

**EXPLANATORY MEMORANDUM TO**  
**THE LEGAL SERVICES ACT 2007**  
**(DESIGNATION AS A LICENSING AUTHORITY) (No.2) ORDER 2011**

**2011 No. 2866**

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the Instrument**

2.1 This Order designates the Law Society (“the Society”) as a licensing authority for the purpose of the following reserved legal activities: the exercise of a right of audience, the conduct of litigation, reserved instrument activities, probate activities and the administration of oaths. This will allow the Society to license alternative business structures (“licensed bodies”) to carry out these activities under the provisions of Part 5 of the Legal Service Act 2007 (“the 2007 Act”) which were commenced by S.I. 2011/2196.

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

3.1. None.

**4. Legislative Context**

4.1 The 2007 Act sets out a framework for the regulation of legal services in England and Wales. It establishes the Legal Services Board (“the LSB”) as the oversight regulator for this new framework and requires that reserved legal activities may only be carried out by those who are authorised to do so, or exempt. It makes provision for the regulation by approved regulators of those carrying on reserved legal activities. A list of approved regulators is set out in Part 1 of Schedule 4 to the 2007 Act and includes the Society.

4.2 Part 5 of the 2007 Act sets out arrangements under which approved regulators which have been designated as licensing authorities may license firms (“licensed bodies”) which are partly or wholly owned or controlled by non-lawyers to provide legal services (or a mixture of legal and non-legal services).

4.3 Schedule 10 to the 2007 Act provides for approved regulators to apply to the LSB to become a licensing authority in relation to one or more reserved legal activities. Under that Schedule the LSB must make rules specifying how it will determine such applications. The Lord Chancellor may only make an Order on the recommendation of the LSB and under paragraph 15 of Schedule 10 must give the applicant notice of, and publish, his decision to make such an Order.

## **5. Territorial Extent and Application**

5.1 The instrument applies to England and Wales.

## **6. European Convention on Human Rights**

6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy Background**

- *What is being done and why*

7.1 This Order will designate the Society as a licensing authority in relation to those reserved legal activities for which it is already an approved regulator. This will enable it to regulate licensed bodies under the provisions of Part 5 of the 2007 Act. The Lord Chancellor has agreed to make this Order on the recommendation of the LSB. In making its recommendation, the LSB has completed a detailed review of the Society's application.

7.2 As the Society has delegated its regulatory functions to the Solicitors Regulation Authority ("the SRA") as its regulatory arm, the SRA will in practice act as the licensing authority.

7.3 The SRA has been authorising and regulating Legal Disciplinary Practices ("LDPs") since their introduction in March 2009. These are firms offering legal services which have up to 25% non-lawyer managers. Approximately 400 LDPs had been established by June 2011. The SRA's experience in introducing and regulating LDPs has demonstrated its capacity to understand and accommodate new business practices and, as such, provides a positive basis for its application to become a licensing authority.

7.4 In preparation for its new role as a licensing authority, the SRA has developed a new system of risk-based Outcomes Focused Regulation, making significant changes to the Code of Conduct which covers arrangements for the conduct, discipline and practice of all SRA-regulated entities, including licensed bodies.

7.5 The LSB is satisfied that the Society's application demonstrates that it has complied with the LSB's own rules and with the statutory arrangements set out in Schedules 11 (licensing rules) and 13 (ownership of licensed bodies) to the 2007 Act regarding the arrangements which licensing authorities must make in their licensing rules for the purpose of considering applications and regulating licensed bodies. These arrangements include provision for indemnity and compensation.

- 7.6 The SRA will have in place memoranda of understanding with the Office for Legal Complaints and other regulators, both legal and non-legal, to ensure that complaints about, or conflicts within, licensed bodies are effectively dealt with. A suitable appellate body (the Solicitors Disciplinary Tribunal) has been established to deal with appeals against the Society's decisions as a licensing authority.
- 7.7 The LSB considers that the Society has the capacity and capability to be a competent licensing authority and that consumers and providers will be suitably protected as a result of the measures which have been put in place.
- 7.8 Articles 3 to 8 of this Order and the Schedules make provision as a result of the Society being designated. Generally, their purpose is to apply to licensed bodies provision which already applies in relation to recognised bodies. This will ensure that licensed bodies are subject to a similar regulatory legislative framework to that which currently exists for solicitors and for firms regulated by the Society under the Administration of Justice Act 1985 ("recognised bodies"). This approach has been taken for two reasons - first, because it is likely that some recognised bodies will become licensed bodies (because, for example, they intend to take on external investment). Secondly, it is important that consumers are not confused by differing regulatory arrangements for ostensibly similar firms and that they receive commensurate protection in every case.
- ***Consolidation***
- 7.9 This is the second Order made under Schedule 10 to the 2007 Act (the first, S.I. 2011/2038, gave effect to the designation of the Council for Licensed Conveyancers as a licensing authority). However, there are no consolidation issues.

## **8. Consultation Outcome**

- 8.1 In preparation for the Society's application for licensing authority designation, the SRA undertook a wide-ranging review of both its approach to regulation and its regulatory framework, in order to ensure parity for individual solicitors, recognised bodies and licensed bodies. This has resulted in the establishment of the new regulatory framework which was the subject of extensive public consultation prior to its implementation. Details of this consultation can be found at: <http://www.sra.org.uk/sra/consultations/consultations-closed.page>.
- 8.2 The 2007 Act provides that the LSB must, before making its final recommendation to the Lord Chancellor to designate an approved regulator as a licensing authority, seek the advice of the statutory consultees (the Lord Chief Justice, the Office of Fair Trading and the Legal Services Consumer Panel) in accordance with paragraph 3 of Schedule 10.

8.3 In accordance with paragraph 9 of that Schedule, the Society was given the opportunity to make representations about the advice of the statutory consultees. The SRA also responded. As required by paragraph 12 of the Schedule, both the advice and the representations were considered by the LSB in deciding whether to grant the application. The LSB concluded that the issues raised had been satisfactorily addressed. The consultees' advice; the Law Society's and the SRA's representations; and the LSB's decision notice are available on the LSB's website at: [http://www.legalservicesboard.org.uk/what we do/regulation/sra licensing authority application.htm](http://www.legalservicesboard.org.uk/what_we_do/regulation/sra_licensing_authority_application.htm).

## **9. Guidance**

9.1 The LSB has issued guidance to licensing authorities under section 162 of the 2007 Act on the content of the licensing rules of a licensing authority. A copy of this guidance can be found at: [http://www.legalservicesboard.org.uk/what we do/regulation/reg pol.htm](http://www.legalservicesboard.org.uk/what we do/regulation/reg_pol.htm).

## **10. Impact**

10.1 There is no impact on charities or voluntary bodies. Any business impact will relate to the Society.

10.2 There will be no impact on the public sector.

10.3 An Impact Assessment has not been carried out for this Order as its provisions are consistent with the policy of the 2007 Act and do not impose additional burdens on the private and voluntary sector. A full regulatory impact assessment (RIA) was prepared for the Legal Services Bill in November 2006 and can be found at <http://www.dca.gov.uk/risk/ria-legal-services.pdf>. A supplementary memorandum was published in June 2007 and can be found at <http://www.justice.gov.uk/docs/RIA-supplement-v021.pdf>. A further full RIA, together with a detailed Equality Impact Assessment, was prepared in relation to S.I. 2011/2196 which commenced Part 5 of the 2007 Act, and this can be found at <http://www.legislation.gov.uk/ukSI/2011/2196/introduction/made>.

10.4 In its application, the Society considered the impact of licensing authority status on the SRA as an organisation. The SRA's organisational structure has been reformed accordingly and it is developing the capabilities of its staff and systems in response to its new role.

## **11. Regulating small business**

11.1 This Order does not apply to small business.

## **12. Monitoring and review**

12.1 Following the submission of the Society's licensing authority application, the SRA has provided the LSB with agreed management information (both quantitative and qualitative) on a regular basis. The two organisations have also been working to an agreed programme of reviews which will continue for the first two years post-designation.

## **13. Contact**

Please contact Heather Atkinson at the Ministry of Justice (tel: 020 3334 4204 or email: [heather.atkinson@justice.gsi.gov.uk](mailto:heather.atkinson@justice.gsi.gov.uk)) about any queries regarding this instrument.