

Meeting: Legal Services Board

Date: 30 November 2021

Item: Paper (21) 61

Title: Review of Rules/Guidance for alterations to regulatory arrangements

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Status: Official

Introduction: Purpose of the paper/ Issue

1. This paper seeks the Board's approval of the new Applications to Alter Regulatory Arrangements Rules 2021 ('Rules'), supporting new Guidance ('Guidance') and decision document. The Board will make the Rules under paragraph 20(1) of Schedule 4 to the Legal Services Act 2007, and the Guidance under s162. They replace the current Rules and Guidance. This follows the Executive's consideration and assessment of the responses received to the consultation on the draft Rules and Guidance considered and approved by the Board in June 2021.

Recommendation(s)

2. The Board is invited to:
 - **approve** the new Rules, new Guidance, and decision document.
 - **delegate approval** of any minor drafting/technical amendments to Rules, Guidance and decision document to the Chief Executive.

Timing

3. We are aiming to publish the Decision Document, Rules and Guidance following the November Board meeting subject to the Board's approval. The Rules and the Guidance are to come into effect on 1 February 2022. We are proposing to allow a period of two months between publication of the Rules and Guidance and the coming into effect date, to give regulators a period of transition between the current and new Rules and Guidance.

Background

4. The January 2021 Board paper (available to Board members on request) set out the background and rationale for the review and invited the Board to provide views on our direction of travel. The Board approved our approach.
5. At its April 2021 meeting the Board considered a paper (available to Board members on request) setting out the key proposals for the review. At that

meeting the Board provided feedback and approved in principle the proposals for implementation in draft rules and guidance.

6. At its June 2021 meeting the Board considered a paper (available to Board members on request) providing draft new Rules, Guidance and a draft consultation to be issued. The Board approved the documents for consultation.
7. The consultation closed on 30 July and received 13 responses, from approved regulators, regulatory bodies, the SDT and the LSCP.
8. The consultation sought views on the draft Rules and Guidance for alterations to regulatory arrangements. The Legal Services Act 2007 (the Act) at Paragraph 20(1) of Schedule 4 enables the LSB to make rules on the form and manner of applications for alterations to regulatory arrangements.
9. Through the review we identified three outcomes we would seek to achieve through new Rules and Guidance. These were as follows:
 - focus on regulatory objectives: applications demonstrate that approved regulators have taken ownership of ensuring that proposed alterations are explicitly and demonstrably focused on complying with and thus promoting the regulatory objectives and making changes that are in the public interest.
 - impact of alterations: approved regulators' applications and the LSB's assessment and consideration of them focus on substantive issues impacting on the regulatory objectives, regulated persons, consumers and stakeholders. Specific emphasis should be placed on the impact on diversity and inclusion, including assessing the impact of proposals on persons with protected characteristics.
 - pre-application engagement: clarification through guidance on how the LSB may offer to give approved regulators feedback on proposed changes before they seek approval of alterations. This may include guidance on proposals that fall within the meaning of 'regulatory arrangements' requiring approval under the Act.

Issues raised in consultation

10. The draft Rules were intended to implement our policy objectives within the boundaries of the Act, with draft Guidance on the implementation of the Rules. Most respondents expressed support for the overall policy objectives of the draft Rules and draft Guidance, and we received helpful representations on a range of matters.
11. We have given careful consideration to the consultation responses and have proposed some changes to the Rules and Guidance to reflect points made. We have also made some drafting changes to the Rules and Guidance for clarity and consistency. The changes are detailed in the Decision Document at Annex A.

12. We have clarified in the Rules which of its provisions do not apply to the Solicitors Disciplinary Tribunal, consistent with the Act, and made consequential changes in the Guidance.
13. Some respondents raised concerns about the volume of material required for both applications and requests for exemption. We have made changes to the Guidance to further clarify the information and evidence to be included in applications and requests for exemption. We have set out that the information should be targeted and proportionate to the significance of the changes proposed.
14. Several respondents noted that the Rules and Guidance did not provide enough clarity for how the LSB would assess whether a proposed alteration was suitable for exemption. Following these submissions, we have made amendments to our Guidance to provide greater clarity by adding non-exhaustive criteria for determining whether an alteration may be suitable for exemption direction.
15. Another representation was around how the LSB will be evaluating and monitoring whether the changes achieve our outcomes and what the impact is on regulators. We have set out in the Decision Document our evaluation plan, which will include producing a yearly summary of applications and conducting a review of the process and its impact two years from when the Rules and Guidance come into effect.
16. ICAEW submitted that there is a lack of interaction between the LSB's Internal Governance Rules (IGRs) and the Rules and Guidance. They noted this review was an opportunity to build on the IGRs by reducing the level of scrutiny needing to be undertaken by the LSB.
17. We have carefully considered these concerns but do not propose changes to the Rules and Guidance as the IGR's were not designed to alter the LSB's statutory role in considering whether to approve proposed alterations to regulatory arrangements. They were focused on ensuring greater regulatory independence. The scrutiny given to proposed alterations to regulatory arrangements is not solely focused on whether they have been developed independently of representative influence.

Next steps

18. Subject to Board approval, we will publish in November the Rules and Guidance, which will take effect on 1 February 2022. We will publish the decision document and individual responses to the consultation at the same time as the Rules and Guidance.

Risks and mitigations	
Financial:	N/A
Legal:	We are proposing new statutory Rules and Guidance. This carries with it an inherent risk of legal challenge if implemented.
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Communications and engagement:	The documents will be published on our website and shared directly with relevant stakeholders.
Equality and diversity:	We have conducted an equality and diversity impact assessment of the Rules and Guidance. A summary of this is set out in the decision document which will accompany the final Rules and Guidance. We see the new Rules, and Guidance, with the increased focus on meaningful and evidence-based impact assessment, as an important tool as we seek to ensure diversity considerations are properly factored into regulators' decision-making. This goes towards meeting the challenge of dismantling barriers to a diverse and inclusive profession at all levels.
Resource:	N/A

Annexes

Annex A – Decision document

Annex B – Rules and Guidance

Freedom of Information Act 2000 (FoI)		
Para ref	FoI exemption and summary	Expires
Annexes A and B	Exemption section 22 (future publication)	31 December 2021