

LEGAL SERVICES ACT 2007

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5: Alternative Business Structures

Background

180. Historically, there have been a number of statutory restrictions on the type of business structures through which legal services may be provided. Some existing regulators have also prohibited lawyers from entering into partnership with non-lawyers. Certain regulators have also placed restrictions on the ways in which non-lawyers can participate in the management of firms. In other cases, regulators do not have the powers they need to regulate a more diverse range of business structures.
181. In March 2001, the OFT identified a number of rules of the legal profession that were potentially unduly restrictive, and that might have negative implications for consumers.¹ The OFT recommended that rules governing the legal professions should be fully subject to competition law and that unjustified restrictions on competition should be removed.
182. Following the 2004 Clementi Review,² in 2005 the Government published a White Paper, *The Future of Legal Services: Putting Consumers First*.³ It proposed ABS, which would allow different types of lawyers and non-lawyers to work together in an ABS firm or company, and/or the possibility of non-lawyer ownership and investment. It identified potential benefits for both consumers and legal services providers.

““Potential benefits for consumers:

- more choice: consumers will have greater flexibility in deciding from where to obtain legal and some non-legal services;
- reduced prices: consumers should be able to purchase some legal services more cheaply. This should arise where ABS firms realise savings through economies of scale and reduce transaction costs where different types of legal professionals are part of the same firm;
- better access to justice: ABS firms might find it easier to provide services in rural areas or to less mobile consumers;
- improved consumer service: consumers may benefit from a better service where ABS firms are able to access external finance and specialist non-legal expertise;
- greater convenience: ABS firms can provide one-stop-shopping for related services, for example car insurance and legal services for accident claims; and

¹ OFT, 2001

² Clementi, 2004

³ Department for Constitutional Affairs, 2005

*These notes refer to the Legal Services Act 2007 (c.29)
which received Royal Assent on 30th October 2007*

- increased consumer confidence: higher consumer protection levels and an increase in the quality of legal services could flow from ABS firms which have a good reputation in providing non-legal services. These firms will have a strong incentive to keep that reputation when providing legal services.

“Potential benefits for legal service providers:

- increased access to finance: at present, providers can face constraints on the amount of equity, mainly debt equity, they can raise. Allowing alternative business structures will facilitate expansion by firms (including into international markets) and investment in large-scale capital projects that increase efficiency;
- better spread of risk: a firm could spread its risk more effectively among shareholders. This will lower the required rate of return on any investment, facilitate investment and could deliver lower prices;
- increased flexibility: non-legal firms such as insurance companies, banks and estate agents will have the freedom to realise synergies with legal firms by forming ABS firms and offering integrated legal and associated services;
- easier to hire and retain high-quality non-legal staff: ABS firms will be able to reward non-legal staff in the same way as lawyers; and
- more choice for new legal professionals: ABS firms could contribute to greater diversity by offering those who are currently under-represented more opportunities to enter and remain within the profession.”

Section 71: Carrying on activities by licensed bodies

183. This section introduces Part 5. *Section 71(2)* defines “licensed body” as a body holding a licence under Part 5.

Section 72: “Licensable body”

184. This section defines licensable bodies. They are bodies that have at least one manager who is not an authorised person (as defined in section 111) or at least one person who has an interest or an indirect interest in shares in the body who is not an authorised person. Section 207 defines a manager as: a member, in relation to a body corporate whose affairs are managed by its members; a director, in relation to a body corporate if its affairs are not managed by its members; a partner, if the body is a partnership; and a member of its governing body, if it is an unincorporated body other than a partnership.

185. By *section 72(3)*, a person holds an interest in a body if he owns shares in it or is entitled to exercise or control the exercise of voting rights in it. By section 72(6), “shares” means:

- where the body has share capital, allotted shares as defined in the Companies Acts;
- where it has capital but no share capital, the right to share in its capital; and
- where it has no capital, an interest with the right to share in profits or the liability to contribute to losses, or giving rise to an obligation to contribute to the body’s debts or expenses on winding up.

Section 73: Licensing authorities and relevant licensing authorities

186. This section provides that a licensing authority is either the Board or an approved regulator who is designated as a licensing authority under Part 1 of Schedule 10. Under *section 73(2)*, the Board is a licensing authority in relation to all reserved legal activities, but an approved regulator is only a licensing authority in relation to those reserved

legal activities for which it has been designated under Schedule 10. By [section 73\(3\)](#) the Board may delegate its functions as licensing authority and must ensure that it appropriately separates its functions as licensing authority from its other functions.

Section 74: Designation of approved regulator as licensing authority

187. **Part 1 of Schedule 10**, introduced by this section, sets out the procedure to be followed when an approved regulator seeks designation as a licensing authority. It is similar to the procedure for a designation of a body as an approved regulator.
188. **Paragraph 1** of the Schedule sets out certain requirements for applications for designation as a licensing authority.
189. **Paragraph 11** obliges the Board to make rules governing the way it determines applications. Sub-paragraphs (2) and (3) of paragraph 11 sets out conditions that must be met (and must be reflected in the rules) before the Board can grant an application.
190. **Paragraph 12** sets out the matters the Board must consider before deciding whether to grant the application in whole or (where it relates to more than one reserved legal activity) in respect of any of the activities in the application. The Board's decision notice must give reasons for any refusal and must be published.
191. **Paragraph 13** provides that the deadline for deciding applications is 12 months from the day of the application. That period can be extended any number of times up to a maximum of 16 months, but only after consulting the OFT, the Consumer Panel and the Lord Chief Justice, and obtaining the Lord Chancellor's consent.
192. **Paragraph 14** sets out the process by which the Board must make a recommendation to the Lord Chancellor to make an order designating the applicant as a licensing authority.
193. **Paragraph 15** provides that when the Lord Chancellor receives a recommendation from the Board the Lord Chancellor may either make the recommended order or refuse to make it. If the applicant has also applied to be designated as an approved regulator, the Lord Chancellor must first make the appropriate order. If the Lord Chancellor makes a modified order, or declines to make an order, the reasons for that decision must be published. Paragraph 16 provides that the making of the order has the effect that the proposed licensing rules are treated as approved by the Board (but remain subject to the power of the Board to make directions under section 32).

Section 75: Automatic cancellation of designation as licensing authority

194. This section provides that if a licensing authority loses its status as an approved regulator, it automatically loses its status as a licensing authority.

Section 76: Cancellation of designation as licensing authority by order

195. This section sets out how the designation of a licensing authority may be cancelled in whole or in part. Cancellation is by the Lord Chancellor on the recommendation of the Board. The Board must recommend cancellation where the licensing authority requests it and adheres to the requirements under [section 76\(3\)](#). Under [section 76\(5\)](#) the Board may make a recommendation for cancellation where 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 the regulatory objectives, and in all the circumstances of the case it is appropriate to cancel the designation. In considering whether it is appropriate to cancel the designation, the Board must consider the impact of taking action on the other regulatory objectives. By [section 76\(6\)](#) the Board may not exercise this power unless it is satisfied that the use of any of the powers set out in sections 31 to 43 (performance targets, directions and public censure) would not adequately deal with the situation. [Section 76\(7\)](#) introduces **Part 2 of Schedule 10**, which makes provision about recommendations under section 76(5).

196. The Lord Chancellor may decide not to make the order recommended by the Board, but must give reasons and publish them.
197. [Part 2](#) of Schedule 10 sets out the details of the procedure to be used when the Board is considering making a recommendation for cancellation under section 76(5). Paragraph 18 provides that the Board must give the licensing authority a warning notice, setting out its reasons for cancellation, which it must publish. The licensing authority may then make written representations (or oral representations, if authorised by the Board) within 28 days or a longer period specified by the Board. The Board must publish a report about those representations after having regard to the licensing authority's comments about the draft report.
198. [Paragraphs 19 to 24](#) set out the process whereby the Board must consult the OFT, the Consumer Panel, the Lord Chief Justice and such other persons that the Board considers reasonable to consult.
199. [Paragraph 25](#) requires the Board to provide to the licensing authority a copy of any advice from those persons, and to publish that advice together with any representations made by the licensing authority under paragraph 18. The licensing authority and any body licensed by that authority may then make written representations and, if authorised by the Board, oral representations. The Board may also allow others to make written or oral representations. The remainder of the paragraph sets out related procedures.

Section 77: Cancellation of designation: further provision

200. This section allows consequential provision to be made by the Lord Chancellor where the designation of a licensing authority is cancelled. Two types of order are possible. The first, under [section 77\(2\)](#), enables legislation etc to be modified to take account of the cancellation. The second, under [section 77\(3\)](#), allows arrangements to be made transferring licensed bodies from the regulation of the original licensing authority to another that consents to act as their licensing authority. Such arrangements must include provision for placing the transferred bodies under the "new" licensing authority's rules ([section 77\(6\)\(a\)](#)) and may include provisions for transferring licensing fees to the new authority ([section 77\(6\)\(b\)](#)). [Section 77\(8\)](#) provides that the Lord Chancellor may only make an order under this section on the recommendation of the Board, and only one that is materially the same as the order drafted by the Board.

Section 78: The Board's power to recommend orders made under section 77

201. This section provides for the process that must be followed by the Board if it wishes to make a recommendation that the Lord Chancellor exercise the powers conferred under section 77.

Section 79: Cancellation of designation: powers of entry etc

202. Where an approved regulator has its designation cancelled, this section provides for the Board to request assistance from the former licensing authority to enable regulation by the new licensing authority to continue. [Section 79\(3\) to 79\(10\)](#) make provision for the Board to obtain a warrant to enter and search the premises of the former licensing authority and to take possession of written or electronic records where necessary or desirable to enable regulation to continue. The Lord Chancellor must make regulations, either on the Board's recommendation or after consulting it, which specify further matters that the judge must take into account before issuing a warrant, which regulate the exercise of the warrant power and set out the circumstances in which records can be copied.

Section 80: Functions of appellate bodies

Section 81: Procedural requirements relating to recommendations under section 80

203. **Section 80** allows the Lord Chancellor, on the Board's recommendation, to establish appellate bodies by order, or to modify the operation of the Solicitors Disciplinary Tribunal or the Discipline and Appeals Committee of the CLC, for the purposes of appeals under Part 5. The order may also make provision about fees and costs and may make modifications to any enactment. The order must be in a form that is not materially different from the draft attached to the recommendation by the Board under section 81.
204. **Section 81** sets out procedural requirements about recommendations by the Board for an order under section 80.

Section 82: Licensing authority policy statement

205. **Section 82** requires licensing authorities to issue and publish policy statements setting out how they will comply with the regulatory objectives when carrying out their functions under Part 5. These statements have to be approved by the Board, as do any amendments or replacement statements.

Section 83: Licensing rules

206. This section requires the Board, acting in its capacity as a licensing authority, to make suitable licensing rules (which mean suitable regulatory arrangements as defined in Schedule 12) within a period of 12 months from a decision of the Board under Schedule 12 that a licensable body is entitled to apply to it for a licence. Under Schedule 12, such a decision would be made because no other approved regulator has suitable regulatory arrangements in relation to the body in question, or in the case of certain non-commercial bodies (as listed in sub-paragraph (6) of paragraph 1 of Schedule 12), no other approved regulator is prepared to offer appropriate terms. Those rules must be made or modified by the Board acting as licensing authority, with the approval of the Board acting in its capacity as oversight regulator rather than licensing authority or approved regulator. **Section 83(3)** provides that licensing rules made by an approved regulator only have effect while that regulator is also a licensing authority. **Section 83(4)** defines licensing rules. **Section 83(5)** details the provisions that must be contained in licensing rules, including conduct, discipline and practice rules; appropriate provision requiring the licensing authority to take account of the objective of improving access to justice of a proposed application for a licence; the regulatory conflict provisions of sections 52 and 54; and the complaint handling provisions of sections 112 and 145. **Section 83(7)** introduces **Schedule 11**, which makes further provision as to licensing rules. **Sections 83(8) and 83(9)** provide that the licensing rule requirements in section 83(5) and Schedule 11 are subject to sections 105 and 106, which make special provision in relation to trade unions and other special bodies.
207. **Schedule 11** describes licensing rules in detail. It has four parts, dealing with licensing procedure, the structural requirements of licensed bodies, the practice requirements of those bodies, and their regulation. Decisions about individual licences are taken by licensing authorities without reference to the Board or the Lord Chancellor.
208. **Part 1** of this Schedule outlines licensing procedures.
209. **Section 84** (described below) sets out the basic conditions for the way licensing authorities must deal with applications for licences. Part 1 of the Schedule makes detailed provision about licensing decisions. Under paragraphs 1 to 6 licensing rules must include provision about how an application for a licence, or for the modification of a licence, should be made, and they may include provision as to the period for which a licence is to remain in force and the renewal of licences.

210. Paragraphs 7 and 8 make provision in similar terms to that described above in relation to applications under section 106, which deals with the power to modify the application of licensing rules to the special bodies detailed in section 106. In particular, licensing rules must make provision obliging a special body to notify the licensing authority where it becomes a different kind of special body or ceases to be a special body, within 30 days or a longer period provided for in the licensing rules.
211. Part 2 of the Schedule outlines the three basic structural requirements that must be covered in the licensing rules. Paragraphs 9 and 10 require all licensed bodies to have at least one manager who is an authorised person, who can be either an individual or an entity (which is not a licensed body); prohibit a licensed body having a manager who is disqualified (provision about disqualification can be found in section 99); permit licensing rules to be made about managers; and prohibit licensing rules from specifying that all the managers must be authorised persons.
212. Paragraphs 11 and 12 require licensing rules to provide that licensed bodies must also have a designated Head of Legal Practice (HoLP) who is approved by the licensing authority, is an authorised person and not disqualified. Under sub-paragraph (4) of paragraph 11, a HoLP may be approved only if the person is fit and proper to undertake the duties set out in section 91. Paragraph 12 requires provision in the rules about the procedures and criteria that the licensing authority will apply in determining whether a person is fit and proper, and in determining whether to withdraw its approval of the person as fit and proper. It also requires that licensing authorities make provision for review of these decisions. Paragraph 12 also allows the rules to suspend the requirement to have a HoLP for a specified period, so long as the licensed body complies with other requirements set out in the rules.
213. Paragraphs 13 and 14 make similar provision in relation to the requirement to have a designated Head of Finance & Administration (“HoFA”) approved by the licensing authority.
214. Part 3 of the Schedule outlines practice requirements. Licensing rules must cover four basic practice requirements:
- under paragraph 15 a licensed body that is not a company or limited liability partnership with its registered office in England or Wales must have a practising address which is a place in England & Wales where the body carries out some or all of the reserved legal activities for which it is licensed;
 - under paragraph 16 licensed activities may be carried on only by or under the supervision of entitled persons;
 - under paragraph 18 disqualified persons may not work in licensed bodies as employees or officers; and
 - under paragraph 20 clients’ money must be accounted for.
215. Paragraph 17 requires licensing rules to require licensed bodies to have suitable arrangements in place to ensure that:
- they, and their managers and employees, comply with the duties in section 176,
 - they, and such of their managers and employees as are authorised persons, maintain the professional principles set out in section 1; and
 - non-authorised persons subject to the duty in section 90 comply with it.
216. Paragraph 19 provides that for the purpose of giving effect to indemnity and compensation arrangements, licensing rules may make provision authorising or requiring funds to be maintained by the licensing authority, insurance to be taken out by the licensing authority, or insurance to be taken out by licensed bodies.

217. Under paragraph 21 of the Schedule, all licensed bodies must pay periodic licensing fees, although different fees can be set for different kinds of body.
218. [Part 4](#) of the Schedule covers a number of areas of regulation of licensed bodies. Descriptions of the various paragraphs in this Part are included within the sections to which they relate.

Section 84: Application for licence

219. This section sets out the way licensing authorities must deal with applications for licences. Licensing authorities must determine applications that come from licensable bodies with the required fee and may not grant an application unless they are satisfied that the body will comply with licensing rules. Under [section 84\(4\)](#) licensing authorities must issue the licence as soon as reasonably practicable after the application has been granted and under [section 84\(5\)](#) the licence has effect from that date. Applications for licences may only be made to the Board (acting in its non-licensing authority capacity) under [Schedule 12](#).
220. The Schedule deals with the limited circumstances in which licensable bodies can apply to the Board for a licence. That is when:
- there is no competent licensing authority, and none that is potentially competent (sub-paragraph (3) of paragraph 1) – “competent” and “potentially competent” are defined in paragraphs 5 and 6 as an approved licensing authority that is designated or which the Board anticipates becoming designated in relation to the reserved legal activities that the body proposes to carry out;
 - no licensing authority or potential licensing authority has or plans to have suitable regulatory arrangements (sub-paragraph (4) of paragraph 1). Licensable bodies can apply to licensing authorities for determinations of this ground under paragraph 3, and paragraph 7 defines the factors to be taken into account in considering whether arrangements are suitable; or
 - if the body is of a kind listed in sub-paragraph (6) of paragraph 1 (not for profit bodies, community interest companies, trade unions and prescribed bodies), no licensing authority has terms that are appropriate to it (sub-paragraph (5) of paragraph 1).
221. [Paragraph 2](#) then specifies that the Board must determine whether the licensable body is entitled to apply to it for a licence and give reasons for its decision. Different timescales for the determination apply to each of the grounds (sub-paragraph (2) of paragraph 2). The Board is obliged to make rules providing for a review of its decision, in particular for cases where the ground for its decision no longer applies (sub-paragraphs (4) and (5) of paragraph 2).

Section 85: Terms of licence

222. This section prescribes what terms licences must contain when they are granted. Every licence must specify the reserved legal activities that the licensed body is licensed to carry on, and any conditions attached to the licence ([section 85\(1\)](#)). Under [sections 85\(4\) and 85\(5\)](#) one condition is obligatory: that the licensed body or any employee, manager etc, must comply with obligations imposed on them by the licensing rules or in legislation. The licensing authority may impose such other conditions as it considers appropriate ([section 85\(6\)](#)), including conditions as to the non-reserved activities that a licensed body may carry out ([section 85\(7\)](#)). If the body is one for which an order has been made under section 106, [section 85\(2\)](#) requires the licence also to set out the terms of the order.

Section 86: Modification of licence

223. This section provides for modification of licences where an application is made in accordance with licensing rules or where licensing rules allow modifications to be made in other circumstances (*section 86(1)*). Under *section 86(3)* modifications are made by notice in writing. Under *section 86(4)*, licensing authorities' powers are subject to the constraints as to conditions set out in section 85 and licensing rules about modification of licences.

Section 87: Registers of licensed bodies

224. This section sets out requirements for registers of licensed bodies. Each licensing authority must keep a register of the names and places of business of all the bodies that it licenses or has licensed (*section 87(1)*) and must make a note of any suspensions in that register (*section 87(2)*). The register must be available for inspection free of charge, during office hours (*section 87(3)*). The Board may make other rules about its own and licensing authorities' registers, in particular about other information that registers should contain (*sections 87(4) and 87(5)*).

Section 88: Evidence of status

225. Under this section a signed certificate of a licensing authority stating that a person does or does not, or did or did not, hold a licence granted by the licensing authority, is evidence of those facts unless proved otherwise.

Section 89: Ownership of licensed bodies

226. **Schedule 13**, introduced by this section, deals with the ownership of licensed bodies. Section 105 provides that this Schedule does not apply to trade unions.
227. **Schedule 13** imposes restrictions on the holding of certain types of interests in licensed bodies (restricted interests) by non-authorised persons. Any non-authorised persons holding, or seeking to hold, restricted interests, must be approved by the licensing authority before the body can be licensed. Once the body is licensed any further acquisition or holding of restricted interests by non-authorised persons must also be approved.
228. The main type of restricted interest is a material interest (Schedule 13, paragraph 3), which arises when a person:
- has an interest in at least 10% or more of the shares in it or in its parent company;
 - can exercise or control the exercise of 10% of the voting rights in (or, in some cases, has power to direct the policy of) it or its parent company; or
 - can exercise significant influence over the management of the company or its parent company by virtue of their shareholding or voting power in it.
229. If they wish, licensing authorities can make licensing rules specifying a lower proportion than 10% for defining material interest (sub-paragraph (2) of paragraph 3).
230. Licensing rules may provide for a second type of restricted interest, a "controlled interest". This is a shareholding in the licensed body or a parent undertaking of a percentage specified in licensing rules, or an entitlement to exercise or control the exercise of voting power in a licensed body or parent undertaking of a percentage specified in licensing rules. Licensing rules may only specify a percentage which exceeds the percentage which constitutes a material interest.
231. For the purposes of deciding whether a person has material interest or a controlled interest in a licensed body, account may be taken of interests held by a person's associates, who are defined in paragraph 5. The Lord Chancellor has power in paragraph

9 to change the definitions of “material interest” and “associate”, on the Board’s recommendation.

232. [Paragraph 6](#) sets out the approval requirements. A non-authorised person’s holding of a restricted interest will be approved if the licensing authority is satisfied that it would not compromise the regulatory objectives or compliance by the licensed body and such of its managers and employees who are authorised persons with the duties in section 176. The licensing authority must also be satisfied that the person is a fit and proper person to hold the interest. Licensing rules must include criteria and procedure for making this decision.
233. [Paragraph 7](#) provides that if a person holds a restricted interest by virtue of holding a certain percentage of a body’s shares or controlling a certain percentage of the voting power in a body, any restricted interest held by virtue of a lesser percentage of shares (where the approved interest is in the form of shares) or voting power (where the approved interest is in the form of voting power) is also treated as being approved by the licensing authority. For example, if the material interest threshold is a 10% shareholding and the controlled interest threshold is a 20% shareholding, a person who is approved to hold a controlled interest will also be approved in relation to the material interest.
234. [Part 2](#) covers the identification to licensing authorities of non-authorised persons, and the approval of those persons. At the initial licensing stage, a body seeking a licence must identify any person that it knows holds a restricted interest or expects to hold one when the licence is issued, (sub-paragraphs (1) and (2) of paragraph 10). This includes telling the licensing authority if the identities of such people change after the application has been made (sub-paragraph (2) of paragraph 10). Failing to do so is an offence, punishable on summary conviction by a fine up to level 5 on the standard scale.
235. Under paragraph 13, the applicant body must also notify the non-authorised persons whom it has identified to the licensing authority. Failure to do this is also an offence, punishable in the same way. The notification must explain the effect of paragraph 14, which enables the licensing authority to seek more information from non-authorised persons who have been identified. The deliberate provision of false or misleading information is an offence, punishable by a fine not exceeding the statutory maximum on summary conviction or by a fine and/or two years in prison on conviction on indictment.
236. If the licensing authority is satisfied that the non-authorised person meets the approval requirements in paragraph 6, and that the person has not been disqualified, it may grant the application for a licence. The licensing authority may also approve the holding of the interest subject to conditions (paragraphs 17 and 18), or it may object to the holding of the interest (paragraphs 19 and 20).
237. After a licence has been granted, the acquisition of interests by non-authorised persons is still regulated in the manner set out in part 3 of the Schedule. Under paragraph 21, if an investor intends to take steps to acquire an interest in a licensed body that would give the investor a restricted interest in it, the investor must notify both the licensed body and the licensing authority. Where the investor acquires an interest without taking steps to do so – for instance, by inheriting it – the investor must give the notifications within a time limit set by the Lord Chancellor on the Board’s recommendation. Under paragraphs 22 and 23, failure to give notification is an offence, punishable on summary conviction by a fine of level 5 on the standard scale. Taking a proposed acquisition step without obtaining approval from a licensing authority is also an offence, punishable by a fine not exceeding the statutory maximum on summary conviction or by an unlimited fine and/or two years in prison on conviction on indictment (paragraph 24).
238. Again, the licensing authority may approve the holding of the interest, approve it subject to conditions, or object to it. The procedure and criteria for this are set out in paragraphs 25 to 32. Where the licensing authority approves a proposed interest (with or without conditions) it may specify a period within which the investor must acquire it. If it does not, the period is automatically one year from the date of the approval notice. If the

*These notes refer to the Legal Services Act 2007 (c.29)
which received Royal Assent on 30th October 2007*

investor does not acquire the interest by the deadline, the approval lapses (paragraph 30).

239. The licensing authority also has power to impose conditions on, or object to the holding of an interest after it has been acquired. The procedure and criteria for this are set out in paragraphs 33 to 37.
240. Conditions imposed under either paragraph 28 or paragraph 33 may be varied or waived on application by the investor, (sub-paragraph (1) of paragraph 35). In addition, the licensing authority may cancel a condition on its own initiative, (sub-paragraph (2) of paragraph 35).
241. [Part 4](#) of the Schedule enables licensing rules to be made specifying an upper “ceiling” limit for the holders of shares in licensed bodies by a non-authorised person. If such a limit is imposed, no non-authorised person may exceed it, regardless of whether or not they meet the approval requirements at paragraph 6.
242. [Part 5](#) of the Schedule deals with enforcement. The “divestiture” provisions enable the court, on application of a licensing authority, to order the sale of shares held by a person who holds an interest in a licensed body. This may be done in the following circumstances:
- where an investor has taken steps to obtain an interest without the licensing authority’s approval – this can lead to divestiture even if the investor has not been charged with or convicted of the offence under paragraph 24;
 - where an investor holds a restricted interest in breach of conditions imposed under paragraphs 17, 28 or 33; and
 - where an investor holds an interest to which the licensing authority has objected under paragraphs 31 or 36.
243. The court may also order the sale of shares where a non-authorised person’s shareholding exceeds any ceiling imposed by licensing rules made under Part 4 of the Schedule.
244. Divestiture is limited by paragraph 41 to licensed bodies that are companies with shares. The number of shares the court may order to be sold is limited – essentially only as many as necessary to ensure that the person is no longer in breach of the requirements of the Schedule (sub-paragraphs (2) and (3) of paragraph 45). If the court orders shares to be sold, it may make whatever other orders it sees fit as to the sale or transfer of the shares (sub-paragraph (6) of paragraph 45). The proceeds of sale have to be paid into court for the benefit of whomever is beneficially interested in them – usually the investor – and any such person may apply for part or all of the proceeds. The cost of conducting the sale is first deducted from the proceeds (sub-paragraph (7) of paragraph 45).
245. Where the conditions for divestiture are satisfied, paragraph 44 allows the licensing authority to issue a restriction notice imposing certain restrictions on the shares. It is expected that a restriction notice will be issued when the licensing authority believes that it must act as a matter of urgency before an application for divestiture to the High Court. The restrictions which may be imposed are:
- any transfer of the shares or agreement to transfer them is void (including transfer of the right to receive unissued shares),
 - the shares’ voting rights cannot be exercised,
 - no further shares can be issued to the investor, or
 - the investor cannot be paid any sums due on the shares (dividends etc), unless the company goes into liquidation.

246. A restriction notice ceases to have effect after a High Court order (the court may make such an order on an application for sale of the shares); if no application has been made to the court for divestiture within a prescribed time limit on the expiry of that time limit, or when the licensed body ceases to be licensed.
247. The court may also remove any restrictions imposed under paragraph 45, set out in subparagraph (4) of paragraph 46.
248. Divestiture will not always be possible. Paragraph 46 provides an alternative mechanism for enforcement in a case where a person holds a restricted interest in breach of any conditions imposed on the holding of that interest. The licensing authority may apply to the High Court for an order enforcing the conditions.
249. [Paragraphs 47 to 50](#) provide for the Board to be notified of decisions under this Schedule to object to a person holding an interest, or to impose conditions on their holding it. Paragraph 51 requires the Board to maintain lists of persons who have been subject to objections and conditions, which will be available to licensing authorities and, will enable them to make informed regulatory decisions.

Section 90: Duties of non-authorised persons

250. [Section 90](#) imposes a duty on non-authorised persons who are employees or managers of, or have certain interests in, a licensed body, not to do anything that would cause or substantially contribute to a breach by the licensed body or an authorised person within it of the duties in [section 176](#). [Section 176](#) requires persons regulated by an approved regulator to comply with the regulatory arrangements of that regulator.

Section 91: Duties of Head of Legal Practice

Section 92: Duties of Head of Finance and Administration

251. [Sections 91](#) and [92](#) describe the duties of the HoLP and HoFA respectively, further provision about these roles is made in [Schedule 11](#). The HoLP must take all reasonable steps to ensure compliance with the terms of the licensed body's licence, and that the licensed body and employees or managers of the body who are subject to the duties under [section 176](#) comply with them, and to ensure that non-authorised persons comply with the duty under [section 90](#). The HoLP must report any failures to do so to the licensing authority as soon as reasonably practicable.
252. The HoFA's duty under [section 92](#) is to ensure that the licensed body complies with the accounts rules in the licensing rules; they must, like the HoLP, report failures to do as soon as practicable. [Section 91\(2\)](#) therefore excludes accounts rules from the HoLP's responsibilities.

Section 93: Information

Section 94: Enforcement of notices under section 93

253. These sections deal with the information that a licensing authority may require from a licensed body and others to determine whether the terms of its licence are being complied with. The licensing authority may require information or documents ([section 93\(1\)](#)) from the body itself and any manager, officer or employee, and from any non-authorised person who holds a material interest in the body, [section 93\(2\)](#). Requests for information are made by notice, which can specify the form in which the information is to be provided and set a deadline for doing so, and also inform the provider of the information to whom it must be provided, as set out in [section 93\(3\)](#).
254. The licensing authority can require those persons, or a representative, to give an explanation of that material ([section 93\(4\)](#)). It may pay reasonable expenses to cover the

cost of providing information and of attending to provide an explanation ([section 93\(5\)](#)). It may also copy or take extracts from any documents it receives ([section 93\(6\)](#)).

255. If persons asked for information under section 93 cannot provide it, they must give the licensing authority an explanation ([section 94\(1\)](#)). If a person fails to comply with a request, the licensing authority may apply to the High Court for an order compelling that person to comply ([section 94\(2\)](#)).

Section 95: Financial penalties

256. This section allows licensing authorities to impose financial penalties for breaches of licences, up to a maximum set by the Board in rules made with the Lord Chancellor's consent. Penalties are payable to the licensing authority. Under paragraph 22 of Schedule 11, licensing rules must make provision as to the acts and omissions in respect of which the licensing authority may impose a penalty, and the criteria and procedure to be applied.

Section 96: Appeals against financial penalties

257. Licensed bodies may appeal to the relevant appellate body (defined in section 111) against financial penalties. Appeals have to be made within a deadline set by the Board in rules. There are limited grounds for appeal, ([section 96\(2\)](#)):

- that the imposition of the penalty was unreasonable in all the circumstances,
- that the amount of the penalty was unreasonable, and
- that the payment timetable was unreasonable.

258. The appellate body can quash the penalty, reduce it, or change the payment timetable ([section 96\(3\)](#)). If it reduces the penalty or changes the timetable, it may add interest to the whole of the penalty or part of it ([sections 96\(4\) and 96\(5\)](#)). Further appeals to the High Court on a point of law are possible under [section 96\(6\)](#), and the High Court can then make any order it thinks fit ([section 96\(7\)](#)). [Section 96\(8\)](#) prevents penalties being challenged by any other means.

Section 97: Recovery of financial penalties

259. This section describes the process for recovering financial penalties that have not been paid on time. In general, if a payment is late, and so long as no appeal is pending, it is recoverable as a civil debt under [section 97\(2\)](#). Interest is added automatically under [section 97\(1\)](#) and can be recovered alongside the basic penalty. All recovered penalties have to be paid into the Consolidated Fund ([section 97\(3\)](#)).

Section 98: Referral of employees etc to appropriate regulator

260. This section allows licensing authorities to refer the conduct of licensed bodies' employees, managers, HoLPs and HOFAs to appropriate regulators – any relevant approved regulators for authorised persons, and any other regulator for persons who are not. The licensing authority may also refer such conduct matters to the Board.

Section 99: Disqualification

261. This section provides that people can be disqualified from being employees or managers of licensed bodies, or from holding the HoLP or HoFA posts, if they breach the duties that the Act places on them or cause or contribute to breaches of the body's licence.

262. Under paragraph 23 of Schedule 11, licensing authorities must have rules about the criteria and procedure to be used when considering whether to disqualify someone under this section. This includes rules for reviewing disqualifications and how to determine whether they should cease to have effect.

Section 100: Lists of disqualified persons

263. This section requires the Board to keep lists of persons who are disqualified under section 99 and whose disqualification remains in force. [Section 100\(3\)](#) provides that a disqualification will no longer be in force if the appropriate licensing authority determines that it should not be, whether after a review or otherwise. If a person was disqualified by a regulator that is no longer a licensing authority, a successor authority can decide that the disqualification is no longer in force ([section 100\(4\)](#)). Under [section 100\(5\)](#), the successor authority is either the licensing authority that currently licenses the body where the disqualified person was working, or (if that is impossible) another authority designated for the purpose by the Board on the disqualified person's application. [Section 100\(6\)](#) requires the Board to publish the lists.

Section 101: Suspension and revocation of licence

264. This section provides that a licensing authority can suspend or revoke any licensed body's licence. Paragraph 24 of Schedule 11 requires licensing rules to empower the licensing authority to do this in the following circumstances:
- paragraph 24, sub-paragraph (3): if a body is no longer a licensable body;
 - paragraph 24, sub-paragraph (4): where the licensed body fails to comply with licensing rules, under paragraph 16 of Schedule 11 (reserved legal activities must be carried on through an entitled person);
 - paragraph 24, sub-paragraph (5): where non-authorised persons hold interest in licensed bodies in breach of Schedule 13,
 - paragraph 24, sub-paragraph (6): where a non-authorised person breaches the duties in section 90;
 - paragraph 24, sub-paragraph (7): where an employee or manager who is an authorised person fails to comply with the duties under section 176;
 - paragraph 24, sub-paragraph (8): where a licensed body has a manager or employee has been disqualified from acting as a manager or employee, on specified grounds; and
 - paragraph 24, sub-paragraph (9): where a licensed body is unable to comply with the licensing rules about the HoLP or HoFA.
265. A licensing authority must give at least 28 days notice of its intention to suspend or revoke a licence, in accordance with sub-paragraphs (10) and (11) of paragraph 24.
266. [Paragraph 25](#) allows licensing authorities to make rules about other circumstances in which it may suspend or revoke a licence.
267. Under paragraph 26 licensing rules must also include provisions about the criteria and procedure to be used when deciding on any suspension or revocation under paragraphs 24 or 25, and must provide for a review of that decision.

Section 102: Intervention

268. This section introduces [Schedule 14](#) which makes provision about the circumstances in which a licensing authority may intervene in the practice of a licensed body, and the powers exercisable upon intervention. The intervention grounds and powers are based on those available to the Law Society and the Council for Licensed Conveyancers (CLC) under the Solicitors Act 1974 and Administration of Justice Act 1985 as amended by Schedules 16 and 17 of this Act.
269. [Paragraph 1](#) of the Schedule provides that a licensing authority may intervene in a licensed body as set out in the Schedule where a licence granted to a body has expired

or where one or more of the conditions set out at sub-paragraph (2) of paragraph 1 are satisfied.

270. Under sub-paragraphs (5) and (6) of paragraph 1, the powers in the Schedule are exercisable in relation to a body whose licence has been suspended or revoked, or whose licence has expired or ceased to have effect.
271. [Paragraph 2](#) provides that a licensing authority can apply to the High Court for an order to prohibit a person who is holding money on behalf of a licensed body from making any payment of that money, unless they have the leave of the High Court to do so.
272. Under paragraph 3, certain sums of money held by or on behalf of the licensed body, and the right to recover or receive them, can be vested in the licensing authority for people who are beneficially entitled to them. The sums of money are then held on trust by the licensing authority for persons that are beneficially entitled to them, and for use in exercising its intervention powers. Sub-paragraphs (5) to (9) of paragraph 3 set out procedure relating to such vesting, and procedure by which the licensing authority must give the licensed body, and anyone else who has money that is subject to the decision, a copy of the decision and a notice prohibiting any payments out of the money. Sub-paragraph (6) of paragraph 3 allows the body and anyone else who receives the notice to apply to the High Court to contest the licensing authority's decision. If the licensed body or other person breaches the notice, it commits an offence and is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.
273. Under paragraph 4, a licensing authority may decide that the right to recover debts of the licensed body should vest in it.
274. [Paragraph 5](#) requires the licensing authority to put any money that it receives by virtue of these vesting powers into a special account in either its name or the name of a nominated person. The money is held on trust for persons beneficially entitled, and for use in exercising the intervention powers. Paragraph 6 enables the licensing authority to make rules governing the treatment of such money, particularly where, despite reasonable steps by the licensing authority, beneficiaries cannot be traced.
275. [Paragraph 7](#) allows a licensing authority to apply to the High Court for an order requiring a person to give the licensing authority information about any money held by that person on behalf of a licensed body, and the accounts in which it is held. Licensing authorities may also require information that is relevant for tracing purposes.
276. A licensing authority may also give notice to a licensed body requiring it to produce all the documents in its possession or under its control relating to its activities as a licensed body, or to certain trusts. Paragraph 8 sets out what the notice may require. Sub-paragraph (4) of paragraph 8 makes it an offence to refuse, neglect or otherwise fail to comply with the notice. Under sub-paragraph (6) of paragraph 8, a person found guilty is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale. However, it is not an offence if the licensing authority has made an application to the High Court for the production or delivery of the documents. Paragraph 9 sets out the procedure to be followed by the High Court in considering and implementing an order. Paragraph 10 sets out the procedure that a licensing authority must follow if it takes possession of documents under notice or order, as detailed in paragraph 8 and 9.
277. Under paragraph 11, a licensing authority may apply to the High Court for a Communications Redirection Order for a period not exceeding 18 months, which causes mail, telephone and electronic communications to be directed to the licensing authority, or to a person appointed by the licensing authority, who may take possession or receipt of the communications. Sub-paragraph (8) of paragraph 11 allows the licensing authority to apply to the High Court to take steps in relation to a licensed body's website, for the purpose of protecting the public interest and/or the interests of any current, former or potential clients of the body. Sub-paragraph (10) of paragraph 11 prevents

licensing authorities from applying for these powers where they have intervened on the grounds of undue delay.

278. **Paragraph 12** allows a licensing authority in possession of documents acquired through notices, orders, or communications redirection (paragraphs 8, 9 or 11) to apply to the High Court for an order to dispose of, or destroy, the documents. The High Court may make any order it thinks fit. Under paragraph 13 a licensing authority may take copies of, or extracts from, documents acquired through notices, orders or communications redirection.
279. Where a licensed body, or one of its managers or employees, is the trustee of any trust, paragraph 14 allows the licensing authority to apply to the High Court to order the appointment of a new trustee in substitution for that person.
280. **Paragraph 15** allows the powers conferred by this Schedule in relation to sums of money and documents to be exercised despite any lien on them or right to their possession. Paragraph 16 allows the licensing authority to do all things that are reasonably necessary to facilitate the exercise of its powers under this Schedule.
281. **Paragraphs 17 and 18** set out how the licensing authority may recover its intervention costs from the licensed body. Under paragraph 18, the licensing authority can apply to the High Court to recover costs from certain persons where the Court is satisfied that the conduct that led to the intervention was carried on with the consent or connivance of, or was attributable to any neglect on the part of, those persons.

Section 103: Regulatory conflict and the Board as licensing authority

282. This section provides that the rules about regulatory conflict in sections 52, 54 and 68 apply to the Board in its capacity as a licensing authority.

Section 104: Prevention of regulatory conflict: accounts rules

283. This section ensures that a licensing authority's accounts rules (made under Schedule 11) apply to licensed bodies that are carrying on business through solicitors or licensed conveyancers. It does this by replacing the rules under the Solicitors Act 1974 or the Administration of Justice Act 1985 that would otherwise apply.

Section 105: Trade union exemptions

Section 106: Power to modify application of licensing rules etc to special bodies

Section 107: Modifications under section 106: supplementary

Section 108: "Low risk body"

284. These sections provide that certain types of body are eligible to apply for certain statutory requirements and/or licensing rules to be waived or otherwise modified in relation to them. Modifications are given effect by orders made by licensing authorities. The bodies in question are:
- trade unions – from which section 105 removes the HoLP and HoFA requirements and the ownership provisions in Schedule 13;
 - not for profit bodies, defined in section 207 by reference to their charitable or public purpose and prohibitions on distributing income or assets to members;
 - community interest companies;
 - low-risk bodies – bodies in which levels of non-authorized control falls under a *de minimis* threshold, defined in section 108 as bodies where fewer than 10% of

the managers are non-authorised persons, and the proportion of shares and voting rights held by non-authorised persons in less than 10%; and

- other bodies of types set out in an order made by the Lord Chancellor on the Board's recommendation.

285. In considering whether modifications are appropriate, the licensing authority must consider the legal activities the body aims to carry on, the people to whom it plans to offer services, any non-authorised persons who part-own or manage the body, and any other factors set out in the authority's licensing rules, as laid out in section 106(5). Some provisions cannot be modified at all; others cannot be waived but may otherwise be modified. Otherwise, licensing authorities have discretion to modify requirements in licensing rules and the application of Schedule 13 (*section 106(3)*), and can make whatever modifications are appropriate, whether or not they were what the body asked for (*section 106(4)*). Section 107 then sets out the circumstances in which a licensing authority can change modifications. Where the licensed body is no longer one to which section 106 applies, the licensing authority must revoke the modification order. Otherwise, it may revoke or modify an order if the licensed body requests it or on its own motion.

Section 109: Foreign bodies

286. This section allows the Lord Chancellor to adapt provisions in this Part of the Act in their application to bodies formed under law outside of England and Wales. A company formed under the law of a foreign country might, for example, have different ownership structures for which the Part 5 provisions need to be adapted.

Section 110: Reporting requirements relating to Part 5

287. *Section 110* obliges the Board to include in its annual report (section 6) an assessment of how the activities of licensing authorities and licensed bodies have affected the regulatory objectives. The requirement is not imposed from the first annual report but instead takes effect in the first financial year in which an ABS licence is issued.

Section 111: Interpretation of Part 5

288. This section defines some provisions for the purposes of Part 5.