

## **EXPLANATORY MEMORANDUM**

### **Title:**

The Legal Services Ombudsman (Extension of Remit) Regulations 2004

### **Laying Authority and Purpose:**

This explanatory memorandum is laid before Parliament by Command of Her Majesty.

### **Department Responsible:**

The Department for Constitutional Affairs.

### **Description:**

These Regulations extend the jurisdiction of the Legal Services Ombudsman by providing that the provisions of sections 21 to 25 of the Courts and Legal Services Act 1990 have effect, as modified, in relation to the investigation by the Ombudsman of allegations which relate to complaints made to an approved body that are concerned with the provision of probate services.

An approved body is a professional or other body approved by the Secretary of State under Schedule 9 to the 1990 Act. Once approved, a body may grant exemption from the provisions of section 23(1) of the Solicitors Act 1974 (unqualified person not to prepare papers for probate etc) to a person who is one of its members and who satisfies the criteria in section 55 of the 1990 Act.

A further three Statutory Instruments will be required to open fully the probate market whilst ensuring that suitable complaints handling mechanisms are in place. These three Statutory Instruments will:

- Commence s53, s54 and s55 and Schedule 9 of the Courts and Legal Services Act 1990;
- Prescribe the requirements that a scheme, which the person seeking exemption under s55(2)(d)(ii) of the 1990 Act belongs to, must comply with; and,
- Prescribe under s23 (2A) of the Solicitors Act 1974 the requirements of the scheme that bodies under s54(2)(e) to s54(2)(h) of the Courts and Legal Services Act 1990 must comply with if they are to offer probate services.

### **Legislative background:**

Section 26(1) of the Courts and Legal Services Act 1990 provides that the Secretary of State may by regulation extend the jurisdiction of the Legal Services Ombudsman by providing for the provisions of sections 21 to 25 to have effect, with such modifications (if any) as he thinks fit, in relation to the investigation by the Ombudsman of allegations (a) which relate to complaints of a prescribed kind concerned with the provision of probate services; and (b) which he would not otherwise be entitled to investigate.

The instrument is being made to extend the Ombudsman's remit so that she will be entitled to deal with allegations relating to the manner in which a complaint made to an approved body concerned with probate with respect to a person who is or was a member of the approved body in question and who has been granted exemption by

that body under section 55, or any employee of such a person has been dealt with by that body.

**Extent:**

The Regulations relate to England and Wales.

**European Convention on Human Rights:**

The Parliamentary Under Secretary of State has signed a statement that the legislation is compatible with Convention rights.

**Policy background:**

Under section 23 of the Solicitors Act 1974, it is an offence for anyone other than a solicitor, a barrister, or a duly certified notary public (most of whom are qualified solicitors), to take instructions for reward or to draft or prepare for reward the papers on which a grant of probate or letters of administration depend.

In his Report *Competition in Professions* published in March 2001, the Director General of Fair Trading suggested that consideration should be given to implementing sections 54 and 55 of the Courts and Legal Services Act 1990. It was considered that doing so would increase competition in the market for offering probate services for a fee.

The government accepted this recommendation and announced its decision in the Departmental report, *Competition and Regulation in the Legal Services Market*, published 24 July 2003.

Section 55 of the 1990 Act relates to professional or other bodies that are approved by the Secretary of State to provide probate services for a fee. Under this section, the body seeking approval must be able to demonstrate that they have established a scheme for dealing with complaints.

Extending the Ombudsman's jurisdiction under s26 of the Courts and Legal Services Act 1990 in advance of removing the competition barrier around providing probate services for a fee will ensure that suitable legislative protections are put in place for consumers before approved bodies begin to offer services in this area.

**Impact:**

To date, few organisations have approached the Department to express an interest in offering probate services as an approved body. Based on the information received from those who have expressed an interest to provide services in this area, we estimate that the Legal Services Ombudsman will be required to deal with only 4 additional complaints each year.

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