

Proposals for minor changes to the Legal Services Act 2007

June 2015

A joint submission to Ministers from the legal services regulators of England and Wales:

- Bar Standards Board
- CILEx Regulation
- Costs Lawyer Standards Board
- Council for Licensed Conveyancers
- Institute of Chartered Accountants in England and Wales
- Intellectual Property Regulation Board
- Legal Services Board
- The Master of the Faculties
- Solicitors Regulation Authority

Proposals for minor changes to the Legal Services Act 2007

Proposal	Issue	Further Details
<p>1. Simplify and remove prescriptive detail from Schedule 11 to the Legal Services Act 2007</p> <p>Schedule 11 deals with procedural, structural and practice requirements for alternative business structures (ABS) and some requirements for regulators.</p>	<p>Current requirements stretch to 8 pages and are extremely prescriptive. This creates a number of issues, for example:</p> <ul style="list-style-type: none"> a. Results in disproportionate costs for providers and regulators b. Denies the latter flexibility to appropriately target regulation at identified risk in accordance with the better regulation principles <p>Assumes – without evidence – that ABS are more risky than other types of providers thereby imposing higher costs and burdens on them.</p>	<p>We suggest that a more discretionary regime, with a principles based approach, would be more appropriate.</p>
<p>2. Simplify and remove prescriptive details from Schedule 13 to the Legal Services Act 2007</p> <p>Schedule 13 sets out the process by which licensing authorities consider whether a non-lawyer should be allowed to own an ABS.</p>	<p>Current requirements stretch to 21 pages and are extremely prescriptive. This creates similar issues to those highlighted above in relation to Schedule 11.</p> <p>There is increasing evidence that regulators are finding it difficult to use the provisions in practice and they may not help the regulator identify those that should be excluded from ownership. Particular issues are reported around:</p> <ul style="list-style-type: none"> a. Cost and delay of identifying everyone that falls into the current definition of “material interest” including their associates such as spouse, children, employees, other businesses of which they are a director etc. b. Cost and delay of applying for Disclosure and Barring Service checks. c. Cost to business of notifying change of interest, particularly delay caused by the need for the regulator to approve and the cost to the regulator of checking the information. d. The current requirements lead to commercial uncertainty. There is a particular issue with the practicalities of the requirements applying to PLCs and group structures e.g. where an investor tips over the specified material interest point despite having no influence or possibly even knowledge if part of a large investment portfolio. 	<p>We suggest that a more discretionary regime, with a principles based approach, would be more appropriate.</p> <p>We also suggest it would be good to understand more about the position in financial services. It is understood there were once similar requirements in financial services around those with “a material interest” but the requirements were subsequently repealed and it would be worth understanding what replaced them.</p>

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<p>3. Remove from section 83(5) the requirement that a regulator’s ABS licensing rules must contain provision about how it will consider whether each application is explicitly meeting the regulatory objective of improving access to justice.</p>	<p>There is underpinning requirement for regulators to promote the regulatory objectives– including “improving access to justice” – at section 3(2) and section 28(2) of the Legal Services Act 2007.</p> <p>In practice the additional requirement around access to justice at 83(5) adds cost and time for applicants to provide information and for regulators to consider the information provided while generating no incremental value.</p>	<p>The regulators will still have a duty to promote the regulatory objectives with the decisions that they make.</p>
<p>4. Repeal sections 91(1)(b) and 92(2) which specify the reporting requirements for Heads of Legal Practice and the Heads of Legal Finance and Administration within ABS.</p>	<p>Currently there is a requirement that these post holders in an ABS must:</p> <ul style="list-style-type: none"> • “...report to the licensing authority any failure to comply...” [section 91(1)(b)] <p>and</p> <ul style="list-style-type: none"> • “must report any breach of ... rules” [section 92(2)] <p>This level of prescription unnecessary and:</p> <ol style="list-style-type: none"> a. Adds cost and time for ABS to provide this information and for the regulator to review it b. Denies regulators flexibility to appropriately target regulation in accordance with the better regulation principles c. Imposes disproportionate burden on ABS compared to other providers without any evidence that this is justified on the basis of risk presented. 	<p>Regulators should have the flexibility to align reporting requirements with those for non-ABS authorised providers – i.e. report any material failure to comply.</p>
<p>5. Review/scale back Schedules 7, 8 and 9 resulting in less prescription in the LSB’s enforcement methods.</p>	<p>While appearing to have strong enforcement powers, the requirements around the exercise of these powers as set out in these schedules are convoluted and time-consuming.</p>	