STATUTORY INSTRUMENTS

2018 No. 448

LEGAL SERVICES, ENGLAND AND WALES

The Legal Services Act 2007 (General Council of the Bar) (Modification of Functions) Order 2018

Made - - - - 27th March 2018

Coming into force in accordance with article 1

The Lord Chancellor makes the following Order in exercise of the powers conferred by section 64(2), (3) and (4), section 69(1), (4) and (6), and section 204(3) of the Legal Services Act 2007(**1**).

In accordance with section 69(2) and (3) of that Act, this Order is made following a recommendation made by the Legal Services Board to which was annexed a draft order in a form not materially different from this Order.

The Legal Services Board has made the recommendation with the consent required by section 70(1) of that Act and after complying with the requirements in section 70(2) to (5) of that Act.

In accordance with section 206(5) of that Act, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

Citation and commencement

1. This Order may be cited as the Legal Services Act 2007 (General Council of the Bar) (Modification of Functions) Order 2018 and comes into force on 1st October 2018.

Interpretation

2. In this Order—

"the Act" means the Legal Services Act 2007;

"relevant authorised person" means a person authorised by the General Council of the Bar (other than by the grant of a licence under Part 5 of the Act) to carry on an activity which is a reserved legal activity(**2**).

(**1**) 2007 c. 29.
(**2**) "Reserved legal activity" is defined in section 12(1) of the Act.

Power to make regulations or rules providing for appeals to the First-tier Tribunal

3.—(1) The General Council of the Bar may make regulations or rules providing for appeals to the First-tier Tribunal against decisions made by the General Council of the Bar in its capacity as an approved regulator, including in its role as a licensing authority.

(2) The regulations or rules made under paragraph (1) may provide for the First-tier Tribunal to 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already taken effect) while an appeal against that decision has been brought and has not yet been finally determined or withdrawn.

Power of intervention

4.—(1) Subject to the modifications in paragraphs (2) to (4), Schedule 14 to the Act (licensing authority's powers of intervention)(**3**) applies in relation to—

(a) the General Council of the Bar in its capacity as an approved regulator (other than in its role as a licensing authority);

(b) a relevant authorised person;

(c) in the case of a relevant authorised person which is a body, a manager of the body, and

(d) an employee of a relevant authorised person,

as it applies in relation to a licensing authority, a licensed body and a manager or employee of such a body.

(2) Schedule 14 to the Act is to be read as if each reference to—

(a) a "licence" were a reference to an "authorisation";

(b) a "licensed body" were a reference to a "relevant authorised person";

(c) "the licensing authority" or "the relevant licensing authority" were a reference to "the General Council of the Bar", and

(d) a manager of a licensed body were a reference to, in the case of a relevant authorised person which is a body, a manager of the body.

(3) Paragraph 1 of Schedule 14 to the Act has effect as if—

(a) for sub-paragraph (3) there were substituted—

"(3) For the purposes of sub-paragraph (2) a relevant insolvency event occurs in relation to a relevant authorised person if—

(a) in the case of a relevant authorised person who is an individual, the person has been made bankrupt or has made a composition or arrangement with the person's creditors in England or Wales;

(b) in the case of a relevant authorised person which is a body, in England or Wales—

(i) a resolution for a voluntary winding-up of the body is passed without a declaration of solvency under section 89 of the Insolvency Act 1986 (statutory declaration of solvency)(**4**);

(ii) the body enters administration within the meaning of paragraph 1(2)(b) of Schedule B1 to that Act (administration)(**5**);

(**3**) Paragraph 1(3)(d) of Schedule 14 was amended by S.I. 2017/540 and paragraph 11(9) of Schedule 14 was amended by section 91 of, and Schedule 12, Part 3, paragraph 189 to, the Postal Services Act 2011 (c. 5).

(**4**) 1986 c. 45.

(**5**) Schedule B1 was inserted by section 248(2) of, and Schedule 16 to, the Enterprise Act 2002 (c. 40).

(iii) an administrative receiver within the meaning of section 251 of that Act (interpretation) is appointed;

(iv) a winding up becomes a creditors' voluntary winding up under section 96 of that Act (conversion to creditors' voluntary winding up)(**6**);

(v) an order for the winding up of the body is made, or

(vi) a compromise or arrangement between the body and its creditors (or a class of them) is in force;

(c) in the case of a relevant authorised person which is a body, established outside the jurisdiction of England and Wales, the body is—

(i) subject to an event in its country or, as the case may be, territory of incorporation that corresponds to an event as set out in sub-paragraphs (b)(i) to (v), or

(ii) subject to an event that corresponds to an event as set out in sub-paragraph (b)(vi).", and

(b) for sub-paragraphs (5) and (6) there were substituted—

"(5) Where this Schedule applies in relation to a relevant authorised person by virtue of sub-paragraph (1)(a) it continues to apply—

(a) in the case of a relevant authorised person who is an individual—

(i) after the individual's death (and for these purposes, the Schedule is to be treated as applying to a personal representative of the individual as it would apply to a relevant authorised person);

(ii) after the individual's authorisation has been revoked or the individual's authorisation has otherwise ceased to have effect;

(b) in the case of a relevant authorised person which is a body, after the body's authorisation has been revoked or the body's authorisation has otherwise ceased to have effect.

(6) For the purposes of this Schedule "relevant authorised person" includes—

(a) a person whose authorisation is suspended;

(b) a person to whom this Schedule continues to apply by virtue of sub-paragraph (5);

(c) except in this paragraph, a person whose authorisation has been revoked or whose authorisation has otherwise ceased to have effect.".

(4) Paragraph 18 of Schedule 14 to the Act has effect as if in sub-paragraph (2) there were inserted before paragraph (a)—

"(za) if the relevant authorised person is an individual who is or was a partner in a partnership, any of the individual's partners or former partners,".

Power to gather information

5.—(1) The General Council of the Bar may make rules requiring a relevant authorised person to produce documents and provide information for the purpose of ascertaining whether or not the provisions of rules or regulations made, or any code issued, by the General Council of the Bar in its

(**6**) Section 96 was substituted by section 126 of, and Schedule 9, paragraphs 1 and 20 to, the Small Business, Enterprise and Employment Act 2015 (c. 26).

capacity as an approved regulator (other than in its role as a licensing authority) are being complied with.

(2) Rules made under paragraph (1) may include provision that—

(a) the General Council of the Bar may, by notice, require a relevant authorised person to produce documents, or documents of a description, specified in the notice;

(b) the General Council of the Bar may, by notice, require a relevant authorised person to provide information, or information of a description, specified in the notice;

(c) the General Council of the Bar may, by notice, require a relevant authorised person to attend at a time and place specified in the notice to provide an explanation of any document produced or information provided by virtue of the rules;

(d) the General Council of the Bar, or a person appointed by it, may take copies of or extracts from a document produced by virtue of the rules;

(e) the General Council of the Bar may pay to a relevant authorised person such reasonable costs as may be incurred by that person in complying with a requirement imposed by virtue of the rules.

(3) A notice given to a relevant authorised person by virtue of rules made under paragraph (1)—

(a) may specify the manner and form in which any documents are to be produced or information is to be provided;

(b) must specify the period within which the documents are to be produced or information is to be provided;

(c) may require documents to be produced or information to be provided to the General Council of the Bar or to a person specified by it.

(4) If a relevant authorised person refuses or otherwise fails to comply with a requirement imposed by virtue of rules made under paragraph (1) to produce documents, provide information, or comply with a notice under paragraph (2)(c), the General Council of the Bar may apply to the High Court for an order requiring the person to comply with that requirement.

Disciplinary arrangements: sanctions

6.—(1) The General Council of the Bar may make disciplinary arrangements, including disciplinary rules, in relation to—

(a) a relevant authorised person;

(b) in the case of a relevant authorised person which is a body, a manager of the body, and

(c) an employee of a relevant authorised person.

(2) The disciplinary arrangements made under paragraph (1) may, amongst other things, make provision for—

(a) the revocation or suspension of a relevant authorised person's authorisation;

(b) the imposition of conditions on a relevant authorised person's authorisation;

(c) ordering the disbarment by the relevant Inn of Court of a relevant authorised person who is a barrister;

(d) the imposition of a fine not exceeding £250 million in relation to a relevant authorised person which is a body and £50 million in relation to an individual;

(e) the giving of a notice that an individual must complete such continuing development activities as may be specified;

(f) the giving of a warning, a reprimand or advice in relation to future conduct.