

References to LBRO for Determination Policy and Procedure

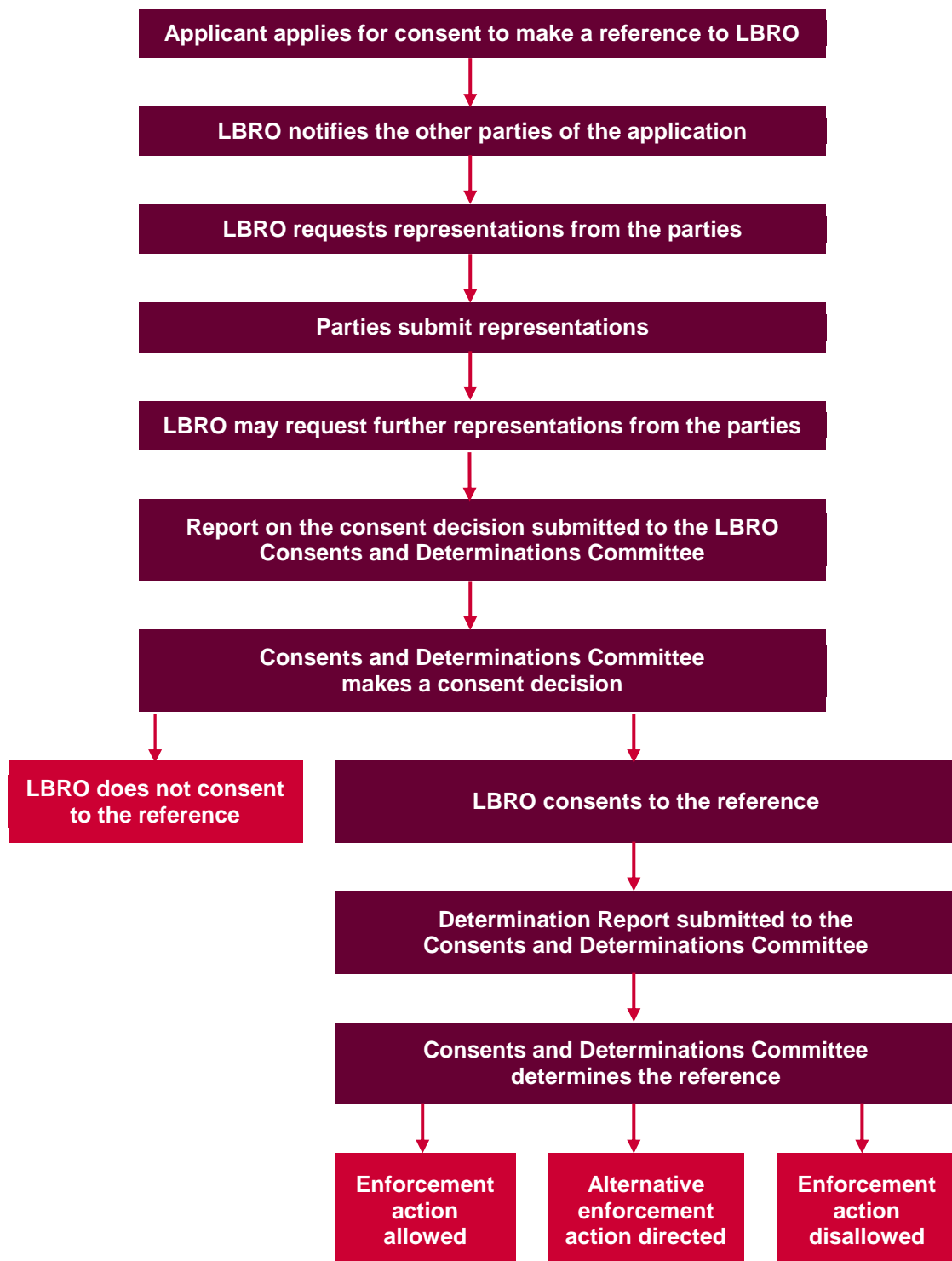
1. EXECUTIVE SUMMARY

- 1.1 The Regulatory Enforcement and Sanctions Act 2008 (**the Act**) enables questions that arise in respect of enforcement action against businesses who have nominated a primary authority to be referred to the Local Better Regulation Office (**LBRO**).
- 1.2 LBRO may in particular consider questions that arise where a local authority (the **enforcing authority**) proposes to take enforcement action against a business (the **regulated person**) in circumstances where that business is claiming to have followed advice or guidance provided to it by its primary authority.
- 1.3 Applicants must first apply for consent to make a reference to LBRO. If consent is granted, LBRO will determine the reference within 28 days of the referral to LBRO (see the flowchart paragraph 2.1 below).
- 1.4 LBRO's powers to consider questions referred to it, and the reference process, are governed by the Act and the Co-ordination of Regulatory Enforcement (Procedure for References to LBRO) Order 2009 (**the Order**).
- 1.5 The actions by enforcing authorities that constitute 'enforcement action' are set out in the Co-ordination of Regulatory Enforcement (Enforcement Action) Order 2009.
- 1.6 LBRO will determine references by considering:
 - a) whether the proposed enforcement action is inconsistent with advice or guidance given by the primary authority;
 - b) whether the advice or guidance given was correct; and
 - c) whether the advice was properly given by the primary authority.
- 1.7 Following consideration of these issues, LBRO will determine whether the enforcing authority may proceed with the proposed enforcement action.
- 1.8 If the advice or guidance was properly given by the primary authority, was correct, and is inconsistent with the proposed enforcement action, LBRO will determine that the enforcement action may not proceed. In all other cases it will determine that the enforcing authority may take the action proposed.

- 1.9 This document provides details of the circumstances in which questions may be referred to LBRO and how LBRO will deal with such references. It provides guidance as to the procedure and practice that LBRO intends to adopt in making determinations and it indicates the conduct that LBRO will expect of parties to the determination process.
- 1.10 This document is intended for all persons who may be parties to or have an interest in the determination process – especially for regulated persons, primary authorities and enforcing authorities. It is not a legally binding document, but is intended to be a source of information and assistance to those persons and their advisers. It is not a substitute for the statutory framework, but aims to summarise the effect of that framework as far as possible.

2 OVERVIEW OF THE REFERENCE PROCESS

2.1 The flowchart below shows the process for referring a question to LBRO:



- 2.2 Referring a question to LBRO is a two stage process:
- a) Applicants must first apply for consent to make a reference;¹ and
 - b) If consent is granted, the question raised will be automatically referred to LBRO, and LBRO will determine the reference within 28 days of such referral².
- 2.3 There will be three parties to each question referred to LBRO:
- a) the enforcing authority;
 - b) the regulated person against which the enforcing authority wishes to take enforcement action; and
 - c) the primary authority.
- 2.4 LBRO will communicate with and invite representations from all parties during the reference process. LBRO may also seek the views and representations of other regulators and of persons who are not parties but who may have an interest in the case or useful information to contribute.
- 2.5 A Consents and Determinations Committee (**the Committee**), which will normally consist of three members of LBRO's Board, will decide whether consent is granted, and will determine any reference made.
- 2.6 The identity of the Committee members will be disclosed to all parties prior to the consent decision being taken. If parties have any concerns about the identity of the Committee members these should be communicated to LBRO as soon as possible.

3 RESOLUTION OF QUESTIONS OUTSIDE OF THE FORMAL DETERMINATION PROCESS

- 3.1 LBRO encourages the parties to maintain contact with each other throughout the reference process, with a view to resolving questions before LBRO gives consent to a reference, or once a reference is made, before it is determined by LBRO.
- 3.2 In particular, an LBRO Account Manager will work actively with the parties to resolve the questions by arranging and facilitating negotiations between the parties.
- 3.3 If the parties do reach agreement before LBRO determines a reference, they should notify LBRO as soon as practicable that such agreement has been reached, and the applicant should request the withdrawal of the application.

4 APPLICATIONS FOR CONSENT TO A REFERENCE

How to apply to LBRO for consent to a reference

- 4.1 Applications for consent may only be made:
- a) by an enforcing authority which has been directed by a primary authority not to take enforcement action;³
 - b) by a regulated person that has been informed by an enforcing authority that it proposes to take enforcement action, in circumstances where the primary authority has not directed that the enforcement action should not be taken;⁴

¹ Paragraphs 1(1), 2(1) and 3(1) of Schedule 4 to the Act

² Paragraph 6 of Schedule 4 to the Act

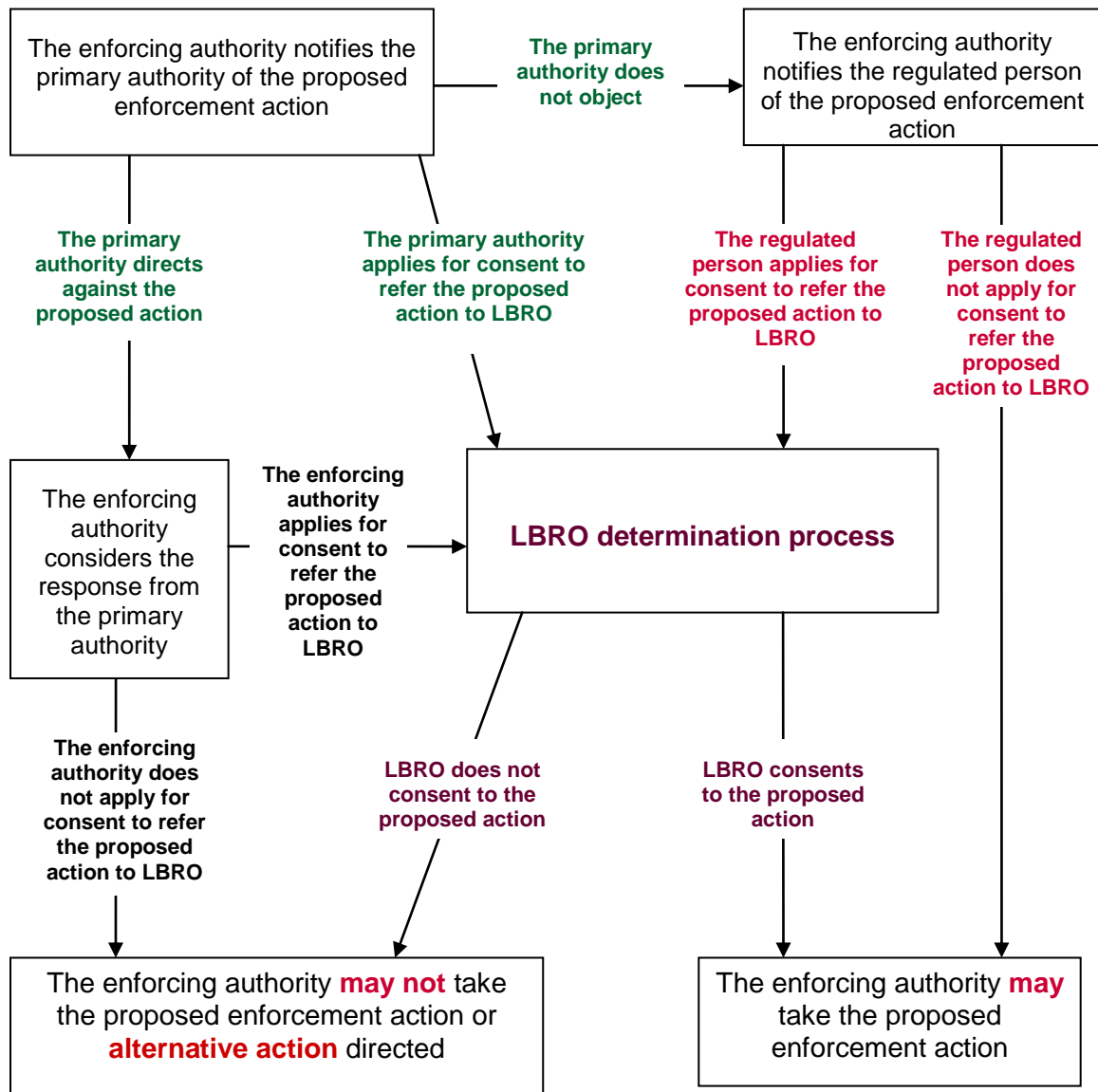
³ Paragraph 1, Schedule 4 to the Act

⁴ Paragraph 2, Schedule 4 to the Act

c) by a primary authority which has been notified of proposed enforcement action by an enforcing authority, but has not directed the enforcing authority not to take the proposed action.⁵

4.2 Where an application for consent to a reference is made by a regulated person, LBRO may require that the regulated person pay reasonable costs incurred by LBRO in determining the reference (see paragraph 13 below).

4.3 The flow chart below shows the points in any proposed enforcement process at which the various parties may refer a question to LBRO.



4.4 LBRO would expect that in the majority of cases it will receive applications from either the regulated person (where the enforcement action has not been blocked) or the enforcing authority (where its action has been blocked).

4.5 Where LBRO receives an application from a primary authority it will be because that authority has declined to make a definitive decision whether it should or should not direct that the enforcement action is not to take place. LBRO expects that a primary

⁵ Paragraph 3 of Schedule 4 to the Act

authority would only make a reference in default of this decision in exceptional circumstances, and that it would be able to provide good reasons why it was not appropriate for it to make the decision. These reasons will be relevant to whether or not LBRO grants consent to the application from a primary authority.

- 4.6 Applications must be submitted in writing to LBRO electronically to the following electronic address: pa@lbro.org.uk, or to any other address and by any other means (which may be electronic, postal or otherwise) as it may from time to time publish on its website.⁶

Timescales for applying for consent to a reference

- 4.7 Applications must be made as soon as reasonably practicable and in any event within the time periods set out below:

Applicant	Time period
Enforcing authority	10 working days beginning with and including the day after receipt of a direction from the primary authority (under section 28(2) of the Act) that the enforcement action should not be taken. ⁷
Regulated person	10 working days beginning with and including the day after receipt of notification from the enforcing authority (under section 28(3) of the Act) of proposed enforcement action. ⁸
Primary authority	5 working days beginning with and including the day after receipt of notification from the enforcing authority (under section 28(1) of the Act) of the proposed enforcement action. ⁹

- 4.8 Applications received by LBRO after 5.00pm will be deemed to be received on the following working day.
- 4.9 LBRO may only extend the time period within which it will accept an application in exceptional circumstances.¹⁰
- 4.10 Parties seeking an extension of the time period for applications should normally be able to show that they have an effective process in place for dealing promptly with the relevant legal notices when they are received.
- 4.11 Parties seeking an extension of the time period for applications should contact LBRO before the expiry of the standard time period within which the relevant party could have made the application. LBRO will not usually consider applications for extensions of time made after the initial time period has expired.
- 4.12 LBRO will not normally consider applications for extending the time period for applications once the enforcement action in question has been commenced by the enforcing authority.

⁶ Article 2, Order

⁷ Article 4, Order

⁸ Article 5, Order

⁹ Article 6, Order

¹⁰ Article 7, Order

Information to be provided in the application for consent to a reference

4.13 Applications must contain the following information:

<p>Information to be included in all applications</p>	<ul style="list-style-type: none"> • the applicant's name;¹¹ • the applicant's business address and the name and contact details of an individual within the applicant's organisation who has responsibility for the application and reference;¹² • the names and business addresses of the other parties;¹³ • a description of the proposed enforcement action.¹⁴
<p>Additional information to be included in applications from enforcing authorities</p>	<ul style="list-style-type: none"> • a copy of any written notification sent to the primary authority under section 28(1) of the Act regarding the proposed enforcement action;¹⁵ • a copy of any written direction by the primary authority under section 28(2) of the Act that the enforcing authority must not take the proposed enforcement action;¹⁶ • a copy of the advice and guidance given by the primary authority (generally or specifically) to the enforcing authority under section 27(1) of the Act which is relevant to the proposed enforcement action;¹⁷ • a statement as to why the enforcing authority considers that the proposed enforcement action is consistent with advice or guidance previously given by the primary authority (generally or specifically) under section 27(1) of the Act, why the advice or guidance given was not correct, or why the advice or guidance was not properly given.¹⁸

¹¹ Article 3(1)(a), Order

¹² Article 3(1)(b), Order

¹³ Article 3(1)(c), Order

¹⁴ Article 3(1)(d), Order

¹⁵ Article 3(2)(a)(i), Order

¹⁶ Article 3(2)(a)(ii), Order

¹⁷ Article 3(2)(a)(iii), Order

¹⁸ Article 3(2)(a)(iv), Order

<p>Additional information to be included in applications from regulated persons</p>	<ul style="list-style-type: none"> • a copy of the advice and guidance received from the primary authority under section 27(1) of the Act;¹⁹ • a copy of any document informing the regulated person, in accordance with section 28(3) of the Act, of the proposed enforcement action;²⁰ • a statement as to why the regulated person considers that the proposed enforcement action is inconsistent with the advice or guidance previously given by the primary authority (generally or specifically) under section 27(1) of the Act, why the advice or guidance given was correct, and why the advice or guidance was properly given.²¹
<p>Additional information to be included in applications from primary authorities</p>	<ul style="list-style-type: none"> • a copy of advice or guidance it has previously given (generally or specifically) under section 27(1) of the Act which is relevant to the proposed enforcement action;²² • a copy of any written notification received under section 28(1) of the Act regarding the proposed enforcement action;²³ • a statement as to why the primary authority considers that the proposed enforcement action is inconsistent with advice or guidance previously given by the primary authority (generally or specifically) under section 27(1) of the Act, why the advice or guidance was correct, and why the advice or guidance was properly given.²⁴ • a statement of the primary authority's reasons for making the application.

- 4.14 LBRO expects applicants to provide all relevant information in as clear and succinct a form as possible and wherever possible using the templates available on LBRO's website at www.lbro.org.uk.
- 4.15 All applications should include a list of contents and pages should be numbered sequentially. Two paper copies should be provided to LBRO, on request, of any application or part of an application.
- 4.16 Failure to provide relevant information succinctly and to follow relevant guidance about the form and presentation of applications may delay the making of a consent decision by LBRO. Failure to provide information that is clear, complete and readily comprehensible may prejudice the case of the party providing it.

¹⁹ Article 3(2)(b)(i), Order

²⁰ Article 3(2)(b)(ii), Order

²¹ Article 3(2)(b)(iii), Order

²² Article 3(2)(c)(i), Order

²³ Article 3(2)(c)(ii), Order

²⁴ Article 3(2)(c)(iii)

- 4.17 LBRO will check that all necessary information has been included in applications and will endeavour to alert applicants to any omissions as soon as reasonably practicable. Applicants should, however, note that it is their sole responsibility to make sure that applications are complete before the time period for making the application has expired, and that it may not be possible for LBRO to check applications within that time period. Consent may be refused for incomplete applications.

5 MULTIPLE AND RELATED APPLICATIONS

- 5.1 The making of an application by one party does not preclude another party from making an application in respect of the same question.
- 5.2 Regulated persons should note that an application by a primary authority does not automatically block enforcing authorities proceeding to take the relevant enforcement action. If, following an application for consent being made by a primary authority, a regulated person receives notice from the enforcing authority in accordance with section 28(3) that it continues to propose to take the relevant enforcement action, the regulated person may wish to consider making its own application for consent. Such an application will prevent the enforcing authority from progressing the proposed enforcement action until consent is declined or any resulting reference is determined.
- 5.3 If more than one application is received, LBRO will consider all applications but will not usually only grant consent to more than one. The question referred will be considered in the light of information provided by all of the parties, and LBRO will take into account the fact that more than one application was received if at any stage during the process it is asked to consent to the application or reference being withdrawn.
- 5.4 LBRO also envisages that it may receive related applications: these will most likely be applications arising from proposals for similar enforcement action by different enforcing authorities against the same regulated person with the same designated primary authority. Typically, for instance, this might occur if the same product has been supplied by a manufacturer within the areas of a number of enforcing authorities, and more than one of those authorities considers the product to breach a relevant regulation and therefore proposes to take action in relation to it.
- 5.5 Where related applications are received, LBRO will generally progress the first such application received and may delay making a consent decision in respect of related applications until after the first application has been determined. LBRO will inform the parties to any related applications as to why a consent decision is being delayed, and would expect to consider representations and other information provided in respect of related applications when determining the outcome of the first application.

6 REPRESENTATIONS FROM OTHER PARTIES

- 6.1 LBRO will notify the other parties in writing (electronically) on receipt of an application for consent.²⁵

²⁵ Article 8, Order

- 6.2 LBRO may, at the same time as notifying the other parties of receipt of an application, or at a later time if it deems it appropriate, request representations from the other parties.²⁶ LBRO expects that in most cases it will request representations before a consent decision is made.
- 6.3 Representations must be submitted in writing (electronically) to LBRO within the time period specified by LBRO in the request for representations.²⁷ LBRO intends to progress applications quickly and generally expects that it will require representations to be submitted within 5 to 10 working days of a request for representations.
- 6.4 LBRO is likely to specify a longer time period for the submission of representations or delay requesting representations where the application received is incomplete or appears to relate to a question which would be inappropriate for LBRO to consider.
- 6.5 LBRO expects that parties should be able to prepare representations without third party assistance. LBRO will not make technical experts available to the parties to assist with the preparation of representations.
- 6.6 Representations should include the following information:²⁸

<p>Information to be included in representations from enforcing authorities</p>	<ul style="list-style-type: none"> • the enforcing authority’s business address and the name and contact details of an individual within the enforcing authority who has responsibility for responding to the application and reference; • a copy of any written notification sent to the primary authority under section 28(1) of the Act regarding the proposed enforcement action; • a copy of any written direction by the primary authority under section 28(2) of the Act that the enforcing authority must not take enforcement action; • a copy of the advice and guidance given by the primary authority (generally or specifically) to the enforcing authority under section 27(1) of the Act which is relevant to the proposed enforcement action; • a statement as to why the enforcing authority considers that the proposed enforcement action is consistent with advice or guidance previously given by the primary authority (generally or specifically) under section 27(1) of the Act, why the advice or guidance given was not correct, or why the advice or guidance was not properly given.
--	---

²⁶ Article 9(1), Order

²⁷ Article 9(2), Order

²⁸ Article 9(3), Order

<p>Information to be included in representations from regulated persons</p>	<ul style="list-style-type: none"> • the regulated person’s business address and the name and contact details of an individual within the regulated person’s organisation who has responsibility for responding to the application and reference; • a copy of the advice and guidance received from the primary authority under section 27(1) of the Act; • a copy of any document informing the regulated person, in accordance with section 28(3) of the Act, of the proposed enforcement action; • a statement as to why the regulated person considers that the proposed enforcement action is inconsistent with the advice or guidance previously given by the primary authority (generally or specifically) under section 27(1) of the Act, why the advice or guidance given was correct, and why the advice or guidance was properly given.
<p>Information to be included in representations from primary authorities</p>	<ul style="list-style-type: none"> • the primary authority’s business address and the name and contact details of an individual within the primary authority who has responsibility for responding to the application and reference; • a copy of advice or guidance it has previously given (generally or specifically) under section 27(1) of the Act which is relevant to the proposed enforcement action; • a copy of any written notification received under section 28(1) of the Act regarding the proposed enforcement action; • a statement as to why the primary authority considers that the proposed enforcement action is inconsistent with advice or guidance previously given by the primary authority (generally or specifically) under section 27(1) of the Act, why the advice or guidance was correct, and why the advice or guidance was properly given.

6.7 LBRO may specify that such further information as it reasonably believes appropriate should be included in representations.

6.8 Parties are expected to present relevant information clearly and succinctly in their representations. All representations should include a list of contents and pages should be numbered. Two paper copies should be provided to LBRO on request of any representations or part of any representations.

- 6.9 LBRO may request further information from the parties after representations have been submitted.²⁹ All such information should be submitted in writing, electronically if so directed by LBRO, promptly and within the time period set out in LBRO's request for the information.
- 6.10 Parties should be aware that LBRO can only make consent decisions and determinations on the basis of information presented to it. Failure to make timely, full, clear or adequate representations, or to provide information requested by LBRO within relevant time periods, may prejudice the determination process to the detriment of the party in default.

7 CONSENT DECISIONS

- 7.1 A report will be prepared on each application for the Committee. The report will consider the following and may include a recommendation as to whether consent should be granted:
- a) whether the application is complete and properly made;
 - b) whether the subject of the application is an appropriate question for LBRO to determine;
 - c) whether multiple applications have been received in respect of the same question;
 - d) whether related applications have been received;
 - e) where the primary authority is the applicant, whether LBRO is satisfied that the primary authority has provided sufficient and appropriate reasons for making the application;
 - f) whether all of the information required for the determination process has been made available to LBRO.
- 7.2 Prior to preparing the report, LBRO may consult with relevant regulators and other third parties, take legal or other specialist advice, and request such further information as it thinks fit from the parties.
- 7.3 The report may be shared or any part of it, including the recommendation as to whether consent should be granted, with any or all of the parties, or the third parties mentioned in paragraph 7.2 above, prior to it being submitted to the Committee.
- 7.4 While it is expected that in most cases the Committee will follow the recommendation made in the report, it is not bound to do so and will exercise its own judgment based on the information before it.
- 7.5 Following receipt of the report the Committee may make a consent decision or defer making a consent decision pending the compilation of a fuller report or obtaining of more information.
- 7.6 The Committee will typically refuse consent if:
- a) an application is incomplete or has otherwise been improperly made;
 - b) the subject of an application is not an appropriate question for LBRO to determine;
 - c) consent has already been given to another party relating to the same question;

²⁹ Paragraph 8, Schedule 4 to the Act

- d) consent has already been given to another applicant making a related application;
 - e) LBRO is not satisfied that the applicant has provided sufficient and appropriate reasons for making the application;
 - f) when the Committee considers the report, LBRO has not received the information it has requested from any party; and
 - g) the application is frivolous or vexatious.
- 7.7 Where consent has already been granted to a related application, the Committee will usually defer making a consent decision until the reference resulting from the related application has been determined.
- 7.8 LBRO will inform the applicant and the other parties in writing (electronically) of a consent decision as soon as reasonably practicable following the making of the decision.³⁰ If consent is refused, LBRO will provide all parties with a written statement of reasons for its decision.³¹
- 7.9 If LBRO consents to a reference, the reference is automatically deemed to be made on the day after the date on which the notice of consent is given to the parties.
- 7.10 Once made and communicated to the parties a consent decision is final and will not be reconsidered by LBRO.

8 REFERENCES

- 8.1 LBRO expects applicants to submit all information relevant to any reference with the application for consent to that reference. LBRO does not expect applicants to submit further information following the making of a reference (although LBRO may at any stage during the reference process request further information from any of the parties.³²)
- 8.2 References will be determined by LBRO within 28 days of the reference being made.³³
- 8.3 A report will be prepared on each reference for the Committee. The report will be prepared following a consideration of the relevant information available and may include a recommendation as to how the reference should be determined. Relevant information will include:
- a) the application;
 - b) representations from the parties;
 - c) any other information received from the parties;
 - d) any information received as a result of consultation with relevant regulators or other persons;
 - e) any relevant guidance issued to the enforcing authority or the primary authority under section 6 of the Act;
 - f) any relevant direction issued to the enforcing authority or the primary authority under section 7 of the Act;
 - g) any relevant guidance and directions given to LBRO by the Secretary of State or the Welsh Ministers under sections 15 and 16 of the Act;
 - h) any previous determinations by LBRO in respect of similar references.

³⁰ Article 10(2), Order

³¹ Article 10(3), Order

³² Paragraph 8, Schedule 4 to the Act

³³ Paragraph 6(1), Schedule 4 to the Act

- 8.4 While the Committee will have regard to any recommendation contained in the report, it is not bound to follow it, but will exercise its own judgment based on the information before it.
- 8.5 Following receipt of the report the Committee may determine the question or may defer determination pending the compilation of a fuller report.
- 8.6 LBRO may if appropriate request that parties attend before the Committee and give oral representations and comments.
- 8.7 LBRO expects that it will rarely be appropriate to make such requests and that such requests will only be necessary where it is necessary for the purpose of determining factual matters or where the statutory timeframe within which references must be determined makes it particularly desirable for the Committee to meet the parties in person.
- 8.8 As LBRO can only consider the information presented to it, the failure of a party to attend on the Committee if requested to do so may prejudice the determination process to the detriment of that party.
- 8.9 References will be determined by the Committee as follows:

References by enforcing authorities	<p>If LBRO is satisfied that:</p> <ul style="list-style-type: none"> the proposed enforcement action is inconsistent with advice or guidance given by the primary authority (generally or specifically); the primary authority's advice or guidance was correct; and the advice or guidance was properly given by the primary authority. 	<p>LBRO will confirm the direction of the primary authority preventing the enforcing authority from taking enforcement action.³⁴</p> <p>LBRO may also direct the enforcing authority to take some other enforcement action.³⁵</p>
	<p>If LBRO is not satisfied that:</p> <ul style="list-style-type: none"> the proposed enforcement action is inconsistent with advice or guidance given by the primary authority (generally or specifically); the primary authority's advice or guidance was correct; and the advice or guidance was properly given by the primary authority. 	<p>LBRO will revoke the primary authority's direction preventing the enforcing authority from taking enforcement action.³⁶</p>

³⁴ Paragraph 1(2)(a), Schedule 4 to the Act

³⁵ Paragraph 1(4), Schedule 4 to the Act

³⁶ Paragraph 1(2)(b), Schedule 4 to the Act

References by regulated persons	<p>If LBRO is satisfied that:</p> <ul style="list-style-type: none"> the proposed enforcement action is inconsistent with advice or guidance given by the primary authority (generally or specifically); the primary's advice or guidance was correct; and the advice or guidance was properly given by the primary authority. 	<p>LBRO will direct the enforcing authority not to take the enforcement action.³⁷</p> <p>LBRO may also direct the enforcing authority to take some other enforcement action.³⁸</p>
	<p>If LBRO is not satisfied that:</p> <ul style="list-style-type: none"> the proposed enforcement action is inconsistent with advice or guidance given by the primary authority (generally or specifically); the primary authority's advice or guidance was correct; and the advice or guidance was properly given by the primary authority. 	<p>LBRO will consent to the proposed enforcement action.³⁹</p>
References by primary authorities	<p>If LBRO is satisfied that:</p> <ul style="list-style-type: none"> the proposed enforcement action is inconsistent with advice or guidance given by the primary authority (generally or specifically); the primary authority's advice or guidance was correct; and the advice or guidance was properly given by the primary authority. 	<p>LBRO will direct the enforcing authority not to take the proposed enforcement action.⁴⁰</p> <p>LBRO may also direct the enforcing authority to take some other enforcement action.⁴¹</p>
	<p>If LBRO is not satisfied that:</p> <ul style="list-style-type: none"> the proposed enforcement action is inconsistent with advice or guidance given by the primary authority (generally or specifically); the primary authority's advice or guidance was correct; and the advice or guidance was properly given by the primary authority. 	<p>LBRO will consent to the proposed enforcement action.⁴²</p>

³⁷ Paragraph 2(2)(a), Schedule 4 to the Act

³⁸ Paragraph 2(5), Schedule 4 to the Act

³⁹ Paragraph 2(2)(b), Schedule 4 to the Act

⁴⁰ Paragraph 3(2)(a), Schedule 4 to the Act

⁴¹ Paragraph 3(5), Schedule 4 to the Act

⁴² Paragraph 3(2)(b), Schedule 4 to the Act

- 8.10 LBRO will normally direct an enforcing authority to take some other enforcement action only where LBRO considers that such enforcement action is necessary in the public interest.
- 8.11 In considering whether proposed enforcement action is inconsistent with advice or guidance given by the primary authority, LBRO will in particular consider:
- a) whether the regulated person has complied with the primary authority's advice or guidance;
 - b) the application of the advice or guidance to the enforcement activity.
- 8.12 In considering whether the advice or guidance given by the primary authority was correct, LBRO will in particular consider:
- a) whether the advice or guidance was legally correct, in that the advice or guidance was in accord with the correct interpretation of any relevant legislative provisions;
 - b) whether, with regard to other matters, the advice or guidance was within the range of advice or guidance that could reasonably have been given by the primary authority.
- 8.13 In considering whether the advice or guidance was properly given by the primary authority, LBRO will in particular consider:
- a) the primary authority's status as primary authority for the regulated person;
 - b) the application of the Act to the enforcement activity;
 - c) whether the advice or guidance was effectively communicated to the regulated person.
- 8.14 Damages are not available through the LBRO determination process and LBRO determinations will not make provision for the payment of damages by or to any party.
- 8.15 As soon as reasonably practicable after determining a reference, LBRO will notify the parties in writing of its determination and make any relevant directions.⁴³ LBRO will provide the parties with a statement of its reasons for the determination as soon as reasonably practicable and in any event within 28 days of the determination being made.⁴⁴

9 CONSULTATION WITH THIRD PARTIES

- 9.1 Before determining a reference, LBRO will consult with any relevant regulator.⁴⁵ Such consultation may take place before or after a consent decision is made and may involve the disclosure to the relevant regulator of any or all of the information provided to LBRO by the parties.
- 9.2 Before determining a reference, LBRO may consult such other persons as it thinks fit.⁴⁶ Such consultation may take place before or after the consent decision is made and may involve the disclosure to the other persons of any or all of the information provided to LBRO by the parties. Other persons with whom LBRO may consult include:

⁴³ Article 13, Order

⁴⁴ Article 14, Order

⁴⁵ Paragraph 5(1)(a), Schedule 4 to the Act

⁴⁶ Paragraph 5(1)(b), Schedule 4 to the Act

- a) legal advisors;
- b) technical experts;
- c) parties to related applications.

9.3 LBRO may but is not obliged to notify the parties before consulting with third parties.

10 WITHDRAWAL OF APPLICATIONS AND REFERENCES

10.1 Applicants may apply to LBRO in writing for the withdrawal of their application at any time before LBRO determines a reference. Applications may only be withdrawn by the applicant and may not be withdrawn without LBRO's consent.⁴⁷

10.2 LBRO will consult with all parties before deciding whether to consent to the withdrawal of an application.⁴⁸ LBRO encourages resolution of questions by the parties outside of the formal reference process and is mindful that applications should not proceed in circumstances where none of the parties wishes them to do so. If no party expresses any objections, LBRO will generally consent to the withdrawal of an application or reference.

10.3 LBRO will normally only refuse consent for the withdrawal of a reference in the following circumstances:

- a) where multiple applications were received and the withdrawal of the reference may prejudice other applicants;
- b) where the time period for another party to make an application has expired and withdrawal of the current application or reference may prejudice the interests of that other party; and
- c) where determination of the reference would be in the public interest.

11 SHARING OF INFORMATION

11.1 LBRO is not required to treat any information disclosed to it by any of the parties as confidential.⁴⁹ LBRO would generally expect to disclose the full content of an application and any representations and other information received from the parties to all parties.

11.2 LBRO may also disclose the full content of an application and any representations and other information received from the parties to any relevant regulator or such other persons that it consults during its consideration of the application.

11.3 No person may, without the consent of LBRO and the other parties, use any information disclosed to it in connection with an application for any purpose not directly connected to the application.⁵⁰

12 PUBLICATION OF INFORMATION

12.1 LBRO will usually publish on the secure area of its website :

- a) details of any applications received, including the names of the parties and the subject of the reference;

⁴⁷ Articles 11(1) and 11(3), Order

⁴⁸ Article 11(2) and 11(4), Order

⁴⁹ Article 12(1), Order

⁵⁰ Article 12(2), Order

- b) the outcome of consent decisions, including if appropriate LBRO's reasons for refusing to consent to a reference;
 - c) reference determinations, including such information on the outcome as is appropriate and is not commercially sensitive.
- 12.2 LBRO may also publish other relevant information, including guidance issued by a primary authority or details of proposed enforcement action.
- 12.3 LBRO will endeavour to ensure that the publication of information which is of genuine commercial sensitivity is not published, particularly where this has been highlighted by the parties.

13 COSTS

- 13.1 The primary authority, enforcing authority and regulated person must bear their own costs in respect of any application (regardless of which party makes the application) or reference to LBRO.
- 13.2 LBRO will bear its own costs if an application is made by a primary authority or an enforcing authority.
- 13.3 If a regulated person makes an application, LBRO may require the regulated person to pay such reasonable costs incurred by LBRO as a result of the reference as LBRO may specify.⁵¹
- 13.4 LBRO will usually require regulated persons who are applicants to pay costs resulting from references, but may choose in its discretion choose not to do so.
- 13.5 No costs will normally be payable where an application for a reference is withdrawn before a consent decision is taken or is declined at consent stage.
- 13.6 Whether the regulated person will be required to pay costs and the level of those costs may depend on factors including:
- a) the outcome of the reference;
 - b) the conduct of all parties during the reference process;
 - c) the complexity of the reference;
 - d) any public interest implications of the reference;
 - e) any application made by the regulated person to withdraw the reference;
 - f) the circumstances of the regulated person;
 - g) whether multiple or related applications have been considered by LBRO.
- 13.7 LBRO's costs will usually include its out-of-pocket expenses, such as the cost of external legal or technical advisers required for the purposes of assisting it, as well as an element of its own cost.
- 13.8 LBRO will aim to confirm to the regulated person that it is required to pay costs, and confirm the amount of those costs, within 28 days of determination of the reference.

⁵¹ Paragraph 2(7), Schedule 4 to the Act