

**Meeting:** Legal Services Board

**Date:** 19 January 2021

**Item:** Paper (21) 06

**Title:** Review of approval process for alterations to regulatory arrangements

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**Status:** Official

### **Introduction**

1. This paper provides an explanation of the work we have conducted to date as part of our review of the approval process for alterations to regulatory arrangements and to set out the rationale and overarching objectives for this work along with next steps so that the Board has an opportunity to provide its views.

### **Recommendation(s)**

2. The Board is invited to **consider and discuss** the overarching objectives for this work, prior to an opportunity to discuss more concrete policy positions in Q1 of the 2021/22 Business Plan year.

### **Timing**

3. We have begun a first round of engagement through a series of bilateral meetings with each of the Regulatory Bodies to capture their views on the current rules, guidance, and approval process in general. The intention is to continue to develop proposals so that new rules and guidance will be ready for consultation in Spring 2021.

### **Background**

### *Business Plan*

4. This review is part of the LSB's Business Plan for 2020/21<sup>1</sup>. It was delayed as a consequence of executive decisions to focus on other work earlier in the year, in particular the LSB response to the Covid-19 pandemic.
5. The Business Plan consultation resulted in broad support for the review. One notable comment was a request from the Law Society that applications for alterations to regulatory arrangements must be accompanied with a cost benefit analysis and be well-evidenced. This has been a longstanding representation from the Law Society.
6. It is reflected in the current Business Plan consultation<sup>2</sup> as a carryover commitment that will be completed in 2021/22.

### *LSB Core Functions*

7. The LSB been taking steps to ensure that the core statutory functions set out in the Legal Services Act 2007 are used cohesively to promote the regulatory objectives.
8. The current LSB regulatory performance framework was implemented in 2017 with transitional assessments being undertaken in November 2018. The framework has continued to be actively used to drive positive change to the regulatory objectives, including by following up on commitments by regulators to monitoring the impact of changes made to regulatory arrangements.
9. The Practising Certificate rules and guidance have been going through a review process. One of the key objectives of the review is to achieve a clear and demonstrable link between allocation of PCF to permitted purposes activities, the regulatory objectives and the regulatory performance of approved regulators.
10. This review of the approval process for alterations to regulatory arrangements is a further step towards ensuring that each of the core statutory functions of the LSB work together consistently and effectively in promoting the regulatory objectives.

### **Rationale for review**

11. The LSB Rules and Guidance for assessing applications remain largely unchanged since they were introduced when the LSB first began assessing and approving proposed alterations to regulatory arrangements in 2010. In that time the LSB has assessed 149 applications and issued a further 166 exemptions.

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<sup>1</sup> <https://www.legalservicesboard.org.uk/wp-content/uploads/2020/04/Final-business-plan-2020-21-FINAL.pdf>

<sup>2</sup> <https://www.legalservicesboard.org.uk/wp-content/uploads/2020/12/Consultation-Document-FINAL.pdf>

12. With this wealth of experience, alongside the evolution of the LSB's approach to regulation over time, we consider now is a good time to review the process to ensure its purpose is clear and consistent with the exercise of our wider powers and specifically, that the process is appropriately focused on ensuring alterations are developed to promote the Regulatory Objectives.

### **Overarching Objectives of the review**

13. Having undertaken an initial assessment, we consider the following to be the overarching objectives of the review:

- **Promotion of the regulatory objectives** – we consider the review provides an opportunity to ensure the entire process for alterations to regulatory arrangements is explicitly and demonstrably focused on ensuring that all changes are developed to promote the regulatory objectives
- **Focused applications and assessments** – best use needs to be made of resources both within the LSB and regulatory bodies. In order achieve this we will consider how best to ensure that applications and LSB assessments are focused on what is meaningful. We intend to revisit what is required content for applications and expect to consider whether greater use should be made of blanket exemptions to cover certain types of alteration.
- **Clarity of expectations** – we have an opportunity to provide additional clarity to regulatory bodies on the processes we have in place pre-application, what regulatory arrangements require our approval and the circumstances in which we may refuse to consider an application that does not provide us with sufficient evidence to make an assessment.

14. We plan to return to the Board in Q1 of the 2021/22 Business Plan year to consider more concrete policy positions that will inform new draft rules and guidance. At this stage, we are seeking a steer from Board on these overarching objectives and providing an opportunity for Board members to note any additional issues that we should factor in.

### **Next Steps**

15. Stakeholder meetings, which began in December 2020, will continue in January 2021 and will include a meeting with the consumer panel.

16. Analysis of the stakeholder discussions along with legal advice will help inform our position. This will lead to the drafting of a consultation document that will be supported with any proposed revisions to the current Rules, Guidance and SIR Framework. We expect to issue a consultation in Spring 2021.

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| <b>Risks and mitigations</b> |
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| <b>Financial:</b>              | The ongoing actions set out in this paper are all within the budget for 2020/21.  |
| <b>Legal:</b>                  | We want to ensure the policy position we reach on the rules is consistent with the Act. To this end we are working closely with the legal team as proposals are developed and to draft the new rules and guidance.                                |
| <b>Comms and engagement:</b>   | By maintaining ongoing engagement with stakeholders throughout the project we will manage expectations and risk. We will also ensure that the review and scope of the review along with its benefits are communicated to the regulated community. |
| <b>Equality and diversity:</b> | We will be covering impact within the review and would expect the consultation to include detail on proposals relevant to equality and diversity.   |
| <b>Resource:</b>               | The ongoing and proposed actions set out in this paper are within planned LSB resourcing.   |

| <b>Freedom of Information Act 2000 (Fol)</b> |                                  |                |
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| <b>Para ref</b>                              | <b>Fol exemption and summary</b> | <b>Expires</b> |
|  | N/A                              |                |