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LSB Notice for representations, Annex B



Draft of proposed Rules for Making Oral and Written Representations and Giving Oral and Written Evidence

Version [0]

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 ¶ These Rules are made by the Board (as defined below) under paragraphs 12, 13, and 14 of schedule 6 to the Act (as defined below).¶

A. DEFINITIONS

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

Act	the Legal Services Act 2007
Affected Practitioner	has the meaning given in paragraph 13(4) of schedule 6 to the Act
Applicable Procedure Rules	has the meaning given in column 4 of Annex A
Approved Regulator Board	has the meaning given in section 20(2) of the Act the Legal Services Board
Evidence	has its ordinary meaning and refers exclusively to evidence submitted as part of an application for the alteration of reserved legal activities in accordance with schedule 6 of the Act
Licensing Authority	has the meaning given in section 73 of the Act
Procedure(s)	has the meaning given in Rule 2
Provisional Report	has the meaning given in paragraph 10(3) of schedule 6 to the Act
Qualifying Regulator	has the meaning given in paragraph 2 of schedule 18 to the Act
Representations Administrator	the person at the Legal Services Board to whom written representations should be submitted in accordance with Rule 6 below
Representing Person	any person <u>who can</u> make representations to the Board <u>in accordance with the provisions</u> of the Act <u>listed in column 3 of Annex A</u>
Tribunal	the Solicitors Disciplinary Tribunal.

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B. WHO DO THESE RULES APPLY TO?

- 2. The Board has made these Rules to govern the making of oral and written representations and Evidence by a Representing Person during the course of the procedures of the Act listed in column 1 of Annex A (the "Procedure(s)"). These rules are made in accordance with the provisions of the Act listed in column 2 of Annex A.
- 3. These Rules must be read in conjunction with the Act, together with any other relevant provisions made by or by virtue of this Act, or any other enactment, particularly including but not limited to the Applicable Procedure Rules referenced in column 4 of Annex A, and any relevant policies and guidance produced by the Board from time to time.
- 4. In the event of any inconsistency between these Rules and the provisions of the Act, the provisions of the Act prevail.
- 5. The Board reserves the right to amend these Rules from time to time. If the amendments made to the Rules are, in the opinion of the Board, material, the Board will publish a draft of the amended Rules and will invite consultations in accordance with section 205 of the Act.

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Deleted: purposes of schedule 6 (Alteration of reserved legal activities) to

C. FORM OF REPRESENTATIONS

Written representations

- 6. Subject to Rule 7, all representations and Evidence given to the Board must be in writing and must be submitted to the Board by the Representing Person either by email, post or courier to the address of the Board, as set out on its website, and for the attention of the Representations Administrator.

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¶
if by email to :contactus@legalservicesboard.org.uk¶
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if by post or courier to:¶
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Address:Legal Services Board¶
7th Floor Victoria House¶
Southampton Row¶
London WC1B 4AD¶
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For
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7. All representations and Evidence must be received by the Board within the applicable period for making representations (the "Representations Period") indicated in column 5 of Annex A. Representations and Evidence that are out of these times will not be considered unless, exceptionally and at the sole discretion of the Board, they appear to raise matters of substance relevant to the Procedure in question which are not already under consideration.

Oral representations and oral evidence

8. The Board may, at its sole discretion, authorise a Representing Person to make oral representations or provide oral Evidence. However, for the avoidance of doubt, on grounds of cost, efficiency, transparency and consistency of treatment between Representing Persons, the Board will not normally accept oral representations or oral Evidence unless the particular circumstances of the Representing Person or the complexity of the issue merit an exception to the normal process in individual cases. If the Board grants such an exception, it will publish its reasons for doing so.

9. Notwithstanding Rule 8, so far as reasonably practicable, the Board will allow oral representations to be made by Affected Practitioners, and any bodies that represent Affected Practitioners, in accordance with paragraph 13(3) to Schedule 6.

10. Should the Board authorise a Representing Person to make oral representations or give oral Evidence, the representations or the giving of Evidence will take place at a hearing to be held either by telephone, video conference or in person. The Board will give the Representing Person not less than ten business days' notice that there will be a hearing. If the hearing is to be held in person, the notice will specify the place and time at which the hearing will be held. If the hearing is to be held by telephone or video conference, the notice will specify the time of the telephone call or video conference and also the arrangements for facilitating the telephone call or video conference.

11. Hearings conducted in person (rather than by telephone or video conference) will normally be open to the public. However, within the period ending four business days prior to the scheduled date of the hearing, the Representing Person may submit to the Board a 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 Representing Person and the Board, after obtaining the agreement of the Representing Person.

12. The Representing Person must appear at the hearing, either in person, by telephone or by video conference (as the case may be) and may be represented by any persons whom they may appoint for the purpose. The proceeding of the hearing will be recorded on behalf of the Board and will be transcribed onto paper.

13. Where oral representations are made or oral Evidence is given, the Board will prepare a report of those representations or Evidence which will be based on the transcription of the hearing made in accordance with Rule 12. Before preparing the report, the Board:

Deleted: <#>The Representing Person must, unless otherwise agreed with the Board, submit all written representations and evidence to the Board using the online tool at www.legalservicesboard.org.uk, once this has been developed.¶

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¶ paragraph 12 of schedule 6 to the Act

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Deleted: <#>Board giving a notice under paragraph 9(2) of schedule 6 to the Act, or within such other time as the Board may specify;¶
¶ paragraphs 13 and 14 of schedule 6 to the Act must be received by the Board within 2 months of the Board publishing its Provisional Report, or within such other time as the Board may specify.¶

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- a) must give the Representing Person a reasonable opportunity to comment on a draft of the report; and
- b) must have regard to any comments duly made by the Representing Person.

14. In accordance with the Procedure Rules and provisions of the Act referenced in column 2 of Annex B (as applicable), the Board reserves the right to extend the Procedure Time Limits in order to take account of the need to transcribe and verify oral submissions.

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15. The Board may from time to time adjourn the hearing.

D. COSTS FOR ORAL REPRESENTATIONS AND ORAL EVIDENCE

16. Subject to Rule 17, the Representing Person will:

- a) bear its own costs for the making of oral representations or the giving of oral Evidence; and
- b) directly pay the transcription provider for the reasonable cost of the transcription service.

17. The Board may, at its sole discretion, pay such costs of a Representing Person as the Board considers reasonable for the purpose of facilitating the giving of oral Evidence or the making of oral representations, including provision of a transcript, by or on behalf of a Representing Person.

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E. FURTHER INFORMATION

18. If you have any questions about the process for making oral or written representations, or giving oral or written Evidence you should contact the Representations Administrator in the matter set out in Rule 6 above.

- Deleted: Board at:

Deleted: Address: Legal Services Board
 7th Floor Victoria House
 Southampton Row
 London WC1B 4AD
 Email: contactus@legalservicesboard.org.uk
 Telephone: 020 7271 0050

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LSB Notice for representations, Annex B

Annex A

These Rules are made by the Board under the following provisions of the Act:

Column 1	Column 2	Column 3	Column 4	Column 5
Procedure	Provisions under which these rules are made	Who can Make Representations?	Applicable Procedure Rules	Representations Period
Approved Regulators: designation of bodies by Order	Sch 4, part 2, paragraph 11(3)	The Applicant in accordance with Sch 4, part 2, paragraph 11(2)	Rules for applications for Approved Regulator and Qualifying Regulator Designation	The period set out at Sch 4, part 2, paragraph 11(4) to the Act
Approved Regulators: Alteration of approved regulator's regulatory arrangements	Sch 4, part 3, paragraph 23(3)	The approved regulator in accordance with Sch 4, part 3, paragraph 23(2), including for the avoidance of doubt, and for the purposes of s178 of the Act, the Tribunal and the Law Society	Rules for Rule Change Applications	The period set out at Sch 4, part 3, paragraph 23(4) to the Act
Alteration of Reserved Legal Activities	Sch 6, paragraphs 12(2), 13(1) and 14(2)	Any person wishing to make representations or provide evidence (as appropriate) to the Board for the purposes of Sch 6, including for the avoidance of doubt, and for	None	In accordance with Sch 6, paragraph 12 to the Act: within 3 months of the Board giving notice under paragraph 9(2) of Schedule 6 to the Act, or within such

		the purposes of paragraph 13(3) of sch 6, an Affected Practitioner and any body which represents an Affected Practitioner		other time as the Board may specify. In accordance with Sch 6, paragraphs 13 and 14 to the Act: within 2 months of the Board publishing its Provisional Report, or within such other time as the Board may specify
Directions: Procedure	Sch 7, paragraphs 2(5) and 10(3)	The approved regulator in accordance with Sch 7, paragraphs 2(4) and 10(2), including for the avoidance of doubt, and for the purposes of s179 of the Act, the Tribunal and the Law Society	None	The period set out at sch 7, paragraph 2 to the Act or The period set out at sch 7, paragraph 10(4) to the Act, whichever is relevant
Intervention Directions: Procedure: Giving Intervention Directions	Sch 8, part 1, paragraphs 2(5) and 10(5)	The approved regulator in accordance with Sch 8, part 1, paragraphs 2(4) and 10(2), together with any body within paragraph 10(3) or any other person within paragraph 10(4)	Intervention directions: Section 41(5) and 42(10) rules	The period set out at Sch 8, part 1, paragraph 2(6) of the Act; or The period set out at Sch 8, part 1, paragraph 10(6) to the Act, whichever is relevant

Intervention Directions: Revoking Interventions Directions	Sch 8, part 2, paragraph 21(5)	The approved regulator in accordance with Sch 8, part 2, paragraph 21(2) together with any body within paragraph 21(3) or any other person within paragraph 21(4)	Intervention directions: Rules for applications to revoke	The period set out at Sch 8, part 2, paragraph 21(6) to the Act
Cancellation of designation as Approved Regulator	Sch 9, paragraphs 2(5) and 9(5)	The approved regulator in accordance with Sch 9, paragraphs 2(4) and 9(2), together with any body within paragraph 9(3) or any other person within paragraph 9(4)	Cancellation of designation: Rules on powers of entry	The period set out at Sch 9, paragraph 2(6) to the Act; or The period set out at Sch 9, paragraph 9(6) to the Act, whichever is relevant
Designation of Approved Regulators as Licensing Authorities: Designation of approved regulators by order	Sch 10, part 1, paragraph 9(3)	The Applicant in accordance with Sch 10, part 1, paragraph 9(2)	Rules for applications to be designated as a Licensing Authority	The period set out at Sch 10, Part 1, paragraph 9(4) to the Act
Designation of approved regulators as licensing authorities:	Sch 10, part 2, paragraphs 18(5) and 25(5)	The licensing authority in accordance with Sch 10, part 2, paragraphs 18(4) and 25(2) together with any body within paragraph 25(3) or	Cancellation of designation: Rules on powers of entry	The period set out at Sch 10, part 2, paragraph 18(6) to the Act; or The period set out at Sch 10, part 2, paragraph 25(6)

cancellation of designation by order		any other person within paragraph 25(4)		to the Act, whichever is relevant
Qualifying Regulators designation of bodies by order	Sch 18, part 1, paragraphs 3(4) and 4	The Applicant in accordance with, Sch 18, part 1, paragraph 4, which adopts Sch 4, part 2, paragraph 11(2)	Rules for applications for Approved Regulator and Qualifying Regulator Designation	The period set out at Sch 4, part 2, paragraph 11(4) to the Act

Annex B

Column 1 - Procedure	Column 2 - Procedure Time Limits
Approved Regulators: designation of bodies by Order	Rules [44 and 45] of the Applicable Procedure Rules
Approved Regulators: Alteration of approved regulator's regulatory arrangements	Rules [29 and 30] of the Applicable Procedure Rules
Alteration of Reserved Legal Activities	Sch 6: paragraph 11 (the investigation period) and paragraph 17 (the final reporting period)
Designation of Approved Regulators as Licensing Authorities: designation of approved regulators by order	Rules [39 and 40] of the Applicable Procedure Rules
Qualifying Regulators: designation of bodies by Order	Rules [44 and 45] of the Applicable Procedure Rules

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Cancellation of designation:
draft of proposed rules on powers of entry

A. DEFINITIONS

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

- Act** the Legal Services Act 2007
- Approved Regulator*** *has the meaning given in section 20(2) of the Act*
- Board** the Legal Services Board
- Licensing Authority*** *has the meaning given in section 73 of the Act*

B. WHO DO THESE RULES APPLY TO?

2. These Rules are the rules that the Board has made in compliance with *sections 48(9) and 79(9)* of the Act in order to specify the persons that the Board may *appoint* for the purposes of *sections 48(3) and 79(3)* of the Act respectively.

3. *These Rules are to be read in conjunction with the Act, together with any other relevant provisions made by or by virtue of this Act, or any other enactment, rules, policies or guidance produced by the Board from time to time.*

4. *In the event of any inconsistency between these Rules and the provisions of the Act, the provisions of the Act prevail.*

5. The Board reserves the right to amend these Rules from time to time. If the amendments made to the Rules are, in the opinion of the Board, material, the Board will publish a draft of the amended Rules and will invite consultations in accordance with section 205 of the Act.

C. APPOINTMENTS FOR THE PURPOSES OF *SECTIONS 48(3) AND 79(3) OF THE ACT*

6. The Board may appoint any person that it considers competent to be able to:

- a) enter and search the premises of an Approved Regulator *or Licensing Authority (as appropriate)*; and

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LSB Notice for representations, Annex C

b) take possession of any written or electronic records found on *such* premises.

7. In considering whether a person is suitable for *appointment* under Rule *6*, the Board will have regard to the extent to which the person has experience of exercising entry and search functions, *taking into account the standards and requirements of the Board in other situations where the Act gives us a power to exercise a warrant.*

D. FURTHER INFORMATION

8. If you have any questions about these Rules you should contact the Board at *the address set out on its website, for the attention of the LSB Rules Co-ordinator.*

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7th Floor Victoria House
Southampton Row
London WC1B 4AD
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Email:contactus@legalservicesboard.org.uk
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Telephone:020 7271 0050

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LSB Notice for representations, Annex D



Rules for applications to cancel designation as a Licensing Authority

Version [●]

A. PREAMBLE

1. In accordance with section 76(4) of the Act the consent of the Lord Chancellor *has been given in respect of these Rules*

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¶ The Act states that the Lord Chancellor may cancel a body's designation as a Licensing Authority in

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¶ the act or omission of a Licensing Authority (or a series of such acts or omissions) has had, or is likely to have, an adverse impact on one or more of the regulatory objectives; and ¶

¶ it is appropriate to cancel the Licensing Authority's designation in relation to the activity or activities in question in all the circumstances of the case (including, in particular, the impact of cancelling the designation on the other regulatory objectives).¶

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

¶ The LSB must make certain rules in relation to the processes it undertakes in deciding whether to make a recommendation to the Lord Chancellor. ¶

¶ The rules that the LSB is required to make are as follows:¶

¶ **Section 76(3)(b)** – The LSB must prescribe rules as to the form and manner of an application by a Licensing Authority to cancel its designation as such. These rules must specify the amount of the fee for such an application (the 'prescribed fee') and must be made with

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Deleted: rules as part of this consultation paper. The rules that the Board has made are at **Annex 1**. This also contains a proposal on the prescribed fee which follows the approach used by the LSB for fees in relation to the cancellation of designation as an Approved Regulator;

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¶ **Section 79(9)** - The LSB must make rules as to the persons it may nominate to apply for a warrant to enter and search premises. The rules that the Board has made are at **Annex 3**; and¶

¶ **Paragraphs 18(5) and 25(5) of schedule 10** – The LSB must make rules governing the making of oral and written representations. The LSB has decided to use the same Rules that it has made for oral and written representations in relation to its other enforcement powers. This will ensure that the rules for any permitted oral and written representations are the same for all forms of enforcement action. A copy of these is at **Annex 4**. ¶

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

B. DEFINITIONS

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

Act	the Legal Services Act 2007
Affected Licensed Body	a Licensed Body who is regulated by the Applicant in relation to a Reserved Legal Activity which is the subject of an Application
Applicant	a body who submits an Application
Application	an application to cancel a body's designation as a Licensing Authority in relation to one or more Reserved Legal Activity that is submitted to the Board in accordance with these Rules
Board	the Legal Services Board
Cancellation Notice	the notice published by the Applicant in accordance with <i>section F</i> of these Rules
Licensed Body	has the meaning given in <i>section 71</i> of the Act
Licensing Authority	has the meaning given in <i>section 73</i> of the Act
Practising Fees	has the meaning given in <i>section 51</i> of the Act
Prescribed Fee	the fee that must accompany an Application as described in <i>section E</i> of these Rules
Reserved Legal Activity	has the meaning given in <i>section 12</i> and <i>schedule 2</i> of the Act

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C. WHO DO THESE RULES APPLY TO?

3. These Rules apply if a body wishes to apply to the Board, under *section 76(3)* of the Act, for the Board to make a recommendation to the Lord Chancellor that an order be made cancelling a body's designation as a Licensing Authority in relation to one or more Reserved Legal Activity.

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4. These Rules set out:

- a) the required content of any Application to the Board (see *Section D*)
- b) the amount of the Prescribed Fee that must accompany any Application (see *Section E*)

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c) the Board's requirements in relation to the Applicant's publication of a notice giving details of the Application in accordance with Section 76(3)(c) of the Act (see **Section F**)

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d) the *process* and *procedure* that the Board will undertake in considering the Application (see **Section G**) and

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e) *who* a body should contact if it has a question in relation to the Application process (see **Section H**).

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5. *These Rules are to be read in conjunction with the Act, together with any other relevant provisions made by or by virtue of this Act, or any other enactment, rules, policies or guidance produced by the Board from time to time.*

6. *In the event of any inconsistency between these Rules and the provisions of the Act, the provisions of the Act prevail.*

7. 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

8. An Applicant must include the following information in their Application:

a) the name, address, telephone number and email address of the person whom the Board should contact in relation to the Application

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b) details of the Reserved Legal Activity or Activities to which the Application relates

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c) details of why the Applicant is making the Application

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d) details of any alternative courses of action, besides cancellation of designation, that have been considered or explored by the Applicant

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e) details of the Affected Licensed Bodies and whether any communication has been had with such bodies in relation to the Application

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f) details of what arrangements the Applicant proposes in relation to:

i) the transfer of the regulation of the Affected Licensed Bodies to another relevant Licensing Authority and whether that Licensing Authority has consented to such transfer

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ii) the transfer of amounts held by the Applicant which represent amounts paid to it by the Affected Licensed Bodies in respect of being licensed as Licensed

Bodies to another relevant Licensing Authority and whether that Licensing Authority has consented to such transfer,

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- g) if the Applicant is planning to wind up all its activities, details of how it proposes to do so in an orderly manner.

E. PRESCRIBED FEE

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

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Reference: **Insert Applicant name**/Licensing Authority Designation Application.

- 10. The Prescribed Fee that must accompany an Application will depend on the type of Application being made. The different levels of the Prescribed Fee are as follows:
 - a) if the Application is in respect of the cancellation of some but not all of the Reserved Legal Activities regulated by the Applicant, the Prescribed Fee is £4,500;
 - b) if the Application is in respect of the cancellation of all of the Reserved Legal Activities regulated by the Applicant, the Prescribed Fee is £6,000.

- 11. The amounts specified in Rule 10 are each the average costs that the Board anticipates it will incur in considering these different types of Application. In respect of the Prescribed Fee set out in Rule 10(a) this is based on a day rate of £562 over 8 business days. In respect of the Prescribed Fee set out in Rule 10(b) this is based on day rate of £562 over 11 business days.

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- 12. The Board reserves the right to charge an amount in excess of the amounts set out in Rule 10 in the following circumstances:

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- a) if the Board requests further information from the Applicants in accordance with Rule 17, and the Board's costs in processing this information exceeds the relevant specified in Rule 10. In these circumstances, any such additional costs will be charged at the day rate of £562; and
- 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 10.

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F. NOTICE REQUIREMENTS

- 13. On submitting an Application to the Board, an Applicant must publish a Cancellation Notice giving the following information:
 - a) the date on which the Application to the Board was made,

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- b) details of the Reserved Legal Activity or Activities to which the Application relates,
- c) details of why the Application is being made,
- d) details of the Affected Licensed Bodies,
- e) details of what arrangements the Applicant proposes in relation to the:
 - i) transfer of the regulation of the Affected Licensed Bodies to another relevant Licensing Authority,
 - ii) transfer of amounts held by the Applicant which represent amounts paid to it by way of Practising Fees by the Affected Licensed Bodies to another relevant Licensing Authority.

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14. Any Cancellation Notice given in accordance with Rule 13 must be published:

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

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G. PROCESS AND PROCEDURE

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Sending the Application

15. The Applicant must submit their Application (and, proof of transmission of the Prescribed Fee) either by email, post or courier to the *address of the Board, as set out on its website, for the attention of the LSB Rules Co-ordinator.*

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

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 If by email to: contactus@legalservicesboard.org.uk¶
 ¶
 If by post or courier to: ¶
 ¶
 Address: Legal Services Board
 7th Floor Victoria House
 Southampton Row
 London WC1B 4AD¶
 ¶
 For the attention of: Cancellation Administrator¶
 ¶
 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, once this has been developed.¶

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

The Board's Decision

18. After considering the Application (and any additional information received under Rule 17) and after satisfying itself that the requirements of Section E have been complied with, the Board will recommend to the Lord Chancellor that an order be made to cancel the Applicant's designation as a Licensing Authority in relation to one or more of the Reserved Legal Activities set out in the Application.

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H. FURTHER INFORMATION

19. If you have any questions about the Application process or the preparation of an Application you should contact *the LSB Rules Co-ordinator* in the *manner* set out in *Rule 15 above*.

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¶

Address: Legal Services Board
7th Floor Victoria House
Southampton Row
London WC1B 4AD ¶

¶

Email: contactus@legalservicesboard.org.uk ¶

¶

Telephone: 020 7271 0050 ¶

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

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

DEFINITIONS ¶

Words defined in these Rules have the following meanings: ¶

Act, the Legal Services Act 2007 ¶

Approved Regulator has the meaning given in Section 20(2) of the Act ¶

Board, the Legal Services Board ¶

Licensing Authority has the meaning given in Section 73 of the Act ¶

WHO DO THESE RULES APPLY TO? ¶

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

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. ¶

NOMINATIONS FOR THE PURPOSES OF SECTION 79(3) ¶

The Board may nominate any person that it considers competent to be able to: ¶
enter and search the premises of an Approved Regulator or Licensing Authority (as appropriate); and ¶
take possession of any written or electronic records found on such premises. ¶