

To:	Legal Services Board	Agenda Item:	8
Date of Meeting:	19 July 2017	Item:	Paper (17) 49

Title:	LSB Rules: proposals for revisions
Workstream(s):	Performance, evaluation and oversight
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Status:	Official

Summary:

Alongside the recent review of the LSB's enforcement policy statement (see paper 17(48)), we have undertaken a review of the LSB's rules. This was initially focused on rules relating to LSB's enforcement powers. However that focused analysis indicated a number of areas across all LSB rules where consistency and clarity could be improved, so the scope of the review was widened.

This paper presents the outcome of that work. We have drafted three new sets of rules to address issues of duplication and lack of consistency (at Annexes A-C). These new rules are for:

- making oral and written representations and giving oral and written evidence
- powers of entry following cancellation of designation
- applications to cancel designation as a Licensing Authority

The paper seeks the Board's approval to invite representations on these new LSB rules.

In due course we will return to the Board for its final approval for these new rules. At that point, the Board's approval will be sought for the related consequential amendments in other rules. To aid the Board's scrutiny of the full set of changes, we are inviting one Board member to oversee these amendments on behalf of the Board.

Recommendation(s):

The Board is invited to:

- approve the draft rules for
 - making oral and written representations and giving oral and written evidence
 - powers of entry following cancellation of designation
 - applications to cancel designation as a Licensing Authority
- approve the seeking of representations on these draft rules

- nominate one Board member to have full oversight of the detailed consequential changes to the rules that the Board will be asked to approve in November.

Risks and mitigations

Financial: N/A.

Legal: Internal legal advice has been sought throughout the review period. The revised rules do not represent a change in the LSB's views or approach. The revisions add clarity and reduce the risk of inconsistency. We do not anticipate any additional legal risk to our work arising from these updates.

Reputational: Undertaking this review demonstrates good regulatory practice and provides assurance that our rules are up to date and fit for purpose. We are not proposing any changes in approach.

Resource: A nine-week consultation is planned. Resources to support this should be available in the context of the current business plan.

Consultation	Yes	No	Who / why?
Board Members:		x	
Consumer Panel:		x	
Others:			

Freedom of Information Act 2000 (Fol)

Para ref	Fol exemption and summary	Expires
Para 9	Section 22: information intended for future publication	
Annexes A-C	Section 22: information intended for future publication	

LEGAL SERVICES BOARD

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LSB Rules: proposals for revisions

Recommendations

1. The Board is invited to:
 - approve the draft rules for
 - making oral and written representations and giving oral and written evidence
 - powers of entry following cancellation of designation
 - applications to cancel designation as a Licensing Authority
 - approve the seeking of representations on these draft rules
 - nominate one Board member to have full oversight of the detailed consequential changes to the rules that the Board will be asked to approve in November.

Background

2. A review of the LSB's enforcement policy statement (current version: 2010) has been underway over the last few months. It complements the work recently completed on the LSB's regulatory approach that was published in June 2017.
3. Alongside this review we have carried out a parallel review of the LSB's rules. This initially centred on those rules relating to LSB's enforcement powers, but as this process indicated a number of areas for improvement, the scope was widened to consider rules relating to other LSB processes.
4. The review highlighted a range of general and specific areas for update, such as drafting inconsistencies, duplication, formatting and accessibility. This paper presents the outcome of that work and seeks the Board's approval to seek representations on proposed revisions to a number of LSB rules.
5. Under Section 205 of the Legal Services Act, if the Board proposes to make any rules, it must publish a draft of the proposed rules and seek representations. This paper describes revisions we are seeking to make to the LSB's rules. We are asking for the Board's approval to invite representations on these revisions, found at **Annexes A-C**.
6. In due course we will return to the Board for its final approval for these new rules. This later decision will include a number of consequential amendments to other rules.

New rules on Oral and Written Representations and Oral and Written Evidence

7. The major area for improvement highlighted in the review was the seven different instances of rules around oral and written representations and evidence. These rules govern statutory procedures relating to LSB's enforcement powers as well as decisions about designations and regulatory

arrangements. Addressing this duplication and lack of consistency is seen as a priority.

8. To tackle this issue, we have amalgamated the seven sets of rules on written and oral representations and written and oral evidence. **Annex A** presents the proposed new set of rules. This draft is based on current rules, and these rules do not reflect any change in approach. Given that there are seven separate sets of substantially similar rules on written and oral representations, the document at Annex A sets out the revisions against only one of these sets (with respect to applications to alter reserved legal activities under schedule 6 of the Act). Further copies of the revisions against the other six sets of rules will be made available to the Board at this meeting.

9. [REDACTED]

10. The seven current sets of rules around representations all make reference to the development of an “online tool” for submitting representations. This was an expected development at the time rules were first drafted, but one that has proved unnecessary. We have removed references to this in the rules at Annex A.

11. Publishing a single set of rules on this topic will require consequential amendments to be made to other rules. The impact on current rules would be as follows:

- the repeal of current standalone representation and evidence rules for
 - schedule 6
 - schedules 7-9 enforcement procedures
 - cancellation of designation of a licensing authority. These are currently annexed to a wider suite of rules on cancellation of designation of LAs generally
- the removal of representations provisions and a tidy-up of five sets of procedure rules for:
 - Designation as an approved regulator and/or qualifying regulator
 - Designation as a licensing authority
 - Alteration to regulatory arrangements
 - Intervention directions: section 41(5) and 42(1) rules
 - Applications to revoke intervention directions.

12. These consequential amendments will be put to the Board for its approval in due course, subject to the outcome of any representations received on Annex A.

New rules on powers of entry in the event of a cancellation of designation for approved regulators and licensing authorities

13. The review identified substantial duplication in two sets of rules relating to search and entry powers in the event that the designation of an approved regulator or

licensing authority is cancelled. We have amalgamated these two sets by amending the approved regulator search and entry rules to include licensing authorities. The proposed new rules can be found at **Annex B**.

14. A consequence of this redrafting is that the current licensing authority search and entry rules would be repealed (these rules are currently enclosed as an annex to the rules on Cancellation of designation as a licensing authority). This consequential amendment will be put to the Board for its approval in due course, subject to the outcome of any representations received.

Breaking down the current structure of rules for the cancellation of designation as a licensing authority

15. The current rules on “Cancellation of designation as licensing authority by order” present substantive rules and statutory procedure in a range of annexes. In the light of the changes presented at Annexes A and B, these rules can be streamlined to match the layout of the equivalent approved regulator provisions by:

- deleting the preamble
- carving out Annex 1 (licensing authority applications for cancellation of designation) as a standalone set of rules. These are at **Annex C**
- relocating Annex 2 (flowchart on the process for cancelling designation as a Licensing Authority) to the guidance section of the LSB website
- as noted above, repealing Annex 3 (rules on power of entry) and amending the corresponding AR rules to include LAs
- repealing Annex 4 (rules on written and oral representations).

16. The proposed new rules on application by licensing authority to cancel designation are at Annex C. The consequential amendments to the remainder of the current set of rules will be put to the Board for its approval in due course, subject to the outcome of any representations received.

Other revisions to rules

17. In addition to the consequential amendments identified in paragraphs 11, 14 and 16 above, the rules review has prompted very minor (non-material) updates to five other sets of rules. These will all require the Board’s approval in due course.
18. To facilitate the Board’s decision making on a large number of consequential amendments, we consider it would be helpful for one Board member to have full oversight of the detailed changes to the rules that the Board will be asked to approve. We seek a volunteer from the Board to undertake this task ahead of its meeting in November.

Next steps

19. Subject to the Board’s approval of Annexes A-C, we invite the Board to seek representations on these proposed sets of rules. Subject to the Board’s decisions, we intend to invite representations on the proposed new rules over the summer alongside the draft enforcement policy, for a nine week period.
20. We will return to the Board for a final decision in the light of the representations we receive later in the year. At that point we will also return to the Board for its approval of the consequential amendments that flow from this work.

ANNEX A

Rules for making oral and written representations and giving oral and written evidence

ANNEX B

Cancellation of designation: rules on powers of entry

ANNEX C

Rules for applications to cancel designation as a Licensing Authority