



## **Consultation: Schedule 12 Rules**

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**A RESPONSE BY THE INSTITUTE OF LEGAL EXECUTIVES**

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**CONSULTATION BY THE LEGAL SERVICES BOARD  
ON HOW IT WILL REVIEW DECISIONS ABOUT LICENCE  
APPLICATIONS MADE TO IT UNDER  
SCHEDULE 12 OF THE LEGAL SERVICES ACT 2007**

**Date: 19.07.11**

1. The above consultation sets out proposals to determine when a “licensable body” can apply to the Legal Services Board (the Board) for a licence acting as a “licensing authority” (LA) in circumstances where there is no appropriate LA.
2. “Licensable body” is defined in *s72 of the Legal Services Act 2007 (the 2007 Act)* as a body where a non-authorized person is a manager or has an interest in a body or where another body has an interest or holds shares in the body. The Board is a LA by virtue of *s73 of the 2007*.

### **Entitlement to make an application to the Board**

3. A licensable body must be regulated by a “licensing authority”. The “licensing body” must show that it satisfies the prescribed conditions set out *schedule 12 (1) of the 2007 Act* (recited at paragraph 7 of the consultation) before it makes an application to the Board.
4. There is no requirement on the Board to make Rules about how it will reach its decision. However, the Board expects the prospective licensing body to comply with Rules laid down in paragraph 10 of the consultation.

### **Review by the Board**

5. The Board must make Rules providing for a review of any decision made by it under *schedule 12 of the 2007 Act*. The proposed Rules are contained at Annex A of the consultation. The proposed Rules reflect the requirement to act, as far as reasonably practical, in a way that is compatible to the regulatory objectives and having regard to the principles of good regulation.

### **Schedule 12 Draft Rules**

6. Subject to the comments below, the Draft Rules appear to be simply drafted and contain no significant issues of concern to ILEX.
7. It is important that this provision (Schedule 12) is a measure of “last resort” for the Board having regard to the comments below. The consultation paper does not expressly acknowledge this but only implies it in paragraph 15 of the consultation. It is important for the Board to exercise a degree of self-restraint and generally leave it to the licensing authorities to approve licensable bodies.
8. We note that the Board has established a Licensing Authority Committee to fulfil the function of the Board in its preparation to act as

a LA. ILEX would welcome further detail of the role of the committee, its remit and capacity.

9. Paragraph 9 of the Draft Rules appears to be erroneously drafted. This paragraph endeavours to formalise the LSB's proposal at paragraph 16 of the consultation. Paragraph 9 of the Draft Rules allows the Board at its discretion to review a refusal to grant an application following a written request "providing the request specifies the grounds on which it has been made". Grounds for the application having already been made, the applicant needs to set out instead the reasons why it considers the Board has made an incorrect decision.

10. For paragraph 10, we would recommend the following wording:

"If the Board decides to review its decision, it will do so as soon as is reasonably practicable"

### **Typographical Errors**

11. Paragraph numbering is inconsistent: paragraphs 5 to 7 are missing.

12. There is a grammatical error at paragraph 8 (The outcome of a review) of the proposed Rules (delete the repeated words "give a").

### **General Background to The Proposed Rules Under Schedule 12.**

13. During the passage of the Legal Services Bill it was agreed in both Houses of Parliament that in principle only Approved Regulators can seek to become licensing authorities.

14. However, government wanted the following exceptions to the general rule: first, where there are no competent licensing authorities for the service that a body wants to provide and none is applying to be designated, so there is a gap in the market; secondly, where there are competent authorities, but they have determined that they do not have suitable regulatory arrangements, and none is planning to make such arrangements; and, thirdly, where there are non-commercial bodies, such as not-for-profit bodies, where licensing authorities have suitable arrangements but none is offering terms that are appropriate for those bodies. Importantly, the Board is not obliged to grant licences when any of the conditions are met. It still has to consider the merits and may decline to licence the body<sup>1</sup>. It may reject an application, for example, if it does not have suitable licensing Rules and may conclude none can be devised.

15. Schedule 12 recognises the possibility that licensing authorities may not have created regulatory requirements for a full range of services leaving gaps in the market in respect of legal provision. That said,

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<sup>1</sup> HC debate 6<sup>th</sup> February c625

there was assurance from Baroness Ashton on behalf of the government that the Board should not be able to license bodies where other licensing authorities have said that they do not consider they can do so safely. Baroness Ashton went on to say that the Board should only step in as a “last resort”. ILEX supports this approach.