

Applications To Alter Regulatory Arrangements Rules

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13 December 2021

The Legal Services Board has, on 13 December 2021, made the following Rules under paragraph 20(1) of Schedule 4 to the Legal Services Act 2007 (c.29).

The Rules for applications to alter regulatory arrangements April 2018 (Version 2), are hereby revoked.

These Rules come into effect on 1 February 2022.

A. Definitions

1. The terms in these Rules have the following meanings–

Act – the Legal Services Act 2007.

alteration – has the meaning given by paragraph 19(5) of Schedule 4 to the Act, and in relation to the tribunal rules, the meaning given in section 178(6) of the Act.

application – (a) an application in the form and manner set out in these Rules made by an approved regulator for the Board to approve an alteration or alterations to its regulatory arrangements in accordance with Part 3 of Schedule 4 to the Act;
(b) an application in the form and manner set out in these Rules made by the Tribunal for the Board to approve an alteration or alterations to the tribunal rules in accordance with section 178(2)(a) of, and Part 3 of Schedule 4 to, the Act.

approved regulator – has the meaning given by section 20(2) of the Act and includes a body which has been delegated the regulatory functions of the approved regulator under section 27(1) of the Act, in accordance with the Internal Governance Rules made by the Board under section 30 of the Act.

Board – the Legal Services Board.

exempt alteration – (a) an alteration to an approved regulator's regulatory arrangements which the Board has directed is to be treated as an exempt alteration and approved under paragraph 19(2)(c) and (3) of Schedule 4 to the Act;
(b) an alteration to the tribunal rules which the Board has directed is to be treated as an exempt alteration and approved under section 178(2)(b) and (4) of the Act.

external regulatory body – has the meaning given by section 54(3) of the Act.

guidance – The guidance referred to in rule 4, given by the Board under section 162 of the Act in relation to these Rules, published at the same time as these Rules, and updated from time to time.

legal services – the services provided by a person which consist of or include “legal activities” as defined by section 12 of the Act.

regulated person – has the meaning given by section 21(3) of the Act.

regulatory arrangements – has the meaning given by section 21 of the Act.

regulatory conflict – has the meaning given by section 52(2) of the Act in relation to an approved regulator and section 54(2) of the Act in relation to an external regulatory body.

Representations Rules – the Board’s rules for making oral and written representations and giving oral and written evidence.

request – (a) a request in the form and manner set out in these Rules made by an approved regulator for the Board to direct under paragraph 19(3) of Schedule 4 to the Act that an alteration to its regulatory arrangements is an exempt alteration;
(b) a request in the form and manner set out in these Rules made by the Tribunal for the Board to direct under section 178(4) of the Act that an alteration to its regulatory arrangements is an exempt alteration.

Rules – These Rules, made by the Board in the exercise of powers conferred by paragraph 20(1) of Schedule 4 to the Act.

Tribunal – the Solicitors Disciplinary Tribunal.

tribunal rules – rules made by the Tribunal under section 46(9)(b) of the Solicitors Act 1974.

warning notice – a notice given by the Board in accordance with paragraph 21(1)(b) of Schedule 4 to the Act.

B. Application and Guidance

2. An approved regulator must comply with these Rules in–
 - (a) making an application for the Board to approve an alteration or alterations to its regulatory arrangements; or
 - (b) making a request for the Board to direct an alteration is to be treated as an exempt alterationunder section 178 (the Solicitors Disciplinary Tribunal: approval of rules) and Part 3 of Schedule 4 to the Act (alteration of approved regulator’s regulatory arrangements).
3. In relation to an application or request by the Tribunal for the Board to approve an alteration or alterations of the tribunal rules, or to direct an alteration is an exempt alteration, these Rules apply as if–
 - (a) references to ‘approved regulator’ is to the Tribunal, and
 - (b) ‘regulatory arrangements’ is to the tribunal rulesexcept as otherwise specified.
4. In seeking to comply with these Rules, an approved regulator must have regard to any guidance given by the Board under section 162 of the Act.

C. Form of Applications

5. (1) An application by an approved regulator for the Board to approve an alteration or alterations of its regulatory arrangements under Part 3 of Schedule 4 to the Act must—
 - (a) be made in writing,
 - (b) include the information specified in Part E (Information requirements) of these Rules, and
 - (c) attach such evidence and material as is specified in that Part.
- (2) A request by an approved regulator for the Board to approve an alteration to its regulatory arrangements by directing that it is an exempt alteration must—
 - (a) be made in writing, and
 - (b) include the information, evidence, and material in rule 17 (and not Part E (Information Requirements) of these Rules).
6. Where an approved regulator does not include all of the information, evidence and material referred to in rule 5, the Board may consider the application or request not to have been properly made under these Rules.

D. Time Limits

7. The Board will consider and make a decision—
 - (a) on an application in accordance with the time limits prescribed in paragraph 21 of Schedule 4 to the Act, and if a warning notice is issued, paragraph 26(3), (4) and (5) of that Schedule; or
 - (b) on a request within 28 days, subject to any reasonable extension.

E. Information Requirements

8. (1) An application under rule 5(1) must be accompanied by—
 - (a) details of the approved regulator's regulatory arrangements as are relevant to the application,
 - (b) details of the alteration or alterations, and
 - (c) such explanatory material as the approved regulator considers is likely to be needed for the purposes of Part 3 of Schedule 4 to the Act.
- (2) The details and explanatory material in rule 8(a), (b) and (c) must include the matters set out in rules 9 to 13.
- (3) The Board may ask for further information from the approved regulator during its assessment of an application.

Regulatory objectives and better regulation principles

9. (1) An application must include an assessment of how the alteration or alterations comply with—

- (a) the approved regulator's duty under section 28(2) of the Act to, so far as is reasonably practicable, act in a way which is compatible with the regulatory objectives in section 1 of the Act, and
 - (b) the approved regulator's duty under section 28(3) of the Act to have regard to the better regulation principles and best regulatory practice.
- (2) Where the alteration or alterations is not compatible with one or more of the regulatory objectives in section 1 of the Act, the application must include details on why the approved regulator considers that overall, they are not prejudicial to the regulatory objectives, and in the public interest.
- (3) Rule 9(1) does not apply to an application made by the Tribunal.

Alterations

10. (1) An application must include—

- (a) each alteration or alterations to the regulatory arrangements for which approval is sought in the application, including any regulatory arrangements already approved under the Act which will be amended by the alteration or alterations,
- (b) details on why the approved regulator is making the alteration or alterations, including any defects in the approved regulator's regulation of regulated persons that the alteration or alterations will remedy,
- (c) details on the intent and purpose of the alteration or alterations, and its effect,
- (d) details on how the alteration or alterations will be implemented,
- (e) details on the approved regulator's anticipated timeframe for implementing the alteration or alterations,
- (f) in accordance with section 52 of the Act (regulatory conflict with approved regulators), an assessment of whether the alteration or alterations impacts on the regulation of regulated persons by another approved regulator or approved regulators, and where there is an impact—
 - (1) details of consultation with the affected approved regulator(s), and
 - (2) details of any regulatory conflict and how these will be addressed by all affected approved regulators,
- (g) in accordance with section 54 of the Act (regulatory conflict with other regulatory regimes), an assessment of whether the alteration or alterations impacts on a requirement of a regulatory provision made by an external regulatory body, and where there is impact—
 - (1) details of consultation with the external regulatory body,
 - (2) details of any external regulatory conflict and how they will be resolved, and
 - (3) if applicable, details of measures to prevent unnecessary duplication of regulatory provisions made by the external regulatory body, and
- (h) any draft guide or policy that will support implementation of the alteration or alterations.

(2) Sub-paragraphs (f) and (g) of rule 10(1) do not apply to an application made by the Tribunal.

Consultation and Engagement

11. An application must include—

- (a) information on any consultation on the proposed alteration or alterations undertaken by the approved regulator with regulated persons, other approved regulators, the public (including consumers) and any interested parties,
- (b) information on the approved regulator's consideration of any responses to its consultation and changes made to the alteration or alterations or an explanation if no change has been made, and
- (c) where no consultation has been undertaken, information on why the approved regulator considers it reasonable and proportionate not to consult.

Impact Assessments

12. An application must include—

- (a) an assessment of the impact of the alteration or alterations on persons with protected characteristics as defined by section 4 of the Equality Act 2010,
- (b) details on measures to mitigate any adverse impacts identified in rule 12(a), and if there are no such measures, why that is not prejudicial to the regulatory objectives in section 1 of the Act,
- (c) an assessment of the impact of the alteration or alterations on regulated persons, consumers and the public interest, and
- (d) details on measures to mitigate any adverse impacts identified in rule 12(c), and if there are no such measures, why that is not prejudicial to the regulatory objectives.

Evaluation and Monitoring

13. An application must include information on the approved regulator's evaluation and monitoring of the impact of the alteration or alterations once they have effect.

F. Warning Notice, Advice and Representation

14. Where the Board gives an approved regulator a warning notice and receives advice under paragraph 22 of Schedule 4 to the Act regarding whether the application should be granted, the approved regulator may make representations to the Board on that advice in accordance with the Representations Rules.

G. Exemption Direction

15. (1) The Board may direct that an alteration to an approved regulator's regulatory arrangements is an exempt alteration, in accordance with section 178(4) of, or paragraph 19(3) of Schedule 4 to, the Act.

(2) Where the Board gives a direction under rule 15(1) it must notify the approved regulator and publish that notice.

16. A direction given by the Board under rule 15(1) may be specific or general—

- (a) in response to an application or request made under rule 5; or
- (b) at the Board's discretion, acting so far as reasonably practicable in compliance with the regulatory objectives in section 1 of the Act, and having regard to the better regulation principles in section 3(3) of the Act.

17. A request made by an approved regulator under rule 5(2) for the Board to direct that an alteration is an exempt alteration must include—

- (a) a summary of the alteration, its purpose, intent, effect and impact,
- (b) the alteration, and any regulatory arrangements it will amend,
- (c) a summary of an assessment under rule 9,
- (d) details of why the approved regulator considers the alteration is necessary, and appropriate for an exemption direction,
- (e) the timeframe for implementation,
- (f) a summary of any consultation on the alteration and if not why,
- (g) a summary of any impact assessment undertaken, including the impact on persons with protected characteristics, and if not why,
- (h) a summary of any evaluation and monitoring of the impact of the alteration once it has effect, and if not why, and
- (i) any further information the Board may ask for during its assessment of a request.