

Meeting: Legal Services Board

Date: 30 April 2024¹

Item: Paper (24) 22

Title: Internal Governance Rules evaluation

Author(s): Clare Brown, Regulatory Policy Manager; Angela Latta, Head of Performance and Oversight.

Status: Official

Purpose of the paper

1. This paper provides an update to Board on our work to evaluate the operation and effectiveness of the Internal Governance Rules (IGR).

Recommendation

2. The Board is asked to **note** the paper and **agree** the scope of the evaluation as set out in paragraph 12.

Background

3. Section 30 of the Legal Services Act 2007 (“the Act”) obliges the LSB to make [Internal Governance Rules \(IGR\)](#) which set out requirements for each Approved Regulator to ensure the separation of regulatory and representative functions (amongst other obligations). The IGR are intended to enhance regulatory independence as far as reasonably practicable; to create and maintain clear divisions which prevent the representative functions prejudicing the regulatory functions; to promote the regulatory objectives; and to uphold the better regulation principles. The IGR are accompanied by [statutory guidance](#) which approved regulators must take into account in determining their approach to the IGR.
4. The IGR and associated statutory guidance place a number of requirements and expectations on Approved Regulators. These are summarised in Annex A. Following the introduction of the current IGR in 2019, the Approved Regulators, and where applicable Regulatory Bodies, were required to provide certification of compliance with these by the end of the transition period (July 2020).
5. Since the LSB’s last review of the IGR in 2019, a small number of matters relating to the operation of the IGR have been brought to the LSB’s attention, including issues that came to light as a result of the CILEX/CRL investigation. In

¹ Circulated 23 April 2024

its 2024/25 Business Plan the LSB has undertaken to carry out an evaluation of the operation and effectiveness of the IGR and guidance.

6. The Board will also recall that some Approved Regulators commented on the IGR during the evidence sessions held by the Justice Select Committee in 2023. We wrote to the Committee on 13 December 2023 to provide our view on the points made (attached at Annex B).

Engagement with regulators

7. In February 2024, the LSB wrote to all Approved Regulators (ARs) and Regulatory Bodies (RBs) to advise them that this work was about to begin and to seek their views on the planned scope of the evaluation (letter attached at Annex C). We asked for general views on ARs' and RBs' experiences of operating under the IGR, details of how they have complied with the requirements contained therein, and any proposals for change that the LSB should consider. We outlined our intention that the focus of our evaluation would be on the aims of the IGR, namely:
 - a) enhancing the separation and independence of regulatory functions within the current legislative framework;
 - b) providing more clarity to decrease the number of independence-related disputes; and
 - c) making the rules readily enforceable for speedier resolution of issues.
8. ARs and RBs were asked to respond by the end of March, however not all took us up on this opportunity and at the time of writing we have received six responses. There will be further opportunities for stakeholder engagement as this work progresses.
9. The responses cover a wide spectrum of opinions on the IGR. At one end, we received comments that the IGR are overly prescriptive, reflect a "one size fits all" approach and allow insufficient control to the AR which nonetheless retains the risk for financial matters.
10. Other views expressed included that the IGR in their current iteration are broadly effective but need to provide greater clarity on the residual role of the AR. There were some comments that, in general, the language of the IGR was not always helpful in enabling ARs to perform their assurance role.
11. At the other end of the spectrum, we received feedback that the IGR were working well and had brought about a significant improvement in respect of regulatory independence, which should not be reversed. Some commented that there was scope in the IGR for greater separation between the AR and RB, emphasising that a clear separation of regulatory and representative functions was critical for public confidence in the system.

Scope of evaluation

12. In light of the feedback received from ARs and RBs, we do not consider that we need to make any changes to the scope of the evaluation as proposed in our letter of 21 February. This is because the intended scope of the evaluation is already sufficiently wide to enable consideration of the points received. We therefore ask the Board to agree that the IGR evaluation should focus on how, and the extent to which, the IGR

- a) enhance the separation and independence of regulatory functions within the current legislative framework;
- b) provide more clarity to decrease the number of independence-related disputes; and
- c) are readily enforceable for speedier resolution of issues

and to agree that, as indicated in our letter to ARs and RBs, we do not at this stage anticipate the need for an in-depth analysis of each rule within the IGR.

13. In order to carry out the evaluation, we will seek evidence from ARs and RBs of any specific examples where the IGR have failed or been ineffective, and evidence of the impact this has had.

14. It is proposed that the evaluation will follow the principles in the Theory of Change model.

Next steps

15. Subject to Board's agreement of the scope of the evaluation as set out above, we will send an information request to ARs and RBs in May/June to seek evidence around how the IGR have worked in practice and the impact of any challenges that have arisen in respect of the IGR.

Risks and mitigations

Financial:	No specific financial considerations arise as a result of this work.
Legal:	Legal advisory support will be provided throughout the project.
Communications and engagement:	We have carried out some initial engagement with approved regulators and regulatory bodies (letter attached at Annex C). Engagement will continue as appropriate throughout the project, commencing in the first instance with an information request to Approved Regulators and Regulatory Bodies.
Equality and diversity:	No specific EDI considerations arise as a result of this work.
Resource:	This work is accounted for in the 2024/25 Business Plan.
Environmental:	No specific environmental considerations arise as a result of this work.

Annexes

Annex A – Requirements and expectations under the IGR

Annex B – Letter from LSB to Sir Bob Neill MP, Chair of the Justice Committee, 13 December 2023

Annex C – Letter to Approved Regulators and Regulatory Bodies, 21 February 2024

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