Meeting: Legal Services Board

Date: 1 March 2022

Item: Paper (22) 07

Title: Regulatory performance review – draft proposals for consultation

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Status: Official

Introduction: Purpose of the paper

1. This paper presents the draft revised regulatory performance assessment framework, including the proposed outcomes and characteristics of effective regulators; proposed assessment approach and process; and proposals for a smooth transition from our current framework.

Recommendations

2. The Board is invited to:

   a) **Discuss** the draft framework;
   b) **Agree** to consult on this basis - with a consultation paper and other supporting material to be circulated to Board for approval in the coming weeks

Background

3. This work is central to our duty to promote the regulatory objectives, have regard to the better regulation principles and the LSB's ambition to reshape legal services to better meet society's needs and provide consumers with fairer outcomes, stronger confidence and better services.

4. The current framework was introduced in 2018 with an expectation that it would be reviewed every three years to ensure it remained fit for purpose. Our experience of the framework, feedback from regulators and research into other approaches indicated that we should develop a revised outcome-focused framework that:

   - Places sufficient emphasis on effective leadership, capability and capacity of regulators;

   - Encourages regulators to take ownership of the regulatory objectives and holds them to account for putting these at the centre of what they do;

- Is sufficiently flexible to account for developments in the market and the policy environment.

5. We brought these objectives to the Board in November 2021 and carried out a gap analysis and mapping exercise with the regulatory objectives and better regulation principles to develop proposals for:

   - Revised outcomes and characteristics (to replace the current standards and outcomes) and proposed assessment and rating system (Annex B);

   - A supporting suite of policies and guidance (‘sourcebook’) that would sit below the outcomes and characteristics (Annex C);

   - A smooth transition from the current framework, including the timing and publication of assessments.

6. In developing these proposals, we have engaged with LSB relationship managers, the LSCP, regulatory bodies and considered other regulators’ (e.g. the National Audit Office, Professional Standards Authority) approaches. We have also taken account of feedback on our proposals from SLT and our Board leads, Catherine Brown and Ian Hamer.

Draft revised framework

7. The draft revised framework is centred on high-level outcomes and characteristics of effective regulators, derived from regulators’ statutory duties and regulatory arrangements. It is more streamlined compared with the current framework, with less repetition, prescription and a sharper focus on regulators’ core purpose and delivery of the regulatory objectives.

8. The revised framework would also include a supporting suite of policies and guidance that would serve to bridge the gap between the higher-level outcomes and characteristics and the more specific expectations that the LSB articulates through policy statements, statutory guidance and other means. We would create a regularly updated “sourcebook” (or similar) of the policies and guidance that are considered relevant to each characteristic, which should provide a means of developing performance expectations to recognise developing thinking from our wider policy work, without needing the regularly amend the core framework. Equally, development of expectations would be based on the introduction of new LSB policies and guidance to which there would already have been separate consultation and engagement. This sourcebook might also include resources not created by the LSB, but which regulators would be encouraged to have regard to, such as the recent OECD guidance on vulnerability. It would also include examples of the type of evidence that regulatory bodies might put forward to provide assurance in relation to each characteristic. An indicative example of how this sourcebook might look is included at Annex C.

9. Our view is that, for well-led organisations, we should require no more material than is available to regulators’ own boards, so there should be limited additional burden on regulators in providing assurance. We may request additional information where material is not available, including from other stakeholders.

Central to our approach is that it provides more autonomy to the independent regulators, who are best placed to demonstrate how they meet the framework outcomes.

10. This supporting material would be revised from time-to-time and allow us to indicate any aspects we wish to emphasise to ensure that our assessments remain relevant.

11. We have included a chart that illustrates how the various elements of the framework would interact at Annex A. This includes how regulators take account of LSB rules, guidance and statements of policy, which would be explicitly included in performance assessments under the proposed revised outcomes and characteristics. This would be a new way of gaining assurance and consolidate reviews of our thematic expectations into a single process and assessment.

Revised outcomes and characteristics

12. At the core of the draft revised framework are three outcomes, which we propose would replace the five standards we have currently:

    Well led: Regulators are well led with the resources and capability required to work for the public and promote the regulatory objectives effectively.

    Effective approach to regulation: Regulators act on behalf of the public to apply their knowledge and address the issues and risks to promoting the regulatory objectives.
    Public protection: Regulators' operational activity is clearly focused on public protection.
    Each of these outcomes has a draft set of characteristics that we expect regulators will demonstrate. These 20 characteristics would replace the 27 outcomes in our current framework (see Annex B).

Revised rating system

13. We propose revising how we assess regulators' performance, including the rating system and focus of our assessments, to provide a clearer, more accurate account of the performance of each regulator. This would allow us to identify: areas of good practice or areas where regulators can improve and learn from each other; provide transparency of areas where there is a lack of assurance about regulators' performance; and focus on specific issues across the regulators in a more targeted and dynamic way.

14. Our proposal is to produce narrative assessments that set out, in a consistent format and language, how each regulator is performing overall and against the individual outcomes. The narrative assessments would be accompanied by a revised rating system, to replace the current met and not met ratings. Our preferred option for revising the rating system is set out in Annex B, which reflects the level of assurance regulators have provided of their performance.

Revised assessment approach

15. We propose revising our approach to annual assessments. Currently, they focus on regulators' individual existing not met outcomes from previous assessments, as well as any issues that have emerged with their performance during the year.

16. An alternative to this would be to review all regulators against one or more of the revised outcomes on a rolling basis. This would enable us to take a more thematic focus and ensure that we are regularly assessing regulators against all of the characteristics, in a targeted and proportionate way. If we propose this approach, we would still assess individual regulators against any outcomes where they previously had a rating of partial or inadequate assurance, or where we have concerns that their performance may no longer be adequate.

17. Existing LSB process documents will be updated to reflect any changes to the assessment approach, but we propose that we will retain all the means of review (ongoing monitoring, annual assessments, benchmark assessments, targeted reviews and investigations) in our current approach. As such, we will retain the option to issue an information request or initiate a review, where appropriate.

Transition

18. Subject to the consultation and our analysis of responses, we plan to return to Board to approve the final version of the revised framework in September 2022. The revised framework would be published soon after and we would begin the transition from the current framework at that time.

19. We propose that our assessment of the regulators' performance for 2022, which will start in September, will be against the current standards and outcomes, using the current rating system and following the usual process. However, we suggest that we publish the assessment in the revised narrative style, as the style of our reports is not determined by the current framework. While this would be a change to our current practice, it would provide a phased introduction to the revised framework and assist the regulators in adjusting to it, while not imposing any new obligations on the regulators prior to the framework's formal introduction.

20. Our first assessment of the regulators against the revised outcomes and characteristics will take place in 2023. Subject to consultation, based on our experience under the current framework and on advice of the Communications Team, we propose to change the timing of our annual assessment and subsequent publication, potentially to October.

Next steps

21. Subject to the Board's comments, we intend to bring the finalised version of the revised framework and the accompanying consultation document to the Board for approval at its 22 March meeting, in anticipation of beginning our formal 12-week consultation by the end of March. Alternatively, we could circulate for approval by correspondence.

Risks and mitigations	
Financial:	N/A
Legal:	There is an element of legal risk in introducing a revised framework and embarking on a consultation of this nature. Colleagues have taken steps to minimise risks where possible.
Communications and engagement:	We expect there will be a range of views, both for and against proposals. We will engage with stakeholders during the consultation period to understand their position and seek to forge consensus.
Equality and diversity:	We will provide impact assessments in the consultation material.
Resource:	N/A

Annexes

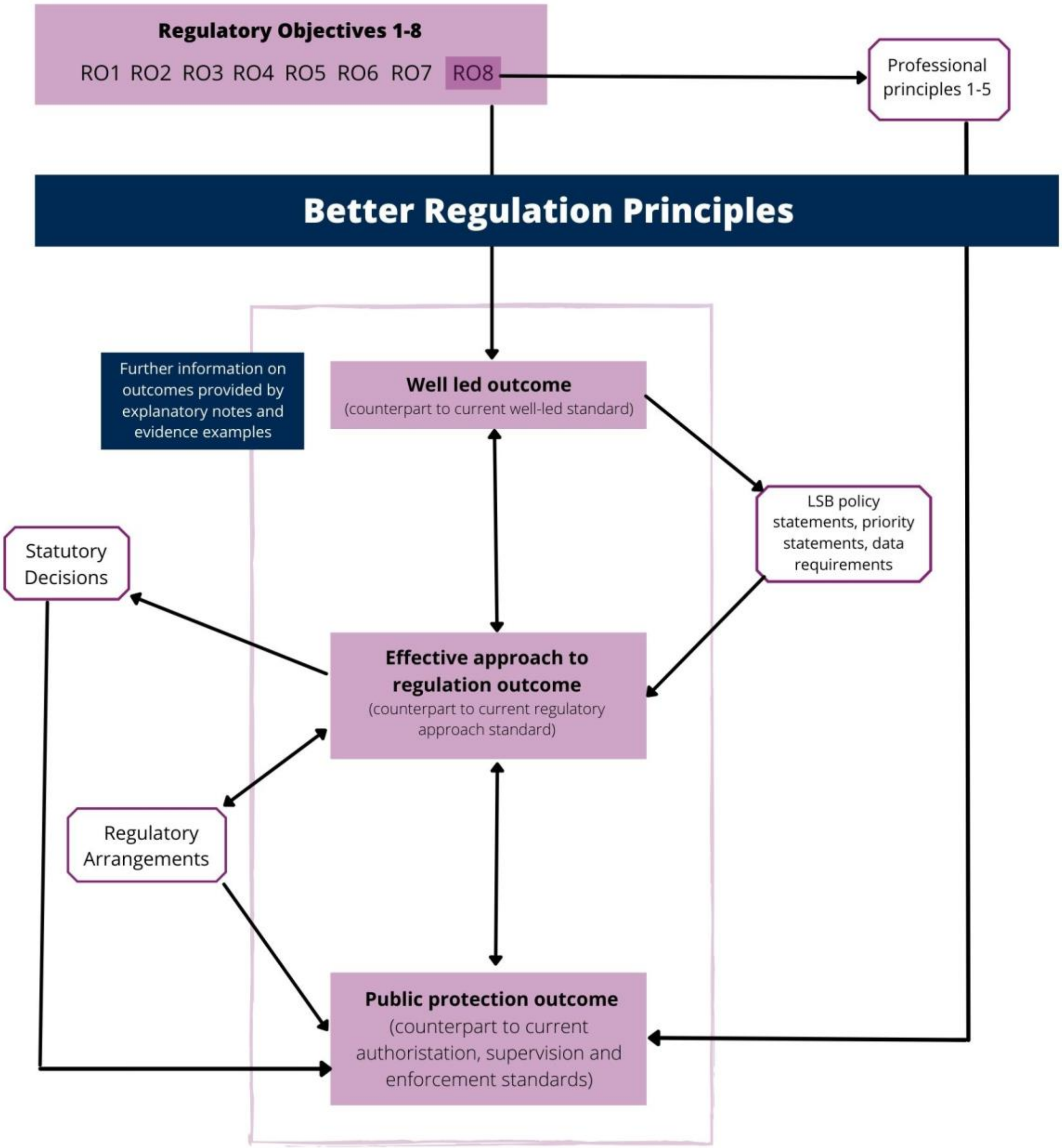
Annex A – Revised framework chart
Annex B – Proposed revised outcomes and characteristics and proposed assessment and rating system
Annex C – 'Sourcebook' [to be added before circulation to Board]

Freedom of Information Act 2000 (FoI)		
Para ref	**FoI exemption and summary**	**Expires**
Annex B and Annex C	S22 – future publication	N/A

Annex A – Performance framework chart

The chart shows how all the elements in the framework interact and complement each other.

- The outcomes derive from the Regulatory Objectives and Better Regulation Principles
- Further information on the outcomes is provided by explanatory notes and evidence examples
- A well led regulator will examine LSB statements on policy and priority and design its approach to regulation accordingly to ensure its effectiveness



Annex B – Proposed revised outcomes and characteristics and proposed assessment and rating system

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Annex C - Regulatory performance assessment framework: Sourcebook

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