



Making applications to the Legal Services Board for approval of alterations to Regulatory Arrangements

1. Introduction

This document has been developed to assist with the preparation of applications to the Legal Services Board (LSB) for approval of alterations to regulatory arrangements. It should be referred to alongside the Rules for Rule Change Applications which are available on our [website](#). It should also be noted that the LSB is not prescribing the format of applications, other than what is required by the rules. Rather this guidance provides some advice on how applicants might construct their applications to ensure that they can be processed by the LSB as quickly and smoothly as possible. The guidance is therefore not mandatory and will be subject to change as our processes develop.

2. Background

All Approved Regulators share the same duty to, “so far as is reasonably practicable”, act in a way which is compatible with the Regulatory Objectives (s.28, Legal Services Act 2007) and have regard to the principles under which regulatory activities should be “transparent, accountable, proportionate, consistent and targeted” (s.28, 3(a)). All activity therefore needs to be carried out within this same framework.

Part 3 of Schedule 4 of the Legal Services Act (“the Act”) provides that Approved Regulators must obtain approval from the LSB to alter any of their Regulatory Arrangements. Our role under the powers provided to us is to assess the applications against the criteria in the Act (Schd 4, 25 (3)), which support the duties set out in section 28. The Act places the onus on us to approve applications unless one or more of the criteria have been met. It is therefore our role to consider whether the changes proposed are compatible with the Regulatory Objectives and have been made in a way which is transparent, accountable, proportionate, consistent and targeted.

The only instances in which changes to regulatory arrangements are not subject to the LSB approval process are where the LSB has directed the change to be exempt from the requirement for approval, either through a general exemption regarding a particular type of change (for example changes relating to compliance with the Internal Governance Rules) or individual exemptions which are Approved Regulator specific.

The Act defines Regulatory Arrangements broadly so as to apply to all rules and regulations and any other arrangements which apply to regulated persons apart from those made for representational or promotional purposes. Section 21 of the Act sets out what is meant by Regulatory Arrangements. If an alteration to regulatory arrangements is made without LSB approval (or exemption), it does not take effect for the purposes of the Act (Schd 4, part 3, 19, (1)).

In December 2009, the LSB published its Rules for Rule Change Applications. The rules set out what is required of applicants and how the approval process works. This guidance has been developed to provide some further information on what we look for in applications and how our approval process works.

The LSB has given Approved Regulators the option to develop an annual plan detailing all planned changes to Regulatory Arrangements (“Forward Plan”). This will help both the LSB and Approved Regulators plan ahead and consider linkages between applications. The Forward Plan is also the process through which the LSB will seek to exempt planned changes to Regulatory Arrangements from the approval process, ahead of the changes needing to be made. Decisions regarding exemptions are made in accordance with our [Significance, Impact and Risk framework](#). This should be useful for Approved Regulators by providing certainty of which changes the LSB will need to look at in detail. It will also help the LSB to target its resources to the most significant changes.

3. Contents of Application - see Rule 9(a-j) of Rules for Rule Change Applications

Rule	Requirement	Guidance
9b	Details of the proposed alteration	<p>Applicants should explain to which part of the Regulatory Arrangements the changes relate (for example section of the code, guidance etc) and provide some overview of the context and policy rationale for the proposed changes.</p> <p>This section should explain clearly why the changes are needed in a way that can be understood with no prior knowledge of the Regulatory Arrangements. It should not be assumed that everyone who reads the application will have the same level of knowledge of the proposals and/or existing Regulatory Arrangements.</p> <p>A chronology should also be provided with any pertinent points highlighted. For example when you consulted and when you made final decisions.</p>
9c	<p>Details of the Applicant's Regulatory Arrangements as are relevant to the Application including a statement setting out:</p> <ol style="list-style-type: none"> <li data-bbox="353 1031 734 1134">i. Nature and effect of the existing Regulatory Arrangement <li data-bbox="353 1158 734 1222">ii. Nature and effect of the proposed alteration <li data-bbox="353 1246 808 1342">iii. Explanation of why the applicant wishes to make the alteration in question 	<p>Applicants may wish to present this information in a comparison table with a column for each of the current and revised arrangements and a further column explaining why the change is required. The application should provide the rationale for why we should approve the text.</p> <p>The following points may be referred to in order to demonstrate how the changes were considered:</p> <ul style="list-style-type: none"> <li data-bbox="875 1126 1984 1222">• An explanation of how it was ascertained that a change was essential and could not be achieved solely by changing guidance around existing rules or deleting existing rules. <li data-bbox="875 1246 1906 1318">• An explanation of why the change is needed if it is already covered by applicable law.

		<ul style="list-style-type: none"> • How it was ascertained that the changes being made constitute the minimum necessary to achieve the objective. For example – can the changes be brought about by only changes to guidance or are rule/code changes absolutely necessary? • Where appropriate, explain why you have used a rule/outcome/principle. • How you have checked that the changes made will have no unintended knock on effects or conflicts with other parts of their rules or with applicable law generally. <p>Nb. You may also refer to the above points with regards to rule 9g – Better Regulation principles.</p> <p>Applicants are required to submit copies of the texts that we are required to approve (for example the relevant sections of the code and/or guidance). These can be provided as an annex to the main application document. It is preferable that any amendments are clearly annotated so that we can easily see how you have approached the changes and be satisfied that the drafting delivers the policy objectives. This will minimise the need for us to ask clarificatory questions and make the process smoother.</p>
9d	Statement in respect of each alteration explaining how and why the alteration will help to promote, be neutral towards or be detrimental to each of the Regulatory Objectives.	<p>Impact upon the Regulatory Objectives forms part of the criteria listed at sub paragraph 25(3) of Schedule 4 to the Act. We therefore need to see evidence that the impacts have been considered and be satisfied that the changes will not be prejudicial to the Regulatory Objectives. We will also look at how the changes promote the Regulatory Objectives.</p> <p>Applicants may find it easier to complete a single statement rather than considering the impact on each of the objectives separately as this will enable an overall assessment to be made. In some cases it is likely that a negative impact</p>

		<p>upon one of the Regulatory Objectives will be balanced out by a positive impact upon another. Applicants should clearly explain this and be up front about any potential negative impacts and the reasons why they have concluded that this should not stop the changes from going ahead.</p> <p>All claims or assertions should be accompanied by supporting rationale, and wherever possible supporting evidence. For example, if an applicant considers the changes to have a positive impact on Access to Justice, they should also provide a brief explanation of why. This might also be backed up with reference to consultation responses, discussions with stakeholders, numerical data or Impact Assessments that have been undertaken.</p>
9e	<p>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</p>	<p>Applicants should explain why the changes <u>and</u> the process by which they have been developed are consistent with the Better Regulation Principles – transparent, accountable, proportionate, consistent and targeted (http://www.bis.gov.uk/bre). For example it may be that current restrictions are not needed anymore, or the existing arrangements are having a disproportionate impact on a section of the regulated community and need to be altered.</p> <p>Applicants may wish to refer to the analysis provided at 9c and consider the questions provided in the relevant section of this guidance – for example, why the planned changes <u>cannot</u> be achieved without alterations to the Regulatory Arrangements. Reference to consultation is also likely to be relevant here.</p> <p>Where the changes are part of a regular process, for example annual Professional Indemnity Insurance requirements or Practising Certificate renewal – you will need to explain what has changed since the previous year and the reasons why the new arrangements are appropriate.</p>

<p>9f</p>	<p>A statement explaining the desired outcome of the alteration and how the applicant intends to assess whether the desired outcome has been achieved.</p>	<p>This section should refer to the policy rationale behind the changes and intended outcome.</p> <p>In some circumstances it may be appropriate to include a review provision to determine whether the changes have achieved the expected outcome or whether any risks have materialised. Where a review is proposed, dates should be provided together with the high level scope of the review. Further details such as the methodology and review criteria may also be provided if known. Applicants should be mindful of the timing of the review. If a review is conducted too soon after the changes are implemented, it may create a disincentive for those affected to participate until the outcome is confirmed. Furthermore, an application should not pre-empt the outcome of a review.</p> <p>When reaching our decision on the application, we will confirm with the applicant details of future actions that they have proposed (for example planned review dates) and recording them in the Decision Notice. We will also include actions agreed as part of our discussions with Approved Regulators during the assessment process. All actions will be followed up as part of the Regulatory Review process.</p>
<p>9g</p>	<p>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</p>	<p>Applicants should be able to show that they have considered the impacts upon other Approved Regulators and consulted appropriately to ensure there are no regulatory gaps or overlaps.</p> <p>If the proposed changes make reference to the Regulatory Arrangements of other Approved Regulators, we will expect the applicant to have consulted with relevant parties and provide evidence of any discussion in the application. This is particularly important where the changes bring regulated persons within the scope of another Approved Regulator.</p>

	<p>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.</p>	<p>Where there are regulatory gaps or overlaps as a result of the changes, we would expect the application to state how they should and will be addressed. This should include evidence of discussion with the relevant Approved Regulator.</p> <p>Where there are no obvious gaps or overlaps, we would expect all Approved Regulators to have ensured transparency of the changes to enable other ARs the opportunity to comment (as it may be there is an impact that the applicant has not identified).</p>
<p>9h</p>	<p>Details of when the Applicant hopes to implement the alteration;</p>	<p>Applicants will need to provide an idea of next steps for implementing the changes. For example if the changes will be rolled out straight away or if they are dependent on something else happening. If the changes are very urgent, this should also be explained together with the risk of the changes not being brought in as quickly as desired.</p> <p>Applicants should also explain where further work is needed to accompany the changes, for example a new training course to be set up. Where this is the case a timeline with key milestones would be useful as it may be that subsequent changes will also require approval or exemption. On this last point, applicants should consider the requirement in the rules to package related changes together as it may be that an application should be deferred to a later date so that all the changes can be submitted and assessed together.</p> <p>If it is going to be some time before the changes are implemented, the applicant will need to explain why approval is required now and provide some assurance that the proposals will still be appropriate in the future. This should include some consideration of what changes in circumstances might mean that the proposals are no longer necessary or appropriate.</p>

<p>9i</p>	<p>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;</p>	<p>All consultation needs to take place before applications are submitted to ensure that any potential issues or impacts have been identified. Applicants should try to ensure the changes are available to all the people affected so that they have opportunity to comment ahead of final decisions.</p> <p>This does not always need to involve full 12 week public consultation. For certain types of changes it may be more appropriate to undertake targeted consultation and provide evidence of this, for example meeting with key stakeholders to discuss your proposals. In other circumstances it may be that inclusion in an existing news update or publication on your website is sufficient. We will be looking for <i>appropriate</i> and <i>proportionate</i> consultation within the particular circumstances.</p> <p>The impact on consumers should be considered together with evidence of consumer engagement where appropriate. This might include discussion with the Legal Services Consumer Panel, consumer groups or end users of services where appropriate.</p> <p>If there are particular competition issues, you may wish to discuss the application with the OFT prior to submission. The LSB has agreed to provide the OFT with information on all applications received but will only seek formal advice if a Warning Notice¹ has been issued. It may also be appropriate to consult with other professional bodies.</p> <p>Issues raised in consultation should be clearly referenced and explained (annexes or links to electronic documents can be provided but please highlight or direct us to relevant sections). Applications should be upfront about areas of controversy and where any outstanding issues remain. Where agreement has</p>
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¹ The Board may issue a notice saying that it is considering whether to refuse the application (“a warning notice”), Schedule 4, Part 3, 21 (1) (b)

		<p>not been reached, the reasons and rationale should be provided. Where proposals have changed considerably as a result of consultation, this should also be explained including information on why you were persuaded by responses to consultation.</p> <p>Applicants may wish to include a summary table covering the following:</p> <ul style="list-style-type: none">• Who was consulted• Key issues consulted upon• Which of the stakeholders agreed with the proposals• Which of the stakeholders did not agree with the proposals (specifying what their concerns were and how they have been addressed) <p>The requirement to consult with other Approved Regulators does not necessarily mean consulting on the actual application prior to submission. Where you have already consulted and the proposals have not changed from what was consulted upon, it may not be proportionate to ask Approved Regulators to comment on the content of your application. However where there is a direct impact upon another Approved Regulator, or your proposals have changed as a result of consultation, other Approved Regulators should have sight prior to you submitting your application.</p> <p>As a matter of process, the LSB will inform all Approved Regulators once an application has been received and published on our website but it is not the role of the LSB to receive representations with regards to applications or to facilitate changes following feedback from other Approved Regulators. Generally we would expect the respondent to liaise directly with the applicant. However, if we do receive representations or feedback, it might lead us to review the level of consultation more closely. If it is clear that there are significant issues which have not been adequately addressed, for example there has been a lack of</p>
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		<p>consultation or the response to an objection has not been adequately addressed, we may decide to stop considering the application and invite the applicant to resubmit once the issues have been dealt with. However, if a proper process has been followed, consultation completed and a rational position reached, opposition from stakeholders would not necessarily lead us to turn down an application.</p>
9j	<p>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.</p>	<p>Impact Assessments</p> <p>The rules do not make it a requirement for Impact Assessments to be submitted. However, we would expect that where Impact Assessments are submitted they should be focused upon the changes we are being asked to approve and provide balanced analysis. As with all other evidence that is provided as annexes to the main applications (or links to published documents), it should be clearly referenced in the main application.</p> <p>Monitoring and Evaluation</p> <p>Applications should clearly identify risks relating to the changes along with an explanation for how these will be monitored and mitigated. This will enable the LSB to take an oversight role with the frontline regulator responsible for managing risk.</p> <p>In some circumstances, approval will be given on the basis that sufficient monitoring and evaluation has been planned. This will be followed up through the Regulatory Review process or as part of wider discussions between the Approved Regulator and the LSB. Applicants should therefore ensure that dates are provided for any future actions. Where dates have not been provided we will seek clarification as part of the decision making process and record all actions in</p>

		the final Decision Notice.
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4. Packaging of Applications

Rule 10 of Rules for Rule Change Applications requires that any application should be made in respect of all related alterations. In practice this means that changes to guidance, forms etc relating to the same policy change should be submitted for consideration together with the code or rule change as one application.

To ensure that cumulative impacts can be considered, any related applications should also take account of one another even if they are submitted as separate applications amending different sets of regulations. For example, where an application makes amendments to a Regulatory Arrangement that is also integral to another application. Wherever possible these applications should be submitted at the same time, with any linkages between applications clearly identified. It is our intention that the annual Forward Plan process will enable these linkages to be identified in advance and applications timetabled accordingly. Until such plans are in place, if you have any questions regarding how applications should be packaged, please contact us prior to submitting your application(s).

5. Presentation of Applications

Applications should be written in a way that those with limited understanding of the current regulatory framework can understand. In order to ensure transparency, all documents are published on our website and should therefore be accessible to those that want to understand how any changes might affect them. This may include consumers as well as regulated persons.

It is helpful to have any key terms defined in the application and for applicants to ensure that any terms are consistent with existing definitions.

Documents provided in annexes should be well referenced in the main application so that if it is possible, the application document can be understood without detailed appraisal of all annexes.

6. Pre-application Discussions

We would be happy to meet with Approved Regulators and discuss a prospective application before the paperwork is developed. This will help us to get to grips with the background of the application and for you to ask questions about the processes and requirements set out in the Rules. Similarly, resources permitting, we would be willing to provide informal feedback prior to formal submission on one draft of the application. Please note that our feedback on your draft application is about making sure the application contains the information we need to consider it. It will not be an ongoing process where we guide applicants through the preparation of each application and provide input into the different iterations of the proposals to help you get the „right“ answer.

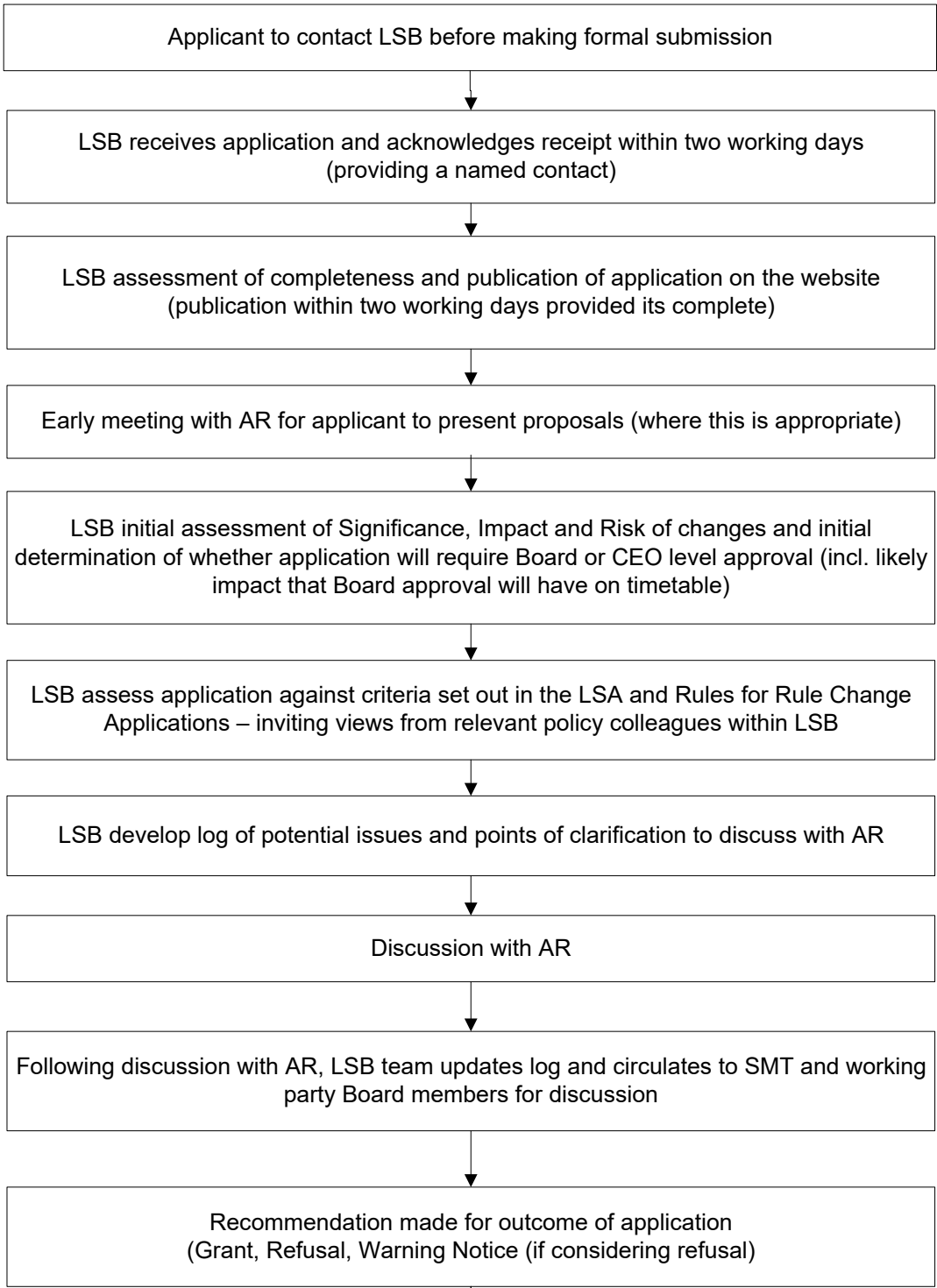
7. Our internal process for considering applications

The diagram below outlines our process for considering applications. To an extent this will vary for each application, due to the nature and complexity of the application and also whether an Extension Notice or Warning Notice is required. However it will provide an outline of how we approach the approval process and the points at which we may require input from applicants.

The Act provides a 28 day initial decision period for considering applications, which can be extended up to a total of 90 days with the issuing of an Extension Notice. We have made a commitment to handle all applications as quickly as possible however it is likely that only the most simple of applications will be determined within the 28 day period and that in many cases an Extension Notice will be issued.

Rule Approval Outline of LSB Decision Making Process

Guidance for Rule 4, Part 3 Applications - Version 12 September 2020



Extension notice likely to be issued where Significance, Impact and Risk is high

May need to ask questions/points of clarification here

Extension notice likely to be issued for complex applications

CEO decision

Board papers drafted

Board decision

Provide applicant with indication of decision

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Decision Notice (or Warning Notice) sent to AR and published on LSB website

See Warning Notice Process Map