities of an insolvency practitioner within the meaning of Part 13 of the Insolvency Act 1986. The Law Society of Scotland is a recognised professional body under the 1986 Act and issues licences to Scottish solicitors who wish to be appointed as insolvency practitioners.
 - Immigration advice or immigration services: the Law Society of Scotland and the Faculty of Advocates are designated professional bodies under the Immigration and Asylum Act 1999. Designation under the Act removes the need for Scottish solicitors and advocates to be individually registered with the Immigration Services Commissioner. The Commissioner has the power to receive complaints against Scottish solicitors giving immigration advice and is required to monitor how any complaints which are passed to the Law Society of Scotland or the Faculty of Advocates are handled (Schedule 5, paragraph 10 of the 1999 Act). The Commissioner is required to review the list of designated professional bodies and report to Scottish Ministers if a designated professional body in Scotland is failing to provide effective regulation of its members.
 - Financial services:
 - Activities mentioned in sub-paragraph (1)(a) of paragraph 5 of Schedule 3 to the Financial Services Act 1986. The Law Society of Scotland was a recognised professional body under the 1986 Act and still retains the function of dealing with complaints against Scottish solicitors in relation to investment business carried on under the 1986 Act. This function of recognised professional bodies was saved, on the repeal of the 1986 Act.
 - Regulated activity within the meaning of section 22 of the Financial Services and Markets Act 2000, other than activities falling within paragraph (f) of

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subsection (2), in respect of which the Financial Services Authority has by virtue of Part 20 of that Act arranged for its regulatory role to be carried out by the Law Society of Scotland.

- Exempt regulated activities within the meaning of section 325(2) of the Financial Services and Markets Act 2000. Since 30th November 2001 the Law Society of Scotland has been a designated professional body under the Financial Services and Markets Act 2000 and responsible for the licensing and regulating of solicitor firms which conduct incidental investment business (i.e. investment work which is incidental and complementary to the provision of legal services). The Financial Services Authority has been responsible since that date for the authorisation and direct regulation of solicitor firms in Scotland which wish to conduct mainstream investment business under the 2000 Act.

478. *Section 195(3)* provides for references to “complaint” and “practitioner” to have the same meaning as in Part 1 of the Legal Profession and Legal Aid (Scotland) Act 2007. “Complaint” is defined by that Act to include any expression of dissatisfaction. “Practitioner” is defined to cover:

- an advocate,
- a conveyancing practitioner
- an executry practitioner
- a firm of solicitors
- an incorporated practice
- a person exercising a right to conduct litigation or a right of audience acquired by virtue of section 27 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990, and
- a solicitor.

479. *Section 195(4)* repeals section 77 of the Legal Profession and Legal Aid (Scotland) Act 2007, which is no longer required as the Legal Services Act 2007 provides full competence for the Scottish Legal Complaints Commission in relation to both reserved and devolved areas.

480. *Section 195(5)* introduces **Schedule 20** to the Legal Services Act 2007 which sets out minor and consequential amendments in relation to the Legal Profession and Legal Aid (Scotland) Act 2007.

Section 196: Scottish legal services ombudsman: functions

481. *Section 196(1)* disapplies the functions of the Scottish Legal Services Ombudsman in relation to advice, services and activities mentioned in *section 195(2)*. The Legal Profession and Legal Aid (Scotland) Act 2007 effects the repeal of those functions of the Ombudsman which fall within devolved competence. It provides a power for Scottish Ministers to modify the functions of the Scottish Legal Services Ombudsman by order; and to abolish that office by order when the Ombudsman has no remaining functions.

482. *Section 196(2)* makes consequential amendments to the Immigration and Asylum Act 1999. The Office of the Immigration Services Commissioner retains its oversight function in relation to the Law Society of Scotland and the Faculty of Advocates which are “designated professional bodies” in terms of section 86(1)(c) of the Immigration and Asylum Act 1999.

483. Where the Lord Chancellor is proposing to de-designate a professional body in terms of section 86(2) of the 1999 Act, the Lord Chancellor must consult the Scottish Legal Services Ombudsman, if the proposed order would affect a designated professional

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body in Scotland. Section 196(2) amends the reference in section 86(4)(c) of the Immigration and Asylum Act 1999 to require that consultation to be with the Scottish Legal Complaints Commission instead of the Scottish Legal Services Ombudsman.

484. Where the Lord Chancellor proposes to apply the code of conduct for immigration advisers to members of a designated professional body in Scotland, the Lord Chancellor is required by sub-paragraph (2)(c) of paragraph 4 of Schedule 5 to the 1999 Act to consult the Scottish Legal Services Ombudsman. Section 196(2) substitutes a reference to the Scottish Legal Complaints Commission for the existing reference to the Scottish Legal Services Ombudsman.