

# Designating Approved Regulators as Licensing Authorities

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*Consultation paper on developing rules to  
approve applications for designation as a  
Licensing Authority.*

This consultation will close on **12 February 2010**

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## 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 (“**ARs**”) in the Act) 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 Act sets out a new regulatory framework for regulators and the ownership of legal service providers. It gives the LSB a new power to designate competent licensing authorities (“**LAs**”). These are ARs who have also been approved by the LSB to license and regulate a particular type of legal service provider, called 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. The LSB has published guidance on the approach to and content of a LA’s licensing rules<sup>1</sup>. The appropriateness of the potential LA’s licensing rules will form a crucial part of the LSB’s assessment of the application and so this consultation should be read in conjunction with that document. It should also be read with our consultation on the process for cancelling designation as a LA which it has published today.
4. This paper contains drafts of the rules that the LSB proposes to make to govern the process of applications for designation as a LA (see **Annex 1**).
5. The LSB recognises that some ARs may not want to become LAs in relation to all types of ABS. We therefore expect a LA’s licensing rules to set out the type of ABS that can apply to it for a licence. If there is no competent LA for a particular ABS or class of ABS, it may be appropriate for the LSB to become a LA.
6. The LSB expects potential LAs to be able to demonstrate that they have the appropriate arrangements in place to license competently ABS. We have identified the dimensions (or competencies) which we expect LAs to develop, including:
  - sufficient and appropriate staffing and staffing arrangements to ensure good quality regulation;

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<sup>1</sup>[www.legalservicesboard.org.uk/what\\_we\\_do/consultations/2009/pdf/consultation\\_181009.pdf](http://www.legalservicesboard.org.uk/what_we_do/consultations/2009/pdf/consultation_181009.pdf).

- suitable processes and systems capable of identifying and dealing with the complexity, risk and volume of expected ABS; and
  - a sufficiently robust and flexible business plan that is able to adapt to:
    - changes in demand for licences;
    - changes in complexity of ABS models;
    - new threats to the regulatory objectives; and
    - changes in the operating and/or regulatory environment.
7. As an aid to develop the required capability, we expect that any AR that wishes to become a LA will share an implementation plan with the LSB which sets out a timetable and targets to be met in relation to achieving the competencies that the LSB expects from a LA. The targets should include interim targets which will be used to help address the issue of whether a LA is a 'potentially competent LA' within the meaning of schedule 12 to the Act.

### ***Designation as LAs***

8. Other than the Board, there are two sorts of body which may apply for designation as a new LA. These are:
- existing ARs; and
  - new bodies who have made an application to become an AR under schedule 4 Part 2 to the Act.
9. The LSB will ensure that these rules adequately provide for these different types of applicant. Clearly, in the latter category information will have been recently supplied to us, and there is a need to avoid imposing a double regulatory burden.
10. This document is designed primarily to deal with the process of designating an AR as a LA.
11. The Act requires the LSB to make decisions on applications to become a LA and also requires the LSB to make rules on how these applications should be dealt with.
12. The Act requires LAs, so far as reasonably practicable, to act in a way which is compatible with the regulatory objectives, and have regard to standards of openness, accountability and transparency and best regulatory practice<sup>2</sup>. We consider that this means that a LA should be – and should be seen to be – a solid, stable, well structured, adequately financed and professionally

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<sup>2</sup> See section 28 of the Act.

operated body. This means that any potential new LA needs to demonstrate to the LSB that it has prepared properly and thoroughly for its role as a LA, that it has the governance and institutional stability to discharge its functions on a proper basis and that it has appropriate regulatory arrangements to ensure that it can comply with the regulatory objectives.

13. The Act requires the LSB to seek advice about the application from the Office of Fair Trading, the Consumer Panel, the Lord Chief Justice and anyone else that the LSB considers it reasonable to consult<sup>3</sup>. The LSB can retain specialist advisors on areas where it does not have in house competence. The LSB proposes that the cost of those advisors will be included as an increase in the prescribed fee that must accompany an application.
14. A joint application may be made for designation as an AR and designation as a LA.
15. The rest of this paper explains in more detail what we are proposing to do and why, starting with general principles and then working towards the specific approvals and rule change processes. In particular, **Annex 1** contains drafts of the rules that the LSB proposes to make for applications by ARs to be designated as a LA.
16. This document is published at the same time as proposals about the process for removing the designation of a LA for one or more reserved legal activity. The deadline for written responses to both consultations is 5 p.m. on **12 February 2010**. Information about how to make submissions is provided at the 'How to Respond' section of this paper. This deadline allows a consultation period of nine weeks. Although this is shorter than the usual period allowed, we consider that it is appropriate because:
  - a. many of the policy issues are similar to those in the LSB's policy on the designation of new ARs which have been consulted on and a decision document has been published at the same time as this document;
  - b. advance copies of a draft of this paper were sent on 24 November 2009 to those ARs who have expressed an immediate interest in becoming LAs ; and
  - c. on 18 November the LSB published a consultation on its guidance on licensing rules. These will form a crucial part of the assessment of a

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<sup>3</sup> See paragraph 3 of schedule 10 to the Act.

potential LA's application and familiarity with the proposals in that document will help to inform respondents' views on this one.

## Legal framework and drafting principles

### Legal framework

17. The legal framework for how ARs are designated as LAs is largely set out in part 1 of schedule 10 (Designation of ARs as LAs) to the Act. Part 2 of schedule 10 deals with cancellation of that designation. Cancellation of designation is dealt with in a separate consultation (released on the same day as this consultation) which forms part of the Board's enforcement strategy.
18. Section 82 of the Act requires each LA to prepare and issue a statement of policy ("**LA policy statement**") as to how, in exercising its functions under Part 5 of the LSA 2007 (regulation of ABS), it will comply with the requirements of section 28 of the Act (ARs' duty to promote regulatory objectives etc.)<sup>9</sup>. It must then have regard to that policy statement when carrying out its licensing functions. The Board must approve the statement before the AR can exercise its functions as a LA<sup>10</sup>.
19. The Act (sections 83 and schedule 11) provides details about the licensing rules which LAs have to develop and submit with the application to become designated as a LA. The LSB is consulting on draft Guidance about what those licensing rules should contain<sup>11</sup>. We do not currently expect LAs' licensing rules to include rules for Special Bodies. The LSB will, in due course and depending on the outcome of its consultation on its guidance on licensing rules, revise these rules to incorporate requirements for Special Bodies.
20. Once a LA has been designated, if it wishes to change its licensing rules or to increase the number of reserved legal activities for which it is a LA, it will have to go through the same rule change application or new reserved legal activity application, as applicable, that applies to changes to its other regulatory arrangements. The LSB has published its approach to this process.
21. Applications by ARs to be designated as LAs (or bodies that have applied to become an AR and a LA at the same time) must be made to the LSB. If appropriate, the LSB will then recommend that an order is made by the Lord

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<sup>9</sup> Section 82(1) of the Act.

<sup>10</sup> Section 82(2) of the Act.

<sup>11</sup> [http://www.legalservicesboard.org.uk/what\\_we\\_do/consultations/2009/pdf/consultation\\_181009.pdf](http://www.legalservicesboard.org.uk/what_we_do/consultations/2009/pdf/consultation_181009.pdf).

Chancellor designating the applicant as a LA in relation to one or more reserved legal activity.

22. It is envisaged that the provisions that will enable the designation of LAs will go live in 2010 and that ARs will be able to apply for designation as a LA thereafter. It is anticipated that the LSB will receive the first application for designation as a LA in August 2010. If the LSB decides that the AR would be a competent LA then it should be able to make a recommendation to the Lord Chancellor in early 2011.

### **Principles followed in drafting the rules**

23. In drafting these rules, the LSB has complied with the obligations imposed on it by the Act<sup>12</sup> by having had regard to:
- the regulatory objectives (section 1 of the Act );
  - the Better Regulation Principles<sup>13</sup>;
  - the desirability of current or potential ARs making well considered applications that have already been consulted on with other ARs, related regulators from other sectors and other relevant stakeholders, in particular consumers and their representatives;
  - the need to be efficient, rapid, transparent and cost effective in considering applications; and
  - its aim to be strategic in its consideration of any applications. This means that the LSB will focus principally on key areas of ambiguity, uncertainty, disagreement, non compliance and risk.
24. In drafting the rules, the LSB has also had regard to the Regulators' Compliance Code – Statutory Code of Practice for Regulators published by the Department for Business, Innovation and Skills<sup>14</sup>.
25. The application must be accompanied by a statement signed by executives and/or honorary officers of the AR (and, where applicable, their independent external advisors) to certify that certain key points are true, accurate, or reasonable to the best of their belief.

*This paper invites you to provide comments on these draft rules.*

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<sup>12</sup> See section 3 of the Act.

<sup>13</sup> The five principles of good regulation are proportionality, accountability, consistency, transparency and targeting as set out in Section 3(3) of the Act.

<sup>14</sup> <http://www.berr.gov.uk/files/file45019.pdf>.



## **On-line applications**

26. The LSB will make its processes as streamlined as possible and it envisages that in due course all of the initial application process will be undertaken by submitting the necessary documents through a link on the LSB's website.
27. The LSB will be working on the technology to allow applications to be made in this manner. In the meantime the rules provide that the applications may be submitted by e-mail, post or courier.

## **Further guidance on licensing rules**

28. The Act allows licensing rules to make provision for the continuity and transfer of a licensed body's licence in the event of changes (e.g. in a partnership) or transfer of business. The LSB's draft guidance inadvertently omitted this issue. The ability to transfer licences can be particularly helpful in ensuring continuity of service to consumers if a business goes into administration. We therefore consider that in principle it is appropriate that licensing rules should include these issues and that they should either:
  - allow licences to continue after changes or transfer of business, subject to a requirement to notify the LA as soon as reasonably practicable after the change has taken place in order for the new managers/owners to be assessed for fitness to own and for the impact of any other changes to be considered; or
  - make provision for the expedited grant of a temporary licence in such circumstances, subject to a full application being received as soon as reasonably practicable after the change has taken place.

**Question 1** – What are the competencies that you would expect a Licensing Authority to demonstrate?

**Question 2** – What are your views on the continuity/transfer of licences and the alternative approaches suggested?

## Applications for designation as a LA

### Application process - requirements in the Act

29. The Act requires the LSB to make some rules and gives it the discretion to make other rules to govern applications from ARs to become LAs. The rules required are:
- rules specifying the form and manner of applications by applicants. These rules must specify the amount of the prescribed fee that must accompany the application<sup>15</sup>;
  - rules about the procedures and criteria that the LSB will apply when determining whether to refuse to consider, or refuse to continue its consideration of, an application<sup>16</sup>;
  - rules governing the making of oral and written statements by the applicant<sup>17</sup>; and
  - rules specifying how the LSB will determine applications<sup>18</sup>.
30. The Act further provides that the LSB's rules specifying how it will determine applications, must in particular provide that the LSB may only grant an application if the LSB is satisfied of the following<sup>19</sup>:
- the applicant's proposed licensing rules in relation to the activity comply with the requirements of section 83 of the Act ("Licensing rules");
  - if an order were to be made designating the applicant as a LA in relation to the reserved legal activity, there would be a body with power to hear and determine appeals against decisions of the LA;
  - if an order were to be made designating the applicant as a LA in relation to the reserved legal activity, the applicant would have appropriate internal governance arrangements in place at the time the order takes effect. In particular the LSB must be satisfied that if the body has or proposes to have representative as well as regulatory functions: (a) that the exercise of the applicant's regulatory functions

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<sup>15</sup> See paragraph 1 of schedule 10 to the Act.

<sup>16</sup> See paragraph 2(2) of schedule 10 to the Act.

<sup>17</sup> See paragraph 9(3) of schedule 10 to the Act.

<sup>18</sup> See paragraph 11(1) of schedule 10 to the Act.

<sup>19</sup> See paragraph 11(2) of schedule 10 to the Act.

would not be prejudiced by any of its representative functions and (b) that decisions relating to the exercise of its regulatory functions would so far as reasonably practicable be taken independently from decisions relating to its exercise of its representative functions<sup>20</sup>; and

- that, if an order were to be made designating the applicant as a LA in relation to the reserved legal activity, the applicant would be competent, and have sufficient resources, to perform the role of LA in relation to the activity at the time the order takes effect<sup>21</sup>.

31. A draft of the rules that the LSB proposes to make, which deal with each of these items, is set out at **Annex 1**. Consistent with its role as an oversight regulator the LSB will adopt a strategic approach to the applications process. The rules are drafted on this basis. They aim to provide a principles-based approach, which is clear about main criteria for approval, but is not prescriptive about the precise form of evidence in order to enable each case to be assessed on a proportionate basis.
32. The LSB expects these rules to evolve over time, both in the light of the experience of considering applications and as other elements of the regulatory process take shape. It is also probable that development work on the approval of new ARs and the process of regulatory reviews will produce lessons that should, over time, be reflected in the process of approving applications for designating LAs. We will re-consult on any significant proposals to change the rules.

### **The Prescribed Fee**

33. Paragraphs 1(4) and (5) of Schedule 10 to the Act state that the application for designation as a LA must provide for a prescribed fee to accompany any application. The fee can only be set with the consent of the Lord Chancellor. Once received, the LSB must pay the prescribed fee into the Consolidated Fund<sup>22</sup>.
34. The LSB has previously consulted on what the appropriate level of (and method of calculation of) the prescribed fee should be for applications to become an AR. The decision on the level of prescribed fee has been published. The LSB proposes to adopt the same prescribed fee methodology that it has adopted for an application to become an AR.

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<sup>20</sup> See paragraph 11(3) of schedule 10 to the Act.

<sup>21</sup> See paragraph 11(2)(d) of schedule 10 to the Act

<sup>22</sup> HM Treasury's account with the Bank of England through which much of the Government's expenditures and receipts pass.

## Your comments

35. You are invited to comment on the LSB's approach and on the content of the proposed rules, in particular the level of and the method of calculation of the prescribed fee. You are also invited to respond to the questions, which for ease of reference are reproduced at **Annex 2**.

# Impact Assessment

## Introduction

The LSB is undertaking an initial impact assessment on these administrative rules. We consider that the impacts are broadly negligible but potentially positive. We are however keen to listen to other views about the impact of these changes to the way that LAs are designated and LAs are allowed to change their licensing rules. We would therefore welcome the highlighting of additional evidence and analysis regarding these rules so as to assist us in developing a final impact assessment next year.

## What is the problem under consideration? Why is intervention necessary?

The Act sets out a new legal framework for the regulation of the legal profession and industry. That framework includes the creation of a licensing regime for ABS. Those ARs who wish to be designated as LAs for the purposes of licensing ABS have to apply to the LSB in order for it to make an appropriate recommendation to the Lord Chancellor.

## What are the policy objectives and the intended effects?

The LSB must promote the regulatory objectives set out in the Act. The Act also includes a duty on the LSB to adhere to best regulatory practice.

## What policy options have been considered? Please justify any preferred option

Three policy options have been considered for designation of ARs as LAs:

- do nothing;
- make requirements for documentation and supporting information at a level of principle with more detailed rules and guidance only to the extent required by the Act; and
- make detailed prescriptive requirements for documentation and supporting information.

LAs are needed in order to allow ABS to be regulated; doing nothing would not fulfil this policy objective. The LSB's preferred option is the second option because it is the most proportionate approach given the likely variation in potential LAs' regulatory arrangements. This approach will allow the LSB flexibility in the way it considers the information from potential LAs in order to assess whether all the statutory and policy

requirements are met. It is also likely to be lower cost than the third option as it will allow LAs in some sector-specific circumstances freedom to tailor the most appropriate solution in their particular context.

**When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?**

We expect to review our rules on applications to become a LA if, over the course of time, our experience indicates that this is necessary. However, we do not expect many applications to become LAs since they are by definition only relevant to ARs. It may therefore be some time before a review is necessary.

***Annual Costs***

One-off (transition): £ negligible.

Average annual cost (excluding one-off): £ negligible in terms of the application to be a LA

***Annual Benefits***

One-off: £ negligible.

Average annual benefit: £ negligible.

**What is the geographic coverage of the policy/option?**

England and Wales.

**On what date will the policy be implemented?**

We expect that ARs will be able to apply to become LAs from mid 2010.

**Which organisation will enforce the policy?**

The LSB.

**Does enforcement comply with Hampton principles?**

Yes.

**Will implementation go beyond minimum EU requirements?**

Yes. EU requirements do not require the regulatory framework set out in the Act.

**What is the value of the proposed offsetting measure per year?**

Nil.

**What is the value of changes in greenhouse gas emissions?**

Nil.

**Will the proposal have a significant impact on competition?**

No.

**Annual cost (£-£) per organisation (excluding one-off)**

None in terms of an application to be a LA. There is no annual fee payable to the LSB.

Micro: negligible; Small: negligible; Medium: Negligible; Large: Negligible.

***Are any of these organisations exempt?***

No.

**Impact on Admin Burdens Baseline (2005 Prices)**

Increase of £: approximately nil.

Decrease of £: approximately nil (although potential for small decrease).

Net Impact £: approximately nil.

### **Evidence Base**

We have undertaken only a preliminary impact assessment of the rules for applications to become a LA. We consider that the cost of these changes is significantly below the generally accepted threshold of £5 million costs, below which an impact assessment is not necessary. However, we believe that in setting out how we have considered the various elements of the impact assessment will help us consult on both our proposals and our assessment of their impact.

## ***Competition***

We consider that a principles-based approach to assessing applications provides potential LAs the flexibility to innovate on how to meet the regulatory objectives in a proportionate manner that is appropriate to their particular regulated community and market sector. We believe that this will allow LAs to promote better regulation and mitigate risks to, and promote, the regulatory objectives at the lowest appropriate cost.

## ***Small Firms Impact Test***

The regulated community is diverse and that is likely to continue as the Act takes effect, although we will need to monitor the impact of the changes. The proposals in this consultation document are proportionate in that they set the same principles and objectives for both large and small LAs but give freedom for a proportionate level of regulation – thus allowing a small LA the freedom to meet the principles and requirements in a proportionate manner. This proportionality will be fed down to the regulatory community through both the cost of licensing and the cost of regulatory compliance and thus will serve to protect small firms from a one size fits all regulatory framework.

## ***Legal Aid***

We expect minimal impact through rules, although greater competition between LAs and within the legal profession may enhance the competitiveness of the legal aid market as consumers are offered a greater range of legal services at more affordable prices.

## ***Race/Disability/Gender equalities***

There is no direct or indirect impact expected. However, competition between LAs may enhance the opportunity for proportionate and flexible regulation. The focus of the rules on the regulatory objectives may promote equalities in the longer term as they provide for proportionate risk assessment and response.

## ***Human Rights***

In promoting a proportionate response to risks the rules proposed are likely to protect Human Rights.

## ***Rural Proofing***

There is no direct or indirect impact expected. However, competition between LAs may enhance the opportunity for proportionate and flexible regulation. Similarly the



commitment to proportionate regulation may protect small firms that are often found in rural areas. The focus of the rules on the regulatory objectives, such as promoting access to justice, may protect and promote rural services in the longer term.

***Sustainability, carbon emissions, environment and health***

There is no impact expected on sustainability, carbon emissions, environment and health.

## How to Respond

Our consultation period ends at 5 p.m. on **12 February 2010**. In accordance with Section 205(3) of the Act, you are therefore given notice that any representation about the proposals contained in the consultation paper must be received prior to the end of this period.

In framing this consultation paper, we have posed specific questions to help develop our proposed rules. These questions can be found in the body of the two sets of rules and also as a consolidated list in Annex 2. We would be grateful if you would reply to these questions, as well as commenting more generally on the issues raised where relevant. Where possible please can you link your comments to specific questions or parts of the paper rather than making general statements.

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:

E-mail: [consultations@legalservicesboard.org.uk](mailto:consultations@legalservicesboard.org.uk)

Post: 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.

# Annex 1: Rules for applications to be designated as a LA

## RULES FOR LICENSING AUTHORITY DESIGNATION APPLICATIONS

### A. PREAMBLE

1. These Rules are made by the Board (as defined below) under paragraphs 1(4), 1(5), 2(2), 9(3) and 11 of part 1 of schedule 10 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>          | a body who submits an Application   |
| <b>Application</b>        | an application to be designated as a Licensing Authority in relation to one or more Reserved Legal Activities 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>AR Applicant</b>       | a body who submits an application to be designated as an Approved Regulator in relation to one or more Reserved Legal Activities that is submitted to the Board in Accordance with the Board's Rules for Approved Regulator Designation Applications, as in force from time to time |
| <b>Authorised Person</b>  | has the meaning given in Section 18 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>Existing LA Applicant</b>   | an Applicant that is already a Licensing Authority in respect of certain Reserved Legal Activities and who is submitting an Application to be designated as a Licensing Authority in relation to one or more additional Reserved Legal Activities |
| <b>Licensable Body</b>         | has the meaning given in Section 72 of the Act  |
| <b>Licensed Activity</b>       | has the meaning given in Section 111 of the Act   |
| <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>Licensing Rules</b>         | has the meaning given in Section 83 of the Act  |
| <b>Mandatory Consultees</b>    | 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>Prescribed Fee</b>          | the fee that must accompany an Application as described in Section D of these Rules   |
| <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 and Schedule 2 of the Act   |
| <b>Reserved Legal Services</b> | has the meaning given in section 207 of the Act   |
| <b>Schedule</b>                | the schedule to these Rules   |

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

3. These are the Rules that apply if a body wishes to apply to the Board, under Part 1 of Schedule 10 of the Act, for the Board:
  - to make a recommendation to the Lord Chancellor that an order be made that the body be designated as a Licensing Authority in relation to one or more activities which constitute one or more Reserved Legal Activities; and
  - to approve what the body proposes as its Licensing Rules if such an order is made.
4. A body may only make an Application under these Rules in relation to a Reserved Legal Activity if:
  - it is an Approved Regulator in relation to the Reserved Legal Activity which is the subject of the Application under these Rules; or
  - it has made an application under Part 2 of Schedule 4 of the Act for the Board to recommend that an order be made by the Lord Chancellor designating the body as an Approved Regulator in relation to the Reserved Legal Activity which is the subject of the Application under these Rules.
5. These Rules set out:
  - the required content of any Application to the Board and some guidance in relation to that content (**see Section C**);
  - the amount of the Prescribed Fee that must accompany any Application (**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 can make representations to the Board about its Application (**see Section F**);
  - the Board's criteria for determining Applications (see **Section G**); and
  - whom a body should contact if it has a question in relation to the Application process (see **Section H**).

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. CONTENTS OF APPLICATION**

##### ***Content***

7. The Act requires the Board to consider certain factors and to consult with other parties in order to reach its determination. Accordingly, the Application must contain sufficient information to allow the Board to make a proper consideration of the Application and to provide sufficient information to the Consultees to enable them to consider the Application in a meaningful way. Attached as a Schedule to these Rules are:
  - (a) the administrative information needed to enable processing of an Application (see Part 1 of the Schedule) and guidance on the possible evidence that could be provided to satisfy these requirements; and
  - (b) the items that the Act mandates should be included in a Licensing Authority's Licensing Rules (see Part 2 of the Schedule).
8. The Board does not prescribe the form which an Application should take. The onus is on the Applicant to supply all materials completely and accurately in the format that it thinks fit.

**Question 3** – Bearing in mind the Regulatory Objectives and the Better Regulation Principles, do you agree with the Board's approach to its requirements for the content of Applications?

**Question 4** – If you do not agree with the Board's approach to its requirements for the content of Applications, what alternative approaches would you suggest and why?

**Question 5** – What additions to or alterations to the Application process would you suggest?

#### **E. 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 following bank account:

Bank: HM Paymaster General

Sort code: 10-14-99

Account No: 10610000

Account Name: Legal Services Board

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

11. 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 Applicant is an Existing LA Applicant, or if the Applicant is also an AR Applicant, the Prescribed Fee is £16,000; and
  - b) if the Applicant is not an Existing LA Applicant the Prescribed Fee is £22,000.
12. The amounts specified in Rule 11(a) and Rule 11(b) 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 for an Existing LA Applicant this is based on a day rate of £562 over 28.5 business days. In respect of a Prescribed Fee for an Applicant who is not an Existing LA Applicant, this is based on a day rate of £562 over 39 business days
13. The Board reserves the right to charge an additional amount in excess of the amounts set out in Rule 11 in the following circumstances:
- a) if the Board requests further information from the Applicant in accordance with Rule 17 and the Board's costs in processing this information exceeds the relevant amount specified in Rule 11. In these circumstances, any such additional costs will be charged at the day rate of £562; or
  - 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 11.

**Question 6** – What do you think the appropriate level of, and method of calculation of the Prescribed Fee should be?

**Question 7** – Do you think we should reduce the Prescribed Fee for Applications from (i) existing Licensing Authorities to take on additional Reserved Legal Activities; and (ii) AR Applicants?

**Question 8** – Do you agree that the Board should be able to use external advisors when necessary with the cost of these being met by way of an adjustment to the Prescribed Fee?

## **F. PROCESSES AND PROCEDURE**

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

14. Subject to Rule 15 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: [schedule10approvals@legalservicesboard.org.uk](mailto:schedule10approvals@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:                                LA Designations Administrator

15. 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.

16. On receipt of the Application and the Prescribed Fee, an acknowledgement email will be sent to the Applicant by the Board.

17. The Board will consider the Application and may ask the Applicant for such additional information as the Board may reasonably require.



18. 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.
19. Where the Board decides to refuse to consider, or to continue its consideration of, an Application it will give the Applicant notice of that decision and the reasons for it. Any such notice will be published by the Board on its website.
20. An Applicant may at anytime withdraw or amend their Application by giving notice to that effect to the Board.

### ***Obtaining advice***

21. On receipt of an Application (including the prescribed fee), and all further information that the Board may require under Rule 17, the Board will send a copy of the Application (together with any further information received) to the Consultees. The Board will specify to 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 depending on the volume and complexity of the Application received, this should be published.
22. The OFT, the Consumer Panel and any Optional Consultee will then each consider the Application within the specified time period and will provide its advice to the Board.
23. In providing its advice to the Board, each Consultee may ask the Applicant (or any other person) to provide such additional information as may be required.
24. The Board will then provide the advice it receives from 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.
25. The Lord Chief Justice will then consider the Application and will provide his advice to the Board.

26. Once the Board has received the advice of the Lord Chief Justice, it will provide a copy of all the advice that has been given by the Consultees to the Applicant.

### ***Representations***

27. The Applicant has **28 days** beginning on the day on which a copy of the advice referred to in Rule 26 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***

28. As soon as practicable after the end of the period within which representations under Rule 27 may be made, the Board will publish on its website:
- the advice received from the Consultees; and
  - subject to Rule 29, any written representations duly made by the Applicant (and the report of oral representations (if any) prepared under Rule 47).
29. Prior to the publication of any written representations (and the report of oral representations (if any) prepared under Rule 47) the Board will decide whether any parts of the representations shall remain private and, if so 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***

30. After considering the items listed at paragraph 12(1) of schedule 10 to the Act, the Board will decide whether to grant the Application.
31. If the Board decides to grant the Application, it will notify the Applicant and will recommend to the Lord Chancellor that an order be made.
32. If the Board decides not to grant the Application, the Board will write to the Applicant with the reasons for its decision.

33. The Board will publish on its website a copy of any decision that it gives to the Applicant.
34. Where an Application relates to more than one Reserved Legal Activity, the Board may grant the Application in relation to all or any one of them.

### ***The Lord Chancellor's Decision***

35. The Lord Chancellor has up to 90 days from the date on which the Board makes its recommendation in accordance with Rule 30 to notify the Applicant of whether or not he will make an order in accordance with the recommendation.
36. Where the Board's recommendation relates to more than one Reserved Legal Activity, the Lord Chancellor may make an order in relation to all or any of them.
37. If the Lord Chancellor decides not to make an order in accordance with the Board's recommendation, the Lord Chancellor's notice to the Applicant must state the reasons for that decision. The Lord Chancellor will publish any notice given under Rule 35.

### ***Timing***

38. Under the provisions of the Act the Board has 12 months from the date of the Application to give its decision to the Applicant and its recommendation to the Lord Chancellor (if appropriate). The Board may extend this period up to a maximum of 16 months from the date of Application by giving notice to the Applicant. The Board may only give such a notice if it has first consulted with the Mandatory Consultees in relation to such an extension. Such notice will state the Board's reasons for extending the period and will also be published by the Board on its website.
39. Notwithstanding Rule 38, the Board will aim to deal with an Application within six months from the later of:
  - the date upon which the Board accepts submission of the Application (it being understood that the Board will not accept an Application if a submission is made which the Board regards as being incomplete and/or in a format that is not reasonably practicable to consider efficiently ); and
  - the final date of submission of any further information that the Board may request under Rule 17.

## **G. FORM OF REPRESENTATIONS**

### ***Written representations***

40. Subject to Rules 41 and 43, 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 set out at Rule 14.
41. 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.
42. All representations must be received by the Board within the period set out in Rule 27. 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***

43. The Board may, at its sole discretion authorise an Applicant to make oral representations about advice received by the Board. 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 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.
44. 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 usually give the Applicant 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.
45. 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.

46. 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.
47. 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 46. 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.
48. Subject to complying with the timing requirements set out in Rule 38, the Board reserves the right to extend processes to take account of the need to transcribe and verify oral submissions.
49. The Board may from time to time adjourn the hearing.
50. For the avoidance of doubt, this Section G only applies to representations made to the Board by the Applicant in relation to the advice provided by the Consultees.

**Question 9** – Do you agree with the approach taken to oral representations?

**Question 10** – Bearing in mind the Regulatory Objectives, the Better Regulation Principles and the need to operate efficiently in relation to the Freedom of Information Act, are there any changes you wish to suggest to the proposed process.

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

51. In accordance with paragraph 11(2) and 11(3) of Schedule 10 to the Act, the Board will grant an Application in relation to a particular Reserved Legal Activity only if it is satisfied that:

- the Applicant’s proposed Licensing Rules in relation to the Reserved Legal Activity comply with the requirements of Section 83 of the Act;
- if the Lord Chancellor were to make an Order designating the Applicant as a Licensing Authority in relation to the particular Reserved Legal Activity, there would be a body with power to hear and determine appeals which, under Part 1 of Schedule 10 of the Act or the Applicant’s proposed Licensing Rules, may be made against the decisions of the Applicant;
- if the Lord Chancellor were to make an Order designating the Applicant as a Licensing Authority in relation to the particular Reserved Legal Activity, the Applicant would have appropriate internal governance arrangements in place at the time the order takes effect and, in particular that the exercise of the Applicant’s regulatory functions would not be prejudiced by its representative functions and, so far as is reasonably practicable, regulatory decisions would be taken independently of representative ones;
- if such an Order, were to be made, the Applicant would be competent, and have sufficient resources, to perform the role of Licensing Authority in relation to the Reserved Legal Activity at that time;

52. In addition, when considering an Application the Board will consider how consistent an Applicant’s proposed Licensing Rules are with the requirements of Section 28 of the Act (duty to promote the Regulatory Objectives, pursue best regulatory practice etc.) and with the LSB’s guidance on licensing rules. In this regard, and in accordance with the requirements of section 82, an applicant must also prepare and issue a statement of policy as to how, in exercising its functions under Part 5 of the Act, it will comply with the requirements of section 28 of the Act.

**Question 11** – Do you consider that these are the appropriate criteria?

**H. FURTHER INFORMATION**

53. 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: [schedule10approvals@legalservicesboard.org.uk](mailto:schedule10approvals@legalservicesboard.org.uk)

Telephone: 020 7271 0050

## SCHEDULE

### Part 1 - Administrative Information Needed to Enable Processing of an Application

|    | What is required  | Section of Act              | Possible Evidence   |
|----|---|-----------------------------|---|
| 1. | Background information  | N/A                         | Contact details in relation to the person(s) the Board should contact in relation to the Application, including job title, email address and phone number, a physical address for communication and the Applicant's registered office address (if different from communication address) and company registration number if applicable |
| 2. | A statement of the Reserved Legal Activity or Activities to which the Application relates                             | Sch. 10, paragraph 1(4) (a) | Specification of which of the Reserved Legal Activities set out in Section 12 and Schedule 2 of the Act the Application applies to  |
| 3. | Details of the Applicant's proposed Licensing Rules   | Sch. 10, paragraph 1(4) (b) | An explanation of how the proposed Licensing Rules comply with Section 83(5), Schedule 11 to the Act (see Part 2 of this Schedule for further details) and the LSB's guidance on licensing rules.   |
| 4. | Such explanatory material as the Applicant considers is likely to be needed for the purposes of Part 1 of Schedule 10 | Sch. 10, paragraph 1(4) (c) |   |



|    | <b>What is required</b>   | <b>Section of Act</b>   | <b>Possible Evidence</b>   |
|----|---|-------------------------|--|
| 5. | In deciding what advice to give, the <b>OFT</b> must, in particular, have regard to whether an order ... would (or would be likely to) prevent, restrict or distort competition within the market for Reserved Legal Services to any significant extent | Sch. 10, paragraph 4(2) | The OFT is considering whether to issue its own guidance on the issues to which it is likely to have regard in giving advice   |
| 6. | In deciding what advice to give, the <b>Consumer Panel</b> must, in particular, have regard to the likely impact on consumers of the making of an order   | Sch. 10, paragraph 5(2) | <p>Explanation of how the proposed Licensing Rules will:</p> <ul style="list-style-type: none"> <li>• protect and promote the interests of consumers generally</li> <li>• meet the specific requirements in terms of indemnification and complaint handling</li> </ul> |
| 7. | A <b>selected consultee</b> may give the Board such advice as the selected consultee thinks fit in respect of the Application   | Sch. 10, paragraph 8    | Information on any matters specified by a selected consultee   |
| 8. | The <b>Lord Chief Justice</b> must, in particular, have   | Sch. 10, paragraph      | Information on any matters specified by the LCJ  |

|     | <b>What is required</b>   | <b>Section of Act</b>       | <b>Possible Evidence</b>  |
|-----|---|-----------------------------|---|
|     | regard to the likely impact on the courts in England and Wales of the making of an order  | 7(3)                        |   |
| 9.  | The Board may grant an Application in relation to a particular Reserved Legal Activity only if it is satisfied that, the Applicant's proposed Licensing Rules in relation to the Reserved Legal Activity comply with the requirements of Section 83 of the Act  | Sch.10, paragraph 11(2)(a)  | See Item 3  |
| 10. | The Board may grant an Application in relation to a particular Reserved Legal Activity only if it is satisfied that, if an order were to be made designating the Applicant in relation to the Reserved Legal Activity, there would be a body with power to hear and determine appeals which, under Part 1 of Schedule 10 of the Act or under the Applicant's proposed Licensing Rules, may be made against decisions of the Applicant | Sch. 10, paragraph 11(2)(b) | <p>The Applicant must include a statement about the appellate body that the Applicant proposes to use for appeals against financial penalties and conditions imposed on a Licensable Body.</p> <p>The Applicant should also include a statement for the appellate body that it agrees to hear those appeals</p> |
|     | The Board may grant an  | Sch. 10,                    | Such explanatory material (including  |

|     | <b>What is required</b>  | <b>Section of Act</b>       | <b>Possible Evidence</b>   |
|-----|--|-----------------------------|--|
| 11. | Application in relation to a particular Reserved Legal Activity only if it is satisfied that, if an order were to be made designating the Applicant in relation to the Reserved Legal Activity , the Applicant would have appropriate internal governance arrangements in place at the time the order takes effect   | paragraph 11(2)(c)          | material about the Applicant's constitution and activities) as the Applicant considers is likely to be needed to show how its internal governance arrangements comply with the Board's most recently published policy on internal governance   |
| 12. | The Board may grant an application in relation to a particular Reserved Legal Activity only if it is satisfied that, if an order were to be made designating the Applicant in relation to the Reserved Legal Activity, the Applicant would be competent, and have sufficient resources, to perform the role of Licensing Authority in relation to the Reserved Legal Activity at the time the order takes effect | Sch. 10, paragraph 11(2)(d) | <p>Statement from authorised staff/officeholders in the organisation that there are sufficient resources, an explanation of how this has been assessed</p> <p>Documents signed off by an external accountant as being calculated, presented and supported to a standard that could pass a statutory audit</p> <p>Business Plan for coming year and 3 year forward look</p> <p>Risk management strategy</p> <p>Staff development and retention strategies</p> |
| 13. | The rules made for the purposes of sub-paragraph 2(c) must in particular require the   | Sch. 10, paragraph 11(3)(a) | Statement on how the arrangements comply with the principles of the Act and such rules as the Board may make from time to time   |

|     | <b>What is required</b>  | <b>Section of Act</b>       | <b>Possible Evidence</b> |
|-----|--|-----------------------------|--------------------------|
|     | Board to be satisfied that the exercise of the Applicant's regulatory functions would not be prejudiced by any of its representative functions   |                             |                          |
| 14. | The rules made for the purposes of sub-paragraph 2(c) must in particular require the Board to be satisfied that decisions relating to the exercise of the Applicant's regulatory functions would so far as reasonably practicable be taken independently from decisions relating to the exercise of the Applicant's representative functions | Sch. 10, paragraph 11(3)(b) | See Item 13              |

## Part 2 – Licensing Rules Requirements

|  | What is required  | Section of Act   | Guidance  |
|--|---|------------------|---|
| <b>SECTION 83 REQUIREMENTS</b>   |   |                  |   |
| <b><i>For all these points, Applicants must explain how their licensing rules are likely to achieve the outcomes and other requirements that may be specified in any Guidance issued by the LSB. If the LA’s rules are inconsistent with the Guidance, there should be an explanation together with evidence to explain why.</i></b> |   |                  |   |
| 1.   | Licensing Rules of a Licensing Authority <b>MUST</b> contain appropriate qualification regulations in respect of Licensable Bodies to which the Licensing Authority proposes to issue licences  | Section 83(5)(a) | Paragraph 277 of the LSB’s consultation on “Alternative Business Structures: approaches to licensing” (published 18/11/09)  |
| 2.   | Licensing Rules of a Licensing Authority <b>MUST</b> contain provision as to how the Licensing Authority, when considering the Regulatory Objectives (in compliance with its duties under Section 3(2) or 28(2)) in connection with an application for a licence, should take account of the objective of improving access to justice | Section 83(5)(b) | Paragraphs 207-223 of the LSB’s consultation on “Alternative Business Structures: approaches to licensing” (published 18/11/09)<br><br>Paragraph 19 of this consultation document |
| 3.   | Licensing Rules of a  | Section          | —   |

|    | <b>What is required</b>   | <b>Section of Act</b> | <b>Guidance</b>  |
|----|---|-----------------------|--|
|    | Licensing Authority <b>MUST</b> contain appropriate arrangements (including conduct rules, discipline rules and practice rules) under which the Licensing Authority will be able to regulate the conduct of bodies licensed to it, and their managers and employees | 83(5)(c)              |  |
| 4. | Licensing Rules of a Licensing Authority <b>MUST</b> contain appropriate indemnification arrangements   | Section 83(5)(d)      | Paragraphs 117 to 156 of the LSB's consultation on "Alternative Business Structures: approaches to licensing" (published 18/11/09)           |
| 5. | Licensing Rules of a Licensing Authority <b>MUST</b> contain appropriate compensation arrangements  | Section 83(5)(e)      | Paragraphs 132 to 156 of the LSB's consultation on "Alternative Business Structures: approaches to licensing" (published 18/11/09)           |
| 6. | Licensing Rules of a Licensing Authority <b>MUST</b> contain the provision required by Sections 52 and 54 (resolution of regulatory conflict) (including those provisions as applied by Section 103)  | Section 83(5)(f)      | Paragraphs 61 to 88 and Annex A of the LSB's consultation on "Alternative Business Structures: approaches to licensing" (published 18/11/09) |

| What is required                 |   |                        |  | Section of Act   |  | Guidance |  |
|----------------------------------|---|------------------------|--|--|--|----------|--|
| 7.                               | Licensing Rules of a Licensing Authority <b>MUST</b> contain the provision required by Sections 112 and (145) (requirements imposed in relation to the handling of complaints)        | Section 83(5)(g)       |  | Paragraphs 281 to 299 of the LSB's consultation on "Alternative Business Structures: approaches to licensing" (published 18/11/09)   |  |          |  |
| 8.                               | Licensing Rules of a Licensing Authority <b>MUST</b> contain any other provision required to be contained in Licensing Rules by the Act   | Section 83(5)(h)       |  | —  |  |          |  |
| <b>SCHEDULE 11 REQUIREMENTS</b>  |   |                        |  |  |  |          |  |
| <i>Applications for licences</i> |   |                        |  |  |  |          |  |
| 9.                               | Licensing Rules <b>MUST</b> make provision about the form and manner in which applications for licences are to be made, and the fee (if any) which is to be accompany any application | Sch.11, paragraph1 (1) |  | Paragraphs 34, 114, and 342 to 349 of the LSB's consultation on "Alternative Business Structures: approaches to licensing" (published 18/11/09)<br><br>Paragraphs 34 to 36 of this consultation document |  |          |  |
| 10.                              | Licensing Rules <b>MAY</b> make provision about:  | Sch. 11, paragraph     |  | —  |  |          |  |

| What is required                     |   |                         |  | Section of Act |  | Guidance |  |
|--------------------------------------|---|-------------------------|--|----------------|--|----------|--|
|                                      | <ul style="list-style-type: none"> <li>the information which applications must contain; and</li> <li>the documents which must accompany applications</li> </ul>   | 1(2)                    |  |                |  |          |  |
| <i>Determination of applications</i> |   |                         |  |                |  |          |  |
| 11.                                  | Licensing Rules <b>MUST</b> make provision for those items set out in Schedule 11, paragraph 2  | Sch. 11, paragraph 2(1) |  |                |  |          |  |
| <i>Review of determination</i>       |   |                         |  |                |  |          |  |
| 12.                                  | <p>Licensing Rules <b>MUST</b> make provision for review by the Licensing Authority of:</p> <ul style="list-style-type: none"> <li>a decision to refuse an application for a licence;</li> <li>if a licence is granted, the terms of the licence</li> </ul> | Sch. 11, paragraph 3    |  |                |  |          | Paragraphs 224 to 245 of the LSB's consultation on "Alternative Business Structures: approaches to licensing" (published 18/11/09) |
|                                      |   |                         |  |                |  |          |  |



|                                      | <b>What is required</b>  | <b>Section of Act</b>   | <b>Guidance</b>  |
|--------------------------------------|--|-------------------------|--|
| <i>Period of licence and renewal</i> |  |                         |  |
| 13.                                  | <p>The Licensing Rules <b>MAY</b> make provision:</p> <ul style="list-style-type: none"> <li>• limiting the period for which any licence is (subject to the provision of Part 1 of Schedule 11 and of the Licensing Rules) to remain in force;</li> <li>• about the renewal of licences, including provision about the form and manner in which an application for renewal is to be made, and the fee (if any) which is to accompany an application</li> </ul> | Sch. 11, paragraph 4(1) | Paragraphs 342 to 349 of the LSB's consultation on "Alternative Business Structures: approaches to licensing" (published 18/11/09) |
| 14.                                  | <p>The Licensing Rules <b>MAY</b> make provision about:</p> <ul style="list-style-type: none"> <li>• the information which applicants for renewal must contain; and</li> <li>• the documents which must accompany applications.</li> </ul>   | Sch. 11, paragraph 4(2) | —  |

|                               | What is required   | Section of Act          | Guidance                                   |
|-------------------------------|--|-------------------------|--|
|                               |  |                         |  |
| 15.                           | Licensing Rules <b>MUST</b> provide that a licence issued to a Licensed Body by the Licensing Authority ceases to have effect if the Licensed Body is issued with a licence by another Licensing Authority                       | Sch. 11, paragraph 4(3) | —  |
| <i>Continuity of licences</i> |  |                         |  |
| 16.                           | Licensing Rules <b>MAY</b> make provision about the effect, on a licence issued to a partnership or other unincorporated body (“the existing body”), of any change in the membership of the existing body                        | Sch. 11, paragraph 5(1) | Paragraph 28 of this consultation document |
| 17.                           | Such provision referred to above includes provision for the existing body’s licence to be transferred where the existing body ceases to exist and another body succeeds to the whole or substantially the whole of its business. | Sch. 11, paragraph 5(2) | Paragraph 28 of this consultation document |

| What is required                      Section of Act                      Guidance |  |                         |  |
|--|--|-------------------------|--|
|  |  |                         |  |
| <i>Modification of licences</i>  |  |                         |  |
| 18.  | Licensing Rules <b>MUST</b> make provision about the form and manner in which applications are to be made for modifications of the terms of a licence under Section 86, and the fee (if any) which is to accompany the application | Sch.11, paragraph 6(1)  | —  |
| 19.  | Licensing Rules <b>MAY</b> make provision as to the circumstances in which the Licensing Authority may modify the terms of a licence under Section 86 without an application being made  | Sch. 11, paragraph 6(2) | Paragraph 189 of the LSB’s consultation on “Alternative Business Structures: approaches to licensing” (published 18/11/09)         |
| 20.  | Licensing Rules <b>MUST</b> make provision for review by the Licensing Authority of: <ul style="list-style-type: none"> <li>• a decision to refuse an application for modification of the terms of a licence;</li> </ul>           | Sch. 11, paragraph6 (3) | Paragraphs 224 to 245 of the LSB’s consultation on “Alternative Business Structures: approaches to licensing” (published 18/11/09) |

|  | What is required   | Section of Act           | Guidance  |
|--|--|--------------------------|---|
|  | <ul style="list-style-type: none"> <li>if the Licensing Authority makes Licensing Rules under sub-paragraph 6(2), a decision under those rules to modify the terms of a licence</li> </ul>   |                          |   |
| <p><i>Modifications under section 106 – the LSB has proposed in its consultation on guidance licensing rules that the transitional arrangements for Special Bodies should remain in place for 12 months after other ABS have been permitted. We do not, therefore, expect LAs’ licensing rules to incorporate consideration of special Bodies. We will consult separately on this issue, depending on the outcome of the consultation on our guidance.</i></p> |  |                          |   |
| <p><i>Management</i></p>   |  |                          |   |
| 21.  | <p>Licensing Rules <b>MUST</b> require a Licensed Body to comply with the requirements set out in Schedule 11, paragraph 9</p>   | Sch.11, paragraph 9(1)   | —   |
| 22.  | <p>Licensing Rules <b>MAY</b> make further provision as to:</p> <ul style="list-style-type: none"> <li>the managers of licensed bodies; and</li> <li>the arrangements for the management by them of the Licensed Body and its</li> </ul> | Sch. 11, paragraph 10(1) | Paragraph 60 of the LSB’s consultation on “Alternative Business Structures: approaches to licensing” (published 18/11/09) |

| What is required              |   |                                   |  | Section of Act |  | Guidance |  |
|-------------------------------|---|-----------------------------------|--|----------------|--|----------|--|
|                               | activities  |                                   |  |                |  |          |  |
| 23.                           | Licensing Rules <b>MUST NOT</b> require all managers of a Licensed Body to be authorised persons in relation to Reserved Legal Activity   | Sch. 11, paragraph 10(2)          |  |                |  |          | —  |
| <i>Head of Legal Practice</i> |   |                                   |  |                |  |          |  |
| 24.                           | Licensing Rules <b>MUST</b> include the requirements set out in Schedule 11, paragraph 11   | Sch. 11, paragraph 11(1)          |  |                |  |          | —  |
| 25.                           | Licensing Rules <b>MUST</b> make provision: <ul style="list-style-type: none"> <li>• about the procedures and criteria that will be applied by the Licensing Authority when determining under Schedule 11, paragraph 11(4) whether an individual is a fit a proper person;</li> <li>• for a review by the Licensing Authority of a determination</li> </ul> | Sch. 11, paragraphs 12(1) and (2) |  |                |  |          | Paragraphs 265 to 280 of the LSB’s consultation on “Alternative Business Structures: approaches to licensing” (published 18/11/09) |

|  | What is required   | Section of Act | Guidance |
|--|--|----------------|----------|
|  | <p>under Schedule 11, paragraph 11(4) that an individual is not a fit and proper person;</p> <ul style="list-style-type: none"> <li>• about the procedures and criteria that will be applied by the Licensing Authority under Schedule 11, paragraph 11(6) whether to withdraw its approval;</li> <li>• for a review by the Licensing Authority of a determination under Schedule 11. paragraph 11(6) to withdraw its approval;</li> <li>• about the procedure which is to apply where a Licensed Body ceases to comply with the requirement imposed by virtue of Schedule 11, paragraph 11(2). Rules made <b>MAY</b> in particular provide that the requirement imposed by virtue of Schedule 11, paragraph 11(2) is suspended until such time as may be</li> </ul> |                |          |

|   | What is required  | Section of Act          | Guidance   |
|---|---|-------------------------|--|
|   | specified by the Licensing Authority if the Licensed Body complies with such other requirements as may be specified in the rules  |                         |  |
| <i>Head of Finance and Administration</i> |   |                         |  |
| 26.                                       | Licensing Rules <b>MUST</b> include the requirements set out in Schedule 11, paragraph13  | Sch. 11, paragraph13(1) | —  |
| 27.                                       | <p>Licensing Rules <b>MUST</b> make provision:</p> <ul style="list-style-type: none"> <li>• about the procedures and criteria that will be applied by the Licensing Authority when determining under Schedule 11, paragraph13(4) whether an individual is a fit and proper person;</li> <li>• for a review by the Licensing Authority of a determination under Schedule 11, paragraph13(4) that an individual is not a</li> </ul> | Sch. 11, paragraph14(1) | Paragraphs 265 to 280 of the LSB’s consultation on “Alternative Business Structures: approaches to licensing” (published 18/11/09) |

| What is required | Section of Act   | Guidance |
|------------------|--|----------|
|                  | <p>fit and proper person;</p> <ul style="list-style-type: none"> <li>• about the procedures and criteria that will be applied by the Licensing Authority in determining under Schedule 11, paragraph13(6) whether to withdraw its approval;</li> <li>• for a review by the Licensing Authority of a determination under Schedule 11, paragraph13(6) to withdraw its approval;</li> <li>• about the procedure which is to apply where a Licensed Body ceases to comply with the requirement imposed by virtue of Schedule 11, paragraph13(2). Rules made <b>MAY</b> in particular provide that the requirement imposed by virtue of Schedule 11, paragraph13(2) is suspended until such time as may be specified by the Licensing Authority if</li> </ul> |          |



|                            | What is required   | Section of Act           | Guidance   |
|----------------------------|--|--------------------------|--|
|                            | the Licensed Body complies with such other requirements as may be specified in the rules   |                          |  |
| <i>Practising address</i>  |  |                          |  |
| 28.                        | <p>Licensing Rules <b>MUST</b> require a Licensed Body at all times to have a practising address in England and Wales.</p> <p>The above does not apply to a Licensed Body:</p> <ul style="list-style-type: none"> <li>• which is a company or limited liability partnership; and</li> <li>• the registered office of which is situated in England and Wales (or in Wales)</li> </ul> | Sch. 11, paragraph 15(1) | Paragraph 114 of the LSB’s consultation on “Alternative Business Structures: approaches to licensing” (published 18/11/09)         |
| <i>Licensed activities</i> |  |                          |  |
| 29.                        | Licensing Rules <b>MUST</b> provide that a Licensed Body may carry on a Licensed Activity only through a person who is entitled to carry on the  | Sch. 11, paragraph 16    | Paragraphs 157 to 171 of the LSB’s consultation on “Alternative Business Structures: approaches to licensing” (published 18/11/09) |

| What is required  |   |                                   |  | Section of Act |  | Guidance |   |
|---|---|-----------------------------------|--|----------------|--|----------|---|
|   | activity.   |                                   |  |                |  |          |   |
| <i>Compliance with regulatory arrangements etc</i>                |   |                                   |  |                |  |          |   |
| 30.   | Licensing Rules <b>MUST</b> include the requirements set out in Schedule 11, paragraph 17   | Sch. 11, paragraph 17(1)          |  |                |  |          |   |
| <i>Disqualified employees</i>                                     |   |                                   |  |                |  |          |   |
| 31.   | Licensing Rules <b>MUST</b> include the requirement that a Licensed Body may not employ a person who under Part 3 of Schedule 11 is disqualified from being an employee of a Licensed Body          | Sch. 11, paragraphs 18(1) and (2) |  |                |  |          | Paragraphs 87, 90 and 192 to 193 of the LSB's consultation on "Alternative Business Structures: approaches to licensing" (published 18/11/09) |
| <i>Indemnification arrangements and compensation arrangements</i> |   |                                   |  |                |  |          |   |
| 32.   | For the purpose of giving effect to indemnification arrangements and compensation arrangements, Licensing Rules <b>MAY</b> : <ul style="list-style-type: none"> <li>authorise or require</li> </ul> | Sch. 11, paragraph 19(1)          |  |                |  |          | Paragraphs 115 to 156 of the LSB's consultation on "Alternative Business Structures: approaches to licensing" (published 18/11/09)            |

|                 | What is required   | Section of Act           | Guidance |
|-----------------|--|--------------------------|----------|
|                 | <p>the Licensing Authority to establish and maintain a fund or funds;</p> <ul style="list-style-type: none"> <li>• authorise or require the Licensing Authority to take out and maintain insurance with authorised insurers;</li> <li>• require Licensed Bodies or Licensed Bodies or any specific description to take out and maintain insurance with authorised insurers.</li> </ul> |                          |          |
| <i>Accounts</i> |  |                          |          |
| 33.             | <p>The Licensing Rules <b>MUST</b> make provision:</p> <ul style="list-style-type: none"> <li>• as to the treatment of money (including money held on trust) which is received, held or dealt with by the Licensed Body, its managers and employees for clients or other persons; and</li> </ul>   | Sch. 11, paragraph 20(1) | —        |

|                            | <b>What is required</b>  | <b>Section of Act</b>    | <b>Guidance</b>  |
|----------------------------|--|--------------------------|--|
|                            | <ul style="list-style-type: none"> <li>the keeping of accounts in respect of such money.</li> </ul>  |                          |  |
| <i>Fees</i>                |  |                          |  |
| 34.                        | <p>The Licensing Rules <b>MUST</b> require Licensed Bodies to pay periodical fees to the Licensing Authority</p>   | Sch. 11, paragraph 21(1) | Paragraphs 342 to 345 of the LSB’s consultation on “Alternative Business Structures: approaches to licensing” (published 18/11/09)             |
| 35.                        | <p>The Licensing Rules <b>MAY</b> provide for the payment of different fees by different descriptions of Licensed Body.</p>  | Sch. 11, paragraph 21(2) | Paragraphs 342 to 345 of the LSB’s consultation on “Alternative Business Structures: approaches to licensing” (published 18/11/09)             |
| <i>Financial penalties</i> |  |                          |  |
| 36.                        | <p>The Licensing Rules <b>MUST</b> make provision as to:</p> <ul style="list-style-type: none"> <li>the acts and omissions in respect of which the Licensing Authority may impose a penalty under Section 95;</li> <li>the criteria and</li> </ul> | Sch.11, paragraph 22     | Paragraphs 194 to 202 and Annex D of the LSB’s consultation on “Alternative Business Structures: approaches to licensing” (published 18/11/09) |

|                          | What is required  | Section of Act           | Guidance   |
|--------------------------|---|--------------------------|--|
|                          | <p>procedure to be applied by the Licensing Authority in determining whether to impose a penalty under that section, and the amount of any penalty</p>  |                          |  |
| <i>Disqualifications</i> |   |                          |  |
| 37.                      | <p>Licensing Rules <b>MUST</b> make provision as to the criteria and procedure to be applied by the Licensing Authority in determining whether a person should be disqualified under Section 99</p>   | Sch. 11, paragraph 23(1) | <p>Paragraphs 192 to 193 of the LSB’s consultation on “Alternative Business Structures: approaches to licensing” (published 18/11/09)</p>                |
| 38.                      | <p>Licensing Rules <b>MUST</b> make provision:</p> <ul style="list-style-type: none"> <li>• for a review by the Licensing Authority of a determination by the Licensing Authority that a person should be disqualified;</li> <li>• as to the criteria and procedure to be applied by the</li> </ul> | Sch. 11, paragraph 23(2) | <p>Paragraphs 192 to 193 and 224 to 241 of the LSB’s consultation on “Alternative Business Structures: approaches to licensing” (published 18/11/09)</p> |

|   | What is required   | Section of Act           | Guidance   |
|---|--|--------------------------|--|
|   | <p>licensing authority in determining whether a person's disqualification should cease to be in force; and</p> <ul style="list-style-type: none"> <li>requiring the Licensing Authority to notify the Board of any determination by the Licensing Authority that a person should be disqualified, of the result of any review of that determination, and of any decision by the Licensing Authority that a person's disqualification should cease to be in force.</li> </ul> |                          |  |
| <i>Supervision or revocation of licence under section 101</i> |  |                          |  |
| 39.   | Licensing Rules <b>MUST</b> make provision for the items set out in Schedule 11, paragraph. 24   | Sch. 11, paragraph 24(1) | —  |
| 40.   | Licensing Rules <b>MAY</b> make provision about other circumstances in which the Licensing   | Sch. 11, paragraph 25    | Paragraph 203 of the LSB's consultation on "Alternative Business Structures: approaches to licensing" (published 18/11/09) |

|     | What is required  | Section of Act           | Guidance   |
|-----|---|--------------------------|--|
|     | Authority may exercise its powers under Section 101 to suspend or revoke a licence  |                          |  |
| 41. | Licensing Rules <b>MUST</b> make provision about the criteria and procedure the Licensing Authority will apply in deciding whether to suspend or revoke a licence, or to end the suspension of a licence, under Section 101 | Sch. 11, paragraph 26(1) | Paragraph 203 of the LSB's consultation on "Alternative Business Structures: approaches to licensing" (published 18/11/09)         |
| 42. | Licensing Rules <b>MUST</b> make provision for a review by the Licensing Authority of a decision by the Licensing Authority to suspend or revoke a licence.   | Sch. 11, paragraph 26(2) | Paragraphs 224 to 241 of the LSB's consultation on "Alternative Business Structures: approaches to licensing" (published 18/11/09) |

### **Part 3 – How the Board expects to treat Applications**

1. The Board expects carefully prepared documentation which the executives and/or honorary officers of the Applicant (and the Applicant's independent advisors when applicable) confirm that the information supplied is accurate or, in the case of forecast data, is a best estimate based on good research and informed professional judgement. If the Applicant cannot demonstrate this level of executive and advisory confidence then it is not appropriate for an Application to be made.
2. The Board expects that some parts of the Schedule would be less relevant to an Applicant that is already a Licensing Authority which is applying to add an additional Reserved Legal Activity to its competences. Hence, the Board will take a proportionate view of risk in deciding precisely how much information to seek in any given case.
3. All documents supplied will be subject to publication and to the scrutiny of the Consultees whom the Act prescribes must consider Applications. Consequently Applicants should have regard to this in relation, in particular, to supplying information which might be commercially sensitive and/or contain personal data. The Board will consider limited requests for redaction of information from documents that are published on these grounds but will not be able to redact information from materials sent to the Mandatory Consultees. The Board requires successful Applicants to maintain a publicly accessible internet space containing all of the materials that are submitted by the Applicant in its Application.
4. The Board reserves the right to retain advisors to consider the information supplied. The retention of advisors may result in an increase to the Prescribed Fee as described in Rule 13. Applicants are encouraged to consider how in preparing, presenting and in certifying the information that they submit, they can minimise the need for the Board to take external advice.
5. The Board's decision will take account of professional guidance, Consultee responses received and on the overall competence, completeness and executive and advisor endorsement of the Applications received. The Board, as an oversight regulator, will not usually reanalyse the information supplied unless there are compelling reasons for doing so.
6. Board approval of a new body as a Licensing Authority, or of an existing Licensing Authority as a Licensing Authority in relation to an additional Reserved Legal Activity represents an assessment that:



- the Applicant appears well prepared and appears to understand the roles and responsibilities granted to Licensing Authorities under the Act; and
- no valid objections have been made to the Applicant's Application by the Consultees.

## Annex 2: List of questions

**Question 1:** What are the competencies that you would expect a Licensing Authority to demonstrate?

**Question 2** – What are your views on the continuity/transfer of licences and the alternative approaches suggested?

**Question 3** – Bearing in mind the Regulatory Objectives and the Better Regulation Principles, do you agree with the Board’s approach to its requirements for the content of Applications?

**Question 4** – If you do not agree with the Board’s approach to its requirements for the content of Applications, what alternative approaches would you suggest and why?

**Question 5** – What additions to or alterations to the Application process would you suggest?

**Question 6** – What do you think the appropriate level of, and method of calculation of the Prescribed Fee should be?

**Question 7** – Do you think we should reduce the Prescribed Fee for Applications from (i) existing Licensing Authorities to take on additional Reserved Legal Activities; and (ii) AR Applicants?

**Question 8** – Do you agree that the Board should be able to use external advisors when necessary with the cost of these being met by way of an adjustment to the Prescribed Fee?

**Question 9** – Do you agree with the approach taken to oral representations?

**Question 10** – Bearing in mind the Regulatory Objectives, the Better Regulation Principles and the need to operate efficiently in relation to the Freedom of Information Act, are there any changes you wish to suggest to the proposed process.

**Question 11** – Do you consider that these are the appropriate criteria?