

# Approving Rule Changes and Issuing Directions: Solicitors Disciplinary Tribunal

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*Consultation paper on the powers provided by sections 178 and 179 of the Legal Services Act 2007*

This consultation will close on **Friday, 29 October 2010**

## Executive Summary

1. The Legal Services Board (“**the LSB**”) was created by the Legal Services Act 2007 (“**the Act**”) and is responsible for overseeing legal regulators, (referred to as the Approved Regulators) 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.
2. The Solicitors Disciplinary Tribunal (“**Tribunal**”) is constituted as a Statutory Tribunal under section 46 of the Solicitors Act 1974. Its primary duties are to protect the public and the good reputation of the solicitors’ profession in England and Wales.
3. The Tribunal has the power, inter alia, to strike off, suspend or fine and, in the case of an unadmitted person, to order that his or her employment within the profession be restricted. It has power to restore a struck-off solicitor to the Roll, bring an indefinite period of suspension to an end and revoke an order made in respect of an unadmitted person and can order that a direction made by the Legal Complaints Service in respect of inadequate professional services be treated for the purposes of enforcement as if it were an order of the High Court. The Tribunal has the power to award costs. Appeals against substantive decisions of the Tribunal lie to the High Court.
4. In 2009, the LSB consulted on the Rules for Rule Change Applications (“**Rules**”) for approving the Approved Regulators’ regulatory arrangements and Compliance and Enforcement: Statement of Policy (“**Statement**”). The Rules and the Statement took effect from 1 January 2010.
5. Sections 178 and 179 of the Act also came into force on 1 January 2010. These provisions give the LSB limited enforcement powers with regard to the Tribunal and also require the Tribunal to obtain the LSB’s approval for any changes that it wishes to make to its rules under section 46(9)(b) of the Solicitors Act 1974.
6. When we originally consulted on both the Rules and Statement we did not explicitly draw attention to the future coming into force of sections 178 and 179, and we did not specifically seek views on the application of the Rules and Statement to the Tribunal. No respondents to those consultations commented on the impact on the Tribunal.
7. Although the wording of sections 178-79 is clear—that is to apply the requirements of paragraphs 20-27 of Schedule 4, sections 32-34 and Schedule 7 to the Tribunal as if it were an Approved Regulator, for the interest of transparency and accountability we are now inviting views on any matters relating to the application of sections 178 and 179.
8. Therefore, the purpose of this consultation is not to reconsult on Rules and Statement per se, but to consult on the proposed amendments to the Rules and the Statement so that it explicitly applies to the Tribunal.

## Rules for Rule Change Applications

9. Part 3 of Schedule 4 to the Act provides that Approved Regulators must obtain approval from the LSB to alter any of their regulatory arrangements. The Act defines regulatory arrangements broadly so as to apply to all rules and regulations and any other arrangements which apply to regulated persons apart from those made for representation or promotional purposes. The only exceptions are where the LSB has directed the change to be exempt from the requirement for approval.

10. In December 2009, after consulting, the LSB published its Rules for Rule Change Applications. The Rules set out the requirements for Approved Regulators wishing to make an application for approval of an alteration to its regulatory arrangements. The Rules were deemed effective on 1 January 2010 when the LSB took on the approval powers provided for by Schedule 4 to the Act. The Rules did not explicitly state that it also applies to the Tribunal.
11. Section 178 of the Act provides that the LSB must approve any alteration to the rules the Tribunal makes under section 46(9)(b) of the Solicitors Act 1974. It states that paragraphs 20-27 of Schedule 4 (the detailed provisions on approvals of alterations to regulatory arrangements) apply to the Tribunal's application for approval of its rules changes as they apply to an Approved Regulator seeking approval of a change to its regulatory arrangements.
12. In the same way as the regulatory arrangements of the Approved Regulators, the Act deems that any alteration made without LSB approval does not take effect. The only exception is where the LSB directs an alteration to be exempt from its approval process. The difference between the Tribunal and the Approved Regulators is that only the Tribunal's rules (and not its regulatory arrangements) need to be approved.
13. In summary, the effect of section 178 is to apply the Rules relating to the Approved Regulators' rule changes, but for "Approved Regulator" read "Tribunal". We consider this interpretation to be in line with the intention of the Act, as summarised succinctly in the Explanatory Note "This section makes provision bringing the Tribunal's rules within the structure of consent requirements for regulatory arrangements"<sup>1</sup>. As such, we consider that any rules made by the Tribunal must have regard to the regulatory objectives<sup>2</sup>, professional principles<sup>3</sup> and the Better Regulation principles<sup>4</sup>.
14. In practice, we propose that the following approach for the approval process to amend the Tribunal's rules would be as follows:
  - The Tribunal decides that it wants to make or alter its rules. This power to make rules is exercisable by statutory instrument.
  - In the process of making or amending its rules, we would like the opportunity to comment on the Tribunal's proposed rules. This is to ensure that the proposed rules have regard to the regulatory objectives, professional principles and the Better Regulation principles.
  - The Tribunal submits an application, in accordance with the draft Rules for Rule Change Applications – Version 2 (refer Appendix 1), seeking the LSB's approval for its new or amended rule.
  - The LSB makes a decision whether to approve the application or not. In deciding whether to approve the Tribunal's proposed amendments to its rules, the LSB will have regard to how the proposed amendments will support (or not) the regulatory objectives, professional principles and the Better Regulation principles.
  - If the LSB decides to approve the application, then the new or amended rule takes effect after the approval is given. If the LSB decides to not approve the

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<sup>1</sup> Explanatory Note to the Legal Services Act 2007, paragraph 435, p.69

<sup>2</sup> Paragraph 1(1) of the Legal Services Act 2007.

<sup>3</sup> Paragraph 1(3) of the Legal Services Act 2007.

<sup>4</sup> Paragraph 3(3) of the Legal Services Act 2007.

application, the new or amended rule does not take effect for the purposes of the Act.

15. In summary, we propose that the Tribunal makes or amends its rules first before it submits an application to the LSB to enable the rules to take effect.
16. A draft version of the proposed Rules, as applied to the Tribunal, is at Appendix 1.

**Question 1** - Do respondents agree with our approach regarding the application of the Rules to the Tribunal under section 178 of the Act?

**Question 2** - Do the proposed Rules (at Appendix 1) accurately reflect the application of the Rules to the Tribunal?

## Statement of Policy: Compliance and Enforcement

17. The LSB's Statement of Policy on Compliance and Enforcement sets out the way in which the LSB will exercise the enforcement functions given to it by the Act. It also explains the approach we are likely to take to enforcement and how we will conduct our investigations, including how we will gather evidence and information in order to inform our decisions. The Statement also includes the Rules on Oral and Written Representations ("**Representation Rules**").
18. Section 179 of the Act provides that the LSB has the power to give directions to the Tribunal by applying sections 32-34 and Schedule 7—that is, the LSB's powers to give Directions to the Approved Regulators. The circumstance in which we can direct the Tribunal are limited to where the Tribunal "fails to perform any of its functions to an adequate standard (or at all)"<sup>5</sup>.
19. The Act does not provide us with any further enforcement powers in respect of the Tribunal. For example we do not have the power to impose financial penalties or set performance measures for the Tribunal<sup>6</sup> and we are unable to direct the Tribunal with regard to specific disciplinary cases or proceedings. It would be clearly neither appropriate nor practical for a statutory tribunal to be subject to such penalties.
20. As with the powers provided to us by section 178, we consider that the provisions under section 179 are instructive. As such, the relevant sections of the Statement automatically applied to the Tribunal when section 179 came into force on 1 January 2010.
21. In addition to the general application of the Statement, we are also seeking comment on our interpretation of what constitutes the failure of the Tribunal to "perform any of its functions to an adequate standard". We note that there is no case law on the definition of "adequate standard".
22. We are seeking to take a proportionate approach in defining "adequate standard". We will not therefore be defining a rigid assessment framework for considering the Tribunal's performance.

<sup>5</sup> Explanatory Note to LSA 2007, paragraph 436, p.70

<sup>6</sup> The Explanatory Note to the LSA 2007 describes the power as "considerably restricted" to "reflect the fact that the Tribunal is not itself an approved regulatory, but is a statutorily independent body which performs functions which form part of the regulatory structure of the Law Society" (paragraph 436, p.70)

23. Instead, we are proposing that the Memorandum of Understanding<sup>7</sup> (“**MoU**”), which the Tribunal has agreed with The Law Society and the LSB, could be used as a means to determine whether the Tribunal has been performing its functions to an adequate standard.
24. In particular, the MoU requires the Tribunal to develop its Key Performance Indicators (“**KPIs**”) and report on its performance when it submits its budget application to the LSB each year. The Tribunal is currently developing its KPIs and it is expected that they will be finalised by early 2011. The development of the KPIs is separate from this consultation paper, and will be developed by the Tribunal. We are proposing to use the Tribunal’s performance against its KPIs as a means to help us to assess how the Tribunal is performing generally.
25. We will also consider wider intelligence about the Tribunal’s performance of its functions. This may include information from Approved Regulators, the Tribunal’s annual reports, and correspondence from solicitors to the LSB.
26. Therefore, we will oversee the Tribunal’s performance of its functions by considering its performance against its KPIs and wider intelligence. In exercising our powers, the LSB will also have regard to the regulatory objectives, professional principles and the Better Regulation principles.
27. A draft version of the Statement (including the Representation Rules), as it applies to the Tribunal, is at Appendix 2.

**Question 3** - Do respondents agree with our approach regarding the application of our Statement to the Tribunal under section 179 of the Act?

**Question 4** – Do respondents agree with our proposals for assessing the failure of the Tribunal to “perform any of its functions to an adequate standard (or at all)”?

**Question 5** - Does the draft Statement (at Appendix 2) and the Representation Rules (at Annex 1 of the draft Statement) accurately reflect the application of the Statement and Representation Rules to the Tribunal?

## Consultation process

Section 205(2) of the Act requires that if the LSB proposes to make any rules, that it must publish a draft of the proposed rules. As such, the draft Rules (for rule change applications), Statement of Policy (including the Representation Rules) are set out in Annexes 1 and 2, respectively.

Consistent with section 205(5) of the Act, the LSB will publish an amended version of the Rules and Statement, if there are material changes as a result of the consultation responses.

We intend to work to the following timetable:

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<sup>7</sup> The MoU was developed and agreed by the Tribunal, the Law Society and the LSB in May 2010. The MoU sets out the process by which the Tribunal submits, and the LSB approves, its annual budget. Under the terms of the MoU, it will be reviewed every three years (the next review will be in 2013). A copy of the MoU can be found here: [http://www.legalservicesboard.org.uk/about\\_us/our\\_relationships/pdf/fully\\_signed\\_mou\\_210510\\_final.pdf](http://www.legalservicesboard.org.uk/about_us/our_relationships/pdf/fully_signed_mou_210510_final.pdf).

<b>Timeline</b>	<b>Activity</b>
20 September 2010	Launch consultation for six weeks. Publish consultation paper on the LSB's website and send it to stakeholder organisations. Meetings with stakeholders during the consultation period, if requested.
29 October 2010	End of formal consultation period.
November 2010	Decisions on the Rules and Statement and Board approval.
December 2010	Rules and Statement take effect.

We consider that a six week consultation period is proportionate since the substance of the Rules and the Statement have already been consulted upon. As stated above, the Rules and Statement already apply to the Tribunal. However, as the original consultations did not specifically seek comment on the application of the Rules and Statement on the Tribunal, the purpose of this consultation is to provide an opportunity for stakeholders to raise any matters regarding the application of the Rules and Statement to the Tribunal.

## **How to respond**

Our consultation period ends at 5:00pm on **Friday, 29 October 2010**.

In accordance with sections 50(2) and 205(3) of the Act, you are given notice that any representation about the proposed Rules and Statement must be made to the Board by the end of the consultation period.

We welcome views and comments on our application of sections 178 and 179 of the Act and our proposed:

- Rules for Rule Change Applications – Version 2; and
- Statement of Policy: Compliance and Enforcement – Version 2.

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

**Post:** Mahtab Grant  
 Legal Services Board  
 7<sup>th</sup> Floor, Victoria House  
 Southampton Row  
 London  
 WC1B 4AD

**Fax:** 020 7271 0051

**Email:** [consultations@legalservicesboard.org.uk](mailto:consultations@legalservicesboard.org.uk)

We intend to publish all responses to this consultation on our website unless a respondent explicitly requests that a specific part of the response, or its entirety, should be kept confidential. We will record the identity of the respondent and the fact that they have submitted a confidential response in our decision document.

We are also keen to engage in other ways and we would welcome contact with stakeholders during the consultation period. Please send all requests to:  
[consultations@legalservicesboard.org.uk](mailto:consultations@legalservicesboard.org.uk)

## Appendix 1

Version 2 of the Rules for Rule Change Applications (“Rules”) explicitly applies the Rules to the Solicitors Disciplinary Tribunal. The proposed changes are in red text.

### **Rules for Rule Change Applications - Version 2 (September 2010)**

#### **A. PREAMBLE**

1. These Rules are made by the Board (as defined below) under paragraphs 20(1) and 23(3) of Part 3 of Schedule 4 to the Act (as defined below).

#### **B. DEFINITIONS**

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

<b>Act</b>	the Legal Services Act 2007
<b>Alteration</b>	has the meaning given in paragraph 19(5) of Schedule 4 to the Act
<b>Applicant</b>	an Approved Regulator who submits an Application; <b>and the Tribunal where it makes an alteration to its rules under section 46(9)(b) of the Solicitors Act 1974 and seeks the Board’s approval to the alteration by virtue of sections 178(2) and (3) of the Act.</b>
<b>Application</b>	an application to approve an Alteration to the Regulatory Arrangements of an Approved Regulator that is submitted to the Board in accordance with Part 3 of Schedule 4 to the Act and these Rules; <b>and an application submitted by the Tribunal to the Board to approve an Alteration to the Tribunal’s rules in accordance with Part 3 of Schedule 4 to the Act.</b>
<b>Approval Notice</b>	has the meaning given in Rule 16
<b>Approved Regulator</b>	has the meaning given in section 20(2) of the Act
<b>Authorised Person</b>	has the meaning given in section 18 of the Act
<b>Better Regulation Principles</b>	the five principles of good regulation (being proportionality, accountability, consistency, transparency and targeting) as set out in both sections 3(3) and 28(3) of the Act
<b>Board</b>	the Legal Services Board
<b>Designation Requirements</b>	the requirements set out in paragraph 25(4) of Schedule 4 to the Act
<b>Exempt Alteration</b>	an Alteration to an Approved Regulator’s Regulatory Arrangements, <b>or the Tribunal’s rules</b> , that the Board



has directed (in accordance with paragraphs 19(3) and (4) of Schedule 4 to the Act) is to be treated as exempt from the approval requirements contained in Part 3 of Schedule 4 to the Act

<b>Initial Decision Period</b>	has the meaning given in Rule 16
<b>Licensing Authority</b>	has the meaning given in section 73 of the Act
<b>Regulatory Arrangements</b>	has the meaning given in section 21 of the Act
<b>Regulatory Objectives</b>	has the meaning given in section 1 of the Act
<b>Reserved Legal Activity</b>	has the meaning given in section 12 of and Schedule 2 to the Act
<b>Tribunal</b>	the Solicitors Disciplinary Tribunal
<b>Warning Notice</b>	has the meaning given in Rule 16

### C. WHO DO THESE RULES APPLY TO?

3. These are the Rules that apply if an Approved Regulator wishes to make an Alteration to its Regulatory Arrangements. For the avoidance of doubt, these Rules do not apply to any Alteration of an Approved Regulator's Regulatory Arrangements to the extent that such Alteration is governed by section 51 of the Act. **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.**
4. An Alteration to an Approved Regulator's Regulatory Arrangements, **and the Tribunal's rules (as appropriate)**, do not have effect unless:
  - it is an Alteration approved as a result of the Lord Chancellor making an order to approve a body as an Approved Regulator in accordance with Part 2 of Schedule 4 to the Act;
  - it is an Alteration made in compliance with a direction under section 32 of the Act;
  - it is approved by virtue of paragraph 16 of Schedule 10 to the Act (approval of licensing rules on designation by order as Licensing Authority);
  - it is approved by virtue of paragraph 7 of Schedule 18 to the Act (approval of proposed regulatory arrangements when granting "qualifying regulator" status for the purposes of Part 5 of the Immigration and Asylum Act 1999 (c. 33));
  - it is an Exempt Alteration;
  - it is an Alteration approved by the Board in accordance with Part 3 of Schedule 4 to the Act.
5. These Rules set out:
  - how the Board will direct that an Alteration is an Exempt Alteration (**see Section D**);

- the required contents of an Application to the Board for approval in accordance with Part 3 of Schedule 4 to the Act (**see Section E**);
  - the processes and procedures that the Board will undertake in considering the Application (**see Section F**);
  - the manner in which the Applicant can make representations to the Board about its Application (**see Section G**);
  - the Board’s criteria for determining Applications (**see Section H**); and
  - whom a body should contact if they have a question in relation to the Application process (**see Section I**).
6. 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. EXEMPT ALTERATIONS**

7. In accordance with paragraph 19(3) of Schedule 4 to the Act, the Board may direct, from time to time, that an Alteration to an Approved Regulator’s Regulatory Arrangements, **or to the Tribunal’s rules**, is an Exempt Alteration.
8. A Direction given by the Board under paragraph 19(3) of Schedule 4 to the Act may be specific or general and will be published by the Board on the Board’s website. A Direction will, unless the Board specifically provides otherwise, take effect from the date being 14 days from the publication of the direction on the Board’s website.

#### **E. CONTENTS OF APPLICATION**

9. The Applicant must include the following information in their Application:
- the name, address, telephone number and email address of the person whom the Board should contact in relation to the Application;
  - details of the proposed Alteration;
  - details of such of the Applicant’s Regulatory Arrangements **or rules** as are relevant to the Application including a statement setting out:
    - i) the nature and effect of the existing Regulatory Arrangement **or rules**;
    - ii) the nature and effect of the proposed Alteration; and
    - iii) an explanation of why the Applicant wishes to make the Alteration in question;
  - a statement in respect of each proposed Alteration explaining how and why the Alteration will either help to promote, be neutral towards or be detrimental to each of the Regulatory Objectives. If relevant, the Applicant must explain why the benefit of the Alteration in relation to some of the Regulatory Objectives outweighs its negative effect on other Regulatory Objectives;
  - a statement explaining how and why the Applicant, feels that the Alterations requested fulfil the Applicant’s obligations to comply with its obligations under section 28 of the Act to have regard to the Better Regulation Principles;

- a statement explaining the desired outcome of the Alteration and how the Applicant intends to assess whether the desired outcome has been achieved;
- a statement explaining whether the proposed Alteration is one that affects areas regulated by other Approved Regulators. If this is the case, the Applicant should provide evidence of consultation with, and responses from, these other Approved Regulators. This consultation should deal with the possibility of any regulatory conflicts and also the possibility of harmonising the Regulatory Arrangements of Approved Regulators regulating the same Reserved Legal Activities. The purpose of this requirement is to ensure that sections 52 to 54 of the Act are complied with and that best practice is shared in common areas of regulation;
- details of when the Applicant hopes to implement the Alteration;
- full details of all consultation processes undertaken and responses received by the Applicant in relation to the Alteration, which should include consultations of Approved Regulators and other appropriate regulators when applicable;
- such other explanatory material as the Applicant considers is likely to be needed for the purposes of Part 3 of Schedule 4 to the Act.

10. For reasons of efficiency and so that the affect of Alterations can be seen cumulatively, any Application should, unless otherwise agreed by the Board, be only in respect of related Alterations to an Applicant’s Regulatory Arrangements **or rules**. For example, all Alterations relating to training requirements should be presented in one Application but Alterations to a code of conduct definition on “independence” and an Alteration to “client money” handling rules that arise independently of one another should be made in separate Applications. If in doubt, an Applicant should contact the Board prior to making an Application.

## **F. PROCESSES AND PROCEDURE**

### ***Sending the Application***

11. Subject to Rule 12 below, the Applicant must submit their Application, either by email, post or courier to the relevant address shown below:

- If by email to : schedule4approvals@legalservicesboard.org.uk
- If by post or courier to:  
 Address: Legal Services Board  
 7<sup>th</sup> Floor Victoria House  
 Southampton Row  
 London WC1B 4AD  
 For the attention of: Rule Change Administrator

12. The Applicant must, unless otherwise agreed with the Board, submit their Application to the Board using the online tool at [www.legalservicesboard.org.uk](http://www.legalservicesboard.org.uk), once this has been developed.

13. On receipt of the Application a copy of the proposed Alterations to the Applicant’s Regulatory Arrangements **or rules** will be published on the Board’s website.

14. The Board will consider the Application and may ask the Applicant for such additional information as the Board may reasonably require.
15. The Board has the discretion to refuse to continue its consideration of an Application if it believes that it has not received all the information it requires – this power is granted under paragraph 25(3)(f) of Schedule 4 to the Act as the Board will, in these circumstances, feel that the approval of the Alteration would occur otherwise than in accordance with the procedures for review established by the Board under the Act.

### ***Initial determination***

16. On receipt of an Application, the Board has **28 days** (beginning on the day the Board receives the Application) (the “**Initial Decision Period**”) to:
  - grant the Application and give the Applicant notice to that effect (an “**Approval Notice**”) (paragraph 21(1)(a) of Schedule 4 to the Act);
  - give the Applicant a notice stating that the Board is considering whether to refuse the Application (a “**Warning Notice**”) (paragraph 21(1)(b) of Schedule 4 to the Act); or
  - give neither an Approval Notice or a Warning Notice in which case, the Application is deemed granted by the Board at the end of the Initial Decision Period (paragraph 21(3) of Schedule 4 to the Act).
17. The Board will publish on its website any Approval Notice or any Warning Notice given to the Applicant.
18. The Board may extend the Initial Decision Period with the consent of the Applicant or by giving an extension notice to the Applicant. An extension notice must specify the period of the extension and must state the Board’s reasons for extending the Initial Decision Period. Any period of extension specified in the notice must end no later than the end of the period of 90 days beginning on the day the Application was made.

### ***Advice***

19. Where the Board has given the Applicant a Warning Notice, the Board may invite such persons as it considers appropriate to give the Board advice regarding whether the Application should be granted. A person to whom such an invitation is given, may for the purposes of giving their advice, ask the Applicant (or any other person) to provide them with such additional information as they may require.
20. Once the Board has received any advice provided under Rule 19, it will provide a copy of that advice to the Applicant.

### ***Representations***

21. The Applicant has **28 days** beginning on the day on which a copy of the advice referred to in Rule 20 is given to the Applicant, or such longer period as the Board may specify in

a particular case, to make representations to the Board about the advice. Any representations made by the Applicant must be made in accordance with Section G of these Rules.

### ***Publication of Advice***

22. As soon as practicable after the end of the period within which representations under Rule 21 may be made, the Board will publish on its website:
  - a) any advice received pursuant to Rule 19; and
  - b) subject to Rule 23, any written representations duly made by the Applicant (and the report of oral representations (if any) prepared under Rule 39).
23. Prior to the publication of any written representations (and the report of oral representations (if any) prepared under Rule 39) the Board will decide whether any parts of the representations shall remain private and why, taking account of representations from the Applicant. The Board will so far as practicable exclude any material which relates to the private affairs of a particular individual the publication of which, in the opinion of the Board, would or might seriously and prejudicially affect the interests of that individual.

### ***The Board's Decision***

24. After considering the items listed in paragraph 25(1) of Schedule 4 to the Act, the Board will decide whether to grant the Application.
25. The Board will give notice of its decision to the Applicant. Where the Board decides to refuse the Application, the notice will specify the reasons for that decision.
26. The Board will publish on its website a copy of any decision that it gives to the Applicant.
27. The Board may grant the Application in whole or in part.
28. The Board is obliged to analyse and make its decision in accordance with the explicit provisions of paragraphs 25(3) of Schedule 4 to the Act, the details of which are specified in Section H of these Rules.

### ***Timing***

29. Subject to Rule 30, if the Board gives the Applicant a Warning Notice it has 12 months (beginning with the day the Applicant receives the Warning Notice) to give its decision to the Applicant. If the Board fails to make a decision within this period, the Application is deemed to have been granted by the Board at the end of that period.
30. The Board, may, on one or more occasions, give the Applicant a notice extending the decision period from 12 months up to maximum of 18 months from the day the Applicant receives the Warning Notice. The Board will publish on its website any such notices.

31. The Board will endeavour to deal with an Application within the Initial Decision Period, however, where this is not possible and the Board has extended the Initial Decision Period in accordance with Rule 18 or served a Warning Notice on the Applicant, notwithstanding other provisions in these Rules, the Board will aim to deal with:
- any Application involving a simple Alteration within 30 business days from the later of: (a) the date of submission of the Application; and (b) the final date of submission of any further information that the Board may request under Rule 14;
  - any Application involving a more complex Alteration within 3 months from the later of: (a) the date of submission of the Application; and (b) the final date of submission of any further information that the Board may request under the Rules.

## **G. FORM OF REPRESENTATIONS**

### ***Written representations***

32. Subject to Rules 33 and 35, all representations made to the Board about advice received by the Board must be in writing and must be submitted to the Board either by email, post or courier to the relevant address set out at Rule 11.
33. The Applicant must, unless otherwise agreed with the Board, submit all representations to the Board using the online tool at [www.legalservicesboard.org.uk](http://www.legalservicesboard.org.uk), once this has been developed.
34. All representations must be received by the Board within the period set out in Rule 21. Representations out of this time will not be considered unless, exceptionally and at the sole discretion of the Board, they appear to raise matters of substance relevant to the Application which are not already under consideration.

### ***Oral representations***

35. The Board may, at its sole discretion authorise an Applicant to make oral representations about the advice received by the Board. The Applicant must bear its own costs in relation to any such representations. On grounds of cost, efficiency, transparency and consistency of treatment between Applicants, the Board will not normally accept oral representations unless the particular circumstances of the Applicant or the complexity of the issue merit an exception to the normal process in individual cases. If the Board grants such an exception, it will publish its reasons for doing so.
36. Should the Board authorise an Applicant to make oral representations, the representations will take place at a hearing to be held either by telephone, video conference or in person. The Board will give the Applicant not less than 10 business days notice that there will be a hearing. If the hearing is to be held in person, the notice will specify the place and time at which the hearing will be held. If the hearing is to be held by telephone or video conference, the notice will specify the time of the telephone call or video conference and also the arrangements for facilitating the telephone call or video conference.

37. Hearings conducted in person (rather than by telephone or video conference) will normally be open to the public. However, within the period ending four business days prior to the scheduled date of the hearing, the Applicant may submit to the Board a written request, with reasons, that aspects of the hearing be held in private. The Board will consider the reasons given and will then publish the reasons for any decision that it reaches. Where the hearing is held in private, the Board will only admit persons other than representatives of the Applicant and the Board after obtaining the agreement of the Applicant
38. The Applicant must appear at the hearing, either in person, by telephone or by video conference (as the case may be) and may be represented by any persons whom it may appoint for the purpose. The proceeding of the hearing will be recorded on behalf of the Board and will be transcribed onto paper.
39. Where oral representations are made, the Board will prepare a report of those representations which will be based on the transcription of the hearing made in accordance with Rule 38. Before preparing the report, the Board:
- must give the Applicant a reasonable opportunity to comment on a draft of the report; and
  - must have regard to any comments duly made by the Applicant.
40. Subject to complying with the timing requirements set out in Rules 29 and 30, the Board reserves the right to extend processes to take account of the need to transcribe and verify oral submissions and to require the Applicant to pay the transcription provider for the cost of the transcription service.
41. The Board may from time to time adjourn the hearing.
42. For the avoidance of doubt, this Section G only applies to representations made to the Board by the Applicant in relation to any advice provided under Rule 19.

## **H. CRITERIA FOR DETERMINING APPLICATIONS**

43. In accordance with paragraph 25(3) of Schedule 4 to the Act, the Board may refuse an Application only if it is satisfied that:
- a) granting the Application would be prejudicial to the Regulatory Objectives;
  - b) granting the Application would be contrary to any provision made by or by virtue of the Act or any other enactment or would result in any of the Designation Requirements ceasing to be satisfied in relation to the Approved Regulator;
  - c) granting the Application would be contrary to the public interest;
  - d) the Alteration would enable the Applicant to authorise persons to carry on activities which are Reserved Legal Activities in relation to which it is not a relevant Approved Regulator;
  - e) the Alteration would enable the Approved Regulator to licence persons under part 5 of the Act to carry on activities which are Reserved Legal Activities to which the Applicant is not a Licensing Authority; or

- f) the Alteration has been or is likely to be made otherwise than in accordance with the procedures (whether statutory or otherwise) which apply in relation to the making of the Alteration.

Paragraphs (d) and (e) of Rule 43 do not apply to an application by the Tribunal for approval of an alteration to a rule made by it under section (46)(9)(b) of the Solicitors Act 1974.

## **I. FURTHER INFORMATION**

- 44. If you have any questions about the Application process or the preparation of an Application, you should contact the Board at:

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

Email:                              [schedule4approvals@legalservicesboard.org.uk](mailto:schedule4approvals@legalservicesboard.org.uk)

Telephone:                      020 7271 0050



## Appendix 2

Version 2 of the Statement of Policy – Compliance and Enforcement (“Statement”) explicitly applies the Statement to the Solicitors Disciplinary Tribunal. The proposed changes are in red text.

### **Section 49(1) of the Legal Services Act 2007: Statement of Policy – Compliance and Enforcement (Version 2: September 2010)**

- 1.1 This Statement of Policy sets out the way in which the LSB will exercise the enforcement functions given to it by the Act. It also explains the approach we are likely to take to enforcement and how we will conduct our investigations, including how we will gather evidence and information in order to inform our decisions.
- 1.2 As an oversight regulator the LSB’s focus will be on the activities of the Approved Regulators.<sup>89</sup> We will be concerned particularly with the outcome that Approved Regulators’ activities have on consumers and those who are regulated.
- 1.3 The LSB must make certain rules about aspects of its enforcement functions. These are included as Annexes to this Document and are cross-referenced in the relevant Sections. Where the Act allows the making of oral and/or written representations in relation to the LSB’s enforcement functions, the rules applying to them are at Annex 3 of this consultation paper.

#### **Background**

- 1.4 The Act provides the LSB with a range of enforcement tools that it can use when it identifies that:
  - an act or omission by an Approved Regulator has had or is likely to have an adverse impact on one or more of the Regulatory Objectives;
  - an Approved Regulator has not complied with any requirement under the Act (including a direction by the LSB) or any other enactment;
  - an Approved Regulator has failed to ensure its regulatory functions are not prejudiced by its representative functions;
  - an Approved Regulator has failed to ensure that decisions relating to the exercise of its regulatory functions are, so far as reasonably practicable, taken independently from decisions relating to the exercise of its representative functions; ~~and/or~~
  - an Approved Regulator has failed to comply with practising fee or internal governance rules~~;~~

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<sup>8</sup> For the avoidance of doubt, other than cancellation of designation as an Approved Regulator, this Statement of Policy will also apply to the way in which the LSB will, in due course, exercise its enforcement powers against Approved Regulators in their capacity as Licensing Authorities for Alternative Business Structures. The LSB ~~has issued a is consulting separately on its~~ Statement of Policy on the cancellation of designation as a Licensing Authority.

<sup>9</sup> This Statement of Policy also applies where the LSB exercises its enforcement function under section 32 of the Act to require the Solicitors Disciplinary Tribunal (“Tribunal”) to take steps to modify any rules made by the Tribunal under section 46(9)(b) of the Solicitors Act 1974. For these purposes only, the Tribunal is treated as if it were an Approved Regulator, and this Statement should be read accordingly.

- the Solicitors Disciplinary Tribunal (“Tribunal”) fails to perform any of its functions to an adequate standard, or at all.

1.5 The Act says that the LSB must make a Statement of Policy about the exercise of its enforcement powers of:

- performance targets and monitoring;
- directions;
- public censure;
- financial penalties;
- intervention directions; and
- cancellation of designation as an Approved Regulator.

1.6 An overview of these enforcement powers in diagrammatic form is set out at [Annex 7](#) the end of this Statement.

1.7 ~~The LSB has issued a separate~~ ~~The Act also obliges the LSB to make a~~ Statement of Policy about the cancellation of designation of a body as a Licensing Authority. ~~The LSB is consulting separately on this Statement of Policy.~~

1.8 In preparing this Statement of Policy, the LSB has:

- had regard to the principle that its principal role is the oversight regulator of the Approved Regulators **and the Tribunal (as appropriate)**;
- taken into account the desirability of resolving informally matters which arise between the LSB and an Approved Regulator **and the Tribunal (as appropriate)**;
- specified how we will comply with the requirement to be proportionate, consistent, targeted only at cases where action is needed, etc; and
- had regard to the principle that it should only exercise its enforcement power if the act or omission of an Approved Regulator **and the Tribunal (as appropriate)** was unreasonable.

### **The LSB’s approach to compliance and enforcement action**

1.9 The LSB’s approach to compliance and enforcement is to seek to achieve an appropriate balance between informal and formal action, based on best practice. We consider that this will enable us to improve regulatory performance by the Approved Regulators **and the Tribunal (as appropriate)** so that:

- consumers are more confident in accessing the legal services market and can make better informed decisions about purchases; and
- cultures and systems of quality assurance are embedded throughout the legal services sector to give consumers confidence in the services they purchase.

1.10 We want the public, as consumers and citizens, to be confident that their advisors are proportionately regulated by bodies which, as we set out in our Business Plan for 2009-10:

- keep constantly modernising and updating registration and education requirements to reflect changing social and consumer needs and promote diversity in, and wider access to, the profession;
- maintain and enhance standards of professional conduct in the light of changing circumstances and best practice elsewhere;
- ensure that robust and independent systems of quality assurance are in place;
- themselves monitor and, where necessary, take appropriate enforcement action to ensure that professional standards are put into action at ground level; and
- are accessible and responsive to concerns put to them.

1.11 We also want to ensure that those who provide regulated activities (now and in the future) are confident that their regulators are:

- proportionate and consistent in their decision making, monitoring and enforcement activities;
- well-governed and cost-effective; and
- up to date in their professional thinking and management practice.

### **Considerations of unreasonableness**

~~1.12 This section of the Policy Statement expands materially on the test for unreasonableness that the LSB will use compared to its consultation document which did not offer an interpretation of the unreasonableness test.~~

1.13 In deciding whether it is appropriate to exercise its formal enforcement powers, the LSB must have regard to the principle that it should only use them if the act or omission of the Approved Regulator (or the Tribunal) was unreasonable. In most circumstances it is unlikely that the LSB would consider an act or omission to be unreasonable merely because we would have acted differently or that the act or omission has had or is likely to have an adverse impact on one or more of the Regulatory Objectives. We will, where appropriate, consider the rationale for the act and omission by the Approved Regulator and encourage a review of the situation if we consider, for example, that all options have not been fully explored or the views of consultees were not properly weighed. That, however, is not the same thing as substituting one view for another.

1.14 However, the LSB does not consider that it has to satisfy the public law test of Wednesbury unreasonableness in order to conclude that an act or omission was unreasonable.

1.15 For example, the LSB might consider that an act or omission was unreasonable if it was carried out by an Approved Regulator (or the Tribunal), notwithstanding that the Approved Regulator (or the Tribunal) knew (or could be expected to know) that the act or omission was likely to have an adverse impact on one or more of the Regulatory Objectives. In reaching a conclusion that the act or omission of the Approved Regulator (or Tribunal) was unreasonable, the LSB would consider all the circumstances of the case which would include reasons and evidence from the Approved Regulator (or Tribunal) and/or others.

## **The Enforcement Process**

- 1.16 The subsequent sections describe the process that the LSB will in general follow when dealing with enforcement issues. Where required to do so by the Act, the LSB will, in the first instance, use its judgement to decide if an act or omission (or a series of them) by an Approved Regulator **or the Tribunal (as appropriate)** has breached, or is likely to breach on one or more of the conditions specified. In doing **so**, it will take account of the evidence available to it which is likely to come from many different sources including Approved Regulators, other stakeholders and consumer research. As explained in paragraphs 2.25 – 2.33 below, it will then decide whether to seek to resolve the issues informally in the first instance.
- 1.17 In the event that such an attempt at informal resolution fails or is inappropriate in given circumstances, the LSB may then determine that it is satisfied that the conditions set out in the Act have been met for it to exercise its formal enforcement powers. Part of this process will be consideration of whether that the act or omission of the Approved Regulator **or the Tribunal (as appropriate)** was unreasonable. It will also consider whether it would be proportionate and consistent to exercise one of the enforcement powers.
- 1.18 In some circumstances, the LSB must satisfy itself that its less onerous enforcement powers will not adequately address the matter before it uses its more onerous enforcement powers. In addition financial penalties can only be used in certain circumstances. However the Act places requirements to only use financial penalties in certain circumstances and to ensure that less onerous enforcement powers will not “adequately address” a matter before using more onerous ones but does not otherwise prohibit the LSB from using combinations of enforcement powers. In the event that we decide to take formal enforcement action, we will consider whether a combined approach is the best means of achieving compliance. In order to ensure the rapid mitigation of risks to consumers and citizens, it may well be appropriate to institute a range of measures at an early stage, rather than progress step-by-step. However, our approach will always be proportionate and we will always explain why we have chosen a particular approach. Where we choose to consider the exercise of two or more enforcement powers together then we will ensure that the process that we follow prior to exercise of the power(s) complies with the requirements specified in the Act for all of the enforcement powers that we are considering.

## **Monitoring and information gathering**

~~1.19 This section does not differ materially from the consultation document.~~

- 1.20 The LSB expects to gather information about Approved Regulators **and the Tribunal** from a number of different sources, including as part of its day to day work. The LSB will normally consider if data gathered for one purpose (such as practising fee approval or rule change applications) may also be relevant to another purpose (such as assessing compliance with Section 28 or the Regulatory Objectives). A non exhaustive list of examples of the sources include:
- admission of non-compliance by act or omission (e.g. by failing to publish adequate data) by the Approved Regulator by proactive notification to the LSB;

- information from other Approved Regulators or stakeholders;
- outcomes from the review process that the LSB intends to develop to assess the performance of the Approved Regulators<sup>10</sup>;
- issues that arise in discussions with Approved Regulators;
- information from the regulated community or other stakeholders;
- identification of issues through research and analysis;
- information from the Office of Legal Complaints (the “**OLC**”); ~~and~~
- concerns raised by the Consumer Panel;
- **performance of the Tribunal against its Key Performance Indicators.**

1.21 The LSB will assess the information available and come to a decision about whether to proceed with informal or formal action. If it needs more information it may use its formal information gathering powers<sup>11</sup> to obtain it. Alternatively, if it is appropriate to do so, it will continue to gather information on an informal basis.

1.22 The LSB will always take into account relevant information and evidence that it receives during its consideration of whether or not to pursue an issue, and if it does the type of action that is appropriate. However, in the event that there is insufficient or contradictory information, we will use our judgement as to the best course of action.

1.23 Once the LSB considers it has all the information it needs (or it is practical to obtain), the LSB will decide whether (and if so what) action is appropriate. In doing so, it will take into account some or all of the following:

- the actual or potential adverse impact on one or more of the Regulatory Objectives (which include the Professional Principles)<sup>12</sup>, ~~and the impact of that impact~~;
- this Statement of Policy;
- its position as an oversight regulator and its duties under the Act;
- best regulatory practice including the requirement that its activities must be proportionate, consistent, transparent, accountable and targeted only at cases in which action is needed;
- whether it considers that the Approved Regulator’s **(or the Tribunal’s)** act or omission has been unreasonable through being for example:
  - a contravention of a requirement in the Act or other statutes (such as competition law) including a failure to act compatibly with Section 28 of the Act or with the Regulatory Objectives;
  - a failure to have regard to the Better Regulation Principles or other best regulatory practice;

<sup>10</sup> [See the LSB’s Business Plan 2009-10 at Section 5D](#)

<sup>11</sup> See Section 55 of the Act

<sup>12</sup> Section 1(3) of the Act states that the Professional Principles are:

- that authorised persons should act with independence and integrity;
- that authorised persons should maintain proper standards of work;
- that authorised persons should act in the best interests of their clients;
- that persons who exercise before any court a right of audience, or conduct litigation in relation to proceedings in any court, by virtue of being authorised persons should comply with their duty to the court to act with independence in the interests of justice;
- that the affairs of the client should be kept confidential.

- an act or omission which has taken place over a long time or which is part of a series of the same or similar actions or which appears to be deliberate or vexatious or which follows a failure to resolve the matter informally in a way that the LSB considers satisfactory;
- the seriousness of the act or omission and the impact (or likely impact) of it on consumers and those being regulated);
- the desired outcome for consumers of taking action and whether that outcome is likely to be significantly beneficial compared to the impact of not taking action;
- the likely impact on those being regulated by the Approved Regulator and the likely impact on the wider provision of legal services;
- whether the resource requirements needed are proportionate to achieving the desired results;
- whether it has previously taken informal or formal action over the same or similar issues; and
- any other matters that it appears appropriate to take into account.

1.24 If the LSB decides that the matter should be pursued it may:

- seek to resolve the matter informally with the Approved Regulator **or the Tribunal**; or
- pursue one or more of the other enforcement powers.

### **Informal resolution**

~~1.25 This section of the Statement of Policy differs materially from the consultation document and explains in more detail how the LSB will resolve matters informally.~~

1.26 The LSB must, in preparing this Statement of Policy, take into account the desirability of resolving informally matters that arise between the LSB and the Approved Regulators (**or the Tribunal**). This Section sets out how we are likely to approach that requirement.

1.27 The LSB will always consider whether it is appropriate, in the circumstances of the case, to resolve matters informally and will usually seek to do so before considering more formal intervention.

1.28 We recognise the importance of considering whether it is appropriate to resolve matters informally. If an informal approach is successful, it is likely to lead to quicker resolution of the particular issue and impose lower costs on the LSB, Approved Regulators, **the Tribunal** and others. The Act does not require us to come to a view on whether an Approved Regulator's act or omission is unreasonable before deciding to pursue informal resolution. That requirement only applies when we are considering whether to use one of the formal powers.

1.29 However, we recognise that an informal approach may not be appropriate in all cases. For example if the impact of the issue is immediate, serious and/or widespread or in other circumstances that the LSB considers are not suitable for informal resolution

because, in its judgement, they are not compatible with the delivery of the Regulatory Objectives.

- 1.30 The LSB does not consider that the Act requires it to seek an informal resolution before commencing a formal enforcement process. If the first attempt at informal resolution does not achieve an outcome that, in the LSB's judgement, is appropriate, then the LSB will consider what further action it should take. In doing so, it may seek further information from the Approved Regulator, **the Tribunal** or others or take further informal measures, but is not compelled to do so. The approach adopted will depend on the circumstances of the individual case.
- 1.31 However, if the LSB decides that it is appropriate to take formal enforcement action it will always be open to the Approved Regulator **and the Tribunal** to propose a way to achieve compliance or to present fresh evidence that could not reasonably have been made available earlier to demonstrate that a breach had not occurred. Making such a proposal does not fetter the LSB's discretion to continue with enforcement action but the Approved Regulator's **and the Tribunal's (as appropriate)** actions in proposing to achieve resolution are likely to be taken into account by the LSB in deciding whether, and if so what, further action is needed.
- 1.32 In taking account of the desirability of resolving informally matters which arise between the LSB, **and** an Approved Regulator **or the Tribunal**, the LSB will comply with the requirement to ensure that its actions are transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed. In undertaking the informal resolution route, the LSB anticipates that all communications will be made public except in exceptional circumstances. This will assist in ensuring that the LSB is accountable for its activities and that consumers and others understand the reasons for its approach in each particular case. Our approach to informal resolution will be proportionate to the circumstances of the particular case, but, in doing so, we will have regard, where it is relevant to do so, to other experiences of informal enforcement action.
- 1.33 The timescale for resolving matters informally in general will depend on the circumstances of the case. We will ensure that any timescales agreed are proportionate to the circumstances in question and, in particular, are sufficient so as to mitigate any detriment persons affected by the issue may suffer. As a guide, we will normally expect an Approved Regulator **and the Tribunal** to follow the timescales below when dealing with a matter informally:
- acknowledgement of the notification within 4 working days and including in the acknowledgement a time line for assessment of the issue within 20 further working days; and
  - a resolution of the issue or a detailed proposal for remedying the issue being provided within what the LSB considers to be a reasonable time, to be provided to the LSB within the assessment time line.

#### **Performance targets and monitoring (Section 31 of the Act)**

- 1.34 ~~This section does not differ materially from the consultation document.~~ This section does not apply to the Tribunal.



- 1.35 The LSB is likely to use performance targets and monitoring when an investigation by the LSB has identified the need for action to improve performance and raise standards. They are likely to be used when an Approved Regulator is failing or is likely to fail in a specific area with a clear impact (or likely impact) on the Regulatory Objectives. This form of enforcement may be combined with or precede other forms of enforcement. For example the greater certainty of delivery given by a direction may be necessary to underpin a target.
- 1.36 We will always seek to gain agreement by the Approved Regulator to performance targets and monitoring. However where this is not possible and where merited under the conditions specified in Section 31 we will impose performance targets on an Approved Regulator. Any performance target will need to be transparent – by this we mean its intention is clearly understood and its measurement is not disproportionately costly. It will need to be consistent with any other performance targets we have imposed to the extent that the cases are comparable.
- 1.37 The LSB will always consider the facts of the case as to whether it is appropriate to combine this form of enforcement with other enforcement powers. In general we will take a combined approach where we believe that a more effective route to compliance is needed since this approach is likely to deliver the achievement of the desired outcomes. It would also enable more certain escalation (if appropriate) to more severe forms of enforcement such as intervention because failure to deliver performance targets would be evidence that the measure had not delivered the required change in performance.

#### **Directions (Section 32 of the Act)**

~~1.38 This section does not differ materially from the consultation document.~~

- 1.39 The LSB is likely to use directions when it wants to ensure that specific actions are carried out by an Approved Regulator (or the Tribunal) in order to rectify an act or omission (including a failure to comply with the Act or with law generally) that has been identified. Directions may be combined with other enforcement tools and may precede other forms of enforcement action. For example, where an Approved Regulator does not deliver the requirements of the direction, it will be open to the LSB to pursue imposing a financial penalty where it is appropriate to do so.
- 1.40 Where it is appropriate to do so, we will consider all the circumstances of the case to judge whether it is appropriate for the Approved Regulator to be directed to spend money on a particular issue in order to, for example, benefit consumers and/or those being regulated.
- 1.41 In seeking to direct an Approved Regulator to spend money or take a particular set of actions we will ensure that that we have acted proportionately. For example, where it is reasonable to do so, we will take into account the other operational costs of an Approved Regulator in a particular year before setting what must be delivered under a direction. We will endeavour to ensure that any direction we set is clearly understood by the Approved Regulator to ensure that it achieves its aim. In setting a direction we will have regard, where it is relevant to do so, to the experiences of setting directions during other enforcement action. Our use of directions will be based ~~our actions~~ on



evidence of regulatory failure and ~~we will placed~~ the reasons for our actions in the public domain.

- 1.42 The LSB also has the power to make directions addressed to the Tribunal in relation to rules made by the Tribunal under section 46(9)(b) of the Solicitors Act 1974. If the LSB is satisfied that the Tribunal has failed to perform any of its functions to an adequate standard (or at all), it may make a direction requiring the Tribunal to modify any part of those rules. Where the LSB proposes to use its power to direct, it must send a copy of its warning notice to The Law Society who may make representations to the LSB.

#### **Censure (Section 35 of the Act)**

- 1.43 ~~This section does not differ materially from the consultation document. This section does not apply to the Tribunal.~~
- 1.44 Censure is likely to be used (either on its own or combined with other forms of enforcement) to draw particular attention to the act or omission by the Approved Regulator. The LSB would always take into account, both in using censure and in its general provision of information about enforcement proceedings, the possible perceptions that consumers, potential market entrants and those being regulated would be given, recognising that some forms of publicity may damage confidence in regulation and so lead to less satisfactory outcomes. However, the LSB strongly believes that one of the aims of its compliance powers is to ensure that confidence is maintained in the legal services market. Providing consumers with clear evidence that steps are being taken to address consumer detriment is part of that process.
- 1.45 The aim of the censure statement is to change the behaviour of the Approved Regulator. In general, organisations value their reputation and the censure will identify failures of performance. The LSB believes that used appropriately censure can act as a catalyst for a change in behaviour that leads to improved performance of an Approved Regulator.

#### **Financial Penalties (Section 37 of the Act)**

- 1.46 ~~This Section does not differ materially in terms of the LSB's approach to using financial penalties. However, the level of the maximum has change significantly from the original proposal and this is explained in detail at paragraphs 4.32 of Section 4. This section does not apply to the Tribunal.~~
- 1.47 The Act allows the LSB to impose a financial penalty when an Approved Regulator fails to comply with: (i) internal governance rules, (ii) a direction by the LSB or (iii) practising fee rules. Financial penalties are likely to be used when, in the LSB's judgement, it is appropriate to impose one to seek to change the unreasonable behaviour of the Approved Regulator by penalising the specific act or omission that has been identified. A further aim is to deter future non-compliance by the Approved Regulator on which the penalty is imposed and ~~ei~~ in other Approved Regulators. A financial penalty will only be imposed in serious circumstances and the aim will be to set the level such that it is likely to give consumers and those being regulated confidence that issues which cause them detriment will be dealt with by the regulatory regime.

1.48 The LSB believes that it is important that those who pay for the Approved Regulator through their practising fees should be able to influence the Approved Regulator's behaviour, including its approach to compliance. Even if this is not currently possible, it may be that, over time as new Approved Regulators are designated, the threat of those it regulates being able to switch to another Approved Regulator starts to influence Approved Regulator behaviour and its approach to compliance. It is likely, therefore, that the LSB will consider it reasonable in the circumstances that the members of an Approved Regulator may have to pay (at least in part) for their Approved Regulator's failure to comply. If there is more than one Approved Regulator for a reserved legal activity and the authorised person can therefore switch to another Approved Regulator, this approach may also provide an incentive to Approved Regulators to improve their compliance. As explained in paragraph 21.18 above, the LSB may consider that it is appropriate to impose a financial penalty at the same time as using its other enforcement powers.

***Maximum financial penalty***

1.49 The LSB considers that, to act as a credible deterrent, the maximum penalty has to be able to have a significant impact on the Approved Regulator. A high maximum level gives a regulator the flexibility to exercise its discretion and judgement in setting a penalty in a way that enables it to take into account the likely wide variation in the outcomes of investigations that it will encounter. **This section does not apply to the Tribunal.**

1.50 It is not the objective of the LSB to impose penalties which have the effect of making it impossible for an Approved Regulator to fulfil its regulatory functions. We would therefore regard any attempt by an Approved Regulator to pay a penalty in a way which had such an impact as, of itself, raising issues in relation to compliance with internal governance rules.

1.51 If the LSB is investigating a number of breaches by an Approved Regulator as separate investigations (for example one investigation into a breach of directions concerning internal governance rules and a separate investigation into a breach of rules controlling practising fees), it may be appropriate for each investigation to impose a separate penalty, in each case of up to the maximum amount.

***Process for setting a penalty***

1.52 The LSB will be guided by the principles of better regulation when it uses its reasonable discretion and judgement in setting the level of a financial penalty. However, the LSB does not consider that it is appropriate to set out in advance the exact mechanism by which it will decide on the appropriate level of a penalty since this is likely to vary on a case by case basis and a prescriptive approach is unlikely to be able to be applied in all cases.

1.53 The LSB will consider whether there are any aggravating factors when it sets the level of the penalty. Aggravating factors it may consider could include (but not be limited to) the seriousness of the failure, the extent to which it was deliberate or reckless<sup>13</sup>, the impact on consumers and whether the actions have resulted in an actual or potential

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<sup>13</sup> See Section 49(5) of the Act

loss to anyone (for example by preventing them from participating in certain types of business opportunities), the duration of the act or omission and whether there was a lack of co-operation by the Approved Regulator with the LSB's investigation.

- 1.54 The LSB will also consider whether any mitigating factors should reduce the level of penalty. These could include (but not be limited to) whether the failure was accidental in nature or the result of a genuine misunderstanding, the presence of good controls or procedures, and the extent of impact on the Regulatory Objectives, the professional principles and consumers, co-operation by the Approved Regulator with the investigation, whether directions have been issued that require the Approved Regulator to spend money on a particular issue, and whether there were any genuine proposals by the Approved Regulator to resolve the matter during the course of the investigation.
- 1.55 Finally, the LSB will consider whether, in all the circumstances, the amount of the proposed penalty is reasonable, again guided by the principles of better regulation. In doing this, it will take into account the resources of the Approved Regulator. The LSB will also check that the proposed penalty does not exceed the maximum amount.

#### **Intervention Directions (Section 41 of the Act)**

- 1.56 ~~This section does not differ materially from the consultation document. This section does not apply to the Tribunal.~~
- 1.57 The LSB regards the use of intervention directions (with the related powers to enter premises under warrant and seize documents) as an extreme measure which will only be used in serious circumstances relating to the Approved Regulator's regulatory functions where none of the other enforcement measures are adequate to address the matter. These circumstances are likely to be where there has been a serious and persistent act or omission by the Approved Regulator that has had or is likely to have an adverse impact on one or more of the Regulatory Objectives. Intervention directions may also be used if, for whatever reason, the Approved Regulator faces a risk to its organisational viability which puts in jeopardy the continuing effective discharge of its regulatory functions. It is also likely that the act or omission would be having (or be likely to have) a demonstrable harmful impact on consumers and/or those regulated by the Approved Regulator. It may also be appropriate to use this power if an Approved Regulator became insolvent.
- 1.58 The aim of using intervention directions would be, to the extent necessary, to stop the Approved Regulator from behaving in the harmful manner which has been identified, to obtain any documents that would be necessary for the person who is either tasked with directing the Approved Regulator's behaviour or who would be given the Approved Regulator's former functions to carry them out effectively and to prevent further adverse impact on the Regulatory Objectives.
- 1.59 Before issuing an intervention direction the LSB will have carefully assessed that this is a proportionate response. It will have considered all the circumstances of the case and ensured it had the necessary evidence to demonstrate that issuing an intervention was a reasonable response. In issuing an intervention direction the LSB will have

regard, where it is relevant to do so, to the experiences of using intervention directions during other enforcement action it has taken.

- 1.60 An intervention direction can be revoked by the LSB following a request by the Approved Regulator. In considering whether to revoke the intervention direction the LSB will take into account all the relevant information and evidence that it has, including the views of those it must consult (including the Office of Fair Trading and the Consumer Panel).
- 1.61 The rules that the LSB ~~has made must make~~ on intervention directions are at Annex 3; those concerning revocation of an intervention direction are at Annex 4. The rules about making representations in relation to this power are at Annex 1.

#### **Cancellation of designation as an Approved Regulator (Section 45 of the Act)**

- 1.62 ~~This section does not differ materially from the consultation document. This section does not apply to the Tribunal.~~
- 1.63 An Approved Regulator's designation can be cancelled in relation to one or more of the reserved legal activities that it regulates. The cancellation can be effected either following a request by the Approved Regulator, or as a result of enforcement action by the LSB. This Statement of Policy only refers to cancellation as a result of enforcement action by the LSB, However the LSB has, as required by the Act, made rules about the process of cancellation following a request by an Approved Regulator; these are at Annex 5.
- 1.64 As with intervention directions, the LSB regards a decision to recommend cancellation of an Approved Regulator's designation as extremely serious. It will only be used in exceptional circumstances when the LSB is satisfied that none of its other enforcement powers would adequately address the issues. In using this power, the LSB's aim would be to try to ensure as smooth a transition as possible to the new body taking over regulation of the former Approved Regulator's members. The LSB would also try to ensure appropriate provision of information to the public in order to reassure consumers about those providing legal advice to them.
- 1.65 The LSB's rules about cancellation of designation as a result of enforcement action are at Annex 6. The rules about the way in which representations can be made about a proposed cancellation are at Annex 1.

## **Annex 1 - Enforcement processes: rules on oral and written representations**

### **A - PREAMBLE**

1. These Rules are made by the Board (as defined below) under section 7 of the Act (as defined below) and paragraphs 2(5) and 10(3) of Schedule 7, paragraphs 2(5) and 10(5) of Schedule 8 and paragraphs 2(5) and 9(5) of Schedule 9 to the Act (as defined below).

### **B - DEFINITIONS**

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

Act	the Legal Services Act 2007
Approved Regulator	has the meaning given in section 20(2) of the Act
Board	the Legal Services Board
Representing Person	an Approved Regulator or any other person, <b>including the Tribunal</b> , who can make representations to the Board in accordance with section 38(2) and Schedules 7 to 9 to the Act <sup>a</sup>

**Tribunal**                                      **the Solicitors Disciplinary Tribunal**

### **C - WHO DO THESE RULES APPLY TO?**

3. These Rules are the rules that the Board has made to govern the making of oral and written representations by a Representing Person in accordance with paragraphs 2(5) and 10(3) of Schedule 7 to the Act (**Directions**);
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 - FORM OF REPRESENTATIONS**

#### ***Written representations***

5. Subject to Rules 6 and 8, all representations made to the Board must be in writing and must be submitted to the Board either by email, post or courier to the relevant address shown below:
  - if by email to :                                      [contactus@legalservicesboard.org.uk](mailto:contactus@legalservicesboard.org.uk)
  - if by post or courier to:

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<sup>a</sup> 'Representing Person' includes the Solicitors Disciplinary Tribunal where the Tribunal has made rules under section 46(9)(b) of the Solicitors Act 1974 where the Board is satisfied the Tribunal has failed to perform any of its functions to an adequate standard (or at all), but only in relation to 'Directions'

Legal Services Board  
7<sup>th</sup> Floor Victoria House  
Southampton Row  
London WC1B 4AD

- For the attention of: Enforcement Administrator

6. The Representing Person must, unless otherwise agreed with the Board, submit all written representations to the Board using the online tool at [www.legalservicesboard.org.uk](http://www.legalservicesboard.org.uk), once this has been developed.
7. All representations must be received by the Board within the relevant period set out in the Act. Representations out of this time will not be considered unless, exceptionally and at the sole discretion of the Board, they appear to raise matters of substance relevant to the process in question which are not already under consideration.

### ***Oral representations***

8. The Board may, at its sole discretion authorise a Representing Person to make oral representations. The Representing Person must bear its own costs in relation to any such representations. On grounds of cost, efficiency, transparency and consistency of treatment between Representing Persons, the Board will not normally accept oral representations unless the particular circumstances of the Representing Person or the complexity of the issue merit an exception to the normal process in individual cases. If the Board grants such an exception, it will publish its reasons for doing so.
9. Should the Board authorise a Representing Person to make oral representations, the representations will take place at a hearing to be held either by telephone, video conference or in person. The Board will give the Representing Person not less than ten business days notice that there will be a hearing. If the hearing is to be held in person, the notice will specify the place and time at which the hearing will be held. If the hearing is to be held by telephone or video conference, the notice will specify the time of the telephone call or video conference and also the arrangements for facilitating the telephone call or video conference.
10. Hearings conducted in person (rather than by telephone or video conference) will normally be open to the public. However, within the period ending four business days prior to the scheduled date of the hearing, the Representing Person may submit to the Board a request, with reasons, that aspects of the hearing be held in private. The Board will consider the reasons given and will then publish the reasons for any decision that it reaches. Where the hearing is held in private, the Board will only admit persons, other than representatives of the Representing Person and the Board, after obtaining the agreement of the Representing Person.
11. The Representing Person must appear at the hearing, either in person, by telephone or by video conference (as the case may be) and may be represented by any persons whom it may appoint for the purpose. The proceeding of the hearing will be recorded on behalf of the Board and will be transcribed onto paper.
12. Where oral representations are made, the Board will prepare a report of those representations which will be based on the transcription of the hearing made in accordance with Rule 11. Before preparing the report, the Board:
  - must give the Representing Person a reasonable opportunity to comment on a draft of the report; and

- must have regard to any comments duly made by the Representing Person.
13. Subject to complying with the requirements of the Act, the Board reserves the right to extend processes to take account of the need to transcribe and verify oral submissions and to require the Representing Person to directly pay the transcription provider for the cost of the transcription service.
  14. The Board may from time to time adjourn the hearing.

## **E - FURTHER INFORMATION**

15. If you have any questions about the process for making oral or written representations you should contact the Board at:

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

Email:                         [contactus@legalservicesboard.org.uk](mailto:contactus@legalservicesboard.org.uk)

Telephone:                    020 7271 0050

**Annex 2 - Financial penalties: maximum penalty statutory  
instrument**

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S T A T U T O R Y   I N S T R U M E N T S

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**2009 No.**

**LEGAL SERVICES, ENGLAND AND WALES**

**The Legal Services Act 2007 (Maximum Penalty for Approved  
Regulators) Rules 2009**

*Made*   -   -   -   -   -   *8th December 2009*

*Laid before Parliament*   \*\*\*

*Coming into force*   -   -   *1st January 2010*

The Legal Services Board with the consent of the Lord Chancellor makes the following Rules in exercise of the powers conferred by sections 37(4) and 204(2), (3) and (4)(b) of the Legal Services Act 2007<sup>(b)</sup>.

The Legal Services Board has complied with the consultation requirements in section 205 of that Act.

**Citation and commencement**

1.—a) These Rules may be cited as the Legal Services Act 2007 (Maximum Penalty for Approved Regulators) Rules 2009.

(1) These Rules come into force on 1st January 2010.

**Maximum penalty**

2.—b) For the purposes of section 37(3) of the Legal Services Act 2007 (financial penalties), the maximum amount of any financial penalty which the Legal Services Board may impose on an approved regulator is an amount equal to 5 per cent. of all income which the regulator derived from its regulatory functions in respect of its most recent accounting period.

(1) The reference to the approved regulator's most recent accounting period is to the most recent accounting period—

- a) which ended before the imposition of the financial penalty; and
- b) for which the regulator has audited accounts which have been drawn up in accordance with generally accepted accounting practice.

(2) The amount of the income referred to in paragraph (1) is to be determined by reference to the audited accounts referred to in paragraph (2)(b).

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<sup>(b)</sup> 2007 c.29.



Made by the Legal Services Board at its meeting on 30th November 2009

*Terence Connor  
Stephen Green  
Rosemary Martin  
Bill Moyes  
Barbara Saunders OBE  
Nicole Smith  
Andrew Whittaker  
David Wolfe  
Chris Kenny*

I consent  
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 Rules)*

These Rules set out the method to be used in determining the maximum amount of the penalty which the Legal Services Board may impose under section 37(3) of the Legal Services Act 2007 (c. 29) on an approved regulator. Section 37 of that Act provides for the imposition of financial penalties on approved regulators for failure to comply with any requirement imposed on them by or under certain specified provisions of that Act (namely, section 30 (rules relating to the exercise of regulatory functions), section 32 (directions) and section 51 (control of practising fees charged by approved regulators)).

## **Annex 3 - Intervention directions: Section 41(5) and 42(10) rules**

### **A. PREAMBLE**

1. These Rules are made by the Board (as defined below) under sections 41(5) and 42(10) of the Act (as defined below).

### **B. DEFINITIONS**

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

<b>Act</b>	the Legal Services Act 2007
<b>Approved Regulator</b>	has the meaning given in section 20(2) of the Act
<b>Board</b>	the Legal Services Board
<b>Intervention Direction</b>	a direction given by the Board to an Approved Regulator in accordance with section 41 of the Act
<b>Specified Person</b>	has the meaning given in section 42(9) of the Act

### **C. WHO DO THESE RULES APPLY TO?**

3. These Rules are the rules that the Board has made in compliance with:
  - a) section 41(5) of the Act in order to specify the persons that the Board may nominate for the purposes of section 41(2)(a) of the Act;
  - b) section 42(10) of the Act in order to specify the persons that a Specified Person may appoint for the purposes of section 42(3) of the Act.
4. The rules that the Board has made in accordance with paragraphs 2(5) and 10(5) of schedule 8 to the Act in relation to Intervention Directions and the making of oral and written representations are in the Board's rules on the making of oral and written representations which can be found at "Enforcement Rules: Rules on Oral and Written Representations".
5. The rules that the Board has made in accordance with paragraph 13(2) of schedule 8 to the Act in relation to the revocation of an Intervention Direction are in the Board's rules on the revocation of Intervention Directions which can be found at "Intervention Directions: Rules for Applications to Revoke".
6. 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. NOMINATIONS FOR THE PURPOSES OF SECTION 41(2)(a)**

7. The Board may nominate such person as it considers to be fit and competent to exercise the regulatory function of the Approved Regulator, and this may include another Approved Regulator or other competent person, such as a professional adviser (for example an accountancy firm).

#### **E. APPOINTMENTS FOR THE PURPOSES OF SECTION 42(3)**

8. A Specified Person may appoint any person that it considers competent to be able to:
  - a) enter and search the premises of an Approved Regulator;
  - b) take possession of any written or electronic records found on the premises.
9. In considering whether a person is suitable for appointment under Rule 8, the Specified Person must have regard to the extent to which the person has experience of exercising entry and search functions.

#### **F. FURTHER INFORMATION**

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

Address:	Legal Services Board 7 <sup>th</sup> Floor Victoria House Southampton Row London WC1B 4AD
Email:	<a href="mailto:contactus@legalservicesboard.org.uk">contactus@legalservicesboard.org.uk</a>
Telephone:	020 7271 0050

## **Annex 4 - Intervention directions: rules for applications to revoke**

### **A. PREAMBLE**

1. These Rules are made by the Board (as defined below) under paragraphs 13(2) and 21(5) of part 2 of schedule 8 to the Act (as defined below).

### **B. DEFINITIONS**

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

<b>Act</b>	the Legal Services Act 2007
<b>Applicant</b>	an Approved Regulator who submits an Application
<b>Application</b>	an application to revoke an Intervention Direction that is submitted to the Board in accordance with these Rules
<b>Approved Regulator</b>	has the meaning given in section 20(2) of the Act
<b>Board</b>	the Legal Services Board
<b>Consultees</b>	the Mandatory Consultees and any Optional Consultee
<b>Consumer Panel</b>	the panel of persons established and maintained by the Board in accordance with section 8 of the Act
<b>Intervention Direction</b>	a direction given by the Board to an Approved Regulator in accordance with section 41 of the Act
<b>Mandatory Consultees</b>	the Lord Chancellor, the OFT, the Consumer Panel and the Lord Chief Justice
<b>OFT</b>	the Office of Fair Trading
<b>Optional Consultee</b>	any person (other than a Mandatory Consultee) who the Board considers it reasonable to consult regarding an Application
<b>Regulatory Objectives</b>	has the meaning given in section 1 of the Act
<b>Representative Body</b>	a body that represents persons authorised by the Applicant to carry on activities which are Reserved Legal Activities
<b>Reserved Legal Activity</b>	has the meaning given in section 12 of and schedule 2 to the Act

### **C. WHO DO THESE RULES APPLY TO?**

3. These are the Rules that apply if an Approved Regulator wishes to apply to the Board, under part 2 of schedule 8 to the Act, for the Board to revoke an Intervention Direction given to the Approved Regulator.
4. These Rules set out:
  - the required content of any Application to the Board and some guidance in relation to that content (**see Section D**);
  - the processes and procedures that the Board will undertake in considering the Application (**see Section E**);
  - the manner in which the Applicant and any Representative Body can make representations to the Board about an Application (**see Section F**); and
  - who an Approved Regulator should contact if it has a question in relation to the Application process (**see Section G**).
5. 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. CONTENTS OF APPLICATION**

6. An Application must include such information as the Applicant believes necessary to satisfy the Board that:
  - a) all the issues relating to the act or omission which resulted in the imposition of the Intervention Direction have been appropriately dealt with; and
  - b) it is appropriate for the Board to revoke the Intervention Direction in all the circumstances of the case (including in particular the impact of revoking the Intervention Direction on the Regulatory Objectives).
7. Information provided in accordance with Rule 6 may include evidence of:
  - a) the remedies that have been taken by the Applicant to correct the act or omission in question;
  - b) the mechanisms that have been put in place by the Applicant to mitigate against a repeat act or omission or similar or more serious act or omission.

#### **E. PROCESSES AND PROCEDURE**

##### ***Sending the Application***

8. Subject to Rule 9 below, the Applicant must submit their Application either by email, post or courier to the relevant address shown below:

a) If by email to: [contactus@legalservicesboard.org.uk](mailto:contactus@legalservicesboard.org.uk)

b) If by post or courier to:

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

For the attention of: Enforcement Administrator

9. The Applicant must, unless otherwise agreed with the Board, submit their Application to the Board using the online tool at [www.legalservicesboard.org.uk](http://www.legalservicesboard.org.uk), once this has been developed.
10. On receipt of the Application, an acknowledgement email will be sent to the Applicant by the Board.
11. The Board will consider the Application and may ask the Applicant for such additional information as the Board may reasonably require.
12. The Board has the discretion to refuse to consider, or to continue its consideration of, an Application. The Board will exercise this discretion if it believes that it has not received all the information it requires.

***Obtaining advice***

13. On receipt of an Application, and all further information that the Board may require under Rule 11, the Board will send a copy of the Application (together with any further information received) to the Consultees.
14. The Board will specify to the Lord Chancellor, the OFT, the Consumer Panel and any Optional Consultee a time period in which each body must provide their advice on the Application to the Board. The Board intends to request that these bodies provide their advice within a time period which is reasonable, published and variable dependent on the volume and complexity of the Application received.
15. The Lord Chancellor, the OFT, the Consumer Panel and any Optional Consultee will then each consider the Application within the specified time period and will provide their advice to the Board.
16. The Board will then provide the advice it receives from the Lord Chancellor, the OFT, the Consumer Panel and any Optional Consultee to the Lord Chief Justice and will specify to the Lord Chief Justice a time period in which he must provide his advice on the Application to the Board. Again, the time period that the Board will specify will depend on the particular circumstances of the Application.

17. The Lord Chief Justice will then consider the Application and will provide his advice to the Board.

18. In providing their advice to the Board, each Consultee may ask the Applicant (or any other person) to provide them with such additional information as they may require.

### ***Publication of Advice***

19. Once the Board has received the advice of the Lord Chief Justice, it will:

- a) provide a copy of all the advice that has been given by the Consultees to the Applicant;
- b) publish a copy of all the advice that has been given by the Consultees on its website.

### ***Representations***

20. The Applicant and any Representative Body has **28 days** beginning on the day on which a copy of the advice referred to in Rule 19 has been published on the Board's website, or such longer period as the Board may specify in a particular case, to make representations to the Board about the advice. Any representations made by the Applicant or any Representative Body must be made in accordance with Section F of these Rules.

### ***Publication of Representations***

21. As soon as practicable after the end of the period within which representations under Rule 20 may be made, subject to Rule 22, the Board will publish on its website, any written representations duly made by the Applicant or any Representative Body (and any reports of oral representations prepared under Rule 34).

22. Prior to the publication of any written representations (and any report of oral representations prepared under Rule 34) the Board will ensure, so far as practicable, that such materials exclude any matter which relates to the private affairs of a particular individual the publication of which, in the opinion of the Board, would or might seriously and prejudicially affect the interests of that individual.

### ***The Board's Decision***

23. After considering the Application (and any additional information received under Rule 11), the advice received from the Consultees and any representations by the Applicant or any Representative Body and any other information that the Board considers relevant to the Application, the Board will decide whether to grant the Application.

24. If the Board decides to grant the Application, it will notify the Applicant and will state the time from which the revocation of the Intervention Direction is to take effect.

25. If the Board decides not to grant the Application, the Board will write to the Applicant with the reasons for its decision.

26. The Board will publish on its website a copy of any decision that it gives to the Applicant.

## **F. FORM OF REPRESENTATIONS**

### ***Written representations***

27. Subject to Rules 28 and 30, all representations made to the Board must be in writing and must be submitted to the Board either by email, post or courier to the to the relevant address set out at Rule 8.
28. The Applicant or Representative Body must, unless otherwise agreed with the Board, submit all representations to the Board using the online tool at [www.legalservicesboard.org.uk](http://www.legalservicesboard.org.uk), once this has been developed.
29. All representations must be received by the Board within the period set out in Rule 20. Representations out of this time will not be considered unless, exceptionally and at the sole discretion of the Board, they appear to raise matters of substance relevant to the Application which are not already under consideration.

### ***Oral representations***

30. The Board may, at its sole discretion authorise an Applicant or any Representative Body to make oral representations at their own expense. On grounds of cost, efficiency, transparency and consistency of treatment between Applicants and Representative Bodies, the Board will not normally accept oral representations unless the particular circumstances of the Applicant or Representative Body or the complexity of the issues merit an exception to the normal process in individual cases. If the Board grants such an exception, it will publish its reasons for doing so.
31. Should the Board authorise an Applicant or Representative Body to make oral representations, the representations will take place at a hearing to be held either by telephone, video conference or in person. The Board will give the Applicant or Representative Body not less than ten business days notice that there will be a hearing. If the hearing is to be held in person the notice will specify the place and time at which the hearing will be held. If the hearing is to be held by telephone or video conference, the notice will specify the time of the telephone call or video conference and also the arrangements for facilitating the telephone call or video conference.
32. Hearings conducted in person (rather than by telephone or video conference) will normally be open to the public. However, within the period ending four business days prior to the scheduled date of the hearing, the Applicant or Representative Body may submit to the Board a written request, with reasons, that aspects of the hearing be held in private. The Board will consider the reasons given and will then publish the reasons for any decision that it reaches. Where the hearing is held in private, the Board will only admit persons other than representatives of the Applicant or the Representing Body (as relevant) and the Board, after obtaining the agreement of the Applicant of the Representing Body (as relevant).
33. The Applicant or Representative Body must appear at the hearing, either in person or by telephone (as the case may be), and may be represented by any persons whom they may appoint for the purpose. The proceeding of the hearing will be recorded on behalf of the Board and will be transcribed onto paper.



34. Where oral representations are made, the Board will prepare a report of those representations which will be based on the transcription of the hearing made in accordance with Rule 33. Before preparing the report, the Board:
- a) must give the Applicant or Representative Body a reasonable opportunity to comment on a draft of the report; and
  - b) must have regard to any comments duly made by the Applicant or Representative Body.
35. Subject to the requirements of the Act, the Board reserves the right to extend processes to take account of the need to transcribe and verify oral submissions and to require the Applicant or Representative Body to directly pay the transcription provider for the reasonable cost of the transcription service.
36. The Board may from time to time adjourn the hearing.

#### **F. FURTHER INFORMATION**

37. If you have any questions about the Application process or the preparation of an Application, you should contact the Board at:

Address:	Legal Services Board 7 <sup>th</sup> Floor Victoria House Southampton Row London WC1B 4AD
Email:	<a href="mailto:contactus@legalservicesboard.org.uk">contactus@legalservicesboard.org.uk</a>
Telephone:	020 7271 0050

## **Annex 5 – Cancellation of designation: rules for applications to cancel**

### **A. PREAMBLE**

1. These Rules are made by the Board (as defined below) under sections 45(3) of the Act (as defined below). In accordance with section 45(4) of the Act (as defined below), the consent of the Lord Chancellor has been given in respect of these Rules.

### **B. DEFINITIONS**

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

<b>Act</b>	the Legal Services Act 2007
<b>Affected Authorised Person</b>	an Authorised Person who is regulated by the Applicant in relation to a Reserved Legal Activity which is the subject of an Application
<b>Applicant</b>	a body who submits an Application
<b>Application</b>	an application to cancel a body's designation as an Approved Regulator in relation to one or more Reserved Legal Activity that is submitted to the Board in accordance with these Rules
<b>Approved Regulator</b>	has the meaning given in section 20(2) of the Act
<b>Authorised Person</b>	has the meaning given in section 18 of the Act
<b>Board</b>	the Legal Services Board
<b>Cancellation Notice</b>	the notice published by the Applicant in accordance with Section F of these Rules
<b>Prescribed Fee</b>	the fee that must accompany an Application as described in Section E of these Rules
<b>Reserved Legal Activity</b>	has the meaning given in section 12 of and schedule 2 to the Act

### **C. WHO DO THESE RULES APPLY TO?**

3. These are the Rules that apply if a body wishes to apply to the Board, under section 45(3) of the Act, for the Board to make a recommendation to the Lord Chancellor that an order be made cancelling a body's designation as an Approved Regulator in relation to one or more Reserved Legal Activity.

4. These Rules set out:
  - a) the required content of any Application to the Board (**see Section D**);
  - b) the amount of the Prescribed Fee that must accompany any Application (**see Section E**);
  - c) the Board's requirements in relation to the Applicant's publication of a notice giving details of the Application in accordance with section 45(3)(c) of the Act (**see Section F**);
  - d) the processes and procedures that the Board will undertake in considering the Application (**see Section G**); and
  - e) whom a body should contact if it has a question in relation to the Application process (**see Section H**).
5. 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. CONTENTS OF APPLICATION**

6. An Applicant must include the following information in their Application:
  - a) the name, address, telephone number and email address of the person whom the Board should contact in relation to the Application;
  - b) details of the Reserved Legal Activity or Activities to which the Application relates;
  - c) details of why the Applicant is making the Application;
  - d) details of any alternative courses of action, besides cancellation of designation, that have been considered or explored by the Applicant;
  - e) details of the Affected Authorised Persons and whether any communication has been had with such persons in relation to the Application;
  - f) details of what arrangements the Applicant proposes in relation to:
    - i) the transfer of the regulation of the Affected Authorised Persons to another relevant Approved Regulator and whether that Approved Regulator has consented to such transfer;
    - ii) the transfer of amounts held by the Applicant which represent amounts paid to it by way of practising fees by the Affected Authorised Persons to another

relevant Approved Regulator and whether that Approved Regulator has consented to such transfer;

- g) if the Applicant is planning on winding-up all its activities, details of how it proposes to do so in an orderly manner.

#### **E. PRESCRIBED FEE**

7. Any Application must be accompanied by the Prescribed Fee set out in Rule 8 below. The Prescribed Fee must be paid by electronic funds transfer to the following bank account:

Bank: HM Paymaster General

Sort code: 10-14-99

Account No: 10610000

Account Name: Legal Services Board

Reference: *[Insert Applicant name]*/ Cancellation Application

8. The Prescribed Fee that must accompany an Application will depend on the type of Application being made. The different levels of the Prescribed Fee are as follows:
- a) if the Application is in respect of the cancellation of some but not all of the Reserved Legal Activities regulated by the Applicant, the Prescribed Fee is £4,500;
  - b) if the Application is respect of the cancellation of all of the Reserved Legal Activities regulated by the Applicant, the Prescribed Fee is £6,000.
9. The amounts specified in Rule 8 are each the average costs that the Board anticipates it will incur in considering these different types of Application. In respect of the Prescribed Fee set out in Rule 8(a) this is based on a day rate of £562 over 8 business days. In respect of the Prescribed Fee set out in Rule 8(b) this is based on day rate of £562 over 11 business days.
10. The Board reserves the right to charge an amount in excess of the amounts set out in Rule 8 in the following circumstances:
- a) if the Board requests further information from the Applicants in accordance with Rule 16, and the Board's costs in processing this information exceeds the relevant specified in Rule 8. In these circumstances, any such additional costs will be charged at the day rate of £562;
  - b) the nature of the Application means that the Board has to seek external advice and the cost of this advice would mean that the Board's cost in processing the Application would exceed the relevant amount specified in Rule 8.

#### **F. NOTICE REQUIREMENTS**

11. On submitting an Application to the Board, an Applicant must publish a Cancellation Notice giving the following information:
- a) the date on which the Application to the Board was made;
  - b) details of the Reserved Legal Activity or Activities to which the Application relates;
  - c) details of why the Application is being made;
  - d) details of the Affected Authorised Persons;
  - e) details of what arrangements the Applicant proposes in relation to:
    - i) the transfer of the regulation of the Affected Authorised Persons to another relevant Approved Regulator;
    - ii) the transfer of amounts held by the Applicant which represent amounts paid to it by way of practising fees by the Affected Authorised Persons to another relevant Approved Regulator.
12. Any Cancellation Notice given in accordance with Rule 11 must be published:
- a) on the Applicant's website on the same day on which an Application is submitted to the Board; and
  - b) in any publication that the Board may specify from time to time within 5 business days of the Application being submitted to the Board.

## **G. PROCESSES AND PROCEDURE**

### ***Sending the Application***

13. Subject to Rule 14 below, the Applicant must submit their Application (and, proof of transmission of the Prescribed Fee) either by email, post or courier to the relevant address shown below:

- a) If by email to: [contactus@legalservicesboard.org.uk](mailto:contactus@legalservicesboard.org.uk)
- b) If by post or courier to:

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

For the attention of: Cancellation Administrator

14. The Applicant must, unless otherwise agreed with the Board, submit their Application (and, proof of transmission of the Prescribed Fee) to the Board using the online tool at [www.legalservicesboard.org.uk](http://www.legalservicesboard.org.uk), once this has been developed.
15. On receipt of the Application and the Prescribed Fee, an acknowledgement email will be sent to the Applicant by the Board.
16. The Board will consider the Application and may ask the Applicant for such additional information as the Board may reasonably require.

***The Board's Decision***

17. After considering the Application (and any additional information received under Rule 16) and after satisfying itself that the requirements of Section G have been complied with, the Board will recommend to the Lord Chancellor that an order be made to cancel the Applicant's designation as an Approved Regulator in relation to the one or more Reserved Legal Activities set out in the Application.

**G. FURTHER INFORMATION**

18. If you have any questions about the Application process or the preparation of an Application, you should contact the Board at:

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

Email:                         contactus@legalservicesboard.org.uk

Telephone:                    020 7271 0050

## **Annex 6 – Cancellation of designation: Section 48(9) rules**

### **A. PREAMBLE**

1. These Rules are made by the Board (as defined below) under section 48(9) 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

### **C. WHO DO THESE RULES APPLY TO?**

3. These Rules are the rules that the Board has made in compliance with section 48(9) of the Act in order to specify the persons that the Board may appoint for the purposes of section 48(3) of the Act.
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. APPOINTMENTS FOR THE PURPOSES OF SECTION 48(3)**

5. The Board may appoint any person that it considers competent to be able to:
  - a) enter and search the premises of an Approved Regulator; and
  - b) take possession of any written or electronic records found on premises.
6. In considering whether a person is suitable for nomination under Rule 5, the Board will have regard to the extent to which the person has experience of exercising entry and search functions.

### **E. FURTHER INFORMATION**

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

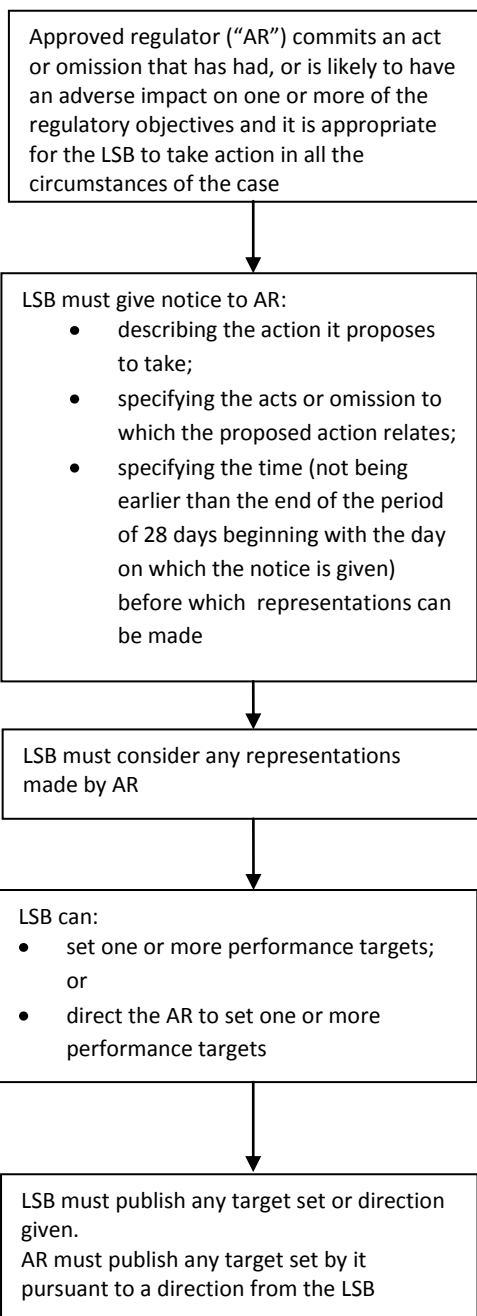
Address: Legal Services Board  
7<sup>th</sup> Floor Victoria House  
Southampton Row  
London WC1B 4AD

Email: [contactus@legalservicesboard.org.uk](mailto:contactus@legalservicesboard.org.uk)

Telephone: 020 7271 0050

## **Annex 7 – Enforcement processes**

**Note:** Appeals processes shown are those set out in the Act  
**Performance targets and monitoring (Section 31)**





## Directions (Section 32)

LSB is satisfied:

- that an act or omission of an authorised regulator (“AR”), has had, or is likely to have, an adverse impact on one or more of the regulatory objectives;
- that an AR has failed to comply with any requirement imposed on it by or under the Act or any other enactment;
- that an AR: (i) has failed to ensure that the exercise of its regulatory functions is not prejudiced by any of its regulatory functions; or (ii) has failed to ensure that decisions relating to the exercise of its regulatory functions are, so far as reasonably practicable, taken independently from decisions relating to the exercise of its regulatory functions.

Or, the LSB is satisfied that the Solicitors Disciplinary Tribunal (“Tribunal”) “fails to perform any of its functions to an adequate standard (or at all)”.

LSB gives the AR (or the Tribunal) a notice (“warning notice”) accompanied by a copy of the proposed direction. The “warning notice” must specify a period of not less than **14 days** within which the AR can make written representations.

LSB must give copies of the “warning notice”, any written representations (and any report of oral representations) to:

- the Lord Chancellor (“LC”);
- Office of Fair Trading (“OFT”);
- the Consumer Panel;
- the Lord Chief Justice (“LCJ”); and
- any such other person as the Board considers it reasonable to consult (a “Consultee”)

The Board must also give these bodies (other than the LCJ) a notice specifying a period in which they must give their advice.

The LC, OFT, Consumer Panel and Consultee (if any) provide advice to LSB.

LSB provides advice given by the LC, OFT, Consumer Panel and Consultee (if any) to the LCJ. The Board must also give the LCJ a notice specifying a period in which they must give their advice.

The LCJ provides advice to LSB.

LSB provides copies of advice received to AR (or the Tribunal) who then has **28 days** to make written representations about advice.

LSB must publish any advice and any written representations from the AR (or the Tribunal) (and also the report of oral representations (if any)).

LSB considers advice and written and oral (if any) representations and decides whether to give the direction.

LSB must give notice of its decision to the AR (or the Tribunal). Where the LSB decides to give the direction, the notice must:

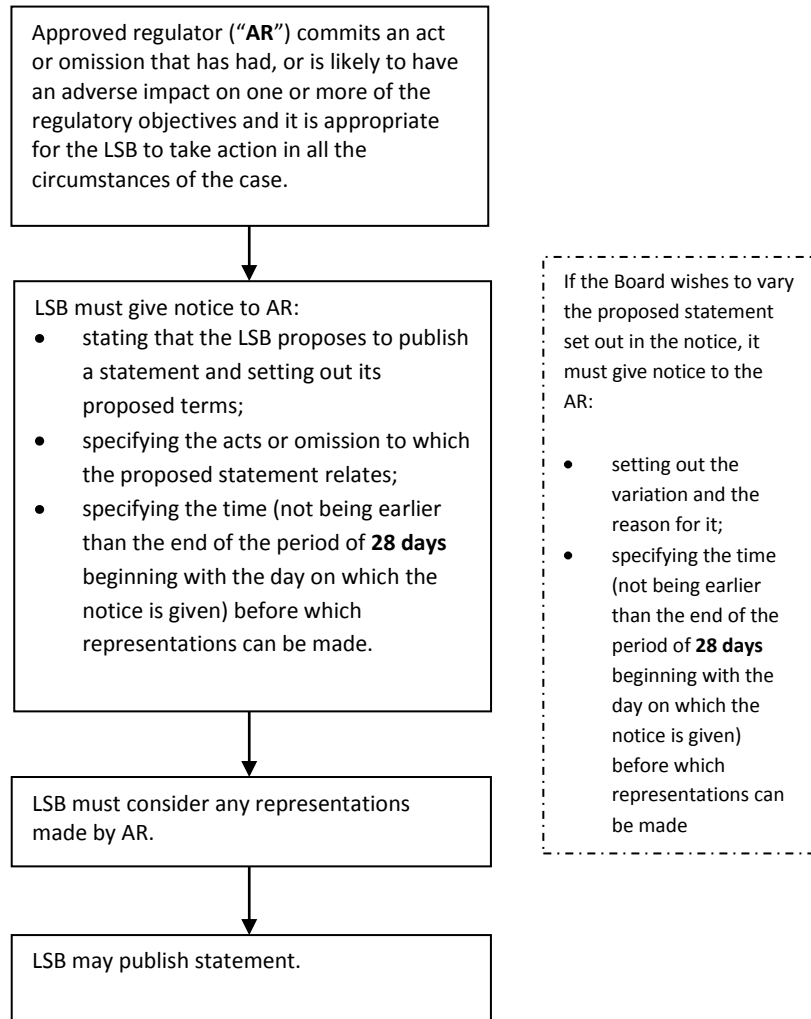
- contain the direction;
- state the time at which the direction is to take effect; and
- specify the LSB’s reasons for giving the direction

LSB must publish the notice.

The Board has the discretion to also allow oral representations. Where oral representations are allowed, the Board must prepare a report of those representations. The AR (or the Tribunal) must have opportunity to comment on a draft of such report.

The Board has the discretion to also allow oral representations. Where oral representations are allowed, the Board must prepare a report of those representations. The AR (or the Tribunal) must have opportunity to comment on a draft of such report.

## Public censure (Section 35)



## Financial penalties (Section 37)

Approved regulator (“AR”) fails to comply with: (i) rules under Section 30 (internal governance rules); (ii) direction under Section 32 (Board directions); or (iii) Section 51 (control of practising fees charged by approved regulator) and it is appropriate for the LSB to take action in all the circumstances of the case.

LSB must give notice to AR:

- stating that the LSB proposes to impose a penalty and the amount of the penalty proposed;
- specifying the failure to which the proposed penalty relates;
- specifying the other facts which, in the LSB’s opinion, justify the imposition of a penalty and the amount of the penalty;
- specifying the time (not being earlier than the end of the period of **21 days** beginning with the day on which the notice is given) before which representations can be made.

If the Board wishes to vary the amount of the proposed penalty set out in the notice, it must give notice to the AR:

- setting out the variation and the reason for it;
- specifying the time (not being earlier than the end of the period of **21 days** beginning with the day on which the notice is given) before which representations can be made.

LSB must consider any representations made by AR.

LSB imposes penalty and as soon as practicable gives notice (“**Decision Notice**”) to the AR:

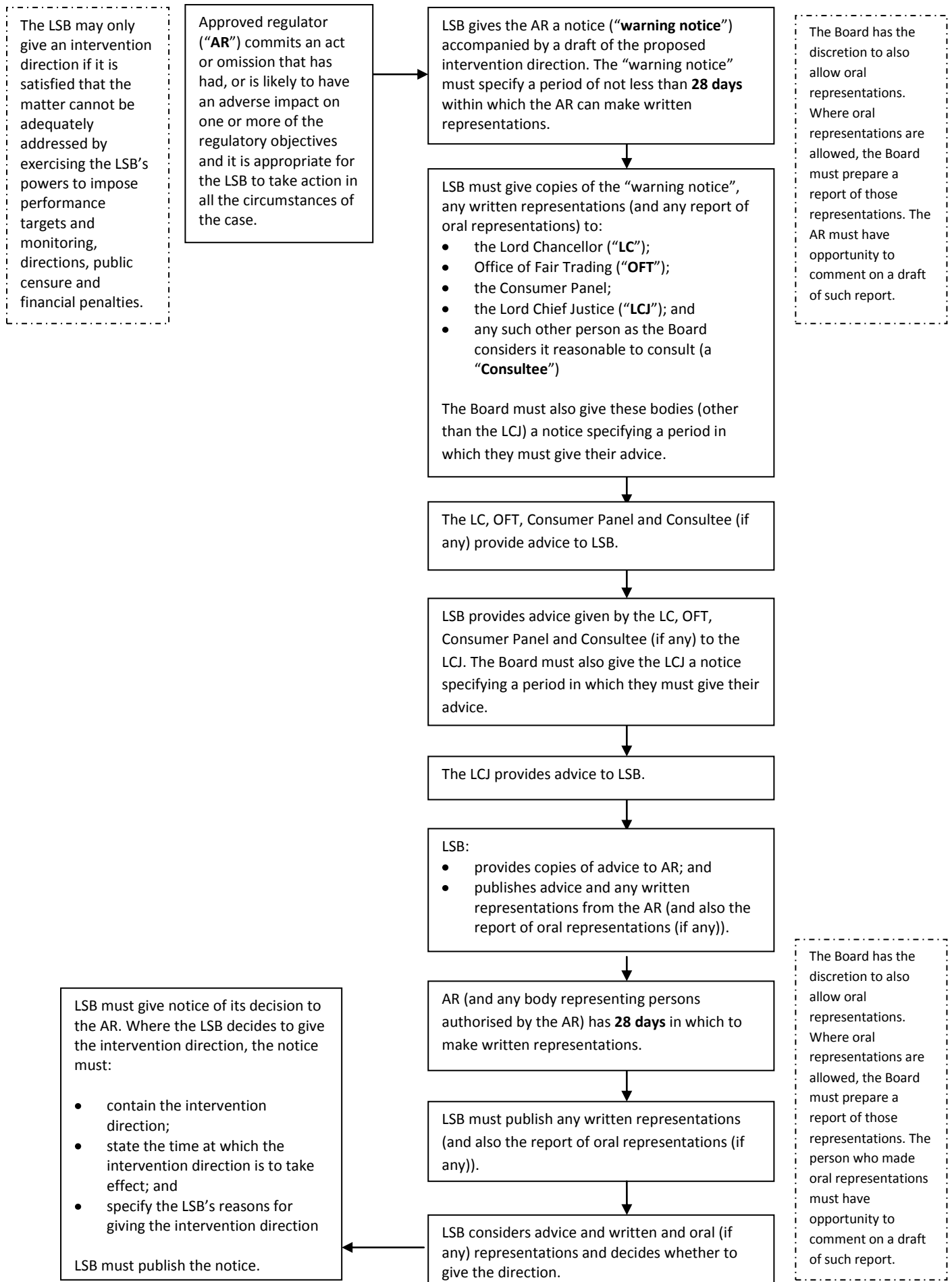
- stating that it has imposed a penalty on the AR and its amount;
- specifying the failure to which the penalty relates;
- specifying the other facts which, in the LSB’s opinion, justify the imposition of the penalty and its amount; and
- specifying a time (not being earlier than the end of the period of **3 months** beginning with the day on which the notice is given) before which the penalty is required to be paid.

AR pays penalty.

AR may within 21 days of Decision Notice make an application to the LSB for it to specify different times by which different portions of penalty paid.

AR may within 3 months of the Decision Notice (or within 3 months of any decision made in relation to payments at different times and in different portions) appeal decision to impose penalty.

## Intervention directions (Section 41)



## Cancellation of designation as approved regulator (Section 45)

