

Statement of Policy – Cancellation of designation as a Licensing Authority

Introduction

1. The Act obliges the LSB to make a Statement of Policy about the exercise of its enforcement powers of:
 - performance targets and monitoring;
 - directions;
 - public censure;
 - financial penalties;
 - intervention directions;
 - cancellation of designation as an Approved Regulators; and
 - cancellation of designation as a Licensing Authority.
2. This Statement of Policy on the cancellation of designation as a Licensing Authority addresses the last of the enforcement powers listed above.

Cancellation of designation as a Licensing Authority

3. Similar to the processes for cancelling the designation of Approved Regulators¹, there are three circumstances in which a Licensing Authority's designation can be cancelled:
 - the first is that a Licensing Authority can ask the LSB to make a recommendation to the Lord Chancellor cancelling its designation in relation to one or more reserved legal activities. The rules made by the Board setting out the form and manner in which such an application must be made and the prescribed fee² are at **Annex 2**. The LSB does not regard this power as part of its enforcement tools. However, it will try to ensure that appropriate arrangements have been put in place by

¹ See section 45 of the Act.

² See section 76(3) of the Act.

the Licensing Authority before the LSB makes any recommendation. The Lord Chancellor can decide not to cancel the designation;

- the second is in relation to enforcement action. The LSB can make a recommendation to the Lord Chancellor to cancel a Licensing Authority's designation if an act or omission (or a series of them) by a Licensing Authority has had or is likely to have an adverse impact on one or more of the regulatory objectives, and that the act or omission was unreasonable and it is appropriate to recommend cancellation of designation in all the circumstances of the case³. The Lord Chancellor may (in accordance with a recommendation by the LSB) cancel a Licensing Authority's designation in relation to some or all of the reserved activities which it regulates. The Lord Chancellor cannot cancel a designation in the absence of a recommendation from the LSB. However, the Lord Chancellor is not obliged to accept the LSB's recommendation. The LSB's power of cancellation of designation can only be used when the LSB is satisfied that the issue cannot be adequately addressed by any of its other powers⁴; and
 - the third is in the event that the Licensing Authority's designation as an Approved Regulator is wholly or partially cancelled in which event an equivalent cancellation will have to be sought by the Licensing Authority or applied to the body's Licensing Authority functions⁵.
4. The Act (at sections 76 to 79 and at schedule 10 Part 2) sets out the procedure that the LSB must follow. This includes giving a warning notice to the Licensing Authority and considering representations from it, obtaining advice from the Lord Chancellor, OFT, Consumer Panel, Lord Chief Justice and other appropriate consultees. An overview of the cancellation process is set out in diagrammatic form at **Annex 3**. Details about the rules that the LSB proposes to make about cancelling a Licensing Authority's designation are set out in paragraphs 13 to 15 of this paper.
5. The LSB will follow the general approach set out in its Statement of Policy on its other enforcement powers⁶ when considering whether to recommend that an Approved Regulator's authorisation as a Licensing Authority is cancelled. This includes how it will have regard to the principle that it should not exercise any of its enforcement functions by reason of an act or omission of an Approved Regulator unless the act or omission was unreasonable.

³ See section 76(5) of the Act.

⁴ See section 45(6) of the Act.

⁵ See section 75(2) of Act.

⁶ http://www.legalservicesboard.org.uk/can_we_help/lwb_policies_procedures/pdf/enforcement_policy_statement.pdf

The LSB's aim in cancelling the designation of a Licensing Authority

6. As with cancellation of designation as an Approved Regulator, the LSB regards a decision to recommend cancellation of a Licensing Authority's designation as an extremely serious matter. It will only be used in exceptional circumstances when the LSB is satisfied that the matter cannot be adequately addressed by the LSB using other powers that are available to it⁷. In using this power, the LSB's aim will be to try to ensure as smooth a transition as possible to the new body taking over regulation of the former Licensing Authority's licensed bodies. The LSB will also try to ensure appropriate provision of information to the public in order to reassure consumers and individuals regulated by the Licensing Authority.
7. Section 75 of the Act states that if the Lord Chancellor makes an order cancelling a body's designation as an Approved Regulator, the body's designation as a Licensing Authority is also cancelled. The converse of this is not true and the LSB recognises that there may be instances where it may recommend that a body's designation as a Licensing Authority is cancelled but not recommend that its designation as an Approved Regulator is cancelled.

⁷ See section 76(6) of the Act.