

Rules for applications to alter regulatory arrangements

Version 2, April 2018

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 to the Act
applicant	an approved regulator who submits an application and the Tribunal where it makes an alteration to its rules under section 46(9)(b) of the Solicitors Act 1974 and seeks the Board's approval to the alteration by virtue of sections 178(2) and (3) of the Act
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 to the Act and these rules ; and an application submitted by the Tribunal to the Board to approve an alteration to the Tribunal's rules in accordance with Part 3 of Schedule 4 to the Act
approval notice	has the meaning given in rule 17
approved regulator	has the meaning given in section 20(2) of the Act
better regulation principles	the five principles of good regulation (being transparency, accountability, proportionality, consistency and targeting) as set out in 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 to the Act
exempt alteration	an alteration to an approved regulator's regulatory arrangements , or the Tribunal's rules, that the Board has directed (in accordance with paragraphs

19(3) and (4) of Schedule 4 to the **Act**) is to be treated as exempt from the approval requirements contained in Part 3 of Schedule 4 to the **Act**

initial decision period	has the meaning given in rule 17
licensing authority	has the meaning given in section 73(1) of the Act
licensing rules	has the meaning given in section 83 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
representations period	has the meaning given in rule 7 of the representations rules
representations rules	the Board's rules for making oral and written representations and giving oral and written evidence
reserved legal activity	has the meaning given in section 12 of and Schedule 2 to the Act
Tribunal	the Solicitors Disciplinary Tribunal
warning notice	has the meaning given in rule 17

B. WHO DO THESE RULES APPLY TO?

2. These **rules** apply if an **approved regulator** wishes to make an **alteration** to its **regulatory arrangements** under Part 3 of Schedule 4 to the **Act**. These **rules** also apply where the **Tribunal** seeks the **Board's** approval to an **alteration** of a rule it has made under section 46(9)(b) of the Solicitors Act 1974.
3. For the avoidance of doubt, these **rules** do not apply to any **alteration** of an **approved regulator's regulatory arrangements** to the extent that such **alteration** is governed by section 51 of the **Act**.
4. An **alteration** to an **approved regulator's regulatory arrangements**, and the **Tribunal's** rules (as appropriate) does not have effect unless:
 - a) 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 to the **Act**;
 - b) it is an **alteration** made in compliance with a direction under section 32 of the **Act**;
 - c) it is approved by virtue of paragraph 16 of Schedule 10 to the **Act** (approval of **licensing rules** on designation by order as **licensing authority**);

- d) it is approved by virtue of paragraph 7 of Schedule 18 to the **Act** (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));
 - e) it is an **exempt alteration**; or
 - f) it is an **alteration** approved by the **Board** in accordance with Part 3 of Schedule 4 to the **Act**.
5. These **rules** set out:
- a) how the **Board** will direct that an **alteration** is an **exempt alteration** (see Section C);
 - b) the required contents of an **application** to the **Board** for approval in accordance with Part 3 of Schedule 4 to the **Act** (see Section D);
 - c) the processes and procedures that the **Board** will undertake in considering the **application** (see Section E);
 - d) the **Board's** criteria for determining **applications** (see Section F); and
 - e) who a body should contact if they have a question in relation to the **application** process (see Section G).
6. These **rules** are to be read in conjunction with the **Act**, together with any other relevant provisions made by or by virtue of this **Act**, or any other enactment, rules, policies or guidance produced by the **Board** from time to time.
7. In the event of any inconsistency between these **rules** and the provisions of the **Act**, the provisions of the **Act** prevail.
8. The **Board** reserves the right to amend these **rules** from time to time. When amendments are made, the **Board** will, when required to do so under section 205 of the **Act**, publish a draft of the amended **rules** and invite representations.

C. EXEMPT ALTERATIONS

9. In accordance with paragraph 19(3) of Schedule 4 to the **Act**, the **Board** may direct, from time to time, that an **alteration** to an **approved regulator's regulatory arrangements**, or to the **Tribunal's** rules, is an **exempt alteration**.
10. A direction given by the **Board** under paragraph 19(3) of Schedule 4 to the **Act** may be specific or general and will be published by the **Board** on the **Board's** website. A direction will, unless the **Board** specifically provides otherwise, take effect from the date beginning 14 days from the date of publication of the direction on the **Board's** website.

D. CONTENTS OF THE APPLICATION

11. An **applicant** must include the following information in their **application**:

- a) the name, address, telephone number and email address of the person whom the **Board** should contact in relation to the **application**;
- b) details of the proposed **alteration**;
- c) details of such of the **applicant's regulatory arrangements** or rules as are relevant to the **application** including a statement setting out:
 - i) the nature and effect of the existing **regulatory arrangements** or rules;
 - ii) the nature and effect of the proposed **alteration**; and
 - iii) an explanation as to why the **applicant** wishes to make the **alteration** in question;
- d) 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**;
- e) 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**;
- f) a statement explaining the desired outcome of the **alteration** and how the **applicant** intends to assess whether the desired outcome has been achieved;
- g) 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;
- h) details of when the **applicant** hopes to implement the **alteration**;
- i) 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; and

- j) such other explanatory material as the **applicant** considers is likely to be needed for the purposes of Part 3 of Schedule 4 to the **Act**.
12. For reasons of efficiency and so that the effect of **alterations** can be seen cumulatively, any **application** should, unless otherwise agreed by the **Board**, be only in respect of related **alterations** to an **applicant's regulatory arrangements** or rules. For example, all **alterations** relating to training requirements should be presented in one **application** but **alterations** to a code of conduct definition of "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**.

E. PROCESSES AND PROCEDURES

Sending the application

13. The **applicant** must submit their **application** as follows:
- a) if by email, to: schedule4approvals@legalservicesboard.org.uk
 - b) if by post or courier, to: the relevant address of the **Board** as set out on its website.
- For the attention of: Administrator for Regulatory Arrangements Alterations.
14. On receipt of the **application** a copy of the proposed **alterations** to the **applicant's regulatory arrangements** or rules will be published on the **Board's** website.
15. The **Board** will consider the **application** and may ask the **applicant** for such additional information as the **Board** may reasonably require.
16. 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 to 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

17. On receipt of an **application**, the **Board** has **28 days** (beginning on the day the **Board** receives the **application**) (the "**initial decision period**") to:
- a) grant the **application** and give the **applicant** notice to that effect (an "**approval notice**") (paragraph 21(1)(a) of Schedule 4 to the **Act**);

- b) 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 to the **Act**); or
 - c) give neither an **approval notice** or a **warning notice** in which case, the **application** is deemed granted by the **Board** at the end of the **initial decision period** (paragraph 21(3) of Schedule 4 to the **Act**).
18. The **Board** will publish on its website any **approval notice** or any **warning notice** given to the **applicant**.
19. 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

20. 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.
21. Once the **Board** has received any advice provided under **rule 20** above, it will provide a copy of that advice to the **applicant**.

Representations about the advice

22. Any representations made by the **applicant** about the advice referred to in **rules 20** and **21** above must be made in accordance with the **representations rules**, which are located at:

http://www.legalservicesboard.org.uk/what_we_do/regulation/index.htm

23. For the avoidance of doubt, the **representations rules** only apply to representations made to the **Board** by the **applicant** in relation to any advice provided under **rule 20**.

Publication of advice

24. As soon as practicable after the end of the **representations period** for **applications** made under these **rules**, the **Board** will publish on its website:
- a) any advice received pursuant to **rule 20**; and

- b) subject to **rule 25**, any written representations duly made by the **applicant** (and the report of oral representations (if any) prepared in accordance with the **representations rules**).
25. Prior to the publication of any written representations (and the report of oral representations (if any) prepared in accordance with the **representations rules**) the **Board** will decide whether any parts of the representations shall remain private and why, taking account of representations from the **applicant**. The **Board** will, so far as practicable, exclude any material which relates to the private affairs of a particular individual, the publication of which, in the opinion of the **Board**, would or might seriously and prejudicially affect the interests of that individual.

The Board's decision

26. After considering the items listed in paragraph 25(1) of Schedule 4 to the **Act**, the **Board** will decide whether to grant the **application**.
27. 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.
28. The **Board** will publish on its website a copy of any decision that it gives to the **applicant**.
29. The **Board** may grant the **application** in whole or in part.
30. The **Board** is obliged to analyse and make its decision in accordance with the explicit provisions of paragraph 25(3) of Schedule 4 to the **Act**, the details of which are specified in Section F of these **rules**.

Time limits

31. Subject to **rule 32**, 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.
32. The **Board**, may, on one or more occasions, give the **applicant** a notice extending the decision period from 12 months up to a maximum of 18 months from the day the **applicant** receives the **warning notice**. The **Board** will publish on its website any such notices.
33. 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 19** or served a **warning notice** on the **applicant**, notwithstanding other provisions in these **rules**, the **Board** will aim to deal with:
- a) any **application** involving a simple **alteration** within 30 business days from the later of:

- (i) the date of submission of the **application**; and
 - (ii) the final date of submission of any further information that the **Board** may request under **rule 15**;
- b) any **application** involving a more complex **alteration** within 3 months from the later of:
 - (i) the date of submission of the **application**; and
 - (ii) the final date of submission of any further information that the **Board** may request under these **rules**.

F. CRITERIA FOR DETERMINING APPLICATIONS

34. In accordance with paragraph 25(3) of Schedule 4 to the **Act**, the **Board** may refuse an **application** only if it is satisfied that:
- a) granting the **application** would be prejudicial to the **regulatory objectives**;
 - b) 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**;
 - c) granting the **application** would be contrary to the public interest;
 - d) 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**;
 - e) the **alteration** would enable the **approved regulator** to license 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
 - f) 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**.

Paragraphs (d) and (e) of **rule 34** do not apply to an application by the **Tribunal** for approval of an **alteration** to a rule made by it under section 46(9)(b) of the Solicitors Act 1974.

G. FURTHER INFORMATION

35. If you have any questions about the **application** process or the preparation of an **application**, you should contact the **Board** in the manner set out in **rule 13** above.