



# Legal Services Act 2007

## 2007 CHAPTER 29

### PART 5

#### ALTERNATIVE BUSINESS STRUCTURES

##### *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;

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- (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
  - (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;

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- (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.