

10 December 2009

Name
Title
Organisation
Address

E-mail:

Dear []

Alterations to Regulatory Arrangements – Final rules and next steps

I am writing to inform you that the Legal Services Board (“**LSB**”) has now set out its final rules for designating new approved regulators (“**AR**”) and approving alterations to the Regulatory Arrangements. A copy of the final rules can be found on the consultations page of the LSB website through the following link.

http://www.legalservicesboard.org.uk/what_we_do/responses_to_consultations/index.htm

These rules are made in accordance with Schedule 4 of the Legal Services Act 2007 (“**the Act**”) following a full consultation process which ran from 21 July until 13 October 2009. Copies of all responses and the LSB response to consultation are also available on our website.

Now that the rules have been finalised, our focus must be on ensuring a clear process is in place for handling alterations to the Regulatory Arrangements from January next year. The process set out in schedule 4 of the Act marks a significant change from the current arrangements and we would like to ensure a smooth transition that will enable us all to focus resources where it matters.

As you know, at present the only “Regulatory Arrangements” that existing ARs are required to seek approval (from the Secretary of State) in order to amend are qualification regulations and rules of conduct relating to the rights of audience and rights to conduct litigation.

The Act provides that an AR must obtain approval from the LSB to alter any of its “Regulatory Arrangements” unless the LSB has directed it to be considered exempt from the requirement for pre-approval.

The Act (Section 21) defines “Regulatory Arrangements” broadly so as to apply to all rules and regulations **and** any other arrangements which apply to regulated persons apart from those made for representational or promotional purposes. This expands considerably the range of the existing approval regime.

So far, discussion between the LSB and ARs has primarily focused on the details of those Regulatory Arrangements that ARs believe should be exempted from the approval process rather than on the process itself.

The Board has held two roundtable discussions on the scope of the LSB's use of the provision at paragraph 19(3) and (4) of Schedule 4 of the Act to exempt general or specific alterations to the Regulatory Arrangements from the requirement for pre-approval from the Board. We have listened to concerns and discussed the issues with the majority of ARs in order to find a position that we believe is acceptable to all.

For obvious reasons we anticipate that nearly all alterations to regulatory arrangements will be undertaken by the part of the AR that has responsibility for carrying out regulatory functions. If in limited circumstances the representative side is directly involved with a change, for example, we would expect the approval process that we have set out to be adhered to in full.

Approach to forward plans

The agreed approach will involve each AR providing the LSB with an annual forward plan detailing the alterations to the Regulatory Arrangements that it anticipates wanting to make throughout the year ahead. The LSB would then agree those which we want to scrutinise in detail, based on an evaluation of significance, impact and risk. The LSB would direct all other proposed alterations within the plan to be exempt from the requirement for pre-approval provided certain conditions were met and on the understanding that the scope of exemption and altered arrangements may be revisited at a later date if significant concerns were raised. The draft rules have been amended to facilitate this.

Where an AR fails to agree an acceptable plan with us, all changes, with the exception of those within the agreed de minimis requirements (which the LSB will direct before January) or any other changes that have been exempted by direction from the LSB, will need to be submitted to the LSB for approval.

All forward plans will be published on our website to ensure full transparency and provide notice to interested parties such as prospective consultees.

A template outlining our requirements for the content of forward plans is attached to this letter at **Annex A**.

We do not want the planning process to become overly burdensome or an approval mechanism in itself so we will not be expecting a full analysis to be completed as part of the forward planning process. However, we will be seeking assurance that your internal processes are sufficiently robust to ensure that impacts are assessed and appropriate consultation is undertaken. This will enable the LSB to focus on those areas which require particular attention and exempt the majority of alterations. We would stress that even in areas where alterations have been exempted from the full process, the context of a changing regulatory regime means that both our focus and yours must be firmly on the regulatory objectives.

Under the rules, any alterations to the Regulatory Arrangements which have not been included in the forward plan, with the exception of those within the agreed de minimis requirements (which the LSB will direct before January), will need to come to the LSB for approval. However, we propose that periodic reviews of forward plans will be the most pragmatic way to manage alterations in year.

A direction exempting alterations relating to the dual self-certification requirements contained within the internal governance rules will also be issued before January. This will mean that internal changes relating to the rules made by the Board in accordance with section 30 of the Act will be exempt from the schedule 4 approval process.

Where LSB policy requires specific alterations to Regulatory Arrangements, such as the proposed approach to First Tier Complaints Handling, we will issue further directions to ensure that alterations of our own instigation are not subject to the full rule approval process.

Our process for handling alterations to the Regulatory Arrangements is set out in a process map which is attached to this letter at **Annex B**.

Timetable

Until the forward plans are in place and the LSB has made decisions about those alterations it wishes to scrutinise in more detail and those which are exempt from this process, the rules require that all alterations to the Regulatory Arrangements will need to come to the LSB for approval from January 2010.

We would like to be in a position where we can exempt a large number of alterations from the full scrutiny process; however we can only do this if we receive early sight of the planned alterations together with a high level assessment of significance, impact and risk which supports any recommendation for exemptions.

We therefore propose that you write to us before Christmas informing us of all alterations that will need to be approved in the period from January to March 2010, together with a list of alterations that are likely to form part of your forward plan for the next financial year. We apologise for the short timescales, particularly in the lead up to Christmas, however we are hopeful that this will not be too burdensome as we already have a sense of forthcoming amendments from recent discussions with your teams. Where we have prior warning of anticipated changes, we will be able to work with you to ensure the process is as efficient as possible. You may wish to use the template provided at **Annex A**.

We realise that a number of alterations coming to us in the New Year may have been previously submitted to the Ministry of Justice. We wish to take a sensible approach and in some cases we are already working with you to agree how each of these applications can best be managed within the framework of the new rules. However, for the purpose of clarity, please can you ensure that the information you provide to us on forthcoming alterations is as comprehensive as possible.

We will also be arranging a series of one to one meetings to discuss your annual forward plans as they develop.

To keep the process as streamlined as possible, I would also like to suggest that you identify a named contact within your organisation to act as a lead contact on this matter, together with a back-up contact.

By way of summary, the following points set out our proposed next steps:

- ARs to provide LSB with information on planned alterations covering the period from January to March 2010, to include any alterations that have previously been submitted to the Ministry of Justice, before Christmas (see template at **Annex A**).
- ARs to provide LSB with an early indication of contents of forward plans for the next financial year (April 2010 – March 2011), to include a high level initial assessment of significance, impact and risk.
- ARs to provide details of a named contact and back up contact within their organisation to act as the lead on the forward planning and application process.
- LSB to arrange meetings with each AR to discuss forward plans on an individual basis in early 2010.

This is a new process for us all, developed as a direct result of consultation activity over recent months. As we move forward over the coming weeks and months, our teams will need to work closely together. I would like to reassure you that my team are available to discuss any aspect of the process, so should you require further information then please contact Chris Handford on 020 7271 0074 or Emily Lyn 020 7271 0090.

As you are aware it is our policy to make LSB correspondence containing decisions such as this publicly available so that practitioners and other stakeholders are aware of our activities. A copy of this letter will therefore be placed on our website.

Yours sincerely

Chris Kenny

Chief Executive

ANNEX A

Alterations to Regulatory Arrangements

Content of Forward Plans

All forward plans should be developed with regard to the duties covered under section 28 of the Act.

- **Outline** of proposed alterations to be introduced throughout the year.
 - Nature of the alteration – i.e. changes to code of conduct, rules, guidance etc.
 - A brief background on the reasons for and context of the alteration.

- **Timetable**
 - Timetable for submitting applications to LSB.
 - Planned timetable for implementation of the change and any interdependencies.

- Initial analysis against the **regulatory objectives**
 - A brief summary of how the alteration will impact on the regulatory objectives.
 - Where there is a negative impact, what is the rationale for proceeding? Are there other benefits in terms of the regulatory objectives which balance out the impact overall?

- Initial analysis against **BRE principles**

- Recommendation for **Exempt Alterations** based on initial analysis of **significance, impact and risk**
 - Brief evaluation of the significance, impact and risk of each alteration.
 - Which alterations are you recommending be exempted from the pre-approval process?

- High level detail of internal processes relating to impact assessment and consultation that will be undertaken for alterations (above the de minimum cut off) that the LSB may direct to be exempt.

Example Template

Proposed alteration	Nature of alteration	Timetable for submission of application to LSB	Implementation on Timetable (if approved by LSB)	Initial analysis against Regulatory Objectives (with regard to section 28 of the Act)	Initial analysis against BRE principles	Evaluation of significance, impact and risk	Recommendation for exemption
	<i>Changes to code of conduct, rules, guidance, forms?</i>	<i>When will the application likely be submitted to the LSB?</i>	<i>When does the change need to be approved? Does this impact on any other workstreams?</i>	<i>Overall, how will the change impact on the regulatory objectives? Which of the objectives will it promote, be neutral towards or detrimental?</i>		<i>Summary of the significance, impact and risks associated with the alteration.</i>	Yes/No

ANNEX B

Changes to Regulatory Arrangements – Pre Approval Process

