

LSB CONSULTATION: DESIGNATING NEW APPROVED REGULATORS AND APPROVING RULE CHANGES

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?

In general we agree with the approach of the Board although make some further comments in answer to Question 3.

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?

Not applicable.

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

Whilst in general we agree with the approach of the Board we are unclear about the extent of Rule 10. Our understanding is that requirement to consult with other Approved Regulators will only apply to those Approved Regulators with which the applicant is likely to have an interaction. However whilst the Rule refers to consultation with ‘relevant’ stakeholders it simply refers to ‘other Approved Regulators’ and we would suggest that there should be more clarity around this.

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

We do not feel able to comment on the appropriate level of the Prescribed Fee and feel that current approved regulators are best placed to comment on this.

The consultation paper proposes 4 options for calculating the level of the prescribed fee. The option of having no fee has some merit in that it will be straightforward and may encourage a wider number of bodies to apply to become approved regulators. However we agree that there would be a risk that it will increase the number of applications which would never have a chance of being successful but which the LSB would still have to consider.

We would therefore favour Option 2 (a set fee with the possibility of a refund / supplementary fee depending on the amount of work the LSB is required to spend on it). We agree that this Option has the disadvantage that the ‘supplement’ could be unpredictable for applicants and would therefore suggest that it should be subject to a capped maximum. Whilst this may mean that on occasions certain costs will need to be covered by the overall levy, if the maximum supplement is set at a realistic level this is likely to be rare.

We accept that this Option may be more burdensome for the LSB but believe that it has the following advantages:

- The charging of a fixed fee will help ensure that 'vexatious or poorly put together applications' will be kept to a minimum;
- The refund / supplement system will assist in ensuring that applications are properly drafted thus requiring the LSB to spend less time approving them.

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

Yes – applications from existing Approved Regulators are likely to require less work by the LSB. Where this is not the case the supplement referred to at Question 4 could be imposed.

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?

Yes – it is important that the LSB considers applications properly and where it is necessary to use external advisors to do this the cost should be met by an adjustment to the Prescribed Fee. Whilst it may be appropriate to employ an external advisor if an application is technically complex or unusually data intense we are not clear why external advisors would be necessary simply because an application is poorly prepared or urgent.

We would therefore suggest that the Board should publish clearer criteria concerning when it is likely to need to use external advisors so that applicants can consider these when drafting their applications. We also believe that where the Board is considering using an external advisor because an application is believed to be technically complex or unusually data intense the applicant should be informed in advance and given the opportunity to revise their application.

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

Yes – we presume that if the date given by the Board for the oral representations is, for legitimate reasons, inconvenient to the applicant then there will be the possibility of it being rescheduled.

It is also unclear to us whether the phrase used in Rule 45 (*'The Board may, at its sole discretion authorise an applicant to make oral representations at its own expense'*) refers to the 'expense' of the applicant or the Board.

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.

We have no additional comments to make.

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

The criteria listed appear to be appropriate.

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?

Yes.

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?

In general we are content with the requirements specified. However, whilst we understand that the ‘deemed granted’ provisions outlined at paragraph 20 are taken from the statute we believe that too great a reliance on them may lead to confusion and ambiguity and may be seen to obviate the need for a formal approval notice. Therefore we would recommend that the Board makes clear that it will generally issue an Approval or Warning Notice on receipt of the application.

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

Yes – although we reiterate the point made in answer to Question 7.

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.

We have no suggested improvements to process other than the comments made in relation to earlier questions.

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

Yes.