

To:	Legal Services Board	
Date of Meeting:	29 January 2014	Item: Paper (14) 06

Title:	Review of schedule 13
Workstream(s):	Strategy development and research - regulatory reform
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Status:	Unclassified

Summary:
<p>Recent LSB research and our monitoring of the SRA's licensing of Alternative Business Structures (ABS) suggest potential issues associated with the application of schedule 13 to the Legal Services Act 2007 (LSA). This addresses the ownership of ABS, in terms of determining whether a Licensing Authority (LA) must assess the suitability of non-authorized individuals. Application of the detailed and prescriptive provisions appears in some cases to be resulting in significant numbers of checks being carried out. While some degree of testing will be necessary, it is possible that changes to the schedule could deliver reasonable simplifications to the authorisation process.</p> <p>We are reviewing these provisions, some of which have an existing route for modification (by Order of the Lord Chancellor on the LSB's recommendation), and the approach taken by LAs to applying them. It is anticipated that we will identify problems falling into one of three categories:</p> <ol style="list-style-type: none"> 1. Those arising from requirements of schedule 13 provisions, where a potential route for change exists in the LSA 2. Those arising from the requirements, but where no route is apparent 3. Those resulting from the approach taken by LAs (but not falling within 1 or 2). <p>Assuming that we gather sufficient evidence, the first category will be discussed with the Ministry of Justice (MoJ) later this year, with a view to possible recommendations to the Lord Chancellor in the autumn for change(s) to ensure that checks do not unduly restrict market entry. Those in the second will be flagged as wider considerations. We expect to discuss those in the third with LAs, with a view to changes to their approach.</p> <p>This work forms part of the LSB's blueprint for regulatory reform and is in keeping with the government's agenda for regulatory simplification and supporting growth.</p>

Recommendation(s):
The Board notes the planned review and its associated timetable.

Risks and mitigations	
Financial:	N/A
Legal:	The extent to which provisions with a possible route for change in the LSA may be modified is unclear at this point. The language of the LSA appears to suggest limited scope, but the position should become clearer once we engage with MoJ.
Reputational:	<p>Bringing forward changes to arrangements that were ostensibly designed to protect the integrity of legal services could lead to challenge/criticism around associated levels of risk. For example, the Council for Licensed Conveyancers (CLC) has expressed the view in initial discussion that change is not needed as the current requirements provide a proportionate response to the risks posed.</p> <p>Evaluation of processes applied by LAs to licensing ABS (category 3 above) could also lead to further commentary on the LSB's remit/approach.</p>
Resource:	While the work is likely to be intensive in nature, we expect it to be met by existing resources. There will, though, be limited scope to accommodate adjustments to plans.

Consultation	Yes	No	Who / why?
Board Members:			Not yet allocated. Terry Babbs and Andrew Whittaker are suggested, but we would welcome the Board's thoughts.
Consumer Panel:		x	
Others:	None		

Freedom of Information Act 2000 (Fol)		
Para ref	Fol exemption and summary	Expires
None		

LEGAL SERVICES BOARD

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Review of schedule 13

Background

1. Holding certain interests in an ABS requires approval by a LA in accordance with the provisions of schedule 13 to the LSA. Current provisions were to an extent copied from the financial sector arrangements that were in place at the time (these have since been amended) with the intent that, as far as possible, people with improper significant influence are detected.
2. Schedule 13 runs to 22 pages in total. At this stage key sections seem likely to be parts 1– introductory (which includes paragraph 9: Lord Chancellor’s power to modify) and 2 – approval of restricted interests on application for licence. These are set out in Annex A. For the sake of brevity, part 3 – approval of restricted interests after licence is issued, part 4 – additional restrictions (e.g. requirements that can be imposed by the licensing rules of a LA), and part 5 – enforcement (e.g. divestiture of interests), have not been provided.
3. The LSB previously issued guidance to LAs on their approach to licensing ABS, including in relation to schedule 13. This indicates that we expect LAs to implement the ownership tests in a proportionate way to ensure that they do not unduly restrict different types of ABS ownership. However, the requirements to be addressed are still detailed and extensive in nature. For example, eight criteria determine whether a qualifying interest is held (relating to shareholdings and voting power) either individually or together with associates. Fit and proper person testing may call for the assessment of parent undertakings and their owners, plus a person’s associates (extensively defined to include, among others, some immediate family members, employees, associated undertakings and their subsidiaries).
4. The Solicitors Regulation Authority (SRA) has perhaps so far had greater experience of applying schedule 13 to complex ABS arrangements/applications. Issues with its processing of applications were considered last year. It has indicated that it struggles with how far up the corporate “chain” it must go in carrying out fit and proper person tests for the purposes of the approval requirements. For example, private equity arrangements can present three or more layers of companies above an ABS with a qualifying interest. It highlighted the possibility of over seven hundred individuals having to complete forms, with a lesser amount being subject to criminal record checks (with associated costs per person in addition to the licence application fee).
5. In contrast, the CLC has stated that it does not consider change is necessary or appropriate. In its view schedule 13 offers a proportionate response to the risks posed. To date it has mostly dealt with, but not exclusively, the conversion of existing regulated firms to ABS status.

6. The LSB carried out research in 2013 into ABS' experience of the licensing process for both the SRA and CLC, which appeared to suggest issues connected with the schedule.
7. This is an opportune time to review schedule 13, particularly paragraph 9, under which the Lord Chancellor may on our recommendation modify (by Order) certain paragraphs. These concern what qualifies as an interest in an ABS, so that a non-lawyer holding it must be approved by the LA, and who constitutes an associate of that individual for the purposes of assessing whether a collective interest exists.

Objective and scope

8. Our objective is to establish the arrangements needed by LAs to reasonably address risks presented in licensing ABS without unduly restricting commercial activity. This involves:
 - understanding the rationale for the existing format of schedule 13, as well as the approach taken in comparable markets (e.g. financial services)
 - identification of issues that may be associated with current arrangements
 - considering intended outcomes to identify core elements or features that are needed in arrangements
 - in the context of the above, distinguishing between the existing provisions of schedule 13 and the licensing procedures of LA that are fit for purpose, and those where modification might help to advance outcome focussed regulation
 - understanding options for change and the scope or appetite for modification
 - where appropriate deliver recommendations for change and, if relevant, implement consequential amendments.
9. With the above in mind, requirements of the LSA relating to ABS licensing and regulation that are not associated with schedule 13 will not be addressed.

Approach and timetable

10. The review involves working with stakeholders, including LAs (existing and forthcoming) and ABS in the first instance, to categorise issues and identify relevant options for change. This is expected to conclude in March 2014. We anticipate that issues will be one of three types:
 - a. Those resulting from the requirements of schedule 13, for which a possible route for change exists
 - b. Those related to the requirements, but for which no route is apparent
 - c. Those related to the approach taken by LAs to licensing ABS, for example through the application of discretion in applying the ownership tests.
11. Type a. in particular (those with a route for modification set out in the LSA) will entail understanding where change may be desirable, the potential scope for it and, within the context of that scope and associated risks, what change might look like. We will seek the Board's decision on the scale of alteration considered appropriate, both prior to (in March 2014) and after consulting on our proposals (in July 2014).

12. Subsequent discussion with MoJ will focus on:

- what any recommendation(s) by the LSB to the Lord Chancellor might look in relation to changes that are permitted in the LSA, with a view to recommendations being made in September 2014, and
- “themes” identified in the issues associated with the provisions of schedule 13 that do not have an obvious route for change.

13. Issues resulting from the approach taken by LAs to licensing ABS will be discussed with LAs, either individually or collectively as appropriate, alongside this timetable.

Recommendation

14. The Board notes the planned review and its associated timetable.

17.01.14

Annex A

Schedule 13: Ownership of Licensed Bodies

PART 1

INTRODUCTORY

Restricted interests subject to approval

- 1 (1) The holding by a non-authorised person of a restricted interest in a licensed body is subject to the approval of the relevant licensing authority in accordance with the provisions of this Schedule.
- (2) In relation to a licensed body which is a partnership, for the purposes of section 34 of the Partnership Act 1890 (c. 39) (dissolution by illegality) the holding by a non-authorised person of a restricted interest in the body without the approval of the relevant licensing authority does not make it unlawful for the business of the partnership to be carried on, or for the partners to carry it on in partnership.

Restricted interest

- 2 (1) "Restricted interest" means each of the following—
 - (a) a material interest;
 - (b) if licensing rules are made by the relevant licensing authority under sub-paragraph (2), a controlled interest.
- (2) Licensing rules may specify that a controlled interest is a restricted interest for the purposes of this Schedule.

Material interest

- 3 (1) For the purposes of this Part of this Act, a person holds a material interest in a body ("B") if the person—
 - (a) holds at least 10% of the shares in B,
 - (b) is able to exercise significant influence over the management of B by virtue of the person's shareholding in B,
 - (c) holds at least 10% of the shares in a parent undertaking ("P") of B,
 - (d) is able to exercise significant influence over the management of P by virtue of the person's shareholding in P,
 - (e) is entitled to exercise, or control the exercise of, voting power in B which, if it consists of voting rights, constitutes at least 10% of the voting rights in B,
 - (f) is able to exercise significant influence over the management of B by virtue of the person's entitlement to exercise, or control the exercise of, voting rights in B,
 - (g) is entitled to exercise, or control the exercise of, voting power in P which, if it consists of voting rights, constitutes at least 10% of the voting rights in P,
 - (h) is able to exercise significant influence over the management of P by virtue of the person's entitlement to exercise, or control the exercise of, voting rights in P.
- (2) Licensing rules made by the relevant licensing authority may provide—
 - (a) that the references in sub-paragraph (1) to 10% are to have effect as references to such lesser percentage as may be specified in the rules;
 - (b) that in relation to a partnership, for the purposes of this Part a person has a material interest in the partnership if he is a partner (whether or not the person has a material interest by virtue of sub-paragraph (1)).
- (3) For the purposes of sub-paragraph (1) "the person" means—
 - (a) the person,
 - (b) any of the person's associates, or
 - (c) the person and any of the person's associates taken together.
- (4) For the purposes of this Schedule, material interests held by virtue of different paragraphs of sub-paragraph (1) are restricted interests of different kinds.

Controlled interest

- 4 (1) For the purposes of this Schedule, a person holds a controlled interest in a body ("B") if the person—
 - (a) holds at least x% of the shares in B,
 - (b) holds at least x% of the shares in a parent undertaking ("P") of B,
 - (c) is entitled to exercise, or control the exercise of, at least x% of the voting rights in B, or
 - (d) is entitled to exercise, or control the exercise of, at least x% of the voting rights in P.
- (2) For the purposes of sub-paragraph (1) "the person" means—

- (a) the person,
 - (b) any of the person's associates, or
 - (c) the person and any of the person's associates taken together.
- (3) In sub-paragraph (1), “x” means such percentage as may be specified in licensing rules made by the relevant licensing authority under paragraph 2(2).
- (4) Licensing rules made under paragraph 2(2) may specify more than one percentage.
- (5) Any percentage specified by licensing rules made under paragraph 2(2) must be greater than—
- (a) 10%, or
 - (b) if the relevant licensing authority makes licensing rules under paragraph 3(2)(a), the percentage specified in those rules.
- (6) For the purposes of this Schedule—
- (a) controlled interests held by virtue of different paragraphs of sub-paragraph (1) are restricted interests of different kinds;
 - (b) if licensing rules made under paragraph 2(2) specify more than one percentage, controlled interests held by virtue of each of those percentages are restricted interests of different kinds.

Associates, parent undertakings and voting power

- 5 (1) For the purposes of this Schedule “associate”, in relation to a person (“A”) and—
- (a) a shareholding in a body (“S”), or
 - (b) an entitlement to exercise or control the exercise of voting power in a body (“V”),
- means a person listed in sub-paragraph (2).
- (2) The persons are—
- (a) the spouse or civil partner of A,
 - (b) a child or stepchild of A (if under 18),
 - (c) the trustee of any settlement under which A has a life interest in possession (in Scotland a life interest),
 - (d) an undertaking of which A is a director,
 - (e) an employee of A,
 - (f) a partner of A (except, where S or V is a partnership in which A is a partner, another partner in S or V),
 - (g) if A is an undertaking—
 - (i) a director of A,
 - (ii) a subsidiary undertaking of A, or
 - (iii) a director or employee of such a subsidiary undertaking,
 - (h) if A has with any other person an agreement or arrangement with respect to the acquisition, holding or disposal of shares or other interests in S or V (whether or not they are interests within the meaning of section 72(3)), that other person, or
 - (i) if A has with any other person an agreement or arrangement under which they undertake to act together in exercising their voting power in relation to S or V, that person.
- (3) In sub-paragraph (2)(c), “settlement” means any disposition or arrangement under which property is held on trust (or subject to a comparable obligation).
- (4) For the purposes of this Schedule—
- “parent undertaking” and “subsidiary undertaking” have the same meaning as in the Financial Services and Markets Act 2000 (c. 8) (see section 420 of that Act);
- “voting power”, in relation to a body which does not have general meetings at which matters are decided by the exercise of voting rights, means the right under the constitution of the body to direct the overall policy of the body or alter the terms of its constitution.

The approval requirements

- 6 (1) For the purposes of this Schedule, the approval requirements are met in relation to a person's holding of a restricted interest if—
- (a) the person's holding of that interest does not compromise the regulatory objectives,
 - (b) the person's holding of that interest does not compromise compliance with the duties imposed by section 176 by the licensed body or persons to whom sub-paragraph (2) applies, and
 - (c) the person is otherwise a fit and proper person to hold that interest.
- (2) This sub-paragraph applies to any employee or manager of the licensed body who is an authorised person in relation to an activity which is a reserved legal activity.

- (3) In determining whether it is satisfied of the matters mentioned in sub-paragraph (1)(a) to (c), the licensing authority must in particular have regard to—
 - (a) the person's probity and financial position,
 - (b) whether the person is disqualified as mentioned in section 100(1), or included in the list kept by the Board under paragraph 51,
 - (c) the person's associates, and
 - (d) any other matter which may be specified in licensing rules.
- (4) Licensing rules must make provision about the procedures that will be applied by the licensing authority when determining whether it is satisfied of the matters mentioned in sub-paragraph (1)(a) to (c).

Approval of multiple restricted interests

- 7 (1) This paragraph applies if a person ("P") holds a kind of restricted interest in a body ("B") by virtue of—
 - (a) holding a particular percentage of the shares in B or a parent undertaking of B, or
 - (b) an entitlement to exercise, or control the exercise of, a particular percentage of the voting rights in B or a parent undertaking of B.
- (2) If the relevant licensing authority approves P's holding of that interest, it is to be treated as also approving P's holding of any lesser restricted interest in B held by P.
- (3) A lesser restricted interest is a kind of restricted interest held by P by virtue of—
 - (a) holding a smaller percentage of the shares mentioned in sub-paragraph (1)(a), or
 - (b) an entitlement to exercise, or control the exercise of, a smaller percentage of the voting rights mentioned in sub-paragraph (1)(b).

Board's power to prescribe rules

- 8 In this Schedule "prescribed" means prescribed by rules made by the Board for the purposes of this Schedule.

Lord Chancellor's power to modify

- 9 The Lord Chancellor may, on the recommendation of the Board, by order modify—
 - (a) paragraph 3 (material interest);
 - (b) paragraphs 4(2), 5, 6(3)(c), 38(3), 41(3) and 42(3) (associates).

PART 2 APPROVAL OF RESTRICTED INTERESTS ON APPLICATION FOR LICENCE

Requirement to identify non-authorised persons

- 10 (1) Where a body applies to a licensing authority for a licence, it must identify in its application—
 - (a) any non-authorised person who holds a restricted interest in the body, or whom the body expects to hold such an interest when the licence is issued, and
 - (b) the kind of restricted interest held, or expected to be held, by that person.
- (2) If, before the licence is issued, there is any change in—
 - (a) the identity of the non-authorised persons within sub-paragraph (1)(a), or
 - (b) the kind of restricted interest held, or expected to be held, by a person identified to the licensing authority under that sub-paragraph,

the applicant must inform the relevant licensing authority within such period as may be specified by order made by the Lord Chancellor on the recommendation of the Board.
- 11 (1) It is an offence for a person to fail to comply with a requirement imposed on the person by paragraph 10.
- (2) A person who is guilty of an offence under sub-paragraph (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (3) It is a defence for a person charged with an offence under sub-paragraph (1) to show that at the time of the alleged offence the person had no knowledge of the facts by virtue of which the duty to notify arose.
- 12 (1) This paragraph applies if a person under a duty to notify imposed by paragraph 10—
 - (a) had no knowledge of the facts by virtue of which that duty arose, but
 - (b) subsequently becomes aware of those facts.
- (2) The person must give the licensing authority the required notification within such period, after the person becomes so aware, as may be specified by order made by the Lord Chancellor on the recommendation of the Board.
- (3) A person who fails to comply with the duty to notify imposed by sub-paragraph (2) is guilty of an offence.

- (4) A person who is guilty of an offence under sub-paragraph (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Requirement to notify non-authorised persons

- 13 (1) Where an applicant for a licence identifies a non-authorised person to a licensing authority in accordance with paragraph 10 or 12, it must give that person a notice—
- (a) stating that it has applied for a licence and identified the person to the licensing authority in accordance with paragraph 10 or 12, and
 - (b) explaining the effect of paragraph 14.
- (2) It is an offence for a person to fail to comply with a requirement imposed on it by sub-paragraph (1).
- (3) A person who is guilty of an offence under sub-paragraph (2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Licensing authority's power to require information

- 14 (1) A licensing authority may require a non-authorised person identified to it in accordance with paragraph 10 or 12 to provide it with such documents and information as it may require.
- (2) It is an offence for a person who is required to provide information or documents under sub-paragraph (1) knowingly to provide false or misleading information or documents.
- (3) A person who is guilty of an offence under sub-paragraph (2) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum, and
 - (b) on conviction on indictment, to a term of imprisonment not exceeding 2 years or a fine (or both).

Licence may not be granted unless non-authorised persons approved

- 15 (1) This paragraph applies where an applicant for a licence (“the applicant”) gives the licensing authority notification under paragraph 10 or 12 in relation to one or more non-authorised persons.
- (2) The licensing authority may not grant the application for a licence unless, in relation to each non-authorised person in respect of which notification is given (“the investor”), it approves the investor's holding of the restricted interest to which the notification relates (“the notified interest”).
- (3) Sub-paragraph (2) does not apply in relation to a non-authorised person who does not hold the notified interest when the licence is issued.
- (4) In this Part of this Schedule, “the applicant”, “the investor” and “the notified interest” are to be construed in accordance with this paragraph.

Unconditional approval of notified interest

- 16 (1) If the licensing authority is satisfied that the approval requirements are met in relation to the investor's holding of the notified interest, it must approve the investor's holding of that interest without conditions.
- (2) If the licensing authority approves the investor's holding of the notified interest without conditions, it must notify the investor and the applicant of its approval as soon as reasonably practicable.

Conditional approval of notified interest

- 17 (1) If the licensing authority is not satisfied that the approval requirements are met in relation to the investor's holding of the notified interest, it may approve the investor's holding of the notified interest subject to conditions.
- (2) It may do so only if it considers that, if the conditions are complied with, it will be appropriate for the investor to hold the notified interest without the approval requirements being met.
- (3) If the licensing authority proposes to approve the investor's holding of the notified interest subject to conditions it must give the investor and the applicant a warning notice.
- (4) The warning notice must—
- (a) specify the nature of the conditions proposed and the reasons for their imposition, and
 - (b) state that representations may be made to the licensing authority within the prescribed period.
- (5) The licensing authority must consider any representations made within the prescribed period.
- (6) If the licensing authority approves the investor's holding of the notified interest subject to conditions, it must notify the investor and the applicant of its approval as soon as reasonably practicable.
- (7) The notice must—
- (a) specify the reasons for the imposition of the conditions, and
 - (b) explain the effect of Part 5 of this Schedule.

- 18 (1) The investor and the applicant may before the end of the prescribed period appeal to the relevant appellate body against the imposition of any or all of the conditions.
- (2) The relevant appellate body may dismiss the appeal, or allow the appeal and—
 - (a) order the licensing authority to approve the investor's holding of the notified interest without conditions, or subject to such conditions as may be specified in the order, or
 - (b) remit the matter to the licensing authority.
- (3) A party to the appeal may before the end of the prescribed period appeal to the High Court on a point of law arising from the decision of the relevant appellate body, but only with the permission of the High Court.
- (4) The High Court may make such order as it thinks fit.
- (5) If the investor's holding of the notified interest is subject to conditions as a result of an order made on an appeal under this paragraph, for the purposes of this Schedule the conditions are to be treated as having been imposed under paragraph 17.

Objection to notified interest

- 19 (1) If the licensing authority is not satisfied that the approval requirements are met in relation to the investor's holding of the notified interest, it may object to the investor's holding of that interest.
- (2) If the licensing authority proposes to object to the investor's holding of the notified interest, it must give the investor and the applicant a warning notice.
- (3) The warning notice must—
 - (a) specify the reasons for the proposed objection, and
 - (b) state that representations may be made to the licensing authority within the prescribed period.
- (4) The licensing authority must consider any representations made within the prescribed period.
- (5) If the licensing authority objects to the investor's holding of the notified interest, it must notify the investor and the applicant of its objection as soon as reasonably practicable.
- (6) The notice must—
 - (a) specify the reasons for the objection, and
 - (b) explain the effect of Part 5 of this Schedule.
- 20 (1) The investor and the applicant may before the end of the prescribed period appeal to the relevant appellate body against the objection.
- (2) The relevant appellate body may dismiss the appeal, or allow the appeal and—
 - (a) order the licensing authority to approve the investor's holding of the notified interest without conditions, or subject to such conditions as may be specified in the order, or
 - (b) remit the matter to the licensing authority.
- (3) A party to the appeal may before the end of the prescribed period appeal to the High Court on a point of law arising from the decision of the relevant appellate body, but only with the permission of the High Court.
- (4) The High Court may make such order as it thinks fit.
- (5) If the investor's holding of the notified interest is subject to conditions as a result of an order made on an appeal under this paragraph, for the purposes of this Schedule the conditions are to be treated as having been imposed under paragraph 17.

PART 3 APPROVAL OF RESTRICTED INTERESTS AFTER LICENCE IS ISSUED

POWERS OF LICENSING AUTHORITY IN RELATION TO CHANGE OF INTERESTS

Continuing notification requirements

- 21 (1) This paragraph applies where a non-authorized person ("the investor")—
 - (a) proposes to take a step which would result in the investor acquiring a 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), or
 - (b) acquires such an interest in a licensed body without taking such a step.
- (2) In a case within sub-paragraph (1)(a) the investor must notify the licensed body and the relevant licensing authority of the proposal.

- (3) In a case within sub-paragraph (1)(b) the investor must notify the licensed body and the relevant licensing authority of the acquisition within such period, after the investor becomes aware of it, as may be specified by order made by the Lord Chancellor on the recommendation of the Board.
- (4) In this Part of this Schedule—
 - (a) references to “the investor” are to be construed in accordance with this paragraph, and
 - (b) references to a notifiable interest are to the restricted interest which the investor will have as a result of the step the investor proposes to take (or has as a result of the acquisition which has taken place).

Offences in connection with paragraph 21

- 22 (1) It is an offence for a person to fail to comply with a requirement imposed by—
 - (a) paragraph 21(2), or
 - (b) paragraph 21(3).
- (2) A person who is guilty of an offence under sub-paragraph (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (3) It is a defence for a person charged with an offence under sub-paragraph (1)(a) to show that at the time of the alleged offence the person had no knowledge of the facts by virtue of which the duty to notify arose.
- 23 (1) This paragraph applies if a person under the duty to notify imposed by paragraph 21(2)—
 - (a) had no knowledge of the facts by virtue of which that duty arose, but
 - (b) subsequently becomes aware of those facts.
- (2) The person must give the licensed body and the licensing authority the required notification within such period, after the person becomes so aware, as may be specified by order made by the Lord Chancellor on the recommendation of the Board.
- (3) A person who fails to comply with the duty to notify imposed by sub-paragraph (2) is guilty of an offence.
- (4) A person who is guilty of an offence under sub-paragraph (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- 24 (1) It is an offence for a non-authorized person, who under paragraph 21(2) is required to notify the licensed body and the relevant licensing authority of a proposal to take a step, to take the step, unless the relevant licensing authority has approved the investor's holding of the notifiable interest under paragraph 27 or 28.
- (2) If paragraph 22(3) applies, the reference in sub-paragraph (1) to paragraph 21(2) is to be read as a reference to paragraph 23(2).
- (3) A person who is guilty of an offence under sub-paragraph (1) is liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum, and
 - (b) on conviction on indictment, to a term of imprisonment not exceeding 2 years or a fine (or both).

Duty of licensing authority following notification etc.

- 25 (1) The relevant licensing authority must—
 - (a) following receipt of a notification under paragraph 21(2) or (3) or 23(2), or
 - (b) if the licensing authority becomes aware that an investor has failed to comply with a notification requirement imposed by paragraph 21(2) or (3) or 23(2),
 determine which of the steps in sub-paragraph (3) to take.
- (2) The licensing authority must make the determination within such period as may be prescribed.
- (3) The steps are—
 - (a) to approve the investor's holding of the notifiable interest unconditionally under paragraph 27,
 - (b) to warn the investor under paragraph 28(3) that it proposes to approve the investor's holding of the notifiable interest subject to conditions,
 - (c) to approve under paragraph 28(4) the investor's holding of the notifiable interest subject to conditions,
 - (d) to warn the investor under paragraph 31(2) that it proposes to object to the investor's holding of the notifiable interest, or
 - (e) to object under paragraph 31(3) to the investor's holding of the notifiable interest.

Licensing authority's power to require information

- 26 (1) A licensing authority may require the investor to provide it with such documents and information as it may require.

- (2) It is an offence for a person who is required to provide information or documents under sub-paragraph (1) knowingly to provide false or misleading information or documents.
- (3) A person who is guilty of an offence under sub-paragraph (2) is liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum, and
 - (b) on conviction on indictment, to a term of imprisonment not exceeding 2 years or a fine (or both).

Unconditional approval of notifiable interest

- 27 (1) If the licensing authority is satisfied that the approval requirements are met in relation to the investor's holding of the notifiable interest, it must approve the investor's holding of that interest without conditions.
- (2) If the licensing authority approves the investor's holding of the notifiable interest without conditions, it must notify the investor and the licensed body of its approval as soon as reasonably practicable.

Conditional approval of notifiable interest

- 28 (1) If the licensing authority is not satisfied that the approval requirements are met in relation to the investor's holding of the notifiable interest, it may approve the investor's holding of that interest subject to conditions.
- (2) It may do so only if it considers that, if the conditions are complied with, it will be appropriate for the investor to hold the notifiable interest without the approval requirements being met.
- (3) If the licensing authority proposes to approve the investor's holding of the notifiable interest subject to conditions it must give the investor and the licensed body a warning notice.
- (4) But the licensing authority may approve the investor's holding of the notifiable interest subject to conditions without giving a warning notice if it considers it necessary or desirable to do so for the purpose of protecting any of the regulatory objectives.
- (5) The warning notice must—
 - (a) specify the nature of the conditions proposed and the reasons for their imposition, and
 - (b) state that representations may be made to the licensing authority within the prescribed period.
- (6) The licensing authority must consider any representations made within the prescribed period.
- (7) If the licensing authority approves the investor's holding of the notifiable interest subject to conditions, it must notify the investor and the licensed body of its approval as soon as reasonably practicable.
- (8) The notice must—
 - (a) specify the reasons for the imposition of the conditions and (if the investor already holds the notifiable interest) the time from which they have effect, and
 - (b) explain the effect of Part 5 of this Schedule.

- 29 (1) The investor and the licensed body may before the end of the prescribed period appeal to the relevant appellate body against the imposition of any or all the conditions.
- (2) The relevant appellate body may dismiss the appeal, or allow the appeal and—
 - (a) order the licensing authority to approve the investor's holding of the notifiable interest without conditions, or subject to such conditions as may be specified in the order, or
 - (b) remit the matter to the licensing authority.
- (3) A party to the appeal may before the end of the prescribed period appeal to the High Court on a point of law arising from the decision of the relevant appellate body, but only with the permission of the High Court.
- (4) The High Court may make such order as it thinks fit.
- (5) If the investor's holding of the notifiable interest is subject to conditions as a result of an order made on an appeal under this paragraph, for the purposes of this Schedule the conditions are to be treated as having been imposed under paragraph 28.

Duration of unconditional or conditional approval

- 30 In a case within paragraph 21(1)(a), the licensing authority's approval under paragraph 27 or 28 remains effective only if the investor acquires the notifiable interest—
 - (a) before the end of such period as may be specified in the notice under paragraph 27(2) or 28(7), or
 - (b) if no such period is specified, before the end of the period of one year beginning with the date of that notice.

Objection to acquisition of notifiable interest

- 31 (1) If the licensing authority is not satisfied that the approval requirements are met in relation to the investor's holding of the notifiable interest, it may object to the investor's holding of that interest.
- (2) If the licensing authority proposes to object to the investor's holding of the notifiable interest, it must give the investor and the licensed body a warning notice.
- (3) But the licensing authority may object to the investor's holding of the notifiable interest without giving a warning notice if it considers it necessary or desirable to do so for the purpose of protecting any of the regulatory objectives.
- (4) The warning notice must—
- (a) specify the reasons for the proposed objection, and
 - (b) state that representations may be made to the licensing authority within the prescribed period.
- (5) The licensing authority must consider any representations made within the prescribed period.
- (6) If the licensing authority objects to the investor's holding of the notifiable interest, it must notify the investor and the licensed body of its objection as soon as reasonably practicable.
- (7) The notice must—
- (a) specify the reasons for the objection, and
 - (b) explain the effect of Part 5 of this Schedule.
- 32 (1) The investor and the licensed body may before the end of the prescribed period appeal to the relevant appellate body against the objection.
- (2) The relevant appellate body may dismiss the appeal, or allow the appeal and—
- (a) order the licensing authority to approve the investor's holding of the notifiable interest without conditions, or subject to such conditions as may be specified in the order, or
 - (b) remit the matter to the licensing authority.
- (3) A party to the appeal may before the end of the prescribed period appeal to the High Court on a point of law arising from the decision of the relevant appellate body, but only with the permission of the High Court.
- (4) The High Court may make such order as it thinks fit.
- (5) If the investor's holding of the notifiable interest is subject to conditions as a result of an order made on an appeal under this paragraph, for the purposes of this Schedule the conditions are to be treated as having been imposed under paragraph 28.

POWERS OF LICENSING AUTHORITY WHERE NO CHANGE OF INTERESTS

Imposition of conditions (or further conditions) on existing restricted interest

- 33 (1) The relevant licensing authority may impose conditions (or further conditions) on a person's holding of a restricted interest in a licensed body (or a restricted interest of a particular kind) if—
- (a) it is not satisfied that the approval requirements are met in relation to the person's holding of that interest, or
 - (b) it is satisfied that a condition imposed under paragraph 17 or 28 or this paragraph on the person's holding of that interest has not been, or is not being, complied with.
- (2) The licensing authority may act under sub-paragraph (1) only—
- (a) if it considers that, if the conditions are complied with, it will be appropriate for the investor to hold the restricted interest without the approval requirements being met, and
 - (b) before the end of such period (beginning with the time when the licensing authority becomes aware of the matters in question) as may be prescribed.
- (3) If the licensing authority proposes to impose conditions (or further conditions) on the person's holding of the restricted interest, it must give the person and the licensed body a warning notice.
- (4) But the licensing authority may impose conditions (or further conditions) on the person's holding of the restricted interest without giving a warning notice if it considers it necessary or desirable to do so for the purpose of protecting any of the regulatory objectives.
- (5) The warning notice must—
- (a) specify the nature of the conditions proposed and the reasons for their imposition, and
 - (b) state that representations may be made to the licensing authority within the prescribed period.
- (6) The licensing authority must consider any representations made within the prescribed period.
- (7) If the licensing authority imposes conditions (or further conditions) on the person's holding of the restricted interest, it must notify the person and the licensed body as soon as reasonably practicable.

(8) The notice must—

- (a) specify the reasons for the imposition of the conditions, and the time from which they are to take effect, and
 - (b) explain the effect of Part 5 of this Schedule.
- 34 (1) The person and the licensed body may before the end of the prescribed period appeal to the relevant appellate body against any or all of the conditions (or further conditions).
- (2) The relevant appellate body may dismiss the appeal, or allow the appeal and—
- (a) modify or quash the conditions imposed by the licensing authority under paragraph 33, or
 - (b) remit the matter to the licensing authority.
- (3) A party to the appeal may before the end of the prescribed period appeal to the High Court on a point of law arising from the decision of the relevant appellate body, but only with the permission of the High Court.
- (4) The High Court may make such order as it thinks fit.
- (5) If the person's holding of the restricted interest is subject to any conditions as a result of an order made on an appeal under this paragraph, for the purposes of this Schedule those conditions are to be treated as having been imposed under paragraph 33.

Variation and cancellation of conditions

- 35 (1) A person whose holding of a restricted interest in a licensed body is subject to a condition imposed under paragraph 17, 28 or 33 may apply to the relevant licensing authority—
- (a) for the condition to be varied, or
 - (b) for the condition to be cancelled.
- (2) The licensing authority may, on its own initiative, cancel a condition imposed under one of those paragraphs.
- (3) If the licensing authority varies or cancels a condition under this paragraph, it must notify the person and the licensed body as soon as reasonably practicable.

Objection to existing restricted interest

- 36 (1) The relevant licensing authority may object to a person's holding of a restricted interest in a licensed body (or a restricted interest of a particular kind) if—
- (a) it is not satisfied that the approval requirements are met in relation to the person's holding of that interest, or
 - (b) it is satisfied that a condition imposed under paragraph 17, 28 or 33 on the person's holding of the interest has not been, or is not being, complied with.
- (2) The licensing authority may act under sub-paragraph (1) only before the end of such period (beginning with the time when the licensing authority becomes aware of the matters in question) as may be prescribed.
- (3) If the licensing authority proposes to object to a person's holding of the restricted interest, it must give the person and the licensed body a warning notice.
- (4) But the licensing authority may object to the person's holding of the restricted interest without giving a warning notice if it considers it necessary or desirable to do so for the purpose of protecting any of the regulatory objectives.
- (5) The warning notice must—
- (a) specify the reasons for the proposed objection, and
 - (b) state that representations may be made to the licensing authority within the prescribed period.
- (6) The licensing authority must consider any representations made within the prescribed period.
- (7) If the licensing authority objects to the person's holding of the restricted interest, it must notify the person and the licensed body of its objection as soon as reasonably practicable.
- (8) The notice must—
- (a) specify the reasons for the objection, and
 - (b) explain the effect of Part 5 of this Schedule.
- 37 (1) The person and the licensed body may before the end of the prescribed period appeal to the relevant appellate body against the objection.
- (2) The relevant appellate body may dismiss or allow the appeal.

- (3) If the relevant appellate body allows the appeal it may also—
 - (a) order the licensing authority to impose under paragraph 33 such conditions on the person's holding of the restricted interest as may be specified in the order, or
 - (b) remit the matter to the licensing authority.
- (4) A party to the appeal may before the end of the prescribed period appeal to the High Court on a point of law arising from the decision of the relevant appellant body, but only with the permission of the High Court.
- (5) The High Court may make such order as it thinks fit.
- (6) If the person's holding of the restricted interest is subject to conditions as a result of an order made on an appeal under this paragraph, for the purposes of this Schedule the conditions are to be treated as having been imposed under paragraph 33.