Rules for applications to alter regulatory arrangements

The LSB’s response to consultation and decision on new rules for applications to alter regulatory arrangements under paragraph 20(1) of Schedule 4 the Legal Services Act 2007 and statutory guidance

13 December 2021

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Executive summary

1. The Legal Services Board ("LSB") is the oversight regulator for legal services. It is responsible for regulating ten approved regulators of legal services as well as the regulatory bodies to which some of them have delegated their regulatory functions ("regulators"). The LSB was established by the Legal Services Act 2007 ("the Act"), which provides that in discharging its functions, the LSB must comply with and thus promote eight regulatory objectives.

2. The Act offers regulators a great deal of flexibility in designing their own regulatory arrangements. This flexibility is reflected in the fact that the only approval needed by regulators before proceeding is that provided by the LSB. We also reflect this flexibility in how we assess regulators' applications for approval and requests for exemptions of alterations to their regulatory arrangements. 'Regulatory arrangements' includes a regulator's rules, regulations and arrangements which apply to regulated persons.

3. Following consultation, the LSB has made the Applications to Alter Regulatory Arrangements Rules 2021 ("Rules") and statutory Guidance to the Rules ("Guidance"). The Rules and Guidance apply to regulators seeking approval under Part 3 of Schedule 4 to the Act of changes to their regulatory arrangements. They revoke and replace the Rules for applications to alter regulatory arrangements April 2018 and accompanying guidance (2018 Rules and guidance on it). The Rules and Guidance will come into effect on 1 February 2022. The Rules and Guidance will be published at the same time as this Decision Document on 13 December 2021.

4. The period of time between the making and publication of the Rules, and the coming into effect date is to provide a transitional period for regulators to make preparations for implementing the Rules, and opportunity to finalise and submit applications that are already in train. The Rules and Guidance will apply to all applications and exemption direction requests submitted on and from 1 February 2022.

5. This document sets out the LSB's decision and response to the consultation on proposals for draft Rules and draft Guidance, which was published on 15 June 2021 and closed for responses on 30 July 2021.

What we did

6. On 15 June 2021, we published a consultation document[1], which set out the draft Rules and draft Guidance, following engagement and discussion with regulators and regulatory bodies from late 2020 on the LSB's working proposals.

7. We received 13 responses to the consultation. A list of the individual respondents is at paragraph 19 and copies of the responses can be found on the LSB website.

[1] https://legalservicesboard.org.uk/wp-content/uploads/2021/06/20210615-Regulatory-Arrangements-Consultation-with-annexes.pdf

Changes we have made

8. This document sets out our consideration of the main issues raised by the consultation responses and our conclusions. The final Rules and Guidance are at Annexes A and B.

9. The majority of responses to the consultation welcomed the review and the proposals made as a consequence. We are pleased to have obtained a significant degree of consensus around the outcomes we are seeking through this work.

10. We have made the following main changes to the draft Rules and draft Guidance consulted on, as a result of the responses to the consultation:

    - applicability to the Solicitors Disciplinary Tribunal ("Tribunal") – clarifying in the Rules which provisions of the Rules do not apply to the Tribunal, consistent with the Act, with consequential changes to the Guidance.

    - proportionality – further clarifying that the information and evidence to be included in an application or request for exemption direction ought to be targeted and proportionate to the significance of the changes proposed.

    - non-exhaustive criteria for exemption direction requests – to provide guidance for regulators in determining whether an alteration may be suitable for exemption direction.

    - technical drafting changes –minor drafting changes for clarity and consistency, including in response to the submissions made in respect of specific provisions of the draft Rules and draft Guidance.

11. We are grateful to everyone who responded to the consultation. We recognise that stakeholders have dedicated time and effort to analysing our proposals and providing us with constructive feedback. We have considered all the submissions received and issues raised by stakeholders carefully and have made amendments to the Rules and Guidance as appropriate.

Introduction

About the Legal Services Board

12. The LSB is the independent body that oversees the regulation of legal services in England and Wales. The LSB was created by the Act to hold regulators for the different branches of the legal services profession to account.

13. The Act provides that in discharging its functions, the LSB must comply with and thus promote eight regulatory objectives. These are:

    - Protecting and promoting the public interest

    - Supporting the constitutional principle of the rule of law

    - Improving access to justice

    - Protecting and promoting the interests of consumers

- Promoting competition in the provision of legal services
- Encouraging an independent, strong, diverse, and effective legal profession
- Increasing public understanding of the citizen's legal rights and duties
- Promoting and maintaining adherence to the professional principles prescribed in section 1(3) of the Act.

14. The Act gives the LSB the power to approve or refuse applications from regulators for proposed alterations to their regulatory arrangements, and to grant exemptions. Submissions must be made by regulators in the form and manner the LSB may specify in rules. This paper sets out the LSB's response to responses received to the consultation on draft Rules and draft Guidance.

Reviewing our framework

15. In 2020/21 we undertook a review of the process for alterations to regulatory arrangements including engagement with stakeholders.

16. In December 2020, we commenced engagement with all regulatory bodies and other interested stakeholders, including contacting all regulators, to capture views on the current process and early proposals for change. We received constructive feedback and comments, which helped to inform our emerging thinking on the proposals.

17. On 15 June 2021, we published our consultation on the draft Rules and accompanying draft statutory Guidance. The consultation closed on 30 July 2021. The consultation set out a new proposed framework for approval of alterations to regulatory arrangements. This is our response to that consultation.

The outcomes we are seeking

18. The Rules, and the accompanying Guidance, aim to achieve the following outcomes:

    - Focus on regulatory objectives: applications demonstrate that 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: 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 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.

Summary of consultation responses and LSB response

19. We received 13 responses to the consultation, including three from approved regulators and eight from regulatory bodies:

    - Bar Council ("BC")
    - Bar Standards Board ("BSB")
    - Chartered Institute of Legal Executives ("CILEX")
    - CILEx Regulation ("CRL")
    - Costs Lawyer Standards Board ("CLSB")
    - Council for Licensed Conveyancers ("CLC")
    - Institute of Chartered Accountants in England and Wales ("ICAEW")
    - Intellectual Property Regulation Board ("Ire")
    - Legal Services Consumer Panel ("LSCP")
    - Master of the Faculties ("MoF")
    - Solicitors Disciplinary Tribunal ("Tribunal")
    - Solicitors Regulation Authority ("SRA")
    - The Law Society ("TLS").

20. We have published all the responses on our website.

21. The main issues raised by the respondents to the consultations are summarised below against the relevant parts of the Rules and Guidance, followed by our response, where we set out changes that we have made.

Definitions/Application and Guidance - rules 1 to 4

Definitions (rule 1)

22. TLS suggested that the term "impact assessments" be defined in the Rules given the weight placed on this in the process.

23. *Board responsibility for applications (rules 2 to 4)*

24. Several respondents commented on the LSB's expectation for boards of regulators to take ultimate responsibility for alterations and to be sighted on proposals before seeking the LSB's approval. This expectation was set out in the draft Guidance to rules 2 to 4.

25. Some respondents were concerned that the draft Guidance was unclear as to whether sign-off by a regulator's board was required for more minor changes, such as for requests for exemption, and low impact proposals. They were of the view that requiring this for all alterations would be disproportionate and divert resources, especially for small regulators, from being properly targeted on major proposals. The BSB noted that minor alterations would normally be signed-off through authority delegated to the executive by its board. CRL commented that for good governance reasons all alterations should be reported to its board for transparency and accountability, without requiring board discussion unless justified.

26. The SRA stated the LSB’s expectation was in line with its current processes and the level of its board input was proportionate to the significance, impact and risk associate with the change.

Regard to Guidance (rule 4)

27. ICAEW was concerned that draft rule 4 required that regulators ‘must’ have regard to any guidance issued by the LSB under section 162 of the Act. ICAEW stated it recognized that guidance is an important explanatory guide but considered that the use of “must” conveyed an element of mandate that was not appropriate for guidance. It felt that the word “should” would be more appropriate in this context.

Quality Assurance

28. CRL noted its intention to revise its internal quality assurance process in light of the Rules and Guidance. It submitted that it would be helpful if the LSB facilitated information sharing across regulators on alterations to regulatory arrangements to assist improve quality assurance processes and highlight best practice.

LSB response:
Definitions We do not consider it necessary to add a definition for impact assessment generally or for the two assessments required under the Rules as they are set out plainly in rule 12. However, we have clarified the Guidance to rule 17 to provide that for exemption requests, impact assessments need to consider the matters set out in rule 12. Rule 12 provides that an application to alter regulatory arrangements must include an assessment of the impact of the alteration or alterations on: • persons with protected characteristics as defined by section 4 of the Equality Act 2010 and • regulated persons, consumers and the public interest. Rule 17 provides that a request for an exemption direction must include a summary of any impact assessment undertaken, including the impact on persons with protected characteristics, and if not why. *Board responsibility* Our intention in the draft Guidance to draft rule 4 was to ensure that regulators’ boards are taking appropriate responsibility for changes to regulatory arrangements, in line with a well-led regulator that is focussed on promoting the regulatory objectives. We value the feedback received on this rule and guidance. We have made changes to the Guidance to further clarify regulators’ discretion to determine the degree of oversight required by its board and make it less prescriptive, whilst maintaining the key outcome we are seeking to achieve.

In particular, we have clarified the Guidance on rules 2 to 4 to reflect that board approval may be required under a regulator's governance arrangements, depending on the significant risks and likely impact of the proposals. Approval is unlikely to be necessary or proportionate for every application or exemption request, that is a matter of judgement for the regulator.

Regulators are responsible for determining their exact governance arrangements. The more significant an alteration is the more likely that significant board involvement will be required. We accept that in some circumstances a board's involvement will simply mean sharing with them the fact that an application or request for exemption has been made.

Regard to Guidance

We have considered the submission made on the use of the word "*must*" [have regard to the Guidance] in rule 4 but concluded that no change is required. We note s162 of the Act provides that when exercising its functions, the LSB may have regard to the extent to which a regulator has complied with guidance which is applicable to the regulator. It is appropriate therefore for the Rules to provide that a regulator must have regard to the Guidance as it applies to them when seeking approval of changes to its regulatory arrangements. A regulator may have good reason to depart from the Guidance, and if that is the case, it simply needs to articulate a coherent reason for doing so.

Quality Assurance

We welcome the fact that one regulator's internal quality assurance processes will be considered in light of Rules and Guidance. We would encourage all regulators to consider their processes.

We support the proposal for information sharing on lessons learnt across regulators and will give additional consideration to how best we can facilitate this in relation to applications to alter regulatory arrangements.

Time limits – rule 7

Time extensions and phasing of applications

29. Two respondents welcomed the clarification in the draft Rules and draft Guidance on timescales for a decision. The SRA considered it was helpful to have the timescales in the Act, gathered in the Rules and Guidance. TLS considered it imperative that the LSB has the ability to extend its consideration time for complicated applications. It also set out a view that there would be merit in making provision for larger applications to be phased or made in stages.

30. ICAEW expressed concerns over the interface between the timing of applications to the LSB and dealing with other regulators and government bodies. It considered that for its regulatory arrangements that required Privy Council approval, an application it makes to the LSB could be expedited before Privy Council approval afterwards, even if approval is conditional on Privy Council approving the changes.

31. CLSB noted that LSB decision notices on applications and exemption requests specify when they were received but did not set out when informal engagement on proposals began prior to the application being submitted.

Extensions to requests for exemption

32. CRL submitted it would be helpful to specify in the Guidance timescales for extensions to the period for decisions on requests for exemption. This is because such requests are usually for minor and non-controversial changes where time is of the essence. It noted the draft Guidance only states such extensions would be 'reasonable'.

LSB response:
Time extensions and phasing of applications We note there may be merit in significant applications being phased or sent to the LSB in stages, in cases where this can be achieved. We do not consider that the Rules or Guidance need to specifically provide for this. There is nothing to stop regulators from seeking approval of changes to their regulatory arrangements at different stages should they wish to do so, provided they comply with the Rules and have regard to the Guidance. Approval under the Act is required before a regulator's regulatory arrangements have effect. In relation to ICAEW's concerns about Privy Council approval, we note that any changes made by the Privy Council would need to be approved by the LSB before they can have effect. In practice, we have and continue to be willing to engage with regulators to facilitate this process. We want to ensure that any approval required of other regulators or bodies does not result in significant timing issues insofar as this is in the LSB control. Any engagement with regulators in advance of them submitting an application for approval under the Act does not form part of the approval process. Pre-application feedback is not referenced in LSB decision notices because any such feedback provided by the LSB is entirely discretionary. A regulator is not obliged to so engage and may submit an application or exemption request without prior engagement with the LSB. We anticipate that the need for such engagement to guide regulators on making applications and requests that meet a minimum standard, will reduce once the Rules and Guidance take effect. This is reflected in the Guidance at paragraph 95 - feedback in the future will not be given routinely on any draft proposals.

Extensions to requests for exemption Our expectation is for the majority of requests for exemption to be dealt with within 28 days. We have provided in the Guidance for reasonable extensions beyond 28 days in cases where they are required – the period of any extension will depend on the particular circumstances of each case. Such an extension is most likely to be required where the regulator has been asked to provide additional information. If we identify upon receipt that a request for an exemption direction is likely to take longer than 28 days to assess, this may indicate that the issues it raises are as such that the alterations are not suitable for exemption and an application instead may be required.

Information requirements – rules 8 to 13

Detailed information requirements (rules 9 to 13 and 17)

33. Several respondents commented on the level of detail required of applications and exemption direction requests in draft rules 9 to 13 and 17. ICAEW considered the level of detail was in excess of what might reasonably be required in most cases. For alterations that are procedural in nature or made for clarification purposes, it considered that the detail required under the draft Rules was inconsistent with the better regulation principles in s28(3) of the Act and the Legislative and Regulatory Reform Act 2006. It further submitted that the LSB was at risk of adopting the role of regulatory boards in directly intervening and vetting in such detail rule change applications for relatively minor changes.

34. CRL submitted it would be helpful to have a proportionality principle for applications that do not fall within the ambit of exemptions. A requirement for an excessively detailed application for minor operational alterations was potentially onerous for a regulator and the LSB, and disproportionate.

35. IPReg stated that the process for obtaining an exemption (draft rule 17) was practically indistinguishable from the process for an application (draft rules 9 to 13) and that there was an opportunity for the LSB to reduce the quantity of information required for an exemption. MoF noted that while the level of detail required for a request for exemption was less than an application, it considered that the pre-application work required was not significantly different.

LSB response:
Information requirements

We have carefully considered the submissions made that our proposals are not consistent with the better regulation principles.

We note the consultation highlighted that the draft Rules and Guidance are intended to be a proportionate, transparent, targeted, and effective means of achieving the outcomes set out above at paragraph 18. For consistency and to better target resources, we have specifically set out two clear processes in the Rules. One for more significant alterations (applications) and another for less significant alterations (requests for exemption). These measures effect the LSB's duty to act in accordance with the better regulation principles under the s3(3) of the Act. Those principles reflect the principles of good regulation under the Legislative and Regulatory Reform Act 2006.

We consider the Rules and Guidance strike a balance between setting out in the Rules the mandatory requirements and providing Guidance on how the Rules may be complied with, without being too prescriptive. It is for the applicant regulator to determine the content of its application or request for exemption direction. We expect the information and evidence required is that which regulators would be gathering and considering in making regulatory decisions. We therefore do not consider that it represents a significant additional burden on regulators.

On the form of the application, regulators have discretion on how they make applications. The proforma is optional and provided as a guide. If a regulator prefers to provide information in another format, we are content to consider that instead.

We have considered the submissions that the process for obtaining exemptions and work required is indistinguishable from the process for applications. We have developed two separate processes within the Rules in order to provide a clear distinction. The material required will be significantly reduced for a request for exemption, this is not least because the impact of the alteration is typically expected to be less than is likely from a change made under the application process. Additionally, there is the opportunity for regulators to explain why certain information is not proportionate and required for their request for exemption. This includes consultation, summary impact assessments and summary evaluation and monitoring. This is likely to result in less preparation work pre-application.

We note the Guidance sets out our expectation that for more significant changes we would expect more detailed information. We consider this is relevant across all the information required and have made amendments to the Guidance to further clarify that the level of detail that may be needed in an application ought to be proportionate to the significance of the changes proposed.

Regulatory objectives and better regulation principles (rule 9)

36. The Tribunal submitted that draft rule 9 should only apply to regulators and not the Tribunal, noting that draft rule 3 applied the Rules to the Tribunal unless otherwise specified. Draft rule 9 is on the regulators' duty under section 28 of the Act to so far as is reasonably practicable act in compliance with the regulatory objectives and have regard to the better regulation principles. The section 28 duty does not apply to the Tribunal.

37. TLS suggested drafting changes to draft rule 9(1)(a) and (2) to replace 'is compatible with', with 'support' or 'is consistent with' and 'not compatible with' with 'damaging to or is inconsistent with'.

38. The CLC submitted that draft rule 9(2) was unclear and could be interpreted that, if an alteration was not compatible with one or more of the regulatory objectives it will be detrimental overall. It suggested the provision could be clarified to express that regulators need to assess whether the overall benefits outweigh any identified detriments, and the changes are in the public interest.

39. ICAEW recommended that draft rules 9(2) and 10(g) be amended to cover actions taken to mitigate any adverse impact on the regulatory objectives where alterations are required by another oversight body.

LSB response:
Regulatory objectives and better regulation principles Rule 9(1)(a) and (2) is consistent with section 28 of the Act. We do not consider it appropriate to make the suggested drafting changes which seem to go beyond that. We have considered the other submissions on rule 9(2) and made minor changes to this rule and the relevant Guidance. The changes are to further clarify our intent that regulators are required to undertake an overall assessment of whether an alteration is prejudicial to the regulatory objectives. We considered whether the scope of rule 9(2) needed to be widened to cover changes required by other oversight bodies. We accept that there are circumstances where requirements of other oversight bodies may have an impact on a regulator's regulatory arrangements, however, we do not consider this needs to be prescribed in the Rules. We are, however, willing to engage with regulators and other oversight bodies on such issues as and when they occur. In rule 9, changes have been made to reflect that the duty under section 28 of the Act does not apply to the Tribunal. Consequently, we have revised the Guidance to reflect the following. An application by the Tribunal is subject to the conditions for refusal under paragraph 25(3) of Schedule 4 to the Act, including that an application may be

refused because in the LSB’s opinion it is prejudicial to the regulatory objectives. Therefore, the Tribunal will need to address the regulatory objectives in their application, and where there is prejudice to any regulatory objective, explain why that is reasonable and proportionate. The LSB in assessing an application or exemption request made by the Tribunal is obliged to as far as is reasonably practicable comply with the regulatory objectives and have regard to the better regulation principles.

Application to include draft guidance or policy that will support implementation (rule 10(h))

40. Several respondents commented on the requirement in draft rule 10(h) for applications to include any draft guidance or policy that will support implementation.

41. The SRA was pleased to see acknowledgement of the developing and ongoing nature of regulatory guidance. The BSB welcomed the clarification that these documents do not need to be in final form.

42. IPReg disagreed with the LSB’s proposal for draft guidance or policies to be included with applications. IPReg was of the view that guidance does not ordinarily require LSB approval and if the LSB routinely needed to approve guidance it would risk a chilling effect.

43. The Tribunal explained that it routinely issues guidance as required. Often this is not linked to applications to alter its regulatory arrangements but instead to practical application as rules develop over time.

LSB response:
Draft guidance or policy that will support implementation We have carefully considered the submission that guidance on regulatory arrangements do not ordinarily require LSB approval. Our position is that the LSB's responsibilities in respect of approvals apply to regulatory arrangements in whatever form they might take. The Act does not distinguish between rules, regulations, or guidance in this context. In practice, however, it is unusual for guidance to be so central to proposals as to form part of the regulatory arrangements and in the vast majority of circumstances, guidance will not need approval. Indeed, it would be disproportionate to create such an expectation. Nevertheless, from time to time, guidance and policies may be drafted in such a way as to have a material impact on the implementation and effect of regulatory arrangements. While we are content to rely on regulators either to avoid using guidance or policies to this effect, or to submit such guidance or policies for approval as part of regulatory arrangements, we have clarified in the Guidance that where a question arises as to whether proposals, including

guidance, require the LSB's approval, that is for the LSB to decide in accordance with paragraph 19(6) of Schedule 4 to the Act. We confirm that we are content for policies and guidance to be submitted in draft (i.e., they do not need to be in final form). We consider that the inclusion of draft policies or guidance with an application will also provide helpful context as to how proposed alterations will work in practice if approved. As a consequence, we expect such draft documentation to be substantive but, as set out above, we accept they will not always be in final form at the point an application is made to the LSB. We also understand that guidance and policies are routinely issued by regulators that are not linked to alterations to regulatory arrangements. We would not usually expect these to require LSB approval before they have effect unless they are regulatory arrangements. We expect regulators to undertake their own assessments as to whether or not proposed guidance or policy documents constitute regulatory arrangements. If they are, regulators must seek the LSB's approval before they have effect as required under the Act. We expect that it would only be in limited circumstances where the regulator has been unable to make such an assessment, and therefore need to ask the LSB for a decision. We accept that regulators and the Tribunal may not necessarily have draft policy or guidance at the time regulatory arrangements are submitted for approval. We have amended the Guidance to reflect this, noting that the more significant an application is, the more likely it is that at the stage an application is made, draft guidance or policy has been prepared on how the alterations will apply in practice.

Application of conflict requirements to the Tribunal (rule 10)

44. The Tribunal submitted that draft rule 10 needs to exclude the Tribunal from the requirements for regulators to deal with regulatory conflict with another regulator or an external regulatory body. These provisions reflect ss52 and 54 of the Act, which do not apply to the Tribunal.

LSB response:
Application to Tribunal Rule 10(2) has been inserted to exclude the Tribunal from those requirements in rule 10(1) that do not apply to it – they are sub-paragraphs (f) (assessment of impact on another approved regulator) and (g) (assessment of impact on an external regulatory body). Sub-paragraphs (f) and (g) of Rule 10(1) reflect sections 52 and 54 of the Act, which only apply to approved regulators and not the Tribunal.

Consultation (rule 11)

45. ICAEW noted draft rule 11 required a regulator that does not consult on its proposals to explain why it considered that was reasonable and proportionate. It submitted that it would be helpful for the LSB to agree with regulators upfront whether there is a need to consult, who should be consulted, and how long any public consultation should last. Alternatively, the Guidance needed to be more definitive as to what is meant by consultation.

Impact on regulated persons, consumers and the public interest (rule 12(c))

46. The BSB would welcome more guidance such as an optional proforma to assist it in setting out its assessment of the impact of the alterations on regulated persons, consumers and the public interest.

LSB response:
Consultation The decision on whether or not to consult is a matter for regulators and not the LSB. However, a regulator seeking approval to alter its regulatory arrangements must be prepared to justify its approach to consultation. We do not consider that it is for the LSB to mandate how regulators should consult. However, having considered the responses we have made some adjustments to the Guidance to provide examples of how regulators may target consultations differently depending on the alterations being proposed. We have also provided clarification that engagement with stakeholders may also be appropriate instead of direct consultation in some circumstances. It is for regulators to assess what is reasonable and proportionate consultation and engagement on their proposals. *Impact on regulated persons, consumers and the public interest* It is for regulators to determine how they present their assessments of the impact of its proposed alterations on regulated persons, consumers and the public interest. Our view is that regulators need to exercise appropriate discretion in providing us with documentation similar to what has been required for approval through their internal governance processes. We have made a minor change to the Guidance to further emphasise that regard needs to be given to the impact on the proposals on persons with protected characteristics.

Requests for exemption – draft rules 15 to 17

47. Respondents provided broad support for setting out a clear distinction between applications for approval and requests for exemption.

Significance, impact and risk framework

48. Two respondents cited the LSB's Significance Impact and Risk Framework which applied to exemption requests under the 2018 Rules and Guidance to it. The SRA stated that it understood it was being replaced by the Rules and Guidance and CRL asked for clarification on whether it would cease to exist.

Suitability for exemption

49. Several respondents submitted that the draft Rules and draft Guidance did not do enough to set out when, or on what basis, the LSB would consider an alteration suitable for exemption.

50. CLSB noted that various paragraphs in the draft Guidance provide a sense of what the LSB might take into account but that this was not set out clearly or explicitly in the draft Rules. It also stated that it would welcome an articulation of how the criteria would be applied, when they would be applied, how they interact and an indication of any thresholds.

Pre-application work

51. The MoF noted that there does not appear to be a significant difference in the pre-application work required for requests for exemption. It explained that this may impact the ability of regulators to react quickly, flexibly and effectively to address a specific matter.

Proforma

52. Two respondents explained that it would be useful for the optional proforma for requests for exemption in the draft Guidance to include a section for the regulator to set out why an exemption is appropriate.

53. The BSB stated that it would welcome clarification of LSB expectations around impact assessments (draft rule 17(g)) possibly with the provision of an optional proforma.

Shortage of time

54. TLS explained that the LSB should consider arguments being made for exemptions to be granted due to a shortage of time, with particular care. It also mentioned the possibility of increased safeguards when regulators make changes at short notice.

LSB response:
Significance, impact and risk framework We confirm that the Significance, Impact and Risk Framework is being replaced by these Rules and Guidance, into which the substance of that framework has been incorporated, where relevant. *Suitability for exemption*

We have taken on board respondents' views that guidance is required on the circumstances in which it is likely to be appropriate to consider a change to regulatory arrangements as an exemption direction request. The Guidance has been revised to provide the following non-exhaustive list of what might be appropriate for an exemption direction:

a. minor alterations to correct drafting errors or to update cross-references
b. non-controversial alterations with low risk of being prejudicial to the regulatory objectives
c. alterations that are unlikely to impact consumers or the regulatory community in any meaningful way
d. alterations that are consequential to legislative changes.

Pre-application work

Paragraph 35 above sets out our consideration of this submission. In short, the material required will be significantly reduced for a request for exemption. This is not least because the impact of the alteration is likely to be less than would be expected from changes subject to the application process. Additionally, there is the opportunity for regulators to explain why certain information is not required in any exemption request they make. This includes consultation, summary impact assessments and summary evaluation and monitoring.

Proforma

We have amended the optional proforma annexed to the Guidance to include the requirement for regulators to set out why an exemption direction is appropriate.

We have considered the submission asking for criteria or an optional proforma on impact assessments. Our view that it is for regulators to determine how they present their impact assessments. We expect regulators to exercise appropriate discretion in providing us with documentation similar to what has been required for approval through their internal governance processes.

Shortage of time

A shortage of time will not itself be seen as a valid reason for an exemption direction to be granted. The LSB will consider requests for exemption on a case-by-case basis on their merits against the Rules and having regard to the Guidance. We do not consider there is any reason to distinguish a change being made at short notice from any other request for exemption or application.

Proposal for new general exemption directions

55. Respondents provided broad support for the LSB's proposal to introduce new general exemption directions. They welcomed the proportionate nature of the proposal and that it would enable regulators to target resources at more significant or complex alterations.

56. The SRA explained that it would welcome the opportunity to comment on the wording of any general exemption direction before it is issued.

57. TLS considered that the use of general exemptions should be open to challenge in the event that it is perceived there has been some abuse of process or that the route has been used inappropriately or incorrectly.

58. The Tribunal noted that it would be helpful for a general exemption to cover circumstances where alterations approved by the LSB later required amendment as a result of scrutiny by the Joint Committee on Statutory Instruments.

LSB response:
We acknowledge the submissions on our proposal to issue new general exemptions. We expect to produce a new general exemption in the near future. We expect to share a draft of any proposed general exemption with regulators as appropriate to enable them to provide comments prior to issue. We have considered the concern raised about appropriate use of general exemptions. Our intention is that general exemption directions will be designed to allow the LSB to take action if it considers an alteration notified does not fall within the scope of an exemption. In such circumstances the LSB will notify the regulator that it will need to either make an application or a separate request for exemption. However, we accept that we could be more transparent on when requests are made for exemption directions. To that end, consistent with applications, the LSB intends to publish on its website requests for exemption, any extension of time notice, third party correspondence received as well as the exemption direction that we currently publish.

Other issues raised

Internal Governance Rules

59. ICAEW raised a concern around the lack of interaction between the LSB's Internal Governance Rules (IGRs) and the revisions to the Rules and Guidance. It explained that it had presumed the LSB would place much greater reliance on the decision making of

regulatory boards now that it had ensured greater independence and autonomy of such boards. It felt that this review was an opportunity to build on the IGRs by reducing the level of scrutiny needing to be undertaken by the LSB.

Third party correspondence

60. The SRA considered that it would be helpful to modify the Guidance to make clear that third party representations would only be considered in specific circumstances. It suggested that the Guidance be amended to say that such representations would be entertained where issues had arisen since the consultation process or issues were raised through consultation, but evidence has not been provided to show the issue was taken into account.

LSB response:
IGRs The IGRs were not designed to alter the LSB's statutory role in considering proposed alterations to regulatory arrangements. They were focused on ensuring greater regulatory independence. One of the outcomes we are seeking is for a greater focus on the regulatory objectives. Where regulators are demonstrably making changes that promote the regulatory objectives we consider they will be able to straightforwardly comply with the information requirements set out in the Rules and Guidance. This will lead to less need for correspondence during the course of the LSB's assessment and more straightforward consideration of applications. *Third party correspondence* We have carefully considered the suggestions on third party representations. However, we do not consider there is a need to further narrow the scope of our Guidance on third party correspondence. We expect to raise any issues that are material to our consideration with regulators if we consider they have not been addressed in the application to our satisfaction.

Equality Act assessment

61. One respondent supported our proposal for specific emphasis being placed on the impact on diversity and inclusion within the new Rules and Guidance. No other responses making specific representations on equality matters was received.

62. The LSB has considered its obligations under the Equality Act 2010, including having due regard to the public sector equality duty in reviewing the 2018 Rules and guidance on it, and developing a new framework.

63. We have considered whether the Rules and Guidance will have a negative effect on the protected characteristics. Our conclusion is that we do not foresee any negative effects, although we will keep this under review.

64. Our expectation is for the Rules and Guidance to have a significant and positive impact in this area. The increased focus on the regulatory objectives under the Rules and Guidance will provide us with a better understanding of the impact of proposals on different groups with protected characteristics. This will inform the LSB's oversight responsibilities and will be an important tool as we seek to ensure equality and diversity considerations are properly factored into regulators' decision-making. This will be an important step in meeting the challenge of dismantling barriers to a diverse and inclusive profession at all levels. It is of particular relevance to the regulatory objectives of improving access to justice, protecting and promoting the interests of consumers, and encouraging an independent, strong, diverse and effective legal profession.

Impact on consumers, regulated persons and the public

65. The LSB invited comment on the impact of the draft Rules, including on quantifying the likely costs associated with compliance and anticipated benefits. This was to further inform the LSB's assessment of the regulatory impact of the proposals in the draft Rules. While no respondents quantified the likely costs and associated benefits, some made representations on the additional regulatory burden that the proposals would impose on them.

66. We have carefully considered these representations and amended the Guidance to reflect our consideration. The Guidance clarifies that we expect regulators to take a proportionate approach depending on the significance of the proposals, and disapplied provisions that are not applicable to the Tribunal. We consider that regulators will benefit from a more streamlined process in relation to minor, low risk alterations, some of which we intend to address in preparing proposed new general exemptions. This will be combined with the benefit of greater scrutiny of those proposals that impact significantly on the regulatory objectives and the public interest.

67. One respondent requested that the LSB consider evaluating the new process to determine whether it has achieved the anticipated benefits for the LSB and to measure the impact on applicants.

68. We accept that the Rules require some additional information to be set out in applications and requests for exemption. However, much of this information relates to matters that we would expect regulators or regulatory bodies to have already provided to their respective boards to enable them to make informed decisions to proceed with the proposals. Additionally, we note that that when issued, any new general exemption should reduce the regulatory burden associated with alterations that fall under the scope of that exemption.

69. We plan to monitor and evaluate the Rules and Guidance to assess how they work in practice. Our intention is to:

a) Develop an evaluation framework to capture relevant information and evidence about the new process in real time once the Rules are in effect.

b) Produce a yearly summary of applications to share issues and best practice with regulators.

c) Undertake and publish a review considering the first two years of applications and requests for exemption under the Rules. As part of the review, we intend to engage with the regulators on their experience and consider issues raised through our consideration of applications and requests for exemption.

Next steps

Effective date

70. The Rules and Guidance will come into effect on 1 February 2022 and will be published at the same time as this Decision Document on 13 December 2021.

Transitional period

71. The period of time between the making and publication of the Rules, and the coming into effect date is to provide a transitional period for regulators to make preparations for implementing the Rules, and opportunity to finalise and submit applications that are already in train. The Rules and Guidance will apply to all applications and exemption direction requests submitted on and from 1 February 2022.