

**Meeting:** Legal Services Board

**Date:** 8 June 2021

**Item:** Paper (21) 26

**Title:** Review of Process for Alterations to Regulatory Arrangements

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**Status:** Official

### **Introduction: Purpose of the paper/ Issue**

1. This paper sets out and explains the new draft Rules and draft Guidance which we intend to publish for consultation in June following our review of the process for alterations to regulatory arrangements. The draft consultation document is also enclosed.

### **Recommendation(s)**

2. The Board is invited to

**approve** the draft Rules and draft Guidance for consultation and delegate approval of a final consultation document, finalised version of the draft Rules and draft Guidance to the Chief Executive.

### **Timing**

3. We are aiming to publish the consultation after the June Board for a 7-week consultation period. The intention is to return to Board in September after the consultation with a finalised version of the draft Rules and draft Guidance once we have considered all consultation responses and made any changes to the Rules as appropriate. We intend to publish the new Rules and Guidance following the October Board meeting.

### **Background**

4. The January 2021 Board paper (available to Board members on request) set out the background and rationale for the review and invited the Board to provide views on our direction of travel. The Board approved our approach.
5. At its April 2021 meeting the Board considered a paper (available to Board members on request) setting out the key proposals for the review. At that meeting the Board provided feedback and approved in principle the proposals for implementation in draft rules and guidance.

6. Since the April 2021 Board the team have reflected on Board feedback, in particular feedback around ensuring the rules are simplified and principles based. As a result, amendments have been made to ensure the rules are focused and avoid repetition of any prescription already set out in the Legal Services Act 2007, unless necessary for clarity and context.

### **Summary of key content in new draft rules and guidance**

7. As explained in the draft consultation document, the new draft Rules are split into sections A to G. The draft Guidance mirrors these sections. Section A of the rules is merely the definitions section.

#### *Section B – Application and Guidance*

8. This section has been updated from the current Rules for clarity and to simplify the provisions but is largely unchanged in its effect save for the fact that draft rule 4 requires approved regulators to have regard to any statutory Guidance issued by the Board under section 162 of the Act.

#### *Regulatory Arrangements*

9. The draft Guidance to this section provides further explanation to approved regulators on the LSB approach to what constitutes a regulatory arrangement. An approved regulator who is unsure as to whether their proposals fall within the meaning of an alteration or alterations to regulatory arrangements will need to engage with the LSB.

#### *Section C – Form of Applications*

10. This section sets out the two routes under the draft Rules in which alterations to regulatory arrangements are approved by the Board under the Act:
  - (1) applications to approve alterations to regulatory arrangements<sup>1</sup>, and
  - (2) requests to approve alterations by exemption direction<sup>2</sup>.

This is a significant change from the current Rules which did not provide a separate facility for making requests for alterations to be exempt from the requirement for LSB approval by application.

11. The accompanying draft Guidance provides a steer that approved regulators consult with the Board if they are unclear on whether proposals are suitable for exemption. It emphasises that approved regulators as applicants are responsible for ensuring their applications meet the requirements in the Rules.

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<sup>1</sup> Provided for in paragraph 19(2)(b) of Schedule 4 to the Act.

<sup>2</sup> Provided for in paragraph 19(2)(c) of Schedule 4 to the Act.

*Pre-application engagement*

12. The draft Guidance sets parameters for pre-application engagement between the LSB and approved regulators on proposals for alterations. The focus of pre-application engagement will be clarification of how the Rules and Guidance may apply to complex, significant and or novel proposals.
13. The Guidance also sets an expectation that approved regulators will provide the LSB with information on an annual basis about upcoming proposed alterations.

*Section D – Time limits*

14. The time limits section of the draft Rules largely refers to time limits prescribed by the Act. The draft Guidance provides the detail of this.
15. In addition, the draft Rules provide that a decision on requests for exemption will be made within 28 days, subject to any reasonable extension.

*Section E – Information Requirements*

16. Section E is the most detailed section of the new draft Rules as it sets out requirements for an application for alterations to regulatory arrangements.
17. Many of the provisions are an updated articulation of the current Rules with emphasis on the information and evidence that enables the LSB to complete its assessment of applications against the refusal criteria in paragraph 25(3) of Schedule 4 to the Act.
18. New requirements for applications include:
  - the provision of any draft guidance or policy that will support the implementation of proposed alterations in the application
  - an assessment of impact of the proposed alterations on persons with protected characteristics under the Equality Act 2010, details of measures to mitigate any adverse impacts and an explanation of why any remaining adverse impact is proportionate, reasonable and will not be prejudicial to the regulatory objectives, as well as detail on how the proposals advance the rights of those persons
  - An assessment of impact of the proposed alterations on the regulated community, consumers and the public along with details of any measures to mitigate adverse impacts and an explanation of why any remaining adverse impact is proportionate, reasonable and will not be prejudicial to the regulatory objectives.

*Third-party representations*

19. The Guidance on this section sets out our existing approach to representations received from third parties during our assessment of an application.

20. The Guidance clarifies that the LSB can make a decision at any time during the decision period. This is designed to ensure third parties are aware that any representations ought to be sent as early as possible in the process.

#### *Section F – Warning Notice, Advice and Representation*

21. This section references the warning notice, advice and representation provision in Act,<sup>3</sup> and apply the LSB's existing Representations Rules<sup>4</sup> to any representations made by approved regulators on advice received by the Board.

#### *Section G – Exemption Direction*

22. This new section provides the detail on information requirements for a request for exemption, referred to in Section C which confirms the separate procedure for such a request.

### **Equality Impact Assessment of proposals**

23. In preparing the draft Rules and draft Guidance we have considered the LSB's obligations under the Equality Act 2010. We have conducted an initial equality impact assessment and concluded that the new draft Rules will comply with the LSB's duty to advance equality between persons who have protected characteristics and those who do not. The draft Rules require approved regulators to conduct an equality impact assessment of their proposed alterations, and to provide details on measures they will take to mitigate any adverse impacts. If they fail to conduct an assessment or to take any mitigating measures, they will need to clearly justify why that is compatible with the regulatory objectives. A key objective of the draft Rules is to enhance compliance with, and promotion of the regulatory objectives, which include objectives<sup>5</sup> related to diversity.
24. In the consultation document we will invite comments on the draft Rules, including content relevant to equality impact and on any other equality issues respondents believe arise from the draft Rules.

### **Impact of proposals on regulators**

25. As set out in the April Board paper, the LSB has considered the likely impact of the new draft Rules on the approved regulators, regulatory bodies and their

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<sup>3</sup> Paragraph 22 of Schedule 4 to the Act.

<sup>4</sup>

[https://legalservicesboard.org.uk/what\\_we\\_do/regulation/pdf/New%20folder%20\(2\)/FINAL\\_Rules\\_for\\_making\\_oral\\_and\\_written\\_representations\\_and\\_giving\\_oral\\_and\\_written\\_evidence.pdf](https://legalservicesboard.org.uk/what_we_do/regulation/pdf/New%20folder%20(2)/FINAL_Rules_for_making_oral_and_written_representations_and_giving_oral_and_written_evidence.pdf)

<sup>5</sup> Including the regulatory objectives of improving access to justice, protecting and promoting the interests of consumers, and encouraging a strong, diverse and effective legal profession – section 1(1) of the Act.

regulated communities. We recognise that in some instances, changes in our approach to the process, reflected in the new draft Rules may result in an increased regulatory burden. However, we consider that any costs associated with compliance with the new draft Rules are outweighed by the anticipated benefits, as they will lead to greater focus on the regulatory objectives and will reduce regulatory burden in relation to minor, low risk alterations, some of which will be covered by the new proposed general exemptions.

26. We have had regard to the better regulation principles in our development of the key proposals and we consider that the new draft Rules and draft Guidance will be a proportionate, transparent, targeted and effective means of achieving the overarching objectives set for the review. They will provide a means of enhanced accountability to the regulated community and consumers.
27. In the consultation document, we will invite respondents to provide comments on the impact of the new draft Rules and quantify the likely costs and anticipated benefits, to further inform the LSB's assessment of the regulatory impact of the new draft Rules.

### Next Steps

28. Subject to the Board's views, we will publish the draft new Rules and draft Guidance for consultation, with an accompanying consultation document.

<b>Risks and mitigations</b>	
<b>Financial:</b>	The ongoing actions set out in this paper are all within the budget for 2021/22.
<b>Legal:</b>	To mitigate risks we have considered stakeholder views and worked closely with our legal advisers in preparing the key proposals and new draft Rules to reflect the LSB's policy.
<b>Comms and engagement:</b>	By maintaining effective engagement with stakeholders throughout the project we have managed expectations and risk. The consultation will provide us with further direct input from stakeholders that we will carefully consider before finalising the new rules and guidance.
<b>Resource:</b>	The ongoing and proposed actions set out in this paper are within planned LSB resourcing.

### Annexes

Annex A: Draft Rules

Annex B: Draft Guidance

Annex C: Draft Consultation Document

<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>
Annex A-C	Exemption s22 future publication	N/A