



# Legal Services Act 2007

## 2007 CHAPTER 29

### PART 4

#### REGULATION OF APPROVED REGULATORS

##### *The Board as approved regulator*

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

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

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- (5) An order under this section may make such modifications of provision made by or under any enactment (including this Act or any Act passed after this Act) as the Lord Chancellor considers necessary or expedient.

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

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

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

- (1) This section applies in relation to an order under section 62(1)(b) (an order modifying the functions of the Board).
- (2) The order may include (among other things) provision conferring on the Board powers to do any of the following—
- (a) to authorise (otherwise than by the grant of a licence under Part 5) persons or any category of persons (whether corporate or unincorporate) to carry on one or more activities which are reserved legal activities in relation to which the Board is designated as an approved regulator;
  - (b) to make qualification regulations;
  - (c) to make provision as to the educational, training and other requirements to be met by regulated persons who are not relevant authorised persons;
  - (d) to make practice rules and conduct rules;
  - (e) to make disciplinary arrangements in relation to regulated persons (including discipline rules);
  - (f) to make rules requiring the payment of fees specified in or determined in accordance with the rules;
  - (g) to make indemnification arrangements;
  - (h) to make compensation arrangements;
  - (i) to make rules as to the treatment of money (including money held in trust) which is received, held or dealt with for clients, or other persons, by regulated persons, and as to the keeping by such persons of accounts in respect of such money;

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- (j) to take steps for the purpose of ascertaining whether or not the provisions of rules or regulations made, or any code or guidance issued, by the Board in its capacity as an approved regulator are being complied with, and to make rules requiring relevant authorised persons to produce documents and provide information for that purpose;
  - (k) to delegate any of the functions exercisable by the Board in its capacity as an approved regulator to such persons as it considers appropriate;
  - (l) to make regulations or rules providing for appeals to the High Court or another body against decisions made by the Board in its capacity as an approved regulator (including regulations or rules providing for a decision on such an appeal to be final and for orders as to payment of costs).
- (3) The order may—
- (a) provide for any provision of Schedule 14 (licensing authority's powers of intervention)—
    - (i) to apply in relation to the Board (in its capacity as an approved regulator) and regulated persons as it applies in relation to a licensing authority and licensed bodies (or managers or employees of such bodies), or
    - (ii) to so apply with such modifications as are prescribed by the order, or
  - (b) make provision, in relation to the Board (in that capacity) and regulated persons, corresponding to any of the provisions made, in relation to licensing authorities and licensed bodies (or managers or employees of such bodies), by that Schedule.
- (4) For the purposes of giving effect to indemnification arrangements and compensation arrangements, the order may authorise the Board to make rules—
- (a) authorising or requiring the Board to establish and maintain a fund or funds;
  - (b) authorising or requiring the Board to take out and maintain insurance with authorised insurers;
  - (c) requiring relevant authorised persons or relevant authorised persons of any specific description to take out and maintain insurance with authorised insurers.
- (5) In this section—
- “authorised insurer” means a person within any of the following paragraphs—
- (a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 (c. 8) to effect or carry out contracts of insurance of a relevant class;
  - (b) an EEA firm (within the meaning of that Act) of the kind mentioned in paragraph 5(d) of Schedule 3 to that Act, which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to effect or carry out contracts of a relevant class;
  - (c) a person who does not fall within paragraph (a) or (b) and who may lawfully effect or carry out contracts of insurance of a relevant class in a member State other than the United Kingdom;
- “regulated person” has the meaning given by section 21;

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“relevant authorised person” means a person authorised by the Board (other than by the grant of a licence under Part 5) to carry on one or more activities which are reserved legal activities.

- (6) For the purposes of this section—
- (a) a contract of insurance is of a relevant class if it insures against a risk arising from accident, credit, legal expenses, general liability to third parties, sickness, suretyship or miscellaneous financial loss, and
  - (b) the definition of “authorised insurer” in subsection (5) must be read with section 22 of the Financial Services and Markets Act 2000, and any relevant order under that section, and with Schedule 2 to that Act.

#### Commencement Information

- II** S. 64 partly in force; s. 64 not in force at Royal Assent see s. 211; s. 64(1)(2)(4)(5)(6) in force at 1.1.2010 by [S.I. 2009/3250](#), [art. 2\(c\)\(i\)](#) (subject to [art. 3\(2\)](#) (as amended (30.9.2011) by S.I. 2011/2196, arts. 1(2), 5) and with [art. 9](#))

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

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

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

- (1) The Board may recommend to the Lord Chancellor that the Lord Chancellor make an order under section 62 in the form of a draft order prepared by the Board and annexed to the recommendation.
- (2) Before making a recommendation under this section, the Board must give each of the persons listed in subsection (3) a notice containing—
  - (a) a copy of the proposed recommendation,
  - (b) a copy of the proposed draft order, and
  - (c) a statement specifying a period within which representations may be made about the proposals.
- (3) Those persons are—
  - (a) the Lord Chancellor,
  - (b) the OFT,
  - (c) the Consumer Panel,
  - (d) the Lord Chief Justice, and
  - (e) such other persons as the Board considers it reasonable to consult regarding the proposals.

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- (4) The Board must publish a notice given under subsection (2).
- (5) Before making the recommendation, the Board must have regard to any representations duly made (whether by persons within subsection (3) or otherwise).
- (6) If the draft order to be annexed to the recommendation differs from the draft contained in the notice under subsection (2) in a way which is, in the opinion of the Board, material, the Board must, before making the recommendation, publish the draft order along with a statement detailing the changes made and the reasons for those changes.

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

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

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

- (1) An approved regulator may make a request under subsection (4) if it considers that the regulatory arrangements of the Board (in its capacity as an approved regulator) do not make appropriate provision to prevent a conflict between—
  - (a) a requirement of those regulatory arrangements, and
  - (b) a requirement of the regulatory arrangements of the approved regulator.
- (2) An affected person in relation to an approved regulator may request the approved regulator to exercise its powers under subsection (1).
- (3) An affected person in relation to the Board may make a request under subsection (4) if the person considers that the regulatory arrangements of the Board (in its capacity as an approved regulator) do not make appropriate provision to prevent a conflict between—
  - (a) a requirement of those regulatory arrangements, and
  - (b) a requirement of the regulatory arrangements of an approved regulator.
- (4) The request is a request made to the Board (in its capacity as an approved regulator) that it reconsider the provision made by its regulatory arrangements to prevent a regulatory conflict with the conflicting regulator.
- (5) An affected person in relation to the Board may make an application under subsection (6) if the person considers that the regulatory arrangements of an approved regulator do not make appropriate provision to prevent a conflict between—
  - (a) a requirement of those regulatory arrangements, and
  - (b) a requirement of the regulatory arrangements of the Board (in its capacity as an approved regulator).
- (6) The application is an application to the Board for it to exercise its powers under section 32 to direct the approved regulator—

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- (a) to take steps to modify, in such manner as may be specified in the direction, the provision made by its regulatory arrangements to prevent a regulatory conflict with the Board (in its capacity as an approved regulator), or
  - (b) if its regulatory arrangements do not make any such provision, to make such provision as may be specified in the direction to prevent such a conflict.
- (7) An affected person in relation to an approved regulator (other than the Board) may make a request under subsection (8) if the person considers that the regulatory arrangements of the approved regulator do not make appropriate provision to prevent a conflict between—
- (a) a requirement of those regulatory arrangements, and
  - (b) a requirement of the regulatory arrangements of the Board (in its capacity as an approved regulator).
- (8) The request is a request to the approved regulator that it reconsider the provision made by its regulatory arrangements to prevent a regulatory conflict with the Board.
- (9) The Board (in its capacity as an approved regulator) and any other approved regulator must consider any request made to it under this section.
- (10) Subsections (5) to (8) of section 53 apply in relation to an application under subsection (6) as they apply in relation to an application under that section, except that—
- (a) references to the applicant regulator are to be read as references to the person who made the application, and
  - (b) references to the conflicting regulator are to be construed in accordance with this section.
- (11) In this section—
- “affected person” in relation to the Board or any other approved regulator, means—
- (a) any person authorised by the body to carry on a reserved legal activity, or
  - (b) an employee or manager of such a person;
- “conflicting regulator” means—
- (a) in a case within subsection (1), the approved regulator making the request, and
  - (b) in a case within subsection (3) or (5), the approved regulator whose regulatory arrangements are considered to conflict with those of the Board.

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