

Further rules relating to the regulation of licensed bodies

A consultation paper on rules concerning the notification of changes to the holding of interests in, registers of, and ownership of licensed bodies.

This consultation will close on **21 February 2011**

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Introduction

- 1 The Legal Services Board (the “**LSB**”) is one of the organisations created by the Legal Services Act 2007 (the “**LSA**”) and is responsible for overseeing legal regulators, (referred to as the approved regulators (“**ARs**”) in the LSA) in England and Wales. The LSB’s mandate is to ensure that regulation in the legal services sector is carried out in the public interest and that the interests of consumers are placed at the heart of the system. The LSA gives the LSB and the ARs the same regulatory objectives – including an objective to promote competition within the provision of legal services – and a requirement to have regard to the better regulation principles.
- 2 The LSA also makes provision for approved regulators to apply to the LSB to become designated as licensing authorities (“**LAs**”). As a LA they may issue licences to legal services businesses that have some element of non-lawyer ownership commonly referred to as alternative business structures (“**ABS**”) but known in the LSA as licensed bodies.
- 3 The Act gives the LSB the power¹ (but does not require it) to make a recommendation to the Lord Chancellor about the time period within which certain information must be provided by external investors to a LA. The LSB considers that it is appropriate for it to make such a recommendation in order to ensure that there is clarity for investors about their obligations and to enable LAs to have clear grounds for taking enforcement action if the time periods are not met.
- 4 This consultation sets out proposals beyond the guidance issued in March 2010² for:
 - additional rules about the content of registers that LAs must keep giving details of licensed bodies³;
 - additional rules that the Board must make under Schedule 13 to the LSA concerning the “prescribed period” during which certain actions connected with the ownership of licensed bodies must be carried out; and
 - recommendations to be made by the Board to the Lord Chancellor to make an order specifying periods relating to notification of changes to

¹ Schedule 13 to the LSA paragraphs 10(2), 12(2), 21(3), 23(3), 39(2), 40(2)

² http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/abs_guidance_on_licensing_rules_guidance.pdf

³ LSA s87

ownership as outlined in Schedule 13 to the LSA⁴. These periods are required to be defined in order to ensure that the criminal sanctions put in place by the LSA in relation to the information provided by non-lawyer owners are enforceable.

- 5 The LSB also must keep four lists of people who are disqualified from—
 - (a) acting as Head of Legal Practice (“**HoLP**”) of any licensed body,
 - (b) acting as Head of Finance and Administration (“**HoFA**”) of any licensed body,
 - (c) being a manager of any licensed body, or
 - (d) being employed by any licensed body
- 6 This paper sets out the approach that the LSB will take to keeping these lists.
- 7 In developing the positions in the paper, we have discussed the issues with potential licensing authorities.
- 8 We consider that such a recommendation, and the wider rules and approach in this paper are the appropriate approach, taking into account the regulatory objectives and best regulatory practice.

⁴ Schedule 13 to the LSA paragraphs 10(2), 12(2), 21(3), 23(3), 39(2), 40(2)

Rules in relation to keeping registers of ABS

9 The LSB proposes that the registers kept by it (if it becomes a LA) and other LAs are publically available and accessible. Ensuring that the information held is sufficient to be able to identify licensed bodies, managers, statutory officers and owners of licensed bodies and making the information available should aid public confidence in the providers of legal services.

10 Balanced against this is the requirement on the LSB and the LAs to act proportionately, so it is not proposed that any additional information above what would be normally be expected to be required by the LA, is included in the registers.

11 We propose that the following information is held on the registers:

- Name of licensed body
- Whether the licence is suspended or revoked and the date on which suspension or revocation took place
- Any enforcement action or sanction on the licensed body, its owner or any employee
- Trading name of licensed body
- Previous names of the licensed body
- The company registration number
- The licence number of the body (if any)
- Previous licences held by the body
- The date the licence was issued
- Registered address of licensed body
- Practising address(es) of licensed body
- The names of the head of legal practice and the head of finance and administration
- The authorising body of the head of legal practice⁵
- The reserved legal activities that the body is authorised to undertake
- The ultimate beneficial owner (other than in very limited circumstances)⁶

12 We do not propose to include other information that is more regulatory in nature on the register, although we would encourage LAs to consider whether and how they make such information available. This could include information on matters such as:

- Managers of licensed body⁷
- The names of those with a material interest in the licensed body⁸

⁵ A Head of Legal Practice must be an authorised person i.e. regulated by an AR

⁶ See our guidance “Alternative Business Structures: approaches to licensing” paragraph 110

⁷ See s207 LSA 2007.

- The names of authorised persons who are employees of the licensed body
- Any conditions placed on the licensed body

13 In addition to the statutory requirement to make the register available⁹ we are of the view that the registers should be available electronically on the websites of the LSB (if it acts as a LA) and relevant approved LAs.

14 In order to maintain an accurate register the LSB proposes that the LAs are required to keep their register as up to date as reasonably practicable. We would expect that this would be able to reflect any change made within 28 calendar days.

15 A draft of the rules is at annex A

1. What do you think of the proposed information to be held on the register?
2. Do you think any other information should be held?
3. Do you think that the registers should be publically available on the LA's websites?
4. Do you think that information on the register should be updated in the times suggested?
5. Do you have any views on the rules as they are drafted?

⁸See paragraph 3(1) of Schedule 13 to the LSA 2007

⁹ See section 87(3)

Approach to the LSB's lists of disqualified persons

16 Ensuring that people who are disqualified from involvement in the provision of legal services are kept from further harming the public is a key regulatory protection in the LSA. As such there is a requirement that a centralised list of such people is held by the LSB. This list must be published by the LSB¹⁰.

17 Disqualification is a serious sanction and can be imposed by a LA on someone for intentionally or through neglect breaching a duty or causing or substantially contributing to a significant breach of the terms of an ABS licence¹¹.

18 We think that the information held on the list is useful for:

- LAs to ensure that their licensed bodies are meeting the requirements not to employ disqualified people¹²,
- potential employers to be able to find out which people they are not allowed to employ,
- the public to gain information on people who have caused serious breaches, and
- other regulatory bodies to inform them of regulatory decisions made by LAs.

19 Each LA will have the ability to make disqualification decisions about the people and bodies that it regulates. LAs are required to make provision in their licensing rules as to the procedure, criteria and review of decisions to disqualify¹³. We have issued guidance on this as part of our guidance on the content of licensing rules¹⁴.

20 LAs are required to make provision to notify the LSB of a determination to disqualify, the results of the review of such a determination and any decision that the disqualification should cease to be in force¹⁵. We propose that LAs provide us this information within 7 calendar days of any of these events to ensure that the list held by the LSB is as up to date as possible. We consider 7 calendar days to be sufficient time to provide the information to the LSB. The LSB will then update the information on its website within 2 working days of receiving it from the LA.

¹⁰ See section 100(6) LSA

¹¹ See section 99 (3) LSA

¹² See schedule 11 paragraph 18(2) LSA

¹³ See schedule 11, paragraph 23

¹⁴ See paragraph 101:

http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/abs_guidance_on_licensing_rules_guidance.pdf

¹⁵ See schedule 11 paragraph 23(2)(c) LSA

21 Given the serious nature of disqualification we have considered the information contained on other lists of disqualified persons such as the register of disqualified directors¹⁶. We propose that the following information is included on the list of disqualified people:

- Full name
- Other names known by
- Date of birth
- Type of disqualification (as a manager, employee, HoLP, or HoFA)
- Date of disqualification decision
- Review date
- Result of review
- Cessation of disqualification
- Name of licensed body previously employed by, or manager of
- Number of licence (if any)
- Licensing Authority
- Type of authorisation (if a authorised person e.g. solicitor, barrister etc.)
- Practising certificate number (if any)
- Details of misconduct (reason for disqualification)

22 Although this may seem to be a considerable amount of information, we consider that it is imperative that there is positive identification of all those who are disqualified from involvement in ABS.

23 We propose that, like the register of ABS, this information should be freely accessible on the LSB's website with a link from each licensing authority.

24 We are also required to keep a list under Schedule 13 paragraph 51 of people who LAs have objected to holding of a material interest in an ABS or who have had conditions placed on their ownership. This also needs to include if the LA has applied for that holding to be divested. LAs may also notify us if an owner breaches a share or voting limit but this is not compulsory. We are required to make this list available to all LAs. We propose that the information held on this list should be similar to that on the disqualification list and that it should also be available to the public.

6. What do you think about the requirement on LAs to notify the LSB of disqualification determinations within 7 days?
7. What do you think of the proposed details to be held on the list of disqualified persons?
8. Is it a proportionate amount of information to provide?
9. What do you think of our publication proposals?
10. What is your view on our approach to the list held under schedule 13 paragraph 51?

Specifying periods relating to notification of changes to ownership required by Schedule 13 to the LSA

25 Schedule 13 to the LSA sets out the regime and mechanisms for non-authorized persons (i.e. non lawyers) owning or controlling ABS. The schedule sets out tests that individuals need to satisfy in order to be able to hold an interest¹⁷. There are a number of different ways in which a non-authorized person can hold a material interest¹⁸. We discuss this in more detail in our guidance to licensing authorities¹⁹.

26 Given the strong protection and rigour in Schedule 13 there are a number of areas where there are criminal sanctions for failing to comply with particular requirements (for both holders of an interest and potential holders of an interest). These sanctions are set as fines not exceeding level 5 on the standard scale – the maximum of the scale currently set at £5000. In addition, were such a breach to occur, the breach and the fine would be likely to be taken into account as part of the application for a licence.

27 There are three areas where such a notification requirement is specified in the LSA:

- Where there are changes in those expected to hold restricted interests prior to the issuing of the licence²⁰;
- Where an investor acquires an interest in a licensable body²¹; and
- If a share limit or voting limit has been exceeded²².

28 A draft order is at Annex B.

Notification of changes to those expected to hold restricted interests prior to the issuing of the licence

29 Licensing authorities need to have accurate information about those who hold restricted interests. This is particularly important during the consideration of a licence application. Without good quality information the LA will not be in a position to accurately assess whether there are likely to be any risks posed by the person who is expected to hold an interest.

30 It is a criminal offence to fail to identify a non-authorized person who holds a restricted interest and the kind of restricted interest held. If, during the application process, a different person is expected to hold a restricted interest

¹⁷ See Schedule 13 paragraph 6 LSA

¹⁸ See schedule 13 paragraph 3 LSA

¹⁹ See paragraphs 10 – 11 and 106 – 128:

http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/abs_guidance_on_licensing_rules_guidance.pdf

²⁰ See schedule 13 paragraph 10(2) and 12(2) LSA

²¹ See schedule 13 paragraph 21(3) and 23(2) LSA

²² See schedule 13 paragraph 39(2) and 40(2) LSA

then this must be reported to the LA for its consideration. We consider that it is important for applicants in a licensable body to have appropriate processes in place to ensure that they are made aware by people who are likely to hold a restricted interest and of any changes in their interest. It is therefore proposed that for the purposes of schedule 13 paragraph 10(2) the period specified should be 7 calendar days. We believe that a short deadline is appropriate given the importance of the fitness to own test within the overall regulatory framework in ensuring confidence in the new business. We consider that 7 calendar days recognises this, while ensuring that any affected individual has time to check and, if necessary take advice, on the precise nature of the obligations which they face.

- 31 If, for some reason, the applicant had no knowledge of the change in the holding of a restricted interest before a licence is issued, they must nevertheless notify the LA when they become aware of the change. We propose that the period specified under schedule 13 paragraph 12(2) should be 7 calendar days. The same reasoning lies behind this proposal.

Where an investor acquires an interest in a licensable body

- 32 Keeping an accurate picture of those who control licensed bodies will be important to managing the risks, if any, of ABS. The LSA requires anyone who proposes to take a step which would result in the investor acquiring restricted interest in a licensed body (or, if the investor already has one or more kinds of restricted interest, acquiring an additional kind of restricted interest) to notify the licensed body and the LA of the proposal. However, if the person acquires such an interest in a licensed body without taking such a step then they must notify the licensed body and the LA within a period specified in rules²³.
- 33 If a person had no knowledge of the facts that led them to a position whereby they were holding a restricted interest (such as on inheritance of shares) they must inform the LA within the period specified in the rules. We propose that for the purposes of Schedule 13 paragraph 21(3) and paragraph 23(2) the period should be 7 calendar days. Again, we believe that this reflects the right balance between urgency and practicability.
- 34 If a share limit or voting limit has been exceeded under schedule 13 paragraph 38 LAs may, in their rules, impose limits on the holdings of interests of non-authorized persons. While it is our position as set out in our guidance²⁴ that in principle there should be no restriction on the holding of interests by non-authorized persons, if a LA convinces us that such a

²³ Schedule 13 paragraph 21(3) LSA

²⁴ See paragraph 106:

http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/abs_guidance_on_licensing_rules_guidance.pdf

requirement is justified given their regulatory competence it should be properly enforced.

35 Where such restrictions are in place, inadvertent breaches may be more common, say in a small partnership where a partner who is an authorised person dies unexpectedly leaving the non-lawyer partners owning a share larger than is allowed under the restrictions. Given that the non-lawyer owners will have already had their interests approved and will be known to the LA and will have the appropriate supervision in place we consider these circumstances to be lower risk than the other cases where a comparable criminal sanction exists. However, it is important to set a period to ensure that a breach is enforceable in line with the intent of the Act.

36 Where a non-authorised person acquires (or becomes aware that they have acquired) a holding that exceeds the limits set out in licensing rules we propose that person should be required to notify the LA and the licensed body within a period of 28 calendar days. That is for the purposes of the paragraph 39(2) and 40(2) of Schedule 13 to the LSA the specified period should be 28 calendar days. We believe that the longer period is justified in this case, as the risks of consumer detriment and loss of confidence in the regulatory framework in the event of a short-term excessive holding are less than in the other cases under consideration.

11. What do you think about our approach to specifying the periods in schedule 13 and the draft order? If you wish to provide an alternative approach or specific periods, please provide supporting evidence to justify this.

12. What do you think of the proposed 7 calendar day period for notification of changes that occur prior to issuing of licences?

13. What do you think of the proposed 7 calendar day period for notification where an interest changes?

14. What do you think of the 28 calendar day period for notification if a share or voting limit has been exceeded?

Ownership of licensed bodies: Schedule 13 – prescribed rules

37 Schedule 13 to the LSA concerns the ownership by non-lawyers of ABS. It sets out, amongst other things, the ways in which LAs may approve non-authorised people who hold restricted interests, requirements on non-authorised people to notify LA in certain circumstances, rights of appeal against certain LA decisions and requirements on LAs about the way in which they consider the information that has been given to them. The Schedule states that certain actions (by LAs and non-authorised people) have to be carried out within a “prescribed period” set in rules made by the LSB.

38 The categories of prescribed period seem to us to fall into two groups:

Actions by the LA

39 These are the circumstances when the LA is required to do something:

- (i) Schedule 13 paragraph 25(2) – where the LA has to make a determination about whether to approve or object to an investor’s holding of a notifiable interest following notification by the investor;
- (ii) Schedule 13 paragraph 33(2)(b) – where the LA has to decide whether to impose conditions (or further conditions) on an existing restricted interest;
- (iii) Schedule 13 paragraph 36(2) – where the LA may object to an existing restricted interest; and
- (iv) Schedule 13 paragraph 44(4)(b) – where a restriction notice has been given to an investor and the LA may apply to the High Court for an order for divestiture.

40 In considering what the prescribed period should be for these issues, we consider that the LA should be given sufficient time to analyse the information it has been given and come to a view on what the appropriate approach should be; it may also be appropriate for the LA to have discussions with the investor. Providing sufficient time is more likely to mean that all relevant issues are properly considered, the decision and the reasons for it are made clear to the investor and are less likely to be subject to appeal (with the associated costs and time for both the LA and the investor). In circumstances that fall within Schedule 13 paragraph 44(4)(b), we have taken into account the fact that it is likely that the LA will have to wait for the period un Schedule 13 paragraph 43(2)(b) (application for divestiture, currently proposed to be 28 days) to expire before an application can be made to the High Court. We therefore propose that the prescribed period for these issues should be 90 days.

Actions by investors

- 41 These are periods within which an investor is required to notify a LA or periods within which an investor may make representations to the LA or appeal to the appellate body about a LA's decision.
- 42 The prompt notification of issues to a LA is an important part of ensuring that the LA can consider whether it needs to take action to protect consumers from undesirable investors. Once the LA has made a decision, it is appropriate for the investor to be able to make representations and to exercise any appeal right quickly so that the LA and the investor have certainty within a reasonable time period. We therefore propose that the prescribed period for these issues should be 28 days. Although there are a variety of circumstances and issues to which the term "prescribed period" applies, we do not consider that it would be appropriate to have different periods for each one since this would add unnecessary complexity for both investors and LAs. In addition, the period of 28 days is consistent with what we have proposed for appeals to the appellate body under section 96 of the LSA against financial penalties.

15. What are your views on the time periods that we have proposed?

How to respond

43 The LSB plans to publish all responses received during the consultation period on its website. While the LSB is happy to discuss varying this general policy in individual cases, there is a strong presumption in favour of transparency. It will therefore note publicly that a submission has been received from an identified body which had withheld its consent for publication in the summary of the consultation.

44 We would prefer to receive responses electronically (in Microsoft word or PDF format), but hard copy responses by post or fax are also welcome. Responses should be sent to:

Post: Michael Mackay
Legal Services Board 7th Floor,
Victoria House Southampton Row
London WC1B 4AD

Fax number: 020 7271 0051

Email: consultations@legalservicesboard.org.uk

45 The consultation period will end at **5pm on 21 February** – 12 weeks from date of publication. In accordance with 205 of the Legal Services Act 2007, you are given notice that any representation about the proposed rules must be made to the Board by the end of this period.

46 We are happy to meet you to discuss your views on the consultation if you would find that helpful. Please send all requests to consultations@legalservicesboard.org.uk.

Annex A – Draft rules

Registers of licensed bodies: Section 87(4) rules

A. PREAMBLE

1. These Rules are made by the Board (as defined below) under section 87(4) of the Act (as defined below).

B. DEFINITIONS

2. Words defined in these Rules have the following meanings:

Act	the Legal Services Act 2007
Board	the Legal Services Board
Licensing Authority	within the definition of 73(1) of the Act
Licensed Body	a body granted a licence by a licensing authority

C. WHAT DO THESE RULES APPLY TO?

3. These Rules are the rules that the Board has made in compliance with section 87(4) of the Act in order to specify the information to be held on the registers of licensed bodies.

4. The Board reserves the right to amend these Rules from time to time. If the amendments made to the Rules are, in the opinion of the Board, material the Board will publish a draft of the amended Rules and will invite consultations in accordance with section 205 of the Act.

D. REQUIREMENTS FOR THE PURPOSES OF SECTION 87(4)

5. The register of licensed bodies that each licensing authority holds under section 87(1) shall contain at least the following information:

- a) Name of licensed body
- b) Whether the licence is suspended or revoked and the date on which suspension or revocation took place
- c) Any enforcement action or sanction on the licensed body, its owner or any employee
- d) Trading name of licensed body
- e) Previous names of the licensed body
- f) The company registration number
- g) The licence number of the body (if any)
- h) Previous licences held by the body
- i) The date the licence was issued
- j) Registered address of licensed body
- k) Practising address(es) of licensed body
- l) The names of the head of legal practice and the head of finance and administration
- m) The authorising body of the head of legal practice
- n) The reserved legal activities that the body is authorised to undertake

6. In addition to the requirements on the licensing authority under 87(3) the register should be available electronically via the licensing authority's website, or similar.

E. FURTHER INFORMATION

7. If you have any questions about these Rules you should contact the Board at:

Address: Legal Services Board
7th Floor Victoria House

Southampton Row
London WC1B 4AD

Email: contactus@legalservicesboard.org.uk
Telephone: 020 7271 0050

Ownership of licensed bodies: Schedule 13- prescribed rules

A. PREAMBLE

1. These Rules are made by the Board (as defined below) under Schedule 13 to the Act (as defined below).

B. DEFINITIONS

2. Words defined in these Rules have the following meanings:

Act	the Legal Services Act 2007
Board	the Legal Services Board
Licensing Authority	within the definition of 73(1) of the Act
Licensed Body	a body granted a licence by a licensing authority

C. WHAT DO THESE RULES APPLY TO?

3. These Rules are the rules that the Board has made in compliance with Schedule 13 to the Act in order to specify the prescribed period for certain actions of licensing authorities and others.

4. The Board reserves the right to amend these Rules from time to time. If the amendments made to the Rules are, in the opinion of the Board, material, the Board will publish a draft of the amended Rules and will invite consultations in accordance with section 205 of the Act.

D. REQUIREMENTS FOR THE PURPOSES OF SCHEDULE 13

5. For the purposes of:

- (i) Schedule 13 paragraph 25(2)
- (ii) Schedule 13 paragraph 33(2)(b)
- (iii) Schedule 13 paragraph 36(2)
- (iv) Schedule 13 paragraph 44(4)(b)

the prescribed period is 90 days.

6. In all other cases the prescribed period is 28 days.

E. FURTHER INFORMATION

7. If you have any questions about these Rules you should contact the Board at:

Address: Legal Services Board
 7th Floor Victoria House
 Southampton Row
 London WC1B 4AD

Email: contactus@legalservicesboard.org.uk

Telephone: 020 7271 0050

2010 No.

LEGAL SERVICES, ENGLAND AND WALES

The Legal Services Act 2007 (Notification of Interests in Licensed Bodies) (Specified Periods) Order 2010

<i>Made</i>	***
<i>Laid before Parliament</i>	***
<i>Coming into force</i> - -	***

The Lord Chancellor makes the following Order in exercise of the powers conferred by paragraphs 10(2), 12(2), 21(3), 23(2), 39(2) and 40(2) of Schedule 13 to the Legal Services Act 2007⁽²⁵⁾.

In accordance with each of those paragraphs of that Schedule, the Order is made following a recommendation made by the Legal Services Board.

[The Legal Services Board has made the recommendation after complying with the consultation requirements in]

Citation, commencement and interpretation

—a) This Order may be cited as the Legal Services Act 2007 (Notification of Interests in Licensed Bodies) (Specified Periods) Order 2010.

This Order comes into force on [date].

In this Order “the 2007 Act” means the Legal Services Act 2007.

Specified period for notifying change in restricted interest after application for licence

—b) This paragraph applies for the purposes of the following provisions of Part 2 of Schedule 13 to the 2007 Act (approval of restricted interests on application for licence).

In paragraph 10(2) (applicant for a licence required to inform the licensing authority of certain changes in holdings of restricted interest in the applicant), the specified period is the period of 7 days that starts with the date on which the change that is to be notified takes place.

In paragraph 12(2) (notification period where a person under duty to inform a licensing authority imposed by paragraph 10 of Schedule 13 becomes aware of facts giving rise to that duty only after the duty has arisen), the specified period is the period of 7 days that starts with the date on which the person first becomes aware of the facts that give rise to the duty to notify.

Specified period for notifying acquisition of restricted interest after licence is issued

—c) This paragraph applies for the purposes of the following provisions of Part 3 of Schedule 13 to the 2007 Act (approval of restricted interests after licence is issued).

In paragraph 21(3) (notification period where non-authorised person acquiring a restricted interest in a licensed body becomes aware of the acquisition only after it has taken place), the specified period is the period of 7 days that starts with the date on which the person first becomes aware of the acquisition that is to be notified.

⁽²⁵⁾ 2007 c.29.

In paragraph 23(2) (notification period where a person under a duty to notify imposed by paragraph 21(2) of Schedule 13 becomes aware of facts giving rise to that duty only after the duty has arisen), the specified period is the period of 7 days that starts with the date on which the person first becomes aware of the facts that give rise to the duty to notify.

Specified period for notifying acquisition of interests restricted by licensing rules

—d) This paragraph applies for the purposes of the following provisions of Part 4 of Schedule 13 to the 2007 Act (additional restrictions).

In paragraph 39(2) (notification period for acquisitions of interests that are restricted by licensing rules where person subject to the duty to notify the acquisition becomes aware of it only after it has taken place), the specified period is the period of 28 days that starts with the date on which the person first becomes aware of the acquisition that is to be notified.

In paragraph 40(2) (notification period where a person under a duty to notify imposed by paragraph 39(2) of Schedule 13 becomes aware of facts giving rise to that duty only after the duty has arisen), the specified period is the period of 28 days that starts with the date on which the person first becomes aware of the facts that give rise to the duty to notify.

Signed by authority of the Lord Chancellor

Date

Name
Parliamentary Under Secretary of State
Ministry of Justice

EXPLANATORY NOTE
(This note is not part of the Order)

Annex C – List of questions

Registers of ABS

1. What do you think of the proposed information to be held on the register?
2. Do you think any other information should be held?
3. Do you think that the registers should be publically available on the LA's websites?
4. Do you think that information on the register should be updated in the times suggested?
5. Do you have any views on the rules as they are drafted?

Lists of disqualified persons

6. What do you think about the requirement on LAs to notify the LSB of disqualification determinations within 7 calendar days?
7. What do you think of the proposed details to be held on the list of disqualified persons?
8. Is it a proportionate amount of information to provide?
9. What do you think of our publication proposals?
10. What is your view on our approach to the list held under schedule 13 paragraph 51?

Notification periods under schedule 13

11. What do you think about our approach to specifying the periods in schedule 13 and the draft order? If you wish to provide an alternative approach or specific periods, please provide supporting evidence to justify this.
12. What do you think of the proposed 7 day period for notification prior to issuing of licences?
13. What do you think of the proposed 7 day period for notification where the ownership changes?
14. What do you think of the 28 day period for notification if a limit has been exceeded?

Ownership of licensed bodies: Schedule 13 – prescribed rules

15. What are your views on the time periods that we have proposed?

Annex D – Draft impact assessment

<p>Title: Setting notification periods for owners of licensed bodies under schedule 13 to the Legal Services Act 2007</p> <p>Lead department or agency: Ministry of Justice</p> <p>Other departments or agencies: Legal Services Board</p>	Impact
	IA No: MoJ xxx
	Date: TBC
	Stage: Development/Options
	Source of intervention: Domestic
	Type of measure: Secondary legislation
<p>Contact for enquiries: christopher.baas@legalservicesboard.org.uk</p>	

Summary: Intervention and Options

<p>What is the problem under consideration? Why is government intervention necessary?</p> <p>The authorisation of non-lawyer owners of legal services bodies is one of the key protections in the Legal Services Act 2007 (LSA). Schedule 13 to that Act includes the mechanism by which this authorisation will occur. The requirements of the Act set out three periods where notification is required and where failure to notify within a specified period is punishable as a criminal act. The order discussed sets those periods without which the sanctions would not be enforceable.</p>	
<p>What are the policy objectives and the intended effects?</p> <p>The objective is to ensure that the criminal punishments envisioned by the Act for failure to notify are enforceable. This will ensure that information is provided to the Licensing Authority (LA) as required by the Act. Failure to make an order under these sections would mean that no period was specified and there would be no potential for sanction.</p>	
<p>What policy options have been considered? Please justify preferred option (further details in Evidence Base)</p> <p>Option 0: Do nothing (base case) Option 1: Have a short period (7 days) that accords with the current behaviour of the approved regulators (ARs) for the periods where we consider there to be the higher risk of detriment and a longer period 28 days for the lower risk period. Option 2: Have a short period (7 days) for all the periods</p> <p>Option 1 is preferred as it ensures that the sanctions are able to be enforced and is proportionate to the risk posed.</p>	
<p>When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?</p>	<p>It will be reviewed As part of an ABS review</p>
<p>Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?</p>	<p>Not applicable</p>

Chief Executive's Sign-off For consultation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Chief Executive..... Date:.....

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			England and Wales		
From what date will the policy be implemented?			06/10/2011		
Which organisation(s) will enforce the policy?			Private parties		
What is the annual change in enforcement cost (£m)?			Minimal		
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			No		
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: N/A	Non-traded: N/A	
Does the proposal have an impact on competition?			No		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			Costs:		Benefits:
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro	< 20	Small	Medium	Large
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
Statutory equality duties	No	7
Economic impacts		
Competition	No	7
Small firms	No	7
Environmental impacts		
Greenhouse gas assessment	No	7
Wider environmental issues	No	7
Social impacts		
Health and well-being	No	7
Human rights	No	7
Justice system	No	7
Rural proofing	No	7
Sustainable development	No	7

Evidence Base (for summary sheets) – Notes

References

No.	Legislation or publication
	<u>Legal Services Act (2007)</u>
	<u>LSB Consultation Paper Approaches to Licensing</u>
	<u>LSB Response to Consultation</u>

+ Add another row

Evidence Base

Annual profile of monetised costs and benefits* - (£m) constant prices

	Y ₀	Y ₁	Y ₂	Y ₃	Y ₄	Y ₅	Y ₆	Y ₇	Y ₈	Y ₉
Transition costs										
Annual recurring cost										
Total annual costs										
Transition benefits										
Annual recurring benefits										
Total annual benefits										

* For non-monetised benefits please see summary pages and main evidence base section

Evidence Base (for summary sheets)

1. Introduction

Background

- 1.1 The Legal Services Board (LSB) was created by the Legal Services Act (LSA 2007) and is charged with the responsibility of overseeing the regulators of legal services and ensuring that its activities reflect the regulatory objectives set out in the Act. The LSB's mandate is to ensure that regulation in the legal services industry is carried out in a manner that is consistent with the public interest and that the interest of consumers is central in policy making. The Act gives the LSB and Approved Regulators (AR) the same regulatory objectives. In full these objectives are:
- Protecting and promoting the public interest;
 - Supporting the constitutional principle of the rule of law;
 - Improving the access to justice;
 - Protecting and promoting the interests of consumers;
 - Promoting competition in the provision of services;
 - Encouraging an independent, strong, diverse and effective legal services profession;
 - Increasing public understanding of the citizen's legal rights and duties;
 - Promoting and maintaining adherence to the professional principles.
- 1.2 The LSA 2007 enables the operation of Alternative Business Structures (ABS). The Act also details the process of establishing Licensing Authorities (LAs) and their statutory basis to license Alternative Business Structures (ABS). Both the Solicitor's Regulation Authority (SRA) and the Council for Licensed Conveyancers (CLC) have indicated that they will apply to become LAs in 2011. The issue of the wider impact from the commencement of this part of the Act will be considered in another impact assessment which will provide further detail on the economic impacts of ABS.
- 1.3 There are a number of areas where there are criminal sanctions for failing to comply with particular requirements. These sanctions are set as fines not exceeding level 5 on the standard scale for criminal fines – the maximum of the scale currently set at £5000. In addition, was such a breach to occur, the breach and the fine would be likely to be taken into account as part of the application for a licence.
- 1.4 There are three areas where such a notification requirement is specified in the LSA:
- where there are changes in those expected to hold restricted interests prior to the issuing of the licence;
 - where an investor acquires an interest in a licensable body; and
 - if a share limit or voting limit has been exceeded.

Problem under consideration

- 1.5 The particular problem under consideration is setting periods under Schedule 13 to the LSA paragraphs 10(2), 12(2), 21(3), 23(3), 39(2), 40(2).
- 1.6 The Act gives the LSB the power (but does not require it) to make a recommendation to the Lord Chancellor about the time period within which certain information must be provided by external investors to a LA. The LSB considers that it is appropriate for it to make such a recommendation in order to ensure that there is clarity for investors about their obligations and to enable LAs to have clear grounds for taking enforcement action if the time periods are not met.

Economic rationale

- 1.7 The conventional economic approach to Government intervention is to resolve a problem based on efficiency or equity arguments. The Government may consider intervening if there are strong enough failures in the way markets operate (e.g. monopolies overcharging consumers) or if there are strong enough failures in existing government interventions (e.g. waste generated by misdirected rules). In both cases the proposed new intervention itself should avoid creating a further set of disproportionate costs and distortions. The Government may also intervene for equity (fairness) and redistributive reasons (e.g. to reallocate goods and services to the more needy groups in society).
- 1.8 In this case, intervention would be justified primarily on efficiency grounds: the proposals will ensure that the regulation of legal services remains effective once the LSA 2007 is fully enacted.

The proposals should also ensure that the sanctions for not providing information about owners of ABS are in place creating a level playing field and ensuring that the public are protected.

Affected Stakeholder groups, Organisations and Sectors

1.9 The following individuals/sectors are likely to be affected by the proposals:

- The Legal Services Board
- Prospective licensing authorities
- ABS firms regulated by licensing authorities
- Potential owners of ABS firms
- Consumers of legal services

2. Costs and benefits

2.1 This Impact Assessment identifies impacts on individuals, groups and businesses in the UK, with the aim of understanding what the overall impact to society might be from implementing these options. The costs and benefits of each option are compared to the do nothing option. Impact Assessments place a strong emphasis on valuing the costs and benefits in monetary terms (including estimating the value of goods and services that are not traded). However there are important aspects that cannot sensibly be monetised. These might include how the proposal impacts differently on particular groups of society or changes in equity and fairness, either positive or negative.

Option 0: Base case (do nothing)

2.2 By doing nothing, no order would be made by the Lord Chancellor specifying the periods.

2.3 The do nothing option is the base case against which other options are compared: because the do nothing option is compared against itself its costs and benefits are necessarily zero, as is its Net Present Value (NPV).²⁶

Option 1:

Description

2.4 Have a short period (7 days) that accords with the current behaviour of the approved regulators (ARs) for the periods where we consider there to be the higher risk of detriment and a longer period 28 days for the lower risk period.

Costs of Option 1

ABS firms

2.5 There would be a cost of providing this information to the LA but this should not be different from the general costs associated with providing information to the LA.

2.6 There would be a cost – the fine – where there was non-compliance.

2.7 There would also be a deterrent effect – more risk for bodies being fined. They may incur some additional compliance costs however, these are not expected to be significant as the information that is needed to be supplied to avoid non-compliance is information that already needs to be provided to the LA.

Licensing Authorities

2.8 There may be some additional cost on the LA in monitoring compliance. However, this is likely to be small.

Consumers of legal services

2.9 Any fines or regulatory / compliance costs likely to be passed onto the consumers of legal services.

Benefits of Option 1

²⁶ The Net Present Value (NPV) shows the total net value of a project over a specific time period. The value of the costs and benefits in an NPV are adjusted to account for inflation and the fact that we generally value benefits that are provided now more than we value the same benefits provided in the future.

Consumers of legal services

2.10 Likely to be better off as regulatory regime continues to be effective. If this ensures standard of legal service provision does not fall, will benefit consumers of legal services.

Society

2.11 Society will gain from efficiency benefit and the added protection of owners not being able to avoid their reporting requirements increasing transparency.

Net impact of Option 1

2.12 It has not been possible to quantify the costs and benefits that will result from the proposal. However, the proposals should lead to better information about the owners of ABS. The net impact of the proposals is therefore expected to be positive.

Option 2:

Description

2.13 Have a short period (7 days) for all the periods.

Costs of Option 2

ABS firms

2.14 The costs to ABS firms would be as set out in Option 1. However, these would likely be greater in magnitude as a shorter period would apply in all circumstances.

Licensing Authorities

2.15 The costs to LAs would be as set out in Option 1.

Consumers of legal services

2.16 As set out in Option 1.

Benefits of Option 2

Consumers of legal services

2.17 As set out in Option 1.

Society

2.18 As set out in Option 1.

Net impact of Option 2

2.19 It has not been possible to quantify the costs and benefits that will result from the proposal. However, the proposals should lead to higher compliance with the reporting requirements. The net impact of the proposals is therefore expected to be positive.

3. Enforcement and Implementation

3.1 Licensing Authorities would enforce against the reporting requirements generally. Implementation would be through the licensing rules of the LA.

4. Specific Impact Tests

Equality Impact Assessment

3.2 The proposal is not expected to have any significant impacts.

Competition Assessment

4.1 We do not anticipate any significant impact on competition as a consequence of these proposals.

Small Firms Impact Test

4.2 We do not anticipate any significant impact on small firms as a consequence of these proposals.

Carbon Assessment

4.3 We do not anticipate any significant carbon impacts as a consequence of these proposals.

Other Environment

4.4 We do not anticipate any significant environmental impacts as a consequence of these proposals.

Health Impact Assessment

4.5 We do not anticipate any significant health impacts as a consequence of these proposals.

Human Rights

4.6 The reforms are considered to be compatible with Convention Rights.

Justice Impact Test

4.7 We do not anticipate any significant impact on the justice system as a consequence of these proposals.

Rural Proofing

4.8 We do not anticipate any significant rural impacts as a consequence of these proposals.

Sustainable Development

4.9 We do not anticipate any significant impact on the principles of Sustainable Development as a consequence of these proposals.

Annex 1: Post Implementation Review (PIR) Plan

Basis of the review: N/A
Review objective: N/A
Review approach and rationale: N/A
Baseline: N/A
Success criteria: N/A
Monitoring information arrangements: N/A
Reasons for not planning a PIR: It is not considered feasible to disaggregate the effects of this policy from the wider ABS regime. As such it will be considered as part of the post implementation review of ABS.