

# Rules relating to cancellation of designation as a Licensing Authority

## Rules

1. The Act states that the Lord Chancellor may cancel a body's designation as a Licensing Authority in accordance with a recommendation by the LSB. The LSB can make such a recommendation if:
  - a. the act or omission of a Licensing Authority (or a series of such acts or omissions) has had, or is likely to have, an adverse impact on one or more of the regulatory objectives; and
  - b. it is appropriate to cancel the Licensing Authority's designation in relation to the activity or activities in question in all the circumstances of the case (including, in particular, the impact of cancelling the designation on the other regulatory objectives).

The LSB must also have decided that the act or omission by the Licensing Authority was unreasonable.

2. The LSB must make certain rules in relation to the processes it undertakes in deciding whether to make a recommendation to the Lord Chancellor.
3. The rules that the LSB is required to make are as follows:
  - **Section 76(3)(b)** – The LSB must prescribe rules as to the form and manner of an application by a Licensing Authority to cancel its designation as such. These rules must specify the amount of the fee for such an application (the 'prescribed fee') and must be made with the consent of the Lord Chancellor. Though this is not technically an enforcement tool, the LSB considers it reasonable to propose these rules as part of this consultation paper. The rules that the Board has made are at **Annex 1**. This also contains a proposal on the prescribed fee which follows the approach used by the LSB for fees in relation to the cancellation of designation as an Approved Regulator;
  - **Section 79(9)** - The LSB must make rules as to the persons it may nominate to apply for a warrant to enter and search premises. The rules that the Board has made are at **Annex 3**; and
  - **Paragraphs 18(5) and 25(5) of schedule 10** – The LSB must make rules governing the making of oral and written representations. The LSB has decided to use the same Rules that it has made for oral and written representations in relation to its other enforcement powers. This will

ensure that the rules for any permitted oral and written representations are the same for all forms of enforcement action. A copy of these is at **Annex 4**.

## **Annex 1 – Cancellation of designation: rules for application to cancel under section 76(3) of the Act**

### **A. DEFINITIONS**

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

<b>Act</b>	the Legal Services Act 2007
<b>Affected Licensed Body</b>	a Licensed Body 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 a Licensing Authority in relation to one or more Reserved Legal Activity that is submitted to the Board in accordance with these Rules
<b>Board</b>	the Legal Services Board
<b>Cancellation Notice</b>	the notice published by the Applicant in accordance with Section E of these Rules
<b>Licensed Body</b>	has the meaning given in Section 71 of the Act
<b>Licensing Authority</b>	has the meaning given in Section 73 of the Act
<b>Practising Fees</b>	has the meaning given in Section 51 of the Act
<b>Prescribed Fee</b>	the fee that must accompany an Application as described in Section D of these Rules
<b>Reserved Legal Activity</b>	has the meaning given in Section 12 and Schedule 2 of the Act

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

2. These are the Rules that apply if a body wishes to apply to the Board, under Section 76(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 a Licensing Authority in relation to one or more Reserved Legal Activity.
  
3. These Rules set out:
  - the required content of any Application to the Board (**see Section C**);
  - the amount of the Prescribed Fee that must accompany any Application (**see Section D**);
  - the Board's requirements in relation to the Applicant's publication of a notice giving details of the Application in accordance with Section 76(3)(c) of the Act (**see Section E**);
  - the processes and procedures that the Board will undertake in considering the Application (**see Section F**); and
  - whom a body should contact if it has a question in relation to the Application process (see **Section G**).
  
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.

## **C. CONTENTS OF APPLICATION**

6. An 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 Reserved Legal Activity or Activities to which the Application relates;
  - details of why the Applicant is making the Application;

- details of any alternative courses of action, besides cancellation of designation, that have been considered or explored by the Applicant;
- details of the Affected Licensed Bodies and whether any communication has been had with such bodies in relation to the Application;
- details of what arrangements the Applicant proposes in relation to:
  - i) the transfer of the regulation of the Affected Licensed Bodies to another relevant Licensing Authority and whether that Licensing Authority has consented to such transfer;
  - ii) the transfer of amounts held by the Applicant which represent amounts paid to it by the Affected Licensed Bodies in respect of being licensed as Licensed Bodies to another relevant Licensing Authority and whether that Licensing Authority has consented to such transfer; and
- if the Applicant is planning to wind up all its activities, details of how it proposes to do so in an orderly manner.

**D. PRESCRIBED FEE**

10. Any Application must be accompanied by the Prescribed Fee set out in Rule 11 below. The Prescribed Fee must be paid by electronic funds transfer to the bank account specified from time to time by the LSB using the following reference:

Reference: [Insert Applicant name]/Licensing Authority Designation 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.

## **E. NOTICE REQUIREMENTS**

11. On submitting an Application to the Board, an Applicant must publish a Cancellation Notice giving the following information:
- the date on which the Application to the Board was made;
  - details of the Reserved Legal Activity or Activities to which the Application relates;
  - details of why the Application is being made;
  - details of the Affected Licensed Bodies;
  - details of what arrangements the Applicant proposes in relation to the:
    - i. transfer of the regulation of the Affected Licensed Bodies to another relevant Licensing Authority;

- ii. transfer of amounts held by the Applicant which represent amounts paid to it by way of Practising Fees by the Affected Licensed Bodies to another relevant Licensing Authority.

12. Any Cancellation Notice given in accordance with Rule 11 must be published:

- on the Applicant's website on the same day on which an Application is submitted to the Board; and
- in any publication that the Board may specify from time to time within 5 working days of the Application being submitted to the Board.

## **F. 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:

- If by email to:           contactus@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:    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.



## Annex 2 – Process for cancelling designation as a Licensing Authority

The LSB may only give a recommendation if it is satisfied that the matter cannot be adequately addressed by exercising the LSB's powers to impose performance targets and monitoring, directions, public censure, financial penalties and intervention directions

Licensing Authority ("LA") commits an act or omission that has had, or is likely to have, an adverse impact on one or more of the regulatory objectives and that act or omission was unreasonable and it is appropriate for the LSB to take action in all the circumstances of the case

LSB gives the LA a notice ("warning notice") accompanied by a draft of the proposed recommendation. The "warning notice" must specify a period of not less than **28 days** within which the LA can make written representations

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

- 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 OFT, Consumer Panel and Consultee (if any) provide advice to LSB

LSB provides advice given by the 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 to LA; and
- publishes advice and any written representations from the LA (and also the report of oral representations (if any))

LA (and any body representing licensed bodies authorised by the LA) has **28 days** in which to make written representations

LSB must publish any written representations (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 recommendation

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 must have opportunity to comment on a draft of such report

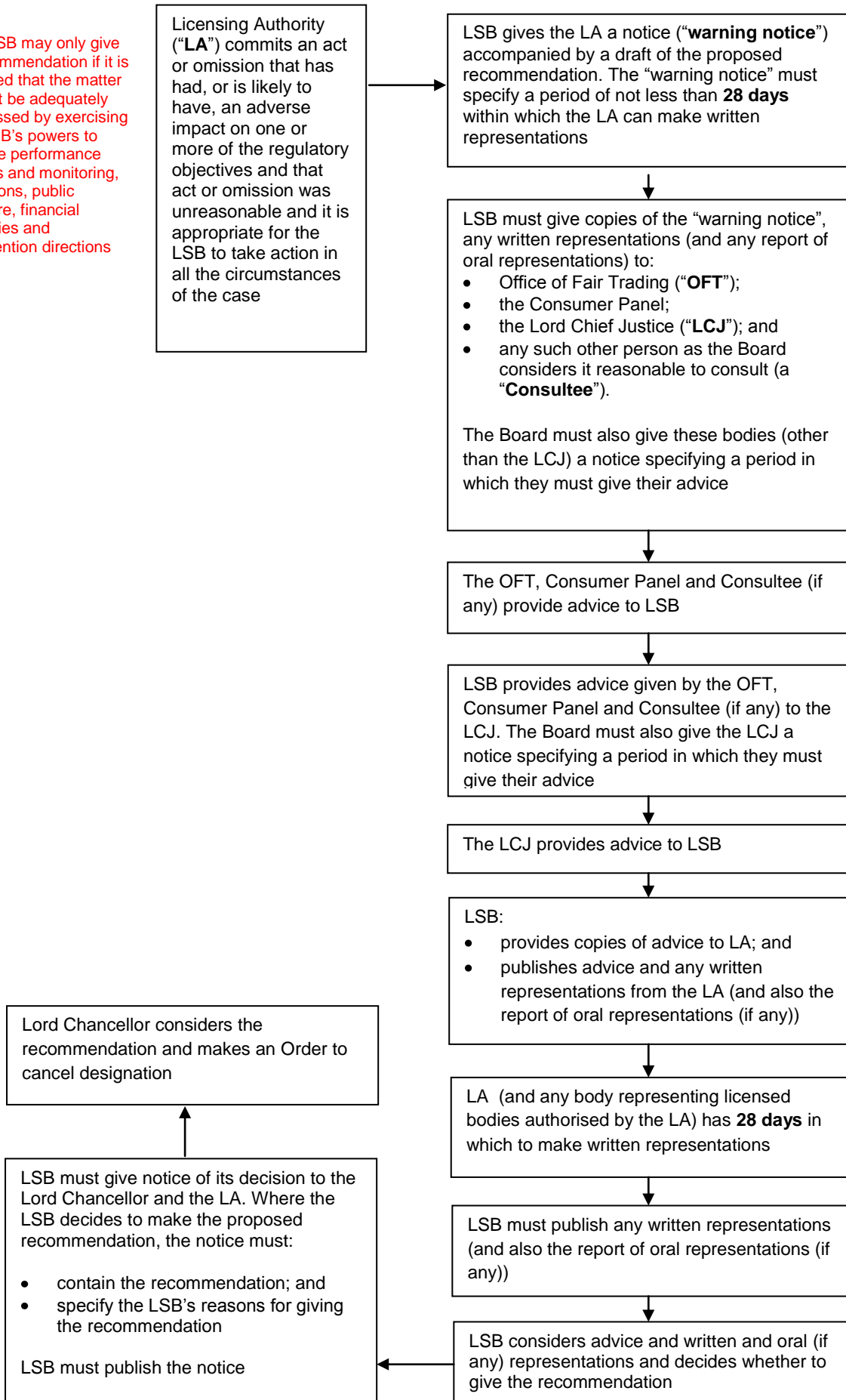
The Board has the discretion to also allow oral representations. Where oral representations are allowed, the Board must prepare a report of those representations. The person who made oral representations must have opportunity to comment on a draft of such report

Lord Chancellor considers the recommendation and makes an Order to cancel designation

LSB must give notice of its decision to the Lord Chancellor and the LA. Where the LSB decides to make the proposed recommendation, the notice must:

- contain the recommendation; and
- specify the LSB's reasons for giving the recommendation

LSB must publish the notice



## **Annex 3 – Cancellation of designation: Section 79(9) rules on powers of entry**

### **A. DEFINITIONS**

1. 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>Licensing Authority</b>	has the meaning given in Section 73 of the Act

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

2. These Rules are the rules that the Board has made in compliance with Section 79(9) of the Act in order to specify the persons that the Board may nominate for the purposes of Section 79(3) of the Act respectively.
3. 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.

### **C. NOMINATIONS FOR THE PURPOSES OF SECTION 79(3)**

4. The Board may nominate any person that it considers competent to be able to:
  - a) enter and search the premises of an Approved Regulator or Licensing Authority (as appropriate); and
  - b) take possession of any written or electronic records found on such premises.
5. In considering whether a person is suitable for nomination under Rule 4, the Board will have regard to the extent to which the person has experience of exercising entry and search functions, taking into account the standards and requirements of the LSB in other situations where the Act gives us a power to exercise a warrant.

**D. FURTHER INFORMATION**

6. 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 4 – Cancellation of designation: rules on oral and written representations

### A. DEFINITIONS

1. 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>Licensing Authority</b>	has the meaning given in Section 73 of the Act
<b>Representing Person</b>	an Approved Regulator, a Licensing Authority or any other person who can make representations to the Board in accordance with Section 38(2) and Schedules 7 to 10 to the Act

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

2. 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:

- Section 38(2) of the Act (**Financial Penalties**);
- paragraphs 2(5) and 10(3) of Schedule 7 of the Act (**Directions**);
- paragraphs 2(5) and 10(5) of Schedule 8 of the Act (**Intervention Directions**);
- paragraphs 2(5) and 9(5) of Schedule 9 of the Act (**Cancellation of Designation as Approved Regulator**); and
- paragraphs 18(5) and 25(5) of Schedule 10 of the Act (**Cancellation of Designation of Approved Regulators as Licensing Authorities**).

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.

## **C. FORM OF REPRESENTATIONS**

### ***Written representations***

6. Subject to Rules 5 and 7, 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:

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

For the attention of:        Enforcement Administrator

7. 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.

8. 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***

9. 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.

10. 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.
11. 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.
12. 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.
13. 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 10. 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.
14. 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.
15. The Board may from time to time adjourn the hearing.

## **D. FURTHER INFORMATION**

16. 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