Draft Order laid before Parliament under section 206(4) and (5) of the Legal Services Act 2007 (c. 29) and section 51(14) of the Tribunals, Courts and Enforcement Act 2007 (c. 15) for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2009 No. [XX]

LEGAL SERVICES, ENGLAND AND WALES

The Legal Services Act 2007 (Consequential Amendments) Order 2009

Made - - - - 2009

Coming into force in accordance with article 2

The Lord Chancellor makes the following Order in exercise of the powers conferred on him by section 208(2) and (3) of the Legal Services Act 2007(**a**), section 78 of the Mental Health Act 1983(**b**) and section 51 of the Tribunals, Courts and Enforcement Act 2007(**c**).

The Lord Chancellor has consulted the Administrative Justice and Tribunals Council in accordance with paragraph 24(1) of Schedule 7(**d**) to the Tribunals, Courts and Enforcement Act 2007 and the Lord Chief Justice of England and Wales and the Judicial Appointments Commission in accordance with section 51(9) of that Act.

A draft of this Order has been approved by a resolution of each House of Parliament pursuant to sections 206(5) of the Legal Services Act 2007 and section 51(14) of the Tribunals, Courts and Enforcement Act 2007.

Citation and commencement

1. This Order may be cited as the Legal Services Act 2007 (Consequential Amendments) Order 2009.

2.—(1) Articles 3 to 21, 23 and 24 of this Order come into force on the commencement of section 13 of the Legal Services Act 2007.

(2) Article 22 and all other articles of this Order come into force on the day after the day on which this Order is made.

(**a**) 2007 c. 29.
(**b**) 1983 c. 20. Section 78 was amended by S.I. 2008/2833, article 9(1) and Schedule 3, paragraphs 39 and 59.
(**c**) 2007 c. 15.
(**d**) The previous duty to consult the Administrative Justice and Tribunals Council under section 8 of the Tribunals and Inquiries Act 1992 (c. 53) was repealed by sections 48(1) and 146 of, and Schedule 8, paragraphs 23 and 27 and Schedule 23, Part 1 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15) and was replaced by paragraph 24 of Schedule 7 to that Act.

Consequential amendments to primary legislation

3.—(1) Section 281 of the Copyright, Designs and Patents Act 1988(**a**) is amended as follows.

(2) In subsection (2)(b) for "an individual" substitute "a person".

(3) In subsection (2)(c) for—

(a) "an individual" substitute " a person";

(b) "him" substitute "the person"; and

(c) "his" substitute "the person's".

4.—(1) The Charities Act 1993(**b**) is amended as follows.

(2) In section 31 for—

(a) "taxed" in each place substitute "assessed";

(b) "taxation" in each place (including the section heading) substitute "assessment"; and

(c) "taxing officer" in each place substitute "costs officer".

(3) In column 1 of the table in paragraph 5 of Schedule 1C, in the entry relating to an order made under section 31, for "taxation" substitute "assessment*"*.

5.—(1) Section 88 of the Trade Marks Act 1994(**c**) is amended as follows.

(2) In subsection (1)(b) for "an individual" substitute "a person".

(3) In subsection (1)(c) for—

(a) "an individual" substitute "a person";

(b) "him" substitute "the person"; and

(c) "his" substitute "the person's".

Consequential amendments to secondary legislation

6.—(1) The Coroners Rules 1984(**d**) are amended as follows.

(2) In rule 2 after the definition of "appropriate officer" insert—

> ""authorised person" means a person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the exercise of a right of audience (within the meaning of that Act)".

(3) In rule 20(1) for "an authorised advocate" to "1990" substitute "an authorised person".

(4) In rule 20(1)(a) for "by such an advocate" substitute "by an authorised person".

7. In rule 2 of the Non-Contentious Probate Rules 1987(**e**) for the definition of "probate practitioner" substitute—

> ""probate practitioner" means a person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes a probate activity (within the meaning of that Act);".

8. In rule 6 of the Design Right (Proceedings before Comptroller) Rules 1989(**f**)—

(a) in paragraph (1) for "agent" substitute "attorney";

(b) in paragraph (4)(b)—

(i) for "any individual" substitute "a person",

(**a**) 1988 c. 48. Section 281(2)(b) and (c) is amended by the Legal Services Act 2007 (c. 29).
(**b**) 1993 c. 10. Section 31 was amended by the Charities Act 2006 (c. 50), section 75(1) and Schedule 8, paragraphs 96 and 123(1), (2) and (3). Schedule 1C was inserted by the Charities Act 2006, section 8(3) and Schedule 4.
(**c**) 1994 c. 26. Section 88(1)(b) and (c) is amended by the Legal Services Act 2007.
(**d**) S.I. 1984/552, amended by S.I. 1999/3325. There are other amending instruments but none is relevant.
(**e**) S.I. 1987/2024.
(**f**) S.I. 1989/1130, amended by S.I. 1990/1453. There are other amending instruments but none is relevant.

(ii) for "agents" substitute "attorneys", and

(iii) for "in pursuance of rules made under" substitute "in accordance with"; and

(c) in paragraph (4)(c) for—

(i) "an individual" substitute "a person",

(ii) "agents" substitute "attorneys",

(iii) "him" substitute "the person", and

(iv) "his" substitute "the person's".

9.—(1) The Patent Agents (Non-recognition of Certain Agents by Comptroller) Rules 1990(**a**) are amended as follows.

(2) In the definition of "the register" in rule 2 for—

(a) "agents" substitute "attorneys"; and

(b) "pursuant to rules made under" substitute "in accordance with".

(3) In rule 3(b) for "an individual" substitute "a person".

(4) In rule 3(c) for—

(a) "an individual" substitute " a person";

(b) "him" substitute "the person"; and

(c) "his" substitute "the person's".

10. In rule 11.9 of the Family Proceedings Rules 1991(**b**) for the definition of —

(a) "legal representative" substitute—

""legal representative" means a—

(a) barrister,

(b) solicitor,

(c) solicitor's employee,

(d) manager of a body recognised under section 9 of the Administration of Justice Act 1985(**c**), or

(e) person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the conduct of litigation (within the meaning of that Act),

who has been instructed to act for a party in relation to the proceedings;"; and

(b) "professional legal adviser" substitute—

""professional legal adviser" means a—

(a) barrister,

(b) solicitor,

(c) solicitor's employee,

(d) manager of a body recognised under section 9 of the Administration of Justice Act 1985, or

(e) person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the conduct of litigation (within the meaning of that Act),

who is providing advice to a party but is not instructed to represent that party in the proceedings;".

(**a**) S.I. 1990/1454.
(**b**) S.I. 1991/1247, amended by S.I. 2009/857.
(**c**) 1985 c. 61.

11. In rule 21Y of the Family Proceedings Courts (Children Act 1989) Rules 1991(**a**) for the definition of —

(a) "legal representative" substitute—

""legal representative" means a—

(a) barrister,

(b) solicitor,

(c) solicitor's employee,

(d) manager of a body recognised under section 9 of the Administration of Justice Act 1985, or

(e) person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the conduct of litigation (within the meaning of that Act),

who has been instructed to act for a party in relation to the proceedings;"; and

(b) "professional legal adviser" substitute—

""professional legal adviser" means a—

(a) barrister,

(b) solicitor,

(c) solicitor's employee,

(d) manager of a body recognised under section 9 of the Administration of Justice Act 1985, or

(e) person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the conduct of litigation (within the meaning of that Act),

who is providing advice to a party but is not instructed to represent that party in the proceedings;".

12. In regulation 2 of the Community Legal Service (Costs) Regulations 2000(**b**) for the definition of—

(a) "solicitor" substitute—

""solicitor" means a solicitor or another person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the conduct of litigation (within the meaning of that Act);"; and

(b) "supplier" substitute—

""supplier" means any person or body providing funded services to the client, including any person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the exercise of a right of audience (within the meaning of that Act) engaged by the client's solicitor to act in proceedings;"

.

13. In regulation 2(1) of the Community Legal Service (Financial) Regulations 2000(**c**) for the definition of "solicitor" substitute—

""solicitor" means a solicitor or another person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the conduct of litigation (within the meaning of that Act);".

14. In regulation 2(1) of the Community Legal Service (Cost Protection) Regulations 2000(**a**) for the definition of "solicitor" substitute—

(**a**) S.I. 1991/1395. Rule 21Y was inserted by S.I. 2009/858.
(**b**) S.I. 2000/441.
(**c**) S.I. 2000/516.

""solicitor" means a solicitor or another person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the conduct of litigation (within the meaning of that Act);".

15. Omit paragraph 16 of Schedule 4 to the European Communities (Lawyer's Practice) Regulations 2000(**b**).

16. In regulation 3(1) of the Community Legal Service (Asylum and Immigration Appeals) Regulations 2005(**c**) for the definition of "supplier" substitute—

""supplier" means a solicitor or another person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the conduct of litigation (within the meaning of that Act) having a contract for the provision of services including Legal Representation in immigration review proceedings;".

17.—(1) The Family Procedure (Adoption) Rules 2005(**d**) are amended as follows.

(2) In rule 6 for the definition of "legal representative" substitute—

""legal representative" means a—

(a) barrister,

(b) solicitor,

(c) solicitor's employee,

(d) manager of a body recognised under section 9 of the Administration of Justice Act 1985, or

(e) person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the conduct of litigation (within the meaning of that Act),

who has been instructed to act for a party in relation to the proceedings;".

(3) In rule 78 for the definition of "professional legal adviser" substitute—

""professional legal adviser" means a—

(a) barrister,

(b) solicitor,

(c) solicitor's employee,

(d) manager of a body recognised under section 9 of the Administration of Justice Act 1985, or

(e) person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the conduct of litigation (within the meaning of that Act),

who is providing advice to a party but is not instructed to represent that party in the proceedings;".

18. In regulation 2 of the Proceeds of Crime Act 2002 (Legal Expenses in Civil Recovery Proceedings) Regulations 2005(**e**) for the definition of "solicitor" substitute—

""solicitor" means a solicitor of the Senior Courts and, in relation to England and Wales, includes any other person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the conduct of litigation (within the meaning of that Act);".

(**a**) S.I. 2000/824.
(**b**) S.I. 2000/1119.
(**c**) S.I. 2005/966.
(**d**) S.I. 2005/2795.
(**e**) S.I. 2005/3382.

19. In rule 6 of the Court of Protection Rules 2007(**a**) for the definition of "legal representative" substitute—

> ""legal representative" means a—
>
> (a) barrister,
>
> (b) solicitor,
>
> (c) solicitor's employee,
>
> (d) manager of a body recognised under section 9 of the Administration of Justice Act 1985, or
>
> (e) person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the conduct of litigation (within the meaning of that Act),
>
> who has been instructed to act for a party in relation to any application;".

20. In rule 2 of the Mental Health Review Tribunal for Wales Rules 2008(**b**) for the definition of "legal representative" substitute—

> ""legal representative" means a person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the exercise of a right of audience or the conduct of litigation (within the meaning of that Act);".

21.—(1) The Judicial Appointments Order 2008(**c**) is amended as follows.

(2) In article 2—

(a) for the definition of "registered patent agent" substitute—

> ""registered patent attorney" has the meaning assigned to it by section 275 of the Copyright, Designs and Patents Act 1988;"; and

(b) for the definition of "registered trade mark agent" substitute—

> ""registered trade mark attorney" has the meaning assigned to it by section 83 of the Trade Marks Act 1994;".

(3) In article 5—

(a) in paragraph (b) for "agent" substitute "attorney"; and

(b) in paragraph (c) for "agent" substitute "attorney".

(4) In article 6—

(a) in paragraph (b)—

(i) for "agent" substitute "attorney",

(ii) for "agents" substitute "attorneys", and

(iii) for "the Register of Patent Agents Rules 1990" substitute "section 275 of the Copyright, Designs and Patents Act 1988"; and

(b) in paragraph (c)—

(i) for "agent" substitute "attorney",

(ii) for "agents" substitute "attorneys", and

(iii) for "the Register of Trade Mark Agents Rules 1990" substitute "section 83 of the Trade Marks Act 1994".

(5) In article 8 for "agent" (in both places) substitute "attorney".

(**a**) S.I. 2007/1744.
(**b**) S.I. 2008/2705.
(**c**) S.I. 2008/2995.

Qualified lawyers

22. In the provisions set out in the table in Schedule 1 to this Order, for "employed by a solicitors' practice" (in each place) substitute "practising in a solicitor's practice (including a body recognised under section 9 of the Administration of Justice Act 1985)".

23. In the provisions set out in the table in Schedule 2 to this Order, for "a barrister" to "the Courts and Legal Services Act 1990)" substitute "a person who, for the purposes of the Legal Services Act 2007), is an authorised person in relation to an activity which constitutes the exercise of a right of audience or the conduct of litigation (within the meaning of that Act)".

Revocations

24. The following instruments are revoked—

(a) The Register of Patent Agents Rules 1990(**a**); and

(b) The Register of Trade Mark Agents Rules 1990(**b**).

Signed by authority of the Lord Chancellor

Name
Parliamentary Under Secretary of State
Ministry of Justice

Date

SCHEDULE 1

Article 22

Provision	**Statutory instrument**
Regulation 35(6A)	Working Time Regulations 1998(**c**)
Regulation 41(7A)	Transnational Information and Consultation of Employees Regulations 1999(**d**)
Paragraph 2(5A) of Schedule 4	Employment Equality (Religion or Belief) Regulations 2003(**e**)
Paragraph 2(5A) of Schedule 4	Employment Equality (Sexual Orientation) Regulations 2003(**f**)
Article 2	Compromise Agreements (Description of Person) Order 2004(**g**)
Regulation 40(8)	Information and Consultation of Employees Regulations 2004(**h**)
Article 2	Compromise Agreements (Description of Person) Order 2005(**i**)
Paragraph 13(5) of the Schedule	Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006(**j**)
Paragraph 2(6) of Schedule 5	Employment Equality (Age) Regulations 2006(**k**)
Regulation 41(8)	European Cooperative Society (Involvement of Employees) Regulations

(**a**) S.I. 1990/1457. Rule 8 was amended by S.I. 1999/983, rule 2.
(**b**) S.I. 1990/1458. Rule 2 was amended by S.I. 1999/983, rule 3.
(**c**) S.I. 1998/1833. Regulation 35(6A) was inserted by S.I. 2004/2516, regulation 2.
(**d**) S.I. 1999/3323. Article 41(7A) was inserted by S.I. 2004/2518, regulation 2.
(**e**) S.I. 2003/1660. Paragraph 2(5A) was inserted by S.I. 2004/2520, regulation 2.
(**f**) S.I. 2003/1661. Paragraph 2(5A) was inserted by S.I. 2004/2519, regulation 2.
(**g**) S.I. 2004/754.
(**h**) S.I. 2004/3426.
(**i**) S.I. 2005/2364.
(**j**) S.I. 2006/349.
(**k**) S.I. 2006/1031.

	2006(**a**)
Regulation 62(8)	Companies (Cross-Border Mergers) Regulations 2007(**b**)

SCHEDULE 2

Article 23

Provision	**Statutory instrument**
Regulation 35(6)(a)	Working Time Regulations 1998(**c**)
Regulation 41(7)(a)	Transnational Information and Consultation of Employees Regulations 1999(**d**)
Paragraph 2(5)(a) of Schedule 4	Employment Equality (Religion or Belief) Regulations 2003(**e**)
Paragraph 2(5)(a) of Schedule 4	Employment Equality (Sexual Orientation) Regulations 2003(**f**)
Regulation 19(6)(a)	Merchant Shipping (Working Time: Inland Waterways) Regulations 2003(**g**)
Regulation 20(6)(a)	Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004(**h**)
Regulation 52(7)(a)	European Public Limited-Liability Company Regulations 2004(**i**)
Regulation 40(7)(a)	Information and Consultation of Employees Regulations 2004(**j**)
Paragraph 13(4)(a) of the Schedule	Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006(**k**)
Paragraph 2(5)(a) of Schedule 5	Employment Equality (Age) Regulations 2006(**l**)
Regulation 41(7)(a)	European Cooperative Society (Involvement of Employees) Regulations 2006(**m**)
Regulation 62(7)(a)	Companies (Cross-Border Mergers) Regulations 2007(**n**)

(**a**) S.I. 2006/2059.
(**b**) S.I. 2007/2974.
(**c**) S.I. 1998/1833.
(**d**) S.I. 1999/3323.
(**e**) S.I. 2003/1660.
(**f**) S.I. 2003/1661.
(**g**) S.I. 2003/3049.
(**h**) S.I. 2004/1713.
(**i**) S.I. 2004/2326.
(**j**) S.I. 2004/3426.
(**k**) S.I. 2006/349.
(**l**) S.I. 2006/1031.
(**m**) S.I. 2006/2059.
(**n**) S.I. 2007/2974.

EXPLANATORY NOTE

(This note is not part of the Order)

The Order makes minor and consequential amendments to primary and secondary legislation to reflect changes to the regulation of legal services introduced by the Legal Services Act 2007 (c. 29) ("the 2007 Act").

Article 4 amends the Charities Act 1993 (c. 10) to substitute new terminology for the assessment of costs.

Articles 3 and 5 make amendments which reflect the registration of entities, as well as individuals, as patent attorneys and trade mark attorneys. Articles 8, 9 and 21 make amendments to instruments to reflect changes in terminology for the registration of patent attorneys and trade mark attorneys introduced by the 2007 Act. Article 24 revokes instruments whose enabling powers are wholly or partly repealed by the 2007 Act.

Article 22 amends definitions of "qualified lawyer" to remove the requirement for ILEX Fellows to be employed by solicitors' practices. ILEX Fellows may now be managers and partners of legal practices regulated by the Law Society.

The remainder of the Order makes amendments which are consequential upon the commencement of Part 3 of the 2007 Act. Part 3 identifies the legal activities which will be subject to the regulatory regime introduced by the 2007 Act and sets out who may be authorised to carry out those activities. The amendments in this Order reflect this new framework of authorisation and remove out of date references (for example to section 119 of the Courts and Legal Services Act 1990 (c. 41)).

An impact assessment has not been prepared for this Order but a full regulatory impact assessment was prepared for the Legal Services Bill in November 2006, supplemented in 2007. Copies of these documents are annexed to the Explanatory Memorandum which is available alongside this instrument on the OPSI website.

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DRAFT STATUTORY INSTRUMENTS

2009 No. [XX]

LEGAL SERVICES, ENGLAND AND WALES

The Legal Services Act 2007 (Consequential Amendments) Order 2009

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