

Guidance

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Does my employer need to be authorised by an approved regulator?

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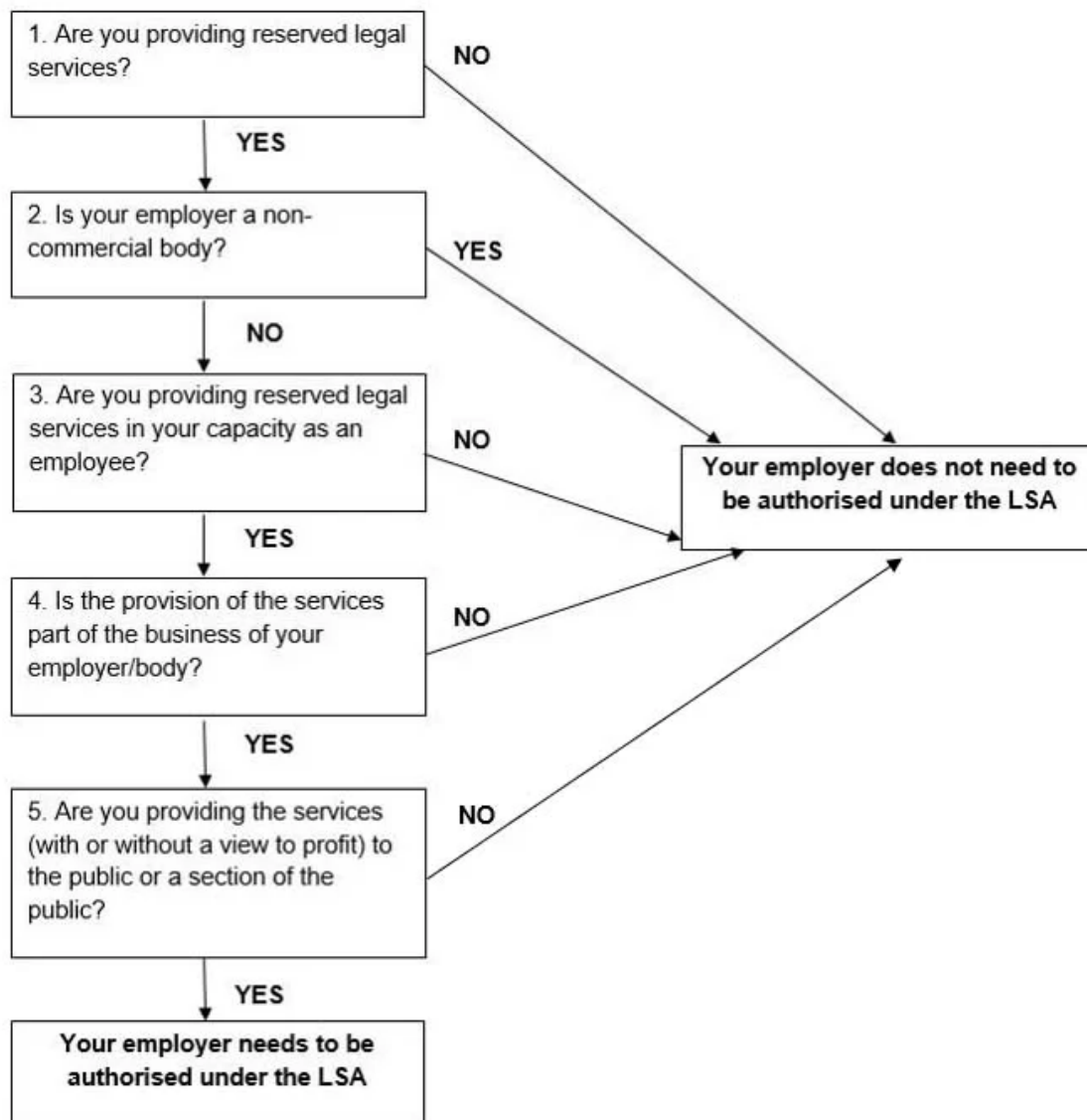
Section 15 of the Legal Services Act 2007 (LSA)

Status

This guidance is to help you understand your obligations and how to comply with them. We will have regard to it when exercising our regulatory functions.

Purpose of this guidance

This flow chart and the accompanying notes are intended to assist solicitors, registered European lawyers and registered foreign lawyers in deciding whether their employer needs to be authorised under the LSA. This represents our interpretation of the position under the LSA but it is ultimately a matter to be determined by the Courts.



Notes to the flow chart on Does my employer need to be authorised by an approved regulator? Section 15 of the Legal Services Act 2007 (LSA)

1. Are you providing reserved legal services?

Section 13(1) of the Legal Services Act 2007 (LSA) makes it clear that the question whether a person is entitled to carry on a reserved legal activity is determined solely by reference to the LSA.

Section 15 LSA, which determines whether an person's employer needs to be authorised by the SRA or another approved (legal services) regulator, only applies to reserved legal services. These are services that consist or include any of the following reserved legal activities, which are set out in section 12 and schedule 2 of the Legal Services Act 2007 (the Act):

- a. the exercise of a right of audience before certain (higher) courts



- b. the conduct of litigation (which can be described as the taking of formal steps in proceedings, such as issuing a claim or filing documents or forms)
- c. reserved instrument activities (which covers certain conveyancing transactions - for example preparing and lodging transfers or charges with the Land Registry - and preparing instruments relating to court proceedings, such as pleadings)
- d. probate activities, namely preparing papers on which to seek or challenge grant of probate or letters of administration
- e. notarial activities (for which you are authorised by the Master of the Faculties)
- f. the administration of oaths

2. Is your employer a non-commercial body?

If your employer is a not for profit body, a community interest company or an independent trade union, then they will not need to be authorised by us or another approved regulator because of transitional arrangements under section 23 of the LSA. The transitional period, which began on 1 January 2010, will be brought to an end by an order of the Lord Chancellor and we are currently not aware of any plans to do so.

3. Are you providing reserved legal services in your capacity as an employee?

In deciding whether you are providing reserved legal services in your capacity as an employee, you may wish to consider whether, for example, you are required by your employer to carry out the activities in question, are held out as carrying out the activities on behalf of the employer and/or are paid for the time spent doing them. When considering whether you are, conversely, acting independently, it may also be relevant whether you are providing the services during working hours and/or from your employer's business premises.

These factors are not exhaustive, or determinative, and the question will turn on the facts. However, for example, you are unlikely to be acting in your capacity as an employee where you are doing pro bono work with your employer's permission (but not at their request) by volunteering at a law centre outside working hours, and make it clear that you are acting independently in doing so.

4. Is the provision of the services part of the business of your employer/body?

The factors relevant to this question will necessarily overlap with those in question 3. For example, you will want to consider the extent to which the employer is itself involved with the activities (for example, by requiring you to carry them out, or to hold yourself out as acting on their behalf) and factors such as when and where they are carried out. However, you may in addition wish to consider:

- a. whether your employer describes its business as including the relevant services
- b. how regularly it provides the services, the number of employees that do so and the overall proportion of time spent on providing them
- c. the extent to which these services complement or enhance the business of your employer
- d. whether your employer provides management, training or supervision in relation to the provision of these services, or rewards you (directly or indirectly) for doing the work
- e. who provides the necessary indemnity insurance cover.



Once again these factors are not exhaustive or determinative, and you will need to look at the circumstances in the round.

5. Are you providing the services (with or without a view to profit) to the public or a section of the public?

What is meant by the 'public or a section of the public' is not defined in the LSA, although it has been considered by the courts in other contexts (for example, discrimination).

In order to understand what is meant by this phrase it is necessary to consider the overall purpose of these particular statutory provisions. Firstly, it is important to note that a key overall purpose of the Act is to safeguard the protection of the public generally, and consumers of legal services in particular, and it is in this context that the authorisation requirements for employers must be considered. The Explanatory Notes to section 15 explain the intended effect: 'for example, that where a body employs lawyers to provide in-house legal services to that body or to certain persons connected to the body, but not to the public or a section of the public, the body in question will not need to be an authorised person...'.

Therefore the question will not depend on the characteristics of the client (whether an individual or an organisation, or whether within the public or private sector for example). Rather, the relevant question to ask is: are you only providing the services to your employer or a person (individual or organisation) connected to your employer?

In some situations this will be obvious, for example where the person is:

- a. a holding, associated or subsidiary company of your employer
- b. a partnership, LLP, syndicate or joint venture company in which your employer has an interest;
- c. a present or former employee, manager, director, company secretary, board member or trustee of your employer, where the matter relates to their work in that capacity
- d. an association, club or pension fund operated for the benefit of the employees of your employer.

In other situations, deciding what constitutes 'the public or a section of the public' will not always be easy to answer, but will also depend on a clear and specific relationship your client has with your employer.

This will ultimately be a matter to be determined by the Courts. However, it is useful to bear in mind the following key indicators:

- a. if your employer is a club or association, and you are providing services to its members, the size of its membership, and whether it has rules allowing for genuine selection of members - case law in the discrimination field suggests that this would mean that members are not the public or a section of the public
- b. how the person to whom you are providing services came to you/the employer - they are likely to fall within the definition of public or a section of the public if they come to you haphazardly or as a result of marketing your services
- c. conversely, if the services are only provided to a closely defined group with a specific relationship with the employer, they are likely not to be classed as a section of the public, for example where a local authority enters into a joint venture to share services with one or more neighbouring authorities
- d. whether the services are provided to the public at large, or members of a disparate group united by a particular feature but not selected in this way -

for example prisoners or asylum detainees, or those affected by a breach of trading standards legislation.