

# **LSB enforcement policy and rules of procedure**

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A notice issued by the Board under section 50 and section 205 of the Legal Services Act 2007 to invite representations on a draft statement of policy under section 49 of the Act and rules of procedure under section 205.

Representations are invited to be made by 5pm on Thursday 12 October 2017.

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## Introduction

1. The Legal Services Board (LSB) is the independent body responsible for overseeing the regulation of lawyers in England and Wales. We are independent of both government and the profession. We are funded by the legal profession. We hold to account the nine approved regulators for the different branches of the legal profession and the Office for Legal Complaints.
2. We have recently undertaken a review of the LSB's enforcement policy and the LSB's rules governing the use of its enforcement powers and other processes. This paper presents the outcome of that work and seeks representations on the proposed revisions.

## Revisions to LSB's enforcement policy

3. Under section 49 of the Legal Services Act 2007 (the Act), the LSB Board must issue a statement of policy on the exercise of its enforcement powers against the approved regulators and the Solicitors Disciplinary Tribunal:
  - section 31 (performance targets and monitoring)
  - section 32 (directions)
  - section 35 (public censure)
  - section 37 (financial penalties)
  - section 41 (intervention directions)
  - section 45 (cancellation of designation as approved regulator)
  - section 76 (cancellation of designation as a licensing authority by order).
4. The LSB's current enforcement policy was published in 2010.<sup>1</sup> It was supplemented in 2011 with a separate policy on the Board's powers to cancel designation of a licensing authority (section 76).<sup>2</sup> Together these statements run to over 40 pages of text, are duplicative, contain unnecessary procedural information, and can be difficult to navigate. They include a number of annexes of procedural rules and diagrams.
5. It is good regulatory practice to regularly review policies to provide assurance that they remain up to date and fit for purpose. A recent assessment of these statements has identified a number of potential updates and improvements. If implemented these updates will increase the clarity and accessibility of the current 2010/2011 statements, and reflect the Board's experience of using the

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<sup>1</sup> Section 49(1) of the Legal Services Act 2007: Statement of Policy – Compliance and Enforcement (Version 2: November 2010). Available at: [http://www.legalservicesboard.org.uk/what\\_we\\_do/consultations/closed/pdf/statement\\_of\\_policy\\_compliance\\_and\\_enforcement\\_v2\\_november10.pdf](http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/statement_of_policy_compliance_and_enforcement_v2_november10.pdf)

<sup>2</sup> Statement of Policy – Cancellation of designation as a Licensing Authority. Available at: [http://www.legalservicesboard.org.uk/what\\_we\\_do/regulation/pdf/cancellation\\_of\\_designation\\_la\\_statement\\_of\\_policy\\_3.pdf](http://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/cancellation_of_designation_la_statement_of_policy_3.pdf)

policy. An update would also allow the Board to issue a single statement of policy for all enforcement powers against the approved regulators and the Solicitors Disciplinary Tribunal.

6. The draft statement of policy is at **Annex A**. This sets out the proposed revisions against the current version of the main LSB enforcement policy.
7. In light of the LSB's acceptance of informal resolution following its investigation of the Bar Council and Bar Standards Board in 2013, the policy has been updated around informal resolution (paragraphs 23–33). These state more clearly that default of informal resolution may lead to formal action. Paragraphs 29–30 provide for the opportunity for the LSB to prompt informal resolution.
8. Other revisions proposed in the draft policy at Annex A in addition to the above are minor editorial changes. We have:
  - added a table of contents to aid navigation and removed duplicated text
  - deleted annexes that reprint related rules and regulations and replaced these with a list of links
  - removed procedural flowcharts from the policy itself (although these will remain available separately on the LSB website)
  - added references to:
    - the statutory instrument which prescribes the maximum financial penalty the LSB may impose on an approved regulator (paragraph 44); and
    - the statutory instruments relating to the issuing of warrants for entry into the premises of approved regulators and/or licensing authorities (the warrant regulations) (paragraphs 58 and 66).

## Representations

9. Under section 50 of the Act, before publishing a statement of policy, LSB is required to invite representations on a draft of the statement. This paper therefore constitutes a notice under section 50 of the Act in relation to a proposed statement of policy.
10. Representations about the draft statement of policy at **Annex A** may be made to LSB by 5pm on Thursday 12 October 2017.

## Revisions to LSB's rules of procedure

11. Alongside the review of the LSB's enforcement policy statement, we have carried out a parallel review of the LSB's rules. This initially centred on those rules relating to LSB's enforcement powers, but as this indicated a number of areas for improvement, the scope was widened to consider rules relating to other LSB procedures.
12. The review highlighted a range of general and specific areas for updating, such as drafting inconsistencies, duplication, formatting and accessibility. We have drafted three new sets of rules to address the issues identified. These new rules (at Annexes B–D) are for:
  - making oral and written representations and giving oral and written evidence
  - powers of entry following cancellation of designation
  - applications to cancel designation as a licensing authority.

## New rules on oral and written representations and oral and written evidence

13. The major area for improvement highlighted in the review was with respect to rules concerning the provision of oral and written representations and evidence. At present, these rules are inconsistently duplicated in seven separate locations among the LSB's other various procedure rules, either as part of a wider set of rules, or as standalone documents. Addressing this duplication and lack of consistency is seen as a priority.
14. To tackle this, we have amalgamated the seven sets of rules on written and oral representations and written and oral evidence. **Annex B** presents the proposed new single set of rules.
15. This draft is based on current rules, and these draft rules do not reflect any significant change in approach. The amendments can be summarised as follows:
  - the combination of all defined terms into a single list to amalgamate the current seven sets of rules
  - the creation of tables at new Annexes A and B to these rules to account for the various statutory provisions and procedures under which these rules will apply, together with cross referencing to such Annexes throughout the proposed new rules
  - the addition of rule 3 to confirm that the rules must be read in conjunction with other LSB rules and policies
  - the addition of rule 4 to confirm that the Act prevails over the rules
  - removal of the LSB address and replacement with a reference to the address on the LSB website
  - removal of references to an online tool (see below)

- the addition of clarifications on the LSB's position with respect to the payment of costs of oral representations (see below)
- other amendments required to amalgamate the seven sets of rules into one.

16. Publishing a single set of rules on this topic will require consequential amendments to be made to other rules. The impact on current rules would be as follows:

- the repeal of current standalone representation and evidence rules for
  - schedule 6<sup>3</sup>
  - schedules 7-9 enforcement procedures<sup>4</sup>
  - cancellation of designation of a licensing authority (these are currently annexed to a wider suite of rules on cancellation of designation of licensing authorities)<sup>5</sup>
- the removal of representations provisions and a tidy-up of five sets of procedure rules for:
  - Designation as an approved regulator and/or qualifying regulator<sup>6</sup>
  - Designation as a licensing authority<sup>7</sup>
  - Alteration to regulatory arrangements<sup>8</sup>
  - Intervention directions: section 41(5) and 42(10) rules<sup>9</sup>
  - Applications to revoke intervention directions.<sup>10</sup>

17. Given that there are seven separate sets of substantially similar rules on written and oral representations, the document at Annex B sets out the revisions against only one of these sets (with respect to applications to alter

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<sup>3</sup> Schedule 6 Rules – Making Oral and Written Representations and Giving Oral and Written Evidence. Available at:

[http://www.legalservicesboard.org.uk/what\\_we\\_do/regulation/pdf/schedule\\_6\\_rules.pdf](http://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/schedule_6_rules.pdf)

<sup>4</sup> Enforcement processes: rules on oral and written representations – Version 2 (November 2010). Available at:

[http://www.legalservicesboard.org.uk/what\\_we\\_do/regulation/pdf/rules\\_on\\_oral\\_and\\_written\\_representations\\_v2\\_November10.pdf](http://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/rules_on_oral_and_written_representations_v2_November10.pdf)

<sup>5</sup> Rules relating to cancellation of designation as a Licensing Authority. Available at:

[http://www.legalservicesboard.org.uk/what\\_we\\_do/regulation/pdf/Cancellation\\_of\\_designation\\_as\\_a\\_LA\\_rules.pdf](http://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/Cancellation_of_designation_as_a_LA_rules.pdf)

<sup>6</sup> Rules for applications for Approved Regulator and Qualifying Regulator designation. Available at:

[http://www.legalservicesboard.org.uk/what\\_we\\_do/consultations/closed/pdf/Qualifying\\_Regulator\\_statements/201110328\\_Rules\\_for\\_applications\\_Approved\\_Regulator\\_Qualifying\\_Regulator\\_designation\\_1\\_April.pdf](http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/Qualifying_Regulator_statements/201110328_Rules_for_applications_Approved_Regulator_Qualifying_Regulator_designation_1_April.pdf)

<sup>7</sup> Rules for applications to be designated as a LA. Available at:

[http://www.legalservicesboard.org.uk/what\\_we\\_do/regulation/pdf/designating\\_la\\_rules\\_v2\\_june\\_2011\\_final.pdf](http://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/designating_la_rules_v2_june_2011_final.pdf)

<sup>8</sup> Rules for Rule Change Applications. Available at:

[http://www.legalservicesboard.org.uk/what\\_we\\_do/regulation/pdf/rules\\_for\\_rule\\_change\\_applications\\_v2\\_November2010.pdf](http://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/rules_for_rule_change_applications_v2_November2010.pdf)

<sup>9</sup> Intervention directions: Section 41(5) and 42(10) rules. Available at:

[http://www.legalservicesboard.org.uk/what\\_we\\_do/regulation/pdf/intervention\\_directions.pdf](http://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/intervention_directions.pdf)

<sup>10</sup> Intervention directions: rules for applications to revoke. Available at:

[http://www.legalservicesboard.org.uk/what\\_we\\_do/regulation/pdf/applications\\_to\\_revoke.pdf](http://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/applications_to_revoke.pdf)

reserved legal activities under schedule 6 of the Act<sup>11</sup>). A document explaining the impact of this revision on the other six sets of rules is available on the open consultations page of the LSB website.

18. In the course of drafting the rules at Annex B we have clarified the LSB's position on costs associated with making oral representations or giving oral evidence. This is reflected in rule 17. In short, the Board retains the discretion to meet costs in these circumstances, but the default position is that these costs lie with the representing person. The drafting also reflects paragraph 18 to Schedule 6 of the Act.

19. The seven current sets of rules around representations all make reference to the development of an "online tool" for submitting representations. This was an expected development at the time rules were first drafted, but one that has proved unnecessary. We have removed references to this in the rules at Annex B.

### **Rules on powers of entry in the event of a cancellation of designation for approved regulators and licensing authorities**

20. The review identified substantial duplication in two sets of rules relating to powers of entry in the event of a cancellation of designation as (i) an approved regulator<sup>12</sup> and/or (ii) a licensing authority<sup>13</sup> respectively. We propose to amalgamate these two sets by amending the approved regulator power of entry rules to include licensing authorities. The proposed new rules can be found at **Annex C**.

21. There are no policy changes proposed in this draft set of rules. The amendments can be summarised as follows:

- the combination of all defined terms into a single list to amalgamate the current two sets of rules
- the addition of rule 3 to confirm that the rules must be read in conjunction with other LSB rules and policies
- the addition of rule 4 to confirm that the Act prevails over the rules
- other amendments required to amalgamate two sets of rules into one.

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<sup>11</sup> Schedule 6 Rules – Making Oral and Written Representations and Giving Oral and Written Evidence. Available at:

[http://www.legalservicesboard.org.uk/what\\_we\\_do/regulation/pdf/schedule\\_6\\_rules.pdf](http://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/schedule_6_rules.pdf)

<sup>12</sup> Cancellation of designation: Section 48(9) rules. Available at:

[http://www.legalservicesboard.org.uk/what\\_we\\_do/regulation/pdf/section\\_48\\_9\\_rules.pdf](http://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/section_48_9_rules.pdf)

<sup>13</sup> Cancellation of designation: Section 79(9) rules on powers of entry. Annex 3 of rules available at:

[http://www.legalservicesboard.org.uk/what\\_we\\_do/regulation/pdf/Cancellation\\_of\\_designation\\_as\\_a\\_LA\\_rules.pdf](http://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/Cancellation_of_designation_as_a_LA_rules.pdf)

## Rules for the cancellation of designation as a licensing authority

22. The current rules on “Cancellation of designation as licensing authority by order”<sup>14</sup> present procedures as a series of rules in a range of annexes. In the light of the changes described above, these rules may now be streamlined by making the following changes:

- deleting the preamble
- carving out Annex 1 (licensing authority applications for cancellation of designation) as a standalone set of rules. These are at **Annex D**
- relocating Annex 2 (flowchart on the process for cancelling designation as a licensing authority) to the guidance section of the LSB website
- repealing rules on power of entry and, as stated above, amending the corresponding approved regulator rules to include licensing authorities (Annex C)
- repealing rules on written and oral representations, in the light of proposed rules described above (Annex B).

23. Further to the above, the carved out rules at Annex D also set out proposed revisions against the current rules on licensing authority applications for cancellation of designation. There are no policy changes proposed in this draft set of rules. The amendments can be summarised as follows:

- the addition of rule 5 to confirm that the rules must be read in conjunction with other LSB rules and policies
- the addition of rule 6 to confirm that the Act prevails over the rules
- removal of the LSB address and replacement with a reference to the address on the LSB website
- removal of references to an online tool.

24. For the time being, the LSB is not seeking representations with respect to the level of the prescribed fees set out in Section E of the proposed rules at Annex D. To the extent that the level of the prescribed fees needs to be reviewed, this will be considered at a later date alongside other prescribed fee levels.

## Representations

25. Under Section 205 of the Act, if the Board proposes to make any rules, it must publish a draft of the proposed rules and seek representations. This paper therefore constitutes a notice under section 205 of the Act in relation to draft rules.

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<sup>14</sup> Rules relating to cancellation of designation as a Licensing Authority. Available at: [http://www.legalservicesboard.org.uk/what\\_we\\_do/regulation/pdf/Cancellation\\_of\\_designation\\_as\\_a\\_LA\\_rules.pdf](http://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/Cancellation_of_designation_as_a_LA_rules.pdf)



26. We would welcome representations about the proposals set out in the draft rules at Annexes B–D by 5pm on Thursday 12 October 2017.

### Next steps

27. Once the Board has considered representations on Annexes A–D, we will publish final versions of the statement and the rules. If these differ from the drafts in a material way, we will publish details of the differences.

### How to respond

28. Any representations on Annexes A-D should be made to the Board by 5pm on Thursday 12 October 2017.

29. We would prefer to receive responses electronically (in MS Word format), but hard copy responses by post or fax are also welcome.

30. Responses should be sent to:

- Email: [consultations@legalservicesboard.org.uk](mailto:consultations@legalservicesboard.org.uk)
- Post: Legal Services Board, One Kemble Street, London, WC2B 4AN
- Fax: 020 7271 0051

31. We intend to publish all responses on our website unless a respondent explicitly requests that a response (or a specific part of it) should be kept confidential. We will record the identity of the respondent and the fact that they have submitted a confidential response in our summary of responses.

32. If you wish to discuss any aspect of this paper, or need advice on how to respond to the consultation, please contact the LSB by telephone (020 7271 0050) or by one of the methods described above.

33. Any complaints or queries about this process should be directed to the Consultation Co-ordinator, Jenny Prior, at the following address:

Consultation Co-ordinator  
Legal Services Board  
One Kemble Street  
London WC2B 4AN

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

## **Annexes**

Annex A: Draft of proposed statement of policy for enforcement (v3)

Annex B: Draft of proposed rules on oral and written representations and oral and written evidence

Annex C: Cancellation of designation: draft of proposed rules on powers of entry

Annex D: Draft of proposed rules for the cancellation of designation as a licensing authority