



# Legal Services Act 2007

## 2007 CHAPTER 29

### PART 4

#### REGULATION OF APPROVED REGULATORS

##### *Introductory*

#### **27 Regulatory and representative functions of approved regulators**

- (1) In this Act references to the “regulatory functions” of an approved regulator are to any functions the approved regulator has—
  - (a) under or in relation to its regulatory arrangements, or
  - (b) in connection with the making or alteration of those arrangements.
- (2) In this Act references to the “representative functions” of an approved regulator are to any functions the approved regulator has in connection with the representation, or promotion, of the interests of persons regulated by it.

##### *General duties of approved regulators*

#### **28 Approved regulator’s duty to promote the regulatory objectives etc**

- (1) In discharging its regulatory functions (whether in connection with a reserved legal activity or otherwise) an approved regulator must comply with the requirements of this section.
- (2) The approved regulator must, so far as is reasonably practicable, act in a way—
  - (a) which is compatible with the regulatory objectives, and
  - (b) which the approved regulator considers most appropriate for the purpose of meeting those objectives.
- (3) The approved regulator must have regard to—

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- (a) the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, and
- (b) any other principle appearing to it to represent the best regulatory practice.

*Separation of regulatory and representative functions*

**29 Prohibition on the Board interfering with representative functions**

- (1) Nothing in this Act authorises the Board to exercise its functions in relation to any representative function of an approved regulator.
- (2) But subsection (1) does not prevent the Board exercising its functions for the purpose of ensuring—
  - (a) that the exercise of an approved regulator’s regulatory functions is not prejudiced by its representative functions, or
  - (b) that decisions relating to the exercise of an approved regulator’s regulatory functions are, so far as reasonably practicable, taken independently from decisions relating to the exercise of its representative functions.

**30 Rules relating to the exercise of regulatory functions**

- (1) The Board must make rules (“internal governance rules”) setting out requirements to be met by approved regulators for the purpose of ensuring—
  - (a) that the exercise of an approved regulator’s regulatory functions is not prejudiced by its representative functions, and
  - (b) that decisions relating to the exercise of an approved regulator’s regulatory functions are so far as reasonably practicable taken independently from decisions relating to the exercise of its representative functions.
- (2) The internal governance rules must require each approved regulator to have in place arrangements which ensure—
  - (a) that the persons involved in the exercise of its regulatory functions are, in that capacity, able to make representations to, be consulted by and enter into communications with the Board, the Consumer Panel, the OLC and other approved regulators, and
  - (b) that the exercise by those persons of those powers is not prejudiced by the approved regulator’s representative functions and is, so far as reasonably practicable, independent from the exercise of those functions.
- (3) The internal governance rules must also require each approved regulator—
  - (a) to take such steps as are reasonably practicable to ensure that it provides such resources as are reasonably required for or in connection with the exercise of its regulatory functions;
  - (b) to make such provision as is necessary to enable persons involved in the exercise of its regulatory functions to be able to notify the Board where they consider that their independence or effectiveness is being prejudiced.
- (4) The first set of rules under this section must be made before the day appointed by the Lord Chancellor by order for the purposes of this section.

### *Performance targets*

## **31 Performance targets and monitoring**

- (1) The Board may—
  - (a) set one or more performance targets relating to the performance by an approved regulator of any of its regulatory functions, or
  - (b) direct an approved regulator to set one or more performance targets relating to the performance by the approved regulator of any of its regulatory functions, if the Board is satisfied that the conditions in subsection (2) are satisfied.
- (2) Those conditions are—
  - (a) that an act or omission of the approved regulator (or a series of such acts or omissions) has had, or is likely to have, an adverse impact on one or more of the regulatory objectives, and
  - (b) that it is appropriate to take the action proposed under subsection (1) in all the circumstances of the case (including in particular the impact of taking the action on the other regulatory objectives).
- (3) A direction under subsection (1)(b) may impose conditions with which the performance targets must conform.
- (4) If the Board proposes to take action under this section in respect of an approved regulator it must give notice to the approved regulator—
  - (a) describing the action it proposes to take,
  - (b) specifying the acts or omissions to which the proposed action relates and any other facts which, in the opinion of the Board, justify the taking of that action, and
  - (c) specifying the time (not being earlier than the end of the period of 28 days beginning with the day on which the notice is given) before which representations with respect to that action may be made.
- (5) Before taking action under this section, the Board must consider any representations which are duly made.
- (6) In exercising its regulatory functions, an approved regulator must seek to meet any performance target set for or by it under this section.
- (7) The Board must publish any target set or direction given by it under this section.
- (8) An approved regulator must publish any target set by it pursuant to a direction under subsection (1)(b).
- (9) The Board may take such steps as it regards as appropriate to monitor the extent to which any performance target set under this section is being, or has been, met.

### *Directions*

## **32 Directions**

- (1) This section applies if the Board is satisfied—

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- (a) that an act or omission of an approved regulator (or a series of such acts or omissions) has had, or is likely to have, an adverse impact on one or more of the regulatory objectives,
  - (b) that an approved regulator has failed to comply with any requirement imposed on it by or under this Act (including this section) or any other enactment, or
  - (c) that an approved regulator—
    - (i) has failed to ensure that the exercise of its regulatory functions is not prejudiced by any of its representative functions, or
    - (ii) has failed to ensure that decisions relating to the exercise of its regulatory functions are, so far as reasonably practicable, taken independently from decisions relating to the exercise of its representative functions.
- (2) If, in all the circumstances of the case, the Board is satisfied that it is appropriate to do so, it may direct the approved regulator to take—
- (a) in a case within subsection (1)(a), such steps as the Board considers will counter the adverse impact, mitigate its effect or prevent its occurrence or recurrence;
  - (b) in a case within subsection (1)(b) or (c), such steps as the Board considers will remedy the failure, mitigate its effect or prevent its recurrence.
- (3) In a case within subsection (1)(a), before giving a direction under subsection (2) the Board must in particular consider the impact of giving the direction on the other regulatory objectives.
- (4) A direction under subsection (2)—
- (a) may only require an approved regulator to take steps which it has power to take;
  - (b) may require an approved regulator to take steps with a view to the modification of any part of its regulatory arrangements.
- (5) The Board may not exercise its powers under this section so as to give a direction requiring an approved regulator to take steps in respect of a specific disciplinary case or other specific regulatory proceedings (as opposed to all, or a specified class of, such cases or proceedings).
- (6) For the purposes of this section a direction to take steps includes a direction which requires an approved regulator to refrain from taking a particular course of action.
- (7) The power to give a direction under this section is subject to any provision made by or under any other enactment.
- (8) The Board may take such steps as it regards as appropriate to monitor the extent to which a direction under this section is being, or has been, complied with.
- (9) Where the Board revokes a direction under this section, it must—
- (a) give the approved regulator to whom the direction was given notice of the revocation, and
  - (b) publish that notice.

### **33 Directions: procedure**

Schedule 7 makes provision about the procedure which must be complied with before a direction is given under section 32.

### **34 Enforcement of directions**

- (1) If at any time it appears to the Board that an approved regulator has failed to comply with a direction given under section 32, the Board may make an application to the High Court under this section.
- (2) If, on an application under this section, the High Court decides that the approved regulator has failed to comply with the direction in question, it may order the approved regulator to take such steps as the High Court directs for securing that the direction is complied with.
- (3) This section is without prejudice to any other powers conferred on the Board by this Part.

### *Censure*

### **35 Public censure**

- (1) This section applies if the Board is satisfied—
  - (a) that an act or omission of an approved regulator (or a series of such acts or omissions) has had, or is likely to have, an adverse impact on one or more of the regulatory objectives, and
  - (b) that it is appropriate to act under this section in all the circumstances of the case (including in particular the impact of so acting on the other regulatory objectives).
- (2) The Board may publish a statement censuring the approved regulator for the act or omission (or series of acts or omissions).

### **36 Public censure: procedure**

- (1) If the Board proposes to publish a statement under section 35 in respect of an approved regulator, it must give notice to the approved regulator—
  - (a) stating that the Board proposes to publish such a statement and setting out the terms of the proposed statement,
  - (b) specifying the acts or omissions to which the proposed statement relates, and
  - (c) specifying the time (not being earlier than the end of the period of 28 days beginning with the day on which the notice is given to the approved regulator) before which representations with respect to the proposed statement may be made.
- (2) Before publishing the statement, the Board must consider any representations which are duly made.
- (3) Before varying any proposed statement set out in a notice under subsection (1)(a), the Board must give notice to the approved regulator—
  - (a) setting out the proposed variation and the reasons for it, and

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- (b) specifying the time (not being earlier than the end of the period of 28 days beginning with the day on which the notice is given to the approved regulator) before which representations with respect to the proposed variation may be made.
- (4) Before varying the proposal, the Board must consider any representations which are duly made.

### *Financial penalties*

#### **37 Financial penalties**

- (1) This section applies if the Board is satisfied—
  - (a) that an approved regulator has failed to comply with a requirement to which this section applies, and
  - (b) that, in all the circumstances of the case, it is appropriate to impose a financial penalty on the approved regulator.
- (2) This section applies to any requirement imposed on the approved regulator—
  - (a) by rules under section 30 (internal governance rules),
  - (b) by a direction given under section 32 (Board directions), or
  - (c) by section 51 (control of practising fees charged by approved regulators) or by rules under that section.
- (3) The Board may impose a penalty, in respect of the failure, of such an amount as it considers appropriate, but not exceeding the maximum amount prescribed under subsection (4).
- (4) The Board must make rules prescribing the maximum amount of a penalty which may be imposed under this section.
- (5) Rules may be made only under subsection (4) with the consent of the Lord Chancellor.
- (6) A penalty under this section is payable to the Board.
- (7) In sections 38 to 40 references to a “penalty” are to a penalty under this section.

#### **38 Financial penalties: procedure**

- (1) If the Board proposes to impose a penalty on an approved regulator, it must give notice to the approved regulator—
  - (a) stating that the Board proposes to impose a penalty and the amount of the penalty proposed to be imposed,
  - (b) specifying the failure to which the proposed penalty relates,
  - (c) specifying the other facts which, in the Board’s opinion, justify the imposition of a penalty and the amount of the penalty, and
  - (d) specifying the time (not being earlier than the end of the period of 21 days beginning with the day on which the notice is published under subsection (8)) before which representations with respect to the proposed penalty may be made.
- (2) Before imposing a penalty on an approved regulator, the Board must consider any representations which are duly made.

- (3) Where the Board proposes to vary the amount of a proposed penalty stated in a notice under subsection (1)(a), the Board must give notice to the approved regulator—
  - (a) setting out the proposed variation and the reasons for it, and
  - (b) specifying the time (not being earlier than the end of the period of 21 days beginning with the day on which the notice is published under subsection (8)) before which representations with respect to the proposed variation may be made.
- (4) Before varying the proposal, the Board must consider any representations which are duly made.
- (5) As soon as practicable after imposing a penalty, the Board must give notice to the approved regulator—
  - (a) stating that it has imposed a penalty on the approved regulator and its amount,
  - (b) specifying the failure to which the penalty relates,
  - (c) specifying the other facts which, in the Board’s opinion, justify the imposition of the penalty and its amount, and
  - (d) specifying a time (not being earlier than the end of the period of 3 months beginning with the day on which the notice is given to the approved regulator), before which the penalty is required to be paid.
- (6) The approved regulator may, within the period of 21 days beginning with the day on which it is given the notice under subsection (5), make an application to the Board for it to specify different times by which different portions of the penalty are to be paid.
- (7) If an application is made under subsection (6) in relation to a penalty, the penalty is not required to be paid until the application has been determined.
- (8) The Board must publish any notice given under this section.

### **39 Appeals against financial penalties**

- (1) An approved regulator on whom a penalty is imposed may appeal to the court on one or more of the appeal grounds.
- (2) The appeal grounds are—
  - (a) that the imposition of the penalty was not within the power of the Board under section 37;
  - (b) that any of the requirements of section 38 have not been complied with in relation to the imposition of the penalty and the interests of the approved regulator have been substantially prejudiced by the non-compliance;
  - (c) that the amount of the penalty is unreasonable;
  - (d) that it was unreasonable of the Board to require the penalty imposed or any portion of it to be paid by the time or times by which it was required to be paid.
- (3) An appeal under subsection (1) must be made—
  - (a) within the period of 3 months beginning with the day on which the notice under section 38(5) is given to the approved regulator in respect of the penalty, or
  - (b) where the appeal relates to a decision of the Board on an application by the approved regulator under section 38(6), within the period of 3 months

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beginning with the day on which the approved regulator is notified of the decision.

- (4) On any such appeal, where the court considers it appropriate to do so in all the circumstances of the case and is satisfied of one or more of the appeal grounds, the court may—
  - (a) quash the penalty,
  - (b) substitute a penalty of such lesser amount as the court considers appropriate, or
  - (c) in the case of the appeal ground in subsection (2)(d), substitute for any time imposed by the Board a different time or times.
- (5) Where the court substitutes a penalty of a lesser amount it may require the payment of interest on the substituted penalty at such rate, and from such time, as it considers just and equitable.
- (6) Where the court specifies as a time by which the penalty, or a portion of the penalty, is to be paid a time before the determination of the appeal under this section, it may require the payment of interest on the penalty, or portion, from that time at such rate as it considers just and equitable.
- (7) Except as provided by this section, the validity of a penalty is not to be questioned by any legal proceedings whatever.
- (8) In this section “the court” means the High Court.

#### **40 Recovery of financial penalties**

- (1) If the whole or any part of a penalty is not paid by the time by which it is required to be paid, the unpaid balance from time to time carries interest at the rate for the time being specified in section 17 of the Judgments Act 1838 (c. 110).
- (2) If an appeal is made under section 39 in relation to a penalty, the penalty is not required to be paid until the appeal has been determined or withdrawn.
- (3) If the Board grants an application under subsection (6) of section 38 in relation to a penalty but any portion of the penalty is not paid by the time specified in relation to it by the Board under that subsection, the Board may where it considers it appropriate require so much of the penalty as has not already been paid to be paid immediately.
- (4) Where a penalty, or any portion of it, has not been paid by the time when it is required to be paid and—
  - (a) no appeal relating to the penalty has been made under section 39 during the period within which such an appeal can be made, or
  - (b) an appeal has been made under that section and determined or withdrawn,the Board may recover from the approved regulator, as a debt due to the Board, any of the penalty and any interest which has not been paid.

#### *Intervention*

#### **41 Intervention directions**

- (1) The Board may give an approved regulator an intervention direction in relation to any of the approved regulator’s regulatory functions if the Board is satisfied—



- (a) that an act or omission of an approved regulator (or a series of such acts or omissions) has had, or is likely to have, an adverse impact on one or more of the regulatory objectives, and
  - (b) that it is appropriate to give the intervention direction in all the circumstances of the case (including in particular the impact of giving the direction on the other regulatory objectives).
- (2) An intervention direction, in relation to a regulatory function of an approved regulator, is a direction—
  - (a) that the regulatory function is to be exercised by the Board or a person nominated by it, and
  - (b) that the approved regulator must comply with any instructions of the Board or its nominee in relation to the exercise of the function.
- (3) The Board may not determine that it is appropriate to give an intervention direction unless it is satisfied that the matter cannot be adequately addressed by the Board exercising the powers available to it under sections 31 to 40.
- (4) Part 1 of Schedule 8 makes provision about the procedure which must be complied with before an intervention direction is given and the manner in which such a direction is to be given.
- (5) The Board must make rules as to the persons it may nominate for the purposes of subsection (2)(a).

#### **42 Intervention directions: further provision**

- (1) This section applies where an intervention direction has effect in respect of a function of an approved regulator (“the relevant function”).
- (2) The approved regulator must give the specified person all such assistance, in connection with the proposed exercise of the relevant function by the specified person in pursuance of the direction, as the approved regulator is reasonably able to give.
- (3) On an application by the specified person (or a person appointed by the specified person to act on its behalf) a judge of the High Court, Circuit judge or justice of the peace may issue a warrant authorising that person to—
  - (a) enter and search the premises of the approved regulator, and
  - (b) take possession of any written or electronic records found on the premises.
- (4) The person so authorised may, for the purpose of the exercise by the specified person of the relevant function, take copies of written or electronic records found on a search carried out by virtue of the warrant.
- (5) The judge or justice of the peace may not issue the warrant unless satisfied that its issue is necessary or desirable for the exercise by the specified person of the relevant function.
- (6) The Lord Chancellor must make regulations—
  - (a) specifying further matters which a judge or justice of the peace must be satisfied of, or matters which a judge or justice of the peace must have regard to, before issuing a warrant, and
  - (b) regulating the exercise of a power conferred by a warrant issued under subsection (3) or by subsection (4) (whether by restricting the circumstances

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in which a power may be exercised, by specifying conditions to be complied with in the exercise of a power, or otherwise).

- (7) Regulations under subsection (6)(b) must in particular make provision as to the circumstances in which written or electronic records of which a person has taken possession by virtue of a warrant issued under subsection (3) may be copied or must be returned.
- (8) But the Lord Chancellor may not make regulations under subsection (6) unless—
  - (a) they are made in accordance with a recommendation made by the Board, or
  - (b) the Lord Chancellor has consulted the Board about the making of the regulations.
- (9) In this section “the specified person” means the Board or, where a person is nominated by it as mentioned in section 41(2), that person.
- (10) The Board must make rules as to the persons a specified person may appoint for the purposes of subsection (3).

#### **43 Intervention directions: enforcement**

- (1) If at any time it appears to the Board that an approved regulator has failed to comply with an obligation imposed on it by, or by virtue of, an intervention direction or section 42(2), the Board may make an application to the High Court under this section.
- (2) If, on an application under subsection (1), the High Court decides that the approved regulator has failed to comply with the obligation in question, it may order the approved regulator to take such steps as the High Court directs for securing that the obligation is complied with.
- (3) This section is without prejudice to any other powers conferred on the Board by this Part.

#### **44 Revocation of intervention directions**

- (1) An intervention direction has effect until such time as it is revoked by the Board (whether on the application of the approved regulator or otherwise).
- (2) Part 2 of Schedule 8 makes provision about the procedure which must be complied with before an intervention direction is revoked and the manner in which notice of the revocation is to be given.

#### *Cancellation of approval*

#### **45 Cancellation of designation as approved regulator**

- (1) The Lord Chancellor may by order cancel a body’s designation as an approved regulator—
  - (a) in relation to all the reserved legal activities in relation to which it is an approved regulator, or
  - (b) in relation to one or more, but not all, of those reserved legal activities, with effect from a date specified in the order.

- (2) But the Lord Chancellor may only make an order under subsection (1) in accordance with a recommendation made by the Board under subsection (3) or (5).
- (3) The Board must recommend that an order is made cancelling a body's designation as an approved regulator in relation to one or more reserved legal activities, if—
  - (a) the body applies to the Board for such a recommendation to be made,
  - (b) the application is made in such form and manner as may be prescribed by rules made by the Board, and is accompanied by the prescribed fee, and
  - (c) the body publishes a notice giving details of the application in accordance with such requirements as may be specified in rules made by the Board.
- (4) In this section “the prescribed fee”, in relation to an application, means the fee specified in, or determined in accordance with, rules made by the Board, with the consent of the Lord Chancellor.
- (5) The Board may recommend that an order is made cancelling a body's designation as an approved regulator in relation to one or more reserved legal activities if it is satisfied—
  - (a) that an act or omission of an approved regulator (or a series of such acts or omissions) has had, or is likely to have, an adverse impact on one or more of the regulatory objectives, and
  - (b) that it is appropriate to cancel the body's designation in relation to the activity or activities in question in all the circumstances of the case (including in particular the impact of cancelling the designation on the other regulatory objectives).
- (6) The Board may not determine that it is appropriate to cancel a body's designation in relation to an activity or activities unless it is satisfied that the matter cannot be adequately addressed by the Board exercising the powers available to it under sections 31 to 43.
- (7) Schedule 9 makes further provision about the making of recommendations under subsection (5).
- (8) If the Lord Chancellor decides not to make an order in response to a recommendation made under subsection (3) or (5), the Lord Chancellor must give the Board notice of the decision and the reasons for it.
- (9) The Lord Chancellor must publish a notice given under subsection (8).
- (10) The Board may not make a recommendation under subsection (5) in respect of a body's designation as an approved regulator in relation to a reserved legal activity at any time when, by virtue of Part 2 of Schedule 5 (protection of rights during a transitional period), any person is being treated as authorised by the body to carry on that activity.

#### **46 Cancellation of designation: further provision**

- (1) This section applies where a body (“the former regulator”) has its designation in relation to one or more reserved legal activities cancelled by an order under section 45.
- (2) The Lord Chancellor may by order make—
  - (a) such modifications of provisions made by or under any enactment (including this Act or any enactment passed after this Act), prerogative instrument or other instrument or document, and
  - (b) such transitional or consequential provision,

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as the Lord Chancellor considers necessary or expedient in consequence of the cancellation.

- (3) The Lord Chancellor may, by order, make transfer arrangements.
- (4) “Transfer arrangements” are arrangements in accordance with which each person authorised by the former regulator who consents to the arrangements is, from the time the cancellation takes effect, treated as being authorised to carry on each protected activity by either—
  - (a) a relevant approved regulator, in relation to the protected activity, who consents to the transfer arrangements, or
  - (b) the Board acting in its capacity as a relevant approved regulator in relation to the protected activity by virtue of an order made under section 62.
- (5) The transfer arrangements—
  - (a) must make such provision as is necessary to ensure that, where a person is treated under those arrangements as being authorised to carry on a protected activity by the new regulator, that person is subject to the regulatory arrangements of the new regulator;
  - (b) may make provision requiring amounts held by the former regulator which represent amounts paid to it by way of practising fees by the persons to whom the transfer arrangements apply (or a part of the amounts so held) to be paid to the new regulator and treated as if they were amounts paid by those persons by way of practising fees to the new regulator.
- (6) Subsection (5)(a) is subject to any transitional provision which may be made by the transfer arrangements, including provision modifying the regulatory arrangements of the new regulator as they apply to persons to whom the transfer arrangements apply.
- (7) The Lord Chancellor may make an order under this section only if—
  - (a) the Board has made a recommendation in accordance with section 47, and
  - (b) the order is in the same form as, or in a form which is not materially different from, the draft order annexed to that recommendation.
- (8) For the purposes of this section—
  - (a) a person is “authorised by the former regulator” if immediately before the time the cancellation takes effect the person is authorised by the former regulator (other than by virtue of a licence under Part 5) to carry on an activity which is a reserved legal activity to which the cancellation relates, and
  - (b) in relation to that person—
    - (i) the activity which that person is authorised to carry on as mentioned in paragraph (a) is a “protected activity”, and
    - (ii) “the new regulator” means the approved regulator within paragraph (a) or (b) of subsection (4).
- (9) In this section “practising fee”, in relation to an approved regulator, means a fee payable by a person under the approved regulator’s regulatory arrangements in circumstances where the payment of the fee is a condition which must be satisfied for that person to be authorised by the approved regulator to carry on one or more activities which are reserved legal activities.
- (10) But for the purposes of this section “practising fee” does not include a fee payable by a licensed body to its licensing authority under licensing rules.

#### **47 The Board’s power to recommend orders made under section 46**

- (1) The Board may recommend to the Lord Chancellor that the Lord Chancellor make an order under section 46 in the form of a draft order prepared by the Board and annexed to the recommendation.
- (2) Before making a recommendation under this section, the Board must publish a draft of—
  - (a) the proposed recommendation, and
  - (b) the proposed draft order.
- (3) The draft must be accompanied by a notice which states that representations about the proposals may be made to the Board within a specified period.
- (4) Before making the recommendation, the Board must have regard to any representations duly made.
- (5) If the draft order to be annexed to the recommendation differs from the draft published under subsection (2)(b) in a way which in the opinion of the Board is material, the Board must, before making the recommendation, publish the draft order along with a statement detailing the changes made and the reasons for those changes.

#### **48 Cancellation of designation: powers of entry etc**

- (1) This section applies where a body (“the former regulator”) has its designation in relation to one or more reserved legal activities cancelled by an order under section 45.
- (2) The Board may request the former regulator to provide assistance to the new regulator and the Board, for the purpose of continuing regulation.
- (3) On an application by a person appointed by the Board to act on its behalf, a judge of the High Court, Circuit judge or justice of the peace may issue a warrant authorising that person to—
  - (a) enter and search the premises of the former regulator, and
  - (b) take possession of any written or electronic records found on the premises.
- (4) A person so authorised may, for the purpose of continuing regulation, take copies of written or electronic records found on a search carried out by virtue of the warrant.
- (5) The judge or justice of the peace may not issue the warrant unless satisfied that its issue is necessary or desirable for the purpose of continuing regulation.
- (6) The Lord Chancellor must make regulations—
  - (a) specifying further matters which a judge or justice of the peace must be satisfied of, or matters which a judge or justice of the peace must have regard to, before issuing a warrant, and
  - (b) regulating the exercise of a power conferred by a warrant issued under subsection (3) or by subsection (4) (whether by restricting the circumstances in which a power may be exercised, by specifying conditions to be complied with in the exercise of a power, or otherwise).
- (7) Regulations under subsection (6)(b) must in particular make provision as to circumstances in which written or electronic records of which a person has taken possession by virtue of a warrant issued under subsection (3) may be copied or must be returned.

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- (8) But the Lord Chancellor may not make regulations under subsection (6) unless—
- (a) they are made in accordance with a recommendation made by the Board, or
  - (b) the Lord Chancellor has consulted the Board about the making of the regulations.
- (9) The Board must make rules as to the persons it may appoint for the purposes of subsection (3).
- (10) For the purposes of this section—
- “authorised by the former regulator”, “protected activity” and “new regulator” have the same meaning as for the purposes of section 46;
- “the purpose of continuing regulation” means the purpose of enabling persons authorised by the former regulator to continue to be authorised and regulated in relation to the protected activity.

### *Policy statements*

#### **49 The Board’s policy statements**

- (1) The Board must prepare and issue a statement of policy with respect to the exercise of its functions under—
- (a) section 31 (performance targets and monitoring);
  - (b) section 32 (directions);
  - (c) section 35 (public censure);
  - (d) section 37 (financial penalties);
  - (e) section 41 (intervention directions);
  - (f) section 45 (cancellation of designation as approved regulator);
  - (g) section 76 (cancellation of designation as licensing authority by order).
- (2) The Board may prepare and issue a statement of policy with respect to any other matter.
- (3) In preparing a statement of policy, the Board must have regard to the principle that its principal role is the oversight of approved regulators.
- (4) The statement of policy prepared under subsection (1) must—
- (a) take account of the desirability of resolving informally matters which arise between the Board and an approved regulator, and
  - (b) specify how, in exercising the functions mentioned in that subsection, the Board will comply with the requirements of section 3(3) (regulatory activities to be proportionate, consistent and targeted only at cases in which action is needed, etc),
- and, in preparing that statement, the Board must have regard to the principle that the Board should not exercise any of those functions by reason of an act or omission of an approved regulator unless the act or omission was unreasonable.
- (5) The Board’s policy in determining what the amount of a penalty under section 37 should be must include having regard to—
- (a) the seriousness of the failure in question, and
  - (b) the extent to which it was deliberate or reckless.
- (6) The Board may at any time alter or replace any statement issued under this section.

- (7) If a statement is altered or replaced, the Board must issue the altered or replacement statement.
- (8) In exercising or deciding whether to exercise any of its functions, the Board must have regard to any relevant policy statement published under this section.
- (9) The Board must publish a statement issued under this section.
- (10) The Board may make a reasonable charge for providing a person with a copy of a statement.

## **50 Policy statements: procedure**

- (1) Before issuing a statement under section 49, the Board must publish a draft of the proposed statement.
- (2) The draft must be accompanied by a notice which states that representations about the proposals may be made to the Board within a specified period.
- (3) Before issuing the statement, the Board must have regard to any representations duly made.
- (4) If the statement differs from the draft published under subsection (1) in a way which is, in the opinion of the Board, material, the Board must publish details of the differences.
- (5) The Board may make a reasonable charge for providing a person with a copy of a draft published under subsection (1).

### *Practising fees*

## **51 Control of practising fees charged by approved regulators**

- (1) In this section “practising fee”, in relation to an approved regulator, means a fee payable by a person under the approved regulator’s regulatory arrangements in circumstances where the payment of the fee is a condition which must be satisfied for that person to be authorised by the approved regulator to carry on one or more activities which are reserved legal activities.
- (2) An approved regulator may only apply amounts raised by practising fees for one or more of the permitted purposes.
- (3) The Board must make rules specifying the permitted purposes.
- (4) Those rules must, in particular, provide that the following are permitted purposes—
  - (a) the regulation, accreditation, education and training of relevant authorised persons and those wishing to become such persons, including—
    - (i) the maintaining and raising of their professional standards, and
    - (ii) the giving of practical support, and advice about practice management, in relation to practices carried on by such persons;
  - (b) the payment of a levy imposed on the approved regulator under section 173;
  - (c) the participation by the approved regulator in law reform and the legislative process;

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- (d) the provision by relevant authorised persons, and those wishing to become relevant authorised persons, of reserved legal services, immigration advice or immigration services to the public free of charge;
  - (e) the promotion of the protection by law of human rights and fundamental freedoms;
  - (f) the promotion of relations between the approved regulator and relevant national or international bodies, governments or the legal professions of other jurisdictions.
- (5) A practising fee is payable under the regulatory arrangements of an approved regulator only if the Board has approved the level of the fee.
- (6) The Board must make rules containing provision—
- (a) about the form and manner in which applications for approval for the purposes of subsection (5) must be made and the material which must accompany such applications;
  - (b) requiring applicants to have consulted such persons as may be prescribed by the rules in such manner as may be so prescribed before such an application is made;
  - (c) about the procedures and criteria that will be applied by the Board when determining whether to approve the level of a fee for the purposes of subsection (5).
- (7) Rules under subsection (6)(c) must, in particular, contain—
- (a) provision requiring the Board, before it determines an application for approval of the level of a fee, to consult such persons as it considers appropriate about the impact of the proposed fee on persons providing non-commercial legal services;
  - (b) provision about the time limit for the determining of an application.
- (8) In this section “relevant authorised persons”, in relation to an approved regulator, means persons who are authorised by the approved regulator to carry on activities which are reserved legal activities.

### *Regulatory conflict*

## **52 Regulatory conflict with approved regulators**

- (1) The regulatory arrangements of an approved regulator must make such provision as is reasonably practicable to prevent regulatory conflicts.
- (2) For the purposes of this section and section 53, a regulatory conflict is a conflict between—
- (a) a requirement of the approved regulator’s regulatory arrangements, and
  - (b) a requirement of the regulatory arrangements of another approved regulator.
- (3) Subsection (4) applies where a body is authorised by an approved regulator (“the entity regulator”) to carry on an activity which is a reserved legal activity.
- (4) If a conflict arises between—
- (a) a requirement of the regulatory arrangements of the entity regulator, in relation to the body authorised by the entity regulator or an employee or manager of the body (“an entity requirement”), and



- (b) a requirement of the regulatory arrangements of another approved regulator in relation to an employee or manager of the body who is authorised by it to carry on a reserved legal activity (“an individual requirement”),  
the entity requirement prevails over the individual requirement.

### **53 Modification of provision made about regulatory conflict**

- (1) An approved regulator (“the applicant regulator”) may make an application under this section if it considers that the regulatory arrangements of another approved regulator (“the conflicting regulator”) do not make appropriate provision to prevent a regulatory conflict with the applicant regulator.
- (2) An application under this section is an application made to the Board for the Board to exercise its powers under section 32 to direct the conflicting regulator—
  - (a) to take steps to modify, in such manner as may be specified in the direction, the provision made by its regulatory arrangements to prevent a regulatory conflict with the applicant regulator, or
  - (b) if its regulatory arrangements do not make any such provision, to make such provision as may be specified in the direction to prevent such a conflict.
- (3) An approved regulator must consider any request made by an affected person—
  - (a) for the approved regulator to reconsider the provision made by its regulatory arrangements to prevent a regulatory conflict with another approved regulator, or
  - (b) for the approved regulator to make an application under this section.
- (4) An “affected person”, in relation to an approved regulator, means—
  - (a) a person authorised by the approved regulator to carry on a reserved legal activity;
  - (b) an employee or manager of such a person.
- (5) Where an application is made under this section, the Board—
  - (a) must give the applicant regulator and the conflicting regulator an opportunity to make representations, and
  - (b) may consult any persons it considers appropriate.
- (6) The Board must decide whether or not to give a warning notice in response to the application.
- (7) The Board must make that decision before the end of the period of 6 months beginning with the day on which the application is received by it.
- (8) The Board must give notice of its decision, and the reasons for it, to the applicant regulator and the conflicting regulator.
- (9) For the purposes of this section “warning notice” means a notice given under paragraph 2(1) of Schedule 7 (warning of proposed direction under section 32).

### **54 Regulatory conflict with other regulatory regimes**

- (1) The regulatory arrangements of an approved regulator must make such provision as is reasonably practicable and, in all the circumstances, appropriate—
  - (a) to prevent external regulatory conflicts,

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- (b) to provide for the resolution of any external regulatory conflicts which arise, and
  - (c) to prevent unnecessary duplication of regulatory provisions made by an external regulatory body.
- (2) For the purposes of this section, an external regulatory conflict is a conflict between—
- (a) a requirement of the regulatory arrangements of the approved regulator, and
  - (b) a requirement of any regulatory provision made by an external regulatory body.
- (3) For this purpose “external regulatory body” means a person (other than an approved regulator) who exercises regulatory functions in relation to a particular description of persons with a view to ensuring compliance with rules (whether statutory or non-statutory) by those persons.
- (4) Regulatory arrangements made for the purposes of subsection (1)(b) may, with the consent of the Board, provide for the Board to exercise functions in connection with the resolution of conflicts.

### *Information*

## **55 Provision of information to the Board**

- (1) The Board may, by notice, require an approved regulator—
- (a) to provide any information, or information of a description, specified in the notice, or
  - (b) to produce documents, or documents of a description, specified in the notice.
- (2) A notice under subsection (1)—
- (a) may specify the manner and form in which any information is to be provided;
  - (b) must specify the period within which any information is to be provided or document is to be produced;
  - (c) may require any information to be provided, or document to be produced, to the Board or to a person specified in the notice.
- (3) The Board may, by notice, require a person representing the approved regulator to attend at a time and place specified in the notice to provide an explanation of any information provided or document produced under this section.
- (4) The Board may pay to any person such reasonable costs as may be incurred by that person in connection with—
- (a) the provision of any information, or the production of any document, by that person pursuant to a notice under subsection (1), or
  - (b) that person’s compliance with a requirement imposed under subsection (3).
- (5) The Board, or a person specified under subsection (2)(c), may take copies of or extracts from a document produced pursuant to a notice under subsection (1).
- (6) For the purposes of this section and section 56, references to an approved regulator include a body which was, but is no longer, an approved regulator.

## **56 Enforcement of notices under section 55**

- (1) Where an approved regulator is unable to comply with a notice given to it under section 55(1), it must give the Board a notice to that effect stating the reasons why it cannot comply.
- (2) If an approved regulator refuses, or otherwise fails, to comply with a notice under section 55(1), the Board may apply to the High Court for an order requiring the approved regulator to comply with the notice or with such directions for the like purpose as may be contained in the order.
- (3) This section applies in relation to a person to whom a notice is given under section 55(3) as it applies in relation to an approved regulator to whom a notice is given under section 55(1).

### *Competition*

## **57 Reports by the OFT**

- (1) If the OFT is of the opinion that the regulatory arrangements of an approved regulator (or any part of them) prevent, restrict or distort competition within the market for reserved legal services to any significant extent, or are likely to do so, the OFT may prepare a report to that effect.
- (2) A report under subsection (1)—
  - (a) must state what, in the OFT's opinion, is the effect, or likely effect, on competition of the regulatory arrangements or part of them to which the report relates, and
  - (b) may contain recommendations as to the action which the Board should take for the purpose of ensuring that the regulatory arrangements of the approved regulator do not prevent, restrict or distort competition.
- (3) Where the OFT makes a report under subsection (1), it must—
  - (a) give a copy of the report to the Board, the Consumer Panel and the approved regulator, and
  - (b) publish the report.
- (4) Before publishing a report under subsection (3)(b), the OFT must, so far as practicable, exclude any matter which relates to the private affairs of a particular individual the publication of which, in the opinion of the OFT, would or might seriously and prejudicially affect the interests of that individual.
- (5) The OFT may exercise any of the powers conferred on it by section 174(3) to (5) of the Enterprise Act 2002 (c. 40) (investigation powers) for the purpose of assisting it in exercising its functions under this section.
- (6) For the purposes of the law of defamation, absolute privilege attaches to any report of the OFT under this section.

## **58 The Board's response to OFT report**

- (1) This section applies where a report is made by the OFT under section 57 in respect of an approved regulator.

- (2) The Board must allow the approved regulator a period of 28 days beginning with the day on which the copy of the report is given to the approved regulator under section 57, or such longer period as the Board may specify in a particular case, to make representations to the Board about the OFT's report.
- (3) The Consumer Panel may give the Board such advice as the Consumer Panel thinks fit regarding the OFT's report.
- (4) Having considered any representations made under subsection (2) and any advice given under subsection (3), the Board must notify the OFT of the action (if any) it proposes to take in response to the report.

## **59 Referral of report by the Lord Chancellor to the Competition Commission**

- (1) This section applies where the OFT is satisfied that the Board has failed to give full and proper consideration to a report made by the OFT, in respect of an approved regulator, under section 57.
- (2) The OFT may give a copy of its report to the Lord Chancellor.
- (3) The OFT must notify the Board and the approved regulator if it gives a copy of its report to the Lord Chancellor.
- (4) On receiving a report under subsection (2), the Lord Chancellor must—
  - (a) give the Competition Commission a copy of the report, and
  - (b) seek its advice on what action (if any) should be taken by the Lord Chancellor under section 61.

## **60 Duties of the Competition Commission**

- (1) Where the Lord Chancellor seeks the advice of the Competition Commission under section 59, the Commission must investigate the matter.
- (2) The Commission must then make its own report on the matter unless it considers that, as a result of any change of circumstances, no useful purpose would be served by a report.
- (3) If the Commission decides in accordance with subsection (2) not to make a report, it must make a statement setting out the change of circumstances which resulted in that decision.
- (4) The Commission must comply with subsection (2) or (3) within the period of 3 months beginning with the day on which it receives a copy of the OFT's report under section 59(4)(a).
- (5) A report made under this section must state the Commission's conclusion as to whether any of the matters which is the subject of the report has or is likely to have the effect of preventing, restricting or distorting competition within the market for reserved legal services to a significant extent.
- (6) A report under this section stating the Commission's conclusion that there is, or is likely to be, such an effect must also—
  - (a) state whether or not the Commission considers that that effect is justified, and

- (b) if it states that the Commission considers that it is not justified, state its conclusion as to what action, if any, ought to be taken by the Board.
- (7) When determining under subsection (6)(b) any action to be taken by the Board, the Commission must ensure—
- (a) that the action stated is action which the Board has power to take, and
  - (b) so far as reasonably possible, that the action stated is compatible with the functions conferred, and obligations imposed, on the Board by or under this Act.
- (8) A report under this section must contain such an account of the Commission’s reasons for its conclusions as is expedient, in the opinion of the Commission, for facilitating proper understanding of them.
- (9) Sections 109 to 115 of the Enterprise Act 2002 (c. 40) (investigation powers) apply in relation to an investigation under this section as they apply in relation to an investigation made on a reference made to the Commission under Part 3 of that Act (mergers), but as if—
- (a) in section 110(4) of that Act, the reference to the publication of the report of the Commission on the reference concerned were a reference to the Commission making a report under subsection (2) or a statement under subsection (3), and
  - (b) in section 111(5)(b)(ii) of that Act the day referred to were the day on which the Commission makes that report or statement.
- (10) If the Commission makes a report or a statement under this section it must—
- (a) give a copy to the Lord Chancellor, the Board, the Consumer Panel and the approved regulator to which the OFT’s report relates, and
  - (b) publish the report or statement.

## **61 Lord Chancellor’s power to give directions**

- (1) The Lord Chancellor may direct the Board to take such action as the Lord Chancellor considers appropriate in connection with any matter raised in a report made by the OFT under section 57.
- (2) Before giving a direction under subsection (1), the Lord Chancellor must consider any report from the Competition Commission under section 60 on that matter.
- (3) When exercising the power to give a direction under subsection (1), the Lord Chancellor must ensure—
- (a) that the action stated is action which the Board has power to take, and
  - (b) so far as reasonably possible, that the action stated in any direction is compatible with the functions conferred, and obligations imposed, on the Board by or under this Act.
- (4) The Lord Chancellor must publish a direction given under this section.

### *The Board as approved regulator*

## **62 The Board as an approved regulator**

- (1) The Lord Chancellor may by order—

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- (a) designate the Board as an approved regulator in relation to one or more reserved legal activities;
  - (b) modify the functions of the Board, and make such other provision relating to those functions as the Lord Chancellor considers necessary or expedient, with a view to enabling the Board to discharge its functions as an approved regulator effectively and efficiently;
  - (c) cancel the Board's designation as an approved regulator in relation to one or more reserved legal activities.
- (2) But the Lord Chancellor may make an order under subsection (1) only if—
- (a) the Board has made a recommendation in accordance with section 66, and
  - (b) the order is in the same form as, or in a form which is not materially different from, the draft order annexed to that recommendation.
- (3) If the Lord Chancellor decides not to make an order pursuant to a recommendation made under section 66, the Lord Chancellor must—
- (a) give the Board a notice stating the reasons for that decision, and
  - (b) publish the notice.
- (4) In discharging its functions as an approved regulator the Board must take such steps as are necessary to ensure an appropriate financial and organisational separation between the activities of the Board that relate to the carrying out of those functions and the other activities of the Board.
- (5) An order under this section may make such modifications of provision made by or under any enactment (including this Act or any Act passed after this Act) as the Lord Chancellor considers necessary or expedient.

### **63 The Board's designation under section 62(1)(a)**

- (1) This section applies in relation to an order under section 62(1)(a) (an order designating the Board as an approved regulator).
- (2) Subject to subsection (3), the order may designate the Board as an approved regulator in relation to a reserved legal activity only where—
- (a) a body's designation as an approved regulator in relation to the activity is cancelled under section 45, or
  - (b) the activity becomes a reserved legal activity by virtue of an order under section 24.
- (3) Subsection (2) does not prevent the order having effect in advance of an event within paragraph (a) or (b) of that subsection for the purpose of enabling the Board to authorise persons to carry on activities which constitute the reserved legal activity in question with effect from the occurrence of the event.
- (4) The order must ensure that the Board, acting as an approved regulator, may make regulatory arrangements or modify its regulatory arrangements only with the approval of the Board (acting otherwise than in its capacity as an approved regulator or as a licensing authority under Part 5).

#### **64 Modification of the Board's functions under section 62(1)(b)**

- (1) This section applies in relation to an order under section 62(1)(b) (an order modifying the functions of the Board).
- (2) The order may include (among other things) provision conferring on the Board powers to do any of the following—
  - (a) to authorise (otherwise than by the grant of a licence under Part 5) persons or any category of persons (whether corporate or unincorporate) to carry on one or more activities which are reserved legal activities in relation to which the Board is designated as an approved regulator;
  - (b) to make qualification regulations;
  - (c) to make provision as to the educational, training and other requirements to be met by regulated persons who are not relevant authorised persons;
  - (d) to make practice rules and conduct rules;
  - (e) to make disciplinary arrangements in relation to regulated persons (including discipline rules);
  - (f) to make rules requiring the payment of fees specified in or determined in accordance with the rules;
  - (g) to make indemnification arrangements;
  - (h) to make compensation arrangements;
  - (i) to make rules as to the treatment of money (including money held in trust) which is received, held or dealt with for clients, or other persons, by regulated persons, and as to the keeping by such persons of accounts in respect of such money;
  - (j) to take steps for the purpose of ascertaining whether or not the provisions of rules or regulations made, or any code or guidance issued, by the Board in its capacity as an approved regulator are being complied with, and to make rules requiring relevant authorised persons to produce documents and provide information for that purpose;
  - (k) to delegate any of the functions exercisable by the Board in its capacity as an approved regulator to such persons as it considers appropriate;
  - (l) to make regulations or rules providing for appeals to the High Court or another body against decisions made by the Board in its capacity as an approved regulator (including regulations or rules providing for a decision on such an appeal to be final and for orders as to payment of costs).
- (3) The order may—
  - (a) provide for any provision of Schedule 14 (licensing authority's powers of intervention)—
    - (i) to apply in relation to the Board (in its capacity as an approved regulator) and regulated persons as it applies in relation to a licensing authority and licensed bodies (or managers or employees of such bodies), or
    - (ii) to so apply with such modifications as are prescribed by the order, or
  - (b) make provision, in relation to the Board (in that capacity) and regulated persons, corresponding to any of the provisions made, in relation to licensing authorities and licensed bodies (or managers or employees of such bodies), by that Schedule.

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- (4) For the purposes of giving effect to indemnification arrangements and compensation arrangements, the order may authorise the Board to make rules—
- (a) authorising or requiring the Board to establish and maintain a fund or funds;
  - (b) authorising or requiring the Board to take out and maintain insurance with authorised insurers;
  - (c) requiring relevant authorised persons or relevant authorised persons of any specific description to take out and maintain insurance with authorised insurers.
- (5) In this section—
- “authorised insurer” means a person within any of the following paragraphs—
- (a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 (c. 8) to effect or carry out contracts of insurance of a relevant class;
  - (b) an EEA firm (within the meaning of that Act) of the kind mentioned in paragraph 5(d) of Schedule 3 to that Act, which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to effect or carry out contracts of a relevant class;
  - (c) a person who does not fall within paragraph (a) or (b) and who may lawfully effect or carry out contracts of insurance of a relevant class in a member State other than the United Kingdom;
- “regulated person” has the meaning given by section 21;
- “relevant authorised person” means a person authorised by the Board (other than by the grant of a licence under Part 5) to carry on one or more activities which are reserved legal activities.
- (6) For the purposes of this section—
- (a) a contract of insurance is of a relevant class if it insures against a risk arising from accident, credit, legal expenses, general liability to third parties, sickness, suretyship or miscellaneous financial loss, and
  - (b) the definition of “authorised insurer” in subsection (5) must be read with section 22 of the Financial Services and Markets Act 2000, and any relevant order under that section, and with Schedule 2 to that Act.

## **65 Cancellation of the Board’s designation under section 62(1)(c)**

- (1) This section applies in relation to an order under section 62(1)(c) (cancellation of Board’s designation as an approved regulator).
- (2) Where such an order is made, section 46 (other than subsection (4)(b)) and section 47 (transfer arrangements etc on cancellation of approved regulator’s designation) apply in relation to the Board and relevant authorised persons as they apply to an approved regulator whose designation is cancelled under section 45 and persons authorised by that approved regulator to carry on activities which are reserved legal activities.
- (3) In this section “relevant authorised persons” has the same meaning as in section 64.



## **66 The Board’s power to recommend orders made under section 62**

- (1) The Board may recommend to the Lord Chancellor that the Lord Chancellor make an order under section 62 in the form of a draft order prepared by the Board and annexed to the recommendation.
- (2) Before making a recommendation under this section, the Board must give each of the persons listed in subsection (3) a notice containing—
  - (a) a copy of the proposed recommendation,
  - (b) a copy of the proposed draft order, and
  - (c) a statement specifying a period within which representations may be made about the proposals.
- (3) Those persons are—
  - (a) the Lord Chancellor,
  - (b) the OFT,
  - (c) the Consumer Panel,
  - (d) the Lord Chief Justice, and
  - (e) such other persons as the Board considers it reasonable to consult regarding the proposals.
- (4) The Board must publish a notice given under subsection (2).
- (5) Before making the recommendation, the Board must have regard to any representations duly made (whether by persons within subsection (3) or otherwise).
- (6) If the draft order to be annexed to the recommendation differs from the draft contained in the notice under subsection (2) in a way which is, in the opinion of the Board, material, the Board must, before making the recommendation, publish the draft order along with a statement detailing the changes made and the reasons for those changes.

## **67 Effect of the Board’s designation as an approved regulator**

- (1) The powers of the Board under sections 31 to 51 and 55 (regulatory powers in respect of approved regulators) are not exercisable by it in relation to the Board in its capacity as an approved regulator.
- (2) In section 53 references to an approved regulator do not include the Board in its capacity as an approved regulator.
- (3) Sections 57 to 61 (reports by OFT etc) do not apply in relation to the Board in its capacity as an approved regulator.

## **68 Regulatory conflict and the Board as approved regulator**

- (1) An approved regulator may make a request under subsection (4) if it considers that the regulatory arrangements of the Board (in its capacity as an approved regulator) do not make appropriate provision to prevent a conflict between—
  - (a) a requirement of those regulatory arrangements, and
  - (b) a requirement of the regulatory arrangements of the approved regulator.
- (2) An affected person in relation to an approved regulator may request the approved regulator to exercise its powers under subsection (1).

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- (3) An affected person in relation to the Board may make a request under subsection (4) if the person considers that the regulatory arrangements of the Board (in its capacity as an approved regulator) do not make appropriate provision to prevent a conflict between—
  - (a) a requirement of those regulatory arrangements, and
  - (b) a requirement of the regulatory arrangements of an approved regulator.
- (4) The request is a request made to the Board (in its capacity as an approved regulator) that it reconsider the provision made by its regulatory arrangements to prevent a regulatory conflict with the conflicting regulator.
- (5) An affected person in relation to the Board may make an application under subsection (6) if the person considers that the regulatory arrangements of an approved regulator do not make appropriate provision to prevent a conflict between—
  - (a) a requirement of those regulatory arrangements, and
  - (b) a requirement of the regulatory arrangements of the Board (in its capacity as an approved regulator).
- (6) The application is an application to the Board for it to exercise its powers under section 32 to direct the approved regulator—
  - (a) to take steps to modify, in such manner as may be specified in the direction, the provision made by its regulatory arrangements to prevent a regulatory conflict with the Board (in its capacity as an approved regulator), or
  - (b) if its regulatory arrangements do not make any such provision, to make such provision as may be specified in the direction to prevent such a conflict.
- (7) An affected person in relation to an approved regulator (other than the Board) may make a request under subsection (8) if the person considers that the regulatory arrangements of the approved regulator do not make appropriate provision to prevent a conflict between—
  - (a) a requirement of those regulatory arrangements, and
  - (b) a requirement of the regulatory arrangements of the Board (in its capacity as an approved regulator).
- (8) The request is a request to the approved regulator that it reconsider the provision made by its regulatory arrangements to prevent a regulatory conflict with the Board.
- (9) The Board (in its capacity as an approved regulator) and any other approved regulator must consider any request made to it under this section.
- (10) Subsections (5) to (8) of section 53 apply in relation to an application under subsection (6) as they apply in relation to an application under that section, except that—
  - (a) references to the applicant regulator are to be read as references to the person who made the application, and
  - (b) references to the conflicting regulator are to be construed in accordance with this section.
- (11) In this section—

“affected person” in relation to the Board or any other approved regulator, means—

  - (a) any person authorised by the body to carry on a reserved legal activity, or
  - (b) an employee or manager of such a person;

- “conflicting regulator” means—
- (a) in a case within subsection (1), the approved regulator making the request, and
  - (b) in a case within subsection (3) or (5), the approved regulator whose regulatory arrangements are considered to conflict with those of the Board.

*Functions of approved regulators etc*

**69 Modification of the functions of approved regulators etc**

- (1) The Lord Chancellor may by order modify, or make other provision relating to, the functions of an approved regulator or any other body (other than the Board).
- (2) The Lord Chancellor may make an order under subsection (1) only if—
  - (a) the Board has made a recommendation under this section,
  - (b) a draft order was annexed to the recommendation, and
  - (c) the order is in the same form as, or a form not materially different from, that draft order.
- (3) The Board may make a recommendation under this section only with a view to an order being made which enables the body to which it relates to do one or more of the following—
  - (a) to become designated by an order under Part 2 of Schedule 4 as an approved regulator, or designated by an order under Part 1 of Schedule 10 as a licensing authority, in relation to one or more reserved legal activities;
  - (b) to authorise persons or any category of persons (whether corporate or unincorporate) to carry on one or more activities which are reserved legal activities in relation to which the body is (at the time the authorisation has effect) designated as an approved regulator, or to make regulatory arrangements;
  - (c) to carry out its role as an approved regulator (including its role, if any, as a licensing authority) more effectively or efficiently;
  - (d) to become a qualifying regulator under Part 1 of Schedule 18;
  - (e) if it is a designated qualifying regulator under section 86A of the Immigration and Asylum Act 1999 (c. 33), to authorise persons to provide any additional advice or services the provision of which amounts to the provision of immigration advice or immigration services.
- (4) Subsections (2) (other than paragraph (a)), (3) and (4) of section 64 apply in relation to an order under this section as they apply in relation to an order under section 62(1) (b) in relation to the Board.
- (5) An order under this section also may make provision in relation to—
  - (a) the provision of immigration advice or immigration services, and
  - (b) persons authorised to provide such advice and services by the body to which the order relates,corresponding to the provision which may be made by virtue of section 64(2) to (4) in relation to reserved legal activities and persons authorised to carry on those activities.

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*Status: This is the original version (as it was originally enacted).*

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- (6) An order under this section may modify provisions made by or under any enactment (including this Act or any Act passed after this Act), prerogative instrument or other instrument or document.
- (7) Any provision made by an order under this section may be expressed to be conditional upon—
  - (a) the body to which the order relates being designated by an order under Part 2 of Schedule 4 as an approved regulator, or by an order under Part 1 of Schedule 10 as a licensing authority, in relation to one or more reserved legal activities specified in the proposed draft order, or
  - (b) the body to which the order relates becoming a designated qualifying regulator under section 86A of the Immigration and Asylum Act 1999 (c. 33).
- (8) The powers to make an order conferred by this section are without prejudice to any powers (statutory or non-statutory) which an approved regulator or other body may have apart from this section.

## **70 Procedural requirements relating to recommendations under section 69**

- (1) A recommendation may be made under section 69 only with the consent of the approved regulator or other body to which the recommendation relates.
- (2) Before making a recommendation under that section, the Board must publish a draft of—
  - (a) the proposed recommendation, and
  - (b) the proposed draft order.
- (3) The draft must be accompanied by a notice which states that representations about the proposals may be made to the Board within a specified period.
- (4) Before making the recommendation, the Board must have regard to any representations duly made.
- (5) If the draft order to be annexed to the recommendation differs from the draft published under subsection (2)(b) in a way which is, in the opinion of the Board, material, the Board must, before making the recommendation, publish the draft order along with a statement detailing the changes made and the reasons for those changes.