

Draft Order laid before Parliament under section 206(5) of the Legal Services Act 2007, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2018 No.

LEGAL SERVICES, ENGLAND AND WALES

The Legal Services Act 2007 (Appeals from Licensing Authority Decisions) (General Council of the Bar) Order 2018

Made - - - -

Coming into force in accordance with article 1

The Lord Chancellor makes the following Order in exercise of the powers conferred by sections 80(1)(b) and (4)(b) and 204(3) of the Legal Services Act 2007(1).

In accordance with section 80(3) of that Act, the Order is made following a recommendation made by the Legal Services Board to which was annexed a draft order which was in a form not materially different from this Order.

The Legal Services Board made its recommendation under section 80 of that Act with the consents required by section 81(1) of that Act and having complied with the requirements of section 81(2) to (5) of that Act.

A draft of this Order has been approved by a resolution of each House of Parliament pursuant to section 206(5) of the Legal Services Act 2007.

Citation and commencement

1. This Order may be cited as the Legal Services Act 2007 (Appeals from Licensing Authority Decisions) (General Council of the Bar) Order 2018 and comes into force on 1st October 2018.

Interpretation and application

2.—(1) In this Order, “the 2007 Act” means the Legal Services Act 2007.

(2) This Order applies to appeals from decisions made by the General Council of the Bar in its capacity as a licensing authority.

Appeals to be made to the First-tier Tribunal

3.—(1) The First-tier Tribunal may hear and determine appeals from decisions made by the General Council of the Bar which are appealable under any provision of—

- (a) Part 5 of the 2007 Act, or
- (b) the General Council of the Bar’s licensing rules⁽²⁾.

(2) The First-tier Tribunal may suspend the effect of a decision of the General Council of the Bar (whether or not the decision has already taken effect) while an appeal against that decision has been brought and has not yet been finally determined or withdrawn.

(3) The First-tier Tribunal may, in relation to appeals from the decisions which are appealable under the licensing rules—

- (a) affirm the General Council of the Bar’s decision in whole or in part;
- (b) quash the General Council of the Bar’s decision in whole or in part;
- (c) substitute for all or part of the General Council of the Bar’s decision another decision of a kind that the General Council of the Bar could have made, or
- (d) remit a matter to the General Council of the Bar (generally, or for determination in accordance with a finding made or direction given by the First-tier Tribunal).

Modifications of the 2007 Act

4. The Schedule to this Order (which modifies provisions of the 2007 Act) has effect.

Date

Name
Minister of State
Ministry of Justice

(2) Section 83 of the 2007 Act defines and makes other provision relating to licensing rules. By reason of article 3, the First-tier Tribunal is the “relevant appellate body” as defined in section 111 of the 2007 Act.

SCHEDULE

Article 4

Modifications to section 96 of the 2007 Act

1. Section 96 of the 2007 Act (appeals against financial penalties) has effect in relation to a penalty imposed by the General Council of the Bar as if—

- (a) in subsection (1), “, before the end of such period as may be prescribed by rules made by the Board,” were omitted;
- (b) subsections (6) and (7) were omitted,
- (c) for subsection (8) there were substituted—
 - “(8) Except as provided by this section or Part 1 of the Tribunals, Courts and Enforcement Act 2007(3), the validity of a penalty is not to be questioned by any legal proceedings whatever.”.

Modifications to Schedule 13 to the 2007 Act

2.—(1) Schedule 13 to the 2007 Act (ownership of licensed bodies) has effect in relation to decisions of the General Council of the Bar with the following modifications.

(2) Paragraph 18 (appeal from decision to approve notified interest subject to conditions) has effect as if—

- (a) in sub-paragraph (1), “before the end of the prescribed period” were omitted;
- (b) sub-paragraphs (3) and (4) were omitted,
- (c) in sub-paragraph (5), after “an appeal under this paragraph” there were inserted “or Part 1 of the Tribunals, Courts and Enforcement Act 2007”.

(3) Paragraph 20 (appeal from decision to object to a notified interest) has effect as if—

- (a) in sub-paragraph (1), “before the end of the prescribed period” were omitted;
- (b) sub-paragraphs (3) and (4) were omitted,
- (c) in sub-paragraph (5), after “an appeal under this paragraph” there were inserted “or Part 1 of the Tribunals, Courts and Enforcement Act 2007”.

(4) Paragraph 29 (appeal from decision to approve a notifiable interest subject to conditions) has effect as if—

- (a) in sub-paragraph (1), “before the end of the prescribed period” were omitted;
- (b) sub-paragraphs (3) and (4) were omitted,
- (c) in sub-paragraph (5), after “an appeal under this paragraph” there were inserted “or Part 1 of the Tribunals, Courts and Enforcement Act 2007”.

(5) Paragraph 32 (appeal from decision to object to acquisition of a notifiable interest) has effect as if—

- (a) in sub-paragraph (1), “before the end of the prescribed period” were omitted;
- (b) sub-paragraphs (3) and (4) were omitted,
- (c) in sub-paragraph (5), after “an appeal under this paragraph” there were inserted “or Part 1 of the Tribunals, Courts and Enforcement Act 2007”.

(6) Paragraph 34 (appeal from decision to impose conditions (or further conditions) on existing restricted interest) has effect as if—

- (a) in sub-paragraph (1), “before the end of the prescribed period” were omitted;

(3) 2007 c. 15.

- (b) sub-paragraphs (3) and (4) were omitted,
 - (c) in sub-paragraph (5), after “an appeal under this paragraph” there were inserted “or Part 1 of the Tribunals, Courts and Enforcement Act 2007”.
- (7) Paragraph 37 (appeal from decision to object to existing restricted interest) has effect as if—
- (a) in sub-paragraph (1), “before the end of the prescribed period” were omitted;
 - (b) sub-paragraphs (4) and (5) were omitted,
 - (c) in sub-paragraph (6), after “an appeal under this paragraph” there were inserted “or Part 1 of the Tribunals, Courts and Enforcement Act 2007”.
- (8) Paragraph 47(4) (notifying the Board of the outcome of an appeal against an objection to holding a restricted interest or the imposition of conditions) has effect as if, for “to the High Court” there were substituted “under Part 1 of the Tribunals, Courts and Enforcement Act 2007”.
- (9) Paragraph 48(3) (notifying the Board of the outcome of an appeal against the imposition of conditions) has effect as if, for “to the High Court” there were substituted “under Part 1 of the Tribunals, Courts and Enforcement Act 2007”.
- (10) Paragraph 50 (appeal from decision to notify the Board where share limit or voting limit breached) has effect as if—
- (a) in sub-paragraph (1), “before the end of the prescribed period” were omitted;
 - (b) sub-paragraphs (3) and (4) were omitted,
 - (c) in sub-paragraph (5), after “any appeal under this paragraph” there were inserted “or Part 1 of the Tribunals, Courts and Enforcement Act 2007”.
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EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision under section 80 of the Legal Services Act 2007 (c. 29) (“the 2007 Act”) for the First-tier Tribunal to hear and determine appeals from decisions made by the General Council of the Bar, in its capacity as a licensing authority. Licensing authorities regulate licensed bodies under the provisions of Part 5 of the 2007 Act (alternative business structures). The decisions are those which are appealable under Part 5 of the 2007 Act or the General Council of the Bar’s own licensing rules. Section 83 of the 2007 Act defines licensing rules as rules about the licensing and regulation of licensed bodies.

Article 3 provides for such appeals to be heard and determined by the First-tier Tribunal and sets out the powers of the First-tier Tribunal in relation to an appeal under the licensing rules. The 2007 Act provides for the grounds of appeal and the First-tier Tribunal’s powers in relation to an appeal under Part 5.

Certain provisions of the 2007 Act are modified by the Schedule to this Order. The modifications take account of the provision in Part 1 of the Tribunals, Courts and Enforcement Act 2007 (c. 15) for appeals from the First-tier Tribunal to go to the Upper Tribunal.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

Document Generated: 2023-10-22

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: The Legal Services Act 2007 (Appeals from Licensing Authority Decisions) (General Council of the Bar) Order 2018 No. 457