

Technical changes to rules made under section 96 of, and Schedule 13 to, the Legal Services Act 2007

Consultation on technical changes to some rules made by the
Legal Services Board

The consultation period will end at 5pm on Tuesday 24 June 2014.

This Consultation Paper will be of interest to:

Alternative Business Structures (**ABS**)

Approved regulators

Legal representative bodies

Licensing authorities

Potential ABS

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Introduction

What is the role of the Legal Services Board?

1. The Legal Services Board (the **LSB** or the **Board**) is one of the organisations created by the Legal Services Act 2007 (the **LSA**) and is responsible for overseeing legal regulators, (referred to as the approved regulators in the LSA) in England and Wales. The LSB's mandate is to ensure that regulation in the legal services sector is carried out in the public interest and that the interests of consumers are placed at the heart of the system. The LSA gives the LSB and the approved regulators the same regulatory objectives – including an objective to promote competition within the provision of legal services – and a requirement to have regard to the better regulation principles.
2. The LSA also makes provision for approved regulators to apply to the LSB to become designated as licensing authorities. As a licensing authority they may issue licences to legal services businesses that have some element of non-lawyer ownership or management, commonly referred to as alternative business structures (**ABS**) but known in the LSA as licensed bodies.

What is this consultation about?

3. This document consults on technical changes to three sets of rules that the LSB has made. **We are not proposing to alter the policy intent behind the rules, or to alter any of the time periods within which actions must be taken by licensing authorities or ABS.**
4. Part of the work that the LSB has carried out in considering the licensing authority designation applications for the ICAEW and IPReg has been to develop statutory orders under section 80 of the LSA that are needed for them to use the First Tier Tribunal (the **FTT**) as their appellate body.
5. The Board has previously made rules under Schedule 13 to the LSA concerning the time limits for making representations to licensing authorities, the consideration of those representations by licensing authorities and the time limits for making appeals to the relevant appellate body or the High Court (on a point of law); rules have also been made under section 96 of the LSA for the time limit to appeal against a financial penalty imposed by a licensing authority.
6. In reviewing the draft section 80 orders; the FTT has identified that some of the rules made by the Board conflict with the FTT's own rules: the FTT rules give it discretion to extend its own time limits, whereas the LSB's rules prescribe a set time period. We have agreed with the FTT that we will amend our rules to resolve

this conflict. The section 80 Orders have been drafted to remove all reference to time limits set by the Board other than for those set for licensing authorities; this ensures that only the FTT's rules on time periods will apply to appeals made against ICAEW and IPReg licensing authority decisions.

7. Our rules were originally drafted to allow us to make non-material changes to them without the need for consultation. We consider that the types of changes that we propose to make fall into this category. However, the LSB's view now is that section 205(2) of the LSA requires us to consult on any modification of our rules, no matter how immaterial that change is. This is supported by s205(9) which confirms that any references to "making" rules include references to "modifying" rules. This is, in our view, a further example of unnecessary cost and complexity inherent in the LSA.
8. You are hereby given notice under section 205(3) of the LSA that representations about the proposals in this document must be made to the LSB by no later than **5pm on Tuesday 24 June 2014**. Further details on how to make representations can be found on page 7.

What changes are being proposed?

9. The changes being proposed are to:
 - ensure that the LSB's rules do not conflict with those of the FTT which is the body chosen by most licensing authorities to hear appeals about decisions made by them;
 - remove a provision in the rules that is inconsistent with the consultation requirements in sections 205(2) and 205(9) of the LSA; and
 - generally tidy up the drafting of the rules.
10. The rules that are the subject of this consultation are:
 - ***"Rules on the period for the making of appeals against decisions of a licensing authority in relation to financial penalties"***.¹ These are rules on the time period for the making of appeals against decisions of a licensing authority in relation to financial penalties imposed on an ABS.

We propose changing the definition of "relevant appellate body" to expressly exclude the FTT, thereby ensuring that the provisions in relation to time periods in its own rules² apply. We also propose to amend the clause relating

¹ http://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/Rules_under_s96.pdf

² <http://www.justice.gov.uk/downloads/tribunals/general/consolidated-TPFTT-GRC-Rules2009-6-04-12.pdf>

to how the Board will modify the rules to ensure consistency with section 205 of the LSA. There will also be some amendments to tidy up the drafting of this set of rules.

The revised rules are at **Annex A**.

- **“Rules on the prescribed period for the making of appeals against decisions of a licensing authority regarding ownership of licensed bodies”**.³ These are rules that prescribe the period within which any applicant, investor or other person subject to a relevant decision of a licensing authority can appeal to the relevant appellate body (or to the High Court on a point of law).

We propose changing the drafting to ensure that if a licensing authority uses the FTT as its relevant appellate body, the provisions in relation to time periods in the FTT’s own rules⁴ apply. Similarly, any appeals on a point of law against a FTT decision will be made to the Upper Tribunal with provisions relating to time periods set out in the Tribunal’s procedures, not the LSB’s rules. For the decisions of appellate bodies where an appeal on a point of law can be made to the High Court (with the Court’s permission), the LSB’s rules set out the relevant time period within which those appeals must be made. We also propose to amend the rules to alter the clause relating to how the Board will modify the rules to ensure consistency with section 205 of the LSA. There will also be some amendments to tidy up the drafting of this set of rules.

The revised rules are at **Annex B**.

- **“Ownership of licensed bodies: Schedule 13- prescribed rules”**.⁵ The only changes of substance that we propose making to these rules (which specify the prescribed period for certain actions of licensing authorities) is to alter the clause relating to how the Board will modify the rules to ensure consistency with section 205 of the LSA. There are also some amendments to tidy up and seek to simplify the drafting of this set of rules. Although these changes are not relevant to any appeals made to the FTT, we consider it appropriate to include them in this consultation for consistency because they complete the set of rules that the LSB has made under Schedule 13.

The revised rules are at **Annex C**.

³ http://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/rules_under_sch_13_final.pdf

⁴ <http://www.justice.gov.uk/downloads/tribunals/general/consolidated-TPFTT-GRC-Rules2009-6-04-12.pdf>

⁵ http://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/ownership_licensed_bodies_schedule_13_prescribed_rules.pdf

How to respond

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

Post:

Michael Mackay
Legal Services Board
One Kemble Street
London WC2B 4AN

Fax number: 020 7271 0051

Email: Consultations@LegalServicesBoard.org.uk

12. The consultation period will end at 5pm on Tuesday 24 June 2014, four weeks after publication.

13. The LSB is happy to meet respondents to discuss views on the consultation if you would find that helpful. Please send requests to:

Email: Consultations@LegalServicesBoard.org.uk

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

Complaints

15. Complaints or queries about the LSB's consultation process should be directed to Michelle Jacobs, Consultation Co-ordinator, at the following address:

Michelle Jacobs
Legal Services Board
One Kemble Street
London WC2B 4AN

Or by Email: michelle.jacobs@legalservicesboard.org.uk

Annex A - Draft proposed changes to the LSB's Rules on the period for making appeals against decisions of a licensing authority in relation to financial penalties

Rules on the period for the making of appeals against decisions of a licensing authority in relation to financial penalties

~~Version 1: 13 December 2010~~
Version 2: [2014]

A. PREAMBLE

1. These Rules are made by the Board ~~(as defined below)~~ under section 96(1) of the Legal Services Act 2007 ~~(as defined below)~~ the "Act") to prescribe the period within which a person on whom a financial penalty is imposed by a licensing authority under section 95(1) of the Act may appeal to the relevant appellate body on one or more of the appeal grounds.

B. DEFINITIONS

2. ~~Words~~ Unless otherwise herein, defined terms used in these Rules have the following same meanings as those set out in the Act:

~~Act~~ _____ the Legal Services Act 2007

~~Appeal grounds~~ _____ has the meaning given in section 96(2) of the Act

~~Approved Regulator~~ _____ has the meaning given in section 20(2) of the Act

~~Board~~ _____ the Legal Services Board

~~Licensing authority~~ _____ has the meaning given in section 73(1)

~~"rRelevant appellate body"~~ _____ has the meaning given in section 111(1) of the Act but excludes the First Tier Tribunal (whose proceedings are governed by the Tribunals, Courts and Enforcement Act 2007)

C. WHO DO THESE RULES APPLY TO? PRESCRIBED PERIOD FOR MAKING AN APPEAL

3. ~~For the purposes of s96(1) of the Act, These Rules are the rules that the Board has made to prescribe the period within which a person on whom a licensing authority has imposed a financial penalty is imposed by a licensing authority under~~

section 95(1) of the Act, may appeal to the relevant appellate body- within 28 days from the date on which the notice of the decision to impose the financial penalty is given to the appellant~~on one or more of the appeal grounds.~~

D. MODIFICATION TO RULES

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

D. THE PERIOD FOR MAKING AN APPEAL

~~5. A person on whom a licensing authority has imposed a financial penalty under section 95(1) of the Act may appeal to the relevant appeal body within a period of 28 days from the date on which the notice of the decision to impose the said penalty is given to the appellant.~~

E. FURTHER INFORMATION

~~6. If you have any questions about the period within which a person on whom a penalty is imposed under section 95 of the Act may appeal to the relevant appellate body you should contact the Board at:~~

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

~~Email: contactus@legalservicesboard.org.uk~~

~~Telephone: 020 7271 0050~~

Annex B - Draft proposed changes to the LSB's Rules on the prescribed period for making of appeals against decisions of a licensing authority regarding ownership of licensed bodies

Schedule 13: Rules ~~on for~~ the prescribed period for the making of appeals against ~~decisions of a~~ licensing authority decisions regarding relating to ownership of licensed bodies

Version ~~12: 13 June 2011~~ 13 June 2014

A. PREAMBLE

1. ~~Further to paragraph 8 of~~ For the purposes of Schedule 13 ~~paragraph 8 to of~~ the Legal Services Act 2007 (as defined below ~~the "Act"~~), these Rules are made by the Board (as defined below) for the purposes of paragraphs 18(1), 18(3), 20(1), 20(3), 29(1), 29(3), 32(1), 32(3), 34(1), 34(3), 37(1), 37(4), 50(1) and 50(3) of Schedule 13 ~~to the Act~~ to prescribe the periods within which appeals against licensing authority decisions must be taken.

B. DEFINITIONS

2. ~~Words~~ Unless otherwise herein defined, terms used in these Rules will have the following same meanings as those set out in the Act:

Act _____ the Legal Services Act 2007

Applicant _____ has the meaning given in paragraph 15(1) of ~~Schedule 13 to the Act~~

Board _____ the Legal Services Board

Investor _____ has the meaning given in paragraph 15(2) of Schedule 13 to the Act

Licensing authority _____ has the meaning given in section 73(1)

"rRelevant appellate body" _____ has the meaning given in section 111(1) of the Act but excludes the First Tier Tribunal (whose proceedings are governed by the Tribunals, Courts and Enforcement Act 2007)

C. WHO DO THESE RULES APPLY TO? PRESCRIBED PERIODS FOR APPEALS

~~3. These Rules are the rules that the Board has made to~~ The prescribed the period for the making of an appeal to the relevant appellate body is 28 days for

- (i) paragraph 18(1);
- (ii) paragraph 20(1);
- (iii) paragraph 29(1);
- (iv) paragraph 32(1);
- (v) paragraph 34(1);
- (vi) paragraph 37(1); and
- (vii) paragraph 50(1) of Schedule 13 to the Act.

4. Each prescribed period set out in Rule 3 above is from the date on which the notice of the decision of the licensing authority is given to the applicant, investor or other person subject to the licensing authority's decision.

5. The prescribed period for the making of an appeal against the decision of the relevant appellate body to the High Court on a point of law arising from the decision of the relevant appellate body (but only with permission of the High Court) is 28 days for

- (i) paragraph 18(3);
- (ii) paragraph 20(3);
- (iii) paragraph 29(3);
- (iv) paragraph 32(3);
- (v) paragraph 34(3);
- (vi) paragraph 37(4); and
- (i)(vii) paragraph 50(3) of Schedule 13 to the Act. within which—
 - ~~(a) any applicant, investor or other person subject to a decision of a licensing authority under paragraphs 17(1), 19(1), 28(1), 31(1), 33(1), 36(1) or 49(2) of Schedule 13 to the Act may appeal to the relevant appellate body under paragraphs 18(1), 20(1), 29(1), 32(1), 34(1), 37(1) and 50(1) of Schedule 13 to the Act respectively; and~~
 - ~~(b) any party to an appeal set out in paragraph 3(a) above may make an appeal against the decision of the relevant appellate body to the High Court on a point of law arising from the decision of the relevant appellate body, but only with permission of the High Court, under paragraphs 18(3), 20(3), 29(3), 32(3), 34(3), 37(4) and 50(3) of Schedule 13 to the Act respectively.~~

64. The prescribed period of 28 days is from the date on which a party to an appeal referred to in paragraph 5 above, is given notice of the decision of the relevant appellant body.

D. MODIFICATIONS TO RULES

~~7. The Board reserves the right to amendmodify these Rules from time to time and. If the amendments made to the Rules are, in the opinion of the Board, material the Board will publish a draft of the amendedany modified Rules and will invite consultations in accordance with section 205 of the Act.~~

VERSION 2: [_____ 2014]

~~D. THE PERIOD FOR MAKING AN APPEAL~~

~~5. For the purposes of the making of an appeal to the relevant appellant body pursuant to paragraphs 17(1), 19(1), 28(1), 31(1), 33(1), 36(1) or 49(2) of Schedule 13 to the Act, the prescribed period is 28 days from the date on which the notice of the decision of the licensing authority is given to the applicant, investor or other person subject to the licensing authority's decision.~~

~~6. For the purposes of the making of an appeal against the decision of the relevant appellate body to the High Court on a point of law arising from the decision of the relevant appellate body, but only with permission of the High Court, under paragraphs 18(3), 20(3), 29(3), 32(3), 34(3), 37(4) and 50(3) of Schedule 13 to the Act, the prescribed period is 28 days from the date on which a party to an appeal, referred to in paragraph 5 above, is given notice of the decision of the relevant appellant body.~~

~~E. FURTHER INFORMATION~~

~~7. If you have any questions regarding the content of these rules, you should contact the Board at:~~

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

~~Email: contactus@legalservicesboard.org.uk~~

~~Telephone: 020 7271 0050~~

Annex C – Draft proposed changes to the LSB’s Rules on the Ownership of licensed bodies: Schedule 13 prescribed rules

Schedule 13: Ownership of licensed bodies Rules: **Schedule 13–prescribed ruletime periods**

A. PREAMBLE

1. For the purposes of Schedule 13 paragraph 8 of the Legal Services Act 2007 (the “Act”), these Rules are made by the Board (as defined below) under Schedule 13 to the Act (as defined below) to prescribe the periods within which certain actions of a licensing authority must be taken.

B. DEFINITIONS

2. Words Unless otherwise defined, terms used in these Rules will have the following same meanings as those set out in the Act:

Act ————— the Legal Services Act 2007

Board ————— the Legal Services Board

Licensing Authority ————— within the definition of 73(1) of the Act

Licensed Body ————— a body granted a licence by a licensing authority

C. WHAT DO THESE RULES APPLY TO?

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

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

CD. REQUIREMENTS FOR THE PURPOSES OF SCHEDULE 13 OF THE ACT **PRESCRIBED PERIODS**

35. For the purposes ofThe prescribed period is 90 days for:

- (i) Schedule 13 paragraph 25(2);
- (ii) Schedule 13 paragraph 33(2)(b);
- (iii) Schedule 13 paragraph 36(2); and
- (iv) Schedule 13 paragraph 44(4)(b) of Schedule 13 to the Act.

~~the prescribed period is 90 days.~~

~~46. In all other cases the~~The prescribed period is 28 days for

~~(i) paragraph 17(4)(b);~~

~~(ii) paragraph 17(5);~~

~~(iii) paragraph 19(3)(b);~~

~~(iv) paragraph 19(4);~~

~~(v) paragraph 28(5)(b);~~

~~(vi) paragraph 28(6);~~

~~(vii) paragraph 31(4)(b);~~

~~(viii) paragraph 31(5);~~

~~(ix) paragraph 33(2)(b);~~

~~(x) paragraph 33(5)(b);~~

~~(xi) paragraph 33(6);~~

~~(xii) paragraph 36(5)(b);~~

~~(xiii) paragraph 36(6);~~

~~(xiv) paragraph 43(3);~~

~~(xv) paragraph 46(3);~~

~~(xvi) paragraph 49(4)(b); and~~

~~(xvii) paragraph 49(5) of Schedule 13 to the Act.~~

D. MODIFICATIONS TO RULES

~~5. The Board reserves the right to modify these Rules from time to time and the Board will publish a draft of any modified Rules and will invite consultations in accordance with section 205 of the Act.~~

~~**VERSION 2: [2014]**~~

E. FURTHER INFORMATION

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

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

~~Email: — contactus@legalservicesboard.org.uk~~

~~Telephone: — 020 7271 0050~~