



# **Guidance on the Applications to Alter Regulatory Arrangements Rules 2021**

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This is statutory guidance under section 162 Legal Services Act 2007

13 December 2021

## Guidance

### Introduction

1. The Legal Services Board (“LSB”) is the independent body that oversees the regulation of legal services in England and Wales. One of the reasons for the creation of the LSB by the Legal Services Act 2007 (“the Act”) is to hold approved regulators and the regulatory bodies to whom some of them have delegated their regulatory functions for the different branches of the legal services profession to account. The Act provides that in discharging its functions the LSB and approved regulators must, so far as reasonably practicable, comply with and thus promote eight regulatory objectives.
2. The Act offers approved regulators a great deal of flexibility in designing their own regulatory arrangements. This flexibility is reflected in the fact that the only approval needed by regulators before proceeding is that provided by the LSB. We also reflect this flexibility in how we assess regulators’ applications for approval and requests for exemptions of alterations to their regulatory arrangements. “Regulatory arrangements” includes an approved regulator’s rules, regulations and arrangements which apply to regulated persons.
3. This Guidance is on the Applications to Alter Regulatory Arrangements Rules 2021 (“Rules”), made by the LSB under paragraph 20(1) of Schedule 4 to the Act for:
  - a. applications made by approved regulators for approval by the LSB of alterations to their regulatory arrangements under paragraph 19(2)(b) of Schedule 4 to the Act (approval by the LSB under Part 3 of Schedule 4)
  - b. requests made by approved regulators for the LSB to direct that an alteration to their regulatory arrangements is to be treated as an exempt alteration and approved under paragraph 19(2)(c) of Schedule 4 to the Act (exempt alteration).
4. The above covers the most frequent circumstances in which alterations to regulatory arrangements are approved under the Act. The Rules and this Guidance do not apply to other circumstances in which alterations may be approved under the Act.<sup>1</sup>
5. This Guidance is given by the LSB under section 162 of the Act. Approved regulators and regulatory bodies to which some have delegated their regulatory functions must have regard to this Guidance in seeking approval of alterations to their regulatory arrangements, as required under rule 4 of the Rules.
6. Unless otherwise stated, the Rules and the Guidance also apply to alterations made by the Solicitors Disciplinary Tribunal (“Tribunal”) to its rules that the LSB must approve before they can have effect, under section 178 of the Act.

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<sup>1</sup> Alterations do not have effect unless approved for the purposes of the Act. Paragraph 19(2) of Schedule 4 to the Act sets out the circumstances in which an alteration is approved.

7. The Rules and the Guidance need to be read within the context of Part 3 of Schedule 4 to the Act, which sets out how alterations to the regulatory arrangements of an approved regulator must be approved.

## Principles and purpose

8. The Rules and this Guidance, reflect the principle we are pursuing that in exercising their regulatory functions, approved regulators should take full ownership of the regulatory objectives set out in the Act and, so far as is reasonably practicable, put them at the centre of their regulatory decision-making.
9. The Rules are intended to support this principle by providing a clear framework for how approved regulators should apply to the LSB for approval of alterations to their regulatory arrangements under Part 3 of Schedule 4 to the Act. The same applies to the Tribunal when it is seeking the LSB's approval of alterations to its practice and procedure rules. A key aim of the Rules and this Guidance is to assist approved regulators (and the Tribunal as applicable) ensure their applications include sufficient information for the LSB to undertake a meaningful assessment of the proposed alterations against the conditions for refusal under the Act,<sup>2</sup> and achieve the outcomes below:
  - Focus on regulatory objectives: applications demonstrate that approved regulators have taken ownership of ensuring that proposed alterations are explicitly and demonstrably focused on complying with and thus promoting the regulatory objectives and making changes that are in the public interest.
  - Impact of alterations: approved regulators' applications and the LSB's assessment and consideration of them focus on substantive issues impacting on the regulatory objectives, regulated persons, consumers and stakeholders. Specific emphasis should be placed on the impact on diversity and inclusion, including assessing the impact of proposals on persons with protected characteristics<sup>3</sup>.
  - Pre-application engagement: clarification through guidance for how the LSB may offer to give approved regulators feedback on proposed changes before they seek approval of alterations.
10. This framework will inform the LSB's wider oversight responsibilities, including under its regulatory performance assessment framework for approved regulators.

## Structure of Guidance

11. This Guidance is divided into Parts (A to G) mirroring each Part of the Rules, and Part H which deals with other issues. Each Part sets out its purpose, an overview of the key points made in the Guidance and gives guidance on each of the Rules where applicable.

### A: Definitions

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<sup>2</sup> In paragraph 25(3) of Schedule 4 to the Act.

<sup>3</sup> As that term is defined under the Equality Act 2010.

- B: Application and Guidance
- C: Form of Applications
- D: Time Limits
- E: Information Requirements
- F: Warning Notice, Advice and Representation
- G: Exemption Direction
- H: Guidance on Other Issues

## Part A: Definitions (Rule 1)

12. Words defined in rule 1 are referred to in the relevant Parts below where applicable. A few definitions reflect those in the Act where we consider it adds clarity to the Rules.

## Part B: Application and Guidance (Rules 2 to 4)

### Purpose

13. Each approved regulator *must* comply with the Rules when applying to the LSB for approval of alterations to its regulatory arrangements or requesting that the LSB direct that an alteration is to be treated as an exempt alteration. ‘Application’ and ‘request’ are defined in rule 1 as those which have been made in accordance with the Rules.
14. The LSB may refuse an application only if it is satisfied of one or more of the conditions in paragraph 25(3) of Schedule 4 to the Act.<sup>4</sup>

### Guidance on specific rules

15. Rule 2 sets out how approved regulators seek the LSB’s approval of alterations to their regulatory arrangements under these Rules. This is by making an application for the LSB to approve its alterations or requesting that it be treated as exempt.
16. Rule 3 applies these Rules (unless otherwise stated) to alterations made by the Tribunal to its rules, which must be approved by the LSB before they have effect.<sup>5</sup>
17. Rule 4 provides that in seeking to comply with the Rules, an approved regulator must have regard to this Guidance. The LSB may have regard to the extent to which an approved regulator has complied with the Guidance in the exercise of its functions, in particular assessing applications or requests for exemption.<sup>6</sup>
18. Before applications or requests for exemption are made to the LSB, we expect that they have been subject to the approved regulator’s internal quality assurance and governance checks and processes, as appropriate.
19. The boards of approved regulators – or their regulatory bodies where regulatory functions have been delegated – seeking approval of alterations to regulatory arrangements need to take ultimate responsibility. Such internal systems are reflective of a well governed and led organisation. Approval by a regulator’s board

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<sup>4</sup> <https://www.legislation.gov.uk/ukpga/2007/29/schedule/4/paragraph/25>

<sup>5</sup> See section 46(9)(b) of the Solicitors Act 1974 and section 178 of the Act.

<sup>6</sup> Section 162(5) of the Act.

may be required under its governance arrangements, depending on the significance, risks and likely impact of the proposals in an application. Such approval is unlikely to be necessary or proportionate for every application or exemption request. This is a matter of judgement for the regulator concerned depending on the significance of their proposals and its governance arrangements, having regard to a proportionate level of internal scrutiny and approval. Applications and requests for exemption subject to rigorous internal checks and balances are less likely to involve the need for requests for clarification and information before a decision is made by the LSB.

#### Guidance on meaning of regulatory arrangements

20. The following guidance is to assist approved regulators in determining whether their proposals fall within the meaning of alterations to regulatory arrangements requiring approval under the Act before they have effect.
21. An alteration to an approved regulator's regulatory arrangements includes an addition to or the revocation of any part of the arrangements (rule 1 of the Rules and paragraph 19(5) of Schedule 4 to the Act). An alteration to the tribunal rules includes the making and modification of such rules (rule 1 and section 178(6) of the Act).
22. Section 21(1) of the Act defines regulatory arrangements of bodies widely as follows:
  - (a) its arrangements for authorising persons to carry on reserved legal activities,
  - (b) its arrangements (if any) for authorising persons to provide immigration advice or immigration services,
  - (c) its practice rules,
  - (d) its conduct rules,
  - (e) its disciplinary arrangements in relation to regulated persons (including its discipline rules),
  - (f) its qualification regulations,
  - (g) its indemnification arrangements,
  - (h) its compensation arrangements,
  - (i) any of its other rules or regulations (however they may be described), and any other arrangements, which apply to or in relation to regulated persons, other than those made for the purposes of any function the body has to represent or promote the interests of persons regulated by it, and
  - (j) its licensing rules (if any), so far as not within paragraphs (a) to (i).
23. Compensation arrangements, conduct rules, discipline rules, indemnification arrangements, practice rules and qualification regulations are defined in section 21(2).
24. Ordinarily, changes to guidance or policy documents that do not impose mandatory requirements will not be considered to be regulatory arrangements and therefore will not require LSB approval. However, there may be circumstances where guidance or

policy documents are so central to the proposals that they fall within the meaning of an alteration or alterations to regulatory arrangements requiring LSB approval. The focus ought to be on content and intent, rather than what a particular document might be labelled as. This is most often relevant in circumstances where an approved regulator proposes to issue guidance that impose obligations on or in relation to regulated persons that are not underpinned by existing regulatory arrangements – and therefore likely to require approval under the Act before they can have lawful effect.

25. Regulators need to undertake their own assessments as to whether proposed guidance or policy documents are regulatory arrangements. If approved regulators are unsure as to whether their proposals amount to an alteration or alterations to their regulatory arrangements, they should consult with the LSB in advance of implementing the relevant proposals. We expect that it would only be in limited circumstances where a regulator is unable to make such an assessment, and therefore need to ask the LSB for a decision. If a question arises as to whether proposals require the LSB's approval under Part 3 of Schedule 4 to the Act, that is a matter for the LSB to decide in accordance with paragraph 19(6) of that Schedule.

## Part C: Form of Applications (Rules 5 and 6)

### Purpose

26. The aim of rules 5 and 6 is to set out how an approved regulator must apply to the LSB for approval of alterations to their regulatory arrangements or request that such an alteration is approved by the LSB directing that it is an exempt alteration.
27. Applications and requests need to include the relevant material, details and evidence specified in the Rules to allow for meaningful assessment by the LSB against the refusal conditions in paragraph 25(3) of Schedule 4 to the Act.

### Key points

28. Approved regulators must ensure they comply with the information requirements set out at Part E (for applications for approval) and rule 17 (for exempt alteration requests) of the Rules.
29. If an approved regulator is in doubt as to whether its proposals amount to an alteration to regulatory arrangements that requires approval or is appropriate for a request that it be treated as an exempt alteration, it should consult with the LSB.
30. The LSB will publish on its website applications made under rule 5(1) within two working days of receipt. In addition, we will use our social media channels to publicise the receipt of applications. If any information submitted as part of the application is considered by the approved regulator to be confidential or commercially sensitive, this should be clearly explained in the cover email or letter which accompanies the application providing reasons as to why the information in question should not be published.

31. The LSB will publish alongside the application any extension notice or warning notice, and its decision notice once given to the approved regulator as required under the Act<sup>7</sup>.
32. Third-party correspondence relating to an application that is received by the LSB before a decision is made, will ordinarily be published alongside the application with personal data redacted – see Part H Guidance on Other Issues.
33. Consistent with applications, the LSB will usually publish on its website requests for exemption, any extension of time notice, third party correspondence received and the exemption direction or refusal notice.

#### Guidance on specific rules

##### Rule 5(1): applications

34. Rule 5(1) provides that an application made by an approved regulator for alterations to its regulatory arrangements must be made in writing and include the information, evidence and material specified in Part E of the Rules.
35. Approved regulators must make applications in accordance with this rule, unless an alteration is one that may be suitable for the LSB to direct as an exempt alteration or is covered by a general exemption direction issued by the LSB.

##### Rule 5(2): exempt alterations

36. Rule 5(2) applies to a request made by an approved regulator for the LSB to direct that an alteration to its regulatory arrangement is an exempt alteration.
37. When making a request, approved regulators must comply with the information requirements in rule 17, and not Part E.
38. The LSB may direct that an alteration is an exempt alteration in response to an application or request, or at its discretion.
39. The LSB may from time-to-time issue general exemption directions to cover certain alterations or classes of alterations.<sup>8</sup> Approved regulators should check whether their proposed alterations are covered by a general exemption direction before seeking approval. Where an approved regulator is unsure as to whether a general exemption direction is applicable to an alteration, it will need to seek further guidance from the LSB.

##### Rule 6: failure to comply with information requirements

40. Upon receipt of an application or request, the LSB will assess whether it includes all of the information, details, evidence and material required under the Rules. Failure to comply with information requirements means the application or request has not been properly made under the Rules. That may mean the application or request will not be considered by the LSB for approval or exemption and will be returned to the applicant approved regulator. If that is the case, the LSB will notify the approved regulator of its assessment and reasons in writing.

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<sup>7</sup> Paragraphs 21(2), 24(1), 25(8) and 26(6) of Schedule 4 to the Act sets out the notices, and advice and representation in relation to a warning notice that the Board must publish.

<sup>8</sup> Paragraph 19(3) and (4) of Schedule 4 to the Act.

## Part D: Time Limits (Rule 7)

### Purpose

41. This Part confirms that the LSB will make a decision on an application in accordance with the time limits prescribed by the Act.
42. This Part also sets out the time period for a decision by the LSB on requests for it to direct that an alteration is an exempt alteration.

### Key points

43. The Act prescribes the time period within which the LSB must make a decision on an application and give notice of any extension. The Rules and Guidance set out the time period in which the LSB will make a decision on a request for an exempt alteration.
44. The Act provides that the initial decision period for an application by an approved regulator for the LSB to approve alterations is 28 days beginning with the day on which the application is received (paragraph 21(4) of Schedule 4).
45. On receipt of an application the LSB must within the 28-day initial decision period, notify the approved regulator of its decision, extend the initial decision period or issue a warning notice. Failure to notify the approved regulator within the initial decision period will mean the alterations are deemed to have been granted by the LSB under paragraph 21(3) of Schedule 4 to the Act.
46. The initial decision period may be extended with the consent of the approved regulator or by the LSB issuing an extension notice to the approved regulator (paragraph 21(5) of Schedule 4 to the Act). An extension notice must specify the time period of the extension, reasons, and end no later than 90 days from the date on which the application was made (paragraph 21(7) of Schedule 4 to the Act).
47. Where the LSB issues a warning notice, it may extend the decision period for 12 months and may further extend the decision period before it ends, provided that any extended period does not exceed 18 months (paragraphs 21(1)(b) and 26(3) and (5) of Schedule 4 to the Act).

### Guidance on specific rules (Rule 7)

48. The LSB has discretion to make its decision on an application at any point - it is not constrained to doing so at the end of an initial or extended decision period.
49. Requests for an alteration to be directed as exempt are not subject to the full approval procedure for applications under Schedule 4 to the Act. As such, the LSB aims to deal with requests promptly by making a decision within 28 days as is set out in rule 7(b). This is consistent with the initial decision period for applications prescribed by the Act. The LSB may extend this period by notifying the approved regulator in writing – this will be for a reasonable period in the circumstances of each case. An extension may be required where the approved regulator has been asked to provide additional information.



## Part E: Information Requirements (Rules 8 to 13)

### Purpose

50. This Part sets out the information, evidence and material an approved regulator must include in an application under rule 5(1). The application must include sufficient information to enable the LSB to assess it against the conditions for refusal under paragraph 25(3) of Schedule 4 to the Act.
51. The LSB may seek further information during its consideration of an application. For example, this may be for detail on how the approved regulator has taken into account any LSB guidance and policy that may be relevant to the proposed alterations to its regulatory arrangements.<sup>9</sup>

### Key points

52. An approved regulator must address in its application all the information requirements detailed in rules 9 to 13 (Rule 6 deals with failure to comply with information requirements).
53. An approved regulator has the option of applying using the proforma at Annex A to this Guidance, which summarises the information requirements in Part E. Alternatively an approved regulator may use its own format for the application.
54. During its assessment of an application, the LSB may seek further information and details from the approved regulator, as provided for in rule 8(3).

### Guidance on specific rules

#### Rule 9: regulatory objectives and better regulation principles

55. Rule 9 provides that applications must include details on the impact of the proposals on the regulatory objectives. For example, evidence and research considered – including assessment of potential benefits and detriments against the regulatory objectives – by the approved regulator in formulating the proposed alterations. This reflects an approved regulator's duty under section 28(1) and (2) of the Act, and the refusal conditions against which the LSB will assess the application. The section 28 duty does not apply to the Tribunal.
56. Approved regulators in discharging their regulatory functions must, so far as reasonably practicable, act in a way which is compatible with the regulatory objectives and which they consider most appropriate for the purpose of meeting those objectives, and have regard to the better regulation principles (section 28(1) and (3) of the Act).
57. The regulatory objectives in section 1 of the Act are:
  - (a) protecting and promoting the public interest;
  - (b) supporting the constitutional principle of the rule of law;

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<sup>9</sup> For example, the Guidance on regulatory arrangements for education and training issued under section 162 of the Act is available here:

[https://legalservicesboard.org.uk/what\\_we\\_do/regulation/pdf/20140304\\_LSB\\_Education\\_And\\_Training\\_Guidance.pdf](https://legalservicesboard.org.uk/what_we_do/regulation/pdf/20140304_LSB_Education_And_Training_Guidance.pdf)

- (c) improving access to justice;
  - (d) protecting and promoting the interests of consumers;
  - (e) promoting competition in the provision of legal services;
  - (f) encouraging an independent, strong, diverse and effective legal profession;
  - (g) increasing public understanding of the citizen's legal rights and duties;
  - (h) promoting and maintaining adherence to the professional principles.
58. Section 28(3) of the Act requires that approved regulators must have regard to the better regulation principles and best regulatory practice. The better regulation principles are that regulatory activities should be:
- (a) transparent;
  - (b) accountable;
  - (c) proportionate;
  - (d) consistent; and
  - (e) targeted only at cases in which action is needed.
59. The duty to act so far as is reasonably practicable in a way which is compatible with the regulatory objectives, and thus promote them, is fundamental to the process for alterations to regulatory arrangements. **As the regulatory objectives are of central importance to our assessment, approved regulators are encouraged to consider structuring their applications around their analysis of how the alterations comply with and thus promote the regulatory objectives.**
60. It will not always be the case that every regulatory objective is impacted equally by proposed alterations. We expect applications to focus in particular on the regulatory objectives which approved regulators consider are meaningfully engaged by their proposals.
61. In circumstances where it is anticipated that alterations will have a negative impact on one or more of the regulatory objectives, applications must clearly explain the alteration(s) and negative impact, and why it is considered that the alterations when considered as a whole, are not prejudicial to the regulatory objectives, and in the public interest.
62. An application made by the Tribunal under Part 3 of Schedule 4 to the Act, is subject to the conditions for refusal under paragraph 25 that Schedule, which includes the condition that an application may be refused if the LSB is satisfied that granting it would be prejudicial to the regulatory objectives (paragraph 25(3)(a)). As such, rule 9(2) of the Rules applies to the Tribunal and guidance on that provision is set out at paragraph 59 of this Guidance. The LSB in discharging its functions under the Act, must so far as reasonably practicable act in a way which is compatible with the regulatory objectives and have regard to the better regulation principles. Information provided by the Tribunal on compatibility with the regulatory objectives and better regulation principles, will assist the LSB in assessing its application against the refusal conditions.

## Rule 10: Alterations

63. This rule specifies the details of the proposed alterations that must be included within an application. 'Alteration' is defined in rule 1.
64. The application must include the proposed alterations, including any regulatory arrangements already approved under the Act that will be amended by the proposals. Details on why the alterations are being made, including evidence of any defects in the regulation of regulated persons that the proposals will remedy, must also be included. The application should also include information on the purpose, intent and effect of the proposals, how they will be implemented and the timeframe for implementation.
65. An assessment of whether the alterations impact on the regulation of regulated persons by another approved regulator(s) also needs to be included. Where there is impact, the details of consultation with the affected approved regulator(s), any regulatory conflict and how these will be resolved needs to be included. This requirement at rule 10(f) reflects an approved regulator's duty under section 52 of the Act to make provision as is reasonably practicable to prevent regulatory conflict. An approved regulator in making alterations is encouraged to harmonise their regulatory arrangements with other approved regulators. As section 52 applies to approved regulators and not the Tribunal, rule 10(f) does not apply to the Tribunal.
66. Rule 10(g) requires that provision be made to prevent external regulatory conflicts where this may arise. Where they do arise, the application must provide for resolution and prevent unnecessary duplication of regulatory provisions made by an external regulatory body. This requirement at rule 10(g) reflects an approved regulator's duty under section 54 of the Act to make provision as is reasonably practicable to prevent external regulatory conflict. As section 54 applies to approved regulators and not the Tribunal, rule 10(g) does not apply to the Tribunal.
67. Rule 10(h) requires that an application must include any draft guide or policy intended to support the implementation of the alterations. These documents can give necessary context to how the alterations will work in practice which may be important in assessing their impact on the regulatory objectives, and against the refusal conditions. It may also be the case that these documents fall within the meaning of regulatory arrangements and enclosing them with an application will assist in determining this. These documents do not necessarily have to be in final form – but they must be sufficiently advanced to enable meaningful consideration.
68. It is important that an application provides full detail in the manner prescribed in rule 10, on each alteration being proposed to enable the LSB to properly assess the application.

## Rule 11: Consultation and Engagement

69. Rule 11 sets out the details to be included in an application relating to consultation and engagement by the approved regulator on its proposals, including with regulated persons and consumers.
70. Consultation or engagement with those who are likely to be impacted by policy changes is an integral part of policy development. This is an opportunity to explain to stakeholders and the public what alterations are being made and why, and gives them

an opportunity to comment on the proposals. It also provides an opportunity for stakeholders, including those with different perspectives, to raise issues in relation to the impact of the proposals, including on persons with protected characteristics. This may identify possible risks for the approved regulator to consider and address for their consultees, and as appropriate in finalising its alterations.

71. We expect applications to include content on the issues raised through consultation and engagement, explaining any consequential amendments to its proposals, or if no changes have been made in response, why.
72. Proportionate consultation and engagement will help ensure approved regulators have the evidence base required to assess the impact of alterations on the regulatory objectives and having regard to the better regulation principles. We expect approved regulators to explain their approach to consultation and engagement and why they consider that approach to be reasonable, proportionate and not prejudicial to the regulatory objectives overall.
73. Regulators should consider who may be interested in or impacted by their proposals. They should also be cognisant of the value and insight that may be gained through consulting and engaging with those who may be able to identify risks from alternate perspectives. For example, a change to consumer protection is likely to benefit from input from consumers or consumer organisations. Changes to regulatory requirements are likely to benefit from input from the regulatory community or other regulatory bodies. Regulators must take responsibility for reasonable and proportionate consultation and engagement on their proposals.
74. Where an approved regulator does not consult on its proposals, it will need to explain why the lack of consultation in relation to a specific set of alterations in an application is reasonable, proportionate and not prejudicial to the regulatory objectives overall. For example, an approved regulator may choose to provide an explanation of what alternative engagement was undertaken instead of direct consultation and why such engagement was proportionate and appropriate in the circumstances.

#### Rule 12: Impact Assessments

75. Rule 12 provides that applications must include:
  - a. an assessment undertaken by the approved regulator of the impact of its proposals on persons with protected characteristics as defined by section 4 of the Equality Act 2010 and
  - b. an assessment of the impact of the proposals on regulated persons, consumers and the public interest.
76. The LSB expects that approved regulators will collect and use diversity data to help inform policy development. Where appropriate, approved regulators should make use of this data to inform impact assessments of proposed alterations. We do not expect this assessment of the impact of the alterations on those with protected characteristics to focus solely on avoiding or mitigating negative impacts. This should also provide an opportunity for approved regulators to encourage an independent, strong, diverse and effective legal profession by demonstrating the following. First, that they are developing approaches which could help to dismantle barriers to a diverse and inclusive legal profession at all levels. Second that they are advancing

equality of opportunity between persons who share protected characteristics and persons who do not.

77. As such, applications must include details on measures to advance equality of opportunity as appropriate and mitigate any adverse impacts on persons with protected characteristics. An application needs to also include, if relevant, details of why any remaining adverse impact is proportionate, reasonable and not prejudicial to the regulatory objectives overall. We expect that this assessment will be proportionate to the proposals, but regard needs to be given to the impact of the proposals on persons with protected characteristics.
78. Applications must also include an assessment of the impact of the alterations on regulated persons, consumers and the public interest along with any measures to mitigate adverse impacts. Where adverse impact remains, an explanation should be provided of why this is proportionate, reasonable and will not be prejudicial to the regulatory objectives overall. Where significant changes to the regulatory framework are proposed, an approved regulator must undertake a proportionately more detailed assessment of the potential impact on the regulated persons, consumers and the public interest.
79. Approved regulators should include within any assessment, evidence and detail of any identified positive impacts that are relevant to the overall impact of the alterations on the regulatory objectives.

#### Rule 13: Evaluation and Monitoring

80. Rule 13 requires applications to include information on how the actual impact of alterations will be evaluated and monitored once they have effect.
81. We expect applications to include specific plans for what actions will be taken to evaluate and monitor the impact of the alterations. This should include detail on the methods of evaluation, monitoring and timescales for carrying out the work.
82. The implementation of evaluation and monitoring plans will be assessed as part of the LSB's regulatory performance assessment framework.

## Part F: Warning Notice, Advice and Representation (Rule 14)

### Purpose

83. Rule 14 applies only where the LSB issues a warning notice to an approved regulator notifying that it is considering refusing an application under paragraph 21(1)(b) of Schedule 4 to the Act.
84. Where the LSB receives from persons it invites advice on whether the application should be granted, the approved regulator may make representations on that advice (paragraphs 22 and 23 of Schedule 4 to the Act). Rule 14 provides that the approved

regulator may make such representations in accordance with the Representation Rules<sup>10</sup>.

85. The LSB must publish any advice and representations received in accordance with paragraph 24, Schedule 4 to the Act.

## Part G: Exemption Direction (Rules 15 to 17)

### Purpose

86. This Part reflects provisions under the Act that provide an exemption direction issued by the LSB may be specific or general, in response to a request for exemption from an approved regulator or at the LSB's discretion. It sets out the information requirements that apply to a request for exemption made by an approved regulator.

### Key points

87. Rule 17 sets out the information the approved regulator needs to include in a request for an exempt alteration. This is required by the LSB to assess whether the proposed alteration(s) is suitable for exemption. A request for exemption is to be used in circumstances where an approved regulator considers its alterations are suitable for exemption from the full approval process. The following is a non-exhaustive list of what might be appropriate for an exemption direction:

- minor alterations to correct drafting errors or to update cross-references
- non-controversial alterations with low risk of being prejudicial to the regulatory objectives
- alterations that are unlikely to impact consumers or the regulatory community in any meaningful way
- alterations that are consequential to legislative changes.

### Guidance on specific rules

88. The information requirements in rule 17 are similar to the Part E application requirements but are not as detailed given that exemptions are usually only applicable for minor and non-controversial changes or in exceptional circumstances where time is of the essence. Requests for exemption must include:

- a. A summary of the alteration, its purpose intent, effect and impact – why is the alteration necessary?
- b. The alteration(s) and the regulatory arrangements it will amend, if any. We expect this to include information on any alteration to the regulatory arrangements approved over the past 2 years.

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[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)

- c. A summary of an assessment under rule 9 of the impact of the alteration on the regulatory objectives, and measures to mitigate any adverse impacts, and if not, why that is not prejudicial to the regulatory objectives overall.
  - 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 undertaken proportionate to the alteration, or if not why. This should include any earlier consultations on the regulatory arrangements being altered, and any issues identified in that consultation that the alteration may address.
  - g. A summary of an assessment of the impact of the alteration, including on persons with protected characteristics, and if not why. We expect such an assessment, if carried out, considers the matters set out in rule 12 and is proportionate to the alteration. If there are adverse impacts, information on any mitigating measures and if there are none, why this is reasonable, proportionate, and not prejudicial to the regulatory objectives overall. This is likely to include information on the number or proportion of regulated persons and consumers that will be affected by the alteration.
  - h. A summary of any evaluation and monitoring of impact of the alteration once it has effect, and if not why.
89. The information set out in rule 17 is intended to focus on the significance, impact and risk of the proposed alteration. In determining the detail of the information to provide with a request, an approved regulator is expected to take a proportionate approach appropriate to the alterations being sought. A request for an exemption is not a full application for approval, and accordingly, the level of detail required is likely to be proportionally less than would be required for an application.
90. The LSB may seek further information from the approved regulator during its assessment of a request for exemption. For example, this may be for detail on how the approved regulator has taken into account any LSB guidance and policy that may be relevant to the proposed alterations to its regulatory arrangements.<sup>11</sup>
91. Where the LSB directs an exempt alteration, it will notify the approved regulator and publish the notice on its website.
92. Where the LSB does not issue an exemption direction in response to a request for exemption, it will notify the approved regulator of its reasons in writing. It may be the case that the proposal is not an alteration to regulatory arrangements or is not appropriate for an exemption direction. An alteration may not be appropriate for exemption if for example it involves more than a very minor change to regulatory arrangements or raises issues that are potentially prejudicial to the regulatory

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<sup>11</sup> For example, the Guidance on regulatory arrangements for education and training issued under section 162 of the Act is available here:

[https://legalservicesboard.org.uk/what\\_we\\_do/regulation/pdf/20140304\\_LSB\\_Education\\_And\\_Training\\_Guidance.pdf](https://legalservicesboard.org.uk/what_we_do/regulation/pdf/20140304_LSB_Education_And_Training_Guidance.pdf)

objectives. In that case, the approved regulator may need to prepare and submit an application to seek approval of the alterations.

93. We expect approved regulators to consider and respond to each question in paragraph 88 above in conducting their own assessment as well as in their request for exemption to the LSB. An optional proforma that summarises the information required for requests for exemption can be found at Annex B to this Guidance. Alternatively, an approved regulator may use its own format for the request.

## Part H: Guidance on Other Issues

### Guidance on pre-application engagement

94. There may be instances where an approved regulator may be uncertain as to the application of the Rules and Part 3 of Schedule 4 to the Act, including the information requirements, to its proposals. In such circumstance the LSB may provide informal feedback on such proposals before an application or request for exemption is submitted.
95. The Rules and Guidance are intended to provide clarity on the matters that applications and requests for exemption need to address. Consequently, feedback will not be given routinely on any draft applications or requests for exemption. The LSB will likely only do so on complex, high-risk proposals or those that may have a significant impact on the regulatory objectives. Approved regulators may wish to show the LSB a preliminary draft of such applications for guidance.
96. Pre-application engagement is intended to give guidance on how the Rules apply to an approved regulator's proposed alterations. For example, guidance may be on matters an approved regulator needs to consider and assess, to be in a position to include with their application all of the relevant information. Pre-application engagement is discretionary and is not part of the application process under Part 3 of Schedule 4 to the Act – there is no obligation on an approved regulator to do so, nor on the LSB to give feedback on drafts.
97. Any feedback provided on draft proposals is at the LSB's discretion; it does not pre-judge or fetter the LSB's discretion in assessing an application or request for exemption. The LSB will make its decision on the merits of an application or request for exemption once made in accordance with Part 3 of Schedule 4 to the Act.

### Guidance on third party correspondence

98. The LSB may consider correspondence from stakeholders on applications, if received before a decision is made. We will review such correspondence to assess whether issues material to our consideration of the application are raised.
99. We may raise issues so identified with the approved regulator if they have not been addressed in the application to our satisfaction. Third party correspondence we receive during our assessment of an application will ordinarily be published on our website alongside the application with any personal data redacted unless a request is made to keep the correspondence confidential.



100. The LSB may make its decision at any time during the assessment period (see Part E). Third party correspondence received on an application after a decision has been made will not be considered in the LSB's assessment of the application and decision.



**Information requirements: application by approved regulators for approval by the LSB of alterations to their regulation arrangements under Part 3 of Schedule 4 to the Legal Services Act 2007 (the Act)**

**Summary**

An application by an approved regulator for approval by the LSB of alterations to their regulatory arrangements under Part 3 of Schedule 4 to the Act must include the information set out in this proforma, which summarises the requirements for applications under the Part E of the Application to Alter Regulatory Arrangements Rules 2021.<sup>12</sup>

Use of this proforma for making applications is optional to assist applicant approved regulators.

An approved regulator must comply with the Rules and have regard to the Guidance in applying to the LSB. In case of conflict between the Rules, Guidance and the Act, the provisions of the Act prevail.

As set out in paragraph 94 of the Guidance, the LSB may provide informal feedback on some proposals before an application is submitted.

The approved regulator submitting an application takes responsibility for the accuracy and completeness of the information provided.

On receipt of an application, the LSB will acknowledge receipt and confirm to the approved regulator in writing the end date for the initial decision period of 28 days, subject to any extension by consent or notice, or as a consequence of a warning notice given by the LSB. The LSB will notify the approved regulator of its decision pursuant to paragraph 25(6) of Schedule 4 to the Act and publish that notice on its website.

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<sup>12</sup> The information requirements in Part E of the Rules are summarised here.

## **Publication**

We publish all applications on our website, along with any extension notice, warning notice and the decision notice once made.

Ordinarily we publish third party correspondence received on applications with personal data redacted unless a request is made to keep it confidential.

## **Confidential or commercially sensitive information**

If any information submitted as part of the application is considered by the approved regulator to be confidential or commercially sensitive, please state this in the cover email or letter which accompanies the application and provide reasons as to why the information in question should not be published.

## **Contents**

- I. Summary/Overview.
- II. Regulatory objectives and better regulation principles – details on the impact of the proposals on the regulatory objectives, including assessment of potential benefits and detriments against those objectives, having regard to the better regulation principles. Where there are negative impacts, how the alterations nonetheless comply with and thus promote the regulatory objectives overall and are in the public interest.
- III. Alterations
  - a. Full details and explanation of each alteration. This includes a schedule of changes, a track change word document or any other method the approved regulator considers appropriate.
  - b. Rationale, intent, purpose, and effect of each alteration, including detail on any defect in the regulation of regulated persons that will be remedied by the alteration.
  - c. Details on how and when the alterations will be implemented.
  - d. An assessment of whether the alterations impact on the regulation of regulated persons by another approved regulator or approved regulators, and where there is impact details of consultation with the affected approved regulator, any regulatory conflict and how it will be resolved as is reasonably practicable.
  - e. The above applies to any conflict with an external regulatory body – and include measures as is reasonably practicable and appropriate in the circumstances to prevent unnecessary duplication of regulatory provisions.
- IV. Consultation and Engagement: Information on the consultation/engagement undertaken by the approved regulator when developing the proposals. This must include information on the approved regulator's consideration of any responses to the consultation, any consequential changes made to the alterations, and an explanation of why the approach to consultation and engagement was proportionate in the circumstances.
- V. Impact Assessment: An assessment of the impact of the alterations on persons with protected characteristics as defined by section 4 of the Equality Act 2010 along with details of any measures to mitigate any adverse impacts and why any remaining adverse impact is proportionate, reasonable and not prejudicial to the regulatory objectives overall. To include details on how the alterations advance equality of opportunity between persons who share protected characteristics and persons who do not, and on how the alterations support the aim of dismantle barriers to a diverse and inclusive profession where relevant.
- VI. An assessment of the impact of the alterations on the conduct of legal services by regulated persons, consumers and the public interest, along with details of measures to mitigate any adverse impacts. Where adverse impact remains, explain why this is

proportionate, reasonable and will not be prejudicial to the regulatory objectives overall. If significant alterations to the regulatory framework is proposed, an approved regulator must undertake a proportionately more detailed assessment of the potential impact on the regulated persons, consumers and the public interest.

- VII. Information on the evaluation and monitoring the approved regulator will undertake of the impact of the alterations once they have been implemented.
- VIII. Any draft guide or policy that will support implementation of the alterations.

The minimum level of information we expect from approved regulators is set out above. However, additional information may be provided, for example by reference to the Guidance. The LSB may also request further information.

### **Submission**

We would prefer to receive applications electronically, but hard copy applications are also welcome. Applications should be sent to:

Email: [schedule4approvals@legalservicesboard.org.uk](mailto:schedule4approvals@legalservicesboard.org.uk)

Posted applications should be sent to:

Legal Services Board  
3rd floor, The Rookery  
2 Dyott Street  
London  
WC1A 1DE

## **Information required in an application**

### **I. Summary and overview**

Briefly summarise the application

### **II. Regulatory objectives and better regulation principles (rule 9)**

Provide details on the impact of the proposals on the regulatory objectives, including assessment of potential benefits and detriments against those objectives, having regard to the better regulation principles. Where there are negative impacts, how the alterations nonetheless comply with and thus promote the regulatory objectives overall and are in the public interest. Please focus on those regulatory objectives that are meaningfully engaged by the proposals.

### **III. Alterations detail of each proposed alteration (rule 10)**

This must provide full details on, and explanation of each alteration, including any regulatory arrangements they will amend. This can include a schedule of changes, a track change word document or any other method the approved regulator considers appropriate. Details must include: (a) the rationale, intent, purpose, and effect of each alteration; (b) if applicable, the gap or defect in existing regulatory arrangements that the alteration is intended to remedy; (c) how and when the alterations will be implemented; (d) assessment of whether the alterations impact on the regulation of regulated persons by another approved regulator or approved regulators, and where there is impact details of consultation with the affected approved regulator(s), any regulatory conflict and how it will be resolved; and (e) the details in (d) applies to any conflict with an external regulatory body and include measures to prevent unnecessary duplication of regulatory provisions.

#### **(a) Rationale, intent, purpose, and effect of proposed alterations**

This section should include information and evidence setting out:  
why the approved regulator is making the alteration or alterations.  
what defects are intended to be remedied.  
what the intent, purpose and effect of the alteration or alterations will be.  
what impact the proposals are anticipated to have on the regulatory objectives.

#### **(b) The gap or defect in existing regulatory arrangements that the alteration is intended to remedy**

<p><b>(c) Implementation</b></p> <p>Detail setting out how and when the alteration or alterations will be implemented.</p>
<p><b>(d) and (e) Impact on other regulated persons/approved regulators</b></p> <p>Provide an assessment of whether the alteration or alterations impact on the regulation of regulated persons by another approved regulator(s) and/or external regulatory bodies. If there is impact please provide detail of any consultation or engagement with the affected regulator and details of any regulatory conflict and how such conflict will be addressed, as is reasonably practicable.</p>
<p><b>IV. Consultation and Engagement (rule 11)</b></p> <p>Provide detail of the consultation and engagement process undertaken when developing the proposals leading to the alterations. This must include detail of any responses/feedback along with information on your consideration of that, and any consequential changes to the alterations. This section must also provide an explanation of why the approach taken to consultation and engagement was proportionate in the circumstances.</p>
<p><b>V. &amp; VI. Impact Assessment (rule 12)</b></p> <p>a) Equality impact assessment: Provide an assessment of the impact of the alterations on persons with protected characteristics as defined by section 4 of the Equality Act 2010. Please include in this section details of any positive impacts as well as any adverse impacts, measures that will be implemented to mitigate any adverse impacts, and on why any remaining adverse impact is proportionate, reasonable, and not prejudicial to the regulatory</p>

objectives overall. To include details on the consideration given to how the alterations advance equality of opportunity between persons who share protected characteristics and persons who do not and support the aim of dismantle barriers to a diverse and inclusive profession where relevant.

**b) Impact on regulated persons, consumers and the public interest**

Provide an assessment of the impact of the alteration or alterations on the conduct of legal services by regulated persons, consumers and the public interest. Please include in this section details of any measures to mitigate any adverse impacts. Where adverse impact remains, an explanation of why this is proportionate, reasonable and will not be prejudicial to the regulatory objectives overall.

Where significant alterations to the regulatory framework are proposed, an approved regulator must undertake a proportionately more detailed assessment of the potential impact on the regulated persons, consumers and the public interest.

**VII. Evaluation and monitoring**

Provide full details on the evaluation and monitoring the approved regulator will undertake to assess the impact of the alterations once they have been implemented. This should include specific plans and timescales for carrying out the monitoring and evaluation work.

**VIII. Any draft guide or policy that will support implementation of the alterations**

These documents can give necessary context to how the alterations will work in practice which may be important in assessing their impact on the regulatory objectives, and against the refusal conditions. It also may be the case that these documents may fall within the meaning of regulatory arrangements and having them enclosed with an application will assist in determining this.



**Information requirements: request by an approved regulator for the LSB to direct an alteration to their regulation arrangements is exempt under Part 3 of Schedule 4 to the Legal Services Act 2007 (the Act)**

**Summary**

A request by an approved regulator for the LSB to direct that an alteration is to be treated as an exempt alteration under Part 3 of Schedule 4 to the Act must include the information set out in this proforma, which summarises the requirements in the Applications To Alter Regulatory Arrangements Rules 2021 (the Rules).<sup>13</sup>

Use of this proforma for making requests for an exempt alteration is optional to assist applicant approved regulators.

An approved regulator must comply with the Rules and have regard to the Guidance in making a request to the LSB. In case of conflict between the Rules, Guidance and the Act, the provisions of the Act prevail.

The approved regulator submitting a request for an exemption direction takes responsibility for the accuracy and completeness of the information provided.

A request for exemption is to be used in circumstances where an approved regulator considers its alterations are suitable for exemption from the full approval process, having regard to the Rules and Guidance.

The LSB will assess the request and make a decision within 28 days of receipt, subject to any reasonable extension. Where an exemption direction is given by the LSB it will give notice to the approved regulator and published it on the LSB website.

Where the LSB does not direct that an alteration is exempt it will notify the approved regulator in writing of its reasons. The approved regulator may need to submit an application under the Rules for approval of alterations to regulatory arrangements.

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<sup>13</sup> The information requirements in rule 17 of the Rules are summarised here.



## **Publication**

We will ordinarily publish requests for exemption on our website, along with any extension of time notice, third party correspondence received as well as the exemption direction itself.

## **Contents**

- I. Summary/Overview
- II. Summary of proposed alteration, its purpose intent, effect, and impact– why is the alteration necessary?
- III. Details setting out why the alteration is appropriate for exemption
- IV. Full details of the alteration(s) and the regulatory arrangements it will amend, if any. This can be done by way of a schedule of changes, a track change word document or any other method the approved regulator considers appropriate.
- V. A summary of an assessment under rule 9 of the Rules, of the impact of the alteration on the regulatory objectives, and measures to mitigate any adverse impacts, and if not, why that is not prejudicial to the regulatory objectives overall.
- VI. Timeframe for implementation.
- VII. A summary of any consultation undertaken or if not why. Include any consultations relevant to the regulatory arrangements being altered, and any issues identified in that consultation that the alteration may address.
- VIII. A summary of an assessment of the impact of the alteration, including on persons with protected characteristics, and if not why. This is likely to include information on the number or proportion of regulated persons and consumers that will be affected by the alteration. If there are adverse impacts, information on any mitigating measures and if there are none, why this is reasonable, proportionate, and not prejudicial to the regulatory objectives overall.
- IX. A summary of any evaluation and monitoring of impact of the alteration once it has effect, and if not why.

The minimum level of information we expect from approved regulators is set out in the above bullet points. However, additional information may be provided, for example by reference to the Guidance. The LSB may also request further information.

## **Submission**

We would prefer to receive requests electronically, but a hard copy is also welcome. Completed requests should be sent to:

Email: [schedule4approvals@legalservicesboard.org.uk](mailto:schedule4approvals@legalservicesboard.org.uk)

Posted applications should be sent to:

Legal Services Board  
3rd floor, The Rookery  
2 Dyott Street  
London  
WC1A 1DE

## Proforma for a request for exemption direction

<b>Required Content</b>
<b>I. Summary/Overview</b>
Briefly summarise the proposed alteration
<b>II. Summary of proposed alteration, its purpose intent, effect, and impact</b>
Summarise each alteration, its purpose, intent, effect and impact. Why is the alteration necessary? Please ensure that this section can be read and understood by those without detailed prior knowledge of the proposals or regulatory arrangements.
<b>III. Details setting out why the alteration is appropriate for exemption</b>
Focus on the significance, impact and risk of the proposed alteration.
<b>IV. The alteration</b>
Provide full details of each alteration, and the regulatory arrangements it will amend, if any. This can be done by way of a schedule of changes, a track change word document or any other method the Approved Regulator considers appropriate. Include information on any alteration to the regulatory arrangements that will be altered under the request, approved over the past 2 years.
<b>V. Impact on regulatory objectives</b>
A summary of an assessment under rule 9 of the Rules, of the impact of the alteration on the regulatory objectives, and measures to mitigate any adverse impacts, and if not, why that is not prejudicial to the regulatory objectives overall.

<b>VI.</b>	<b>Timeframe for implementation</b>
<b>VII.</b>	<b>Consultation</b>
A summary of any consultation undertaken or if not why. Include any earlier consultations on the regulatory arrangements being altered, and any issues identified in that consultation that the alteration proposed in the request may address.	
<b>VIII.</b>	<b>Impact assessment</b>
<i>Regulated community/consumers</i>	
A summary of an assessment of the impact of the alteration, including on persons with protected characteristics, and if not why. This is likely to include information on the number or proportion of regulated persons and consumers that will be affected by the alteration.	
If there are adverse impacts, information on any mitigating measures and if there are none, why this is reasonable, proportionate, and not prejudicial to the regulatory objectives overall. We expect this assessment to include information, if relevant, on how the alteration advances equality of opportunity between persons who share relevant protected characteristics and persons who do not.	
<b>VIII.</b>	<b>A summary of any evaluation and monitoring of impact of the alteration once it has effect, and if not why</b>