



# Legal Services Act 2007

## 2007 CHAPTER 29

### PART 5

#### ALTERNATIVE BUSINESS STRUCTURES

##### *Introductory*

#### **71 Carrying on of activities by licensed bodies**

- (1) The provisions of this Part have effect for the purpose of regulating the carrying on of reserved legal activities and other activities by licensed bodies.
- (2) In this Act “licensed body” means a body which holds a licence in force under this Part.

#### **72 “Licensable body”**

- (1) A body (“B”) is a licensable body if a non-authorised person—
  - (a) is a manager of B, or
  - (b) has an interest in B.
- (2) A body (“B”) is also a licensable body if—
  - (a) another body (“A”) is a manager of B, or has an interest in B, and
  - (b) non-authorised persons are entitled to exercise, or control the exercise of, at least 10% of the voting rights in A.
- (3) For the purposes of this Act, a person has an interest in a body if—
  - (a) the person holds shares in the body, or
  - (b) the person is entitled to exercise, or control the exercise of, voting rights in the body.
- (4) A body may be licensable by virtue of both subsection (1) and subsection (2).

- (5) For the purposes of this Act, a non-authorised person has an indirect interest in a licensable body if the body is licensable by virtue of subsection (2) and the non-authorised person is entitled to exercise, or control the exercise of, voting rights in A.
- (6) In this Act “shares” means—
- (a) in relation to a body with a share capital, allotted shares (within the meaning of the Companies Acts);
  - (b) in relation to a body with capital but no share capital, rights to share in the capital of the body;
  - (c) in relation to a body without capital, interests—
    - (i) conferring any right to share in the profits, or liability to contribute to the losses, of the body, or
    - (ii) giving rise to an obligation to contribute to the debts or expenses of the body in the event of a winding up;
 and references to the holding of shares, or to a shareholding, are to be construed accordingly.

### *Licensing authorities*

## **73 Licensing authorities and relevant licensing authorities**

- (1) In this Act “licensing authority” means—
- (a) the Board, or
  - (b) an approved regulator which is designated as a licensing authority under Part 1 of Schedule 10 and whose licensing rules are approved for the purposes of this Act.
- (2) For the purposes of this Act—
- (a) the Board is a licensing authority in relation to all reserved legal activities, and
  - (b) an approved regulator within subsection (1)(b) is a licensing authority in relation to any reserved legal activity in relation to which the designation is made.
- (3) The Board—
- (a) may delegate any of its functions as a licensing authority to such persons as it considers appropriate;
  - (b) 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 its functions as a licensing authority and the other activities of the Board.
- (4) In this Part “relevant licensing authority”—
- (a) in relation to a licensed body, means the licensing authority by which the licensed body is authorised to carry on an activity which is a reserved legal activity;
  - (b) in relation to an applicant for a licence, means the licensing authority to which the application is made.

## **74 Designation of approved regulator as licensing authority**

Part 1 of Schedule 10 makes provision for approved regulators to be designated, by order, as licensing authorities in relation to one or more reserved legal activities.

## **75 Automatic cancellation of designation as licensing authority**

- (1) This section applies where a body is designated—
  - (a) as an approved regulator in relation to a reserved legal activity (“the activity”), and
  - (b) as a licensing authority in relation to the activity.
- (2) If the Lord Chancellor makes an order under section 45 cancelling the body’s designation as an approved regulator in relation to the activity, the body’s designation as a licensing authority in relation to the activity is also cancelled.
- (3) The cancellation takes effect at the same time as cancellation of the body’s designation as an approved regulator.

## **76 Cancellation of designation as licensing authority by order**

- (1) The Lord Chancellor may by order cancel an approved regulator’s designation as a licensing authority—
  - (a) in relation to all the reserved legal activities in relation to which it is designated, 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 an approved regulator’s designation as a licensing authority in relation to one or more reserved legal activities, if—
  - (a) the approved regulator 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 approved regulator 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 an approved regulator’s designation as a licensing authority in relation to one or more reserved legal activities if it is satisfied—
  - (a) that an act or omission of the licensing authority (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

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

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- (b) that it is appropriate to cancel the approved regulator'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 an approved regulator's designation as a licensing authority 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) Part 2 of Schedule 10 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).

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

- (1) This section applies where an approved regulator ("the former authority") has its designation as a licensing authority in relation to one or more reserved legal activities cancelled—
  - (a) by virtue of section 75, or
  - (b) by an order under section 76.
- (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,
 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 consenting licensed body is, from the time the cancellation takes effect, treated as being authorised to carry on each protected activity by virtue of a licence issued under this Part by a licensing authority, in relation to the protected activity, which consents to the transfer arrangements.
- (5) "Consenting licensed body" means a licensed body authorised by the former authority which consents to the transfer arrangements.
- (6) The transfer arrangements—
  - (a) must make such provision as is necessary to ensure that, where a licensed body is treated under those arrangements as being authorised to carry on a protected activity by the new authority, that licensed body is subject to the licensing rules of the new authority;
  - (b) may make provision requiring amounts held by the former authority which represent amounts paid to it by way of licensing fees by the consenting licensed bodies (or a part of the amounts so held) to be paid to the new

authority and treated as if they were amounts paid by those licensed bodies by way of licensing fees to the new authority.

- (7) Subsection (6)(a) is subject to any transitional provision which may be made by the transfer arrangements, including provision modifying the licensing rules of the new authority as they apply to the bodies to whom the transfer arrangements apply.
- (8) The Lord Chancellor may make an order under this section only if—
  - (a) the Board has made a recommendation in accordance with section 78, 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.
- (9) For the purposes of this section—
  - (a) a licensed body is “authorised by the former authority” if immediately before the time the cancellation takes effect the body is, by virtue of a licence under this Part, authorised by the former authority to carry on an activity which is a reserved legal activity to which the cancellation relates, and
  - (b) in relation to that body—
    - (i) the activity which the body is authorised to carry on as mentioned in paragraph (a) is a “protected activity”, and
    - (ii) “the new authority” means the licensing authority by which (in accordance with transfer arrangements under subsection (4)) the body is treated as authorised to carry on a protected activity.
- (10) In this section “licensing fee”, in relation to a licensing authority, means a fee payable by a licensed body under the authority’s licensing rules made in accordance with paragraph 21 of Schedule 11.

## **78 The Board’s power to recommend orders made under section 77**

- (1) The Board may recommend to the Lord Chancellor that the Lord Chancellor make an order under section 77 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 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.

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

- (1) This section applies where an approved regulator (“the former authority”) has its designation in relation to one or more reserved legal activities cancelled by virtue of section 75 or an order under section 76.
- (2) The Board may request the former authority to provide assistance to the new authority 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 authority, 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.
- (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 authority”, “protected activity” and “new authority” have the same meaning as for the purposes of section 77;

“the purpose of continuing regulation” means the purpose of enabling bodies authorised by the former authority to continue to be authorised and regulated in relation to the protected activity.

## *Appeals*

### **80 Functions of appellate bodies**

- (1) The Lord Chancellor may by order—
  - (a) establish a body to hear and determine appeals from decisions, made by a person specified in the order in the person's capacity as a licensing authority, which are appealable under this Part or licensing rules made by the person;
  - (b) modify, or make any other provision relating to, the functions of a body within subsection (2) or any other body, for the purpose of enabling the body to hear and determine appeals from such decisions.
- (2) The bodies mentioned in subsection (1)(b) are—
  - (a) the Solicitors Disciplinary Tribunal;
  - (b) the Discipline and Appeals Committee established by the Council of Licensed Conveyancers under section 25 of the Administration of Justice Act 1985 (c. 61).
- (3) The Lord Chancellor may make an order under subsection (1) only if—
  - (a) the Board has made a recommendation in accordance with section 81,
  - (b) a draft order was annexed to the recommendation, and
  - (c) the order is in the same form as, or not materially different from, that draft order.
- (4) An order under this section may—
  - (a) make provision as to the payment of fees, and award of costs, in relation to such appeals;
  - (b) 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.
- (5) Any provision made by an order under this section may be expressed to be conditional upon the person specified in the order being designated by an order under Part 1 of Schedule 10 as a licensing authority in relation to one or more reserved legal activities.
- (6) The powers to make an order conferred by this section are without prejudice to any powers (statutory or non-statutory) which a body may have apart from this section.

### **81 Procedural requirements relating to recommendations under section 80**

- (1) A recommendation may be made under section 80 only with the consent of—
  - (a) the person from whose decisions the appeals are to be made, and
  - (b) where the recommendation is for an order under section 80(1)(b), the body to which appeals are to be made.
- (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 any 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.

### *Policy statement*

## **82 Licensing authority policy statement**

- (1) Each licensing authority must prepare and issue a statement of policy as to how, in exercising its functions under this Part, it will comply with the requirements of section 28 (or, in the case of the Board, section 3) (duties to promote regulatory objectives etc).
- (2) A licensing authority may issue a statement under subsection (1) only with the approval of the Board (acting otherwise than in its capacity as a licensing authority or as an approved regulator).
- (3) A licensing authority may, with the approval of the Board (acting otherwise than in its capacity as a licensing authority or as an approved regulator), alter or replace a statement issued under this section.
- (4) If it does so, it must issue the altered or replacement statement.
- (5) In exercising its functions under this Part, a licensing authority must have regard to the statement issued by it under this section.
- (6) A licensing authority must publish a statement issued by it under this section.

### *Licensing rules*

## **83 Licensing rules**

- (1) The Board (acting in its capacity as a licensing authority)—
  - (a) must make suitable licensing rules before the end of the period of 12 months beginning with the day on which a licensable body first becomes entitled to make an application to it for a licence by virtue of a decision of the Board (acting otherwise than in its capacity as a licensing authority or as an approved regulator) under Schedule 12;
  - (b) may make or modify its licensing rules only with the approval of the Board (acting otherwise than in its capacity as a licensing authority or as an approved regulator).
- (2) In subsection (1)(a), “suitable licensing rules” means licensing rules which constitute suitable regulatory arrangements (within the meaning of Schedule 12) in respect of licensable bodies entitled by virtue of a decision under that Schedule to make an application to the Board for a licence.



- (3) Licensing rules made by an approved regulator have effect only at a time when the approved regulator is a licensing authority (subject to any provision made by an order under section 25).
- (4) Licensing rules of a licensing authority are rules as to—
  - (a) the licensing by the authority of licensable bodies, and
  - (b) the regulation by the licensing authority of licensable bodies licensed by it, and their managers and employees.
- (5) Licensing rules of a licensing authority must contain—
  - (a) appropriate qualification regulations in respect of licensable bodies to which the licensing authority proposes to issue licences under this Part,
  - (b) provision as to how the licensing authority, when considering the regulatory objectives (in compliance with its duties under section 3(2) or 28(2)) in connection with an application for a licence, should take account of the objective of improving access to justice,
  - (c) appropriate arrangements (including conduct rules, discipline rules and practice rules) under which the licensing authority will be able to regulate the conduct of bodies licensed by it, and their managers and employees,
  - (d) appropriate indemnification arrangements,
  - (e) appropriate compensation arrangements,
  - (f) the provision required by sections 52 and 54 (resolution of regulatory conflict) (including those provisions as applied by section 103),
  - (g) the provision required by sections 112 and 145 (requirements imposed in relation to the handling of complaints), and
  - (h) any other provision required to be contained in licensing rules by this Act.
- (6) Without prejudice to the generality of subsection (4), licensing rules of a licensing authority may contain any provision authorised by this Act.
- (7) Schedule 11 makes further provision as to the contents of licensing rules.
- (8) Subsections (5) to (7) are subject to—
  - (a) section 105 (which exempts trade unions from certain provisions), and
  - (b) section 106 (which provides for the modification of licensing rules in their application to bodies to which that section applies).
- (9) Licensing rules may not apply to bodies to which section 106 applies in a way which is different from the way they apply to other bodies, except by virtue of an order under that section.

### *Licensing*

## **84 Application for licence**

- (1) A licensing authority other than the Board must determine any application for a licence which is made to it.
- (2) The Board (acting in its capacity as a licensing authority) may determine an application for a licence which is made to it only if the applicant is entitled to make the application by virtue of a decision of the Board (acting otherwise than in its capacity as a licensing authority) under Schedule 12.

- (3) A licensing authority may not grant an application for a licence unless it is satisfied that if the licence is granted the applicant will comply with its licensing rules.
- (4) If the licensing authority grants an application for a licence, it must issue the licence as soon as reasonably practicable.
- (5) The licence has effect from the date on which it is issued.
- (6) References in this section to an application for a licence are to an application for a licence which is—
  - (a) made to a licensing authority by a licensable body, in accordance with the authority's licensing rules, and
  - (b) accompanied by the required application fee (if any).

## **85 Terms of licence**

- (1) A licence issued under section 84 must specify—
  - (a) the activities which are reserved legal activities and which the licensed body is authorised to carry on by virtue of the licence, and
  - (b) any conditions subject to which the licence is granted.
- (2) If an order under section 106 has been made in relation to the licensed body, the licence must also specify the terms of the order.
- (3) In the case of a licensing authority other than the Board, the licence may authorise the licensed body to carry on activities which are reserved legal activities only if the licensing authority is designated in relation to the reserved legal activities in question.
- (4) A licence must be granted subject to the condition that—
  - (a) any obligation which may from time to time be imposed on the licensed body or a person within subsection (5) by or under the licensing authority's licensing rules is complied with, and
  - (b) any other obligations imposed on the licensed body or a person within that subsection by or under this or any other enactment (whether passed before or after this Act) are complied with.
- (5) The persons mentioned in subsection (4) are the managers and employees of a licensed body, and non-authorised persons having an interest or an indirect interest, or holding a material interest, in the licensed body (in their capacity as such).
- (6) A licence may be granted subject to such other conditions as the licensing authority considers appropriate.
- (7) Those conditions may include conditions as to the non-reserved activities which the licensed body may or may not carry on.
- (8) In this Part references to the terms of the licence are to the matters listed in subsections (1) and (2).

## **86 Modification of licence**

- (1) A licensing authority may modify the terms of a licence granted by it—
  - (a) if the licensed body applies to the licensing authority, in accordance with its licensing rules, for it to do so;

- (b) in such other circumstances as may be specified in its licensing rules.
- (2) If a licensed body is a body to which section 106 applies, the licensing authority may modify the terms of its licence in accordance with sections 106 and 107.
- (3) A licensing authority modifies the terms of a licensed body's licence by giving the licensed body notice in writing of the modifications; and the modifications have effect from the time the licensing authority gives the licensed body the notice or such later time as may be specified in the notice.
- (4) The licensing authority's power under this section is subject to—
  - (a) section 85(3) and (4), and
  - (b) licensing rules made under paragraph 6 of Schedule 11.

## **87 Registers of licensed bodies**

- (1) Each licensing authority must keep a register containing the names and places of business of all bodies which hold or have held licences granted by the licensing authority.
- (2) Where any licence held by a body is for the time being suspended, the licensing authority shall cause that fact to be noted in the register in the entry for that body.
- (3) A licensing authority must provide facilities for making the information contained in the entries in its register available for inspection by any person during office hours and without payment.
- (4) The Board may make rules about—
  - (a) the register to be kept by the Board under this section, and
  - (b) the register to be kept under this section by each licensing authority designated under Part 1 of Schedule 10.
- (5) Rules under subsection (4) may in particular prescribe any further information which must be contained in an entry in the register in relation to a licensed body or former licensed body.

## **88 Evidence of status**

- (1) A certificate signed by an officer of a licensing authority appointed for the purpose and stating one of the matters within subsection (2) is, unless the contrary is proved, evidence of the facts stated in the certificate.
- (2) The matters are that any person does or does not, or did or did not at any time, hold a licence granted by the licensing authority under this Part.
- (3) A certificate purporting to be so signed is to be taken to have been so signed unless the contrary is proved.

### *Ownership of licensed bodies*

## **89 Ownership of licensed bodies**

Schedule 13 makes provision about the holding of certain interests in licensed bodies by non-authorised persons.

*Regulation of licensed bodies***90 Duties of non-authorised persons**

A non-authorised person who is an employee or manager of a licensed body, or has an interest or an indirect interest, or holds a material interest, in a licensed body, must not do anything which causes or substantially contributes to a breach by—

- (a) the licensed body, or
  - (b) an employee or manager of the licensed body who is an authorised person in relation to an activity which is a reserved legal activity,
- of the duties imposed on them by section 176.

**91 Duties of Head of Legal Practice**

- (1) The Head of Legal Practice of a licensed body must—
  - (a) take all reasonable steps to ensure compliance with the terms of the licensed body's licence, and
  - (b) as soon as reasonably practicable, report to the licensing authority any failure to comply with the terms of the licence.
- (2) Subsection (1) does not apply to the terms of the licence so far as they require compliance with licensing rules made under paragraph 20 of Schedule 11 (accounts) (as to which see section 92).
- (3) The Head of Legal Practice of a licensed body must—
  - (a) take all reasonable steps to ensure that the licensed body, and any of its employees or managers who are authorised persons in relation to an activity which is a reserved legal activity, comply with the duties imposed by section 176, and
  - (b) as soon as reasonably practicable, report to the licensing authority such failures by those persons to comply with those duties as may be specified in licensing rules.
- (4) The Head of Legal Practice of a licensed body must—
  - (a) take all reasonable steps to ensure that non-authorised persons subject to the duty imposed by section 90 in relation to the licensed body comply with that duty, and
  - (b) as soon as reasonably practicable, report to the licensing authority any failure by a non-authorised person to comply with that duty.

**92 Duties of Head of Finance and Administration**

- (1) The Head of Finance and Administration of a licensed body must take all reasonable steps to ensure compliance with licensing rules made under paragraph 20 of Schedule 11 (accounts).
- (2) The Head of Finance and Administration must report any breach of those rules to the licensing authority as soon as reasonably practicable.

### **93 Information**

- (1) The relevant licensing authority in relation to a licensed body may by notice require a person within subsection (2)—
  - (a) to provide information, or information of a description, specified in the notice, or
  - (b) produce documents, or documents of a description, specified in the notice, for the purpose of enabling the licensing authority to ascertain whether the terms of the licensed body's licence are being, or have been, complied with.
- (2) The persons are—
  - (a) the licensed body;
  - (b) any manager or employee (or former manager or employee) of the licensed body;
  - (c) any non-authorised person who has an interest or an indirect interest, or holds a material interest, in the licensed body.
- (3) 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 the information is to be provided or the document produced;
  - (c) may require the information to be provided, or the document to be produced, to the licensing authority or to a person specified in the notice.
- (4) The licensing authority may, by notice, require a person within subsection (2) (or a representative of such a person) 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.
- (5) The licensing authority 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 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 (4).
- (6) The licensing authority, or a person specified under subsection (3)(c) in a notice, may take copies of or extracts from a document produced pursuant to a notice under subsection (1).
- (7) For the purposes of this section and section 94, references to a licensed body include a body which was, but is no longer, a licensed body.

### **94 Enforcement of notices under section 93**

- (1) Where a person is unable to comply with a notice given to the person under section 93, the person must give the licensing authority a notice to that effect stating the reasons why the person cannot comply.
- (2) If a person refuses or otherwise fails to comply with a notice under section 93, the licensing authority may apply to the High Court for an order requiring the person to comply with the notice or with such directions for the like purpose as may be contained in the order.

## **95 Financial penalties**

- (1) A licensing authority may, in accordance with its licensing rules, impose on a licensed body, or a manager or employee of a licensed body, a penalty of such amount as it considers appropriate.
- (2) The amount must not exceed the maximum amount prescribed under subsection (3).
- (3) The Board must make rules prescribing the maximum amount of a penalty which may be imposed under this section.
- (4) Rules may be made under subsection (3) only with the consent of the Lord Chancellor.
- (5) A penalty under this section is payable to the licensing authority.
- (6) For the purposes of this section—
  - (a) references to a licensed body are to a body which was a licensed body at the time the act or omission in respect of which the penalty is imposed occurred, and
  - (b) references to a manager or employee of a licensed body are to a person who was a manager or employee of a licensed body at that time,(whether or not the body subsequently ceased to be a licensed body or the person subsequently ceased to be a manager or employee).
- (7) In sections 96 and 97 references to a “penalty” are to a penalty under this section.

## **96 Appeals against financial penalties**

- (1) A person on whom a penalty is imposed under section 95 may, before the end of such period as may be prescribed by rules made by the Board, appeal to the relevant appellate body on one or more of the appeal grounds.
- (2) The appeal grounds are—
  - (a) that the imposition of the penalty is unreasonable in all the circumstances of the case;
  - (b) that the amount of the penalty is unreasonable;
  - (c) that it is unreasonable of the licensing authority 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) On any such appeal, where the relevant appellate body considers it appropriate to do so in all the circumstances of the case and is satisfied of one or more of the appeal grounds, that body may—
  - (a) quash the penalty,
  - (b) substitute a penalty of such lesser amount as it considers appropriate, or
  - (c) in the case of the appeal ground in subsection (2)(c), substitute for any time imposed by the licensing authority a different time or times.
- (4) Where the relevant appellate body 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.
- (5) Where the relevant appellate body 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.

- (6) A party to the appeal may appeal to the High Court on a point of law arising from the decision of the relevant appellate body, but only with the permission of the High Court.
- (7) The High Court may make such order as it thinks fit.
- (8) Except as provided by this section, the validity of a penalty is not to be questioned by any legal proceedings whatever.

## **97 Recovery of financial penalties**

- (1) If the whole or any part of a penalty is not paid by the time by which, in accordance with licensing rules, 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) Where a penalty, or any portion of it, has not been paid by the time by which, in accordance with licensing rules, it is required to be paid and—
  - (a) no appeal relating to the penalty has been made under section 96 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 licensing authority may recover from the person on whom the penalty was imposed, as a debt due to the licensing authority, any of the penalty and any interest which has not been paid.
- (3) A licensing authority must pay into the Consolidated Fund any sum received by it as a penalty (or as interest on a penalty).

## **98 Referral of employees etc to appropriate regulator**

- (1) The relevant licensing authority may refer to an appropriate regulator any matter relating to the conduct of—
  - (a) an employee or manager of a licensed body;
  - (b) a person designated as a licensed body's Head of Legal Practice or Head of Finance and Administration.
- (2) The licensing authority may also refer any matter relating to the conduct of such a person to the Board.
- (3) Appropriate regulators are—
  - (a) if the person is an authorised person in relation to a reserved legal activity, any relevant approved regulator in relation to that person, and
  - (b) if the person carries on non-reserved activities, any person who exercises regulatory functions in relation to the carrying on of such activities by the person.

## **99 Disqualification**

- (1) A licensing authority may in accordance with its licensing rules disqualify a person from one or more of the activities mentioned in subsection (2) if—
  - (a) the disqualification condition is satisfied in relation to the person, and

- (b) the licensing authority is satisfied that it is undesirable for the person to engage in that activity or those activities.
- (2) The activities are—
  - (a) acting as Head of Legal Practice of any licensed body,
  - (b) acting as Head of Finance and Administration of any licensed body,
  - (c) being a manager of any licensed body, or
  - (d) being employed by any licensed body.
- (3) The disqualification condition is satisfied in relation to a person if, in relation to a licensed body licensed by the licensing authority, the person (intentionally or through neglect)—
  - (a) breaches a relevant duty to which the person is subject, or
  - (b) causes, or substantially contributes to, a significant breach of the terms of the licensed body's licence.
- (4) The relevant duties are—
  - (a) the duties imposed on a Head of Legal Practice by section 91,
  - (b) the duties imposed on a Head of Finance and Administration by section 92,
  - (c) the duties imposed by section 176 on regulated persons (within the meaning of that section), and
  - (d) the duty imposed on non-authorised persons by section 90.

## **100 Lists of disqualified persons**

- (1) The Board must keep lists of persons who are disqualified from—
  - (a) acting as Head of Legal Practice of any licensed body,
  - (b) acting as Head of Finance and Administration of any licensed body,
  - (c) being a manager of any licensed body, or
  - (d) being employed by any licensed body.
- (2) A person is disqualified from acting in a way mentioned in subsection (1) if—
  - (a) the person has been disqualified from so acting by a licensing authority under section 99, and
  - (b) the disqualification continues in force.
- (3) The disqualification ceases to be in force if the appropriate licensing authority so determines, on a review or otherwise, in accordance with licensing rules made under paragraph 23 of Schedule 11.
- (4) The appropriate licensing authority is—
  - (a) the licensing authority which disqualified the person, or
  - (b) if the person was disqualified by an approved regulator which is no longer designated as a licensing authority, the successor licensing authority.
- (5) The successor licensing authority is—
  - (a) the licensing authority which licenses the body in relation to which the disqualification condition (within the meaning of section 99) was satisfied in respect of the person, or
  - (b) if there is no such licensing authority, the licensing authority designated by the Board on an application by the disqualified person.



- (6) The Board must publish the lists kept by it under subsection (1).

### **101 Suspension and revocation of licence**

- (1) A licensing authority may, in accordance with its licensing rules, suspend or revoke any licence granted by it under this Part.
- (2) A licence is to be treated as not being in force at any time while it is suspended under this section.

### **102 Intervention**

Schedule 14 confers powers of intervention on licensing authorities.

### **103 Regulatory conflict and the Board as licensing authority**

- (1) Sections 52 and 54 (regulatory conflict between approved regulators and between approved regulators and other regulators) apply in relation to the Board in its capacity as a licensing authority and its licensing rules as they apply in relation to an approved regulator (including the Board in its capacity as approved regulator) and its regulatory arrangements.
- (2) Section 68 (regulatory conflict and the Board as approved regulator) applies in relation to the Board in its capacity as a licensing authority and its licensing rules as it applies in relation to the Board in its capacity as an approved regulator and its regulatory arrangements.

### **104 Prevention of regulatory conflict: accounts rules**

- (1) Where a licensed body carries on an activity through a solicitor, the rules made under paragraph 20 of Schedule 11 apply instead of those made under sections 32 to 34 of the Solicitors Act 1974 (c. 47).
- (2) Where a licensed body carries on an activity through a licensed conveyancer, the rules made under paragraph 20 of Schedule 11 apply instead of those made under sections 22 and 23 of the Administration of Justice Act 1985 (c. 61).

### *Special kinds of body*

### **105 Trade union exemptions**

- (1) Paragraphs 11 to 14 of Schedule 11 (Head of Legal Practice and Head of Finance and Administration) do not apply in relation to a licensed body which is an independent trade union.
- (2) Schedule 13 (ownership) does not apply in relation to an applicant for a licence, or a licensed body, which is an independent trade union.

### **106 Power to modify application of licensing rules etc to special bodies**

- (1) This section applies to a licensed body (or an applicant for a licence) which is—
- (a) an independent trade union,

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- (b) a not for profit body,
  - (c) a community interest company,
  - (d) a low-risk body (see section 108), or
  - (e) a body of such other description as may be prescribed by order made by the Lord Chancellor on the recommendation of the Board.
- (2) A body to which this section applies may apply to the relevant licensing authority, in accordance with its licensing rules, for the authority to make an order under this section.
- (3) The licensing authority may make one or both of the following orders—
  - (a) that the authority’s licensing rules apply in relation to the body with such modifications as may be specified in the order;
  - (b) that Schedule 13 does not apply in relation to the body, or applies in relation to the body with such modifications as may be specified in the order.
- (4) On an application under subsection (2), the licensing authority may make any order which the authority—
  - (a) has power to make under subsection (3), and
  - (b) considers appropriate in all the circumstances of the case,
 whether or not it is the order for which the applicant applied.
- (5) In deciding what order (if any) is appropriate in all the circumstances of the case, the licensing authority must in particular have regard to—
  - (a) the reserved legal activities and non-reserved activities which the body carries on (or proposes to carry on),
  - (b) the nature of the persons to whom the body provides (or proposes to provide) services,
  - (c) any non-authorised persons who have an interest or an indirect interest in the licensed body or hold a material interest in the licensed body, or are managers of the body, and
  - (d) any other matter specified in the authority’s licensing rules.
- (6) If the licensing authority makes an order under subsection (3), the authority’s licensing rules or Schedule 13 or both (as the case may be) have effect in relation to that body in accordance with that order.
- (7) The licensing authority may not make an order under subsection (3)(a) in relation to provisions of its licensing rules made in accordance with the following paragraphs of Schedule 11—
  - (a) paragraphs 2 and 3 (determination and review of applications for a licence);
  - (b) paragraphs 7 and 8 (applications under this section);
  - (c) paragraphs 9(3), 18 and 23 (disqualifications);
  - (d) paragraph 10(2) (management);
  - (e) paragraph 16 (carrying on of licensed activities);
  - (f) paragraph 24(1), (2), (3) and (8) (grounds for suspending and revoking licences);
  - (g) paragraph 24(10) and (11) (procedure for suspending or revoking licence);
  - (h) paragraph 26(2) (review of decision to suspend or revoke licence).

- (8) The licensing authority may not make an order under subsection (3)(a) which results in its licensing rules, as they apply in relation to the body to which the order relates, not making the provision required by—
- (a) section 83(5)(a) to (g);
  - (b) paragraph 1 of Schedule 11 (applications for licences);
  - (c) paragraph 4(3) of that Schedule (renewal of licences);
  - (d) paragraph 6 of that Schedule (modification of licence);
  - (e) paragraph 20 of that Schedule (accounts).
- (9) If the licensing authority's licensing rules, as they apply in relation to a body to which an order under subsection (3)(a) relates, make provision requiring the body to have—
- (a) a Head of Legal Practice approved by the licensing authority, or
  - (b) a Head of Finance and Administration approved by the licensing authority,
- they must also provide for a review by the licensing authority of any decision by it to refuse or withdraw that approval.

#### **107 Modifications under section 106: supplementary**

- (1) This section applies where a licensing authority has made an order under section 106 in relation to a body to which that section applies.
- (2) The licensing authority must revoke the order under section 106 if it becomes aware that the body in respect of which the order was made is no longer a body to which that section applies.
- (3) The licensing authority may revoke or otherwise modify an order under section 106—
- (a) on the application of the body in relation to which the order was made, or
  - (b) of its own motion.
- (4) It may do so only if it considers it appropriate to do so in all the circumstances of the case, having regard to the matters mentioned in section 106(5).

#### **108 “Low risk body”**

- (1) A body (“B”) is a low risk body if the management condition and the ownership condition are satisfied in relation to it.
- (2) The management condition is that the number of managers of the body who are within subsection (4) is less than 10% of the total number of managers.
- (3) The ownership condition is that—
- (a) the proportion of shares in B held by persons within subsection (4) is less than 10%, and
  - (b) the proportion of the voting rights in B which such persons are entitled to exercise, or control the exercise of, is less than 10%, and
  - (c) if B has a parent undertaking (“P”)—
    - (i) the proportion of shares in P held by such persons is less than 10%, and
    - (ii) the proportion of the voting rights in P which such persons are entitled to exercise, or control the exercise of, is less than 10%.
- (4) The persons within this subsection are—

- (a) non-authorised persons;
- (b) licensed bodies.

(5) For the purposes of this section “parent undertaking” has the same meaning as in the Financial Services and Markets Act 2000 (c. 8) (see section 420 of that Act).

## **109 Foreign bodies**

The Lord Chancellor may by order make provision for the modification of any provision of this Part in its application to a body of persons formed under, or in so far as the body is recognised by, law having effect outside England and Wales.

### *Supplementary provision*

## **110 Reporting requirements relating to Part 5**

- (1) The Board’s annual report must deal with how, in the Board’s opinion, the activities of licensing authorities and licensed bodies have affected the regulatory objectives.
- (2) This section does not apply to an annual report for a financial year before the first financial year in which a licence is issued under this Part.
- (3) In this section “annual report” and “financial year” have the same meaning as in section 6.

## **111 Interpretation of Part 5**

- (1) In this Part—
  - “licensed activity”, in relation to a licensed body, means an activity—
    - (a) which is a reserved legal activity, and
    - (b) which the licensed body is authorised to carry on by virtue of its licence;
  - “non-authorised person” means a person who is not within subsection (2);
  - “non-reserved activity” means an activity which is not a reserved legal activity;
  - “relevant appellate body”, in relation to decisions made by a licensing authority under this Part, means the body having power to hear appeals from those decisions (whether by virtue of an order under section 80 or otherwise).
- (2) The following persons are within this subsection—
  - (a) an authorised person in relation to an activity which constitutes a reserved legal activity,
  - (b) a registered foreign lawyer (within the meaning of section 89 of the Courts and Legal Services Act 1990 (c. 41)),
  - (c) a person entitled to pursue professional activities under a professional title to which the Directive applies in a state to which the Directive applies (other than the title of barrister or solicitor in England and Wales),
  - (d) a body which provides professional services such as are provided by persons within paragraph (a) or lawyers of other jurisdictions, and all the managers of which and all the persons with an interest in which—
    - (i) are within paragraphs (a) to (c), or

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- (ii) are bodies in which persons within paragraphs (a) to (c) are entitled to exercise, or control the exercise of, more than 90% of the voting rights.
- (3) In subsection (2)(c) “the Directive” means Directive [98/5/EC](#) of the European Parliament and the Council, to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained.