

Summary analysis of the first year of applications received under the LSB Applications to Alter Regulatory Arrangements Rules 2021

Background

What we did

1. In 2020/21 we undertook a review of the process for alterations to regulatory arrangements including engagement with stakeholders.
2. On 15 June 2021, we published a consultation document, which set out the draft Rules and draft Guidance and we made subsequent amendments to these rules, after reviewing the responses received.
3. The LSB made the Applications to Alter Regulatory Arrangements Rules 2021 (“Rules”)¹ and Statutory Guidance to the Rules (“Guidance”)². The Rules and Guidance apply to regulators seeking approval under Part 3 of Schedule 4 to the Act of changes to their regulatory arrangements. The rules came into effect on 01 February 2022

The outcomes we sought

4. The Rules were introduced with a focus on the following outcomes:
 - **Focus on regulatory objectives:** applications were to demonstrate that 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:** Ensuring 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 was to be placed on the impact on diversity and inclusion, including assessing the impact of proposals on persons with protected characteristics.
 - **Pre-application engagement:** clarification through guidance on how the LSB may offer to give regulators feedback on proposed changes before they seek approval of alterations. This included guidance on proposals that fall within the meaning of ‘regulatory arrangements’ requiring approval under the Act.

Application statistics

5. The first application under the new rules was not received until 8 April 2022. Consequently, the review period for this summary covers the period between 1 April 2022 and 31 March 2023 to allow us to assess a full year of data for the 2022/23 year.
6. During the year under review, the LSB received a total of 19 applications, and made decisions on 16 of them (3 applications were still being assessed at the end of the review

¹ [Applications to Alter Regulatory arrangements rules \(legalservicesboard.org.uk\)](https://legalservicesboard.org.uk/applications-to-alter-regulatory-arrangements-rules)

² [The Guidance on the Applications to Alter Regulatory Arrangements Rules 2021 \(legalservicesboard.org.uk\)](https://legalservicesboard.org.uk/the-guidance-on-the-applications-to-alter-regulatory-arrangements-rules-2021)

period). Six of these applications were considered to have proposals that were high risk in terms of impact on the regulatory objectives. Additionally, the LSB gave 6 exemption directions.

7. The applications included:
 - The ACCA's application to revoke its regulatory arrangements, and CILEx Regulation's application to provide a pathway to persons authorised by ACCA to transfer to it. This was a necessary step for ACCA in order to progress its separate application for cancellation of its designation as an approved regulator.
 - The BSB's application to remove the requirement for prospective barristers to complete the Bar Course Aptitude Test.
 - An application from ICAEW to make a range of amendments to its Disciplinary Framework, including new core disciplinary bye-laws.
 - IPReg's application for new Core Regulatory Framework supported by Standard Operating Procedures, replacing many of its regulatory arrangements.
8. The impact on timescales for making a decision on applications under the Rules compared to the former rules has been minimal. There has been a slight increase in the mean number of days to make a decision from 41 (for 19 decisions in 2021/22) to 43 days (for 16 decisions in 2022/23). The time period for the LSB's decision was extended on 8 of the 16 decisions issued. We will continue to monitor this metric over the coming year.

Benefits of Rules

9. Our experience through the first year of assessing applications has been in the main positive, noting that the changes are still bedding in having only been in place for a year. The key points we have identified are:
 - an increase in opportunities for early engagement between the LSB and regulators on proposals as appropriate, including engagement on the circumstances in which guidance and policies are so central to proposals that they form part of the regulatory arrangements. The early engagement has led to a corresponding reduction in the frequency of comments and clarifications being sought by regulators through the provision of draft applications.
 - a noticeable increase focus on the regulatory objectives in applications
 - the increased quality and clarity and therefore transparency of the content of some applications has meant there has been a reduced need on those applications for LSB to ask follow-up queries with regulators.
10. Engagement with IPReg and ICAEW on their proposed alterations, giving guidance on the requirements under the Rules meant they were able to make targeted applications under the Rules. This demonstrated the value of engaging with the LSB, as appropriate, at an early stage on significant or complex proposals.
11. Less significant and therefore lower risk applications from CRL in relation to cyber risks and the CLSB in relation to its Disciplinary Rules and Procedures demonstrated that those regulators who pay close attention to the requirements of the Rules, and accompanying Guidance will benefit from a more streamlined process. The applications enabled the LSB to focus its scrutiny on key issues and the applications were approved within the initial 28-day determination period.

Key issues

12. The review identified some themes that, we consider may assist regulators in preparing more targeted applications in the future.

Applications for changes to regulatory arrangements

13. **Evaluation and Monitoring:** The most common issue arising out of the consideration of applications during the period under review is on regulators' plans to evaluate and monitor the impact of the changes proposed to their regulatory arrangements. Rule 13 of the Rules requires that applications must include information on how the impact of alterations will be evaluated and monitored once they have effect. The Guidance on rule 18³ at paragraph 81 gives guidance on monitoring and evaluation information, that is specific plans for what actions will be taken to evaluate and monitor the impact of proposed alterations. It states that such plans should include detail on the methods of evaluation, monitoring and timescales for carrying out the work. The LSB has asked regulators for this detailed information from regulators in the course of considering some applications. Regulators are encouraged to give more consideration to their approach in this area. We note that the Legal Services Consumer Panel produced a report in 2022⁴ on monitoring and evaluation in the sector which noted that timely and effective monitoring and evaluation can power the collection of high quality information to inform compelling policies. We encourage regulators to review the report.
14. **Evidence base:** In considering applications we commonly ask for information on the evidence that underpins the decision to make the application. This is aligned with Paragraph 55 of our Guidance which explains that Rule 9 requires applications to include details of the impact of the proposals on the regulatory objectives. Provision of this evidence aids the LSB in understanding the rationale for the changes and the expected impact. We encourage regulators to proactively provide relevant evidence when applications are submitted.
15. **Equality, Diversity and Inclusion (EDI):** Some applications relied on the fact that no consultation responses have raised issues of relevance to the impact of the proposals on persons with protected characteristics in addressing rule 12(a) and (b) of the Rules (impact assessment)⁵. While it is helpful to note that stakeholders have not raised issues, applications need to demonstrate proper consideration of issues of relevance to EDI – they need to meaningfully assess the EDI impact of their proposals and not rely on consultation responses. As per Paragraphs 76-77 of our Guidance, regulators should take the opportunity through their regulatory arrangements to include details of measures to advance equality of opportunity as well as measures to mitigate adverse impacts, as appropriate.
16. **Narrative of reason for and benefit of the proposed change:** We publish all applications and requests for exemption on our website. We also highlight receipt of applications through our social media channels. The published applications provide transparency and accountability to the public including stakeholders on regulators' proposals and what is before the LSB for decision. While not part of the Rules or Guidance, regulators are encouraged to consider setting out, within the application, a

³ <https://legalservicesboard.org.uk/wp-content/uploads/2022/01/The-Guidance-on-the-Applications-to-Alter-Regulatory-Arrangements-Rules-2021.pdf>

⁴ <https://www.legalservicesconsumerpanel.org.uk/wp-content/uploads/2022/06/22.06.30-Monitoring-and-Evaluation-in-Legal-Services.pdf>

⁵ As defined by section 4 of the Equality Act 2010

clear narrative about why changes are being made and what benefits will result to the regulatory objectives, public and regulated community. Links to supporting documents that are not part of the application can be helpful for context and additional detail, however, the application should be able to stand on its own.

17. We intend to share this summary review with each regulator. Where we identify repeat issues with specific regulators, we expect to engage with them directly to give bespoke feedback with a view to them making more targeted applications in future.
18. We will continue to monitor applications over the next year. If significant areas of concern are identified, we will consider whether any action needs to be taken to either through engagement with regulators and/or proposals to consult on for changes to the Rules or Guidance.

Requests for Exemption Direction

19. **SIR Framework:** Some requests for exemption continue to use the Significance, Impact and Risk (SIR) Framework that is no longer in place (as that formed part of the guidance on the previous Rules).⁶,Regulators are asked to ensure that they understand the information requirements in section D of the Rules for requests for exemption direction, as well as the relevant Guidance.
20. **General Exemption:** The general exemption ED 181⁷ was issued on 6 April 2022 to enable regulatory bodies to make alterations by providing a notification to the LSB in circumstances where the alteration:
 - a. corrects a minor drafting error or errors
 - b. corrects or updates grammar, punctuation and pronouns or
 - c. makes minor consequential changes arising from alterations previously approved by the LSB.
21. We would remind regulators that this exemption is available for proposed alterations that fall within its scope. The LSB remains willing to provide clarification on its application to any proposed alterations that may be appropriate for such exemption.

Next steps

22. We intend to undertake and publish a review on the first two years of applications and requests for exemption made under the Rules. This will take place once the Rules have been in place for a minimum of two years.
23. As part of that review, we expect to engage with applicants on their experience alongside our own assessment of issues raised through our consideration of applications and requests for exemption.

⁶ <https://legalservicesboard.org.uk/wp-content/uploads/2021/12/Decision-Document-Rules-for-applications-to-alter-regulatory-arrangements.pdf> (See table under Paragraph 54)

⁷ <https://legalservicesboard.org.uk/wp-content/uploads/2022/04/ED181-General-Exemption-minor-alterations.pdf>