EXPLANATORY MEMORANDUM TO

THE LEGAL SERVICES ACT 2007 (DESIGNATION AS A LICENSING AUTHORITY) ORDER 2017

2017 No. 27

1. Introduction

1.1 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 General Council of the Bar as a licensing authority for the reserved legal activities of 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 General Council of the Bar to license alternative business structures, such as firms which are wholly or partly owned or controlled by non-lawyers to provide legal services, or a mixture of legal and other services, to the public.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 The Legal Services Act 2007 ("the 2007 Act") sets out a framework for the regulation of legal services in England and Wales. It established the Legal Services Board ("the LSB") as the oversight regulator for this 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. The General Council of the Bar is an approved regulator as set out in Part 1 of Schedule 4 to the 2007.

4.2 Under Part 5 of the 2007 Act an approved regulator may be designated as a licensing authority. A licensing authority may license bodies (often referred to as alternative business structures) 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 an approved regulator to apply to the LSB to become a licensing authority in relation to one or more reserved legal activities. 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, the decision to make such an Order.

5. Extent and Territorial Application

5.1 This instrument extends to England and Wales.

5.2 This 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 The 2007 Act sets out 8 regulatory objectives, which include protecting and promoting the interests of consumers and promoting competition in the provision of legal services. The Government believes that designating the General Council of the Bar as a licensing authority will assist in ensuring these objectives are met. This Order will designate the General Council of the Bar as a licensing authority for the exercise of a right of audience, the conduct of litigation, reserved instrument activities, probate activities and the administration of oaths in order to enable them to regulate alternative business structures, as set out in 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 application of the General Council of the Bar.

Consolidation

7.2 This Order does not make any amendments to any other statutory instrument and so consolidation does not arise.

8. Consultation outcome

8.1 In July 2014, the regulatory arm of General Council of the Bar, the Bar Standards Board ("BSB") consulted on their regulatory arrangements and regulation of entities as part of their application to the LSB to become a licensing authority. The majority of respondents considered that the BSB should seek to become a licensing authority.

8.2 Under Schedule 10 to the 2007 Act, the LSB is required when considering an application for designation as a licensing authority to seek advice from the Competition and Markets Authority, the Legal Services Consumer Panel and the Lord Chief Justice. Taking into account comments from the BSB's consultation and the statutory consultees, the LSB are satisfied that the BSB addressed the points raised to obtain support for their application to become a licensing authority and made a recommendation to the Lord Chancellor for an Order to be made.

9. Guidance

9.1 No guidance is proposed in respect of this Order due to the straightforward nature and effect of the Order.

10. Impact

10.1 This Order has no impact on charities or voluntary bodies. The only impact on business will relate to those directly affected by the Order, which is the General Council of the Bar and those they regulate.

10.2 This Order has no impact on the public sector.

10.3 A full regulatory impact assessment (RIA) was prepared for the Legal Services Bill in November 2006 and can be found at https://www.justice.gov.uk/downloads/legislation/bills-acts/lsa-2007/ria-legal-services.pdf further full RIA, together with a detailed Equality Impact Assessment, was prepared in relation to S.I. 2011/2196 which commenced most of Part 5 of the 2007 Act, and this can be found at: http://www.legislation.gov.uk/uksi/2011/2196/introduction/made.

11. Regulating small business

11.1 The legislation applies to activities that are undertaken by small businesses.

11.2 This instrument is not expected to have any disproportionate impact on small firms.

12. Monitoring & review

12.1 It is not considered appropriate to make provision for review in this Order. However the BSB has committed to carrying out a formal review of its entity regulation arrangements after two years of operation as a licensing authority. The LSB, as the oversight regulator of the legal services industry and as part of their wider oversight of regulatory performance will consider the BSB's formal review.

13. Contact

13.1 Please contact Mel Panteli at the Ministry of Justice (Telephone: 0203 334 6147 or email: Mel.Panteli5@justice.gsi.gov.uk) about any queries regarding this Order.