



**A RESPONSE BY ILEX PROFESSIONAL
STANDARDS LIMITED**

CONSULTATION: SCHEDULE 12 RULES

**CONSULTATION ABOUT HOW THE LEGAL
SERVICES BOARD WILL REVIEW DECISIONS
ABOUT LICENCE APPLICATIONS MADE TO IT**

DATE: 19 JULY 2011

ILEX Professional Standards

1. This response represents the views of ILEX Professional Standards (IPS), the regulatory body for Legal Executives and other members. Legal Executives are members of the Institute of Legal Executives (ILEX). ILEX is the professional body representing 22,000 qualified and trainee Legal Executives and is an Approved Regulator under the Legal Services Act 2007 (the Act).
2. IPS works to regulate ILEX members in accordance with the regulatory objectives set out in the Act, having regard to principles of good regulation through regulatory activities that are transparent, accountable, proportionate, consistent and targeted.
3. IPS promotes proper standards of conduct and behaviour among those it regulates. It aims to ensure ILEX members are competent and trusted legal practitioners and are fully aware of their obligations to clients, colleagues, the courts and the public. IPS deals with complaints made against ILEX members, however, its role is not limited to complaints handling and disciplinary work. Equally important is ensuring the public and members of ILEX know what education standards are expected of them. IPS ensures ILEX qualifications are at the right level and are appropriate to the work ILEX members carry out. Overall, IPS aims to help good practitioners stay good and improve throughout their career and to ensure the public know the quality of work Legal Executives can provide.
4. IPS welcomes the opportunity to comment on proposals put forward by the Legal Services Board (LSB) on its rules in relation to Schedule 12 of the Act.

Legal Services Board as a Licensing Authority

5. Under Section 73 of the Act, the LSB ('the Board') is automatically a Licensing Authority (LA) in relation to all reserved legal activities. The LSB is required to consult on rules that it must make in case there is no appropriate LA and a licensable body asks the LSB to decide whether it can apply to the Board (acting as LA) for a licence.
6. Whilst the consultation considers how the Board will be decide whether a licensable body may make an application to it for a licence, which is not the same as the LSB (as LA) granting that body a licence, the LSB has not produced or consulted on its licensing rules before issuing this consultation.
7. The LSB does not appear to have produced licensing rules governing its role as LA. IPS recognises that this may be due to Section 83 of the Act, which sets out that the LSB(LA) has 12 months from the day on which it decides a licensable body can make an application to it by virtue of

Schedule 12, in which to produce licensing rules. Nevertheless, it is difficult to comment on the LSB's ability to consider these applications and to eventually license licensable bodies when it has not provided details about its licensing rules and arrangements.

8. It has been noted that the Board has established a Licensing Authority Committee to fulfil the functions of the Board in preparing to act as a LA and to deal with any matters that arise in relation to those functions. However, at present the LSB has not provided any detail of the role, remit or capacity of such committee.

Draft rules

9. IPS has considered the LSB's draft rules for considering applications under Schedule 12. Firstly, it is noted that the Board is not required to make rules about how it will reach its decisions in relation to Schedule 12 (paragraph 10). Bearing in mind such applications will be made by bodies that cannot be licensed by existing licensing authorities the LSB should consider producing policy or guidance on how it will reach its decisions. Policy/guidance will offer a transparent process, provide applicants with a clear understanding of how their application will be decided on and be in line with the LSB's recent proposals on regulatory standards.
10. Paragraph 9 (Annex A) of the draft rules formalises the LSB's proposal at paragraph 16 of the consultation regarding the review of LSB decisions. Paragraph 9 should be more detailed, expressing that the reviews that fall into this category are reviews of the Board's decision to refuse to grant the application 'when in fact an applicant does have grounds to apply'. It should also state that the LSB expects the 'applicant to set out the reasons why it considers the Board has made an incorrect decision'.
11. Paragraph 9 and paragraph 10 of the draft rules set out that the Board will decide whether to review its decision 'at its discretion' (paragraph 9) and 'if it considers it appropriate to do so' (paragraph 10). The basis upon which the Board will decide to review is too wide and does not contain measurable criteria. It does not provide the applicant with clear factors that will be considered by the Board when it decides whether to review the decision and therefore will create difficulty for applicants in putting an application to the Board.
12. Paragraph 10 of the draft rules outline the timing of the review process. The LSB propose that the Board will review its decision 'as soon as possible'. 'As soon as possible' is not a measurable timescale and could be used inappropriately to cause delay. It is imperative that the LSB provide clear and specific timescales for review as the process described in Schedule 12 is to assist bodies that cannot be licensed by existing licensing authorities. The lack of defined timing will put those bodies in a

difficult position as they will be unable to make internal decisions in relation to timing and the review process.

Summary

13. In summary, the draft rules present a broad brush approach to review. They do not appear to allow for engagement with the applicant during the review process which is likely to leave applicants in a difficult position of suddenly being informed that they are not going to be licensed by the LSB. IPS would welcome more detailed rules on LSB review of decisions.

14. IPS would also welcome more information on the present the role, remit or capacity of the newly established Licensing Authority Committee. Furthermore, IPS looks forward to having the opportunity to comment on the Board's licensing rules and arrangements.

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