

Consultation: Schedule 12 rules

A consultation document about how the LSB will review decisions about licence applications made to it

This consultation will close at 5pm on 19 July 2011

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Introduction

1. The Legal Services Board (the “**LSB**”) is the organisation created by the Legal Services Act 2007 (the “**LSA**”) and is responsible for overseeing legal regulators, (referred to as the approved regulators (“**ARs**”) 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 ARs 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 and any other best regulatory practice.
2. The Act sets out a new regulatory framework for the operation of regulators and the ownership of legal service providers. It gives the LSB a new power to recommend to the Lord Chancellor the designation of — licensing authorities (LAs). These are ARs with the power to license a particular type of legal service provider, conventionally known as —alternative business structures (ABS). The LAs will regulate ABS according to their licensing rules, the requirements for which are set out in the Act.
3. We have now received applications from the Council for Licensed Conveyancers (CLC) and from the Law Society for designation as LAs. Our Board will be considering these applications and will decide whether to recommend designation. We anticipate that ABS will be able to be licensed from 6 October 2011.
4. When Part 5 of the Act is commenced, the concept of “licensable body¹” will become law. In general, a body will be licensable if a non-authorized person is a manager of, or has an interest in (for example, because they have shares or voting rights) it. A licensable body that carries out reserved legal activities must apply to a LA for a licence.
5. This document consults on rules that the LSB must make in case there is no appropriate LA and a licensable body asks the LSB to decide whether it can apply to the Board (acting as a LA) (LSB(LA)) for a licence.
6. The Act sets out what the Board must do if it decides that the body can apply to LSB(LA) for a licence. These requirements are not the subject of this consultation. However, the Board has already established a Licensing Authority Committee to fulfil the functions of the Board in preparing to act as, and in its capacity (if any), as a Licensing Authority and to deal with any matters that arise in relation to those functions.

¹ Section 72

Entitlement to make an application to the Board

7. There are three grounds on which a licensable body can make an application to the Board for a decision about whether it can apply to LSB(LA) for a licence. These are²:
- If there is no competent LA and no potentially competent LA to whom a licensable body can apply for a licence;
 - If each competent or potentially competent LA has determined that it does not have suitable regulatory arrangements (after taking into account any rules changes being considered by the LSB are agreed); and
 - In the case of not for profit bodies, community interest companies and independent trade unions, an application has been made to each LA with suitable regulatory arrangements but no such LA is prepared to grant a licence. .
8. A competent LA is an AR that has been designated as a LA for the reserved legal activities that the licensable body wants to carry out.³ A potentially competent LA is an AR that has made an application to the Board for a recommendation to the Lord Chancellor for designation as a LA (for the relevant reserved legal activities) or for which a recommendation has been made but no decision has been reached.
9. The Act sets out the grounds on which an application can be made⁴ and the timescale within which the Board must decide whether a licensable body can make an application to it for a licence.⁵ In summary these are:
- If the application has been made because there is no competent LA and no potentially competent LA: 14 days;
 - If the application has been made because competent or potentially competent LAs do not have suitable regulatory arrangements: 28 days; and
 - For licensable bodies that are a not for profit body, a community interest company or an independent trade union: 60 days.

² Schedule 12 paragraph 1(3), (4) and (5)

³ Schedule 12 paragraph 5

⁴ Schedule 12 paragraphs 1(3), (4) and (5)

⁵ Schedule 12 paragraph 2(2)

10. The Board does not have to make rules about how it will reach its decision. However, the Board expects the licensable body to submit their application either by email, post or courier to the LSB and to provide sufficient information to allow the Board to make a proper consideration of the application. This must include all:
- Determinations made by a competent licensing authority under Schedule 12 paragraph 3(1)(a) of the Act;
 - Statements and determinations made by a competent licensing authority under Schedule 12 paragraph 3(1)(b) of the Act; and
 - Determinations made by a potentially competent licensing authority under Schedule 12 paragraph 3(2) of the Act.⁶
11. The Board will acknowledge the application by email. It may request additional information in order for the Board to consider the application and may refuse to consider, or to continue its consideration of, an application if it believes that it has not received all the information it requires. An applicant may at anytime withdraw their application by giving notice to that effect to the Board.
12. Once the Board has made its decision, it must give a notice to the licensable body stating its decision and the reasons for it.⁷ In reaching its decision the Board will take into account any determination or statement made by a competent or potentially competent LA following a request by a licensable body to the LA to decide whether it has suitable regulatory arrangements to license it.
13. The Board must make rules about how it will review any decision it makes⁸. The rules can state that a decision can be reviewed if there is a competent LA or potentially competent LA before the LSB(LA) makes a decision whether to grant a licence to the body⁹. In addition to the requirements of Schedule 12 to the Act, the proposed rules at Annex A also take into account the requirement to act, so far as reasonably practicable, in a way that is compatible with the regulatory objectives and having regard to the principles of better regulation. The rules therefore do no more than the Act requires and have been drafted in a way that is as straightforward as possible.
14. If the Board decides that the body may make an application to it then the application must then be made in accordance with the LSB(LA)'s licensing

⁶ Schedule 12 paragraph (3)

⁷ Schedule 12 paragraph 2(3)

⁸ Schedule 12 paragraph 4

⁹ Schedule 12 paragraph 2(5)

rules. For the avoidance of doubt, a decision by the Board that a body may make an application to it for a licence is not a decision that the Board will grant that body a licence. A decision whether to grant a licence will be made by LSB(LA) after it has considered all the information provided in an application.

Summary of the rules

15. The Board considers that it would be reasonable for it to review a decision that a body can apply to it for a licence if, for example, an approved regulator becomes a competent or potentially competent LA. Such a review would have to take place before a decision had been made whether to license the body because once a licence is granted the LSB(LA) would be the body's LA. Depending on the outcome of the review, that could mean that the licensable body then had to make an application to the newly competent or potentially competent LA. This is reasonable to ensure that it will generally be approved regulators (designated as LAs) regulating ABS rather than LSB(LA).¹⁰
16. There may be cases when the Board decides that a body is not entitled to make an application to it for a licence when in fact an applicant does have grounds to apply. If that happens then we would expect the applicant to set out the reasons why it considers the Board has made an incorrect decision. The Board will then, if it considers it appropriate to do so, review its decision.¹¹
17. The rules also allow the Board to review its decision about an application in other circumstances if it considers it appropriate to do so. This would include circumstances where the Board decides on its own initiative to review its decision and does not need additional information from the applicant. This applies to a decision to grant an application as well as a decision to refuse an application.¹²

¹⁰ Draft rules paragraph 8

¹¹ Draft rules paragraph 9

¹² Draft rules paragraph 10

How to Respond

Our consultation period ends at 5 p.m. on **19 July 2011**. The consultation period is 12 weeks.

In accordance with section 205(3) of the Legal Services Act 2007, you are given notice that any representation about the rules must be received by the end of this period.

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:

Email: consultations@legalservicesboard.org.uk

Post: Michael Mackay,
Legal Services Board,
7th Floor, Victoria House,
Southampton Row,
London WC1B 4AD

Fax: 020 7271 0051

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.

If you have any questions about this consultation, please contact Chris Baas, Regulatory Project Manager by telephone (020 7271 0055), e-mail (christopher.baas@legalservicesboard.org.uk) or by post at the address above.

Annex A

Rules for LSB review of decisions about licence applications made to it

A. PREAMBLE

1. These Rules are made by the Board (as defined below) under Schedule 12 paragraph 2(4) to the Act (as defined below).

B. DEFINITIONS

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

Act	the Legal Services Act 2007
Applicant	a licensable body that submits an Application
Application	an application submitted under Schedule 12 paragraph 1 to the Act to the Board for a decision that the Applicant is entitled to apply for a licence to LSB(LA)
Board	the Legal Services Board (acting otherwise than in its capacity as a Licensing Authority)
Competent Licensing Authority	has the meaning given in Schedule 12 paragraph 5 to the Act
LSB(LA)	the Legal Services Board (acting in its capacity as a Licensing Authority)
Licensing Authority	has the meaning given in section 73 of the Act
Potentially Competent Licensing Authority	has the meaning given in Schedule 12 paragraph 6 to the Act

C. WHO DO THESE RULES APPLY TO?

3. These Rules set out the grounds on which the Board may review any decision made by it about an Application.
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 representations in accordance with section 205 of the Act.

D. GROUNDS FOR THE BOARD TO REVIEW ITS DECISION

8. If the Board granted the Application, it may review its decision if the ground on which the application was granted ceases to be made out before the LSB(LA) determines any application for a licence made by the Applicant.
9. If the Board refused to grant the Application, it may at its discretion review its decision following receipt of a written request from the Applicant, providing the request specifies the grounds on which it has been made.
10. The Board may review its decision about an Application if it considers it appropriate to do so.

The outcome of a review

8. After reviewing its decision the Board will give a give a notice to the Applicant stating the outcome of the review and giving reasons for its decision.
9. The Board will publish on its website a copy of any notice that it gives to the Applicant.

Timing

10. If the Board decides to review its decision, it will do so as soon as, in its reasonable view, possible.

E. FURTHER INFORMATION

11. If you have any questions about the review process or the preparation of an Application, 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