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Legal Services Bill [HL] **Committee Stage** **Report**

This is a report on the Committee Stage of the *Legal Services Bill [HL]* produced in response to a recommendation of the Modernisation Committee in its report on The Legislative Process (HC 1097, 2005-06).

This is a pilot Committee Stage Report and we would welcome all feedback on its content and format. This should be sent to papers@parliament.uk or to the Director of Research Services, Rob Clements (ext. 3622).

The Bill would establish a new framework for the regulation of legal services in England and Wales. Key elements of the Bill include: a statement of the regulatory objectives of the regulators; the creation of the Legal Services Board intended to be an independent oversight regulator; and the creation of an independent Office for Legal Complaints. The Bill would also provide for arrangements to facilitate alternative business structures, which would enable lawyers and non-lawyers to work together to deliver legal and other services; legal disciplinary practices of different kinds of lawyers would also be allowed.

In Public Bill Committee a large number of amendments to the Bill were made, including amendments to reverse defeats suffered by the Government in the House of Lords.

Catherine Fairbairn

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Summary

The *Legal Services Bill [HL]* would establish a new framework for the regulation of legal services in England and Wales. Key elements of the Bill include:

- a statement of the regulatory objectives of the regulators
- the creation of the Legal Services Board (LSB), intended to be an independent oversight regulator
- arrangements to facilitate alternative business structures which would enable lawyers and non-lawyers to work together to deliver legal and other services; legal practices of different kinds of lawyers would also be allowed
- the creation of an independent Office for Legal Complaints

The Government has stated that the purpose of the proposed legislation is to put the consumer first and to address concerns about:

- the current “regulatory maze”
- complaints handling by legal professional bodies who, in the past, have generally both regulated their members and represented their interests
- the anti-competitive effects of some of the rules of the legal professional bodies

Consumer organisations have welcomed proposals to reform complaints handling and also the focus on the interests of consumers. Other interested parties, including the Law Society and Bar Council, supported some of the provisions in the Bill but raised concerns about others including, for example, a perceived threat to the independence of the legal profession resulting from the proposed regulatory structure and the role of the Government.

The Bill as introduced in the House of Lords incorporated a number of amendments designed to address concerns raised by the Joint Committee which scrutinised the draft Bill which preceded the Bill. It was then amended considerably during its passage through the House of Lords. Many of the amendments made were Government amendments tabled to meet concerns expressed during the Lords stages of the Bill. For example, the Bill now includes a regulatory objective of protecting and promoting the public interest; and powers which would originally have been exercisable by the Secretary of State would now be exercisable by the Lord Chancellor (who is required under his oath of office to respect the rule of law). It would not be possible to transfer these functions to another Minister simply by a transfer of functions order.

In the House of Lords, the Government also suffered a number of defeats on other amendments which were successfully pressed:

- the Lord Chancellor’s power to appoint the Chair and to appoint and remove other members of the LSB was to be “with the concurrence of the Lord Chief Justice”; this was seen by supporters of the amendment as a means of bolstering the independence of the legal profession from Government
- the threshold for intervention by the new LSB was raised and the Bill would have specified that statements of policy issued by the LSB must respect the principle that primary responsibility for regulation rests with the professional bodies; these

amendments were designed to address the concerns of those who queried whether regulation by the LSB would be “light touch”

- further successfully pressed amendments addressed concerns which had been raised about the alternative business structure (ABS) provisions and their potential impact on access to justice; the amended Bill would have specified this as a factor to be considered before any ABS licence could be granted; in addition, an order to implement Part 5 (the ABS provisions) was to be subject to the affirmative procedure
- the proposals relating to complaints handling were also the subject of Opposition amendments; the envisaged “polluter pays” levy was heavily criticised: critics said that this could have required a contribution to the cost of processing a complaint which was not upheld, from the person against whom the complaint was made. The Bill was amended in the Lords to provide that costs could be recovered in more limited circumstances. In addition, the Bill was amended to allow the delegation of customer service complaints handling to an approved regulator; the Bar, whose previous record in this area had been praised, had pressed particularly strongly for this.

In Public Bill Committee, all of these amendments were overturned. In addition, the Government successfully introduced a large number of new amendments, including amendments dealing with the position of independent trade unions, which had not been considered in the House of Lords. The Government also gave a commitment to consider further a variety of issues, a number of which arose from amendments proposed by other parties.

Further background and information about the Bill's provisions is included in Library Research Paper 07/48, which was prepared for the Bill's second reading.

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I Introduction

A. Background

The *Legal Services Bill [HL]* follows a process of policy development and consultation proposing reform of the law governing regulation of the legal profession and the handling of complaints against lawyers. A draft *Legal Services Bill* was published on 24 May 2006, which was scrutinised by an ad hoc joint committee drawn from both Houses of Parliament. The *Legal Services Bill [HL]* was introduced in the House of Lords on 23 November 2006 as HL Bill 9 of 2006-07 and completed its passage through the House of Lords on 15 May 2007. It had its first reading in the House of Commons on 16 May 2007 as Bill 108 of 2006-07 and its second reading in the House of Commons on 4 June 2007. The Bill had ten sittings in a Public Bill Committee between 12 June 2007 and 26 June 2007. Two further sessions agreed for 28 June 2007 in the programme motion were not used, although on two occasions the Committee sat for long sessions: on 19 June until 9.26 pm and on 26 June until 10.01 pm. A Bill gateway is available on the Parliamentary intranet, which gives additional information and detail of the progress of the Bill. Further background and information about the Bill's provisions is included in Library Research Paper 07/48, which was prepared for the Bill's second reading.

The Bill extends only to England and Wales, except for the provisions of clauses 195 and 196(1) and Schedule 20 which extend to Scotland.¹

B. Pilot scheme

The *Legal Services Bill [HL]* has been the subject of a pilot scheme during its Commons Committee stage. The pilot was intended to examine how the Modernisation Committee recommendation regarding explanatory statements tabled with amendments to Bills would work in practice. Accordingly, a Member's non-argumentative explanatory statement of no more than fifty words could be tabled with each amendment. The following is an example of such a statement:

Bridget Prentice

Schedule 1, page 121, line 6, leave out 'with the concurrence of the Lord Chief Justice'.

Members' explanatory statement

This amendment reverses one made in the House of Lords requiring the concurrence of the Lord Chief Justice to the appointment of the chairman of the Board.

Members of the Committee who referred to the pilot scheme in debate were in favour of it.

¹ The clause numbers are as in the Bill as it left the Public Bill Committee (the form in which it will be debated on Report), that is Bill 135 of 2006-07

II Second reading debate

The *Legal Services Bill [HL]* was introduced at second reading by Bridget Prentice, Under-Secretary of State for Justice. She emphasised the consumer focus and made clear her intention to reverse the defeats suffered by the Government in the House of Lords:

It is an especially important Bill because above all it puts consumer interests at the heart of legal services provision. The consumer focus, as the volume and nature of amendments in the other place show, was clearly forgotten during the Bill's long and drawn-out six-month passage there, so I now look forward to this House reacquainting the Bill with its real purpose. This is our opportunity to give voice to the needs and aspirations of consumers as opposed to providers of legal services.²

Bridget Prentice indicated that she would be tabling further amendments including provisions to ensure that independent trade unions could continue to provide legal services to their members. She summarised the intent of the Bill:

The Bill will restore consumer confidence. We will see a modern, flexible, transparent and independent system of regulation. We will have a new oversight regulator that can act, and will act, to protect consumer interests. There will be enhanced competition, with lawyers able to provide services in new and innovative ways. Most importantly, we will see the sweeping away of decades of piecemeal reform and a new robust regulatory system in its place that will put the consumer at heart of the legal system.³

Oliver Heald, then Shadow Secretary of State for Justice, welcomed the Bill and spoke of the "improvements" made to it in the House of Lords. He also spoke of the importance of independence for the legal profession:

I agree with the Minister that it is right that consumers should be able to challenge their lawyers effectively when things go wrong and that complaints should be efficiently handled. However, it is also vital that lawyers should be free to act for their clients without Government interference. The Government should not be able to use consumer rights as a cloak to attack people's basic civil liberty of having a genuinely independent lawyer acting on their behalf ...having a strong legal profession, independent of Government, is an important constitutional issue and improvements to the regulation of the legal profession should respect that. It is not in the consumer interest to have Government control over lawyers, because many consumers of legal services are taking cases against public authorities and the Government.

British exports could be threatened if the international perception is that our legal profession is not truly independent of Government.⁴

² HC Deb 4 June 2007 c24

³ HC Deb 4 June 2007 c37

⁴ HC Deb 4 June 2007 cc37-9

Oliver Heald gave notice that he would wish to see the issue of trade union exemptions pursued in Committee, saying “I do not see why members of a trade union should not have the protection that the Bill would give someone from the citizens advice bureau or a law centre doing the same work”.⁵ He also said that the Conservatives would want to raise a range of other issues including the regulation of will-writers.

Simon Hughes, then Liberal Democrat Shadow Secretary of State for Justice and Shadow Attorney General also supported the Bill as amended in the Lords and spoke of the Bill having been “considerably improved”:

there was clear support, on the basis of argument, for the amendments on which the Government were defeated. We should work on the basis that that is the right starting place, and that the burden is on the Government to make the case for any changes. I am troubled that the Minister appears in most cases to be rejecting such amendments completely, and in one or two cases to be saying that she will reject them at least in part. I hope that there will be a debate on that, and that we can win the argument. If we do, I hope that the Government will be flexible and will not stubbornly hold on to a position that clearly did not win the confidence of the other place.⁶

He also raised a number of issues which he said he would wish to pursue further but supported key elements of the Bill:

I have made it clear that the legal profession has a good reputation in this country, but it has also had its significant failures, and I started by saying that that is why we are in the Chamber debating the Bill. We are trying to get a structure.

We have supported there being clear, regulatory objectives. That is a good thing. We have supported there being a legal services board—an overarching regulatory authority. That is a good thing. We have supported the separation of representation and regulation. That is a good thing. We have also supported there being one door to a legal complaints service. ... This is not about taking a defensive position, it is about making sure that we respect what works and put it in the context of an accountable and better-to-use service that gives citizens the rights that they expect.⁷

III Evidence

Two pieces of written evidence were reported to the Houses of Parliament and have been published: memoranda submitted by Which? Magazine (LSB 1) and a memorandum submitted by the Legal Services Ombudsman for England and Wales and the Legal Services Complaints Commissioner (LSB2).⁸ In addition, in the course of the debates, members of the Committee referred to briefings and proposals from a number of other bodies including consumer organisations and legal professional bodies.

⁵ HC Deb 4 June 2007 c40

⁶ HC Deb 4 June 2007 c55

⁷ HC Deb 4 June 2007 c56-7

⁸ <http://www.publications.parliament.uk/pa/cm/cmpblegal.htm>

IV Committee Stage

In Public Bill Committee, Bridget Prentice, Under-Secretary of State for Justice led for the Government. Jonathan Djanogly, the Shadow Solicitor General, and Shadow Ministers of Justice, Henry Bellingham and David Burrowes were the main contributors for the Conservatives. Simon Hughes, then Liberal Democrat Shadow Secretary of State for Justice and Shadow Attorney General and John Hemming represented the Liberal Democrats. This section of this paper sets out information about issues debated in Committee. However it is not intended to be an account of the all the issues raised in Committee, many of which reflected debates that had already taken place in the House of Lords.

A. Amendments agreed

1. Lords amendments overturned

Various changes opposed by the Government were made to the Bill in the House of Lords, where the Bill was introduced. In Committee all of these amendments were overturned by way of Government amendments:

a. *Concurrence of Lord Chief Justice*

The House of Lords made various amendments which required the concurrence of the Lord Chief Justice to appointments to and removals from the Legal Services Board (LSB) by the Lord Chancellor. In Public Bill Committee the relevant clauses were returned to their original form. Bridget Prentice explained why the Government disagreed with the amendments made in the Lords:

Setting out a named person to whom the Lord Chancellor must give concurrence would be absolutely contrary to the principle of ultimate ministerial responsibility for appointments. It would remove the formal role of the Commissioner for Public Appointments ... in the oversight and regulation of public appointments, and it would weaken parliamentary scrutiny. It would not be in the interests of anyone.⁹

Similar arguments against the Government amendments were advanced as had been advanced in the House of Lords. The Conservatives considered that the requirement for concurrence was essential to bolster the independence of the legal profession from the Government and spoke of the possible risk to international business. Jonathan Djanogly quoted concerns expressed in a letter from the chairman of the Bar Council and the senior partners at the five largest law firms. The Liberal Democrats also cautioned against creating a perception that appointments to the LSB would be political.¹⁰ The Government amendments were agreed to in a series of divisions.

⁹ PBC Deb 12 June 2007 c27

¹⁰ PBC Deb 12 June 2007 c60

Simon Hughes asked Bridget Prentice for a list of all joint appointments. The Minister wrote to members of the Committee on 21 June 2007 with a table showing a range of types of Ministerial appointments. In her letter she said:

As you can see from the annexed list, in the vast majority of instances that we have examined there is no requirement in legislation for ministers to consult with (or seek the approval of) other bodies or persons outside of Government when making appointments. I think this is no coincidence because the policy is, where this is appropriate, that public appointments should be made with the regulation and oversight by the Commissioner for Public Appointments, and only an appointment made fully by a Minister can engage that.¹¹

b. *Thresholds of LSB's regulatory powers*

A group of Government amendments removed amendments made in the Lords which sought to limit the exercise of the LSB's regulatory powers to circumstances involving significant adverse impact on the regulatory objectives as a whole. As a consequence of the Government's amendments, the relevant provisions are as they were before the changes made in the Lords. The LSB would now be able to act where there is an adverse impact on one or more of the regulatory objectives. Bridget Prentice explained the Government's position:

The Government have not been persuaded that it is necessary or desirable to strengthen the thresholds as the other place proposed. The board needs flexibility to act quickly and decisively where there is a failure. To wait until that failure has a significant adverse impact on the objectives as a whole is likely to be damaging to consumers and, I suggest, to the legal profession.

In particular, the amendments are needed to remove the requirement that the adverse impact be significant. We have serious concerns that such qualification of the thresholds will fetter the board's ability to regulate effectively. Retaining the word "significant" could cast doubt on whether the board can take steps to rectify certain regulatory failings. In the case of smaller regulators, who may regulate fewer reserved activities or authorised persons, the impact on the objectives may not meet the significant threshold even where there is clear evidence of consumer detriment in the failing regulator's field. The Government want to make it clear in the Bill that the board will be able to act in relation to a regulator regardless of that regulator's size. The simple reference to adverse impact will achieve that without leaving damaging room for argument.

We also seek to reverse amendments restricting the board's ability to take action where the adverse impact is on the regulatory objectives as a whole. In making regulatory decisions, the board will of course need to balance the impact on one objective against the other objectives and to assess them together. That might even be the intention behind the amendments made in the other place, but we do not believe that it will be their effect. We consider that those amendments could limit recourse to the regulatory powers to circumstances impacting on all the objectives, which is clearly far too restrictive. Our amendments in this group will

¹¹ A copy of the letter has been placed in the House of Commons Library, Dep 07/1617

make it plain that the board can act where there has been an adverse impact on one or more of the regulatory objectives.¹²

The Conservatives disagreed with the amendments and Henry Bellingham spoke of the desire for a balanced approach. The Liberal Democrats also opposed the amendments.¹³

The amendments were agreed to in a series of divisions.

c. *Relationship between the LSB and approved regulators*

The Government removed an amendment to Clause 49 made in the Lords which specifically provided for the relative roles of the LSB and approved regulators. However, Bridget Prentice also moved a new amendment which was agreed to on division, which she said was to “clarify the drafting” of the Lords amendment. The Bill would now specify that, in preparing a statement of policy, the LSB must have regard to the principle that its principal role is the oversight of approved regulators. The Government amendment also specifies that the LSB’s policy statements should take account of the desirability of resolving issues informally and should specify how the LSB would comply with the regulatory principles in Clause 3. The Government’s amendment differs from the Lords amendment: for example there is no longer a reasonableness test which Bridget Prentice said had the potential to restrict the LSB from taking the appropriate regulatory action in some circumstances.¹⁴

d. *Alternative Business Structures*

The Government reversed a Lords amendment which would have required licensing authorities to pay particular attention to access to justice when considering alternative business structure (ABS) licences. Bridget Prentice said that access to justice did not need to be singled out to ensure that licensing authorities took it into account and said that all regulatory objectives should be considered at all stages; in some circumstances an ABS licence might benefit the consumer because of the other objectives (eg increasing competition). This issue had been debated extensively in the House of Lords. The Conservatives and the Liberal Democrats opposed the Government amendment and favoured retaining the Lords’ amendment. Jonathan Djanogly said that with no effective control on cherry-picking, competition and choice could be reduced by the growth of “so-called advice deserts across the country”. Simon Hughes spoke of the issue as being one which would not go away.¹⁵

The amendment was agreed to on a division by 9 votes to 6.

¹² PBC Deb 19 June 2007 c229

¹³ PBC Deb 19 June 2007 c230-236

¹⁴ PBC Deb 19 June 2007 c249-254

¹⁵ PBC Deb 21 June 2007 cc281-295

e. “Polluter pays” mechanism

A series of amendments reversed Lords amendments to the provisions relating to charges payable by respondents to complaints to the new Office for Legal Complaints (OLC). The Lords amendments provided that charges could be recovered from respondents only in limited circumstances. Bridget Prentice said that she was sympathetic to the proposition that an entirely innocent respondent should not have to pay but said that the unamended Bill already allowed for charges to be waived or reduced. Scheme rules would set out the details and the Minister said that “all those who are worried about [the charging scheme] working acting unfairly and disproportionately should wait before making a grand statement until they have had a chance to comment on the draft rules, which are bound by the Human Rights Act 1998 and are compatible with the European Convention on Human Rights”.

The Conservatives opposed the Government’s amendments with similar arguments to those advanced in the House of Lords, including, for example, that people who have been exonerated following an investigation should not be penalised for being found blameless, and that there should be no discouragement to practice in areas of the law where unjustified complaints are more likely to be made. The Liberal Democrats proposed what were described as compromise amendments.

The Government’s amendments were agreed to on division.¹⁶ Bridget Prentice also agreed to consider further the position of a respondent who had been exonerated following compliance with an in-house complaints procedure and co-operation with the OLC.¹⁷

f. Delegation of complaints handling to approved regulator

In the Bill as originally presented, the OLC was to handle complaints about service, and complaints about conduct were to be handled by the relevant approved regulator. In the House of Lords, amendments were made to allow the delegation of customer service complaints handling to an approved regulator; the Bar, whose previous record in this area had been praised, had pressed particularly strongly for this. In Public Bill Committee, through a clause stand part debate, the Lords amendments were removed on a division. Bridget Prentice said that any form of delegation would undermine the principle of a single independent complaints handling body and would not restore consumer confidence in complaints handling. She referred to the opposition of consumer bodies (Which?, the National Consumer Council and also Citizens Advice Bureaux) to the Lords amendments. Henry Bellingham (Conservative) spoke of the expertise and cost-effectiveness of the Bar Standards Board. John Hemming (Liberal Democrat) also supported the Lords amendment and said that the clause only gave the LSB power to delegate complaints handling; there was no requirement, and he spoke of the possibility of delegation after initial consideration of the complaint by the OLC.¹⁸

¹⁶ PBC Deb 26 June 2007 cc359-375

¹⁷ See page 29 of this paper below

¹⁸ PBC Deb 26 June 2007 cc398-415

g. Commencement provisions

The House of Lords agreed an amendment to the commencement of Part 5, dealing with Alternative Business Structures. The effect of the amendment was that Part 5 could not be implemented until after further research into the possible effects of ABSs had been considered by Parliament, and also that an order to implement Part 5 would be subject to the affirmative procedure. Bridget Prentice set out why the Government disagreed with the Lords' amendment:

Frankly, I cannot see that further research would add anything constructive to the Bill. Baroness Ashton took pains to explain in the other place that such research could achieve only two things: either it would compare our reforms with other jurisdictions, in which case we would learn very little that is relevant, or it would try to estimate the effects of the ABS in the absence of any firms actually being operational, in which case we would get a lot of theory but there would be little chance of discovering anything based on hard evidence. Neither type of information would be much help to Parliament in approving a commencement order.

We have already commissioned research and used it to inform the Bill. ...We do not want to delay the benefits that part 5 offers consumers. ...

The other troublesome element in clause 212 is the requirement for an affirmative resolution for any commencement order, which is a kind of sunrise clause. I do not agree that that measure is necessary, and it was not proposed by the Delegated Powers Committee. Commencement orders are not normally subject to parliamentary procedure, particularly affirmative procedure, and I see no reason to change things here. If anything, this requirement for affirmative procedure is a crude, clumsy attempt to put obstacles in the way of part 5 and specifically to give a veto to those in the House of Lords who oppose the concept of ABS, but whose arguments have failed to win the debate on the principle. Taken with the requirement for more research, hon. Members could be forgiven for thinking that this was a wrecking amendment, or a wrecking clause.¹⁹

Henry Bellingham said that, although the Conservatives were not particularly happy with the Government amendment, they would not vote against it as some good points had been made.

Simon Hughes gave three reasons for supporting the Lords amendment:

First, there is still huge concern among many interested people about the introduction of ABS, and an independent report at this stage—after all the debate on the Bill—would produce a new ability to assess the benefits and disbenefits. ...Secondly, we must address the access to justice concerns, which we have already discussed. Thirdly, there must be the ability to have a sunrise clause. As the Minister knows, other Bills have included sunrise clauses. A sunrise clause would mean that there would have to be parliamentary agreement to press the button on the new business structures, which is, on balance, the right side of the line.

¹⁹ PC Deb 26 June 2007 cc469-70

The Government's amendment was agreed to on a division by 9 votes to 2.²⁰

2. Other amendments and new clauses added

The Government also successfully moved a number of amendments which covered new areas including the following (not all amendments are mentioned):

a. *Compensation, pensions and other payments*

A series of agreed amendments would allow for the payment of compensation, (including for loss of employment), pensions, allowances and gratuities to the chairman and members of the LSB and the Office for Legal Complaints (OLC) in appropriate circumstances. Bridget Prentice said that the amendments would bring the Bill into line with Government policy and Treasury guidance. In response to a question from Jonathan Djanogly about how the measures would be financed, Bridget Prentice said that this would be through the levy on approved regulators and that pension provision would form part of the ongoing cost of the regime and would be at a level determined by the LSB. She also said that she would write to Jonathan Djanogly in more detail about pension law before the next stage.²¹

b. *Independent trade unions*

Another series of amendments addressed the position of independent trade unions and would exempt them from the requirement to be an Alternative Business Structure (ABS) when carrying out certain member services that are reserved legal activities. The individual through whom a union carried on such services would still have to be entitled. Bridget Prentice set out the purpose of the amendments:

The amendments are designed to give effect to the policy that my noble and learned friend Lord Falconer set out on Second Reading in the other place. He said:

"We do not intend the Bill to regulate in any way lay trade union representation, whether whole or part-time in the workplace, nor to place additional burdens on those unions that provide legal advice or representation to their members."
[Official Report, House of Lords, 6 December 2006; Vol. 687,c. 1167.]

We are doing that because unions are in a different position from most legal services providers. They carry out a great deal of work through officials in the workplace, who are usually elected by colleagues rather than professional union staff and are working at some distance from the union's head office, and they do it in a specific context.

...Although a union official may give advice, the purpose is not just to help the member. It is part of the wider role of fostering good labour relations. The official in that situation can advise only members, retired members and family members and no one else. The union does not offer that service to the general public.

²⁰ PBC Deb 26 June 2007 cc469-473

²¹ PBC Deb 12 June 2007 cc 81-85

...unions are already regulated by the certification process. The work of officials is governed by the union's rule book, and that is enforced through the certification officer. Therefore, unions that provide legal services do not need the same degree of regulation as bodies that are offering services more widely or commercially.

...The amendment would remove the requirement for the independent trade unions to be regulated as entities.²²

Bridget Prentice said that the amendments had been tabled at this stage (and not earlier in the Lords) because of ongoing discussions with the TUC and the Law Society, which had raised concerns about the issue. She also gave further details about the actual amendments:

The provision will allow employed lawyers to work, for example, for bodies linked to their employers, such as subsidiary companies, for colleagues, or on a pro bono basis, without their employers needing to be treated as providers of legal services. The Bill will enable the work of those employed lawyers to continue as now. However, there are tight restrictions on that exception, which applies only if the provision of legal services to the public is not part of the employer's business.²³

Bridget Prentice said that the Government had no intention of leaving union members unprotected or less well protected than others:

The important point is that reserved activities will still need to be carried out by authorised persons—in other words, by qualified lawyers. They will still be subject to full regulation by the Law Society or by whichever other approved regulator is appropriate, and they will still be subject to all the rules of the relevant regulator.²⁴

Trade unions which are not independent trade unions would not be covered by the amendments and would have to be authorised and licensed to provide any reserved legal services, even to their members.

Bridget Prentice confirmed that the approved regulators, with the agreement of the LSB, would be able to specify that union lawyers should work only through regulated entities. The unions would then be able to use the provisions of part 5 (ABS provisions).

There was a lengthy debate on the proposed amendments and the position of trade unions.²⁵

The Conservatives opposed the amendments. Jonathan Djanogly said: "For the Government to amend the Bill to abolish regulations on trade unions is outrageous".²⁶

²² PBC 14 June 2007 cc154-155

²³ PBC 14 June 2007 c156

²⁴ PBC 14 June 2007 cc157-158

²⁵ PBC Deb 14 June 2007 cc 154-194

²⁶ PBC Deb 14 June 2007 c 161

He questioned the extent to which the certification officer could regulate the union and also the extent of the proposed amendments:

The Government amendment goes far beyond even what was discussed by officials. It will exempt trade unions from the requirement to become an ABS in relation to all services provided to members, former members and relatives of members, provided that those services were part of the membership package, whether or not they were part of the employment relationship.²⁷

Jonathan Djanogly quoted the opposition of the Solicitors Regulation Authority to the amendments and its view that the concessions already made in the Bill in relation to the regulation of trade unions and other low-risk bodies would ensure proportionate regulation.²⁸

John Hemming said that the Liberal Democrats took “an agnostic approach” to the amendments;

We accept the objective. We do not want a situation in which a trade union convenor who is offering advice to union members on employment law ends up being regulated to the same extent as someone who sets themselves up in business to offer legal services in the widest sense, who carries out regulated legal services and who, as part of that, does unregulated legal services, which are caught in the same process of regulation.²⁹

Simon Hughes questioned the scope of the amendments and why they did not extend to other organisations which had a similar relationship with their members. Bridget Prentice confirmed that other bodies would be able to take advantage of a similar exemption under Clause 15 if they provided reserved legal activities only to their members.³⁰

The Government was criticised for the late tabling of these amendments.

The amendments were agreed to in a series of divisions.

In a letter to members of the Committee dated 21 June 2007, a copy of which has been placed in the House of Commons Library, Bridget Prentice set out further information about the amendments including:

I should also like to take this opportunity to clarify some points that I made in the debates on Clause 15. As I said, trade unions raise different issues from the more commercially-focused bodies that this Bill was designed to deal with. Because of that the Bill, as drafted when it was introduced, included special treatment provisions for trade unions, in Part 5. However, those provisions would still have required unions to be regulated as entities and licensed as ABS bodies, which would have meant that legal services provided by lay advisers would have had to be regulated. That was not exactly what we had intended, so we

²⁷ PBC Deb 14 June 2007 c163

²⁸ PBC Deb 14 June 2007 cc164-5

²⁹ PBC Deb 19 June 2007 c176

³⁰ PBC Deb 19 June 2007 c185

continued to refine the drafting with help from the TUC and the Law Society, which is likely to be the main regulator for lawyers working with unions. The Law Society's Employed Solicitors Code already provides a special exemption for solicitors employed by associations, which includes trade unions, and we focused on building on that. Clause 15 is designed to enable employed lawyers to continue to provide services, in limited circumstances, to people other than their employers, without their employers needing to be regulated. Our amendments make clear that independent trade unions are a particular example of that exception. We have looked carefully at whether it would be possible to confine the exception in Clause 15 of the Bill to legal activities being carried out in pursuance of trade unions' labour relations functions. Unfortunately, this did not prove workable and, as you know, we opted instead for a provision based on membership.³¹

c. Exemption provisions

A number of technical amendments to Schedule 3 were agreed relating specifically to exemptions for persons working under the supervision of authorised persons in relation to rights of audience, reserved instrument activities and probate activities.

d. Alternative Business Structures

A large number of Government amendments were agreed to the Alternative Business Structure (ABS) provisions which Bridget Prentice explained as follows:

They refine the ownership provisions in part 5 and schedules 16 and 17 to provide more clarity on how firms and companies with complex ownership structures will fit into the ABS or recognised body regimes, as well as on whether non-lawyer owners and managers will be subject to the fitness-to-own tests. They also contain a number of related and consequential changes to other provisions. They do not depart from existing policy on non-lawyer ownership, but they do provide essential refinements to ensure clarity in complex corporate structures.³²

e. Law Society powers

Another large number of amendments were agreed to Schedule 16 which deals with the Law Society, Solicitors, Recognised Bodies and Foreign Lawyers. Bridget Prentice said that they had been drafted in response to amendments tabled in the House of Lords on behalf of the Law Society and explained their purpose:

The purpose of the amendments is to provide the Law Society with enhanced powers to regulate sole practitioners and their employees. They bring many of the Law Society's powers in relation to sole practitioner firms into line with its powers over partnerships and LLPs, and sole practitioner firms are often as large and as complex as recognised bodies. Overall, the amendments will ensure that all legal services practices are regulated according to the same principles. The consumers of such services will receive the same level of regulatory protection,

³¹ Dep 07/1617

³² PBC Deb 19 June 2007 c270

regardless of whether they obtain legal services from a sole solicitor or a recognised body.³³

Further amendments dealt with the Law Society's powers to rebuke and fine,³⁴ and with legal professional privilege.³⁵

B. Other significant areas of debate

1. Proposed amendments

A number of other amendments were moved which were either withdrawn or defeated on division, many on subjects already debated in the Lords. A large number of amendments were moved and debated and not all are included in this paper. The proposed amendments included:

a. Competition

Jonathan Djanogly (Conservative) moved an amendment intended to ensure that the objective of promoting competition would be expressly subordinate to the objectives of protecting and promoting the public interest; supporting the constitutional principle of the rule of law; improving access to justice; and protecting and promoting the interests of consumers.³⁶ The amendment was supported by the Liberal Democrats. A similar amendment had been debated in the House of Lords. Bridget Prentice resisted the amendment on the basis that ensuring effective competition was essential to the proposed new consumer-focused regulatory network. She considered that promoting competition should not be seen as of lesser importance than any of the other objectives and said that the Government were opposed to ranking the objectives in any way.³⁷ The amendment was negated on division by 10 votes to 5.³⁸

b. Lay person as chair of the LSB

Kevan Jones (Labour) moved an amendment which would have required that the chairman of the LSB (and not just the first chairman as in the Bill), would be a lay person.³⁹ The amendment was supported by Simon Hughes. Jonathan Djanogly expressed himself to be open minded but unconvinced about it. Bridget Prentice said that, at some point in the future, the best person for the job might be someone who had been a lawyer in the past.⁴⁰ John Mann questioned what would happen if the first chairman unexpectedly left the post early and asked whether the Minister would guarantee that the LSB would have a lay chair for the first five years of its operation. Bridget Prentice said: "Yes, I give my hon. Friend that guarantee. There we are—I have done it... The appointment is for five years, and that first appointment of five years will be

³³ PBC Deb 26 June 2007 cc435-6

³⁴ PBC Deb 26 June 2007 c 447

³⁵ PBC Deb 26 June 2007 c 456

³⁶ PBC Deb 12 June 2007 c7

³⁷ PBC Deb 12 June 2007 cc12-13

³⁸ PBC Deb 12 June 2007 c15

³⁹ PBC Deb 12 June 2007 c71

⁴⁰ PBC Deb 12 June 2007 c76

of a lay person. That is the guarantee that I give to my hon. Friend and to the rest of the Committee".⁴¹ A second amendment considered at the same time would have required a majority of lay ordinary members on a committee that an approved regulator authorised to exercise its regulatory functions. Bridget Prentice said that she could see why that might maintain the confidence of consumers but also said that the Bill recognised the principle of self-regulation of the legal profession and the benefits of retaining the expertise that regulatory bodies had built up.⁴² The first amendment was withdrawn and the second was not moved.

c. *Proportionality*

Jonathan Djanogly moved an amendment which was considered with further amendments and also new clauses proposed by the Liberal Democrats, which he said would deal with the issue of proportionality of regulation. He referred to the amendment having been suggested originally by the Chartered Institute of Patent Agents and the Institute of Trade Mark Attorneys. The proposed provisions included a requirement for guidance be given to the LSB about the matters they should consider when determining whether regulatory activities were proportionate, including the regulator's resources and the effect of regulatory fees, and the different types of consumer. Jonathan Djanogly said that the amendment would not define proportionality, but would set out particular factors to which the LSB should have regard when assessing what was proportionate in the regulation of approved regulators. He also said that it would address the issue of whether regulation would be "light touch". Bridget Prentice resisted the amendment saying that it was important that the LSB, the regulators and the Office for Legal Complaints should be free to consider what was proportionate when making their regulatory decisions on a case by case basis, and that having definitions in legislation of what is proportionate in a particular case would be restrictive and inflexible. She considered that the proposal to require the LSB to ensure that the approved regulators act in a way which is compatible with the regulatory objectives would lead to more intrusive and burdensome regulation and to scope for micro-management by the LSB. She did not consider it necessary to include a further requirement for the LSB to consult. However, Bridget Prentice said that she would consider whether there was a way of using a code of practice or issuing guidance.⁴³ The amendment was withdrawn and the further amendments were not called.

d. *The Consumer Panel*

Bridget Prentice resisted an attempt by Jonathan Djanogly to allow legally qualified persons to serve on the consumer panel as representatives of corporate users of legal services. He referred to a letter from the General Counsel 100 group to the City of London Law Society expressing its concerns about representation. Bridget Prentice agreed that there was a role for the corporate consumer on the panel but said that allowing lawyers to be included would compromise the panel's independence from the

⁴¹ PBC Deb 12 June 2007 cc71-79

⁴² PBC Deb 12 June 2007 c78

⁴³ PBC Deb 12 June 2007 cc89-98

legal profession. Qualified but non-practising solicitors would be eligible to sit on the panel. The amendment was withdrawn and related amendments were not called.⁴⁴

e. *Advice and research functions of the Consumer Panel*

Jonathan Djanogly moved a probing amendment, supported by the Liberal Democrats, which would have allowed the Consumer Panel to act on its own initiative in carrying out research and giving advice to the LSB (and not just when a request had been received from the LSB). He said that the proposal “comes from current consumer bodies”.⁴⁵ Bridget Prentice replied that if the panel considered that there was evidence of a clear detriment to the consumer interest, it could make a representation to the LSB that it request that the panel carry out research into the matter. Such a representation could also specify that the LSB should receive and consider advice from the panel. If the LSB elected to disagree with such a representation, the panel would have to be provided with a justification for that disagreement, and it could then go ahead and publish that exchange. Bridget Prentice also pointed out that nothing in the amendments would stop the panel from conducting irrelevant research, incurring exorbitant costs, or providing that the LSB need not act on the advice.⁴⁶ The amendment was withdrawn.

f. *Will-writing*

As in the Lords, after a lengthy debate, the Government resisted an Opposition probing amendment which would have included will-writing in the list of reserved legal activities that may be carried on only by authorised persons.⁴⁷ Bridget Prentice said that there was no evidence of a need to regulate this area or that bad advice had necessarily been given by people who were not solicitors. She said that regulation must be proportionate and based on an assessment of risk and that the Government did not have any serious evidence of systemic failure. Will-writing could be added in the future as a reserved activity if evidence of systemic failure emerged. The amendment was withdrawn but Simon Hughes, whose name was also on the amendment, indicated that he might wish to return to this subject on Report.

g. *Alterations to approved regulators’ regulatory arrangements*

As in the Lords, the Government resisted an amendment which sought to reverse the presumption that the advance approval of the Legal Services Board should be required to changes to approved regulators’ regulatory arrangements. The amendment was moved by Robert Neill (Conservative) who said it was supported by the Law Society.⁴⁸ Bridget Prentice said that the amendment would result in increased regulatory burdens on both the LSB and the approved regulators and set out how the procedure was intended to work. The amendment was withdrawn.⁴⁹

⁴⁴ PBC Deb 14 June 2007 cc 104-7

⁴⁵ PBC Deb 14 June 2007 c 116

⁴⁶ PBC Deb 14 June 2007 cc 119-20

⁴⁷ PBC Deb 14 June 2007 cc 131-146

⁴⁸ PBC Deb 19 June 2007 cc 212-13

⁴⁹ PBC Deb 19 June 2007 c 220

h. Challenging LSB decisions

The Government resisted various attempts to create additional provisions designed to enable decisions of the LSB to be challenged, stating that they were all unnecessary, because the Bill already achieved essentially the same outcome and the amendments would just create duplication and add to bureaucracy.⁵⁰

i. Financial penalties

Simon Hughes moved an amendment, which he said was proposed by the Law Society and which was supported by the Conservatives, which was designed to ensure that the LSB did not impose financial penalties where lesser sanctions would suffice. Bridget Prentice spoke of the concessions made in the Lords and resisted the amendment saying that consumer bodies would not support it either.⁵¹

j. ABS fitness to own test

Jonathan Djanogly moved an amendment, supported by the Liberal Democrats, which he said was designed to make it clear that the onus of demonstrating fitness to own (in the context of the ABS provisions) rested on the applicant, rather than it being for the licensing authority to demonstrate that a person was not fit and proper before it could withhold approval.⁵² Bridget Prentice said that she agreed with the principle behind the amendment but said that the Bill would already achieve this. She said that she would consider the issue of who had the duty to provide information to enable the licensing authority to make a decision. The amendment was negated on a division.⁵³

k. Number of members of the Office for Legal Complaints

Henry Bellingham moved an amendment which would have removed the provision that would enable the Lord Chancellor to alter the number of members of the OLC. He queried why the Lord Chancellor should have this power when the OLC would be responsible to the LSB. Bridget Prentice resisted the amendment saying that the provision was necessary because the OLC would be a non-departmental public body ultimately accountable to Parliament and also pointed out that the LSB would be under no obligation to make any additional appointments.⁵⁴

l. OLC performance targets and monitoring

John Mann (Labour) said that it was necessary to build into the working practices of regulation an ability to investigate how complaints are handled. His amendment was considered with probing new clauses proposed by the Liberal Democrats. Simon Hughes asked whether there ought to be a measure which transferred to the LSB the powers of the Legal Services Complaints Commissioner in order to provide oversight of the OLC by

⁵⁰ PBC Deb 19 June 2007 c 239

⁵¹ PBC Deb 19 June 2007 cc 240-246

⁵² PBC Deb 21 June 2007 c300

⁵³ PBC Deb 21 June 2007 c307

⁵⁴ PBC 21 June 2007 cc335-337

the LSB. Bridget Prentice resisted the proposals, saying that the OLC would report to and be accountable to the LSB but that the LSB would not deal with the day to day handling of complaints. She said that the OLC would perform a different function from the approved regulators and explained in some detail how the LSB's controls over the OLC would operate.⁵⁵ The amendment was withdrawn.

m. Operation of the OLC ombudsman scheme

John Mann said that there should be “a robust, overseeing complaints procedure for the individual” and moved an amendment the purpose of which he said was “to strengthen that process”. His amendment would have provided “an independent avenue of review for complainants who consider that an approved regulator’s consideration of a regulatory issue was inadequate or that its determination was unreasonable”. Bridget Prentice resisted the amendment which was withdrawn. She emphasised the distinction made in the Bill between redress and discipline; the ombudsman would consider only matters that related to redress and the approved regulators would deal with disciplinary matters. She also explained how the Bill would enable the ombudsman to require a report to be made on any disciplinary matter that had come to the ombudsman’s notice as part of a complaint and had then been referred to the approved regulator, and gave further details about how the provisions were intended to operate. John Mann said that the issue would not go away and that he would return to it on Report: “The powers for the ombudsman to overturn a consumer decision wrongly taken by a regulator, which has looked at its own rules and been restricted by them, must be in the Bill, because the public interest in some of those cases is sufficiently strong that the decision should be sent back”.⁵⁶

n. The levy

Henry Bellingham moved a probing amendment which would have set out various factors to which the LSB must have regard when imposing a levy. He said that it would address a number of concerns put by outside bodies. Bridget Prentice resisted the amendment confirming that the LSB would have to be satisfied that the apportionment of the levy was in accordance with fair principles before making levy rules and that inserting a list of factors to be considered could restrict the LSB’s flexibility. She also resisted an attempt to specify that the levy should be paid from practising fee income again on the basis that this would restrict flexibility.⁵⁷ The amendment was withdrawn

o. Costs

Simon Hughes moved an amendment which, with others considered at the same time, would have required the Government to meet a third of the running costs of the LSB and to bear the start up costs rather than transfer them to the legal profession. He said that it was “not only unreasonable but illogical and inconsistent with other Government policies” to ask the legal profession to meet the costs of the supervisory tier. This included, in part, passing on certain costs met at present by the Government. Bridget Prentice said

⁵⁵ PBC 21 June 2007 cc340-345

⁵⁶ PBC 26 June 2007 cc349-353

⁵⁷ PBC Deb 26 June 2007 cc421-2

that following work on the revised costs, “implementation now stands at £32.1 million and the revised running costs are £4 million for the board and £19.9 million for the OLC. Of those costs, £2.4 million will fall to the Ministry of Justice, so the Government are making a contribution”. She set out a number of reasons to explain why the Government would not be making any further contribution to the costs but also said that she would write to members about further aspects related to costs. Simon Hughes said that he would return to the issue on Report.

p. *Solicitors in Government service*

Simon Hughes moved an amendment designed to remove the exemption for Government solicitors from the requirement to hold a practising certificate, which he described as a “strange anomaly”.⁵⁸ The Conservatives supported the amendment. Bridget Prentice referred to the vote in the House of Lords on this issue, which the Government won. She said that Government solicitors do not deal directly with the public and that she could not see any justification for paying “something in the region of £850,000 of public money to the Law Society to cover a charge for issuing practising certificates”.⁵⁹ The amendment was defeated on a division by 9 votes to 5.

2. *Clause stand part debates*

In addition there were a considerable number of clause stand part debates when the effect of various provisions and other matters were considered. Not all the debates are mentioned in this paper. Members of the Committee considered a wide range of issues including:

a. *Order of clauses*

Simon Hughes considered that some provisions in the Bill were not logically ordered.⁶⁰ Bridget Prentice expressed sympathy with his views and said that she would think about whether small changes could be made and “whether clause 2 in particular should be put at the beginning of the Bill, as it contains a simple, straightforward definition”.⁶¹

b. *Representations by approved regulators*

In a clause stand part debate about Clause 10 (Representations by the Consumer Panel), the Committee also considered a new Clause tabled by the Conservatives which would have required the LSB to consider representations by approved regulators in the same way as it would consider representations by the Consumer Panel. Jonathan Djanogly said that strong representations relating to the clause had been received from the patent and trade mark institutes. This matter had been debated at length in the House of Lords. The Liberal Democrats supported the new clause. Bridget Prentice resisted the clause saying that it was unnecessary because, unlike consumers, approved regulators would already be able to make representations under the terms of a number

⁵⁸ PBC Deb 26 June 2007 c461

⁵⁹ PBC Deb 26 June 2007 c465

⁶⁰ PBC Deb 12 June 2007 cc 23-24

⁶¹ PBC Deb 12 June 2007 c25

of provisions in the Bill. Approved regulators also had experience of making representations and would be able to go to judicial review if the LSB failed to take account of their views. She said that she would consider whether there should be guidance about giving reasons if representations were rejected.⁶² The new clause was defeated on a division by 9 votes to 5.⁶³

c. *Alternative Business Structures*

There was a debate on the Alternative Business Structure (ABS) provisions in a clause stand part debate on Clause 71.⁶⁴ In another debate on Schedule 13, Simon Hughes raised the question of how local communities would know who had made an application for an ABS licence. Bridget Prentice said that it was not common practice for personal information about private investors to be readily available to the public and that it would be for the licensing authority, if it so wished, to consult local communities. Simon Hughes said that he intended to table an appropriate amendment “to make sure, in the case of any significant licensing application that would have an impact on the relevant community, that there is a duty to provide appropriate consultation with the community before any decision is made. Without that, and without an opportunity to respond, the system will not be consumer-led”.⁶⁵

C. Ministerial undertakings to consider

Bridget Prentice, Parliamentary Under-Secretary of State for Justice, gave a number of undertakings to consider further matters raised in debate, including:

a. *Conflicts of interest*

Jonathan Djanogly moved an amendment designed to ensure that the avoidance of conflict of interest would be included in the list of professional principles in Clause 1. (One of the regulatory objectives requires the promotion and maintenance of adherence to the professional principles). He said that the amendment was “another means by which we can demonstrate that the Bill will not destroy the independence of the legal profession and will not be used by the Government as a way in which to intervene and meddle in legal affairs”.⁶⁶ John Mann (Labour) considered that the amendment would produce “the most phenomenal change to the way in which the solicitors profession works” and Kevan Jones (Labour) also considered that the amendment would “drive a coach and horses through the activities at least of the claims handling companies”.⁶⁷ The Liberal Democrats supported the amendment. Reference was made in the debate to the Law Society backing the amendment.⁶⁸ Bridget Prentice said that she was not convinced that there was a gap because authorised persons would already be required to act in the best interests of their clients and would not be able to do so if there were two

⁶² PBC Deb 14 June 2007 cc 114

⁶³ PBC Deb 26 June 2007 cc 474-5

⁶⁴ PBC Deb 19 June 2007 cc264-9

⁶⁵ PBC Deb 21 June 2007 cc309-313

⁶⁶ PBC Deb 12 June 2007 c16

⁶⁷ PBC Deb 12 June 2007 cc17-18

⁶⁸ PBC Deb 12 June 2007 c21

clients with conflicting interests. However, she agreed that it was essential that conflicts of interest were dealt with effectively and that she would consider the matter further to see whether the amendment or something similar was necessary, or whether the Bill already adequately covered the concerns.⁶⁹ The amendment was withdrawn.

b. Costs

Bridget Prentice said that she would write to Members about costs.⁷⁰

c. *The LSB's duty to promote the regulatory objectives*

Henry Bellingham (Conservative) moved a probing amendment which would have removed the words “so far as is reasonably practicable” from the LSB’s duty to promote the regulatory objectives. He said that the words represented a possible escape clause.⁷¹ The Liberal Democrats supported the amendment. Another amendment considered at the same time would have removed similar words in relation to the duty of approved regulators. Bridget Prentice said the Government did not want to put an absolute requirement on the LSB and on the approved regulators “to act in such a way as to be fully compatible with all the regulatory objectives all the time, because that could result in greater cost and bureaucracy, and probably in greater intervention by the board in the regulatory activities of the approved regulators—not least because there would then be a risk of judicial review if they did not so act”. However, she said that she had found the argument “extremely persuasive” and would consider whether removal of the relevant phrase would undermine the intended flexibility in any way and “whether we could rework clause 3(2)(b) to ensure that it would encompass the principles that we all agree should apply”. The amendment was withdrawn.⁷²

d. *Appointments to the Consumer Panel*

- Jonathan Djanogly moved an amendment which he said had been proposed by the Law Society, which would make the Lord Chancellor responsible for approving appointments to the consumer panel. He spoke of a need to ensure that appointments to the panel were made, and were seen to be made, objectively. Bridget Prentice said that she accepted the argument and would take the amendment away and consider it further. The amendment was withdrawn.
- Bridget Prentice said that she would consider an amendment moved by Jonathan Djanogly which would require positions on the consumer panel to be advertised publicly and appointments to be made in accordance with the prevailing standards for appointments to public bodies. She said:

given that the appointments are to be made by the board and not by Ministers, there would, strictly speaking, be no compulsion to follow the Commissioner for Public Appointments’ code of practice. I can see why setting out those

⁶⁹ PBC Deb 12 June 2007 c22

⁷⁰ PBC Deb 12 June 2007 c86

⁷¹ PBC Deb 12 June 2007 c87

⁷² PBC Deb 12 June 2007 cc 87-89

requirements in the Bill would give an assurance that the appropriate appointment practice would be followed, however, and for that reason I should like to take the amendment away for further consideration, because I agree with what the hon. Gentleman has said on the matter.⁷³

- In response to a query from John Hemming, Bridget Prentice said that Clause 10 did not give any specific indication about whether members of the consumer panel could be removed and that she would consider whether there was a gap in the legislation which should be clarified.

e. *Advice and research functions of the Consumer Panel*

Jonathan Djanogly moved an amendment, which he said had come from the National Consumer Council, which would require the LSB, subject to appropriate restrictions, to provide information to the Consumer Panel to enable it to carry out its functions. The Liberal Democrats supported the amendment. The amendment was withdrawn at the request of Bridget Prentice who said “I will positively consider the matter to find out whether we can come to some arrangement”.⁷⁴

f. *Trade unions*

Bridget Prentice said that she would consider whether there was any need to look again at the power of the certification officer to define associate members:

if the certification officer says that he has no way in which to define associate members in that context, I shall certainly look again at the issue.... In the case of rogues, we need to be able to deal with them. If we need to add a further measure to ensure that that is the case, I will be more than happy to do so. Like my hon. Friend, I do not believe that it is in our interests as the Government acting on behalf of the consumers, whether trade union members or others, to give leeway to anyone who will undermine the consumer interest in the Bill.⁷⁵

Bridget Prentice has since written to members of the Committee.⁷⁶ Her letter includes further information about the regulation of trade unions.

g. *Identification of status of person dealing with matter*

Simon Hughes moved an amendment designed to ensure that consumers would be told the title and qualifications of the person they were dealing with. Bridget Prentice said that “there is a lot of merit in the amendment” and that she would take it away and consider it.⁷⁷ The amendment was withdrawn.

⁷³ PBC Deb 14 June 2007 c109

⁷⁴ PBC Deb 14 June 2007 c130

⁷⁵ PBC Deb 19 June 2007 c189

⁷⁶ Letter dated 21 June 2007, a copy of which has been placed in the House of Commons Library, Dep 07/1617

⁷⁷ PBC Deb 19 June 2007 c200

h. Licensable bodies

- Jonathan Djanogly moved a probing amendment which was considered with other amendments, and a new clause, certain of which he said had been proposed by the Institute of Chartered Accountants, another by the City of London Law Society, and others by the Law Society. The aim of the amendments was to allow a further sort of legal disciplinary partnership (not subject to the ABS provisions) with a limited number of non-lawyer partners in certain circumstances. The Liberal Democrats supported the principle of the amendments. Bridget Prentice sympathised with some of the objectives of the amendments but nevertheless resisted them, saying that they would allow firms with significant non-lawyer management and ownership to operate without the oversight of the LSB or any of the guaranteed safeguards provided by Part 5. Furthermore the Government wanted to create a level playing field between regulators and the amendment would allow the Law Society to regulate certain types of ABS firms in advance of other regulators, without having to demonstrate to the LSB that it was fit to do so. Bridget Prentice then said that she wanted to consider whether there were alternative solutions.⁷⁸ The amendment was withdrawn.
- In a later debate, David Kidney (Labour) moved an amendment suggested by the Institute of Chartered Accountants, which, with other amendments considered at the same time, would have amended the provisions relating to “low risk” bodies (not subject to all the ABS provisions). This would have included defining as low-risk multi-disciplinary practices consisting of already regulated professionals, although in some circumstances, licensing authorities would have been allowed not to accept designation of a particular body as low-risk or to disapply any of the ABS rules. Bridget Prentice resisted the amendment but said: “I have heard the concerns of hon. Members and small businesses about legal disciplinary practices and the need to ensure that we take a genuinely risk-based approach, as I have said in previous debates. I am exploring whether we can bring forward a viable alternative to cover that until part 5 is up and running. If that is possible, I shall do so on Report”.

i. Separation of regulatory and representative functions

The Government resisted an amendment moved by John Mann and a Conservative and Liberal Democrat amendment considered at the same time which would have required the LSB to ensure that the approved regulators had established an adequate distinction between their regulatory and representative functions. Bridget Prentice said that Clause 30 would already achieve this but would consider whether the proposed amendments would “make life easier for the small regulators yet still ensure that the regulatory and representative functions of the bigger boys in the playground were clearly separated”. The amendment was withdrawn.

j. Separation of funds proportionality

In a Clause stand part debate on Clause 30, Bridget Prentice agreed to consider a new clause proposed by Henry Bellingham, which he said was inspired by the Chartered

⁷⁸ PBC Deb 19 June 2007 cc 201-212

Institute of Patent Attorneys and the Institute of Trade Mark Attorneys, which would provide that when exercising its functions under clauses 29 (Prohibition on the Board interfering with representative functions) and 30 (Rules relating to the exercise of regulatory functions), the LSB should pay regard to what is proportionate.⁷⁹

k. Public censure: procedure

Bridget Prentice said that she would consider an amendment moved by Henry Bellingham which would require the LSB to give an approved regulator seven days notice of its intention to publish a statement of censure.⁸⁰

l. ABS appellate bodies

Bridget Prentice said that she would write to the Committee with more detail on the structure of the appeals bodies because further discussions about this were still ongoing.⁸¹

m. Prevention of regulatory conflict: accounts rules

In response to an amendment moved by Robert Neill, which covered concerns raised by the SRA about the effect of provisions relating to accounts rules, Bridget Prentice said that she would consider whether any further provision was necessary to reinforce a point raised about conflict-resolution.⁸²

n. Charges payable by respondents to complaints to the OLC

In a debate on Government amendments to remove changes made in the House of Lords to the circumstances in which charges might be payable by respondents to complaints to the OLC,⁸³ Bridget Prentice indicated her willingness to consider some aspects of the issue further. She said that where a respondent had gone through an in-house complaints procedure and co-operated fully with the OLC, and had been exonerated absolutely, there was a case for that person not to have to pay costs. She also said that cross-party discussions would be useful.⁸⁴

o. Financial limit of awards under OLC ombudsman scheme

Amendments were proposed to raise the limit of the amount the ombudsman could award by way of redress from £20,000 to £100,000 or to £50,000. Supporters of the amendments said that the figure in the Bill was too low. Bridget Prentice pointed out that average awards of compensation at present were between £400 and £500 and also that the figure could be raised in the future. However, she also said that she would look at

⁷⁹ PBC Deb 19 June 2007 cc226-7

⁸⁰ PBC Deb 19 June 2007 c 238

⁸¹ PBC Deb 19 June 2007 c 277

⁸² PBC Deb 21 June 2007 cc 320-2

⁸³ See page 13 of this paper above

⁸⁴ PBC Deb 26 June 2007 cc 374-375

the figure again and consider other schemes to see whether another figure would be more appropriate. One amendment was withdrawn and the other not called.⁸⁵

p. Reporting misconduct

David Kidney moved an amendment, which was considered with two others, which would have required the approved regulator to report back to the OLC ombudsman on the action taken in respect of a referral for consideration of disciplinary action; and would have required the ombudsman to send a copy of the approved regulator's report to the complainant. He explained that the Bill stated that the ombudsman "may request a report back, which means that they need not if they do not wish to. The clause is silent on the ombudsman telling the complainant the result". David Kidney referred to a report received from the Legal Services Ombudsman which he said echoed his argument. The Conservatives and Liberal Democrats supported the amendments and Henry Bellingham said that they were also supported by Which? and the National Consumer Council. Bridget Prentice said that, although she was initially concerned that the system should not be overly bureaucratic and costly, she would look at the amendments again because important points about information for consumers had been made. However, she resisted a further amendment which would have allowed the ombudsman, at the complainant's request, to ask an approved regulator to review a decision.⁸⁶

D. Letter from minister

During the debates, Bridget Prentice said on a number of occasions that she would write to members of the Committee. A copy of her letter dated 21 June 2007 has been placed in the House of Commons Library.⁸⁷ It deals with various issues:

- joint appointments
- *Scotland Act 1998* – Scottish Members of Parliament
- reserved instrument activities
- litigants in person
- staffing levels at the LSB and OLC
- regulation of trade unions
- pensions
- compensation and
- costs

Bridget Prentice wrote in her letter that there were a number of additional points that she was still considering and that she would write again prior to report stage.

V Appendix – Members of the Public Bill Committee

Chairmen: Sir Nicholas Winterton, Frank Cook

⁸⁵ PBC 26 June 2007 cc389-396

⁸⁶ PBC 26 June 2007 cc415-419

⁸⁷ Dep 07/1617

Members:

Bailey, Mr. Adrian (West Bromwich, West) (Lab/Co-op)
Bellingham, Mr. Henry (North-West Norfolk) (Con)
Burrowes, Mr. David (Enfield, Southgate) (Con)
Djanogly, Mr. Jonathan (Huntingdon) (Con)
Ellwood, Mr. Tobias (Bournemouth, East) (Con)
Fleelo, Mr. Robert (Stoke-on-Trent, South) (Lab)
Foster, Mr. Michael (Worcester) (Lab)
Goodman, Helen (Bishop Auckland) (Lab)
Hemming, John (Birmingham, Yardley) (LD)
Hesford, Stephen (Wirral, West) (Lab)
Hughes, Simon (North Southwark and Bermondsey) (LD)
Jones, Mr. Kevan (North Durham) (Lab)
Kidney, Mr. David (Stafford) (Lab)
McCarthy, Kerry (Bristol, East) (Lab)
Mann, John (Bassetlaw) (Lab)
Neill, Robert (Bromley and Chislehurst) (Con)
Prentice, Bridget (Parliamentary Under-Secretary of State for Justice)

Committee Clerks: Hannah Weston, John Benger,