

To:	Legal Services Board		
Date of Meeting:	24 October 2018	Item:	Paper (18) 52

Title:	Consultation on IGR and guidance 2019		
Workstream(s):	Independent, effective and proportionate regulation		
Author / Introduced by:	Caroline Wallace, Strategy Director Angela Latta, Regulatory Policy Principal		
Status:	Official Sensitive		

Summary:
<p>Attached at Annex A is the updated LSB consultation document on the proposed internal governance rules (IGR) and guidance. This has been revised to reflect the discussion at the 11 October Board meeting.</p> <p>The consultation will close in early January 2019 with publication of new IGR and guidance in Spring 2019 followed by a 6 month transition period.</p>

Annexes
<p>Annex A: Draft consultation on proposed IGR 2019, including the proposed IGR</p> <p>Annex B: Proposed guidance to accompany the IGR</p>

Recommendations:
<p>The Board is invited:</p> <ol style="list-style-type: none"> (1) Agree to proceed with the IGR consultation document, proposed IGR and guidance, which incorporates the Board feedback. (2) Agree, subject to final amendments, to publish the consultation including the proposed IGR and guidance after this meeting (with final sign-off for publication delegated to the Chief Executive).

Risks and mitigations
Financial: N/A
Legal:
<p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p>

Reputational:	<p>This subject has previously proven contentious and we expect that to remain the case. We will seek to manage reputational risks through clear external communications, through CEO and working level meetings- [REDACTED]</p> <p>[REDACTED]</p> <p>We plan to extend the duration of the consultation to 12 weeks from the 6 week we originally proposed to mitigate the impact of complaints and late submissions.</p>
Resource:	The project is appropriately resourced at this stage to meet the project timetable.

Consultation	Yes	No	Who / why?
Board Members:		X	
Consumer Panel:		X	We will inform the panel when we plan to publish and explore how they would like to be involved in the consultation.
Others:	We have begun early initial engagement with approved regulators and regulatory bodies.		

Freedom of Information Act 2000 (Fol)		
Para ref	Fol exemption and summary	Expires
Risks and mitigations: Legal and Reputational as marked Para 14	Section 42: information subject to legal professional privilege	N/A
Para 14	Section 36(2)(b) & (c): The text has been drafted for the purpose of informing the Board and enabling free and frank discussion.	N/A
Annex A & B	Section 22: The text is intended for future publication	N/A

LEGAL SERVICES BOARD

To:	Board		
Date of Meeting:	24 October 2018	Item:	Paper (18) 52

Consultation on IGR and guidance 2019: Executive Summary

The updated consultation document

1. The Board considered at its meeting on 11 October the draft consultation document and the proposed IGR and guidance. The changes agreed at the meeting and through feedback from board members have been incorporated into the version at Annex A. These are as discussed below.

Updates in the consultation document

2. We have updated the consultation document with other drafting changes from Board members. The following are the changes that we have made to the consultation document.
 - We have examined how the terms *prejudice*, *influence*, *infringe*, *undermine* are used in the IGR and the consultation document. We have revised to ensure consistency.
 - ‘material position’ has been changed to ‘material role’ with respect to rule 5 on the Prohibition on Dual Roles.
 - ‘reasonably practicable’ - we have clarified what we mean by most effective “reasonably practicable” arrangements and how we shall assess this (para 23). This is outlined in the guidance in greater detail.
 - Reasonableness - We have explained our view that “reasonableness” implies a degree of objectivity
 - We have continued to use the term ‘approved regulator with a residual role’ for the consultation because this is accurate and unambiguous but are open to considering other ideas if this is problematic for approved regulators (ARs).
 - We have updated the language around the challenging framework for the LSB regarding the tension between the need to separate an approved regulator’s regulatory and representative functions while at the same time compliance with the Act remains the responsibility of the approved regulator (para 14).
 - We have updated the consultation to reflect the proposed Rule 8 that regulatory bodies are only permitted to consult ARs with regard to appointments with LSB permission.

Assurance and transition

3. We have revised the text to indicate that there will be a 6-month transition period that is not negotiable (para 55) with an expectation of compliance at the end of this period.

4. At the end of the transition period we have updated the consultation document to say that a certificate of compliance is required rather than a statement. A certificate will be required from ARs and regulatory bodies. This was updated to ensure that we are firm on compliance and any resulting enforcement action (para 56).
5. We have updated the section on assurance and transition to reflect the need to make clear what the criteria are for satisfactory assurance (para 63). In particular we will require a separate certificate from the ARs and regulatory bodies, where appropriate (para 62). We have also updated our description of what LSB oversight/assurance looks like to avoid any connotations of an inspection regime.
6. We have made clear that we expect full compliance within the transition period, and in the event of any ongoing non-compliance the AR will have to apply to the LSB to authorise the breaches in accordance with Rule 16: Saving Provisions. We have emphasised that ongoing non-compliance will require justification and be subject to the LSB's agreement.
7. We have also included a commitment that assurance of IGR will be carried out as part of the regulatory performance framework (para 64). We have explicitly limited the remit of this for ARs not currently included in the framework to one standard in the regulatory performance framework (Well led – governance and leadership).

Impact assessments

8. We have caveated our draft qualitative impact assessment (para 66) to reflect our understanding of the anticipated operational impact. We have reviewed the need to update the impact assessment section (para 60-66) and have made some changes, particularly to the question requesting more information from ARs and regulatory bodies about the cost of transition. This information will be used to inform a fuller impact assessment after the consultation has closed and before the Board consider the final IGR and guidance.

Equality duty

9. At para 67 we updated the consultation document with an assessment that the consultation does not raise any issues in light of the Equality Act 2000. We have come to that conclusion as we are proposing rules that apply to approved regulators and regulatory bodies and not directly to individuals.

Updates to the IGR

10. We have made small changes to the IGR, primarily with regard to consistency of terminology from the feedback covered above.

The Guidance on the IGR

11. Annex B contains the proposed guidance to accompany the IGR. This is the first time that this document has been presented to the Board. It is provided to assist with understanding of the IGR and addresses a number of issues which were raised at the previous meeting(s). The Board, under the Scheme of Delegations will need to agree the guidance when it is finalised after this consultation. At this stage it is given to the Board for information and there is no expectation that Board Members provide detailed comments unless they wish to do so. The structure of this document is set out in summary below.

12. The Guidance begins with a brief introduction, followed by a section entitled 'Legal Context'. This sets out the relevant duties in the Act and our view of how these duties interrelate to explain the approach to the IGR and Guidance which follow.
13. In particular this section addresses the tension between Section 30 of the Act (which obliges the LSB to create rules for the separation of an AR's regulatory functions) and Section 28 (which obliges ARs to discharge their functions in accordance with the regulatory objectives and better regulation principles), as well as the fact that LSB enforcement powers lie against the AR only and not the regulatory body.

14. [REDACTED]

15. The 'Legal Context' is directly followed by the Guidance on each rule. With the exception of Rule 15: Guidance and Rule 17: Exemptions (both of which are self-explanatory), the Guidance on each rule is divided into three sections as follows:

- Application – this states whether the rule applies to all ARs or only ARs with both regulatory and representative functions
- Relationship with other Rules – this draws attention to the other parts of the IGR which have a particular bearing on compliance with the Rule.
- Compliance – this breaks the rule down, explaining its constituent terms and setting expectations of how to comply with it (indicators of compliance).

16. The final section is a glossary of the terms which appear in the Guidance and is consistent with the Interpretation section of the IGR. Following this, the IGR are appended.

Next steps

17. Depending on the need for further work on the IGR and Guidance following decisions from the 24 October Board we propose that:
- a) Publication of the consultation on the proposed IGR and Guidance w/c 29 October. The consultation period will close on 18 January 2019.
 - b) Analysis will run into late January and we will present our initial findings as a verbal update to the January Board. At that time we will advise the Board when we will bring the final documents for approval which will depend on the level of amendments needed to take account of the consultation responses.
 - c) Our intended launch of the new IGR will be Spring 2019.