

**EXPLANATORY MEMORANDUM TO
THE ASSOCIATION OF LAW COSTS DRAFTSMEN ORDER 2006**

2006 No.

1. This explanatory memorandum has been prepared by the Department for Constitutional Affairs and is laid before Parliament by Command of Her Majesty.

2. **Description**

This Order designates the Association of Law Costs Draftsmen as an authorised body for the purposes of sections 27 and 28 of the Courts and Legal Services Act 1990.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

None.

4. **Legislative background**

The Order is made under sections 27(9)(c) and 28(5)(b) of, and Schedule 4 to, the Courts and Legal Services Act 1990 (“the Act”).

Section 27 of the Act provides for the right of audience before the courts (that is, the right to appear before and address a court, including the right to call and examine witnesses) of barristers and solicitors. Section 27(9)(c) authorises the making of Orders in Council to designate other bodies (that is, other than the Law Society and the General Council of the Bar) as authorised bodies with the power to grant rights of audience to appropriately qualified members. Section 28 of the Act provides for the right to conduct litigation (that is, the right to issue proceedings before a court, including ancillary functions such as entering appearances) of barristers and solicitors. Section 28(5)(b) authorises the making of Orders in Council to designate other bodies (that is, other than the Law Society, the General Council of the Bar and the Institute of Legal Executives) as authorised bodies with the power to grant rights to conduct litigation to appropriately qualified members. Procedures for the making of such Orders in Council are set out in Schedule 4 to the Act.

Schedule 4 requires the Secretary of State, in relation to an application for designation as an authorised body for section 27 or 28, to seek the advice of the Consultative Panel established by the Act, the Office of Fair Trading and the designated judges (that is, the Lord Chief Justice, the Master of the Rolls, the Presidents of the Queen’s Bench Division and the Family Division and the Chancellor of the High Court). The applicant must also submit its proposed qualification regulations (relating to the training to be required of members) and disciplinary rules for approval by the Secretary of State. After considering the advice of the Consultative Panel, the Office of Fair Trading and the designated judges, the Secretary of State is to approve the application (or not) and if approved, recommend that Her Majesty make the necessary Order in Council.

Approval of the application also has effect as approval of the Association's proposed qualification regulations and disciplinary rules.

5. Extent

The Order extends to England and Wales.

6. European Convention on Human Rights

In the view of the Parliamentary Under Secretary of State for Constitutional Affairs, Bridget Prentice, the provisions of this Order are compatible with the Convention rights.

7. Policy background

The Association of Law Costs Draftsmen is the professional body representing and regulating law costs draftsmen working in England and Wales. Costs draftsmen draw up and analyse bills relating to all aspects of the legal costs included in solicitors bills in relation to cases in all courts. They also appear at court hearings where assessment of such bills takes place. An assessment involves a detailed examination by a costs judge of each item on a bill, whether it was properly charged and whether the service charged for was necessary for the proper administration of justice between the parties. The Association seeks designation as an authorised body so that it can grant the right of audience and the right to conduct litigation in legal costs matters to properly qualified and trained members so that such members can act independently of solicitors in costs proceedings and can address the court during assessment hearings.

The Secretary of State has considered the advice of the Consultative Panel, the Office of Fair Trading and the designated judges in relation to the application by the Association of Law Costs Draftsmen, and the Association's proposed qualification regulations and disciplinary rules, and has approved the Association's application. The application, as finally approved, takes into account the comments and recommendations made.

8. Impact

The jurisdiction of the Legal Services Ombudsman is to be extended to cover complaints to the Association of Law Costs Draftsmen. This will be done by order by the Secretary of State under s 22 of the Act.

There are no identifiable costs to the public nor to the Exchequer.

9. Contact

Barbara Smith at the Department for Constitutional Affairs (telephone 020 7210 2675; email barbara.smith@dca.gsi.gov.uk) can answer queries regarding the Order.