

**EXPLANATORY MEMORANDUM TO**  
**THE LEGAL SERVICES ACT 2007 (NOTIFICATIONS OF INTERESTS IN**  
**LICENSED BODIES) (SPECIFIED PERIODS) ORDER 2011**

**2011 No. 2193**

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the Instrument**

2.1 This instrument specifies the time periods within which non-authorised persons (non-lawyers) must inform licensing authorities of changes to their holding of shares or voting rights in a licensed body in accordance with the requirements of Schedule 13 to the Legal Services Act 2007 (“the 2007 Act”).

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1. None.

**4. Legislative Context**

4.1 The 2007 Act sets out a framework for the regulation of legal services in England and Wales. The 2007 Act establishes the Legal Services Board (“the LSB”) as the oversight regulator for this new framework. It requires certain legal services (“reserved legal activities”) to be carried out by those who are authorised to do so or exempt from authorisation. It also makes provision for the regulation by approved regulators of those providing such services. A list of approved regulators is set out in Part 1 of Schedule 4 to the 2007 Act.

4.2 Part 5 of the 2007 Act sets out arrangements under which licensing authorities may license firms (“licensed bodies”) which are partly or wholly owned or controlled by non-lawyers to provide legal services or a mixture of legal and non-legal services. Part 1 of Schedule 10 to the 2007 Act allows the Lord Chancellor, on the recommendation of the LSB, to designate approved regulators as licensing authorities for the purpose of Part 5.

4.3 Schedule 13 to the 2007 Act concerns the ownership or control of licensed bodies by non-lawyers and sets out the mechanism by which licensing authorities may approve non-lawyers who hold shares or have voting rights (“restricted interests”) in such bodies. The Schedule specifies that certain actions connected with the holding of restricted interests must be notified to licensing authorities. In some cases, notice must also be given to the licensed body. These are: where there are changes in those expected to hold restricted interests, or the kind of

restricted interest held, prior to the issuing of a licence; where an investor acquires an interest in a licensable body after the grant of a licence; and if a share limit or voting limit imposed by licensing rules has been exceeded.

4.4 Schedule 13 allows the Lord Chancellor, on the LSB's recommendation, to make an Order specifying the time periods within which notification is required. The Schedule includes a number of criminal offences for failure to provide the information required. The maximum penalty that can be imposed on conviction of such offences is a fine not exceeding level 5 on the standard scale— currently set at £5000.

4.5 Schedule 13 to the 2007 Act requires the LSB to make rules specifying the periods within which certain actions are required by licensing authorities, or by the licensed body, following notification of changes to ownership. Rules made under this power require the licensing authority to make its decision within 90 days of notification about whether to approve or object to a non-lawyer's holding of a restricted interest, or whether to object to, or impose restrictions on, the person's holding of an existing restricted interest. Where action is required by the licensed body, it must make its decision within 28 days of notification of changes to ownership.

## **5. Territorial Extent and Application**

5.1 The instrument applies to England and Wales.

## **6. European Convention on Human Rights**

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy Background**

- *What is being done and why*

7.1 The Order sets out the periods within which certain information relating to the holding of shares by, or the voting rights of, non-lawyers in a licensed body must be provided to licensing authorities, or to the licensed body, as required by Schedule 13 to the 2007 Act. The time periods must be specified by Order by the Lord Chancellor on the recommendation of the Board.

7.2 Articles 3 and 4 relate to where an application is made to a licensing authority identifying the non-lawyers who hold or whom the body expects to hold a restricted interest in that body and the nature of that interest. If, before a licence is issued to the body, there are changes to the identity of the non-lawyer or the kind of restricted interest held, then the licensing authority must be informed of the change occurring.

The effect of this Order is to require that such notification take place within 7 days of that change. If the applicant was not immediately aware of the change then it must inform the licensing authority when it becomes aware of it. The Order provides that it must do so within 7 days from the date on which it becomes aware of the change.

- 7.3 The LSB considered that prompt notification of these issues is necessary to ensure that the licensing authority can consider whether it needs to take action to protect consumers from undesirable investors.
- 7.4 Articles 5 and 6 relate to where a non-lawyer acquires a restricted interest in a licensed body after the grant of a licence, or where the person acquires an additional kind of restricted interest, without giving prior notice. The Order specifies that the licensed body and the licensing authority must be notified within 7 days from the date the person becomes aware of the acquisition. If a person was not aware of the need to notify then, under this Order, they must inform the licensed body and the licensing authority of the relevant matters within 7 days starting from the date on which they become aware of the duty to notify.
- 7.5 The LSB considered this short time period to be adequate as a licensable body should have appropriate processes in place to ensure that it is quickly made aware by investors of any change in circumstances. The time period also recognises that licensing authorities need to keep accurate information on those persons who have restricted interests in licensed bodies in order to manage any risks that may arise.
- 7.6 Articles 7 and 8 relate to where a non-lawyer acquires a shareholding or voting rights in a licensed body which exceed any limits on such interests imposed by the licensing authority's licensing rules. The Order specifies that the licensed body and the licensing authority must be notified within 28 days starting from the date the person first becomes aware of the acquisition. If a person was not aware of the requirement to notify then the Order specifies that they must inform the licensed body and the licensing authority within 28 days starting from the date on which they become aware of the facts giving rise to the duty to notify.
- 7.7 The LSB considered the longer time period to be justified in this case as the non-lawyer owners will have already had their interests approved, will be known to the licensing authority and will have the appropriate supervision in place. Therefore the risks of consumer detriment in the event of a short-term excessive holding are considered to be less than in the other two cases specified.

7.8 Overall these notification periods provide clarity for non-lawyers about their obligations and enable licensing authorities to have clear grounds for taking enforcement action if the time periods are not met.

- ***Consolidation***

7.9 This is the first Order made under Schedule 13 to the 2007 Act. There are therefore no earlier Orders to consolidate.

## **8. Consultation Outcome**

8.1 Schedule 13 to the 2007 Act provides that the Lord Chancellor may make an Order only if the LSB has made a recommendation that he does so. Before making its final recommendation to the Lord Chancellor, the LSB must publish its recommendation and a notice seeking representations within a specified period. The LSB has satisfied these statutory requirements.

8.2 It consulted between 6 December 2010 and 21 February 2011 on its proposal concerning the time periods specified for notification of changes to restricted interests which non-lawyers can have in a licensable body. Seven responses to the consultation were received. The majority of responses were supportive of the proposals. However, the Institute of Chartered Accountants in England and Wales (the ICAEW) raised a concern that setting a 7 day period within which licensing authorities needed to be notified of changes to those expected to hold restricted interests prior to the issuing of the licence may disrupt the licensing authority's consideration of a licence application. The LSB considered that it was for licensing authorities to consider what approach they take to minimising the risk of notification disrupting the consideration of a licence application. The consultation and response documents issued by the LSB can be found on the LSB website at:

[http://www.legalservicesboard.org.uk/what\\_we\\_do/consultations/closed/index.htm](http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/index.htm)

## **9. Guidance**

9.1 The LSB has issued general guidance for licensing authorities about the content of licensing rules. The guidance is on the LSB's website at: [www.legalservicesboard.org.uk/.../abs\\_guidance\\_on\\_licensing\\_rules\\_guidance.pdf](http://www.legalservicesboard.org.uk/.../abs_guidance_on_licensing_rules_guidance.pdf).

## **10. Impact**

10.1 An Impact Assessment (IA) has not been prepared for this instrument as the setting of the time periods for notification itself is not considered to impose a regulatory burden. The requirement to notify licensing authorities of changes to ownership was imposed in the 2007 Act itself and the introduction of the licensing framework was considered as part

of the wider impact assessment that accompanied the Legal Services Bill.

- 10.2 A full regulatory impact assessment (RIA) was prepared for the Legal Services Bill in November 2006 and can be found at <http://www.dca.gov.uk/risk/ria-legal-services.pdf>. A supplementary memorandum was published in June 2007 and can be found at <http://www.justice.gov.uk/docs/RIA-supplement-v021.pdf>.

## **11. Regulating small business**

- 11.1 The legislation does not disproportionately affect small business.

## **12. Monitoring and review**

- 12.1 The LSB will carry out a post implementation review of licensing generally in 2014, which will include the notification arrangements under Schedule 13.

## **13. Contact**

Please contact Nalini Deen at the Ministry of Justice (tel: 020 3334 4220 or email: [nalini.deen@justice.gsi.gov.uk](mailto:nalini.deen@justice.gsi.gov.uk)) about any queries regarding this instrument.