

Designating new approved regulators and approving rule changes

Discussion paper on developing rules to approve applications for designation as an approved regulator and to approve changes to the rules of approved regulators

This consultation will close on **13 October 2009**

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1. Executive Summary

- 1.1 The Legal Services Board (the “**LSB**”) is the organisation created by the Legal Services Act 2007 (the “**Act**”) and is responsible for overseeing legal regulators in England and Wales. The LSB’s mandate is to ensure that regulation in the legal services sector is carried out in the public interest; and that the interests of consumers are placed at the heart of the system.
- 1.2 The Act created a new regime for the regulation of the provision of legal services in England and Wales. Under the new regime, Approved Regulators¹ will regulate individual “lawyers” and the entities within which they practice. In general terms the word “lawyer” includes anyone who is allowed to practise a list of Reserved Legal Activities which are specified in the Act². Individuals practising these Reserved Legal Activities, and the entities from within which they practise, must be authorised to ensure that they are properly qualified and supervised and must comply with rules defined for them by the Approved Regulators. These rules will normally cover them in their practice both of those Reserved Legal Activities and any related legal activities such as general legal advice.
- 1.3 The Approved Regulators therefore have the important role of setting standards and in supervising and enforcing those standards for the benefit of consumers and the legal profession and legal services industry.
- 1.4 The Approved Regulators’ rules need to be proportionate and not excessive. Once the Act is fully implemented, their rules must be consistent with the Approved Regulators’ obligation to, so far as is reasonably practicable, act in a way which is compatible with the Regulatory Objectives³ which are specified in Section 1 of the Act⁴ and their duties to have regard to “best regulatory practice”⁵

¹ Current Approved Regulators are listed at Part 1 of Schedule 4 of the Act

² Section 12 and Schedule 2 of the Act define “reserved legal activity” as (a) the exercise of a right of audience; (b) the conduct of litigation; (c) reserved instrument activities; (d) probate activities; (e) notarial activities; and (f) the administration of oaths

³ See Section 28(2) of the Act

⁴ Sections 1(1) and 1(2) of the Act provide that:

- (1)a reference to the “regulatory objectives” is a reference to the objectives of –
 - (a) protecting and promoting the public interest;
 - (b) supporting the constitutional principle of the rule of law;
 - (c) improving access to justice;
 - (d) protecting and promoting the interests of consumers;
 - (e) promoting competition in the provision of services within subsection (2);
 - (f) encouraging an independent, strong, diverse and effective legal profession;
 - (g) increasing public understanding of the citizen’s legal rights and duties;
 - (h) promoting and maintaining adherence to the professional principles.
- (2) The services within this subsection are services such as are provided by authorised persons (including services which do not involve the carrying on of activities which are reserved legal activities)

⁵ See Section 28(3) of the Act

- 1.5 The Act mandates that, as it comes into force, a number of existing Approved Regulators are automatically authorised to carry on the regulation of certain of the Reserved Legal Activities, but enables the addition of both new Approved Regulators and changes to the rules of existing ones. This paper sets out how the LSB proposes to discharge its responsibilities in both these areas and includes drafts of the rules that the LSB proposes to make in this regard.

Designation of New Approved Regulators

- 1.6 There are two sorts of body which may apply for designation as a new Approved Regulator. These are:
- existing Approved Regulators; and
 - new bodies who wish to become an Approved Regulator for the first time.
- 1.7 The LSB will ensure that its rules adequately provide for these different types of applicant.

Existing Approved Regulators adding Reserved Legal Activities

- 1.8 In relation to the first type of potential applicant, the Act contemplates that the existing Approved Regulators may want to add to the range of Reserved Legal Activities that they can regulate. This may happen either if:
- an Approved Regulator wishes to expand the range of activities that it wants to regulate into another Reserved Legal Activity currently specified in the Act. As a notional example, the Institute of Legal Executives does not currently regulate notarial activities, but there is no reason in principle why it should be debarred from applying to do so; or
 - the LSB recommends and the Lord Chancellor agrees to extend the scope of Reserved Legal Activities to cover additional areas of legal activity⁶ and an Approved Regulator wishes to expand the range of activities that it regulates to cover these newly created Reserved Legal Activities.

New Approved Regulators

- 1.9 In relation to the second type of potential applicant, during evidence given to the Joint Committee on the Draft Legal Services Bill, Ministers explicitly endorsed the idea of new entrants creating competition between Approved Regulators to undertake licensing of alternative business structure⁷ (“**ABS**”) firms, on the basis that regulatory diversity within a framework of oversight

⁶ See Section 24 of the Act

⁷ Part 5 of the Act allows for alternative business structures to be established which will enable law firms to explore new ways of organising their businesses to be more cost effective, permit different kinds of lawyers and non-lawyers to work together, and allow for external investment

regulation would help to drive up standards of regulation and hence also improve the performance of regulated firms⁸.

1.10 The Act therefore provides that new bodies may become Approved Regulators either to regulate Reserved Legal Activities in the context of Part 4 of the Act or to go on and also become a Licensing Authority⁹ for ABS under the terms of Part 5 of the Act.

1.11 Examples of new bodies who might wish to become an Approved Regulator include:

- an overseas regulatory authority wanting to become an Approved Regulator in order to be able to authorise its domestic lawyers to also provide English legal advice;
- a regulator in another sector (such as accounting or property) wanting to become an Approved Regulator to allow its members to benefit from the opportunities for different business structures contemplated in the Act. Such opportunities may be especially attractive because there is cross over in some areas of accounting and some of the Reserved Legal Activities (e.g. probate);
- a new commercial body seeing an opportunity to make a commercial business from being a regulator. Obviously, such a commercial venture would need to be able to demonstrate that it complied with the principles of the Regulatory Objectives;
- a representative body from a sector that has come within the scope of Reserved Legal Activities wanting (with adequate separation of its regulatory and representative functions) to provide regulation to practitioners in its area of expertise; or
- a new body emerging from within a current Approved Regulator, perhaps covering a certain category of members and/or activities which wishes to become an Approved Regulator in relation to specific Reserved Legal Activities.

1.12 In the event that there are a number of new entrants, oversight regulation will be essential to ensure that benefits are captured and pitfalls avoided. Among the potential risks are:

- some Approved Regulators competing for firms and individual affiliation by lowering their practice fees and intervening less. Such moves could obviously be detrimental to consumer protection;
- a maze of regulation which consumers find difficult to comprehend. The more complex this regulatory system, the greater will be the need for

⁸ <http://www.publications.parliament.uk/pa/jt200506/jtselect/jtlegal/232/232ii.pdf> (see page 242)

⁹ As defined in Section 73 of the Act

public legal education in order to help consumers to make informed choices.

- 1.13 Against this background, the LSB is mindful that an oversight regulator must set a firm framework to manage entry and prevent any erosion of acceptable standards. Such a framework will make sure that overall standards remain consistent, that the same activity regulated by different Approved Regulators is regulated to directly comparable standards and will encourage public legal education to aid choice. Regulatory competition will also give the regulated community (i.e. the profession and the industry) a real voice in driving up regulatory standards.
- 1.14 To the extent that any widespread new entry occurs, the LSB will therefore need to consider the implications for consumers, the market and the structure of regulation. It may be, for example, that some new bodies wish to become Approved Regulators in order to apply regulatory standards to activities which are currently not reserved. Our Business Plan makes clear that we are prepared to look at the status of unreserved activities in the context of a full examination of consumer needs and benefits. However, we are not minded to consider applications for Approved Regulator status until such an examination has been completed.
- 1.15 The more new regulators enter to deal with a particular activity, the more broader regulatory strategy questions such as protection and ownership of title need to be examined. At one extreme, it might be argued that protection of title and ownership of a title by a particular Approved Regulator could be a restrictive practice. However, it would be potentially, if not more, disadvantageous to the public if abolition of restrictions were to cause confusion and/or create an ability for an unscrupulous trader to give the appearance of providing a regulated service when this was not the case. These are issues to which the LSB will give further consideration in devising its work programme for 2010 – 11. The current document is designed primarily to deal with the “nuts and bolts” of transferring current arrangements dealing with Approved Regulator recognition from the Ministry of Justice (the “**MoJ**”) to the LSB rather than these broader strategic issues.

Designation

- 1.16 The Act requires the LSB to decide on applications made in the circumstances set out above by current or potential Approved Regulators and also requires the LSB to make rules on how these applications should be dealt with.
- 1.17 The Act requires Approved Regulators to, so far as reasonably practicable act in a way which is compatible with the Regulatory Objectives, and have regard to standards of openness and transparency and “best regulatory practice”¹⁰. In short, to be – and be seen to be a solid, stable, well structured, adequately financed and professionally operated body - a regulator should seek to adhere to standards at least as good as those that it seeks to enforce on others. This

¹⁰ See Section 28 of the Act

inevitably means that any potential new Approved Regulator (whether a new entrant or an existing Approved Regulator extending its scope) needs to demonstrate to the LSB that it has prepared properly and thoroughly for its role, that it has the governance and institutional stability to discharge its functions on a proper basis and that it has solid regulatory arrangements to ensure that it can discharge the Regulatory Objectives contained in the Act.

- 1.18 The LSB expects high standards of probity in candidates for Approved Regulator status. Therefore, it has, in general, taken the view that it is appropriate to require applicants to provide information certified by the executives or honorary officers of the applicant and, where appropriate independent professional advisors, to ensure clear personal and organisational accountability for the quality of data provided. If the Applicant cannot demonstrate this level of executive and advisory confidence then it is not appropriate for an Application to be made. The LSB also reserves the right to require further information and/or statements or to commission its own analysis of any data submitted should it see reasonable grounds for doing so.
- 1.19 The Act requires the LSB to provide the application and materials to the Office of Fair Trading (the “**OFT**”), the Consumer Panel, the Lord Chief Justice and such other persons as the LSB “considers it reasonable to consult”¹¹ and to seek their advice. The LSB has the ability to retain specialist advisors on areas where it does not have in house competence. The LSB proposes that the cost of those advisors will be included as an adjustment to the “prescribed fee” that must accompany an application.
- 1.20 When an existing Approved Regulator wishes to extend its range of Reserved Legal Activities, then it will not be appropriate for them to complete all of the elements of the application that a new applicant would need to. However, the LSB will expect them to analyse the requirements, to complete the ones that are necessary and to explain point by point why they do not need to address the other aspects.
- 1.21 Based on its own assessment of risk and capability, taking account of the comments of the Consumer Panel, other Approved Regulators or stakeholders the LSB may review this assessment in some detail and require further details.
- 1.22 The aim will, throughout, be to ensure consistent high standards across new and existing regulators. We expect the combination of the LSB’s regulatory reviews and, in some cases, competition between regulators to drive up standards of performance. In devising the methodology for regulatory reviews we will therefore be mindful of any requirement placed on new entrants. In considering how we use our enforcement powers to underpin delivery of the Regulatory Objectives we will ensure that we act in a consistent way across new entrants and existing bodies.

¹¹ See paragraph 5 of Schedule 4 of the Act

Rule Changes

- 1.23 The Approved Regulators have obligations under the Act to have regard to “best regulatory practice”¹². Additionally, circumstances change over time. Consequently, Approved Regulators will need to change their rules from time to time. The Act requires that the LSB approves such changes. This will replace the current process where such decisions are made by the Lord Chancellor, taking account of the advice, where appropriate, of bodies including the OFT and the Legal Services Consultative Panel (the “**LSCP**”).
- 1.24 This paper explains how the LSB proposes to do this in a proportionate and timely manner in order to allow best practice to be shared between regulators, for valuable stakeholder input to be obtained and for the unintended or not immediately obvious consequences of apparently minor changes to be identified.
- 1.25 Additionally we need to allow the LSB to assure itself and “consumers” (meaning any consumer of legal services and not just people in their private capacity) that none of the Regulatory Objectives are compromised when a rule change is made and that the public interest, not simply the regulator’s or the profession’s interests, is actually met by what is done.
- 1.26 We will address the possible implications of ABS in handling suggested rule changes but recognise that further changes to the processes documented here may be needed in future to ensure that the rules remain fit for purpose and consistent.
- 1.27 The rest of this paper explains in more detail what we are proposing to do and why, starting with general principles and then working towards the specific approvals and rule change processes. In particular, Annex 1 and Annex 2 to this paper contain drafts of the rules that the LSB proposes to make in respect of applications by bodies to be designated as an Approved Regulator and applications by Approved Regulators for approval of rule changes, respectively.
- 1.28 The deadline for written responses to this consultation is 5pm on **13 October 2009**. Information about how to make submissions is provided at Section 7 of this paper.

¹² See Section 28(3) of the Act

2. Legal Framework and Drafting Principles

Legal framework

2.1 Parts 2 and 3 of Schedule 4 of the Act make provision for:

- new bodies to apply to be designated by order as Approved Regulators in relation to one or more Reserved Legal Activity;
- existing Approved Regulators to be designated by order as Approved Regulators in relation to additional Reserved Legal Activities (collectively “**New Designation Applications**”); and
- Approved Regulators to apply for approval of changes to their Regulatory Arrangements¹³ (“**Rule Change Applications**”).

2.2 The Act further provides that:

- New Designation Applications should be made to the LSB for the LSB to consider and, if appropriate, then to recommend that an order be made by the Lord Chancellor designating the applicant as an Approved Regulator in relation to the Reserved Legal Activity in question; and
- Rules Change Applications should be made to and be approved by the LSB.

2.3 It is envisaged that the provisions of Parts 2 and 3 of Schedule 4 of the Act will “go live” when the LSB takes up its full powers. It is anticipated that this will take place in early 2010. For information purposes, details of the transitional arrangements that it is intended, subject to MoJ agreement, will be put in place until this time are set out in Section 5 of this paper.

2.4 This paper contains drafts of the rules that the LSB proposes to make to govern the processes of New Designation Applications (see Annex 1) and

¹³ Section 21 of the Act defines “regulatory arrangements” as: (a) a body’s arrangements for authorising persons to carry on reserved legal activities; (b) a body’s arrangements (if any) for authorising persons to provide immigration advice or immigration services; (c) a body’s practice rules; (d) a body’s conduct rules; (e) a body’s disciplinary arrangements in relation to regulated persons (including its disciplinary rules); (f) a body’s qualifications regulations; (g) a body’s indemnification arrangements; (h) a body’s compensation arrangements; (i) any of a body’s other rules or regulations (however they may be described), and any other arrangements, which apply to or in relation to regulated persons, other than those made for the purposes of any function the body has to represent or promote the interests of persons regulated by the body; and (j) the body’s licensing rules (if any) so far as they are not in items (a) to (i)

Rule Changes Applications (see Annex 2). This paper invites you to provide comments on these draft rules.

Principles followed in drafting the rules

2.5 In drafting these rules, the LSB has complied with the explicit obligations imposed on it by the Act¹⁴ by having had regard to:

- the Regulatory Objectives identified in Section 1 of the Act;
- the Better Regulation Principles¹⁵ enshrined in Section 3 of the Act;
- the desirability of current or potential Approved Regulators making well considered applications that have already been consulted on with other Approved Regulators, related regulators from other sectors and other potentially impacted stakeholders, in particular consumers and their representatives;
- the need to be efficient, rapid, transparent and cost effective in the consideration of applications; and
- its aim to be strategic in its consideration of any applications.

2.6 In drafting the rules, the LSB has also had regard to the “Regulators’ Compliance Code – Statutory Code of Practice for Regulators” which is published by the Department for Business, Innovation and Skills. It is anticipated that the LSB will be subject to this code from November 2009.

The meaning of “strategic approach”

2.7 The LSB will focus principally on key areas of ambiguity, uncertainty, disagreement, non compliance and risk rather than becoming involved as a matter of routine with minutiae of process or document heavy activities. The LSB will therefore require well prepared, pre consulted and thought through applications which have already been subject to significant stakeholder and/or public scrutiny in order to ensure that statutory consultation and decision-making can move expeditiously. We will also expect executives and/or honorary officers of applicant bodies (and, where applicable, their independent external advisors) to certify certain key points to be true, accurate, or reasonable to the best of their belief. If this cannot be done the

¹⁴ See Section 3 of the Act

¹⁵ The five principles of good regulation (being, proportionality, accountability, consistency, transparency and targeting) as set out in Section 3(3) of the Act

LSB would need to investigate the application further. Probity and integrity are fundamental principles.

2.8 The LSB will have processes which:

- allow it quickly to assess where it needs to devote its resources in order to allow focus on applications which merit detailed consideration;
- ensure that applications that are submitted are well prepared and fully consulted upon with affected stakeholders prior to submission;
- enable the applicant to utilise the processes efficiently; and
- allow the LSB to identify key risks and conflict areas at an early stage.

On-line applications

2.9 The LSB will make its processes as streamlined as possible and envisages that in due course all of the initial application process will be undertaken by submitting the necessary documents through a link found on the LSB's website.

2.10 The LSB will be working on the technology to allow applications to be made in this manner. In the meantime the rules provide that the applications may be submitted by email, post or courier.

3. New Designation Applications

Application process - requirements in the Act

3.1 The Act requires the LSB to make some rules and gives it the discretion to make other rules to govern New Designation Applications. The rules required are as follows:

- rules specifying the form and manner of applications by applicants. These rules should specify the amount of the “prescribed fee” that should accompany the application¹⁶;
- rules about the procedures and criteria that the LSB will apply when determining whether to refuse to consider, or to continue its consideration, of an application¹⁷;
- rules governing the making of oral and written statements by the applicant¹⁸; and
- rules specifying how the LSB will determine applications¹⁹.

3.2 The Act further provides that the LSB’s rules specifying how it will determine applications, must in particular provide that the LSB may only grant an application if the LSB is satisfied of the following²⁰:

- that, if an order were made designating the applicant as an Approved Regulator, the applicant would have appropriate internal governance arrangements in place at the time the order takes effect. In particular the LSB must be satisfied that if the body has or proposes to have representative as well as regulatory functions: (a) that the exercise of the applicant’s regulatory functions would not be prejudiced by any of its representative functions; and (b) that decisions relating to the exercise of its regulatory functions would so far as reasonably practicable be taken independently from decisions relating to its exercise of its representative functions²¹;
- that, if such an order were to be made, the applicant would be competent, and have sufficient resources, to perform the role of Approved Regulator;

¹⁶ See paragraphs 3(3) and 3(4) of Schedule 4 of the Act

¹⁷ See paragraph 4(2) of Schedule 4 of the Act

¹⁸ See paragraph 11(3) of Schedule 4 of the Act

¹⁹ See paragraph 13(1) of Schedule 4 of the Act

²⁰ See paragraph 13(2) of Schedule 4 of the Act

²¹ See paragraph 13(3) of Schedule 4 of the Act

- that the applicant’s proposed Regulatory Arrangements (i.e. practice rules, conduct rules etc.) make appropriate provision[s]²² ;
 - that the applicant’s proposed Regulatory Arrangements comply with the requirements imposed by Sections 52 and 54 of the Act (i.e. they make provision to prevent regulatory conflicts); and
 - that the applicant’s proposed Regulatory Arrangements comply with the requirements imposed by Sections 112 and 145 of the Act (i.e. they must make provision for a complaints procedure and for “authorised persons” to co-operate with investigations).
- 3.3 A draft of the rules that the LSB proposes to make, and which deal with each of these items is set out at Annex 1. Consistent with its role as an oversight regulator the LSB will adopt a strategic approach to the New Designation Applications process. The rules are drafted on this basis. They aim to provide a principle-based approach, which is clear about main criteria for approval, but is not prescriptive about the precise form of evidence in order to enable each case to be assessed on a proportionate basis.
- 3.4 The LSB see these rules as continuing to evolve over time, both in the light of the experience of considering applications and, perhaps more importantly, as other elements of the regulatory process take shape. In particular, the rules will be updated to take account of the need to reflect the requirements on regulatory independence which the LSB will impose under Sections 29 and 30 of the Act. It is also probable that development work on the approval of ABS Licensing Authorities and the process of regulatory reviews will produce lessons that should, over time, be reflected in the process of approving new Approved Regulators.

The Prescribed Fee

- 3.4 Paragraphs 3(3) and 3(4) of Schedule 4 of the Act provide that the LSB’s rules for New Designation Applications must provide for a “prescribed fee” that must accompany any application. Such fee can only be set with the consent of the Lord Chancellor. Once received, the LSB must pay the “prescribed fee” into the Consolidated Fund²³.
- 3.5 The LSB would welcome views on what the appropriate level of, and method of, calculation of the “prescribed fee” should be. Potential options would include:

²² Paragraph 13(2)(c) of the Act uses the word “provision”. The LSB understands this paragraph to mean that the provisions contained in the applicant’s Regulatory Arrangements are appropriate.

²³ HM Treasury’s account with the Bank of England through which all, or almost all, of the Government’s expenditures and receipts pass.

- a set fee calculated to recover the LSB's direct cost of the staff resources and the associated overheads deployed on considering a typical application. The benefit of this approach would be that it avoids adding to the practising certificate levy that is applied to all Approved Regulators for costs that relate to the activities of one regulator only, but it is not sensitive to the actual level of work on any individual application;
- a set fee as suggested above but with the ability for: (i) a refund to be given back to the applicant if the LSB's costs turn out to be significantly less than the set rate; or (ii) the fee to be increased in the event that the LSB envisages significantly more work is required. This is more accurate than the first option, but considerably more burdensome for the LSB itself to assess and could be less predictable for applicants;
- a fee based on the marginal cost of the LSB's staff time, assessed case by case, but without associated overheads;
- having no fee, with the costs being covered by the overall levy. A potential disadvantage of this approach is that having no fee may result in the LSB receiving vexatious or poorly put together applications which have no prospect of success with the costs involved in the LSB considering these being met by the existing Approved Regulators. Subject to consultees' views therefore, the Board is not initially minded to pursue this option.

3.6 Whichever approach is adopted, the LSB proposes that:

- where it feels that it is necessary, more appropriate or more efficient to use external advisors to consider parts of the application (e.g. to deal with technically complex, unusually data intense, poorly prepared or urgent applications) then it should have the ability to ask the applicant to pay the advisors for the work performed – the LSB may, in its discretion, make an adjustment to the “prescribed fee” to take account of this;
- where an existing Approved Regulator applies to be permitted to carry out an additional Reserved Legal Activity then the fee will be assessed on a case by case basis dependent on the degree of additional assessment that is required in addition to any assessment that has already been carried out in relation to that Approved Regulator.

3.7 Section 45(3) of the Act also provides that that the LSB must provide for a “prescribed fee” in respect of any applications it receives from an Approved Regulator who wishes to apply for the cancellation of its designation in relation

to one or more Reserved Legal Activity. We will discuss the cancellation of such designations in our Enforcement Consultation Paper but would propose that the level of the “prescribed fee” required under Section 45(3) would be calculated using the same methodology that is used for calculating the “prescribed fee” for New Designation Applications.

Your comments

- 3.8 You are invited to comment on the LSB’s approach and on the content of the proposed rules and in particular the level of and the method of calculation of the “prescribed fee”.

4. Rule Change Applications

Application process - requirements in the Act

- 4.1 The LSB's obligations, under the Act, to make rules governing the Rule Change Application process are less extensive than those in relation to New Designation Applications. The Act puts no absolute obligation on the LSB to make rules governing the process as a whole only stating that an application be "made in such form and manner as the Board may specify in rules"²⁴. The Act does, however, provide that:
- the LSB make rules governing the making of oral and written statements by the Approved Regulator in relation to the application; and
 - the LSB may direct that certain alterations to an Approved Regulator's Regulatory Arrangements be exempt from the need for LSB approval.
- 4.2 The Act thus provides for the LSB to make rules governing Rule Change Applications but gives no mandatory requirement. Despite this lack of mandatory requirement, the LSB believes that it important that it make specific rules governing the process. By mandating its requirements, the LSB is seeking to obtain applications which it can deal with quickly in the same strategic manner that it plans to deal with New Designation Applications.
- 4.3 The deliberate openness of the process is also intended to allow the opportunity for scrutiny to help to ensure that substantial rule changes are not introduced inadvertently or inappropriately and that there is a consistency of approach to any changes proposed.
- 4.4 A draft of the rules that the LSB proposes to make is set out at Annex 2. In drafting the rules, the LSB has tried to be specific about the information it will require to support any application. In doing this, the LSB is putting the onus on the applicant to demonstrate why the LSB should give its approval. Although this may mean more work for Approved Regulators in the early stages of consideration of issues, for example in ensuring full consultation, we envisage that this would be more than offset by more rapid LSB consideration of the application. In particular, we envisage that, provided full consultation has been carried out by the applicant and this consultation has been properly documented and the results transparently considered and evaluated and provided to the LSB as part of the application, then it should not be necessary for the LSB to consult on its own decision on whether to approve, modify or reject the application. Notwithstanding this, it would remain open to the LSB to consult on its own decision if it believed that the applicant's consultation process had not met these tests.

²⁴ See paragraph 20 of Schedule 4 of the Act

- 4.5 As part of the rules, the LSB has also included details of when certain alterations to Approved Regulators' Regulatory Arrangements will be exempt from the need to have LSB approval.

Your comments

- 4.6 You are invited to comment on the content of the proposed rules and in particular the criteria the LSB proposes for alterations to be deemed exempt alterations.
- 4.7 We would also welcome views on whether rules are the right approach for specifying these requirements or whether it would be more appropriate to use guidance to deal with some or all of the requirements, so allowing greater flexibility.

5. Transition Arrangements

- 5.1 At present a number of the functions that the LSB will be undertaking in relation to New Designation Applications and Rule Change Applications are undertaken by the MoJ. The LSB recognises the need to ensure that there are clear arrangements in place to allow for the efficient transition of these applications from the MoJ to the LSB as the LSB takes up its powers in this area under the Act.
- 5.2 We have therefore been discussing with the MoJ the proposal that a transitional order be made under Section 208(2) of the Act to potentially achieve the following:
- the MoJ will continue to receive and consider all New Designation Applications and Rule Change Applications until the date upon which the LSB receives its powers to consider and determine on these applications – we currently anticipate that this date will be in early 2010;
 - any application that has been referred to and is with the LSCP for consideration on the date when the LSB receives its powers will automatically be cancelled and the applicant will need to reapply to the LSB under the new processes that the LSB will establish in advance of receiving its powers (the LSB will work with LSCP and the applicant to seek to minimise duplication of work in any such reapplications); and
 - any application which was not referred to the LSCP or which has concluded its LSCP review when the LSB receives its powers but which has still not completed the subsequent review and approval phases with ministers and the judiciary will continue until it is concluded based on the existing processes with any decision made then being recognised by the LSB.
- 5.3 The MoJ has agreed with the need for transitional provisions to be put in place and the MoJ and the LSB will be writing to stakeholders shortly with full details about the proposals.
- 5.4 The LSB feels that this approach is necessary in order to:
- avoid any possible “regulatory gap” should there, for whatever reason, be a delay in the LSB getting its powers; and to
 - ensure that any New Designation Applications or Rule Change Applications that must be determined before the LSB gets its powers can still be addressed.
- 5.5 The LSB is aware that Approved Regulators might elect to wait until the LSB receives its powers before making applications and that this might create a backlog of applications to deal with. Consequently, after this consultation the

LSB will complete the design of its process for New Designation Applications and Rule Change Applications.

- 5.6 Once the design of the process is complete, the LSB will invite “pre application practice applications” from any current or potential Approved Regulator for the approval of New Designation Applications or for the approval of Rule Change Applications. This will allow the LSB and the Approved Regulators to test out how the new process will work before it goes live and will also allow the LSB to make quick progress in processing all applications once it receives its powers.
- 5.7 The LSB will make the Approved Regulators aware of these plans and will encourage parties who do not need a rule approved before the LSB is likely to receive its powers to focus their efforts primarily on making “pre application practice applications” rather than applying to the MoJ. This will allow the MoJ and the LSCP to focus both on finishing off all applications already received and on processing any applications that need attention before the LSB is likely to receive its powers. This should also help to reduce duplication of work between the MoJ and the LSB.

6. Impact Assessment

Introduction

6.1 The LSB is undertaking a very preliminary impact assessment on these largely administrative rules. We consider that the impacts are broadly negligible but potentially positive. We are however keen to listen to other views about the impact of these changes to the way that new Approved Regulators are designated and existing Approved Regulators are allowed to change their rules. We would therefore welcome the highlighting of additional evidence and analysis regarding these rules so as to assist us in developing a final impact assessment later this year.

What is the problem under consideration? Why is intervention necessary?

6.2 The Act sets out a new legal framework for the regulation of the legal profession and industry. The LSB must take over from the MoJ most of the existing obligations of the MoJ in respect of New Designation Applications and Rule Change Applications. This consultation paper sets out the framework for the LSB to do that.

What are the policy objectives and the intended effects?

6.3 The LSB must promote the Regulatory Objectives set out in the Act. The Act also includes a duty on the LSB to adhere to “best regulatory practice”.

What policy options have been considered? Please justify any preferred option

6.4 Three policy options have been considered:

- replicate the MoJ process;
- make detailed rules for Approved Regulators and prospective Approved Regulators to adhere to in all circumstances; and
- regulate at a level of principle with supporting rules and guidance only to the extent required.

6.5 The preferred option is the third option because it is likely to be the fastest and most effective to operate for Approved Regulators and the LSB. It is also likely to be the lowest cost as it will allow Approved Regulators freedom to find the most appropriate solution in their particular context within the parameters set out in the rules. This is because it promotes early development of applications to the required standards and thus eliminates wasteful communication.

- 6.6 A simple and focussed process that sets out principles to adhere to but is not prescriptive on the exact design of Regulatory Arrangements will also promote innovation and competition through providing for flexibility in how to meet the Regulatory Arrangements in a proportionate manner.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

- 6.7 We expect to review our rules on New Designation Applications and Rule Change Applications by the end of 2011/12 in order to consider early operation and links with the introduction of a licensing regime for ABS.

Annual Costs

- 6.8 One-off (transition): £ negligible.
- 6.9 Average annual cost (excluding one-off): £ negligible.

Annual Benefits

- 6.10 One-off: £ negligible.
- 6.11 Average annual benefit: £ negligible.

What is the geographic coverage of the policy/option?

- 6.12 England and Wales.

On what date will the policy be implemented?

- 6.13 Early 2010 will see the LSB taken on full powers but transitional arrangements will apply prior to this to ease the implementation of the Act.

Which organisation will enforce the policy?

- 6.14 The LSB.

Does enforcement comply with Hampton principles?

- 6.15 Yes.

Will implementation go beyond minimum EU requirements?

- 6.16 Yes. EU requirements do not require the regulatory framework set out in the Act.

What is the value of the proposed offsetting measure per year?

6.17 Nil.

What is the value of changes in greenhouse gas emissions?

6.18 Nil.

Will the proposal have a significant impact on competition?

6.19 No.

Annual cost (£-£) per organisation (excluding on-off)

6.20 Micro: negligible; Small: negligible; Medium: Negligible; Large: Negligible.

Are any of these organisations exempt?

6.21 No.

Impact on Admin Burdens Baseline (2005 Prices)

6.22 Increase of £: approximately nil.

6.23 Decrease of £: approximately nil (although potential for small decrease).

6.24 Net Impact £: approximately nil.

Evidence Base

6.25 We have undertaken only a preliminary impact assessment of the rules for New Designation Applications and Rule Change Applications. We consider that the cost of these changes is significantly below the generally accepted threshold of £5 million costs, below which an impact assessment is not necessary. However, we believe that in setting out how we have considered the various elements of the impact assessment will help us consult on both our proposals and our assessment of their impact.

Competition

6.26 We believe that a principles-based approach provides Approved Regulators and prospective Approved Regulators the flexibility to innovate on how to meet the Regulatory Objectives in a proportionate manner that is appropriate to their particular regulated community and market sector. We believe that this will allow existing Approved Regulators to amend existing regulation and thus promote better regulation. It will also allow new Approved Regulators the freedom to mitigate risks to, and promote, the Regulatory Objectives at the lowest appropriate cost.

Small Firms Impact Test

- 6.27 The regulated community is diverse and that is likely to continue as the Act takes effect, although we will need to monitor the impact of the changes. The proposals in this consultation document are proportionate in that they set the same principles and objectives for both large and small Approved Regulators but give freedom for a proportionate level of regulation – thus allowing a small regulator freedom to meet the principles and requirements in a proportionate manner. This proportionality will be fed down to the regulatory community through both the cost of the practicing fee and the cost of regulatory compliance and thus will serve to protect small firms from a one size fits all regulatory framework.

Legal Aid

- 6.28 We expect minimal impact through rules, although greater competition between Approved Regulators and within regulated community may enhance the competitiveness of the Legal Aid market.

Race/Disability/Gender equalities

- 6.29 There is no direct or indirect impact expected. However, competition between Approved Regulators may enhance the opportunity for proportionate and flexible regulation. The focus of the rules on the Regulatory Objectives may promote equalities in the longer term as they provide for proportionate risk assessment and response.

Human Rights

- 6.30 In promoting a proportionate response to risks the rules proposed are likely to protect Human Rights.

Rural Proofing

- 6.31 There is no direct or indirect impact expected. However, competition between Approved Regulators may enhance the opportunity for proportionate and flexible regulation. Similarly the commitment to proportionate regulation may protect small firms that are often found in rural areas. The focus of the rules on the Regulatory Objectives, such as promoting access to justice, may protect and promote rural services in the longer term.

Sustainability, carbon emissions, environment and health

- 6.32 There is no impact expected on sustainability, carbon emissions, environment and health.

7. How to Respond

- 7.1 Our consultation period ends at 5pm on **13 October 2009**. In accordance with Section 205(3) of the Act, you are therefore given notice that any representation about the proposals contained in the consultation paper must be received prior to the end of this period.
- 7.2 In framing this consultation paper, we have posed specific questions to help develop our proposed rules. These questions can be found in the body of the two sets of rules and also as a consolidated list in Annex 3. We would be grateful if you would reply to these questions, as well as commenting more generally on the issues raised where relevant. Where possible please can you link your comments to specific questions or parts of the paper rather than making general statements.
- 7.3 We would prefer to receive responses electronically (in Microsoft Word format), but hard copy responses by post or fax are also welcome. Responses should be sent to:
- Email: consultations@legalservicesboard.org.uk
- Post: Mahtab Grant,
Legal Services Board,
7th Floor, Victoria House,
Southampton Row,
London WC1B 4AD
- Fax: 020 7271 0051
- 7.4 We intend to publish all responses to this consultation on our website unless a respondent explicitly requests that a specific part of the response, or its entirety, should be kept confidential. We will record the identity of the respondent and the fact that they have submitted a confidential response in our decision document.
- 7.5 We are also keen to engage in other ways and we would welcome contact with stakeholders during the consultation period.

Annex 1 – Rules for New Body Designation Applications

A. DEFINITIONS

1. Words defined in these Rules have the following meanings:

Act	the Legal Services Act 2007
Applicant	a body who submits an Application
Application	an application to be an Approved Regulator that is submitted to the Board in accordance with these Rules
Approved Regulator	has the meaning given in Section 20(2) of the Act
Authorised Person	has the meaning given in Section 18 of the Act
Better Regulation Principles	the five principles of good regulation (being proportionality, accountability, consistency, transparency and targeting) as set out in both Sections 3(3) and 28(3) of the Act
Board	the Legal Services Board
Consultees	the Mandatory Consultees and any Optional Consultee
Consumer Panel	the panel of persons established and maintained by the Board in accordance with Section 8 of the Act
Mandatory Consultees	the OFT, the Consumer Panel and the Lord Chief Justice
OFT	the Office of Fair Trading
OLC	the Office of Legal Complaints established in accordance with Section 114 of the Act
Ombudsman Scheme	the scheme referred to in Section 115 of the Act
Optional Consultee	any person (other than a Mandatory Consultee) who the Board considers it reasonable to consult regarding an Application
Prescribed Fee	the fee that must accompany an Application as described in Section D of these Rules
Regulatory Arrangements	has the meaning given in Section 21 of the Act
Regulatory Objectives	has the meaning given in Section 1 of the Act
Reserved Legal Activity	has the meaning given in Section 12 and Schedule 2 of the Act

Schedule

the schedule to these Rules

B. WHO DO THESE RULES APPLY TO?

2. These are the Rules that apply if a body wishes to apply to the Board, under Part 2 of Schedule 4 of the Act, for the Board:
 - to make a recommendation to the Lord Chancellor that an order be made that the body be designated as an Approved Regulator in relation to one or more activities which constitute one or more Reserved Legal Activities; and
 - to approve what the body proposes as its Regulatory Arrangements if such an order is made.
3. These Rules set out:
 - the required content of any Application to the Board and some guidance in relation to that content (**see Section C**);
 - the amount of the Prescribed Fee that must accompany any Application (**see Section D**);
 - the processes and procedures that the Board will undertake in considering the Application (**see Section E**);
 - the manner in which the Applicant can make representations to the Board about its Application (**see Section F**);
 - the Board's criteria for determining Applications (**see Section G**); and
 - whom a body should contact if it has a question in relation to the Application process (**see Section H**).
4. In the event of any inconsistency between these Rules and the provisions of the Act, the provisions of the Act prevail.

C. CONTENTS OF APPLICATION

Content

5. The Act requires the Board to consider certain factors and to consult with other parties in order to reach its determination. Accordingly, the Application must contain sufficient information to allow the Board to make a proper consideration of the Application and to provide sufficient information to the Consultees to enable them to consider the Application in a meaningful way. Attached as a Schedule to these Rules is guidance on:

- the administrative information needed to enable processing of an Application (see Part 1 of the Schedule); and
 - the kind of evidence which the Board may consider in determining whether an Applicant's proposed Regulatory Arrangements are sufficient to guarantee delivery of the Regulatory Objectives (see Part 2 of the Schedule).
6. The onus is on the Applicant to supply all materials completely and accurately. The Board reserves the right to suspend consideration of an Application until the information it requires is supplied or to reject the Application outright and require a fresh Application to be made if the Application is judged so incomplete as to prevent proper assessment.

Guidance

7. The Board is expecting carefully prepared documentation which the executives and/or honorary officers of the Applicant (and the Applicant's independent advisors when applicable) are prepared to put their name to in stating that the information supplied is accurate or, in the case of forecast data, is a best estimate based on good research and informed professional judgement. If the Applicant cannot demonstrate this level of executive and advisory confidence then it is not appropriate for an Application to be made.
8. The Board would expect that some parts of the Schedule would be less relevant to an Applicant who is already an Approved Regulator which is applying to add an additional Reserved Legal Activity to its competences or to a new Applicant which has a strong record of regulatory performance in a related sector than to a wholly new organisation. Hence, the Board will take a proportionate view of risk in deciding precisely how much information to seek in any given case.
9. All documents supplied will be subject to publication and to the scrutiny of the Consultees whom the Act prescribes must consider Applications. Consequently Applicants should have regard to this in relation, in particular, to supplying information which might be commercially sensitive and/or contain personal data. The Board will consider limited requests for redaction of information from documents that are published on these grounds but will not be able to redact information from materials sent to the Mandatory Consultees. The Board requires successful Applicants to maintain a publicly accessible internet space containing all of the materials that are submitted by the Applicant in its Application.
10. The Board will normally expect to see evidence of consultation with other Approved Regulators and the OLC on matters (such as code of conduct) where there is likely to be an interaction between the Applicant and the existing Approved Regulators. The Applicant should also consult with members of, and representative bodies for, professions that may be affected by the Application and with the regulators of these professions. The Board will also normally expect the Applicant to consider, and if appropriate consult with, any other relevant stakeholders.

11. The Board reserves the right to retain advisors to consider the information supplied and may, at its discretion, adjust the Prescribed Fee to recognise this. Applicants are encouraged to consider how in preparing, presenting and in certifying the information that they submit, they can minimise the need for the Board to take external advice.
12. The Board's judgement will take account of professional guidance, Consultee responses received and on the overall competence, completeness and executive and advisor endorsement of the Applications received. The Board, as an oversight regulator, will not usually reanalyse the information supplied unless there are compelling reasons for doing so.
13. Board approval of a new body as an Approved Regulator, or of an existing Approved Regulator as an Approved Regulator in relation to an additional Reserved Legal Activity represents an assessment that:
 - the Applicant appears well prepared and appears to understand the roles and responsibilities granted to Approved Regulators under the Act; and
 - no major valid objections have been made to the Applicant's Application by the Consultees.

Question 1 – Bearing in mind the Regulatory Objectives and the Better Regulation Principles, do you agree with the Board's approach to its requirements for the content of Applications?

Question 2 – If you do not agree with the Board's approach to its requirements for the content of Applications, what alternative approaches would you suggest and why?

Question 3 – What additions to or alterations to the Application process would you suggest?

D. PRESCRIBED FEE

14. Any Application must be accompanied by the Prescribed Fee of £ *[insert]*. The Prescribed Fee must be paid by electronic funds transfer to the following bank account:

Bank: *[Insert name]*

Sort code: *[Insert]*

Account No: *[Insert]*

Account Name: *[Insert name]*

Reference: *[[Applicant name]/New Body Designation Application]*

Question 4 – What do you think the appropriate level of, and method of calculation of the Prescribed Fee should be?

Question 5 – Do you think we should reduce the Prescribed Fee for Applications from existing Approved Regulators to take on additional Reserved Legal Activities?

Question 6 – Do you agree that the Board should use external advisors when necessary with the cost of these being met by way of an adjustment to the Prescribed Fee?

E. PROCESSES AND PROCEDURE

Sending the Application

15. Subject to Rule 16 below, the Applicant must submit their Application (and, proof of transmission of the Prescribed Fee) either by email, post or courier to the relevant address shown below:

- If by email to: *[insert email address]*

- If by post or courier to:

Address: Legal Services Board
7th Floor Victoria House
Southampton Row
London WC1B 4AD

For the attention of: *[insert name]*

16. Once developed, the Applicant must, unless otherwise agreed with the Board, submit their Application (and, proof of transmission of the Prescribed Fee) to the Board using the online tool at www.legalservicesboard.org.uk.

17. On receipt of the Application and the Prescribed Fee, an acknowledgement email will be sent to the Applicant by the Board.

18. The Board will consider the Application and may ask the Applicant for such additional information as the Board may reasonably require.

19. The Board has the discretion to refuse to consider, or to continue its consideration of, an Application if it believes that it has not received all the information it requires.

20. Where the Board decides to refuse to consider, or to continue its consideration, of an Application it will give the Applicant notice of that decision and the reasons for it. Any such notice will be published by the Board on its website.

21. An Applicant may at anytime withdraw or amend their Application by giving notice to that effect to the Board.

Obtaining advice

22. On receipt of an Application, and all further information that the Board may require under Rule 18, the Board will send a copy of the Application (together with any further information received) to the Mandatory Consultees and any Optional Consultee.

23. The Board will specify to the OFT, the Consumer Panel and any Optional Consultee a time period in which each body must provide their advice on the Application to the Board. The Board intends to:

- request that these bodies provide their advice within a time period which is reasonable, published and variable dependent on the volume and complexity of the Application received; and
- request that these bodies agree that if they do not provide their advice within the specified time period, then they will be deemed to have elected not to provide any advice.

24. The OFT, the Consumer Panel and any Optional Consultee will then each consider the Application within the specified time period and will provide their advice to the Board.

25. In providing their advice to the Board, each Consultee may ask the Applicant (or any other person) to provide them with such additional information as they may require.

26. The Board will then provide the advice it receives from the OFT, the Consumer Panel and any Optional Consultee to the Lord Chief Justice and will specify to the Lord Chief Justice a time period in which he must provide his advice on the Application to the Board. Again, the time period that the Board will specify will depend on the particular circumstances of the Application.

27. The Lord Chief Justice will then consider the Application and will provide his advice to the Board.

28. Once the Board has received the advice of the Lord Chief Justice, it will provide a copy of all the advice that has been given by the Consultees to the Applicant.

Representations

29. The Applicant has **28 days** beginning on the day on which a copy of the advice referred to in Rule 28 is given to the Applicant, or such longer period as the Board may specify in a particular case, to make representations to the Board about the advice. Any representations made by the Applicant must be made in accordance with Section F of these Rules.

Publication of Advice

30. As soon as practicable after the end of the period within which representations under Rule 29 may be made, the Board will publish on its website:
- the advice received from the Consultees; and
 - subject to Rule 31, any written representations duly made by the Applicant (and the report of oral representations (if any) prepared under Rule 49).
31. Prior to the publication of any written representations (and the report of oral representations (if any) prepared under Rule 49) the Board will decide whether any parts of the representations shall remain private and, if so why, taking account of representations from the Applicant. The Board's normal assumption is that none of the representations will remain private.

The Board's Decision

32. After considering the Application (and any additional information received under Rule 18), the advice received from the Consultees and any representations by the Applicant and any other information that the Board considers relevant to the Application, the Board will decide whether to grant the Application.
33. If the Board decides to grant the Application, it will notify the Applicant and will recommend to the Lord Chancellor that an order be made.
34. If the Board decides not to grant the Application, the Board will write to the Applicant with the reasons for its decision.
35. The Board will publish on its website a copy of any decision that it gives to the Applicant.
36. Where an Application relates to more than one Reserved Legal Activity, the Board may grant the Application in relation to all or any one of them.

The Lord Chancellor's Decision

37. The Lord Chancellor has up to 90 days from the date on which the Board makes its recommendation in accordance with Rule 33 to notify the Applicant of whether or not he will make an order in accordance with the recommendation.
38. Where the Board's recommendation relates to more than one Reserved Legal Activity, the Lord Chancellor may make an order in relation to all or any one of them.
39. If the Lord Chancellor decides not to make an order in accordance with the Board's recommendation, the Lord Chancellor's notice to the Applicant must state the reasons for that decision. The Lord Chancellor will publish any notice given under Rule 37.

Timing

40. Under the provisions of the Act the Board has 12 months from the date of the Application to give its decision to the Applicant and its recommendation to the Lord Chancellor (if appropriate). The Board may extend this period up to a maximum of 16 months from the date of Application by giving notice to the Applicant. The Board may only give such a notice if it has first consulted with the Mandatory Consultees. Such notice will state the Board's reasons for extending the period and will also be published by the Board on its website.
41. Notwithstanding Rule 40, the Board will aim to deal with an Application within six months from the later of:
- the date of submission of the Application; and
 - the final date of submission of any further information that the Board may request under Rule 18.

F. FORM OF REPRESENTATIONS

Written representations

42. Subject to Rules 43 and 45, all representations made to the Board must be in writing and must be submitted to the Board either by email, post or courier to the relevant address set out at Rule 15.
43. Once developed, the Applicant must, unless otherwise agreed with the Board, submit all representations to the Board using the online tool at www.legalservicesboard.org.uk.
44. All representations must be received by the Board within the period set out in Rule 29. Representations out of this time will not be considered unless, exceptionally and at the sole discretion of the Board, they appear to raise matters of substance relevant to the Application which are not already under consideration.

Oral representations

45. The Board may, at its sole discretion authorise an Applicant to make oral representations at its own expense. On grounds of cost, efficiency, transparency and consistency of treatment between Applicants, the Board will not normally accept oral representations unless the particular circumstances of the Applicant or the complexity of the issues merit an exception to the normal process in individual cases. If the Board grants such an exception, it will publish its reasons for doing so.
46. Should the Board authorise an Applicant to make oral representations, the representations will take place at a hearing to be held either by telephone, video conference or in person. The Board will usually give the Applicant not less than ten

business days notice that there will be a hearing. If the hearing is to be held in person the notice will specify the place and time at which the hearing will be held. If the hearing is to be held by telephone or video conference, the notice will specify the time of the telephone call or video conference and also the arrangements for facilitating the telephone call or video conference.

47. Hearings conducted in person (rather than by telephone or video conference) will normally be held in public. However, the Applicant may request, with reasons, that aspects of the hearing be held in private. The Board will consider the reasons given and will then publish the reasons for any decision that it reaches. Where the hearing is held in private, the Board may admit such persons as it considers appropriate.
48. The Applicant must appear at the hearing, either in person, by telephone or by video conference (as the case may be), and may be represented by any persons whom it may appoint for the purpose. The proceeding of the hearing will be recorded on behalf of the Board and will be transcribed onto paper.
49. Where oral representations are made, the Board will prepare a report of those representations which will be based on the transcription of the hearing made in accordance with Rule 48. Before preparing the report, the Board:
- must give the Applicant a reasonable opportunity to comment on a draft of the report; and
 - must have regard to any comments duly made by the Applicant.
50. Subject to complying with the timing requirements set out in Rule 40, the Board reserves the right to extend processes to take account of the need to transcribe and verify oral submissions and to require the Applicant to pay for the cost of the transcription service.
51. The Board may from time to time adjourn the hearing.

Question 7 – Do you agree with the approach taken to oral representations?

Question 8 – Bearing in mind the Regulatory Objectives, the Better Regulation Principles and the need to operate efficiently in relation to the Freedom of Information Act, please could you suggest improvements to the suggested process.

G. CRITERIA FOR DETERMINING APPLICATIONS

52. In accordance with paragraphs 13(2) and 13(3) of Schedule 4 of the Act, the Board will only grant an Application if it is satisfied:
- that, if the Lord Chancellor were to make an order designating the Applicant in relation to the particular Reserved Legal Activity, the Applicant would have appropriate internal governance arrangements in place at the time the order takes

effect and, in particular that the exercise of the Applicant's regulatory functions would not be prejudiced by its representative functions and, so far as is reasonably practicable, regulatory decisions would be taken independently of representative ones;

- that, if such an order, were to be made, the Applicant would be competent, and have sufficient resources, to perform the role of Approved Regulator in relation to the Reserved Legal Activity at that time;
- that the Applicant's proposed Regulatory Arrangements make appropriate provision for the regulation of its members;
- that the Applicant's proposed Regulatory Arrangements comply with the requirements of Section 52 of the Act in that they must make such provision as is reasonably necessary to prevent regulatory conflicts;
- that the Applicant's proposed Regulatory Arrangements comply with requirements of Section 54 of the Act in that they must make such provision as is reasonably practicable and, in all the circumstances appropriate: (a) to prevent external regulatory conflicts; (b) to provide for the resolution of any external regulatory conflicts that arise; and (c) to prevent unnecessary duplication or regulatory provisions made by an external regulatory body;
- that the Applicant's proposed Regulatory Arrangements comply with the requirements of Section 112 of the Act in that they must make provision requiring each relevant Authorised Person: (a) to establish and maintain procedures for the resolution of relevant complaints; or (b) to participate in, or to make arrangements to be subject to, such procedures established and maintained by another person, and provision for the enforcement of that requirement;
- that the Applicant's proposed Regulatory Arrangements comply with the requirements of Section 145 of the Act in that they must make: (a) provision requiring each relevant Authorised Person to give ombudsmen all such assistance requested by them, in connection with the investigation, consideration or determination or complaints under the Ombudsman Scheme, as that person is reasonably able to give; and (b) provision for the enforcement of that requirement.

53. In addition, when considering an Application the Board will consider how consistent an Applicant's proposed Regulatory Arrangements are with the requirements of Section 28 of the Act (duty to promote the Regulatory Objectives, pursue best regulatory practice etc).

Questions 9 – Do you consider that these are the appropriate criteria?

H. FURTHER INFORMATION

54. If you have any questions about the Application process or the preparation of an Application, you should contact the Board at:

Address: Legal Services Board
 7th Floor Victoria House
 Southampton Row
 London WC1B 4AD

Email: *[insert details]*

Telephone: *[insert details]*

SCHEDULE

Part 1 - Administrative Information Needed to Enable Processing of an Application

	What is required	Section of Act	Possible Evidence
1.	Background information	N/A	Contact details in relation to the person(s) the Board should contact in relation to the Application, including job title, email address and phone number, a physical address for communication and the Applicant's registered office address (if different from communication address) and company registration number if applicable
2.	A statement of the Reserved Legal Activity or Activities to which the Application relates	Sch. 4, paragraph 3(3)(a)	Specification of which of the Reserved Legal Activities set out in Section 12 and Schedule 2 of the Act the Applicant proposes to regulate
3.	Details of the Applicant's proposed Regulatory Arrangements	Sch. 4, paragraph 3(3)(b)	<p>Relevant documentation on how the Applicant proposes to establish and discharge its Regulatory Arrangements, as defined in Section 21 of the Act i.e.:</p> <ul style="list-style-type: none"> • Authorisation processes • Practice rules • Code of conduct • Disciplinary arrangements • Qualification regulations • Indemnification arrangements • Compensation arrangements • Licensing rules • Other related rules <p>A clear explanation of how the Applicant's Regulatory Arrangements actively contribute to the achievement of the Regulatory Objectives and remove risks to their delivery</p>
4.	Such explanatory material (including material about the Applicant's constitution and activities) as the Applicant considers is likely to be needed for the purposes of Part 2 of Schedule 4	Sch. 4, paragraph 3(3)(c)	<p>Memorandum and articles of association or equivalent constitutional documentation</p> <p>Current details of legal entity structure, ownership, list of directors</p> <p>Statement of the non-regulatory activities the Applicant intends to carry out and how these will be managed in accordance with the requirements of the Act and such rules as the Board shall make from time to time</p>

What is required	Section of Act	Possible Evidence	
		A business plan for the activity to be regulated, demonstrating the proposed governance and funding arrangements and sensitivity analysis showing how it relates to different forecasts	
5.	Details of the authority which the Applicant proposes to give persons to carry on activities which are Reserved Legal Activities	Sch. 4, paragraph 3(5)(a)	See Item 3
6.	Details of the nature of the persons to whom <i>each aspect of</i> the authority is to be given	Sch. 4, paragraph 3(5)(a)	See Item 3
7.	Regulations (however they may be described) as to the education and training which persons must receive, and any other requirements which must be met by or in respect of them, in order for them to be authorised	Sch. 4, paragraph 3(5)(b)	<p>Details might include:</p> <ul style="list-style-type: none"> • Split between general principles (i.e. duty to the Supreme Court) and specific activity (i.e. staff training, client money handling etc) • Split between mandatory elements and guidance • Explanation of any variation with the practices adopted by others currently regulating the activity
8.	Rules (however they may be described) as to the conduct required of persons in carrying on any activity by virtue of the authority	Sch. 4, paragraph 3(5)(c)	Details of the activities within each relevant Reserved Legal Activity (e.g. conducting CPD eligible training, handling client money, supervising trainees, supervising lawyers or other disciplines)
9.	In deciding what advice to give, the OFT must, in particular, have regard to whether an order ... would (or would be likely to) prevent, restrict or distort competition within the market for reserved legal services to any significant extent	Sch. 4, paragraph 6(2)	The OFT is considering whether to issue its own guidance on the issues to which it is likely to have regard in giving advice
10.	In deciding what advice to give, the Consumer Panel must, in particular, have regard to the likely impact on consumers of the making of an order	Sch. 4, paragraph 7(2)	<p>Explanation of how the Regulatory Arrangements will:</p> <ul style="list-style-type: none"> • Protect and promote the interests of consumers generally • Meet the specific requirements in terms of indemnification and complaint handling

What is required	Section of Act	Possible Evidence
11.	A selected consultee may give the Board such advice as the selected consultee thinks fit in respect of the Application	Sch. 4, paragraph 8 Information on any matters specified by a selected consultee
12.	The Lord Chief Justice must, in particular, have regard to the likely impact on the courts in England and Wales of the making of an order	Sch. 4, paragraph 9(3) Information on any matters specified by the LCJ
13.	The Board may grant an Application in relation to a particular Reserved Legal Activity only if it is satisfied that, if an order were to be made designating the body in relation to that activity, the Applicant would have appropriate internal governance arrangements in place at the time the order takes effect	Sch.4, paragraph 13(2)(a) See Item 4
14.	The Board may grant an Application in relation to a particular Reserved Legal Activity only if it is satisfied that, if such an order were to be made, the Applicant would be competent, and have sufficient resources, to perform the role of Approved Regulator in relation to the Reserved Legal Activity at that time	Sch. 4, paragraph 13(2)(b) Statement from authorised staff/officeholders in the organisation that there are sufficient resources, an explanation of how this has been assessed Documents signed off by an external accountant as being calculated, presented and supported to a standard that could pass a statutory audit Business Plan for coming year and 3 year forward look Risk management strategy Staff development and retention strategies
15.	The Board may grant an Application in relation to a particular Reserved Legal Activity only if it is satisfied that, the Applicant's proposed Regulatory Arrangements make appropriate provision	Sch. 4, paragraph 13(2)(c) Assessment of how the proposed Regulatory Arrangements are consistent with Better Regulation Principles
16.	Compliance with the requirement imposed by Sections 52 and 54 (resolution of regulatory conflict)	Sch. 4, paragraph 13(2)(d) A statement identifying regulators with whom conflict might arise and the work undertaken to date and proposed to avoid this, in particular in relation to the interaction between an individual regulated by one Approved Regulator and an employing entity regulated by another Approved Regulator

	What is required	Section of Act	Possible Evidence
17.	Compliance with the requirements imposed by Sections 112 and 145 (requirements imposed in relation to the handling of complaints)	Sch. 4, paragraph 13(2)(e)	Current or draft policies showing compliance with any rules made under Sections 112 and 145 of the Act and any OLC guidance
18.	The rules made for the purposes of sub-paragraph 2(a) must in particular require the Board to be satisfied that the exercise of the Applicant's regulatory functions would not be prejudiced by any of its representative functions	Sch. 4, paragraph 13(3)(a)	Statement on how the arrangements comply with the principles of the Act and such rules as the Board may make from time to time
19.	The rules made for the purposes of sub-paragraph 2(a) must in particular require the Board to be satisfied that decisions relating to the exercise of the Applicant's regulatory functions would so far as reasonably practicable be taken independently from decisions relating to the exercise of the Applicant's representative functions	Sch. 4, paragraph 13(3)(b)	See Item 18

Part 2 – Evidence in relation to Regulatory Arrangements

Principles (each principle may relate to more than one risk)	Risks	Relates to Regulatory Objectives (see Section 1(1))	Relates to Regulatory Arrangement (see Section 21(1))	Evidence to underpin approval of designation as an Approved Regulator
Clients money must be protected	Clients money is misused by regulated person or unprotected from entity failure	(d), (f), (h)	(h)	Approved Regulators must ensure that Authorised Persons must keep clients money separate from own Approved Regulators must be able to compensate clients as per Section 21(2) May involve client account rules; insurance requirements; compensation fund or insurance <i>or alternatives</i>
Authorised Persons must act in clients' interests subject to duty to court	Authorised Persons do not or are unable to act in the clients interest	(a), (b), (d), (e), (h)	(g), (d)	Approved Regulators must demonstrate how regulated persons and entities are indemnified against losses arising from claims in relation to any description of civil liability incurred by them, or by employees or former employees of theirs, in connection with their activities as such regulated persons or entities Approved Regulators must have a code of conduct that enshrines the primacy of acting in the client interest and subjugates other pressures, be they commercial or otherwise to that principle
Legal services should only be delivered by regulated persons of appropriate skill and competence	Legal services are not of the appropriate quality	(c), (d), (e), (h)	(a), (b), (c)	Approved Regulators must ensure that definitions of appropriate skill and competence are proportionate in order to ensure both value and professionalism Easily accessible redress should be in place
Compliance with professional principles should be enshrined in regulation	Legal services are not delivered in accordance with professional principles	(a), (d), (h)	(d), (f)	Approved Regulators must have a code of conduct that defines the professional principles that are compulsory for regulated community
Ditto above	Authorised Persons and entities do not comply with	(a), (b), (c), (d), (e), (f), (g), (h)	(e)	Approved Regulator must have a disciplinary remit and processes that allow for setting standards and managing compliance of

Principles (each principle may relate to more than one risk)	Risks	Relates to Regulatory Objectives (see Section 1(1))	Relates to Regulatory Arrangement (see Section 21(1))	Evidence to underpin approval of designation as an Approved Regulator
	regulation			Authorised Persons and entities, efficient investigatory systems and disciplinary powers in the event of breaches of the regulatory framework
Responsibilities for front line complaints handling and interactions with the OLC should be clear	Consumers do not receive timely complaint investigation or redress when justified	(a), (b), (c), (d), (h)	(c), (d), (h)	Approved Regulator must have rules specifying how rights to complain and redress can be accessed, including the right of access to the OLC at an appropriate stage
Regulatory Arrangements should advance the objective of supporting competition	Regulatory requirements act as a barrier to competition by restricting legitimate entry	(d), (e)	(c), (d)	Approved Regulator should be able to demonstrate that their rules are the minimum necessary to address the full set of objectives and do not have unintended consequences in terms of restricted entry
Representative and regulatory functions should be discharged and decisions made, so far as reasonably practicable, independently of each other	Decisions lack credibility and independence because of actual or perceived influence from the representative arm of an Approved Regulator	(a), (d), (f)	(c), (d)	Approved Regulators should have arrangements which implement the Act and such rules as the LSB make on the issue in relation to regulatory strategy, decisions and resourcing of the regulatory arm
Regulation should clearly support the rules of law	Commercial considerations undermine duty to the court	(b), (c), (d), (f)	(a), (c), (d)	Approved Regulators' rules and processes should unequivocally give priority to this duty
The legal professions make up should reflect the population it serves	Public confidence is lost if the profession appears to be a "closed shop"	(c), (d), (f)	(a), (b), (f)	Approved Regulators should be able to demonstrate processes which address diversity concerns
Consumers should be actively involved in decision making throughout their dealings with the profession	Consumers poor understanding restricts their ability to access justice	(a), (c), (d), (g)	(a), (d), (h)	Approved Regulators can demonstrate how their processes address public legal education

Annex 2 – Rules for Rule Change Applications

A. DEFINITIONS

1. Words defined in these Rules have the following meanings:

Act	the Legal Services Act 2007
Alteration	has the meaning given in paragraph 19(5) of Schedule 4 of the Act
Applicant	an Approved Regulator who submits an Application
Application	an application to approve an Alteration to the Regulatory Arrangements of an Approved Regulator that is submitted to the Board in accordance with Part 3 of Schedule 4 of the Act and these Rules
Approval Notice	has the meaning given in Rule 20
Approved Regulator	has the meaning given in Section 20(2) of the Act
Authorised Person	has the meaning given in Section 18 of the Act
Better Regulation Principles	the five principles of good regulation (being proportionality, accountability, consistency, transparency and targeting) as set out in both Sections 3(3) and 28(3) of the Act
Board	the Legal Services Board
Designation Requirements	the requirements set out in paragraph 25(4) of Schedule 4 of the Act
Exempt Alteration	an Alteration to an Approved Regulator's Regulatory Arrangements that fulfils the requirement set out in Section C of these Rules
Initial Decision Period	has the meaning given in Rule 20
Licensing Authority	has the meaning given in Section 73 of the Act
Regulatory Arrangements	has the meaning given in Section 21 of the Act
Regulatory Objectives	has the meaning given in Section 1 of the Act
Reserved Legal Activity	has the meaning given in Section 12 and Schedule 2 of the Act
Warning Notice	has the meaning given in Rule 20

B. WHO DO THESE RULES APPLY TO?

2. These are the Rules that apply if an Approved Regulator wishes to make an Alteration to its Regulatory Arrangements²⁵.
3. An Alteration to an Approved Regulator's Regulatory Arrangements does not have effect unless:
 - it is an Alteration approved as a result of the Lord Chancellor making an order to approve a body as an Approved Regulator in accordance with Part 2 of Schedule 4 of the Act;
 - it is an Alteration made in compliance with a direction under Section 32 of the Act;
 - it is approved by virtue of paragraph 16 of Schedule 10 of the Act (approval of licensing rules on designation by order as Licensing Authority);
 - it is approved by virtue of paragraph 7 of Schedule 18 (approval of proposed regulatory arrangements when granting "qualifying regulator" status for the purposes of Part 5 of the Immigration and Asylum Act 1999 (c. 33));
 - it is an Exempt Alteration;
 - it is an Alteration approved by the Board in accordance with Part 3 of Schedule 4 of the Act.
4. These Rules set out:
 - the requirements to be met for an Alteration to be an Exempt Alteration (see **Section C**);
 - the required contents of an Application to the Board for approval in accordance with Part 3 of Schedule 4 of the Act (**see Section D**);
 - the processes and procedures that the Board will undertake in considering the Application (**see Section E**);
 - the manner in which the Applicant can make representations to the Board about its Application (**see Section F**);
 - the Board's criteria for determining Applications (see **Section G**); and
 - whom a body should contact if they have a question in relation to the Application process (see **Section H**).

²⁵ These rules will be updated to take account of alterations to deal with the Regulatory Arrangements of Licensing Authorities once the regime under Part 5 of the Act (Alternative Business Structures) has been finalised

5. In the event of any inconsistency between these Rules and the provisions of the Act, the provisions of the Act prevail.

C. EXEMPT ALTERATIONS

6. The Board has the power under paragraph 19(3) of Schedule 4 of the Act to direct that an Alteration is an Alteration that does not need to go through the Board's full consideration process and as such is an Exempt Alteration.
7. The Board believes that it is important for all Approved Regulators and other interested parties to be aware of all Alterations that are being made to the Regulatory Arrangements of Approved Regulators in order that consistency and best practice can be encouraged – even if such Alterations are not viewed as material.
8. Therefore the Board requires Approved Regulators to notify the Board of all Alterations to their Regulatory Arrangements by way of submitting an Application to the Board in accordance with these Rules.
9. Where the Applicant believes that the Alteration is not material and should be classed as an Exempt Alteration then the Applicant can simplify the Application in the ways indicated in Section D below.
10. The Board will automatically publish the Application on its website in order to fulfil the objectives outlined in Rule 7. If within 28 days from the date of receipt of the Application by the Board:
 - the Board regards the Alteration contained in the Application to be non material; and
 - the Board has received no representations from any other Approved Regulators or any other interested parties (such as an Authorised Person) suggesting that the Alteration should not be exempt and therefore requires further consideration,then the Board will allow the Application to be deemed granted in accordance with paragraph 21(3) of Schedule 4 of the Act.
11. If the Board regards the Alteration contained in the Application as material and/or the Board receives representations of the kind referred to in Rule 10 above then the Board may exercise its rights under paragraph 21(1)(b) of Schedule 4 of the Act to issue a Warning Notice.
12. If the Board elects to issue a Warning Notice in accordance with Rule 11 it will allow the Applicant to withdraw the Application and file a new Application at this stage should the Applicant wish to do so.

Question 10 – Do you agree with the Board's view that the process suggested is the most effective way to address the Regulatory Objectives and the Better Regulation Principles in relation to approaching potentially low impact rule changes? If not, then please can you suggest how the Objectives and Principles could be better addressed?

D. CONTENTS OF APPLICATION

13. An Applicant must include the following information in their Application:

- the name, address, telephone number and email address of the person whom the Board should contact in relation to the Application;
- details of the proposed Alteration;
- details of such of the Applicant's Regulatory Arrangements as are relevant to the Application including a statement setting out:
 - the nature and effect of the existing Regulatory Arrangement;
 - the nature and effect of the proposed Alteration;
 - an explanation of why the Applicant wishes to make the Alteration in question;
 - where the Applicant regards the Application as an Exempt Alteration a statement to this effect with reasons;
- a statement in respect of each proposed Alteration explaining how and why the Alteration will either help to promote, be neutral towards or be detrimental to each of the Regulatory Objectives. If relevant, the Applicant must explain why the benefit of the Alteration in relation to some of the Regulatory Objectives outweighs its negative effect on other Regulatory Objectives. For proposed Exempt Alterations this requirement can be simplified to a certification that all of the Regulatory Objectives will either be met or be unaffected by the Alteration;
- a statement explaining how and why the Applicant, feels that the Alterations requested fulfil the Applicant's obligations to comply with its obligations under Section 28 of the Act to have regard to the Better Regulation Principles;
- a statement explaining the desired outcome of the Alteration and how the Applicant intends to assess whether the desired outcome has been achieved;
- a statement explaining whether the proposed Alteration is one that affects areas regulated by other Approved Regulators. If this is the case, the Applicant should provide evidence of consultation with, and responses from, these other Approved Regulators. This consultation should deal with the possibility of any regulatory conflicts and also the possibility of harmonising the Regulatory Arrangements of Approved Regulators regulating the same Reserved Legal Activities. The purpose of this requirement is to ensure that Sections 52 to 54 of the Act are complied with and that best practice is shared in common areas of regulation. For proposed Exempt Alterations, these requirements can be simplified to an explanation of why the nature of the Alteration makes wider consultation unnecessary;

- details of when the Applicant hopes to implement the Alteration;
- full details of all consultation processes undertaken and responses received by the Applicant in relation to the Alteration, which should include consultations of Approved Regulators and other appropriate regulators when applicable. For proposed Exempt Alterations this requirement can be simplified to an explanation of why the nature of the Alteration makes wider consultation unnecessary;
- such other explanatory material as the Applicant considers is likely to be needed for the purposes of Part 3 of Schedule 4 of the Act.

14. For reasons of efficiency and so that the affect of Alterations can be seen cumulatively, any Application should only be in respect of related Alterations to an Applicant's Regulatory Arrangements. If a number of related Alterations are expected, an Applicant should wait for these all to be drafted before submitting an Application to the Board. Unrelated Alterations must each be the subject of a separate Application to the Board. For example, all Alterations relating to training requirements should be presented in one Application but Alterations to a code of conduct definition on "independence" and an Alteration to "client money" handling rules that arise independently of one another should be made in separate Applications. If in doubt, an Applicant should contact the Board prior to making an Application.

Question 11 – Bearing in mind the Regulatory Objectives and the Better Regulation Principles, do you agree with the requirements specified above? If not, why not? What alternative or additional requirements would you recommend?

E. PROCESSES AND PROCEDURE

Sending the Application

15. Subject to Rule 16 below, the Applicant must submit their Application, either by email, post or courier to the relevant address shown below:

- If by email to : *[insert email address]*
- If by post or courier to:

Address:	Legal Services Board 7 th Floor Victoria House Southampton Row London WC1B 4AD
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For the attention of:	<i>[insert name]</i>
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16. Once developed, the Applicant must, unless otherwise agreed with the Board, submit their Application to the Board using the online tool at www.legalservicesboard.org.uk.

17. On receipt of the Application a copy of the proposed Alterations to the Applicant's Regulatory Arrangements will be published on the Board's website.
18. The Board will consider the Application and may ask the Applicant for such additional information as the Board may reasonably require.
19. The Board has the discretion to refuse to continue its consideration of an Application if it believes that it has not received all the information it requires – this power is granted under paragraph 25(3)(f) of Schedule 4 of the Act as the Board will, in these circumstances, feel that the approval of the Alteration would occur otherwise than in accordance with the procedures for review established by the Board under the Act.

Initial determination

20. On receipt of an Application, the Board has **28 days** (beginning on the day the Board receives the Application) (the "**Initial Decision Period**") to:
 - grant the Application and give the Applicant notice to that effect (an "**Approval Notice**") (paragraph 21(1)(a) of Schedule 4);
 - give the Applicant a notice stating that the Board is considering whether to refuse the Application (a "**Warning Notice**") (paragraph 21(1)(b) of Schedule 4); or
 - give neither an Approval Notice or a Warning Notice and allow the Application to be deemed granted (paragraph 21(3) of Schedule 4).
21. The Board will publish on its website any Approval Notice or any Warning Notice given to the Applicant.
22. The Board may extend the Initial Decision Period with the consent of the Applicant or by giving an extension notice to the Applicant. An extension notice must specify the period of the extension and must state the Board's reasons for extending the Initial Decision Period. Any period of extension specified in the notice must end no later than the end of the period of 90 days beginning on the day the Application was made.

Advice

23. Where the Board has given the Applicant a Warning Notice, the Board may invite such persons as it considers appropriate to give the Board advice regarding whether the Application should be granted. A person to whom such an invitation is given, may for the purposes of giving their advice, ask the Applicant (or any other person) to provide them with such additional information as they may require.
24. Once the Board has received any advice provided under Rule 23, it will provide a copy of that advice to the Applicant.

Representations

25. The Applicant has **28 days** beginning on the day on which a copy of the advice referred to in Rule 23 is given to the Applicant, or such longer period as the Board may specify in a particular case, to make representations to the Board about the advice. Any representations made by the Applicant must be made in accordance with Section F of these Rules.

Publication of Advice

26. As soon as practicable after the end of the period within which representations under Rule 25 may be made, the Board will publish on its website:

- any advice received pursuant to Rule 23; and
- subject to Rule 27, any written representations duly made by the Applicant (and the report of oral representations (if any) prepared under Rule 43).

27. Prior to the publication of any written representations (and the report of oral representations (if any) prepared under Rule 43) the Board will decide whether any parts of the representations shall remain private and why, taking account of representations from the Applicant. The Board's normal assumption is that none of the representations will remain private.

The Board's Decision

28. After considering the Application (and any additional information received under Rule 18), the advice received under Rule 23, any representations by the Applicant and any other information that the Board considers relevant to the Application, the Board will decide whether to grant the Application.

29. The Board will give notice of its decision to the Applicant. Where the Board decides to refuse the Application, the notice will specify the reasons for that decision.

30. The Board will publish on its website a copy of any decision that it gives to the Applicant.

31. The Board may grant the Application in whole or in part.

32. The Board is obliged to analyse and make its decision in accordance with the explicit provisions of paragraphs 25(3) of Schedule 4 of the Act, the details of which are specified in Section G of these Rules.

Timing

33. Under the provisions of the Act if the Board gives the Applicant a Warning Notice it has 12 months (beginning with the day the Applicant receives the Warning Notice) to give its

decision to the Applicant. If the Board fails to make a decision within this period, the Application is deemed to have been granted by the Board at the end of that period.

34. The Board, may, on one or more occasions, give the Applicant a notice extending the decision period from 12 months up to maximum of 18 months from the day the Applicant receives the Warning Notice. The Board will publish on its website any such notices.
35. The Board will endeavour to deal with an Application within the Initial Decision Period, however, where this is not possible and the Board has extended the Initial Decision Period in accordance with Rule 22 or served a Warning Notice on the Applicant, notwithstanding other provisions in these Rules, the Board will aim to deal with:
 - any Application involving a simple Alteration within six weeks from the later of: (a) the date of submission of the Application; and (b) the final date of submission of any further information that the Board may request under Rule 18;
 - any Application involving a more complex Alteration within 3 months from the later of: (a) the date of submission of the Application; and (b) the final date of submission of any further information that the Board may request under the Rules.

F. FORM OF REPRESENTATIONS

Written representations

36. Subject to Rules 37 and 39, all representations made to the Board must be in writing and must be submitted to the Board either by email, post or courier to the relevant address set out at Rule 16.
37. Once developed, the Applicant must, unless otherwise agreed with the Board, submit all representations to the Board using the online tool at www.legalservicesboard.org.uk.
38. All representations must be received by the Board within the period set out in Rule 25. Representations out of this time will not be considered unless, exceptionally and at the sole discretion of the Board, they appear to raise matters of substance relevant to the Application which are not already under consideration.

Oral representations

39. The Board may, at its sole discretion authorise an Applicant to make oral representations. The Applicant must bear its own costs in any such application. On grounds of cost, efficiency, transparency and consistency of treatment between Applicants, the Board will not normally accept oral representations unless the particular circumstances of the Applicant or the complexity of the issue merit an exception to the normal process in individual cases. If the Board grants such an exception, it will publish its reasons for doing so.
40. Should the Board authorise an Applicant to make oral representations, the representations will take place at a hearing to be held either by telephone, video

conference or in person. The Board will usually give the Applicant not less than ten business days notice that there will be a hearing. If the hearing is to be held in person, the notice will specify the place and time at which the hearing will be held. If the hearing is to be held by telephone or video conference, the notice will specify the time of the telephone call or video conference and also the arrangements for facilitating the telephone call or video conference.

41. Hearings conducted in person (rather than by telephone or video conference) will normally be held in public. However, the Applicant may request, with reasons, that aspects of the hearing be held in private. The Board will consider the reasons given and will then publish the reasons for any decision that it reaches. Where the hearing is held in private, the Board may admit such persons as it considers appropriate.
42. The Applicant must appear at the hearing, either in person, by telephone or by video conference (as the case may be) and may be represented by any persons whom it may appoint for the purpose. The proceeding of the hearing will be recorded on behalf of the Board and will be transcribed onto paper.
43. Where oral representations are made, the Board will prepare a report of those representations which will be based on the transcription of the hearing made in accordance with Rule 42. Before preparing the report, the Board:
 - must give the Applicant a reasonable opportunity to comment on a draft of the report; and
 - must have regard to any comments duly made by the Applicant.
44. Subject to complying with the timing requirements set out in Rules 33 and 34, the Board reserves the right to extend processes to take account of the need to transcribe and verify oral submissions and to require the Applicant to pay for the cost of the transcription service.
45. The Board may from time to time adjourn the hearing.

Question 12 – Do you agree with the approach taken to oral representations?

Question 13 – Bearing in mind the Regulatory Objectives, the Better Regulation Principles and need to operate efficiently in relation to the Freedom of Information Act, please could you suggest improvements to the suggested process.

G. CRITERIA FOR DETERMINING APPLICATIONS

46. In accordance with paragraph 25(3) of Schedule 4 of the Act, the Board may refuse an Application only if it is satisfied that:
 - granting the Application would be prejudicial to the Regulatory Objectives;

- granting the Application would be contrary to any provision made by or by virtue of the Act or any other enactment or would result in any of the Designation Requirements ceasing to be satisfied in relation to the Approved Regulator;
- granting the Application would be contrary to the public interest;
- the Alteration would enable the Applicant to authorise persons to carry on activities which are Reserved Legal Activities in relation to which it is not a relevant Approved Regulator;
- the Alteration would enable the Approved Regulator to licence persons under Part 5 of the Act to carry on activities which are Reserved Legal Activities to which the Applicant is not a Licensing Authority; or
- the Alteration has been or is likely to be made otherwise than in accordance with the procedures (whether statutory or otherwise) which apply in relation to the making of the Alteration.

Questions 14 – Do you consider that these are the appropriate criteria?

H. FURTHER INFORMATION

48. If you have any questions about the Application process or the preparation of an Application, you should contact the Board at:

Address: Legal Services Board
 7th Floor Victoria House
 Southampton Row
 London WC1B 4AD

Email: *[insert details]*

Telephone: *[insert details]*

Annex 3 – List of Questions

Rules for New Body Designation Applications

Question 1 – Bearing in mind the Regulatory Objectives and the Better Regulation Principles, do you agree with the Board’s approach to its requirements for the content of Applications?

Question 2 – If you do not agree with the Board’s approach to its requirements for the content of Applications, what alternative approaches would you suggest and why?

Question 3 – What additions to or alterations to the Application process would you suggest?

Question 4 – What do you think the appropriate level of, and method of calculation of the Prescribed Fee should be?

Question 5 – Do you think we should reduce the Prescribed Fee for Applications from existing Approved Regulators to take on additional Reserved Legal Activities?

Question 6 – Do you agree that the Board should use external advisors when necessary with the cost of these being met by way of an adjustment to the Prescribed Fee?

Question 7 – Do you agree with the approach taken to oral representations?

Question 8 – Bearing in mind the Regulatory Objectives, the Better Regulation Principles and the need to operate efficiently in relation to the Freedom of Information Act, please could you suggest improvements to the suggested process.

Questions 9 – Do you consider that these are the appropriate criteria?

Rules for Rule Change Applications

Question 10 – Do you agree with the Board’s view that the process suggested is the most effective way to address the Regulatory Objectives and the Better Regulation Principles in relation to approaching potentially low impact rule changes? If not, then please can you suggest how the Objectives and Principles could be better addressed?

Question 11 – Bearing in mind the Regulatory Objectives and the Better Regulation Principles, do you agree with the requirements specified above? If not, why not? What alternative or additional requirements would you recommend?

Question 12 – Do you agree with the approach taken to oral representations?

Question 13 – Bearing in mind the Regulatory Objectives, the Better Regulation Principles and need to operate efficiently in relation to the Freedom of Information Act, please could you suggest improvements to the suggested process.

Questions 14 – Do you consider that these are the appropriate criteria?