

SRA Consultation Response

Legal Services Board:

Proposed rules for applications to alter
regulatory arrangements

July 2021

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Introduction

1. The Solicitors Regulation Authority (SRA) is the regulator of solicitors and law firms in England and Wales. We work to protect members of the public and support the rule of law and the administration of justice. We do this by overseeing all education and training requirements necessary to practise as a solicitor, licensing individuals and firms to practise, setting the standards of the profession and regulating and enforcing compliance against these standards. We are the largest regulator of legal services in England and Wales, covering around 80% of the regulated market. We oversee some 206,000 solicitors and more than 10,000 law firms.
2. We welcome the opportunity to respond to the Legal Services Board's (LSB) consultation on new draft rules for applications to alter regulatory arrangements under Paragraph 20(1) of Schedule 4 the Legal Services Act 2007 and draft statutory guidance. We also thank the LSB for their early engagement with us on this matter through an informal discussion before the consultation was launched.
3. We appreciate the collaborative and constructive relationship we have had with the LSB in relation to our individual applications for approval of changes to our regulatory arrangements in recent years, which the LSB has indicated have consistently been of good quality. As a mature regulator, with a sound track record of effectively carrying out our regulatory functions, and assessed as meeting the LSB standards across all the regulatory performance categories, we are pleased to be able to draw on our experiences in formulating our response.
4. We consider that the LSB's proposed changes will improve its existing process. The added focus on the Regulatory Objectives, Better Regulation Principles and equality impacts is welcomed and is consistent with our approach to policy development and rule changes. Taking this forward-looking lens to policy changes, rather than looking at legacy rules, which may not have been subject to such analysis, is in our view appropriate in what is a fast-changing legal environment. It will also better ensure consistency across different regulators.
5. The additional clarity around when guidance will be considered a regulatory arrangement will be beneficial. And we consider that updating the approach to exemption requests is a positive step.
6. Our answers to the LSB's specific questions are set out in the following sections.

Our response

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

7. The definitions in draft rule 1 reflect those in the Legal Services Act 2007 (the Act) and are useful when preparing applications for regulatory change. Draft rules 2 and 4 are appropriate in providing for compliance with the draft Rules when making applications, and for having regard to the LSB's draft Guidance, as provided for under section 162(5) of the Act.
8. We would welcome further discussion on how best to ensure that both the application for and scrutiny of any individual rule change is proportionate, with a view to ensuring resources can be applied as effectively as possible.
9. We note the LSB's expectation that applications and requests for exemption are subject to regulator's internal quality assurance and governance checks before being submitted to the LSB. And that the boards of regulators must take ultimate responsibility for the applications and be sighted on the proposals. This is in line with our processes, with the level of Board input into individual changes proportionate to the significance, impact and risk associated with the change.

Question 2: 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?

10. Draft rules 5 and 6 provide more explicitly for the distinction, already in use, between full applications for change to regulatory arrangements, and requests for the LSB to issue a direction to the effect that the changes are exempt from the application process. It is useful to have this set out in these draft Rules.
11. We have found early dialogue with the LSB useful in determining whether a full application or a request for exemption is required and look forward to these helpful discussions continuing. There may also be an opportunity to further streamline the exemption process by for example, requiring the regulator to provide a brief explanation of how the change meets the exemption criteria.
12. We note draft rule 10(h) which states that a regulator seeking changes to its regulatory arrangements must submit "any draft guide or policy that will support implementation of the alteration or alterations". And that "these [guidance or policy] documents can give necessary context to how the alterations will work in practice which may be important in assessing their impact on the regulatory

objectives, and against the refusal conditions. It also may be the case that these documents may fall within the meaning of regulatory arrangements and having them enclosed with an application will assist in determining this. These documents do not necessarily have to be in final form – but they must be sufficiently advanced to enable meaningful consideration.” We are pleased to see acknowledgement of the developing, ongoing nature of regulatory guidance in this draft Guidance and we agree that guidance should only require LSB approval when it provides mandatory requirements for the regulated community.

13. We note draft Guidance paragraph 37 – “The LSB may from time-to-time issue general exemption directions to cover certain alterations or classes of alterations. Approved regulators should check whether their proposed alterations are covered by a general exemption direction before seeking approval. Where an approved regulator is unsure as to whether a general exemption direction is applicable to an alteration, it will need to seek further guidance from the LSB.” This approach has been taken in respect of recent changes required due to Brexit and to dealing with the Covid-19 pandemic, and it has been a useful approach, allowing us to respond in a timely way to changes driven by external impacts on the legal services and legal education markets. We are pleased to see this covered in the draft Guidance.
14. We note the requirements of draft Rule 12 in respect of impact assessments. The requirements do not appear to go beyond our existing public sector equality duty, and we welcome the reference to the Equality Act 2010 as well as the clear commitment shown in the proposals to equality, diversity and inclusion.

Question 3: Do you have any comments on draft rule 7 above? Do you have any comments on the associated draft Guidance?

15. The rule sets out the timescales already used in line with the provisions of the Act. We are content with the provisions of the draft Rule and draft Guidance, and agree that it is useful to have them gathered here in this way.

Question 4: 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?

16. We note draft Rules 15-17 and the draft Guidance, at paragraph 85 saying – “the information set out in rule 17 is intended to focus on the significance, impact and risk of the proposed alteration” and also the statement in the consultation (paragraph 52) that “It codifies the requirements in the Significance Impact and Risk framework currently applied by the LSB to requests for exempt alterations”. From this, we understand that the draft Rule and Guidance will replace the current Significance Impact and Risk framework.

17. We agree with this change and as we have said at paragraph 11 above, there may also be an opportunity to further streamline the exemption process.

Question 5: Do you have any comments on the proposals and scope for new general exemption directions?

18. We note the intended scope of future general exemption directions – “to make alterations to a range of internal documents, forms and standalone guidance; to make alterations to regulatory arrangements that correct minor drafting errors and make minor changes (such as changes to grammar, punctuation, pronouns) by way of notification with a 14-day window for LSB consideration of whether the proposals are in scope of the exemption; to make consequential minor changes (linked to alterations previously exempted or approved by the LSB) by way of notification with a 14-day window for LSB consideration of whether the proposals are in scope of the exemption.” We strongly support this proposal: it is as a useful and practical approach that will help us manage regulatory change in a timely and responsive way. We would welcome the opportunity to comment on the wording of any general exemption direction before it is issued.

Other comments

19. It may be helpful to modify the guidance to make it clear that third party representations will only be considered by the LSB in specific circumstances, with the LSB’s emphasis being on assuring itself that the regulator has undertaken appropriate consultation and has given sufficient consideration of responses. This would help to make sure that all stakeholders can see that their views are taken into account in a fair and inclusive way. We suggest that the LSB rules and guidance are amended to say that third party representations will be entertained where “...issues that have arisen since the approved regulator’s consultation and engagement process, or where the third party raised the issue during this process and the approved regulator has not evidenced in their application to the LSB that the issue was taken into account.”

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