



## PRESS RELEASE

No: 350/2016

Date: 11th July 2016

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### Consultation on a draft Legal Services Bill

The Ministry of Justice and the Bar Council are together issuing today a Consultation Paper in respect of a draft Legal Services Bill. A copy of the consultation paper and draft Bill can found on the Government website at <https://www.gibraltar.gov.gi/>.

This draft Bill is intended to provide a framework which substantially overhauls of the regulation of legal services in Gibraltar so as to ensure that the sector is regulated in a modern, transparent and effective manner which best reflects the fused nature of legal practice in Gibraltar.

This includes proposals for a more inclusive register of legal practitioners who would be subject to regulation, the updating of standards, codes of professional conduct, disciplinary rules and the governance of legal services in line with the development of the profession, the establishment of an independent Legal Services Regulatory Authority and the placing of the Law Council (currently the Bar Council) on a statutory footing. The background to the draft Bill is dealt with in more detail in the Consultation Paper.

At this stage the Ministry of Justice and the Bar Council invite stakeholders and the general public to make comments and submissions on the draft Bill and Consultation Paper.

Such comments and submissions should be made by 21st September 2016 to the following addresses by post or by email:

- (1) Kevin Warwick  
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The Minister for Justice, the Hon Gilbert H Licudi QC MP, said- “The Government is committed to reviewing the current system of regulation of Legal Services in Gibraltar. To that end we are pleased to, together with the Bar Council who have been a driving force behind the preparation of this draft Bill, publish this consultation paper in order to consider the views of the general public and stakeholders. I am looking forward to considering the views of the public in respect of this proposal.”

The Chairman of the Bar Keith Azopardi QC said: “We have been working very hard over the last few months on the draft that is going to consultation today. The Council is committed to updating the current regulatory system for lawyers and achieving a modernised and comprehensive system of regulation for the provision of legal services in Gibraltar. The launch of this consultation exercise is a significant step forward in that process and was one of the key objectives we mapped out at the last Opening of the Legal Year.”

# DRAFT

## THE LEGAL SERVICES ACT 2016

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## **DRAFT**



## **BILL**

FOR

AN Act to regulate the provision of legal services in and from within Gibraltar, to make provision for and in connection with the creation, membership and functions of a Legal Services Regulatory Authority; to make provision with respect to disciplinary matters in respect of the conduct of lawyers; to provide for, and in connection with, the incorporation, membership and functions of the Law Council of Gibraltar; and for purposes connected therewith.

ENACTED by the Legislature of Gibraltar

## **PART I**

### **PRELIMINARY**

#### **Title and commencement**

1. (1) This Act may be cited as the Legal Services Act 2016.

(2) This Act shall come into force on a day to be appointed by the Minister by notice in the Gazette and different days may be so appointed for different provisions of this Act.

#### **Interpretation**

2. In this Act, unless the context otherwise requires, -

“the Board” means the Law Council Board constituted by section 33;

“Barrister” means a Barrister approved, admitted and enrolled under the Supreme Court Act 1960

“Commonwealth” means the list of countries in Schedule 6

“Designated Country” means the United Kingdom, any Member State of the European Union, any British Overseas Territory, any Member State of the Commonwealth and the United States or such other country that the Minister may prescribe

“EEA lawyer” has the same meaning as in Part IVA of the Supreme Court Act;

“existing” means in existence immediately before the commencement of this Act;

“firm” and “law firm” in this Act shall mean a partnership, a limited liability partnership or a body corporate which is in the business of providing legal services in or from within Gibraltar

“foreign lawyer” is a lawyer admitted to practice in a Designated Country other than Gibraltar

“the former Council” shall be construed in accordance with section 30(2);

“Government” means the Crown in right of Her Majesty’s Government of Gibraltar;

“Law Council” shall be construed in accordance with section 30(2);

“lawyer”, except in the expressions “EEA lawyer” and “European lawyer”, means a barrister or a solicitor;

“Legal Executive” means a person who fulfils the criteria set out in Schedule 4 and who is on either Parts 4 or 6 of the Register established under section 6

“Law Costs Draftsman” means a person who fulfils the criteria set out in Schedule 4 and who is on Part 7 of the Register established under section 6.

“LSRA” means the Legal Services Regulatory Authority and has the meaning assigned by section 14;

“Minister” means the Minister for Justice;

“person” in this Act means, where the context so permits, reference to individuals or law firms

“practise law” shall be construed as meaning the provision of legal services in accordance with sections 3 and 4; and

“practising certificate” shall be construed in accordance with the Solicitors (Practising Certificates) Rules 2005 or any other Rules made with respect to practising certificates under section 18;

“Practising Certificate Rules” means the Solicitors (Practising Certificates) Rules 2005 or any other Rules made with respect to practising certificates under section 18;

“statutory authority” means an authority, agency, commission or other body established by statute;

“Register” means the Register of Authorised Persons established by section 6;

“registration fee” means the initial fee to enable registration on the Register established under this Act or the annual fee for the purposes of maintaining registration as an authorised person under this Act as the case may be;

“registered European lawyer” means a European lawyer, as defined in Part VI of the Supreme Court Act, who is registered as provided for in that Act

“Solicitor” means any person who is approved, admitted and enrolled as a solicitor of the Supreme Court of Gibraltar under the provisions of the Supreme Court Act 1960.

## **PART II**

### **THE PROVISION OF LEGAL SERVICES**

#### **The Provision of Legal Services**

3. (1) For the purposes of this Act, a person provides legal services if, not being an exempt person as defined in this Act, he does all or any of the following –

(a) he carries on or holds himself out as able to carry on any reserved legal activity as defined in this Act;

(b) he provides, or holds himself out as able to provide, for reward, any reserved legal activity of any description on Gibraltar law in or from within Gibraltar to members of the public or businesses generally including for the avoidance of doubt in the role of legal executive or in-house Counsel;

(c) he is a partner, associate, consultant, director or legal executive providing reserved legal activities within or of a firm which provides, or holds itself out as able to provide, for reward, any reserved legal activity of any

description on Gibraltar law in or from within Gibraltar to members of the public or businesses generally;

(d) he is employed by the Government to provide any reserved legal activity of any description to the Government;

(e) he is employed by any business or company to provide any reserved legal activity on Gibraltar law to that business or any associated or subsidiary business, company or entity in or from within Gibraltar

(f) he carries on any other activity prescribed for the purposes of this Act by the Minister by notice in the Gazette.

(2) In this Act “legal services” means the services defined as “reserved legal activity” in section 4.

## **Reserved legal activities**

### **Meaning of “reserved legal activity”**

4. (1) In this Act “reserved legal activity” means—

(a) the exercise by any person or the holding himself out as able to exercise, a right of audience before any court or tribunal in Gibraltar

(b) the conduct of litigation;

(c) reserved instrument activities;

(d) probate activities

(e) any other activity which consists of one or both of the following—

(i) the provision of legal advice or assistance on Gibraltar law in connection with the application of Gibraltar law or with any form of resolution of legal disputes;

(ii) the provision of representation in connection with any matter concerning the application of Gibraltar law or any form of resolution of legal disputes.;

(2) For the avoidance of doubt notarial activities as defined in Part B of Schedule 1 and the administration of oaths being activities governed by the Commissioners for Oaths and Public Notaries Act 1953 are not within the meaning of “reserved legal activity”, the practice of law or the provision of legal services under this Act.

(3) Part A of Schedule 1 makes provision about what constitutes each of those activities specified in subsection (1) and as to the categories of persons who may conduct such activities.

4) “reserved legal activity” does not include any activity of a judicial or quasi-judicial nature (including acting as a mediator, chairman of an inquiry or arbitrator) but does include the representation of a party in an arbitration or inquiry.



(5) For the purposes of subsection (1)(e) “legal dispute” includes a dispute as to any matter of fact the resolution of which is relevant to determining the nature of any person’s legal rights or liabilities.

(6) Section 12 makes provision for adding legal activities to the reserved legal activities.

### **Carrying on the activities**

#### **Entitlement to carry on a reserved legal activity**

5.(1) The question whether a person is entitled to carry on an activity which is a reserved legal activity is to be determined solely in accordance with the provisions of this Act and the Supreme Court Act.

(2) No person is entitled to carry on an activity (“the relevant activity”) which is a reserved legal activity unless—

- (a) the person is an authorised person in relation to the relevant activity, or
- (b) the person is an exempt person in relation to that activity.

#### **Authorised persons, Practising Certificates and Entitlement to Provide Legal Services**

6. (1) For the purposes of this Act “authorised person”, in relation to an activity (“the relevant activity”) which is a reserved legal activity, means a person registered in Parts 1-8 of the Register provided for under section 6(2) and the holding by such a person of a practising certificate to the extent that this Act or any other Act requires the holding of a practising certificate to undertake the relevant activity.

(2) There shall be a Register of authorised persons registered under this Act which shall be composed of such Parts as provided for under subsection (3) and as may be prescribed by the Minister after consultation with the Chief Justice, LSRA and Law Council.

(3) Subject to all other provisions of this Act and the Supreme Court Act as the case may be the following classes of persons shall be entitled to be registered under this Act in the following Parts of the Register:

(a) a person who is approved, admitted and enrolled as a Barrister or Solicitor in Gibraltar under the provisions of the Supreme Court Act and holds a practising certificate under the Practising Certificate rules and is providing or wishes to provide on registration under this Act legal services in or from within Gibraltar [**Part 1**]; or

(b) a person who is approved, admitted and enrolled as a Barrister or Solicitor in Gibraltar under the provisions of the Supreme Court Act for the purposes of appearing as Counsel in particular Gibraltar proceedings and is providing or

wishes to provide on registration under this Act legal services in or from within Gibraltar for the purposes of those particular proceedings only [**Part 2**];

(c) a person who is approved, admitted and enrolled as a Barrister or Solicitor in Gibraltar under the provisions of the Supreme Court Act and is in employment or intends to take up employment with the Government for the purposes of providing legal services to the Government or are seconded, following employment by the Government, to a statutory authority [**Part 3**]

(d) a person who is a Legal Executive and who during the course of his employment is providing or will provide legal services in or from within Gibraltar and is employed by a person registered in Part 1 of the Register or a partnership or company whose partners or members are persons registered under Part 1 of the Register and who are in the business of providing legal services in or from within Gibraltar [**Part 4**];

(e) a person who is a lawyer or a foreign lawyer employed by a company, business, trades union, entity, statutory authority or other body in an in-house capacity for the purposes of providing legal services to that company, business, trades union, entity, statutory authority or other body or is employed in any other capacity but during the course of their employment provides legal services to that company, business, trades union, entity, statutory authority or other body and is providing or wishes to provide on registration under this Act legal services in or from within Gibraltar to that company or business [**Part 5**]; or

(f) a person who is employed for a company or business as a Legal Executive in an in-house capacity for the purposes of providing legal services to that company, business, trades union, entity, statutory authority or other body or is employed in any other capacity but during the course of their employment provides legal services to that company, business, trades union, entity, statutory authority or other body and is providing or wishes to provide on registration under this Act legal services in or from within Gibraltar to that company, business, trades union, entity, statutory authority or other body [**Part 6**];

(g) a person who is a Law Costs Draftsman and holds an accredited recognised qualification in that field and intends to offer services in Gibraltar on an employed or self-employed basis for the purposes of the assessment of costs in contentious or non-contentious matters in Gibraltar and matters incidental thereto [**Part 7**]

(h) a person who is an EEA lawyer or a registered European lawyer [**Part 8**].

(4) Subject to registration as Authorised Persons and compliance with all requirements established under this Act or the Supreme Court Act and any regulations made for this purpose Barristers and Solicitors may organise their provision of legal services either as sole practitioners, in partnerships, limited liability partnerships or body corporates (in this Act “a Law Firm”) provided that:

- (a) a Law Firm that holds itself out as providing legal services in or from within Gibraltar shall not be permitted to have a partner or shareholder who is not an Authorised Person under this Act except in the circumstances provided by subsection (e) below; and
- (b) the Law Firm shall have a permanent place of business within Gibraltar; and
- (c) particulars of the Law Firm and its address shall be provided on an annual basis to the LSRA that shall register the Law Firm in Part 9 of the Register; and
- (d) The partners or shareholders of any firm, partnership, limited liability partnership or body corporate to which subsection (1) applies shall provide the LSRA with an annual list of its partners or shareholders as the case may be which will be available for public inspection;
- (e) a Law Firm may apply to the LSRA for permission in such manner provided by regulations that no more than 10% of the equity of the Law Firm be held legally or beneficially by a person who is not an Authorised Person under this Act provided that such person may not by virtue of such equity interest provide legal services under this Act without authorisation.

(5) A person entitled to be registered under this Act may apply to be registered as provided for in Part III of this Act.

(6) No person shall provide legal services in Gibraltar unless he is registered on the Register.

(7) Fees may be prescribed by the Chief Justice after consultation with the Minister, the LSRA and the Law Council for the payment of:

- (a) fees in relation to an application for first registration on the Register established by this Act (“the initial registration fee”);
- (b) fees in relation to annual registration under this Act (“the annual registration fee”)

and different fees may be prescribed in respect of registration under different Parts of the Register or by reference to the length of time they have held practising certificates.

(8) A person wishing to be registered on the Register or being on the Register and wishing to remain on the Register shall pay such initial registration fee and annual registration fees as may be prescribed.

(9) Subject to compliance with any requirement under the Practising Certificate Rules registration on the Register and payment of the registration fee shall entitle the

authorised person to the issue of a certificate evidencing registration on the particular Part of the Register.

(10) It shall be the duty of authorised persons on the Register to ensure compliance with the Code of Conduct established by and under section 16.

(11) Subject to the other provisions of this Act persons on Parts 4, 5 and 6 shall have no rights of audience in the courts or tribunals in Gibraltar and may not conduct litigation except that persons on Part 4 of the Register may conduct litigation if they are working under the supervision of a person on Part 1 of the Register and persons on Parts 5 and 6 of the Register may conduct litigation if they are instructing a person registered on Parts 1 or 3 of the Register.

(12). Subject to s6(10) of the Act and such other provisions of this Act or any other Act and unless the person is otherwise exempt a person wishing to undertake such restricted activities specified in sections 2, 3, 4 and 5 of Schedule 1 shall hold a valid practising certificate and be registered on either Parts 1, 3 or 8 of the Register except that persons on Part 2 of the Register who hold a valid practising certificate may exercise a right of audience as described in section 2 of Schedule 1.

(13). Subject to such other provisions of this Act or any other Act and unless the person is otherwise exempt a person wishing to undertake such restricted activities specified in section 6 of Schedule 1 shall be registered on either Parts 1 to 6 or 8 of the Register.

(14). Persons on Parts 4 and 6 of the Register may conduct the activities described in sections 4 and 5 of Schedule 1 if they are employed by and under the supervision of a person on Parts 1 or 3 of the Register.

(15). Persons on Part 7 of the Register may conduct the activities described in sections 2, 3 and 6 of Schedule 1 restricted to costs matters before any court or tribunal if they are instructed by an authorised person registered on Parts 1 or 3 of the Register.

(16) Any authorised person on Parts 1, 2, 3 and 8 of the Register shall be an officer of the Supreme Court and subject to the provisions of this Act and the Supreme Court Act the Supreme Court and the Court of Appeal may exercise the same jurisdiction in respect of such persons as any one of the superior courts of law or equity in England and Wales might have exercised immediately before the passing of the Supreme Court of Judicature Act 1873 in respect of any solicitor or attorney admitted to practise there.

### **Exempt persons**

7. In this Act, “exempt person”, in relation to an activity (“the relevant activity”) which is a reserved legal activity, means a person who, for the purposes of carrying on the relevant activity, is an exempt person by virtue of—
- (a) Schedule 2 (exempt persons), or
  - (b) paragraph 8 of Schedule 4 (additional categories of exempt persons during transitional period).

## **Offences**

### **Offence to carry on a reserved legal activity if not entitled**

8. (1) It is an offence for a person to carry on an activity (“the relevant activity”) which is a reserved legal activity unless that person is either entitled to carry on the relevant activity, is registered in the Register, has paid the requisite registration fees as the case may be and is the holder of a valid practising certificate as may be required or is an exempt person.
- (2) In proceedings for an offence under subsection (1), it is a defence for the accused to show that the accused did not know, and could not reasonably have been expected to know, that the offence was being committed.
- (3) A person who is guilty of an offence under subsection (1) is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding level 5 on the standard scale (or both), and
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both).
- (4) A person who is guilty of an offence under subsection (1) by reason of an act done in the purported exercise of a right of audience, or a right to conduct litigation, in relation to any proceedings or contemplated proceedings is also guilty of contempt of the court concerned and may be punished accordingly.
- (5) Notwithstanding anything in any other law or Act contained, proceedings in respect of any offence under this section may be brought at any time within two years next after the commission of the offence or within six months after the first discovery thereof by the prosecutor whichever period is the shorter.
- (6) This section shall not extend to:
- (a) any public officer drawing or preparing instruments in the course of his duty; or
  - (b) any person employed merely to engross any document.
- (7) This section shall be without prejudice to any other disciplinary sanction that may be imposed under the provisions of this Act.

### **Offence to pretend to be entitled**

9. (1) It is an offence for a person—

- (a) wilfully to pretend to be entitled to carry on any activity which is a reserved legal activity or provide legal services when that person is not so entitled, or
- (b) with the intention of implying falsely that that person is so entitled, to take or use any name, title or description.

(2) A person who is guilty of an offence under subsection (1) is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding level 4 on the standard scale (or both), and
- (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both).

(3) Notwithstanding anything in any other law or Act contained, proceedings in respect of any offence under this section may be brought at any time within two years next after the commission of the offence or within six months after the first discovery thereof by the prosecutor whichever period is the shorter.

## **Interpretation**

### **Regulatory arrangements**

10. (1) In this Act references to the “regulatory arrangements” administered by the LSRA established under Part III are to—

- (a) the arrangements under this Act and under the Supreme Court Act for authorising persons to carry on reserved legal activities,
- (b) the prescribed practice rules
- (c) conduct rules made under this Act or under the Supreme Court Act,
- (d) disciplinary arrangements in relation to regulated persons (including its discipline rules) made under this Act or the Supreme Court Act,
- (e) the prescribed qualification regulations,
- (f) the prescribed compensation arrangements
- (g) any other rules or regulations (however they may be described), and any other arrangements, which apply to or in relation to regulated persons, and
- (h) the prescribed licensing rules (if any), so far as not within paragraphs (a) to (g),  
(whether or not those arrangements, rules or regulations are contained in, or made under, an enactment).

(2) In this Act—

“compensation arrangements”, means arrangements for the purposes of compelling regulated persons to take such action as may be necessary to relieve or mitigate losses or hardship suffered by persons in consequence of their failure to account for money received by them in connection with their activities as regulated persons;

“conduct rules”, means any rules or regulations (however they may be described) as to the conduct required of regulated persons;

“discipline rules”, means any rules or regulations (however they may be described) as to the disciplining of regulated persons;

“practice rules”, means any rules or regulations (however they may be described) which govern the practice of regulated persons;

“qualification regulations”, means—  
any rules or regulations relating to—

- (i) the education and training which persons must receive, or
- (ii) any other requirements which must be met by or in respect of them, (in order for them to be authorised under this Act or the Supreme Court Act to carry on an activity which is a reserved legal activity,
- (iii) any other rules or regulations relating to the education and training which regulated persons must receive or any other requirements which must be met by or in respect of them,

(however they may be described).

(3) In this section “regulated persons”, means any class of persons which consists of or includes—

persons who are authorised under this Act or the Supreme Court Act to provide legal services or carry on an activity which is a reserved legal activity;

### **Continuity of existing rights and transitional protection**

#### **Continuity of existing rights to carry on reserved legal activities**

11. Schedule 4 makes provision for the continuity of existing rights and for certain persons to be deemed, during a transitional period, to be authorised to carry on certain activities.

#### **Alteration of reserved legal activities**

#### **Extension of the reserved legal activities**

12.(1) The Minister may, by order, amend section 4 or Schedule 1 (reserved legal activities) so as to add any legal activity to the activities which are reserved legal activities for the purposes of this Act.

(2) An order under subsection (1) may be made only after consultation with the Chief Justice, LSRA and the Law Council.

#### **Recommendations that activities should cease to be reserved legal activities**

13. (1) The LSRA, Law Council or Chief Justice may recommend that an activity should cease to be a reserved legal activity.

(2)The Minister must consider any recommendation made by the LSRA, Law Council or Chief Justice for the purposes of this section and determine whether to give effect to such a recommendation.

### **PART III**

#### **THE LEGAL SERVICES REGULATORY AUTHORITY**

##### **Establishment of the Legal Services Regulatory Authority**

14. (1) There is hereby created a body corporate to be known as the Legal Services Regulatory Authority (in this Act referred to as the “LSRA”) which shall be capable of exercising all the functions of an incorporated company.

(2) The provisions of Schedule 3 shall have effect with respect to the membership of the LSRA, their terms of appointment, tenure and remuneration.

(3) The validity of anything done by the LSRA shall not be affected by any defect in the appointment of a member.

##### **The general functions of the LSRA**

15. (1) The LSRA shall be responsible for the regulation of the legal profession in Gibraltar and of the provision of legal services in or from within Gibraltar.

(2) Subject to the provisions of this Act, the functions of the LSRA shall be to set, promote and secure in the public interest standards of behaviour and professional performance necessary to ensure that persons to whom legal services are provided by Authorised Persons receive a good service and that the constitutional principle of the rule of law is upheld and to carry out the specific regulatory functions set out in subsection (3).

(3) For the purposes of this section “the regulatory –functions” are -

- (a) protecting and promoting the interest of consumers;
- (b) encouraging an independent, strong, diverse and effective legal profession;
- (c) promoting and maintaining adherence to the professional principles set out in subsection (4); and
- (d) regulating the provision of legal services under this Act and the Supreme Court Act as provided for herein;
- (e) recommending the making of rules regulating the admission of barristers and solicitors to practise in the Supreme Court, their



professional practice, conduct and discipline and for those purposes for delegating to any two or more persons (being barristers or solicitors) on such terms as may be specified in the rules, any of the powers conferred on the Chief Justice by section 34 of the Supreme Court Act (other than the powers of disenrolment;

- (f) administering such rules in relation to practice, discipline or conduct of Authorised Persons established, made or prescribed under this Act or the Supreme Court Act;
- (g) administering the application, registration and removal of Authorised Persons on the Register;
- (h) administering the application and issue of Practising Certificates to Authorised Persons;
- (i) supervising the provision of legal services by Authorised Persons;
- (j) investigating such matters as to the provision of legal services in Gibraltar that it considers appropriate;
- (k) making recommendations to the Minister on any matter relevant to the provision of legal services in or from within Gibraltar referred to it by the Minister;
- (l) working with the Law Council to foster cooperation with the Law Council and the efficient performance of their respective duties under this Act;
- (m) regulating the advertising, marketing or offer of legal services to the public;
- (n) administering and fostering continuing professional development programmes;
- (o) undertaking any action that it may deem necessary in the performance of or ancillary to its statutory functions;

(4) For the purposes of this section “the professional principles” are that Authorised Persons–

- (a) should act with independence and integrity;
- (b) should maintain proper standards of work; and
- (c) should act in the best interests of those being provided legal services; and
- (d) safeguard the confidentiality of those to whom legal services are provided.

(5) Without prejudice to the generality of subsections (1) to (4), the LSRA shall be responsible for the enforcement of the code of professional conduct applicable to barristers and solicitors in Gibraltar which is established under this Act and, accordingly, in section 33(2) of the Supreme Court Act, for the words “the Chief Justice” there shall be substituted “the Legal Services Regulatory Authority”.

(6) The LSRA shall consult with the Law Council in the performance of its functions under section 15(3)(e), (i), (k), (m), (l) and (n).

### **The Code of Conduct and Other Codes or Rules**

16.(1) There shall be a Code of Conduct prescribed under this Act in regard to the professional conduct of and provision of legal services by Authorised Persons.

(2) The Code of Conduct referred to in sub-section (1) shall be prescribed and may be amended by the Chief Justice with the concurrence of the LSRA and Law Council

(3) The Chief Justice with the concurrence of the LSRA and after consultation with the Law Council may prescribe such other Codes governing or providing for compensation arrangements, investigation of complaints, disciplinary arrangements, discipline rules, practice rules, qualification rules or such other matters provided for in section 15.

(2) Authorised Persons shall have the duty to comply with the Code of Conduct and such other Codes at all times.

(3) Any breach of the Code of Conduct or other Codes shall be actionable as provided for under the Code of Conduct or such discipline rules made under this Act

### **Functions in relation to admission of barristers and solicitors**

17. On the coming into force of this section, the functions of the Admissions and Disciplinary Committee under Part II of the Barristers and Solicitors Rules (relating to admissions and enrolment) made under section 38 of the Supreme Court Act shall become functions of the LSRA.

### **Functions in relation to practising certificates**

18. (1) On the coming into force of this section, -

(a) the functions of the Registrar under the Solicitors (Practising Certificates) Rules 2005 made under section 38 of the Supreme Court Act (“the existing practising certificate Rules”) shall become functions of the LSRA; and

(b) the function of making rules with respect to practising certificates shall cease to be a function of rules of court and shall become a function of the Chief Justice after consultation with the LSRA.

(2) Rules made under paragraph (b) of subsection (1) may revoke or vary the provisions of the existing practising certificate Rules and may make transitional provisions consequential on any such revocation or variation; but, subject to any such revocation or variation and to paragraph (a) of that subsection, the existing practising certificate Rules shall continue in force.

(3) In accordance with subsection (1), all applications for practising certificates made after the coming into force of this section shall be made to the LSRA and it shall be a function of the LSRA to ensure that the provisions of section 19(3) are strictly enforced.

(4) On an application for a practising certificate, the LSRA shall ensure that the certificate will not be issued except on payment of the initial registration fee and annual registration fee.

#### **Functions in relation to lawyers' account rules**

19. (1) On the coming into force of this section, -

(a) the functions of the Admissions and Disciplinary Committee under the Solicitors' Accounts Rules made under section 38 of the Supreme Court Act ("the existing accounts Rules") shall become functions of the LSRA;

(b) the function of making rules with respect to lawyers' accounts shall cease to be a function of rules of court and shall become a function of the Chief Justice after consultation with the LSRA.

(2) Rules made under paragraph (b) of subsection (1) may revoke or vary the provisions of the existing accounts Rules and may make transitional provisions consequential on any such revocation or variation; but, subject to any such revocation or variation and to paragraph (a) of that subsection, the existing accounts Rules shall continue in force.

(3) For the purpose of better enabling the LSRA to carry out the functions referred to in subsection (1)(a) and any similar functions under Rules made under subsection (1)(b), the LSRA may appoint a panel of auditors to assist it in carrying out investigations, reviews, examinations and other enquiries.

(4) Each member of the panel referred to in subsection (3) shall be a statutory auditor or member of an audit firm, within the meaning of the Financial Services (Auditors) Act 2009, and shall be paid such fees as may be agreed between the LSRA and the auditors.

#### **Intervention in Solicitors Practice**

20. From the coming into effect of this Act the LSRA shall have the powers and duties of the Chief Justice under the Supreme Court (Intervention in Solicitors Practice) Rules 2010 made under the Supreme Court Act except that the LSRA shall not intervene in a Solicitors practice without first making an application to the Chief Justice or a Judge designated by the Chief Justice and obtaining permission to do so.

### **Functions in relation to education and training**

21. (1) The LSRA may make provision for courses in professional conduct, continuing professional development and accounting and with respect to the requirements with which a person must comply to be admitted to any such course.

(2) The LSRA may make it a condition of the issue or renewal of a practising certificate that the applicant has attended and satisfactorily completed one or more of the courses referred to in subsection (1).

(3) The LSRA may charge such fees as are reasonable to persons attending any of the courses referred to in subsection (1).

(4) The LSRA may make it a condition of the initial issue of a practising certificate that the applicant has undertaken such pupillage or other course of training as may be specified by Rules made by the Chief Justice.

### **Chief Executive and other staff of the LRA**

22. (1) The LSRA shall appoint a person as its Chief Executive after consultation with the Law Council.

(2) The LSRA may appoint such other staff as it considers appropriate to assist in the performance of its functions.

(3) The Chief Executive and other staff shall be –

(a) appointed on terms and conditions determined by the LSRA;

(b) paid by the LSRA in accordance with provision made by or under the terms of their appointments.

(4) The terms and conditions on which the Chief Executive and other staff are appointed may provide for the LSRA to pay, or make payments towards the provision of, pensions, allowances or gratuities to or in respect of them.

(5) The LSRA may pay compensation for loss of employment to or in respect of a member or former member of staff.

## **Financing of the LSRA**

23. The LSRA shall be financed from the payment of 80% of initial registration fees and 80% of annual registration fees paid on applications for registration on the Register and for a practising certificate or by such percentage of the annual registration fees as may be prescribed by the Chief Justice after consultation with the LSRA.

## **Accounts, audit and annual report**

24. (1) The LSRA shall cause proper books of account to be kept of its income and other receipts and expenditure for each financial year and shall also cause a statement of its accounts for each financial year to be prepared within three months after the end of that year.

(2) The accounts of the LSRA for each financial year –

(a) shall be audited and certified by a statutory auditor or audit firm, within the meaning of the Financial Services (Auditors) Act 2009, to be appointed annually by the LSRA; and

(b) shall be presented annually to the Minister, Chief Justice and the Law Council;

and, on payment of such reasonable fee as the LSRA may require, a copy of the accounts shall be furnished to any person on request during normal office hours at the offices of the LSRA.

(3) The financial year of the LSRA shall be such as may be determined by the LSRA.

## **Rules**

25. Rules made by the Chief Justice under this Part shall be published by notice in the Gazette.

## **PART IV**

### **DISCIPLINARY MATTERS**

#### **Preliminary investigation of complaints, etc**

26.(1) A complaint made in respect of the conduct of an Authorised Person in the course of his practice in Gibraltar or in the provision of legal services shall be investigated in the first place by the Chief Executive of the LSRA.

(2) If the Chief Executive considers it appropriate in the case of any Authorised Person, he may investigate any such conduct as is referred to in subsection (1) without having received a complaint.

(3) For the purpose of an investigation under subsection (1) or (2), the Chief Executive may, if he thinks fit, -

(a) be assisted by such members of the staff of the LSRA or external legal Counsel as he thinks appropriate;

(b) appoint accountants to inspect books and bank accounts and conduct audits;

(c) make such enquiries and take such other actions as he thinks necessary for the purpose of the investigation, and, in particular, may require any person to provide such information and documents in his possession or under his control as the Chief Executive believes to be needed for the purpose of his investigation; and

(d) if it appears to the Chief Executive that a person has in his possession or under his control any information or document which is needed for the purpose of the investigation but that that person has failed, after reasonable notice, to provide the information or document in a timely manner, the Chief Executive may apply to the court for an order under subsection (4).

(4) If, on an application under subsection (3)(d), the Court considers that the person to whom the application relates has in his possession or under his control any information or document which the Chief Executive reasonably requires for the purpose of his investigation, the court may order that person, within such period as the court directs, to give that information or produce that document and to take such other action, if any, to assist the Chief Executive as the Court considers appropriate.

(5) If, without reasonable excuse, any person fails to comply with an order under subsection (4), he shall be guilty of contempt of court and liable to be punished accordingly.

### **Procedure where conduct requires remedial action and action in respect of unauthorised persons**

27.(1) If, on an investigation under section 26, the Chief Executive decides that the conduct to which his investigation related may call for a remedy, he shall -

(a) refer the case to the Disciplinary Tribunal established under section 28; and

(b) notify his decision to the Authorised Person concerned and, if the investigation follows from a complaint, the complainant.

(2) If, on an investigation under subsection (1) of section 26, the Chief Executive decides -

(a) that the complaint is not justified, or

(b) that the conduct to which the investigation related is not proved or is not such as to call for a remedy,

he shall so inform the complainant and the Authorised Person concerned.

(3) A complainant dissatisfied with the decision of the Chief Executive under subsection (2) may by notice in writing within 14 days of the date thereof request that the Chief Executive's decision be reviewed by the Disciplinary Tribunal established under section 28.

(4) If, on an investigation under subsection (2) of section 26, the Chief Executive decides that the conduct to which his investigation related is not proved or does not call for a remedy, he shall so inform the Authorised Person concerned.

(5) If on the application of the LSRA the Supreme Court is satisfied -

(a) that there is a reasonable likelihood that a person will contravene sections 5, 8 or 9 or the Schedules of this Act or the Supreme Court Act or subsidiary legislation made under this Act or the Supreme Court Act or,

(b) that a person has contravened any such provision and that steps should be taken to remedy the contravention

**the Court may grant an injunction restraining that person from contravening or further contravening any such provision, or order that person and any other person who it appears to the Court is or was knowingly a party to a contravention to take such steps as the Court may direct to remedy that contravention**

(6) If on the application of the LSRA the Court is satisfied that a person has contravened any provision of this Act or the Supreme Court Act and either:

(a) that profits have accrued to any person as a result of that contravention or,

(b) that any client or person to whom legal services have been provided has suffered loss or been otherwise adversely affected as a result of that contravention

**the Court may order that person to pay into Court, or otherwise give security in respect of, such sum as appears to the Court to be just having regard to the extent of any such profit, loss or adverse effect**

(7) Any sum paid into Court pursuant to an order under subsection (5) shall be paid out as the Court may direct to persons who have entered into transactions as a result of which profits have accrued, or to persons who have suffered loss or other adverse effect, as mentioned in that subsection.

**The Disciplinary Tribunal**

28. (1) For the purposes of this Part, there shall be established a Disciplinary Tribunal appointed by the LSRA consisting of three members of the LSRA other than the Chief Executive as Standing Members and such other members being no more than nine as may be appointed by the LSRA as Ordinary Members. The Disciplinary Tribunal shall be a sub-committee of the LSRA and the decisions of the Disciplinary Tribunal shall be deemed to be decisions of the LSRA. The Disciplinary Tribunal may perform its duties in panels of not less than three and no more than seven members.

(2) The members of the Disciplinary Tribunal shall appoint one of their members to be the Chairman and, as such, to preside over meetings of the Tribunal or one of its panels; but, in the event of the Chairman's absence from any meeting, the members present may appoint one of their number to act as chairman at that meeting.

(3) The Disciplinary Tribunal shall hear all cases referred to them under section 28; and, for the purpose of any such hearing, -

(a) lay persons shall not be in the majority; and

(b) the quorum of the Tribunal shall be three of whom at least one shall be a Standing Member and one an Ordinary Member member of the Tribunal; and

(c) one member shall be a lay person.

(4) In this section "lay person" has the meaning given in paragraph 2 of Schedule 3.

(5) Any defect in the appointment of a member of the LSRA who takes part in any proceedings of the Tribunal shall not affect the validity of those proceedings.

(6) The members of the Disciplinary Tribunal shall be paid such fees and expenses in respect of their attendance at hearings and other meetings of the Tribunal as may be determined by the LSRA.

### **Hearings, decisions and appeals**

29. (1) If, for the purpose of hearing a case referred to them under section 27, the Disciplinary Tribunal consider that they need to make a further investigation of the case referred to them, -

(a) they shall have the same powers as the Chief Executive under paragraphs (a) to (c) of subsection (3) of section 26; and

(b) if it appears to the Tribunal that a person has in his possession or under his control any information or document which is needed for the purpose of the further investigation, but that that person has failed, after reasonable notice, to provide the information or document in a timely manner, the Tribunal may request the Chief Executive to apply to the court for an order under section 26(4);



and for the purpose of an application made by virtue of paragraph (b), section 26(4) shall have effect as if –

- (i) the reference therein to an application under subsection (3)(d) were a reference to the application made by virtue of paragraph (b); and

any reference therein to the Chief Executive included a reference

- (ii) to the Tribunal.

(2) At the hearing of a case referred to the Tribunal under section 27, the case may be presented by the Chief Executive or Counsel on his behalf or, if the Tribunal consider it appropriate, they may themselves appoint Counsel to present the case.

(3) If, on being seized of the case and either before or on the hearing of a case referred to them under section 27, the Disciplinary Tribunal consider that action needs to be taken in respect of the Authorised Person's conduct, they may take all or any of the following steps by way of an interim or final measure-

- (a) suspend, impose conditions on or revoke the Authorised Persons's practising certificate and ban him from providing legal services or undertaking restricted legal activities in Gibraltar indefinitely or for such time as appears to the Tribunal to be appropriate and, in addition, if the Tribunal think fit, may recommend to the Chief Justice and apply for the Authorised Person to be struck off the Roll of the Court;

- (b) impose a fine on the Authorised Person;

- (c) administer any reprimand to the Authorised Person;

- (d) order the Authorised Person to repay or forego any fee;

- (e) order the Authorised Person to make payment of or towards the cost of the investigation.

(4) Any fine imposed under subsection (1)(b) and any costs ordered to be paid under subsection (1)(e) shall be recoverable as a civil debt.

(5) In accordance with Rules of Court, an appeal shall lie to the Chief Justice or such other Judge designated by the Chief Justice from a decision of the Disciplinary Tribunal, including a decision as to costs.

## **PART V**

### **THE LAW COUNCIL AND ITS BOARD**

#### **Incorporation of the Law Council**

30. (1) On the commencement of this Act the existing body known as the General Council of the Bar shall by virtue of this Act be constituted as a body corporate under the name of the Law Council of Gibraltar and, as such, shall be capable of exercising all the functions of an incorporated company.

(2) In the following provisions of this Act, any reference to “the Law Council” is a reference to the body corporate constituted by virtue of this Act and any reference to “the former Council” is a reference to the former body known as the General Council of the Bar.

(3) The Law Council shall be limited by subscription, that is to say, the liability of each member in any year shall be limited to the amount paid or payable by him in that year under the following provisions of this Part.

(4) Except in so far as any provision of this Part otherwise provides, the provisions of the existing constitution of the former Council shall not apply to the Law Council and shall be replaced by the constitution set out in Schedule 5 to this Act.

(5) The constitution of the Law Council may be amended in such manner as provided therein except that no amendment shall be considered or passed that in the opinion of the Law Council Board is contrary to the terms or proper administration of this Act.

### **Membership of the Law Council**

31. (1) Any person who is registered in Parts 1-8 of the Register shall to the extent and for such time as they remain on the Register be entitled to hold and shall automatically hold membership of the Law Council.

(2) On the commencement of this Act and for the twelve-month period thereafter any person who was a subscriber of the former Council shall be a member of the Law Council unless his membership is terminated or suspended under section 35.

(3) Without prejudice to subsection (1) the Law Council may in its constitution make provision for different classes of membership of the Law Council for Authorised Persons as well as non-Authorised Persons.

### **Financing of the Law Council and Voluntary Subscriptions of Non-practising members**

32. (1) The Law Council shall, in so far as Authorised Persons, be financed from the payment of 20% of initial registration fees and 20% of annual registration fees paid on applications for registration on the Register and for a practising certificate or by such

percentage of the annual registration fees as may be prescribed by the Chief Justice after consultation with the Law Council.

(2) Persons who have been members of the Law Council but have retired or have ceased to practise and are no longer on Parts 1-8 of the Register or persons undergoing legal training may still hold membership of the Law Council on payment of a voluntary subscription at such times, in such manner and of such amounts as may be determined by the Law Council in accordance with its Constitution.

(2) Different levels of voluntary subscriptions in relation to different classes of members of the Law Council may be provided for in accordance with the Constitution of the Law Council.

### **The Law Council Board**

33. (1) The Law Council shall be managed by a governing body, to be known as “the Law Council Board”, which shall be the executive of the Law Council,

(2) With effect from the date of the incorporation of the Law Council, the Board shall consist of those persons who, immediately before that date, were members of the former Council.

(3) The persons referred to in subsection (1) shall, as members of the Board, continue in office, until such time, holding such positions and subject to such conditions as are applicable to them under the constitution of the Law Council.

(4) The constitution of the Law Council shall make provision with respect to –

(a) the composition of the Board and the election and co-option of the members, the Chairman and other officers and the duration of their appointment;

(b) the filling of temporary vacancies and appointment of alternates;

(c) the proceedings of the Board;

(d) the appointment of committees and sub-committees and the delegation of functions to them;

(e) the appointment of a secretary and other administrative staff; and

(f) such other matters relevant to the efficient functioning of the Board as the Board considers appropriate.

### **Functions of the Law Council**

34. (1) The Law Council shall have the following functions:-

(a) to carry out specified responsibilities in the co-governance of the legal profession

(b) to consider, lay down and implement general policy with regard to all matters affecting the profession;

(c) to maintain the standards, honour and independence of the profession and to promote, preserve and improve the services and functions of the profession;

(d) to represent and act for the members of the legal profession generally as well as in its relations with others and also in matters affecting the administration of justice;

(e) to consider all recommendations and other matters referred to the Board or the Law Council by the LSRA, the Chief Justice, any authority, member of the legal profession or member of the public;

(f) to encourage and promote the study of law and the market of legal services; and

(g) to work with the LSRA and do everything that is reasonably incidental or conducive to carrying out the above functions.

(2) The Minister after consultation with the Law Council Board and to the extent that it is necessary to do so may make Regulations with respect to all or any of the matters set out in subsection (1).

### **Termination and suspension of membership**

35. (1) A person who is a member of the Law Council by virtue of being on the Register shall cease to be a member on the day he ceases to be on the Register unless he transfers, in accordance with the Law Council Constitution or Regulations, to a class of membership which does not require him to be on the Register.

(2) Regulations may make provision for the termination or suspension by the Board of a person's membership of the Law Council in such cases as may be provided in the Regulations; and different provision may be so made in relation to different classes of members.

(3) Regulations under subsection (2) shall contain provisions with respect to the giving of notice of an intention to suspend or terminate a person's membership and the hearing of appeals against any such suspension or termination.

### **Accounts, audit and annual report**

36. (1) The Board shall cause proper books of account to be kept of the Law Council's income and other receipts and expenditure for each financial year and shall

also cause a statement of the Law Council's accounts for each financial year to be prepared within three months after the end of that year.

(2) The accounts of the Law Council for each financial year –

(a) shall be audited and certified by a statutory auditor or audit firm, within the meaning of the Financial Services (Auditors) Act 2009, to be appointed annually by the Board; and

(b) shall be presented annually to the members of the Law Council at a General Meeting together with an annual report, prepared by the Board, on the activities of the Law Council during the preceding year.

(3) The financial year of the Law Council shall be such as may be determined by its constitution or in default by the Board.

### **Annual and extraordinary general meetings of the Law Council**

37. (1) An Annual General Meeting of the members of the Law Council shall be held once in every year on such date and at such time and place as may be determined by the Board.

(2) Upon a request made to the Secretary of the Board in writing by not less than twenty members of the Law Council, of whom at least fifteen shall hold a practising certificate, and stating the objects for which the meeting is required, the Board shall as soon as reasonably practicable convene an extraordinary general meeting of the members of the Law Council for the discussion of the objects for which the meeting is required and such other matters as the Board may think fit.

(3) The Board may of its own motion convene an extraordinary general meeting of the members of the Law Council for the discussion of such matters as the Board think fit.

(4) Regulations may make provision with regard to the calling and conduct of annual and extraordinary general meetings of the Law Council, including the procedure for the giving of notices but, until such time as Regulations otherwise provide, the provisions of Schedule 5, with respect to the matters referred to in subsection (3) shall apply to the Board and the Law Council.

## **PART VI**

### **SUPPLEMENTARY AND TRANSITIONAL**

#### **Consequential provisions as to Barristers and Solicitors Rules**

39. (1) In this section “the 1980 Rules” means the Barristers and Solicitors Rules made under section 38 of the Supreme Court Act.

(2) The Admissions and Disciplinary Committee established by Part I of the 1980 Rules is hereby dissolved.

(3) In consequence of the provisions of section 17, the provisions set out in Part B of Schedule 4 shall have effect for the purpose of preserving the substance of Part II of the 1980 Rules, as it has effect by virtue of that section; and that Schedule may be amended or revoked by Rules of Court.

(4) Part IV of this Act has effect in place of the provisions of Part III of the 1980 Rules.

(5) In consequence of the preceding provisions of this Act, the 1980 Rules are hereby revoked.

### **Amendments to Supreme Court Act**

40. Section 28(1)(d) of the Supreme Court Act shall be repealed and replaced with the following words:

“(d) he intends on admission to practise in Gibraltar to provide legal services in or from within Gibraltar under either Parts 1, 3 or 5 of the Register.”

41. Section 28(3) of the Supreme Court Act is hereby repealed.

42. Section 29(1)(c) is hereby repealed and replaced with the following words:

“(c) he intends on admission to practise in Gibraltar to provide legal services in or from within Gibraltar under either Parts 1, 3 or 5 of the Register.”

43. Section 32 of the Supreme Court Act is repealed and replaced with the following words:

“All barristers shall be at liberty to act also as solicitors and shall be entitled to sue for and recover any fee reward or disbursement on account of, in relation to any act or proceeding done, or taken by them in their professional capacity as such solicitors.”

44. Section 33 of the Supreme Court Act is hereby repealed

45. Section 35 of the Supreme Court Act is repealed.

### **Amendments to the Solicitors (Practising Certificates) Rules 2005**

46. All references to the Registrar in the Rules shall be replaced by references to the LSRA.

47. Rule 3 shall be repealed and replaced with the following words:

“Subject to payment of the Registration Fee under the Legal Services Act and to sub-rules (2), (3) and (5) the LSRA shall issue to each solicitor an annually renewable practising certificate which shall be effective from the date of issue to 30 June next following.”

48. Rule 2 shall be repealed and replaced with the following words:

“No solicitor shall practise in Gibraltar unless he holds a current practising certificate and is on Parts 1 or 3 of the Register”

49. Rule 3 shall be repealed and replaced with the following words:

“The LSRA shall not issue a practising certificate to any solicitor on Part 1 of the Register unless he is satisfied that such solicitor has complied with rules 4 and 5”

50. There shall be a new Rule 3A:

“The LSRA shall issue a practising certificate in the form prescribed by regulations to any solicitor registered on Part 3 of the Register notwithstanding rules 4 and 5”

51. There shall be a new Rule 3B:

“The LSRA shall issue a practising certificate in the form prescribed by regulations to any Barrister registered on Parts 1 or 2 of the Register notwithstanding rules 4 and 5 if such Authorised Person satisfies the LSRA that they hold valid professional indemnity insurance of a limit prescribed and intends to provide and so provides legal services only on the instructions of an Authorised Person registered on Parts 1 or 3 of the Register

54. There shall be a new Rule 3C

“The LSRA shall issue a practising certificate in the form prescribed by regulations to any Lawyer, Foreign Lawyer, Legal Executive, Law Costs Draftsman, European Lawyer or EEA lawyer registered on Parts 4, 5, 6, 7 or 8 of the Register as the case may be notwithstanding rules 4 and 5 if such Authorised Person satisfies the LSRA that they hold valid professional indemnity insurance of a limit prescribed and intends to provide and so provides legal services in compliance with such other provisions of this Act”

55. The Rules shall be renamed the Legal Services (Practising Certificate) Rules

—

## **SCHEDULES**

### **SCHEDULE 1**

#### **PART A - THE RESERVED LEGAL ACTIVITIES**

##### *Introduction*

This Schedule makes provision about the reserved legal activities.

1. In this Schedule “the appointed day” means the day appointed for the coming into force of section 5 (entitlement to carry on reserved legal activities).

##### *Rights of audience*

2(1) A “right of audience” means the right to appear before and address a court or tribunal, including the right to call and examine witnesses.

(2) But a “right of audience” does not include a right to appear before or address a court, or to call or examine witnesses, in relation to any particular court or in relation to particular proceedings, if immediately before the appointed day no restriction was placed on the persons entitled to exercise that right.

##### *Conduct of litigation*



3(1)The “conduct of litigation” means—

- (a)the issuing of proceedings before any court or tribunal in Gibraltar,
- (b)the commencement, prosecution and defence of such proceedings, and
- (c)the performance of any ancillary functions in relation to such proceedings (such as entering appearances to actions).

(2) But the “conduct of litigation” does not include any activity within paragraphs (a) to (c) of sub-paragraph (1), in relation to any particular court or in relation to any particular proceedings, if immediately before the appointed day no restriction was placed on the persons entitled to carry on that activity.

#### *Reserved instrument activities*

4(1)“Reserved instrument activities” means—

- (a)preparing any instrument of transfer or charge for the purposes of the Land Titles Act 2011;
- (b)making an application or lodging a document for registration under that Act;
- (c)preparing any other instrument relating to real or personal estate for the purposes of the law of Gibraltar or instrument relating to court proceedings in Gibraltar.

(2) But “reserved instrument activities” does not include the preparation of an instrument relating to any particular court proceedings if, immediately before the appointed day, no restriction was placed on the persons entitled to carry on that activity.

(3)In this paragraph “instrument” includes a contract for the sale or other disposition of land (except a contract to grant a short lease), but does not include—

- (a)a will or other testamentary instrument,
- (b)an agreement not intended to be executed as a deed, other than a contract that is included by virtue of the preceding provisions of this sub-paragraph,
- (c)a letter or power of attorney, or
- (d)a transfer of stock containing no trust or limitation of the transfer.

(4)In this paragraph a “short lease” means a lease such as is referred to in section 3(4) of the Land Titles Act 2011.

#### *Probate activities*

5(1)“Probate activities” means preparing any probate papers for the purposes of the law of Gibraltar or in relation to any proceedings in Gibraltar.

(2)In this paragraph “probate papers” means papers on which to found or oppose—

(a)a grant of probate, or

(b)a grant of letters of administration.

General Advice

6. General advice, assistance and representation within the scope of s4(1)(e) of the Act.

#### **PART B – NOTARIAL ACTIVITIES**

**7. The following are notarial activities for the purposes of this Act namely any notarial act carried out in Gibraltar by a notary registered under the provisions of the Commissioner for Oaths and Public Notaries Act 1953 and includes:**

**(a) the drawing up of a power of attorney**

**(b) the certification, attestation or authentication of deeds, powers of attorney, wills, agreements, transactions or any other document for the purposes of confirming proper execution, validity, originality or authenticity**

**SCHEDULE 2**  
**EXEMPT PERSONS**

*Rights of audience*

1(1) This paragraph applies to determine whether a person is an exempt person for the purpose of exercising a right of audience before a court in relation to any proceedings (subject to paragraph 7).

(2) The person is exempt if the person—

(a) is not an authorised person in relation to that activity, but

(b) has a right of audience granted by that court or tribunal in relation to those proceedings.

(3) The person is exempt if the person—

(a) is not an authorised person in relation to that activity, but

(b) has a right of audience before that court or tribunal in relation to those proceedings granted by or under any enactment.

(4) The person is exempt if the person is the Attorney General and the person has been approved, admitted and enrolled as a Barrister or Solicitor of the Supreme Court of Gibraltar under the provisions of the Supreme Court Act.

(5) The person is exempt if the person—

- (a) is a party to those proceedings, and
- (b) would have a right of audience, in the person's capacity as such a party, if this Act had not been passed.

(6)The person is exempt if—

- (a)the person is an individual whose work includes assisting in the conduct of litigation, and
- (b)the person is assisting in the conduct of litigation—
  - (i) under instructions given (either generally or in relation to the proceedings) by an individual on Parts 1 or 3 of the Register, and
  - (ii) under the supervision of that individual, and
- (c)the proceedings are being heard in private in the Supreme Court or the Magistrates Court.

### *Conduct of litigation*

2(1)This paragraph applies to determine whether a person is an exempt person for the purpose of carrying on any activity which constitutes the conduct of litigation in relation to any proceedings (subject to paragraph 7).

(2)The person is exempt if the person—

- (a)is not an authorised person in relation to that activity, but
- (b)has a right to conduct litigation granted by a court or tribunal in relation to those proceedings.

(3)The person is exempt if the person—

- (a)is not an authorised person in relation to that activity, but
- (b)has a right to conduct litigation in relation to those proceedings granted by or under any enactment.

(4)The person is exempt if the person—

- (a)is a party to those proceedings, and
- (b)would have a right to conduct the litigation, in the person's capacity as such a party, if this Act had not been passed.

*Reserved instrument activities*

3(1) This paragraph applies to determine whether a person is an exempt person for the purpose of carrying on any activity which constitutes reserved instrument activities (subject to paragraph 7).

(2) The person is exempt if the person prepares the instruments or applications in the course of the person's duty as a public officer.

(3) The person ("E") is exempt if—

(a) E is an individual,

(b) E carries on the activity at the direction and under the supervision of another individual ("P"),

(c) when E does so, P and E are connected, and

(d) P is entitled to carry on the activity, otherwise than by virtue of sub-paragraph (9).

(4) For the purposes of sub-paragraph (3), P and E are connected if—

(a) P is E's employer or a partner, director or shareholder in the firm or company which employs E,

(b) P is a fellow employee of E,

(5) the person is exempt to the extent that the activity consists of the preparation of any instrument which relates to an existing tenancy which is, or which the person believes on reasonable grounds to be, such a tenancy.

(6) The person is exempt to the extent that the activity carried on by the person is also a reserved legal activity within sub-paragraph (7) and the person is—

(a) authorised to carry on that activity by the LSRA in relation to the activity,

(b) an exempt person in relation to that activity by virtue of paragraph 1 or 2 of this Schedule.

(7) The activities are—

(a)the exercise of a right of audience;

(b)the conduct of litigation.

(8)The person is exempt if the person is employed merely to engross the instrument or application.

(9)The person is exempt if the person is an individual who carries on the activity otherwise than for, or in expectation of, any fee, gain or reward.

### *Probate activities*

4(1)This paragraph applies to determine whether a person is an exempt person for the purpose of carrying on any activity which constitutes probate activities (subject to paragraph 7).

(2)The person (“E”) is an exempt person if—

(a)E is an individual,

(b)E provides the probate activities at the direction and under the supervision of another individual (“P”),

(c)when E does so, P and E are connected, and

(d)P is entitled to carry on the activity, otherwise than by virtue of sub-paragraph (4).

(3)For the purposes of sub-paragraph (2), P and E are connected if—

(a)P is E's employer or a partner, director or shareholder in the firm or company which employs E,

(b)P is a fellow employee of E,

(4)The person is exempt if the person is an individual who carries on the activity otherwise than for, or in expectation of, any fee, gain or reward.

### *General Advice*

7. Notwithstanding any other provision of this Act the following persons may provide general advice within the scope of section 4(1)(e) of the Act to the extent set out herein:

(1) Foreign legal Counsel instructed by an Authorised Person on Parts 1 or 3 of the Register may provide general advice within the scope of section 4(1)(e)(i) of the Act notwithstanding that they may not be registered under the Act but may not undertake any other restricted activity including for the avoidance of doubt the settling of pleadings for the purpose of Gibraltar proceedings without being so registered.

(2) Persons employed by the Government or statutory authority whose function includes the provision of advice or assistance or services to the public;

(3) Persons who are licensed or regulated under the provisions of any other Act or in the employ of companies, entities or bodies that are licensed or regulated under the provisions of any other Act

(4) Independent Accountants (being a person who is a member of a recognised accountancy body of an EEA State or being a member of ICASE, ACCA or ICAEW) and Qualified Tax Professionals being a member of the Chartered Institute of Taxation who are in employment or practice in and from business premises in Gibraltar in respect of matters related to their normal course of business and specifically in relation to accounting services, tax, finance or insolvency. .

(5) Such other persons as the Chief Justice after consultation with the LSRA and Law Council may prescribe

(6) The person (“E”) is an exempt person if—

(a) E is an individual,

(b) E provides the legal advice at the direction and under the supervision of another individual (“P”),

(c) when E does so, P and E are connected, and

(d) P is entitled to carry on the activity, otherwise than by virtue of sub-paragraph (6) and/or by virtue of sub-paragraphs (1) to (5).

(7) For the purposes of sub-paragraph (6), P and E are connected if—

(a) P is E's employer or a partner, director or shareholder in the firm or company which employs E,

(b) P is a fellow employee of E,

(8) The person is exempt if the person is an individual who carries on the activity otherwise than for, or in expectation of, any fee, gain or reward.

*European lawyers*

*Employers etc acting through exempt person*

8(1) This paragraph applies where—

- (a) a person (“P”) carries on an activity (“the relevant activity”) which is a reserved legal activity,
- (b) P carries on the relevant activity by virtue of an employee of P (“E”) carrying it on in E’s capacity as such an employee, and
- (c) E is an exempt person in relation to the relevant activity.

(2) P is an exempt person in relation to the relevant activity to the extent that P carries on that activity by virtue of E so carrying it on.

(3) This paragraph does not apply where E—

- (a) carries on the relevant activity at the direction and under the supervision of an authorised person in relation to that activity, and
- (b) is exempt in relation to that activity by virtue of paragraph 1(6), 3(3) or 4(2).

(4) If P is a body, in this paragraph references to an employee of P include references to a manager of P.

*Further exempt persons*

9(1) The Minister may after consultation with the Chief Justice, LSRA and Law Council, by order, amend this Schedule so as to provide—

- (a) for persons to be exempt persons in relation to any activity which is a reserved legal activity (including any activity which is a reserved legal activity by virtue of an order under section 12 (extension of reserved legal activities)),
- (b) for persons to cease to be such persons, or
- (c) for the amendment of any provision made in respect of an exempt person.



(2)The Minister may make an order under sub-paragraph (1) only on the recommendation of the Chief justice or the LSRA.

### **SCHEDULE 3**

#### **The Legal Services Regulatory Authority**

##### *Membership*

1. (1) The LSRA shall consist of the following members -

- (a) a chairman and vice-chairman appointed by the Chief Justice;
- (b) two persons appointed by the Chief Justice on the advice of the Judicial Service Commission of whom one shall be a lay person;
- (c) the Chairman of the Law Council and two other persons appointed by the Chief Justice on the advice of the Chairman of the Law Council one of whom shall be a lay person;
- (d) the Attorney General; and
- (e) the Chief Executive of the LSRA, who shall be appointed by a majority of the persons appointed under subparagraphs (a) to (c).

(2) Notwithstanding any temporary vacancy in the members appointed under either or both of subparagraph (1)(b) and subparagraph (1)(c), the LSRA may act so long as, of the members appointed under those subparagraphs, there remain at least one lay member and one other.

(3) A member of the staff of the LSRA may not be appointed as a member of the LSRA.

(4) The Chief Justice may disregard the advice of the Judicial Service Commission or the Chairman of the Law Council only in such case where he judges that compliance with that advice would prejudice the regulation of legal services in Gibraltar.

2. (1) The chairman shall be appointed from among the body of Her Majesty's Counsel for Gibraltar but shall not be a serving member of the Law Council.

(2) The vice-chairman shall be a lay person.

(2) In this Schedule a "lay person" means a person -

(a) who does not hold and, during the five years preceding his appointment, has not held a practising certificate in Gibraltar or has ceased to practise law;

(b) against whom, whether before or after the passing of this Act, no disciplinary action has been taken, other than a reprimand or the foregoing or repayment of fees or contributing to the costs or making a payment towards the cost of an investigation; and

(b) who is not and never has been an EEA lawyer or a registered European lawyer.

3. In appointing members of the LSRA, the Judicial Service Commission and the Law Council shall have regard to the desirability of securing that the LSRA includes members who (between them) have experience in or knowledge of –

(a) the provision of legal services;

(b) legal education and legal training;

(c) consumer affairs;

(d) civil or criminal proceedings and the working of the courts;

(e) the maintenance of the professional standards of persons who provide legal services;

(g) the handling of complaints.

*Terms of appointment and tenure of members*

4. In the following provisions of this Schedule "member" means a member of the LSRA, other than the chairman and the Chief Executive.

5. (1) Subject to the following provisions, a member shall hold and vacate his office in accordance with the terms and conditions of his appointment.

(2) Each member shall be appointed for a fixed period.

(3) The period for which a member is appointed must not exceed 5 years; but a person who has held office as a member may be re-appointed, once only, for a further period (whether consecutive or not) not exceeding 5 years.

6. If a member who, at the time of his appointment, was a lay person ceases to be a lay person, he shall forthwith cease to be a member; but without prejudice to his being appointed a member in another capacity.

7 (1) The chairman may –

(a) at any time resign from office by giving notice to the Chief Justice;

(b) be removed from office on notice in writing given to him by the Chief Justice;

but the removal of the chairman from office under paragraph (b) shall not affect any rights he may have by virtue of the terms of his appointment.

(2) A member may at any time –

(a) resign from office by giving notice to the Commission or Council which appointed him;

(b) be removed from office by notice in writing given to him by the Commission or Council which appointed him.

(3) The Chief Justice may not remove the chairman under subparagraph (1)(b) and the Judicial Service Commission or the Law Council, as the case may require, may not remove a member under subparagraph (2)(b) unless the Chief Justice or the Commission or Council concerned is satisfied that the chairman or member -

(a) has failed without reasonable excuse to discharge the functions of the office for a continuous period of at least six months ending immediately before the giving of the notice under that subparagraph;

(b) has been convicted of an offence in respect of which a term of imprisonment has been imposed,

(c) is an undischarged bankrupt, or

(d) is otherwise unfit to hold the office or unable to discharge its functions.

(4) Where a person ceases to be employed as Chief Executive, he shall forthwith cease to be a member of the LSRA.

**SCHEDULE 4**  
**Authorised persons**

**Part A Continuity of rights and Transitional Arrangements**

***Rights of audience and conduct of litigation***

1(1) For the purposes of section 6 (authorised persons), in the case of a person who is authorised by the LSRA or, prior to the commencement of this Act, under the Supreme Court Act as the case may be

(a) to exercise a right of audience before a court or tribunal in relation to any proceedings, or

(b) to conduct litigation in relation to any proceedings,

it is irrelevant whether the person's authorisation was granted before or on or after the appointed day.

***The transitional period***

- 2(1) In this Part of this Schedule references to “the transitional period” are to the period which—
- (a) begins with the appointed day (within the meaning given by paragraph 9), and
  - (b) ends with the day appointed by the Minister by order for the purposes of this paragraph.
- (2) Different days may be appointed under sub-paragraph (1)(b) for different purposes.
- (3) An order may be made under sub-paragraph (1)(b) only on the recommendation of the Board.

### ***Lawyers and Foreign Lawyers***

- 3(1) Subject to sub-paragraph (6) during the transitional period, every barrister or solicitor who was approved, admitted and enrolled under the Supreme Court Act and who either holds a practising certificate under the Practising Certificate Rules or is in the employment of the Crown in right of Gibraltar is deemed to be authorised by the LSRA to carry on the activities in sub-paragraph (2).
- (2) Those activities are—
- (a) the exercise of a right of audience before every court in relation to all proceedings;
  - (b) the conduct of litigation
  - (c) reserved instrument activities;
  - (c) probate activities
  - (d) the provision of advice and representation as described in section 4(1)(e).
- (3) The authority conferred on a barrister or solicitor by this paragraph is exercisable in accordance with, and subject to, the regulatory arrangements of the LSRA.
- (4) Subject to sub-paragraph (6) during the transitional period any barrister or solicitor who had been approved, admitted and enrolled under the Supreme Court Act for the purpose of specific court proceedings in Gibraltar only is deemed to be authorised by the LSRA to carry on the activities in sub-paragraph (2) limited to those proceedings in respect of which he had been approved, admitted and enrolled.
- (5) Subject to sub-paragraph (6) during the transitional period any person who was either a lawyer or a foreign lawyer and in both cases was in employment for a company, business, trades union, entity or statutory authority in an in-house capacity for the purposes of providing legal services to that company, business, trades union, entity or statutory authority or is employed in any other capacity but during the course of their employment provides legal services to that company, business, trades union, entity or statutory authority in or from within Gibraltar to that company, business, trades union, entity or statutory authority is deemed to be authorised by the LSRA to carry on such activities as if they had been authorised under Part 5 of the Register
- (6) All Barristers and Solicitors and other persons to which this paragraph applies who wish to benefit from these transitional arrangements and maintain registration

under this Act shall, within a period of 90 days from commencement of this Act, pay the initial registration fee to the LSRA.

### ***European Lawyers***

4(1) During the transitional period, every registered European lawyer registered with the Supreme Court is deemed to be authorised by the LSRA to carry on activities which—

- (a) are within paragraph 4(2), and
- (b) the registered European lawyer is entitled to carry on under his home professional title by virtue of the Supreme Court Act.

(2) The authority conferred on a registered European lawyer by virtue of this paragraph is exercisable in accordance with, and subject to, the regulatory arrangements of the LSRA (as they apply to the registered European lawyer by virtue of the European regulations).

(3) In this paragraph—

- “home professional title” and “registered European lawyer” have the same meaning as in the Supreme Court Act.

### ***Legal Executives***

6. (1) Subject to the provisions of this Act on the coming into effect of this Act any person who:

- (a) Was employed in a capacity as a Legal Executive and;
- (b) Has been in the employ in Gibraltar of a person, or partnership of persons who are, either barristers and/or solicitors approved, admitted and enrolled under the provisions of the Supreme Court Act and who held a practising certificate or practising certificates as the case may be on the date of commencement of this Act,

may on production of the necessary proof of the employment referred to in paragraphs (a) and (b) above apply for and be registered in Parts 4 or 6 of the Register established under this Act as the case may be provided that such person will lose the entitlement of annual registration if such registration is not maintained on an annual basis hereafter and may only then regain such status on completion of the requirements set out in sub-paragraph (2) below

(2) From the date of commencement of this Act and unless the person seeking registration as an Authorised Person on Parts 4 or 6 of the Register is entitled to registration by virtue of paragraph 6(1) above such person must hold:

- (a) A formal professional qualification as a Legal Executive from an approved establishment and;
- (b) Successfully complete the Approved Academic Course in Gibraltar Law as defined by the Supreme Court Act
- (c) Such other requirements as may be established by the Chief Justice

(3) All Legal Executives to which sub-paragraph (1) applies who wish to benefit from these transitional arrangements and maintain registration under this Act shall, within a period of 90 days from commencement of this Act, pay the initial registration fee to the LSRA.

### **Law costs draftsmen**

7. (1) Subject to the provisions of this Act on the coming into effect of this Act any person who:

- (a) Was employed in Gibraltar or offering services in Gibraltar in a capacity as a Law Costs Draftsman and;
- (b) Is certified by the Registrar of the Supreme Court as having provided services in Gibraltar before the commencement of this Act,

may on production of the necessary proof of the employment and certification referred to in paragraphs (a) and (b) above apply for and be registered in Part 7 of the Register established under this Act provided that such person will lose the entitlement of annual registration if such registration is not maintained on an annual basis hereafter and may only then regain such status on completion of the requirements set out in sub-paragraph (2) below

(2) From the date of commencement of this Act and unless the person seeking registration as an Authorised Person on Part 7 of the Register is entitled to registration by virtue of paragraph 7(1) above such person must hold:

- (a) A formal professional qualification as a Law Costs Draftsman from an approved establishment and;
- (b) Such other requirements as may be established by the LSRA

(3) All Law Costs Draftsmen to which sub-paragraph (1) applies who wish to benefit from these transitional arrangements and maintain registration under this Act shall, within a period of 90 days from commencement of this Act, pay the initial registration fee to the LSRA.

### *Interpretation*

8. In this Schedule—

“the appointed day” means the day appointed for the coming into force of section 5 (entitlement to carry on a reserved legal activity);

## PART B

### **Continuation of provisions relating to admission of barristers and solicitors**

#### **Part I**

*Applications for admission and enrolment*

1. (1) An application to be enrolled as a barrister under section 28 of the Supreme Court Act or as a solicitor under section 30 of that Act shall be made by petition, which shall be substantially in the form in Part II of this Schedule, shall be verified by oath or statutory declaration and shall be filed in the Registry of the Supreme Court with two recent testimonials to the character of the applicant.

(2) Every person applying to be admitted as a barrister or solicitor shall deliver to the Registry a notice intimating that he has so applied, which notice shall (unless the Chief Justice shall otherwise allow) be posted and continue to be posted in the Supreme Court for twenty-one days before any order is made on the petition.

*Examination*

2. (1) Every person applying to be admitted as a barrister or solicitor shall before the hearing of his petition appear before the LSRA who shall interview the petitioner and satisfy themselves and report to the Chief Justice whether or not, in their opinion, the petitioner is a fit and proper person to be admitted as a barrister or solicitor in Gibraltar,

(2) Where the LSRA submits an unfavourable report on a petitioner, the LSRA shall furnish the petitioner with a copy thereof.

(3) On receiving an unfavourable report from the LSRA, the Chief Justice may, after hearing the petitioner if the petitioner so desires, if he thinks fit by order in writing stay further proceedings on the petitioner's application.

*Exemption*

3. Subject to the provisions of the Supreme Court Act the Chief Justice may in his discretion exempt any person from the provisions of paragraphs 1(2) and 2(1) upon such terms and conditions as he may think fit.

**Part II**

**Form of Petition**





## **LEGAL SERVICES BILL**

## **CONSULTATION PAPER**

### **INTRODUCTION & OBJECTIVES**

1. The Ministry of Justice and the Bar Council are jointly issuing this Consultation Paper in respect of the draft Legal Services Bill (“LSB”).
2. The LSB is attached. It draws on a previous draft that was the subject of consultation several years ago but has – since – seen substantial amendment.
3. The objective of the LSB is to provide an overhaul of the regulation of legal services in Gibraltar. This is needed for a variety of reasons:
  - (a) because the law has not been fundamentally reviewed for 50 years and requires modernisation and amendment;
  - (b) because the current law has not kept pace with the growth of the legal profession and the current working environment;
  - (c) because the current law does not adequately reflect the fused nature of legal practice in Gibraltar;
  - (d) because the current law does not cater for the clear regulation of persons providing legal services who are not in private practice (for example Government lawyers, in-house Counsel, legal executives and law costs draftsmen) but does potentially affect the provision of services by those persons – see the reference to s35 of the Supreme Court Act (para 6 below);
  - (e) to make the law clearer, easier to use and more transparent in the interests of the consumer of legal services;
  - (f) to update standards, codes of professional conduct, disciplinary rules and the governance of legal services in line with the development of the profession and to cope with regulatory demands placed on the profession by other legislation or international initiatives.
4. The purpose of the LSB is to achieve a clear, comprehensive, modern and effective regulatory system which:
  - (a) defines the provision of legal services;
  - (b) provides for the registration of Authorised Persons;
  - (c) establishes a Register of Authorised Persons to that end;
  - (d) places the Law Council on a statutory footing (see Part V below);
  - (e) establishes a Legal Services Regulatory Authority (LSRA);
  - (f) enables the making of subsidiary legislation to govern matters of discipline, conduct and practice for providers of legal services;

- (g) provides a system of statutory exemptions in defined cases;
- (h) allows for the provision of legal services through an expanded form of structures not currently provided for in law.

## **THE CURRENT SYSTEM & THE SCOPE OF THE LSA**

5. The admission and enrolment of barristers and solicitors to the Supreme Court of Gibraltar is governed by the provisions of sections 27-33 of the Supreme Court Act 1960 (“SCA”). The SCA also contains provisions in respect of European lawyers.
6. Section 35 of the SCA *inter alia* states that:
  - “(1) A person not enrolled as a barrister or solicitor in Gibraltar who:
    - (a) exercises or holds himself out as able to exercise, a right of audience before any court in Gibraltar;
    - (b) carries on, or holds himself out as able to carry on, any activity which, by or under an enactment, is restricted to barristers or solicitors or both;
    - (c) provides, or holds himself out as able to provide, for reward, legal services of any description in or from within Gibraltar to members of the public or businesses generally;is guilty of an offence and is liable on summary conviction to a fine at level 5 on the standard scale.”
7. “Legal Services” are defined in s27W(5) of the SCA as “the giving of legal advice and the preparation of documents having or intended to have legal effect.”
8. The wide nature of s27W(5) as read with s35(1)(c) means that potentially there are people who may fall outside the regulatory scope of the SCA who are nonetheless arguably providing legal services in Gibraltar. This is one further illustration of the need to amend the current law and provide for a system of regulation that is all encompassing.
9. The new regulatory system contained in the LSB will govern private practitioners, government lawyers, in-house counsel, legal executives and lawcosts draftsmen. It also clearly provides that unauthorised (and non-exempt) persons cannot provide legal services. The LSB however does provide a system of statutory exemptions for persons regulated under other Acts or other specified persons to enable these to continue to provide core services within the scope of their respective professional activities.
10. The LSB is intended to be an umbrella piece of legislation under which subsidiary legislation governing professional conduct, discipline, solicitors accounts rules, practising certificate regulations and other matters relating to the provision of legal services will be placed.
11. The following paragraphs provide a summary of the main parts of the LSB.

## **PART II – DEFINITION OF LEGAL SERVICES & AUTHORISATION**

12. Part II of the LSB (and Schedules 1 and 2) draw from the English Legal Services Act 2007 with amendments to adapt these for the Gibraltar situation.
13. The LSB defines legal services in section 3. Under that section a person provides legal services if not being an exempt person as defined in the Act he does all or any of the following:
  - (a) He carries on or holds himself out and able to carry on any reserved legal activity as defined in the Act;
  - (b) He provides or holds himself out as able to provide for reward legal services of any description on Gibraltar law in or from within Gibraltar to members of the public or businesses generally including for the avoidance of doubt in the role of legal executive or in-house counsel;
  - (c) He is a partner, associate, consultant, director or legal executive of a firm which provides or holds itself out as able to provide for reward legal services of any description on Gibraltar law in or from within Gibraltar to members of the public or businesses generally;
  - (d) He is employed by the Government to provide legal services of any description to the Government;
  - (e) He is employed by any business or company to provide legal services to that business or any associated or subsidiary business, company or entity in from within Gibraltar;
  - (f) He carries on any other activity prescribed for the purposes of this Act by the Minister by notice in the Gazette.
14. Reserved legal activities have the meaning in clause 4 of the LSB and mean:
  - (a) The exercise by any person or the holding himself out as able to exercise a right of audience before any Court or tribunal in Gibraltar;
  - (b) The conduct of litigation;
  - (c) Reserved instrument activities;
  - (d) Probate activities;
  - (e) Any other activity which consists of one or both of the following:
    - (i) The provision of legal advice or assistance on Gibraltar law in connection with the application of Gibraltar law or with any form of resolution of legal disputes;
    - (ii) The provision of representation in connection with any matter concerning the application of Gibraltar law or any form of resolution of legal disputes;

15. Administration of oaths and notarial activities are not within the meaning of reserved legal activity (section 4(2)).
16. Part A of Schedule 1 to the LSB makes provision about what constitutes reserved instrument activities and probate activities, the conduct of litigation and the exercise of a right of audience.

## **THE REGISTER**

17. The LSB establishes a register made up of a number of Parts to allow persons who intend to provide legal services to register as Authorised Persons. Section 6 provides that Authorised Persons are persons who in relation to an activity which is a reserved legal activity are registered in Parts 1-8 of the Register established under section 6(2).
18. The various parts of the Register are as follows:
  - (1) Private practitioners who are in practice in Gibraltar (**Part 1**);
  - (2) Foreign Counsel called for specific cases (**Part 2**);
  - (3) Government Lawyers (**Part 3**);
  - (4) Legal Executives who work for Part 1 Lawyers (**Part 4**);
  - (5) In-house counsel working for companies, businesses, trade unions, entities, statutory authorities or other bodies (**Part 5**);
  - (6) Legal executives who work for companies, businesses, trade unions, entities, statutory authorities or other bodies (**Part 6**);
  - (7) Lawcosts draftsmen (**Part 7**);
  - (8) EEA or registered European lawyers (**Part 8**).<sup>1</sup>
19. The LSB provides that law practices can operate via partnerships, corporate entities or Limited Liability Partnerships (LLPS) and must register in **Part 9**. It is intended that subsidiary legislation will be introduced to contain more detailed provision in respect of Part 9 registration.
20. Persons making application to be registered will require to pay a registration fee which will finance the LSRA's and the Law Council's activities.
21. Authorised Persons must comply with the Code of Conduct established by clause 16 of the LSB..
22. Registration under different Parts of the Register provide a tier of rights. As made clear in clause 6(11) and subject to the other provisions of the LSB persons on Parts 4, 5 and 6 shall have no rights of audience in the Courts or tribunals in Gibraltar and may not

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<sup>1</sup> The continuation or otherwise of Part 8 or any impact on it will be considered in due course in light of developments that may emerge following the EU referendum of 23 June 2016.

conduct litigation except that persons on Part 4 of the Register may conduct litigation if they are working under the supervision of a person on Part 1 of the Register and persons on Parts 5 and 6 of the Register may conduct litigation if they are instructing a person registered on Parts 1 or 2 of the Register.

23. It is a requirement that persons who wish to conduct restricted activities shall hold a valid practising certificate as required by the LSB (clause 6(12)).
24. The LSB provides that no person shall provide legal services in Gibraltar unless he is registered on the Register or is otherwise exempt.

### **EXEMPT PERSONS**

25. Exemptions are provided for by clause 7 of the LSB and particularly by Schedule 2.
26. Persons who are regulated by other laws in Gibraltar or other specified persons are exempt from the provisions of the Act and may provide services specified in Schedule 2. For example in the case of persons regulated by the FSC or accountants (as defined) they may provide the services envisaged by clause 4(e) of the LSB.

### **PART III – THE LEGAL SERVICES REGULATORY AUTHORITY**

27. The LSB establishes a Legal Services Regulatory Authority (the “LSRA”).
28. The composition of the LSRA is governed by Schedule 3 of the LSB. The LSRA is intended to be made up of 9 members, namely:
  - (1) a Chairman and vice-Chairman appointed by the Chief Justice;
  - (2) two persons appointed by Chief Justice on advice of the Judicial Service Commission of whom one shall be a lay person;
  - (3) the Chairman of the Law Council;
  - (4) two other persons appointed by the Chief Justice on advice of the Chairman of the Law Council one of whom shall be a lay person;
  - (5) the Attorney General; and
  - (6) the Chief Executive of the LSRA.
29. The general functions of the LSRA are set out in clause 15. It will have wide-ranging regulatory functions (clause 15(2)).
30. *Inter alia* the LSRA will have powers to:
  - regulate the provision of legal services to protect and promote the interests of consumers (15(2)(a));
  - encourage an independent, strong, diverse and effective legal profession (15(2)(b));

- promote and maintain adherence to professional principles (15(2)(c));
- regulate the provision of legal services;
- recommend the making of rules regulating the admission of barristers and solicitors and conduct and discipline (15(2)(e));
- administer such rules in relation to practice, discipline or conduct of authorised persons (15(2)(f));
- administer the application, registration and removal of Authorised Persons from the Register (15(2)(g));
- administer the application and issue of practising certificates to Authorised Persons (15(2)(h));
- supervise the provision of legal services by Authorised Persons (15(2)(i));
- investigate such matters as to the provision of legal services in Gibraltar that it considers appropriate (15(2)(j));
- make recommendations to the Minister on any matter relevant to the provision of legal services (15(2)(k));
- work with the Law Council to foster co-operation (15(2)(l));
- regulate the advertising, marketing or promotion of legal services to the public (15(2)(m));
- administer and foster continuing professional development programmes (15(2)(n));
- undertake any actions that it may deem necessary in the performance of or ancillary to its statutory functions (15(2)(o)).

31. The LSRA will have functions in relation to the admission of barristers and solicitors (clause 17); in relation to practising certificates (clause 18) and lawyers' accounts rules (clause 19). It would also acquire the powers in respect of intervention in solicitors' practice (clauses 19 and 20) and in relation to education and training (clause 21).

### **CODE OF CONDUCT**

32. It is intended that there shall be a Code of Conduct for Gibraltar and provision is made in clause 16 for that purpose. The draft Code will be the subject of a separate consultation exercise with stakeholders.

### **PART IV – INVESTIGATION & DISCIPLINE**

33. The process of investigation of disciplinary matters is governed by Part IV.

34. Clauses 26 and 27 govern the investigation of complaints and the procedure to be followed where conduct requires remedial action.

35. Clause 28 establishes a Disciplinary Tribunal which can perform its functions through disciplinary panels.

36. The members of the Disciplinary Tribunal will be drawn from the LSRA and also from ordinary members appointed by the LSRA.
37. Clause 29 governs the manner of hearings, decisions and appeals.
38. The Disciplinary Tribunal may under clause 29(3) by way of an interim measure suspend, impose conditions on or revoke the Authorised Persons practising certificate and ban him from providing legal services, undertaking restricted legal activities in Gibraltar and in addition may;
  - (a) recommend to the Chief Justice and apply for the Authorised Person to be struck off the roll of the Court;
  - (b) impose a fine on the Authorised Person;
  - (c) administer any reprimand to the Authorised Person;
  - (d) order the Authorised Person to repay or forego a fee;
  - (e) order the Authorised Person to make payment of or towards the cost of the investigation.
39. Appeals from decisions of the Disciplinary Tribunal shall lie to the Chief Justice or such other judge designated by the Chief Justice (clause 29(5)).

#### **PART V – THE LAW COUNCIL**

40. The LSB puts the former Bar Council on a statutory footing (now the Law Council see Part V).
41. The change of nomenclature from Bar Council to Law Council is intended to reflect the fact that the Law Council (as it will now become known) is a body representative not just of the Bar but solicitors, in-house counsel, legal executives and lawcosts draftsmen consonant with the regulation of the overall provision of legal services.
42. The Law Council is to be responsible for the co-governance of the legal profession in accordance with the specific functions set out in the LSA (clause 34). It will be seen that the Law Council will have diverse advisory, consultative and policy-making functions and (through its officers on the LSRA) decision-making powers. The LSRA will hold regulatory functions while the Law Council will retain roles in respect of representation, policy-making, promotion and marketing as well as its co-governance role in the context of the overall legislation.
43. Membership of the Law Council is automatic on registration in the register established under the LSB (clause 31).
44. The Constitution of the Law Council will be modelled on the current Bar Council Constitution but will be revised to take account of the provisions of the LSB. It will be



added to the LSB as Schedule 5 and will be the subject of a separate consultation later this year.

### **COST OF REGULATION**

45. The LSRA will be financed by receipt of 80% of the registration fee paid in respect of applications to register and maintain registration. The Law Council's activities would be financed by receipt of 20% of the registration fee as well as any voluntary subscriptions received.
46. In 2013 the Bar Council AGM approved the principle of increased fees to fund the cost of a new system of regulation. At that stage it was envisaged that registration fees might be in the region of £1,000. It is however possible that the cost of registration and maintaining registration will be lower given the wider regulatory net cast by the Register in the LSB. The specific level of Registration fees that would be introduced is the subject of discussion between the Bar Council, Minister of Justice and Judiciary and will be the subject of a separate consultation with stakeholders.

### **PART VI – CONSEQUENTIAL PROVISIONS**

47. Part VI of the LSB contains consequential provisions in respect of other primary and subsidiary legislation for example:
  - (a) the Supreme Court Act;
  - (b) the Barristers & Solicitors Rules;
  - (c) Solicitors Practising Certificate Rules 2005.

### **COMMENTS & DEADLINE**

48. Comments in respect of the LSB are invited by 21<sup>st</sup> September 2016 to the following addresses by post or by email:
  - (1) Kevin Warwick Esq.  
Ministry of Justice  
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Europort Road  
[Kevin.Warwick@gibraltar.gov.gi](mailto:Kevin.Warwick@gibraltar.gov.gi)
  - (2) Secretary  
Bar Council  
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