

Rules for applications for Qualifying Regulator status

Summary of responses received and the LSB's response to them

April 2011

Contents

1. Introduction.....	3
2. Summary of responses to consultation and our response to them.....	4
3. Conclusion and next steps	7
Annex A – Rules for applications for Approved Regulator and Qualifying Regulator designation	9

1. Introduction

- 1.1 The Legal Services Board (the LSB) was created by the Legal Services Act 2007 (the 2007 Act) and is responsible for overseeing legal regulators, referred to as Approved Regulators, in England and Wales. The LSB's mandate is to ensure that regulation in the legal services sector is carried out in the public interest and that the interests of consumers are placed at the heart of the system.
- 1.2 Schedule 18 of the 2007 Act will be commenced to take effect from 1 April 2011. Under schedule 18 paragraph 5 (1) of the 2007 Act, the LSB must make rules specifying how it will determine applications to allow a body to apply to become a "Qualifying Regulator."
- 1.3 This is for the purposes of Part 5 of the Immigration and Asylum Act 1999 (the 1999 Act) which enables a body to regulate providers of immigration advice and services. However, it should be noted that schedule 18 only applies to Approved Regulators under the 2007 Act. It does not affect the Office for the Immigration Services Commissioner (OISC), which will continue to regulate those individuals directly regulated by it.
- 1.4 Under Section 205 (2) of the 2007 Act, if the LSB proposes to make any rules it must first publish a draft of the proposed rules. The LSB published its proposed rules for Qualifying Regulator applications on 29 November 2010 and sought comments by 28 January 2011.
- 1.5 Given the similarities between the statutory requirements for applications for Qualifying Regulators and Approved Regulators, we proposed revising our *Rules for Approved Regulator Designation Applications* to allow for applications from potential Qualifying Regulators. We also suggested removing provisions for "Transitioned Applications."
- 1.6 We received four responses¹ to the consultation, all of which were in favour of our proposed approach and, with the exception of the Transitioned Applications rule, all respondents were in favour of the proposed revisions to our rules.
- 1.7 This document provides a summary of the comments received about our proposed changes to the *Rules for Approved Regulator Designation* and our response to them. **Annex A** shows where the changes have been made to the *Rules for Approved Regulator Designation* so that they become the *Rules for applications for Approved Regulator and Qualifying Regulator designation*
- 1.8 The final *Rules for applications for Approved Regulator and Qualifying Regulator designation* are available at www.legalservicesboard.org.uk and take effect on 1 April 2011.

¹ The responses to this consultation are available at: www.legalservicesboard.org.uk.

2. Summary of responses to consultation and our response to them

- 2.1 We received four responses to the consultation. These were from ILEX Professional Standards (IPS), The Law Society, the Master of the Faculties and Solicitors Regulation Authority (SRA). All of the responses were positive and endorsed the general approach taken by the LSB to the rules required by the Act for schedule 18, although IPS had concerns about our proposal to remove references to Transitioned Applications.
- 2.2 Our consultation asked six questions. The first five specifically related to schedule 18 and were:

Question 1 - Do you agree that adapting the existing *Rules for Approved Regulator Designation Applications* to allow for Qualifying Regulators is the correct approach to reflect the requirements of schedule 18? If not, please provide reasons for your answer.

Question 2 - Do you agree that the proposed amendments to the Rules shown at Annex A accurately reflect the requirements of schedule 18? If not, please provide reasons for your answer.

Question 3 - Do you agree that the LSB should treat applications for Qualifying Regulator status on the same basis as applications for new Reserved Legal Activities for the purposes of the Prescribed Fee? If not, please provide reasons for your answer.

Question 4 - Do you agree that the LSB should make a recommendation to the Home Secretary once it has granted an application from a Qualifying Regulator? If not, please provide reasons for your answer.

Question 5 - Do you agree that changes to LSB Rules, other than the *Rules for Approved Regulator Designation Applications*, for the purposes of schedule 18 are unnecessary? If not, please provide reasons for your answer.

- 2.3 The Law Society did not comment on each individual question as it is not directly affected by the changes but said that it, “supports the Legal Services Board’s proposals.” In response to questions one to five, the other respondents either said that they agreed with the proposal or had no specific comment.
- 2.4 Comments we received in response to questions one to five included:
- IPS said that it, “agrees with the LSB’s approach...the existing rules adapt well and accommodate the requirements...”

- SRA said, “that the proposed amendments to the Rules...appear to reflect the requirements of schedule 18.”
- The Master of the Faculties commented that: “The applicant should shoulder the expense of the application process and the application process should be broadly equivalent to that for new reserved legal services.”
- IPS agreed that the LSB should, “make a recommendation to the Home Secretary once it has granted an application from a Qualifying Regulator.”
- The SRA said that it, “would agree that further changes do not appear to be required to enact schedule 18.”

LSB response

2.5 We are pleased that our proposals were endorsed by consultees. The LSB has, with ministerial consent, made the Rules as consulted on, with the exception of the changes proposed by question six of the consultation (see below). The new Rules will take effect on 1 April 2011 from which time Approved Regulators will be able to apply to the LSB to regulate providers of immigration advice and services.

Question 6 – Do you have any comments about our proposal to delete the definition “Transitioned Applications” and the related Rules?

2.6 In response to question six, which did not relate directly to schedule 18, but was included for ‘housekeeping’ purposes, Master of the Faculties and SRA agreed that it would be appropriate for the rule to be deleted if the relevant applications had been completed.

2.7 However, IPS, to which the rule directly relates, had some concerns. It commented that, “the definition ‘Transitioned Applications’....should not be deleted until the applications have been fully considered by the LSB. The application for probate rights is in the early stages of consideration. IPS believes that the correct course of action should be to revise the Rules once the determination process has concluded.”

LSB response

2.8 At the time of consultation, we had expected that all of the Transitioned Applications would be concluded by 1 April 2011 when the revised rules take effect. However, this will now not be the case. Therefore the definitions and rule relating to Transitioned Applications (specifically Rule 14e at Annex A) remain in the *Rules for applications for Approved Regulator and Qualifying Regulator designation* that will come into force on 1 April.

Further comments in response to the consultation

Representative and regulatory arrangements for Qualifying Regulators

- 2.9 In its response, The Law Society said that it did not think it appropriate that any waiver in relation to the separation of representative and regulatory arrangements for bodies that regulate immigration should apply. It commented that, “it seems imperative to ensure that the bodies regulating providers of those services have a proper separation between their regulatory function and any representative functions which they may have, in the same way as is required of the other legal services regulators.”

LSB response

- 2.10 We agree with The Law Society’s comments. The separation of representative and regulatory functions is a fundamental element of legal services regulation.
- 2.11 Under paragraph 3, (3) of schedule 18, a body applying to become designated as a Qualifying Regulator will either already be, or in the parallel process of applying to become, an Approved Regulator in relation to one or more Reserved Legal Activities (and possibly also a licensing body for the purposes of Alternative Business Structures (ABS)). The body would therefore need to demonstrate a clear separation of representative and regulatory functions in relation to those designations.
- 2.12 Additionally, paragraph 5, 2 (a) of schedule 18 states that the Board must be satisfied that if a body were to be designated in relation to immigration advice and services, “the applicant would have appropriate internal governance arrangements in place at the time the order takes effect.”
- 2.13 We reflected this requirement in the rules that we consulted on at Rule 57 a) where we say the Board needs to be satisfied that, “if an order were to be made under section 86A of the 1999 Act to make the Applicant a Designated Qualifying Regulator, the Applicant would have appropriate internal governance arrangements in place at the time the order takes effect and, in particular that the exercise of the Applicant’s regulatory functions would not be prejudiced by its representative functions and, so far as is reasonably practicable, regulatory decisions would be taken independently of representative ones.”

Cost of regulation

- 2.14 The SRA commented that it would welcome more information about the statement in our consultation that, “the LSB will absorb the cost of the fee currently paid by these bodies to the OISC” and sought, “further confirmation in due course about the workings of this proposal and any implications for the Approved Regulators.”

LSB response

- 2.15 While outside of the scope of this consultation, upon schedule 18 commencement on 1 April, The Law Society, ILEX and General Council of the Bar (and their regulatory arms) are no longer subject to oversight regulation by OISC for immigration advice and services and that role is transferred to the LSB.
- 2.16 The OISC charged a fee to The Law Society, ILEX and General Council of the Bar for its oversight activities. However, the LSB will not charge those regulators a separate fee for immigration. Instead, it will absorb the cost of this additional regulation within its current budget². However, these bodies will still receive a bill from OISC for any OISC activities carried out in 2009/10 and 2010/11.

3. Conclusion and next steps

- 3.1 The *Rules for applications for Approved Regulator and Qualifying Regulator designation* came into force on 1 April with schedule 18 commencement. This followed the Board’s approval of the Rules and the Minister’s consent to the Rules in March 2011.
- 3.2 The final *Rules for applications for Approved Regulator and Qualifying Regulator designation* are available at www.legalservicesboard.org.uk.

² Further information about our funding arrangements for 2011/12 can be found in our *Draft Business Plan 2011/12*, available at www.legalservicesboard.org.uk.

Applicant	a body who submits an Application
Application	an application to be designated as an Approved Regulator in relation to one or more Reserved Legal Activities (“Approved Regulator Application”) and an application to become a Qualifying Regulator for the purposes of Part 5 of the 1999 Act ¹ that is submitted to the Board in accordance with these Rules (“Qualifying Regulator Application”)
Approved Regulator	has the meaning given in section 20(2) of the 2007 Act
Authorised Person	has the meaning given in section 18 of the 2007 Act ²
Better Regulation Principles	the five principles of good regulation (being proportionality, accountability, consistency, transparency and targeting) as set out in both sections 3(3) and 28(3) of the 2007 Act
Board	the Legal Services Board
Consultees	the Mandatory Consultees and any Optional Consultee
Consumer Panel	the panel of persons established and maintained by the Board in accordance with section 8 of the 2007 Act
Existing AR Applicant	an Applicant who is already an Approved Regulator in respect of certain Reserved Legal Activities and who is submitting an Application to be designated as an Approved Regulator in relation to one or more additional Reserved Legal Activities or to become a Qualifying Regulator for the purposes of Part 5 of the 1999 Act
ILEX	the Institute of Legal Executives
Mandatory Consultees	the OFT, the Consumer Panel and the Lord Chief Justice
OFT	the Office of Fair Trading

¹ Part 5 of the 1999 Act relates to the regulation of immigration advisers and immigration service providers.

² Under schedule 18 paragraph 5 (2) (c) of the Act 2007, a person may only be authorised to provide immigration advice and services if they are also an Authorised Person.

OLC	the Office of Legal Complaints established in accordance with section 114 of the 2007 Act
Ombudsman Scheme	the scheme referred to in section 115 of the 2007 Act
Optional Consultee	any person (other than a Mandatory Consultee) who the Board considers it reasonable to consult regarding an Application. This may include the Immigration Services Commissioner for applications to become a Qualifying Regulator
Prescribed Fee	the fee that must accompany an Application as described in Section E of these Rules
Qualifying Regulator	means a body which is a Qualifying Regulator for the purposes of Section 86A of the 1999 Act by virtue of Part 1 of Schedule 18 to the Act 2007 (Approved Regulators approved by the Board in relation to immigration matters)
Regulatory Arrangements	has the meaning given in section 21 of the 2007 Act
Regulatory Objectives	has the meaning given in section 1 of the 2007 Act
Reserved Legal Activity	has the meaning given in section 12 of and schedule 2 to the 2007 Act
Reserved Legal Services	has the meaning given in section 207 of the 2007 Act
Schedule	the schedule to these Rules
Transitioned Applications	means any one of the following Applications, a form of which was originally submitted to the Ministry of Justice for approval prior to the date of these Rules coming into force: <ul style="list-style-type: none"> a) an Application in respect of the exercise of a right of audience and the conduct of litigation in respect of associate prosecutor members of ILEX; b) an Application in respect of Probate Activities

C. WHAT DO THESE RULES SET OUT?

9. These Rules set out:
 - a) the required content of any Application to the Board and some guidance in relation to that content (**see Section D**);
 - b) the amount of the Prescribed Fee that must accompany any Application (**see Section E**);
 - c) the processes and procedures that the Board will undertake in considering the Application (**see Section F**);
 - d) the manner in which the Applicant can make representations to the Board about its Application (**see Section G**);
 - e) the Board's criteria for determining Applications (**see Section H**); and
 - f) whom a body should contact if it has a question in relation to the Application process (**see Section I**).
10. The Board reserves the right to amend these Rules from time to time. If the amendments made to the Rules are, in the opinion of the Board, material the Board will publish a draft of the amended rules and will invite consultations in accordance with section 205 of the 2007 Act.

D. CONTENTS OF APPLICATION

11. The 2007 Act requires the Board to consider certain factors and to consult with other parties in order to reach its determination. Accordingly, the Application must contain sufficient information to allow the Board to make a proper consideration of the Application and to provide sufficient information to the Consultees to enable them to consider the Application in a meaningful way. Attached as a Schedule to these Rules is:
 - a) details of the administrative information that must be provided to enable processing of an Application (see Part 1 of the Schedule) and guidance on the possible evidence that could be provided to satisfy these requirements;
 - b) guidance on the kind of evidence which the Board may consider in determining whether an Applicant's proposed Regulatory Arrangements are sufficient to guarantee delivery of the Regulatory Objectives (see Part 2 of the Schedule); and
 - c) guidance on how the Board expects to treat Applications (see Part 3 of the Schedule).

12. The Board does not prescribe the form which an Application should take. The onus is on the Applicant to supply all materials completely and accurately in the format that it thinks fit.

E. PRESCRIBED FEE

13. Any Application must be accompanied by the Prescribed Fee set out in Rule 14 below. The Prescribed Fee must be paid by electronic funds transfer to the following bank account:³

Bank: NatWest
Sort code: 60-70-80
Account No: 10012680
Account Name: GBS Re Legal Services Board
Reference: [*Insert Applicant name*]/ Designation Application

14. The Prescribed Fee that must accompany an Application will depend on the type of Application being made. The different levels of the Prescribed Fee are as follows:

- a) if the Applicant is an Existing AR Applicant **applying to regulate a new Reserved Legal Activity**, the Prescribed Fee is £16,000
- b) if the Applicant is **applying for Approved Regulator status**, the Prescribed Fee is £22,000
- c) **if the Applicant is an Existing AR Applicant applying for Qualifying Regulator status, the Prescribed Fee is £16,000**
- d) **if the Applicant is applying simultaneously for Approved Regulator status and Qualifying Regulator status, the Prescribed Fee is £22,000**
- e) if the Applicant is ILEX and the Application is one or more of the Transitioned Applications, the Prescribed Fee is £20.

15. The amounts specified in Rule 14 are each the average costs that the Board anticipates it will incur in considering these different types of Application. The Prescribed Fee for an Existing AR Applicant is based on a day rate of £562 over 28.5 business days. The Prescribed Fee for an Applicant who is not an Existing AR Applicant is based on a day rate of £562 over 39 business days

16. The Board reserves the right to charge an additional amount in excess of the amounts set out in Rule 14 in the following circumstances:

- a) if the Board requests further information from the Applicant in accordance with Rule 20 and the Board's costs in processing this information exceeds the relevant amount specified in Rule 14. In these

³ Bank details updated 2 August 2010.

circumstances, any such additional costs will be charged at the day rate of £562;

- b) the nature of the Application means that the Board has to seek external advice and the cost of this advice would mean that the Board's cost in processing the Application would exceed the relevant amount specified in Rule 14.

F. PROCESSES AND PROCEDURE

Sending the Application

17. Subject to Rule 18 below, the Applicant must submit their Application (and, proof of transmission of the Prescribed Fee) either by email, post or courier to the relevant address shown below:

a) If by email to: schedule4approvals@legalservicesboard.org.uk

b) If by post or courier to:

Address: Legal Services Board
 7th Floor Victoria House
 Southampton Row
 London WC1B 4AD

For the attention of: Designations Administrator

18. The Applicant must, unless otherwise agreed with the Board, submit their Application (and, proof of transmission of the Prescribed Fee) to the Board using the online tool at www.legalservicesboard.org.uk, once this has been developed.

19. On receipt of the Application and the Prescribed Fee, an acknowledgement email will be sent to the Applicant by the Board.

20. The Board will consider the Application and may ask the Applicant for such additional information as the Board may reasonably require.

21. The Board has the discretion to refuse to consider, or to continue its consideration of, an Application. The Board will exercise this discretion if it believes that it has not received all the information it requires.

22. Where the Board decides to refuse to consider, or to continue its consideration, of an Application it will give the Applicant notice of that decision and the reasons for it. Any such notice will be published by the Board on its website.

23. An Applicant may at anytime withdraw or amend their Application by giving notice to that effect to the Board.

Obtaining advice

24. On receipt of an Application, and all further information that the Board may require under Rule 20, the Board will send a copy of the Application (together with any further information received) to the Consultees.
25. The Board will specify to the OFT, the Consumer Panel and any Optional Consultee a time period in which each body must provide their advice on the Application to the Board. The Board intends to request that these bodies provide their advice within a time period which is reasonable, published and variable dependent on the volume and complexity of the Application received.
26. The OFT, the Consumer Panel and any Optional Consultee will then each consider the Application within the specified time period and will provide its advice to the Board.
27. In providing its advice to the Board, each Consultee may ask the Applicant (or any other person) to provide such additional information as may be required.
28. The Board will then provide the advice it receives from the OFT, the Consumer Panel and any Optional Consultee to the Lord Chief Justice and will specify to the Lord Chief Justice a time period in which he must provide his advice on the Application to the Board. Again, the time period that the Board will specify will depend on the particular circumstances of the Application.
29. The Lord Chief Justice will then consider the Application and will provide his advice to the Board.
30. Once the Board has received the advice of the Lord Chief Justice, it will provide to the Applicant a copy of all the advice that has been given by the Consultees.

Representations

31. The Applicant has **28 days** beginning on the day on which a copy of the advice referred to in Rule 30 is given to the Applicant, or such longer period as the Board may specify in a particular case, to make representations to the Board about the advice. Any representations made by the Applicant must be made in accordance with Section G of these Rules.

Publication of Advice

32. As soon as practicable after the end of the period within which representations under Rule 31 may be made, the Board will publish on its website:
- a) the advice received from the Consultees; and
 - b) subject to Rule 33, any written representations duly made by the Applicant (and the report of oral representations (if any) prepared under Rule 53).
33. Prior to the publication of any written representations (and the report of oral representations (if any) prepared under Rule 53) the Board will decide whether any parts of the representations shall remain private and, if so why, taking account of representations from the Applicant. The Board will so far as practicable exclude any material which relates to the private affairs of a particular individual the publication of which, in the opinion of the Board, would or might seriously and prejudicially affect the interests of that individual.

The Board's Decision

34. After considering the items listed in paragraph 14(1) of schedule 4 to the 2007 Act for **Approved Regulator and Reserved Legal Activity Applications** and the items listed in paragraph 6 (1) of schedule 18 to the 2007 Act for **Qualifying Regulator Applications**, the Board will decide whether to grant the Application.
35. If the Board decides to grant an **Approved Regulator** Application, it will notify the Applicant and will recommend to the Lord Chancellor that an order be made.
36. If the Board decides to grant a **Qualifying Regulator Application** it will notify the Applicant and will recommend to the Home Secretary that an order be made under Section 86A of the 1999 Act. Under that part of the 1999 Act, the Home Secretary can only make such an order following consultation with the Immigration Services Commissioner and with the approval of the Lord Chancellor.
37. If the Board decides to grant an **Approved Regulator Application** and a **Qualifying Regulator Application** to the same applicant at the same time, the order by the Home Secretary and approval by the Board of the **Regulatory Arrangements for a Qualifying Regulator Application** are conditional upon the Lord Chancellor making an order under schedule 4 of the 2007 Act to designate the applicant as an **Approved Regulator** in relation to one or more **Reserved Legal Activities**.
38. If the Board decides not to grant the Application, the Board will write to the Applicant with the reasons for its decision.

39. The Board will publish on its website a copy of any decision that it gives to the Applicant.
40. Where an Application relates to more than one Reserved Legal Activity, the Board may grant the Application in relation to all or any of them.

The Lord Chancellor's Decision for Approved Regulator Applications

41. The Lord Chancellor has up to 90 days from the date on which the Board makes its recommendation in accordance with Rule 35 to notify the Applicant of whether or not he will make an order in accordance with the recommendation.
42. Where the Board's recommendation relates to more than one Reserved Legal Activity, the Lord Chancellor may make an order in relation to all or any of them.
43. If the Lord Chancellor decides not to make an order in accordance with the Board's recommendation, the Lord Chancellor's notice to the Applicant must state the reasons for that decision. The Lord Chancellor will publish any notice given under Rule 41.

Timing

44. Under the provisions of the 2007 Act the Board has 12 months from the date of the Application to give its decision to the Applicant. The Board will also make a recommendation to the Lord Chancellor (or Home Secretary) if appropriate. The Board may extend this period up to a maximum of 16 months from the date of Application by giving notice to the Applicant. The Board may only give such a notice if it has first consulted with the Mandatory Consultees in relation to such an extension. Such notice will state the Board's reasons for extending the period and will also be published by the Board on its website.
45. Notwithstanding Rule 44, the Board will aim to deal with an Application within six months from the later of:
 - a) the date of submission of the Application; and
 - b) the final date of submission of any further information that the Board may request under Rule 20.

G. FORM OF REPRESENTATIONS

Written representations

46. Subject to Rules 47 and 49, all representations made to the Board about advice received by the Board must be in writing and must be submitted to

the Board either by email, post or courier to the relevant address set out at Rule 17.

47. The Applicant must, unless otherwise agreed with the Board, submit all representations to the Board using the online tool at www.legalservicesboard.org.uk, once this has been developed.
48. All representations must be received by the Board within the period set out in Rule 31. Representations out of this time will not be considered unless, exceptionally and at the sole discretion of the Board, they appear to raise matters of substance relevant to the Application which are not already under consideration.

Oral representations

49. The Board may, at its sole discretion authorise an Applicant to make oral representations about advice received by the Board. On grounds of cost, efficiency, transparency and consistency of treatment between Applicants, the Board will not normally accept oral representations unless the particular circumstances of the Applicant or the complexity of the issues merit an exception to the normal process in individual cases. If the Board grants such an exception, it will publish its reasons for doing so.
50. Should the Board authorise an Applicant to make oral representations, the representations will take place at a hearing to be held either by telephone, video conference or in person. The Board will give the Applicant not less than ten business days notice that there will be a hearing. If the hearing is to be held in person the notice will specify the place and time at which the hearing will be held. If the hearing is to be held by telephone or video conference, the notice will specify the time of the telephone call or video conference and also the arrangements for facilitating the telephone call or video conference.
51. Hearings conducted in person (rather than by telephone or video conference) will normally be open to the public. However, within the period ending four business days prior to the scheduled date of the hearing, the Applicant may submit to the Board a written request, with reasons, that aspects of the hearing be held in private. The Board will consider the reasons given and will then publish the reasons for any decision that it reaches. Where the hearing is held in private, the Board will only admit persons, other than representatives of the Applicant and the Board, after obtaining the agreement of the Applicant.
52. The Applicant must appear at the hearing, either in person, by telephone or by video conference (as the case may be), and may be represented by any persons whom it may appoint for the purpose. The proceeding of the hearing will be recorded on behalf of the Board and will be transcribed onto paper.

53. Where oral representations are made, the Board will prepare a report of those representations which will be based on the transcription of the hearing made in accordance with Rule 52. Before preparing the report, the Board:
- a) must give the Applicant a reasonable opportunity to comment on a draft of the report; and
 - b) must have regard to any comments duly made by the Applicant.
54. Subject to complying with the timing requirements set out in Rule 44, the Board reserves the right to extend processes to take account of the need to transcribe and verify oral submissions.
55. The Board may from time to time adjourn the hearing.
56. For the avoidance of doubt, this Section G only applies to representations made to the Board by the Applicant in relation to the advice provided by the Consultees.

H. CRITERIA FOR DETERMINING APPLICATIONS

57. In accordance with paragraphs 13(2) and 13(3) of schedule 4 to the **2007 Act for Approved Regulator and Reserved Legal Activity Applications, and paragraphs 5 (2) and 5 (3) of schedule 18 for Qualifying Regulator Applications**, the Board will only grant an Application if it is satisfied:
- a) that, if the Lord Chancellor were to make an order designating the Applicant **as an Approved Regulator** in relation to the particular Reserved Legal Activity, **or if an order were to be made under section 86A of the 1999 Act to make the Applicant a Designated Qualifying Regulator**, the Applicant would have appropriate internal governance arrangements in place at the time the order takes effect and, in particular that the exercise of the Applicant's regulatory functions would not be prejudiced by its representative functions and, so far as is reasonably practicable, regulatory decisions would be taken independently of representative ones;
 - b) that, if such an order, were to be made, the Applicant would be competent, and have sufficient resources, to perform the role of Approved Regulator in relation to the Reserved Legal Activity **or the role of Designated Qualifying Regulator (within the meaning of section 86A of the 1999 Act)** at that time;
 - c) that the Applicant's proposed Regulatory Arrangements make appropriate provision for the regulation of those it wishes to authorise. Details of the kind of evidence that the Board may consider in determining whether an Applicant's proposed Regulatory Arrangements make such provision can be found in Part 2 of the Schedule to these Rules;

- d) that the Applicant's proposed Regulatory Arrangements comply with the requirements of section 52 of the 2007 Act in that they must make such provision as is reasonably necessary to prevent regulatory conflicts;
- e) that the Applicant's proposed Regulatory Arrangements comply with requirements of section 54 of the 2007 Act in that they must make such provision as is reasonably practicable and, in all the circumstances appropriate: (a) to prevent external regulatory conflicts; (b) to provide for the resolution of any external regulatory conflicts that arise; and (c) to prevent unnecessary duplication or regulatory provisions made by an external regulatory body;
- f) that the Applicant's proposed Regulatory Arrangements comply with the requirements of section 112 of the 2007 Act in that they must make provision requiring each relevant Authorised Person: (a) to establish and maintain procedures for the resolution of relevant complaints; or (b) to participate in, or to make arrangements to be subject to, such procedures established and maintained by another person, and provision for the enforcement of that requirement;
- g) that the Applicant's proposed Regulatory Arrangements comply with the requirements of section 145 of the 2007 Act in that they must make: (a) provision requiring each relevant Authorised Person to give ombudsmen all such assistance requested by them, in connection with the investigation, consideration or determination or complaints under the Ombudsman Scheme, as that person is reasonably able to give; and (b) provision for the enforcement of that requirement;
- h) that, for Qualifying Regulator Applications, the arrangements made by the Applicant for authorising persons to provide immigration advice or services provide that persons may not be so authorised unless they are persons also authorised by the Applicant to carry on activities which are Reserved Legal Activities.

58. In addition, when considering an Application, the Board will consider how consistent an Applicant's proposed Regulatory Arrangements are with the requirements of section 28 of the 2007 Act (duty to promote the Regulatory Objectives, pursue best regulatory practice etc).

I. FURTHER INFORMATION

59. If you have any questions about the Application process or the preparation of an Application, you should contact the Board at:

Address: Legal Services Board
7th Floor Victoria House
Southampton Row
London WC1B 4AD

Email: schedule4approvals@legalservicesboard.org.uk

Telephone: 020 7271 0050

SCHEDULE

Part 1 - Administrative information needed to enable processing of an application

	What is required	Section of 2007 Act	Possible Evidence
1.	Background information	N/A	Contact details for the person(s) the Board should contact in relation to the Application, including job title, email address and phone number, a physical address for communication and the Applicant's registered office address (if different from communication address) and company registration number if applicable
2.	A statement of the Reserved Legal Activity or Activities to which the Application relates and/or whether the Application relates to immigration advice and services	Sch. 4, paragraph 3(3)(a) Sch.18 paragraph 3(4)(b)	Specification of: <ul style="list-style-type: none"> • Which of the Reserved Legal Activities set out in section 12 and schedule 2 to the 2007 Act the Applicant proposes to regulate¹ • The context within which the Applicant proposes to regulate such Activities (i.e. will the Applicant only be providing authorisation to provide the Reserved Legal Activities or immigration advice and services in limited circumstances?)
3.	Details of the Applicant's proposed Regulatory Arrangements	Sch. 4, paragraph 3(3)(b) Sch.18, paragraph 3(4)(a)	Relevant documentation on how the Applicant proposes to establish and discharge its Regulatory Arrangements, as defined in section 21 of the 2007 Act i.e.: <ul style="list-style-type: none"> • Authorisation processes • Practice rules • Code of conduct • Disciplinary arrangements • Qualification regulations • Indemnification arrangements • Compensation arrangements • Licensing rules • Other related rules A clear explanation of how the Applicant's Regulatory Arrangements actively contribute to the achievement of the Regulatory Objectives and remove risks to their delivery

¹ For applications under schedule 18, Part 1, Applicants should state their intention to regulate immigration advice and services.

	What is required	Section of 2007 Act	Possible Evidence
4.	Such explanatory material (including material about the Applicant's constitution and activities) as the Applicant considers is likely to be needed for the purposes of Part 2 of schedule 4 and for applications under Part 1 of schedule 18 if relevant	Sch. 4, paragraph 3(3)(c) Sch.18, paragraph 3(4)(b)	<p>Memorandum and articles of association or equivalent constitutional documentation</p> <p>Current details of legal entity structure, ownership, list of directors</p> <p>Statement of the non-regulatory activities the Applicant intends to carry out and how these will be managed in accordance with the requirements of the 2007 Act and such rules as the Board shall make from time to time</p> <p>A business plan for the activity to be regulated, demonstrating the proposed governance and funding arrangements and sensitivity analysis showing how it relates to different forecasts</p>
5.	Details of the authority which the Applicant proposes to give persons to carry on activities which are Reserved Legal Activities	Sch. 4, paragraph 3(5)(a)	See Item 3
6.	Details of the nature of the persons to whom each aspect of the authority is to be given	Sch. 4, paragraph 3(5)(a)	See Item 3
7.	Regulations (however they may be described) as to the education and training which persons must receive, and any other requirements which must be met by or in respect of them, in order for them to be authorised	Sch. 4, paragraph 3(5)(b) Sch.18 paragraph 5(2)(d)	<p>Details might include:</p> <ul style="list-style-type: none"> Split between general principles (i.e. duty to the Supreme Court) and specific activity (i.e. staff training, client money handling etc) Split between mandatory elements and guidance Explanation of any variation with the practices adopted by others currently regulating the activity
8.	Rules (however they may be described) as to the conduct required of persons in carrying on any activity by virtue of the authority	Sch. 4, paragraph 3(5)(c) Sch.18 paragraph 5(2)(d)	Details of the activities within each relevant Reserved Legal Activity and, where relevant, immigration advice and services, (e.g. conducting CPD eligible training, handling client money, supervising trainees, supervising lawyers or other disciplines)
9.	In deciding what advice to give, the OFT must, in particular, have regard to whether an order ... would (or would be likely to) prevent, restrict or distort competition within the market for Reserved Legal Services (or immigration advice and services for Qualifying Regulator Applications) to any significant extent	Sch. 4, paragraph 6(2) Sch.18, paragraph 4(b)	The OFT is considering whether to issue its own guidance on the issues to which it is likely to have regard in giving advice

	What is required	Section of 2007 Act	Possible Evidence
10.	In deciding what advice to give, the Consumer Panel must, in particular, have regard to the likely impact on consumers of the making of an order	Sch. 4, paragraph 7(2) Sch.18, paragraph 4(a)	Explanation of how the Regulatory Arrangements will: <ul style="list-style-type: none"> • Protect and promote the interests of consumers generally • Meet the specific requirements in terms of indemnification and complaint handling
11.	An optional consultee may give the Board such advice as the selected consultee thinks fit in respect of the Application	Sch. 4, paragraph 8 Sch.18, paragraph 4	Information on any matters specified by a selected consultee
12.	The Lord Chief Justice must, in particular, have regard to the likely impact on the courts in England and Wales of the making of an order	Sch. 4, paragraph 9(3) Sch.18, paragraph 4(a)	Information on any matters specified by the LCJ
13.	The Board may grant an Application only if it is satisfied that, if the relevant order were to be made, the Applicant would have appropriate internal governance arrangements in place at the time the order takes effect	Sch.4, paragraph 13(2)(a) Sch.18, paragraph 5(2)(a)	See Item 4
14.	The Board may grant an Application only if it is satisfied that, if the relevant order were to be made, the Applicant would be competent, and have sufficient resources, to perform the role of Approved Regulator in relation to the Reserved Legal Activity at that time or the role of Designated Qualifying Regulator within the meaning of section 86A of the 1999 Act	Sch. 4, paragraph 13(2)(b) Sch.18, paragraph 5(2)(b)	Statement from authorised staff/officeholders in the organisation that there are sufficient resources, an explanation of how this has been assessed Documents signed off by an external accountant as being calculated, presented and supported to a standard that could pass a statutory audit Business Plan for coming year and 3 year forward look Risk management strategy Staff development and retention strategies
15.	The Board may grant an Application only if it is satisfied that, the Applicant's proposed Regulatory Arrangements make appropriate provision	Sch. 4, paragraph 13(2)(c) Sch.18, paragraph 5(2)(d)	Assessment of how the proposed Regulatory Arrangements are consistent with Better Regulation Principles
16.	Compliance with the requirement imposed by sections 52 and 54 (resolution of regulatory conflict)	Sch. 4, paragraph 13(2)(d)	A statement identifying regulators with whom conflict might arise and the work undertaken to date and proposed to avoid this, in particular in relation to the interaction between an individual regulated by one Approved Regulator and an employing entity

What is required			
Section of 2007 Act	Possible Evidence		
			regulated by another Approved Regulator
17.	Compliance with the requirements imposed by sections 112 and 145 (requirements imposed in relation to the handling of complaints)	Sch. 4, paragraph 13(2)(e) Sch.18, paragraph 5(2)(e)	Current or draft policies showing compliance with any rules made under sections 112 and 145 of the 2007 Act and any OLC guidance
18.	The rules made for the purposes of paragraphs 2 and 4 of these Rules must in particular require the Board to be satisfied that the exercise of the Applicant's regulatory functions would not be prejudiced by any of its representative functions	Sch. 4, paragraph 13(3)(a) Sch.18, paragraph 5(3)(a)	Statement on how the arrangements comply with the principles of the 2007 Act and such rules as the Board may make from time to time
19.	The rules made for the purposes of paragraphs 2 and 4 of these Rules must in particular require the Board to be satisfied that decisions relating to the exercise of the Applicant's regulatory functions would so far as reasonably practicable be taken independently from decisions relating to the exercise of the Applicant's representative functions	Sch. 4, paragraph 13(3)(b) Sch.18, paragraph 5(3)(b)	See Item 18
20.	For Qualifying Regulator Applications the Board must additionally be satisfied that the arrangements made by the Applicant for authorising persons to provide immigration advice and services provide that persons may not be so authorised unless they are also authorised by the applicant to carry on activities which are Reserved Legal Activities	Sch.18 paragraph 5(2)(c)	Relevant documentation, such as a Code of Conduct.

Part 2 – Evidence in relation to Regulatory Arrangements

Principles (each principle may relate to more than one risk)	Risks	Relates to Regulatory Objectives (see section 1(1))	Relates to Regulatory Arrangement (see section 21(1))	Evidence to underpin approval of designation as an Approved Regulator
Clients money must be protected	Clients money is misused by regulated person or unprotected from entity failure	(d), (f), (h)	(h)	Approved Regulators must ensure that Authorised Persons must keep clients money separate from own Approved Regulators must be able to compensate clients as per section 21(2) May involve client account rules; insurance requirements; compensation fund or insurance or alternatives
Authorised Persons must act in clients' interests subject to duty to court	Authorised Persons do not or are unable to act in the clients interest	(a), (b), (d), (e), (h)	(g), (d)	Approved Regulators must demonstrate how regulated persons and entities are indemnified against losses arising from claims in relation to any description of civil liability incurred by them, or by employees or former employees of theirs, in connection with their activities as such regulated persons or entities Approved Regulators must have a code of conduct that enshrines the primacy of acting in the client interest and subjugates other pressures, be they commercial or otherwise to that principle
Reserved Legal Services and immigration advice and services should only be delivered by regulated persons of appropriate skill and competence	Reserved Legal Services and/or immigration advice and services are not of the appropriate quality	(c), (d), (e), (h)	(a), (b), (c)	Approved Regulators must ensure that definitions of appropriate skill and competence are proportionate in order to ensure both value and professionalism Easily accessible redress should be in place
Compliance with professional principles should be enshrined in regulation	Reserved Legal Services and/or immigration advice and services are not delivered in accordance with professional principles	(a), (d), (h)	(d), (f)	Approved Regulators must have a code of conduct that defines the professional principles that are compulsory for regulated community

Principles (each principle may relate to more than one risk)	Risks	Relates to Regulatory Objectives (see section 1(1))	Relates to Regulatory Arrangement (see section 21(1))	Evidence to underpin approval of designation as an Approved Regulator
Compliance with professional principles should be enshrined in regulation	Authorised Persons and entities do not comply with regulation	(a), (b), (c), (d), (e), (f), (g), (h)	(e)	Approved Regulator must have a disciplinary remit and processes that allow for setting standards and managing compliance of Authorised Persons and entities, efficient investigatory systems and disciplinary powers in the event of breaches of the regulatory framework
Responsibilities for front line complaints handling and interactions with the OLC should be clear	Consumers do not receive timely complaint investigation or redress when justified	(a), (b), (c), (d), (h)	(c), (d), (h)	Approved Regulator must have rules specifying how rights to complain and redress can be accessed, including the right of access to the OLC at an appropriate stage
Regulatory Arrangements should advance the objective of supporting competition	Regulatory requirements act as a barrier to competition by restricting legitimate entry	(d), (e)	(c), (d)	Approved Regulator should be able to demonstrate that their rules are the minimum necessary to address the full set of objectives and do not have unintended consequences in terms of restricted entry
Representative and regulatory functions should be discharged and decisions made, so far as reasonably practicable, independently of each other	Decisions lack credibility and independence because of actual or perceived influence from the representative arm of an Approved Regulator	(a), (d), (f)	(c), (d)	Approved Regulators should have arrangements which implement the 2007 Act and such rules as the LSB make on the issue in relation to regulatory strategy, decisions and resourcing of the regulatory arm
Regulation should clearly support the rules of law	Commercial considerations undermine duty to the court	(b), (c), (d), (f)	(a), (c), (d)	Approved Regulators' rules and processes should unequivocally give priority to this duty
The legal professions make up should reflect the population it serves	Public confidence is lost if the profession appears to be a "closed shop"	(c), (d), (f)	(a), (b), (f)	Approved Regulators should be able to demonstrate processes which address diversity concerns
Consumers should be actively involved in decision making throughout their dealings with the profession	Consumers poor understanding restricts their ability to access justice	(a), (c), (d), (g)	(a), (d), (h)	Approved Regulators can demonstrate how their processes address public legal education

Part 3 – How the Board expects to treat Applications

1. The Board expects carefully prepared documentation which the executives and/or honorary officers of the Applicant (and the Applicant's independent advisors when applicable) are prepared to put their name to in stating that the information supplied is accurate or, in the case of forecast data, is a best estimate based on good research and informed professional judgement. If the Applicant cannot demonstrate this level of executive and advisory confidence then it is not appropriate for an Application to be made.
2. The Board expects that some parts of this Schedule will be less relevant to an Applicant who is already an Approved Regulator which is applying to add an additional Reserved Legal Activity **or immigration advice and services** to its competences or to a new Applicant which has a strong record of regulatory performance in a related sector than to a wholly new organisation. Hence, the Board will take a proportionate view of risk in deciding precisely how much information to seek in any given case.
3. All documents supplied will be subject to publication and to the scrutiny of the Consultees whom the **2007** Act prescribes must consider Applications. Consequently Applicants should have regard to this in relation, in particular, to supplying information which might be commercially sensitive and/or contain personal data. The Board will consider limited requests for redaction of information from documents that are published on these grounds but will not be able to redact information from materials sent to the Mandatory Consultees. The Board requires successful Applicants to maintain a publicly accessible internet space containing all of the materials that are submitted by the Applicant in its Application.
4. The Board will normally expect to see evidence of consultation with other Approved Regulators and the OLC on matters (such as code of conduct) where there is likely to be an interaction between the Applicant and the existing Approved Regulators. The Applicant should also consult with members of, and representative bodies for, professions that may be affected by the Application and with the regulators of these professions. The Board will also normally expect the Applicant to consider, and if appropriate consult with, any other relevant stakeholders including consumers.
5. The Board reserves the right to retain advisors to consider the information supplied. The retention of such advisors may result in an increase to the Prescribed Fee as described in Rule 16. Applicants are encouraged to consider how in preparing, presenting and in certifying the information that they submit, they can minimise the need for the Board to take external advice.
6. The Board's decision will take account of professional guidance, Consultee responses received and on the overall competence, completeness and executive and advisor endorsement of the Applications received. The Board, as an oversight regulator, will not usually reanalyse the information supplied unless there are compelling reasons for doing so.

7. Board approval of a new body as an Approved Regulator **and/or Qualifying Regulator**, or of an Existing AR Applicant as an Approved Regulator in relation to an additional Reserved Legal Activity, **or a Qualifying Regulator in relation to immigration advice and services** represents an assessment that:
 - a) the Applicant appears well prepared and appears to understand the roles and responsibilities granted to Approved Regulators **and/or Qualifying Regulators** under the **2007** Act; and
 - b) no valid objections have been made to the Applicant's Application by the Consultees.