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| <b>To:</b>              | Legal Services Board |              |               |
| <b>Date of Meeting:</b> | 23 November 2017     | <b>Item:</b> | Paper (17) 82 |

|                                |  |
|--------------------------------|--|
| <b>Title:</b>                  | Revisions of LSB rules and enforcement policy  |
| <b>Workstream(s):</b>          | Performance, Evaluation and Oversight  |
| <b>Author / Introduced by:</b> | Nicola Noble, Legal Adviser<br>nicola.noble@legalservicesboard.org.uk / 020 7271 0071<br>Stephanie Borthwick, Regulatory Associate<br>stephanie.borthwick@legalservicesboard.org.uk / 020 7271 0089<br>Kate Webb, Head of Regulatory Reviews and Investigations<br>kate.webb@legalservicesboard.org.uk / 020 7271 0090 |
| <b>Status:</b>                 | Official   |

### Summary:

This paper sets out the results of the recent consultation undertaken on revisions to the LSB's statement of policy on enforcement and the LSB's rules, and presents final revisions for the Board's approval. Between 9 August and 12 October 2017 the LSB sought representations on a consolidated enforcement policy and three new sets of rules. We received two responses. The Law Society welcomed the updates. The Bar Council offered more commentary on the text revisions to the enforcement policy. The LSB intends to discuss the Bar Council's response at its next meeting. Details of both responses are set out in this paper and copies of each are available to Board members on request and will be published on the LSB website.

The approval of LSB policies and rules is a matter reserved entirely for the Board. Approval is sought for:

1. the final statement of policy on enforcement
2. the final three new sets of rules to address issues of duplication and lack of consistency. These new rules are for:
  - making oral and written representations and giving oral and written evidence
  - powers of entry following cancellation of designation
  - applications to cancel designation as a licensing authority

Final versions of the above documents have been made available to the Board as soft copies ([see soft copy annexes A-D](#)) although hard copies can be provided on request. For the avoidance of doubt, these documents are the same as the tracked versions that were provided to the Board at the meeting on 19 July 2017. No changes have been made to the text since that meeting save for minor updates to formatting and cross referencing, and paragraphs 15 and 16 of the statement of policy on enforcement, which have been amended in response to issues raised by the Bar Council. This extract is provided in hard copy at **Annex A**.

We also seek the Board's approval for the related consequential amendments to 11 sets of other LSB rules. These consequential, non-material amendments have

been reviewed by David Eveleigh on behalf of the Board. David's comments are set out in this paper and all have been addressed. Final versions of these rules have been made available to the Board (see soft copy annexes F- P) however hard copies and/or the tracked versions seen by David Eveleigh, can be made available on request. An explanatory memorandum, together with a spreadsheet of line by line changes to these rules is provided to the Board (at David's request) in hard copy at **Annex E**.

At its meeting on 19 July 2017, the Board asked the executive to consider the level of fees within the application for designation rules. We will return to this question in 2018.

**Recommendation(s):**

The Board is invited to:

- (1) Note the outcome of the consultation on proposals to revise the LSB's enforcement policy and rules explained above
- (2) As a matter reserved to the Board, approve the changes to the enforcement policy and the LSB rules within soft copy Annexes A to D and F to P

**Risks and mitigations**

**Financial:** N/A

**Legal:** Internal legal advice has been sought throughout the review period. The changes do not represent a change in the LSB's views or approach. The revisions to the policy add clarity and improve readability of the text. We do not anticipate any additional legal risk to our work arising from these updates.

**Reputational:** Undertaking this review demonstrates good regulatory practice and provides assurance that our rules are up to date and fit for purpose.

**Resource:** N/A

| Consultation           | Yes | No | Who / why?  |
|------------------------|-----|----|---|
| <b>Board Members:</b>  | ✓   |    | David Eveleigh has reviewed and provided comments (where necessary) with respect to the 11 sets of non-material consequential revisions to rules in soft copy Annexes F-P |
| <b>Consumer Panel:</b> |     | ✓  |   |

**Freedom of Information Act 2000 (Fol)**

| Para ref            | Fol exemption and summary  | Expires |
|---------------------|--|---------|
| Paras 1-17          | Section 36(2)(b)(ii): information likely to inhibit the exchange of views for purposes of deliberation | TBC     |
| Annexes A-D and F-P | Section 22: future publication   | N/A     |

**LEGAL SERVICES BOARD**

|                         |                      |                            |
|-------------------------|----------------------|----------------------------|
| <b>To:</b>              | Legal Services Board |                            |
| <b>Date of Meeting:</b> | 23 November 2017     | <b>Item:</b> Paper (17) 82 |

**Introduction**

Part A of this paper sets out the results of the recent consultation undertaken on revisions to the LSB’s statement of policy on enforcement and LSB rules. Final revisions are presented for the Board’s approval (soft copy Annexes A-D). Part B of this paper sets out David Eveleigh’s comments on the 11 sets of other LSB rules in which non-material, consequential changes have been made. We also seek the Board’s approval for these rules (soft copy Annexes F-P).

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**B. Consequential changes to 11 sets of LSB rules**

18. We also seek the Board’s approval for the related consequential amendments to the following 11 sets of other LSB rules:

- (a) Rules for approved regulator and qualifying regulator designation applications
- (b) Rules for licensing authority designation applications
- (c) Rules for LSB review of decisions about licence applications made to it
- (d) Register of licensed bodies: section 87(4) rules
- (e) Schedule 13: ownership of licensed bodies rules: prescribed time periods
- (f) Schedule 13: rules for the prescribed period for the making of appeals against licensing authority decisions relating to ownership of licensed bodies
- (g) Intervention directions: section 41(5) and 42(10) rules
- (h) Intervention directions: rules for applications to revoke
- (i) Rules on the period for the making of appeals against decisions of a licensing authority in relation to financial penalties
- (j) Rules for applications to alter regulatory arrangements
- (k) Rules for applications to cancel designation as an approved regulator

19. Final versions of these rules have been made available to the Board within the soft copy Board papers (soft copy Annexes F-P) however final hard copies, and/or the tracked versions seen by David Eveleigh, can be made available on request. An explanatory note, together with a spreadsheet of line by line changes to these rules is provided in hard copy at Annex E. These

consequential, non-material amendments have been reviewed in advance by David Eveleigh on behalf of the Board. David's comments are summarised below. All comments have been actioned and are accounted for in the spreadsheet at Annex E.

20. In addition to the changes to the rules that have been made in response to David's comments below, the LSB had initially transferred all provisions relating to prescribed fees to a schedule within the various rules where prescribed fees are present. This was initially done to facilitate easier and regular reviews of these fees. However, after submitting the rules to David for his consideration, the decision was taken to restore all prescribed fees language back into the main rules. For this reason, the rules referenced by David are different to those contained in the rules provided to the Board in soft copy. David Eveleigh's comments were as follows:

- (a) As a useful guide to the precise changes made, David recommended that the LSB enclose the guidance at Annex E with the Board paper when seeking approval for the rules from the Board.
- (b) In the "*rules for approved regulator and qualifying regulator designation applications*": at page 8 (formerly page 9 of the version seen by David), a large section of rule 46 (formerly rule 42 of the version seen by David) has been removed as it merely restates paragraphs 13(2) and 13(3) of Schedule 4 and paragraphs 5(2) and 5(3) of Schedule 18 to the Act and provides no further value.

[Note to the Board: rule 46 sets out criteria for granting an application to become an approved regulator and/or qualifying regulator, which must be included in the rules in accordance with the requirements of the above provisions. However, reference to these criteria, and confirmation that they apply for the purposes of these rules (as opposed to restating them) is sufficient to satisfy the requirements of the Act.]

- (c) In the "*rules for licensing authority designation applications*" at page 8, a large section of rule 42 (formerly rule 38 of the version seen by David) has been removed for the same reason cited for item (b) above.

[Note to the Board: rule 42 sets out criteria for granting an application to become a licensing authority, which must be included in the rules in accordance with the requirements of paragraphs 11(2) and 11(3) of Schedule 10 to the Act. However, as noted for item (b) above, reference to these criteria, and confirmation that they apply for the purposes of these rules (as opposed to restating them) is sufficient to satisfy the requirements of the Act.]

- (d) Intervention directions: section 41(5) and 42(10) rules: rule 8, agreed removal of "fit and" from "fit and competent" in order to harmonise with rule 9 of the same rules, and to also harmonise with the wording of the equivalent rules on powers of entry following cancellation of designation as an approved regulator and/or a licensing authority (soft copy Annex C).

**List of Annexes (annexes A and E in bold provided in hard copy)**

- A. LSB Enforcement Policy 2017** (Soft copy – whole policy; **hard copy - pages 4-5**)
- B. Rules for making oral and written representations and giving oral and written evidence (soft copy)
- C. Rules on powers of entry following cancellation of designation (soft copy)
- D. Rules for applications to cancel designation as a licensing authority (soft copy)
- E. Spreadsheet of detailed non-consequential changes to LSB rules in Annexes F-P**
- F. Rules for approved regulator and qualifying regulator designation applications (soft copy)
- G. Rules for licensing authority designation applications (soft copy)
- H. Rules for LSB review of decisions about licence applications made to it (soft copy)
- I. Register of licensed bodies: section 87(4) rules (soft copy)
- J. Schedule 13: ownership of licensed bodies rules: prescribed time periods (soft copy)
- K. Schedule 13: rules for the prescribed period for the making of appeals against licensing authority decisions relating to ownership of licensed bodies (soft copy)
- L. Intervention directions: section 41(5) and 42(10) rules (soft copy)
- M. Intervention directions: rules for applications to revoke (soft copy)
- N. Rules on the period for the making of appeals against decisions of a licensing authority in relation to financial penalties (soft copy)
- O. Rules for applications to alter regulatory arrangements (soft copy)
- P. Rules for applications to cancel designation as an approved regulator (soft copy)



23 November 2017



## EXPLANATORY MEMORANDUM

### LSB Rules Review: Rules with non-material consequential changes

1. There are an additional 11 sets of LSB rules which required minor updates and amendments following the more substantial changes to:

- Rules for making oral and written representations and giving oral and written evidence
- Rules for powers of entry following cancellation of designation
- Rules for applications to cancel designation as a Licensing Authority

2. These non-material consequential changes are with respect to the following rules:

#### Designation

- Rules for approved regulator and qualifying regulator designation applications
- Rules for licensing authority designation applications

#### ABS

- Rules for LSB review of decisions about licence applications made to it
- Register of licensed bodies: section 87(4) rules
- Schedule 13: ownership of licensed bodies rules: prescribed time periods
- Schedule 13: rules for the prescribed period for the making of appeals against licensing authority decisions relating to ownership of licensed bodies

#### Enforcement

- Intervention directions: section 41(5) and 42(10) rules
- Intervention directions: rules for applications to revoke
- Rules on the period for the making of appeals against decisions of a licensing authority in relation to financial penalties

#### Alterations

- Rules for applications to alter regulatory arrangements

#### Cancellation of Designation

- Rules for applications to cancel designation as an approved regulator

3. In summary, the consequential changes were as follows:

- Pre-existing typos have been corrected

- Provisions on written and oral representations which were originally contained within various procedures rules have been deleted and replaced with a link to the amalgamated rules.
  - Contact details for the LSB have been updated
  - Drafting techniques adopted as part of this review in the main three sets of rules at paragraph 1 above have been added into the other 11 sets of rules to achieve harmonisation. Key themes include:
    - Harmonised formatting (inclusion of an LSB logo on the front page, use of Ariel 11 for the main text, a single approach to capitalised terms (now all bolded, previously policies varied).
    - Removal of preambles to avoid repetition.
    - Harmonisation of sub-headings to achieve uniformity.
    - Insertion of the following two boilerplate clauses throughout all rules:

*“These rules are to be read in conjunction with the Act, together with any other relevant provisions made by or by virtue of this Act, or any other enactment, rules, policies or guidance produced by the Board from time to time”.*

*“In the event of any inconsistency between these rules and the provisions of the Act, the provisions of the Act prevail”.*
4. A table of the detailed changes made to the above rules is set out below. We have not been specific about where the LSB logo was or was not previously present, nor have we restated.

| Rules | Title   | Page                                    | Change  | Reason   |
|-------|---|---|---|--|
| All   | All   | Throughout                              | All defined terms bolded  | In preference over capitalisation of defined terms   |
| 1     | Approved Regulator and Qualifying Regulator Designation Application Rules | 1                                       | Deletion of long preamble   | To harmonise with the appearance of other rules  |
|       |   | 1                                       | “CMA” definition inserted   | Update   |
|       |   | 1                                       | “Designation Order” definition inserted                               | Correction of an error – this should have been included before   |
|       |   | 2                                       | Definition of “Representations Rules” inserted                        | To account for new amalgamated representations rules   |
|       |   | 2                                       | “Transitioned Applications”   | Definition defunct, so deleted   |
|       |   | 2-3                                     | Rules 2-4   | Taken from the pre-ambule with some minor modifications. The location of this information reflects other rules   |
|       |   | 3                                       | Updated cross referencing in rule 5                                   | Owing to removal of section on representations   |
|       |   | 3                                       | Insertion of clauses 6-7  | Useful boilerplate clauses added across all rules (see paragraph 3 above)  |
|       |   | 4                                       | Changes to rule 12  | To future proof our contact instructions by refraining from having our address within the rules.   |
|       |   | 5                                       | Rule 22 – insertion of “(including the Prescribed Fee)”               | Consistent with other rules containing prescribed fees   |
|       |   | 6                                       | Insertion of CMA to rules 23, 24, 26                                  | Update.  |
|       |   | 6                                       | Sub-title “Representations about the advice”                          | Wording, “about the advice” added to confirm the circumstance in which representations can be made.  |
|       |   | 6                                       | Changes to rule 29  | Addition of “about the advice” for the same reason as above. Deadlines for making representations have been replaced with a link to the new amalgamated rules (the representations rules)  |
|       |   | 6                                       | Rule 30 – relocated from the deleted section on representations rules | This is surviving text from old provisions on representations that have been replaced with the new amalgamated rules. This text confirms the context in which representations can be made. |
|       |   | 6                                       | Various updates to cross referencing                                  | Updates.   |
|       | 6   | Rules 32, addition of “...in accordance | To reflect new amalgamated representations rules.                     |  |

|   |   |      |   |   |
|---|---|------|---|---|
|   |   |      | with the Representations Rules...”  |   |
|   |   | 7    | Rule 37 – formerly part of rule 32 but now a standalone rule                  | To reflect drafting in corresponding licensing authority designation application rules.   |
|   |   | 7    | Rule 37, insertion of “...more of the...” to the last line                    | Correction – added for accuracy.  |
|   |   | 7    | Various updates to cross referencing  | Updates.  |
|   |   | 8    | Additional text in rules 45(a)  | To reflect drafting in corresponding licensing authority designation application rules.   |
|   |   | 8    | Removal of representations rules  | To reflect relocation to amalgamated rules  |
|   |   | 8    | Amendment to rule 46, insertion of “designation applications”                 | Accuracy.   |
|   |   | 8    | Rule 46   | Statutory provisions deleted and replaced with references to the statute. No need to restate the statute.                               |
|   |   | 8    | Rule 48 new text on contacting the LSB  | As for rule 12 above.   |
|   |   | 9-16 | Minor amends throughout   | All formatting  |
|   |   |      |   |   |
| 2 | Licensing Authority Designation Application Rules | 1    | CMA” definition inserted  | Update  |
|   |   | 2    | Definition of “Representations Rules” inserted                                | To account for new amalgamated representations rules  |
|   |   | 3    | Updated cross referencing   | Owing to removal of section on representations  |
|   |   | 3    | Insertion of clauses 5-6  | Useful boilerplate clauses added across all rules   |
|   |   | 5    | Changes to rule 10  | To future proof our contact instructions by refraining from having our address within the rules.  |
|   |   | 5    | Rule 21   | Separated from rule 20 to harmonise with equivalent provisions on approved regulator/qualifying regulator designation application rules |
|   |   | 5-6  | Insertion of CMA to rules 21, 22 and 24                                       | Update.   |
|   |   | 6    | Sub-Title “Representations about the advice”, addition of “about the advice”. | Extra text added to confirm the circumstance in which representations can be made.  |

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|   |   | 6    | Changes to rule 27  | Addition of “about the advice” for the same reason as above. Deadlines for making representations have been replaced with a link to the new amalgamated rules (the representations rules)  |
|   |   | 6    | Rule 28 – relocated from the deleted section on representations rules         | This is surviving text from old provisions on representations that have been replaced with the new amalgamated rules. This text confirms the context in which representations can be made. |
|   |   | 6    | Various updates to cross referencing  | Updates.   |
|   |   | 6    | Rules 29-30, addition of “...in accordance with the Representations Rules...” | To reflect new amalgamated representations rules.  |
|   |   | 6-7  | Various updates to cross referencing  | Updates.   |
|   |   | 8    | Removal of representations wording  | To reflect relocation to amalgamated rules   |
|   |   | 8    | Rule 42   | Statutory provisions deleted and replaced with references to the statute. No need to restate the statute.  |
|   |   | 8    | Rule 44 new text  | As for rule 10 above.  |
|   |   | 9-21 | Minor amends throughout   | All formatting   |
|   |   |      |   |  |
| 3 | Rules for LSB review of decisions about license applications made to it | 1    | Deletion of preamble  | To avoid repetition  |
|   |   | 1    | New text in rule 2  | To reflect the approach in other rules   |
|   |   | 1-2  | New rules 3-4   | Useful boilerplate clauses added across all rules  |
|   |   | 1-2  | Numbering after rules 5   | Corrected so that the rule read 1-12   |
|   |   | 2    | New rule 12   | To reflect inclusion of further information provisions in other rules  |

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| 4 | Registers of Licensed Bodies: Section 87(4)   | 1   | Deletion of preamble   | To avoid repetition   |
|   |   | 1   | New rules 3-4  | Useful boilerplate clauses added across all rules   |
|   |   | 1-2 | Changes to rule 6  | Minor typographical corrections   |
|   |   | 2   | New rule 7   | To reflect inclusion of further information provisions in other rules   |
| 5 | Schedule 13: Ownership of licensed bodies Rules: prescribed time periods  | 1   | Deletion of preamble   | To avoid repetition   |
|   |   | 1   | Insertion of all definitions   | To reflect the approach in other rules  |
|   |   | 1   | New text in rule 2, "paragraph 8 of..."  | To reflect the approach in other rules and add detail to the reference to the statutory provision   |
|   |   | 1   | New rules 3-4  | Useful boilerplate clauses added across all rules   |
|   |   | 1   | New rule 5   | Moved from separate location to reflect the approach in other rules   |
|   |   | 2   | New rule 8   | To reflect inclusion of further information provisions in other rules   |
| 6 | Schedule 13: Rules for the prescribed period for the making of appeals against licensing authority decisions relating to ownership of licensed bodies | 1   | Deletion of preamble   | To avoid repetition   |
|   |   | 1   | Insertion of all definitions   | To reflect the approach in other rules  |
|   |   | 1   | New Section B and rule 2   | To reflect the approach in other rules  |
|   |   | 1   | New rules 3-4  | Useful boilerplate clauses added across all rules   |
|   |   | 1   | New rule 5   | Moved from separate location to reflect the approach in other rules   |
|   |   | 2   | New rule 10  | To reflect inclusion of further information provisions in other rules   |
| 7 | Rules on Intervention Directions  | 1   | Deletion of preamble   | To avoid repetition   |
|   |   | 1   | Insertion of definition of "Representation Rules"                                      | To account for new amalgamated representations rules  |
|   |   | 1   | New text in rule 3, "In accordance with...the Board has made representations rules..." | To reflect the approach in other rules  |
|   |   | 2   | New rules 5-6  | Useful boilerplate clauses added across all rules   |
|   |   | 2   | Deletion of "fit and" from "fit and competent" from rule 8                             | To harmonise with rule 9 and equivalent search and entry rules for cancellation of designation as an approved regulator and/or a licensing authority. |

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|   |   | 2 | New wording in rule 11<br>“...using the contact details set out on the Board’s website, for the attention of...”  | To reflect inclusion of further information provisions in other rules   |
|   |   |   |   |   |
| 8 | Rules for Revocation of Intervention Directions   | 1 | Deletion of preamble  | To avoid repetition   |
|   |   | 1 | “CMA” definition inserted   | Update  |
|   |   | 1 | Insertion of definition of “representation rules”   | To account for new amalgamated representations rules  |
|   |   | 2 | New rules 4-5   | Useful boilerplate clauses added across all rules   |
|   |   | 3 | Changes to Rule 7   | To future proof our contact instructions by refraining from having our address within the rules.  |
|   |   | 3 | Insertion of Rule 12(b)   | Added to clarify what will happen in the event that advice is not provided.   |
|   |   | 3 | Insertion of CMA to rules 12-14   | Update.   |
|   |   |   | 4   | Sub-title “Representations about the advice”  |
|   |   | 4 | Changes to rule 18  | Addition of “about the advice” for the same reason as above. Deadlines for making representations have been replaced with a link to the new amalgamated rules (the representations rules) |
|   |   | 4 | Rule 19-20 amendments by adding references to the representations rules   | To indicate the existence of these representations rules as the source of rules on written and oral representations   |
|   |   | 4 | Changes to rule 21, addition of lettering (a)-(d) together with other minor wording: “...received under rule 16, and...any other information that the Board...” | Clarification   |
|   |   | 5 | Removal of representations wording  | To reflect relocation to amalgamated rules  |
|   |   | 5 | Changes to Rule 25  | As for rule 7 above   |
|   |   |   |   |   |
| 9 | Rules on the Period of the making of appeals against the decision of a licensing authority in relation to financial penalties | 1 | Deletion of preamble  | To avoid repetition   |
|   |   | 1 | Insertion of all definitions  | To reflect the approach in other rules  |
|   |   | 1 | New Section B and rule 2  | To reflect the approach in other rules  |
|   |   | 1 | New rules 3-4   | Useful boilerplate clauses added across all rules   |

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|    |   | 1 | New rule 5   | Moved from separate location to reflect the approach in other rules  |
|    |   | 2 | New rule 7   | To reflect inclusion of further information provisions in other rules  |
| 10 | Rules on Alterations to Regulatory Arrangements | 1 | Amendment to title of rules  | To reflect the name of this procedure in the Act   |
|    |   | 1 | Deletion of preamble   | To harmonise with the appearance of other rules  |
|    |   | 2 | Definition of “Representations Rules” inserted   | To account for new amalgamated representations rules   |
|    |   | 2 | Text moved to Rule 2 from Rule 3, “These rules also apply where the Tribunal seeks the Board’s approval to an alteration of a rule it has made under section 46(9)(b) of the Solicitors Act 1974”. | Clarification  |
|    |   | 3 | Rule 5 - removal of references to a section on representations in these rules  | No longer in these rules – now in amalgamated rules  |
|    |   | 3 | Updated cross referencing  | Owing to removal of section on representations   |
|    |   | 3 | Insertion of clauses 6-7   | Useful boilerplate clauses added across all rules  |
|    |   | 3 | Rule 10 – insertion of “beginning”   | Clarification  |
|    |   | 5 | Changes to rule 13, insertion of “...of the Board as set out on its website, for the attention of...”  | To future proof our contact instructions by refraining from having our address within the rules.   |
|    |   | 6 | Sub-title “Representations about the advice”   | Wording, “about the advice” added to confirm the circumstance in which representations can be made.  |
|    |   | 6 | Changes to rule 22   | Addition of “about the advice” for the same reason as above. Deadlines for making representations have been replaced with a link to the new amalgamated rules (the representations rules)  |
|    |   | 6 | Rule 23 – relocated from the deleted section on representations rules  | This is surviving text from old provisions on representations that have been replaced with the new amalgamated rules. This text confirms the context in which representations can be made. |



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|    |   | 6 | Various updates to cross referencing  | Updates.   |
|    |   | 6 | Rules 24-25, addition of "...in accordance with the Representations Rules..." | To reflect new amalgamated representations rules.  |
|    |   | 7 | Various updates to cross referencing  | Updates.   |
|    |   | 7 | Removal of representations wording  | To reflect relocation to amalgamated rules   |
|    |   | 8 | Rule 34 new text  | As for rule 13 above.  |
|    |   |   |   |  |
| 11 | Approved Regulator Applications to Cancel Designation | 1 | Deletion of preamble  | Removal of reference to Lord Chancellor consent for prescribed fees as this is not included in other rules where such consent must also be obtained. |
|    |   | 2 | New rules 4-5   | Useful boilerplate clauses added across all rules  |
|    |   | 4 | Changes to rule 14  | To future proof our contact instructions by refraining from having our address within the rules.   |
|    |   | 5 | Changes to rule 18  | As for rule 14 above   |

