



Legal Services Board

Proposed rules for applications to alter regulatory
arrangements consultation

A response by
CILEx Regulation (CRL)

29 July 2021

Introduction

This response represents the views of CILEx Regulation (CRL), the regulatory body for Chartered Legal Executives, CILEx Practitioners and legal entities. Chartered Legal Executives (Fellows) are members of the Chartered Institute of Legal Executives (CILEx). CILEx Practitioners are authorised by CILEx Regulation to provide reserved legal activities. CILEx is the professional body representing 20,000 qualified and trainee Fellows and is an Approved Regulator under the Legal Services Act 2007 (LSA). Fellows and CILEx Practitioners are authorised persons under the LSA. CILEx Regulation regulates all grades of CILEx members.

CILEx Regulation is also a regulator of entities through which legal services are provided. It authorises entities based upon the reserved and regulated activities.

CILEx Regulation and CILEx provide an alternative route to legal qualification and practice rights allowing members and practitioners, who do not come from the traditional legal route to qualify as lawyers and own their own legal practice.

Any questions relating to this consultation response can be directed to Stuart Dalton, Director of Policy, Governance and Enforcement (stuart.dalton@cilexregulation.org.uk).

Consultation response to the LSB's proposed rules for applications to alter regulatory arrangements

SUMMARY

1. CILEx Regulation broadly welcomes the proposed rule changes and guidance. The new rules and guidance are clearer and more explicit than the previous rules and provide clarity on the LSB's expectations.
2. We appreciate the LSB producing different templates for both a rule change application and an exemption. This will further improve the structure of applications that CILEx Regulation submits.
3. We also appreciate the LSB's intention to consider utilising its general exemption powers more proactively.
4. Rule change applications can range from small operational changes to large strategic decisions, it should be for the regulator to determine the level of detail at which the board need to have oversight. Our suggestion is that the guidance could be improved with a proportionality principle which is added in relation to applications and regulator board oversight to provide further clarity over LSB expectations.

Questions

Q1 – Do you have any comments on the above draft rules 1 to 4? Do you have any comments on the associated draft Guidance?

5. Apart from the helpful explanations and detail of what the LSB is looking for, there is a great deal of useful information in the guidance such as the Principles and Purpose section. It is also helpful including the regulatory objectives and better regulation principles.
6. We wholly support regulator Boards being required to have oversight of all applications. We agree that the Boards of regulators need to have ownership of Rule changes and set the measures in place to satisfy themselves as to the quality and appropriateness of applications.
7. We support that before applications or requests for exemption are made to the LSB that they are subject to internal quality assurance and governance checks. We already have quality assurance processes in place. But in light of the LSB's revised rules and guidance we intend to draw up a revised internal quality assurance process.
8. Equally, we would suggest the requirement for Board oversight would benefit from a proportionality principle Regulatory Boards need to focus their energies

and finite resources on strategic matters. Therefore, whilst we believe strategic or large rule changes should involve full Board consideration; we would suggest that in line with the Better Regulation Principles of “proportionate” and “targeted only at cases in which action is needed” that Board oversight for more operational or smaller, lower impact rule changes or exempt rule changes would be better served through clearly set out reservations and delegations.

9. For CILEx Regulation, we would envisage such a proportionality principle allowing less significant or operational rule change applications to be delegated to a Non-Executive Director Board member plus the Chair of the Board to sign off the proposed changes. Equally, the Chair and Non-Executive board member would have the right not to approve the changes being submitted to the LSB and seek full Board consideration.
10. We would add that for good governance in these circumstances all rule changes should be reported to the Board for transparency and accountability but without requiring discussion unless justified. It also should not delay applications by requiring a report to Board first where the Chair and board member have signed off the application.
11. We would suggest that it is sensible if the Rules explicitly set out regulator board duties for rule change oversight so that they are mandatory. Currently, the Board oversight requirement is only in the guidance, yet the guidance states “Such internal systems are reflective of a well governed and led organisation.”
12. It would also be helpful for the LSB to facilitate sharing of information across regulators in respect of rule change applications. This would help improve internal quality assurance processes and best practice as well as highlight areas where applications could be improved. The number of applications each regulator submits to the LSB may vary and in some years be quite low, so any feedback to improve may be limited to an individual regulator but learning from other regulators would significantly assist when thinking about upcoming rule changes and in the drafting process.

Q2 – Do you have any comments on the above draft rules 5 and 6? In particular, do you have any comments on the information required to be included in applications or requests for exemption specified in Section E (rules 8 to 13) and rule 17 of the draft Rules? Do you have any comments on the associated draft Guidance?

13. We welcome the clarity provided on the LSB’s expectations of information to be provided in Rules 5 to 6 and 8 to 13 and associated guidance. It is clearer than the existing rules and previous guidance. The targeted information plus the proformas are all positive steps forward. An additional suggestion is that the proforma includes some recognition of board oversight ie. a foreword from the regulators board chair that forms part of the application.

14. We fully support that rule changes need to be to an acceptable standard and the LSB should hold regulators to account for meeting these standards. We support the increasing engagement between the LSB and Regulators in advance of submitting rule change applications, this will help clarify further the LSB expectations for specific rule changes as well as understand where issues or questions may arise in the review process. Equally, it would be helpful for there to be a proportionality principle for rule change applications that do not fall within the exempt directions.
15. The Rules and guidance as set out tie both the LSB and regulators hands about a standard expected level of detail and the LSB is at risk of receiving excessively detailed applications for more minor applications, which is not best use of either the LSB's or regulator's time. Currently, the rules and guidance expect a range of significant 'details' and 'assessment' will be necessary in every application and this is potentially onerous and disproportionate for smaller/operational rule changes.
16. We recognise and support that it is reasonable the LSB does not consider applications not made in accordance with the rules under Rule 6.
17. We particularly endorse the emphasis in the guidance for equality impact assessments in relation to Rule 12 of the importance of measures to advance equality of opportunity and not just mitigating adverse impacts.
18. We welcome the Rule 17 exempt request rules and guidance. We appreciate the separate proforma. In conjunction with the broader use of general exemptions we believe this is a positive step forward.
19. Overall we support the proposed changes which provide clear and mutually understood standards and view the rule changes and guidance as a helpful improvement, subject to the proportionality principle we would suggest.

Q3 – Do you have any comments on draft rule 7 above? Do you have any comments on the associated draft Guidance?

20. The guidance provides clear timescales for applications. However, the guidance does not specify timescales for exempt requests beyond 'reasonable' in paragraph 47. It would be helpful to provide timescales particularly as exemption requests are usually for minor and non controversial changes where time is of the essence. .

Q4 – Do you have any comments on the process for requests for exemption? Do you have any comments on draft rules 15 to 17? Do you have any comments on the associated Guidance?

21. The Rules and Guidance make no reference to the "Framework for considering the significance, impact and risk of proposed alterations to Regulatory Arrangements" bar mentioning the intention that the Rules and guidance codifies

it in paragraph 52 of the Introduction. There are useful elements in the SIR framework that are not covered in the guidance. Is the intention that the framework ceases? Otherwise, would it be helpful to reference the SIR framework in the guidance?

Q5 – Do you have any comments on the proposals and scope for new general exemption directions?

22. We believe the LSB's proposal to issue a general exemption direction for the points covered in paragraph 58 of the introduction (internal document changes; correcting minor drafting errors; minor consequential changes) as a highly positive step forward. We appreciate the LSB identifying better ways like this to make the optimal use of the LSB's statutory powers.

ADDITIONAL COMMENTS

23. We appreciate the supportive dialogue approach set out in Section H's guidance on pre-application engagement, whilst recognising this does not fetter the LSB's final discretion.
24. Whilst it is in the Act so not strictly necessary, it would be helpful if the guidance included the criteria for determining applications which is set out in current Rule 34, so it is easy to hand and the LSB and regulators do not need to cross-refer to the legislation.