

Internal Governance Rules 2009

Version 1: 15 December 2009

The Legal Services Board has, on 9 December 2009, made the following rules under Legal Services Act 2007 (c.29), section 30(1):

A. DEFINITIONS

1. In these Rules, a reference to “the principle of regulatory independence” is a reference to the principle that:

structures or persons with representative functions must not exert, or be permitted to exert, undue influence or control over the performance of regulatory functions, or any person(s) discharging those functions.

2. The words defined in these Rules have the following meanings:

Act	the Legal Services Act 2007 (c.29)
Applicable Approved Regulator	an Approved Regulator that is responsible for the discharge of regulatory and representative functions in relation to legal activities in respect of persons whose primary reason to be regulated by that Approved Regulator is those person’s qualifications to practise a reserved legal activity that is regulated by that Approved Regulator

Approved Regulator	has the meaning given in Section 20(2) of the Act
Board	the Legal Services Board
Consumer Panel	the panel of persons established and maintained by the Board in accordance with Section 8 of the Act
lay person	has the meaning given in Schedule 1, paragraphs 2(4) and (5) of the Act
legal activities	has the meaning given by section 12(3) of the Act
OLC	the Office for Legal Complaints established under Section 114(1) of the Act
person	includes a body of persons (corporate or unincorporated)
prejudice	the result of undue influence, whether wilful or inadvertent, causing or likely to cause the compromise or constraint of independence or effectiveness
regulatory board	has the meaning given by Rule B in Part 1 of the Table in the Schedule to these Rules
regulatory functions	has the meaning given by Section 27(1) of the Act
regulatory objectives	has the meaning given by section 1(1) of the Act

representative functions	has the meaning given by Section 27(2) of the Act
representative interests	the interests of persons regulated by the Approved Regulator
reserved legal activities	has the meaning given by section 12(1) of the Act
undue influence	pressure exercised otherwise than in due proportion to the surrounding circumstances, including the relative strength and position of the parties involved, which has or is likely to have a material effect on the discharge of a regulatory function or functions.

B. WHO DO THESE RULES APPLY TO?

3. These Rules are the rules that the Board has made in compliance with 30(1) of the Act relating to the exercise of Approved Regulators' regulatory functions.
4. Accordingly, these Rules apply to each Approved Regulator.
5. In the event of any inconsistency between these Rules and the provisions of the Act, the provisions of the Act prevail.

C. GENERAL DUTY TO HAVE IN PLACE ARRANGEMENTS

6. Each Approved Regulator must:
 - (a) have in place arrangements that observe and respect the principle of regulatory independence; and
 - (b) at all times act in a way which is compatible with the principle of regulatory independence and which it considers most appropriate for the purpose of meeting that principle.

7. Without limiting the generality or scope of Rule 6, the arrangements in place under that Rule must in particular ensure that:
- (a) persons involved in the exercise of an Approved Regulator's regulatory functions are, in that capacity, able to make representations to, be consulted by and enter into communications with any person(s) including but not limited to the Board, the Consumer Panel, the OLC and other Approved Regulators;
 - (b) the exercise of regulatory functions is not prejudiced by any representative functions or interests;
 - (c) the exercise of regulatory functions is, so far as reasonably practicable, independent of any representative functions;
 - (d) the Approved Regulator takes such steps as are reasonably practicable to ensure that it provides such resources as are reasonably required for or in connection with the exercise of its regulatory functions; and
 - (e) the Approved Regulator makes provision as is necessary to enable persons involved in the exercise of its regulatory functions to be able to notify the Board where they consider that their independence or effectiveness is being prejudiced.

D. REQUIREMENTS FOR APPLICABLE APPROVED REGULATORS

8. In the case of each Applicable Approved Regulator, the arrangements in place under Rule 6 must also meet the requirements set out in the Schedule to these Rules.

E. ENSURING ONGOING IMPLEMENTATION

9. Each Applicable Approved Regulator, jointly with its regulatory board, must:
- (a) if it considers itself to be compliant with these Rules, certify such compliance in the form and manner prescribed by the Board from time to time; or
 - (b) if it considers itself not to be compliant with these Rules, in some or all respects, notify such non-compliance and set out:

- (i) why it has been unable to comply in such respects as it has identified;
- (ii) when it considers that it will be compliant; and
- (iii) how it plans to achieve compliance, and by when, and how much it is expected to cost.

10. Subject to the agreement of the Board, an Applicable Approved Regulator may invite any other appropriate body, including a consumer panel associated with the Applicable Approved Regulator, to provide a certification in a similar form and manner.

F. GUIDANCE

11. Approved Regulators must, in seeking to comply with these Rules, have regard to any guidance issued by the Board under this Rule.

12. For the avoidance of doubt, any guidance issued under Rule 11 does not, of itself, constitute a part of these Rules.

Schedule to Internal Governance Rules

The requirements set out in this Schedule are that Applicable Approved Regulators, in making arrangements under these Rules, must:

- (a) adhere to the principles set out in the table below in respect of specified areas which arrangements must cover;
- (b) comply with the rules set out in the table below in respect of demonstrating compliance with the principles; and
- (c) take account of the illustrative guidance set out in the table below when seeking to comply with the principles and rules.

Principle	Rule	Illustrative guidance
<p>Part 1: Governance</p> <p>Nothing in an Applicable Approved Regulator’s (AAR’s) arrangements should impair the independence or effectiveness of the performance of its regulatory functions.</p>	<p>A. Each AAR must delegate responsibility for performing all regulatory functions to a body or bodies (whether or not a separate legal entity/separate legal entities) without any representative functions (herein after ‘the regulatory body’ or ‘the regulatory bodies’).</p>	<p>An AAR should take all reasonable steps to agree arrangements made under these Rules with the regulatory body or, as the case may be, the regulatory bodies.</p>
		<p>If an AAR wishes otherwise than through its regulatory body/bodies to offer guidance to its members or more widely on regulatory matters, it should:</p> <ul style="list-style-type: none"> • ensure that it does not contradict or add material new requirements to any rules or guidance made by the regulatory body/bodies; and • consult with the regulatory body/bodies when developing that guidance.

	<p>B. The regulatory body or, if more than one, each of the regulatory bodies, must be governed by a board or equivalent structure (herein after the 'regulatory board').</p>	
	<p>C. In appointing persons to regulatory boards, AARs must ensure that:</p> <ul style="list-style-type: none"> • a majority of members of the regulatory board are lay persons; and • the selection and appointment of a chair is not restricted by virtue of any legal qualification that person may or may not hold, or have held. 	
<p>Part 2: Appointments etc</p> <p>(1) Processes in place for regulatory board members' appointments, reappointments, appraisals and discipline must be demonstrably free of undue influence from persons with representative functions.</p>	<p>A. All appointments to a regulatory board must be made on the basis of selection on merit following open and fair competition, with no element of election or nomination by any particular sector or interest groups.</p>	<p>If regulatory boards do not lead on managing the appointments process, it should have a very strong involvement at all stages.</p>
		<p>Best practice for public appointments should be taken into account. In particular, account should be taken of the Code of the Commissioner of Public Appointments insofar as relevant.</p>
	<p>B. The selection of persons so appointed must itself respect the principle of regulatory independence and the principles relating to "appointments etc" set out in this Part of this Schedule.</p>	<p>Appointment panels or equivalent should be established following the guidance set out in the Board's letter of 2 December 2008¹.</p>
		<p>The chair of the regulatory board (or an alternate) should always form part of that panel, unless the panel is established to select the chair (in which case another member of the regulatory board should participate).</p>

¹ See: <http://www.justice.gov.uk/news/docs/legal-services-board-open-letter-021208.pdf>

		<p>The appointments process should be conducted with regard to the desirability of securing a diverse board with a broad range of skills. The framework applied at Schedule 1 paragraph 3 of the Act serves as a useful template.</p>
	<p>C. Decisions in respect of the remuneration, appraisal, reappointment and discipline of persons appointed to regulatory boards must respect the principle of regulatory independence and the principles relating to “appointments etc” set out in this Part of this Schedule.</p>	<ul style="list-style-type: none"> • Remuneration – decisions in respect of regulatory board pay and conditions should be made having regard to best practice and in any event should not be controlled wholly or mainly by persons responsible for representative functions; • Appraisals – while persons with representative functions may be consulted about regulatory board members’ appraisal, they should not be involved formally in agreeing the outcome, or future objectives; • Reappointments – decisions should be guided by objective appraisals and the desirability of ensuring a balance between regular turnover <u>and</u> continuity.
	<p>D. Except insofar as an AAR would be, or would reasonably be considered likely to be, exposed to any material legal liability (other than to pay wages, salaries etc) as a consequence of the delay required to obtain</p>	<p>While the LSB accepts that there may be <u>exceptional</u> reasons which justify immediate dismissal without concurrence having first been obtained, it would expect a full explanation if such circumstances were ever to arise. An AAR should accordingly be prepared to justify why it could not comply with the relevant Rule.</p>

(2) All persons appointed to regulatory boards must respect the duty to comply with the requirements of the Legal Services Act 2007.	the concurrence of the Board, no person appointed to a regulatory board must be dismissed except with the concurrence of the Board.	Where an AAR proposes to discipline one or more member(s) of a regulatory board, where such discipline is short of dismissal, the Board should be consulted privately in advance of the action being taken, and the AAR should consider any representations the Board may chose to make.
	E. No person appointed to and serving on a regulatory board must also be responsible for any representative function(s).	Where possible, a person appointed should not have been responsible for any representative functions immediately prior to appointment. The longer the gap between holding responsibility for representative functions and taking up regulatory functions, the more likely it is that the principle of regulatory independence will be observed.
		Codes of conduct or equivalent for board members should highlight the importance of observing and respecting the regulatory objectives and the principles of better regulation, rather than operating to represent any one or more sectoral interests. Codes should also highlight the importance of respecting the principle of regulatory independence, as underlined by the provisions of sections 29 and 30 of the Act.
Part 3: Strategy and Resources etc Subject only to the oversight permitted under Part 4 of this	A. Defining and implementing a strategy should include: <ul style="list-style-type: none"> • access to the financial and other resources reasonably required to meet the strategy it has adopted; • effective control over the management of 	The Act requires separation of regulatory and representative functions. Absent of corporate management structures that are robustly and demonstrably separated from the control of persons with representative functions, these Rules are likely to require a high degree of delegation to regulatory bodies in respect of the control of strategy and resourcing.

<p>Schedule, persons performing regulatory functions must have the freedom to define a strategy for the performance of those functions and work to implement that strategy independently of representative control or undue influence.</p>	<p>those resources; and</p> <ul style="list-style-type: none"> • the freedom to govern all internal processes and procedures. 	<p>What is or is not a regulatory function is determined in accordance with the Act. Subject to the Act, whether something is 'regulatory' should be for each regulatory body to determine, in close consultation with respective AARs.</p>
		<p>Where members of staff are employed by an AAR to discharge regulatory functions under the delegated remit of a regulatory body, the position of the AAR as legal employer should be recognised in the arrangements made under these rules. However, in complying with these Rules, those arrangements should make clear how decisions with respect to the management and control of such members of staff are to be exercised.</p> <p>The presumption under such arrangements should be – subject only to being exposed to unreasonable liability (such as in creating a pension scheme) – that an AAR should always agree a reasonable request from its regulatory body. While an AAR has a right of veto, therefore, it also carries a responsibility to justify that decision in light of the principle of regulatory independence.</p> <p>The Board may from time to time issue further illustrative guidance on these issues under Rule 11 of these Rules.</p>

		Each regulatory body should act reasonably when defining and implementing its strategy, and should in particular have regard to the provisions of Section 28 of the Act. It should also have due regard to the position of the AAR and in particular to any responsibilities or liabilities it may have as AAR.
	B. The regulatory body (or each of the regulatory bodies) must have the power to do anything within its allocated budget calculated to facilitate, or incidental or conducive to, the carrying out of its functions.	Each regulatory body should act reasonably when exercising its functions in accordance with this Rule, and should in particular have regard to the provisions of Section 28 of the Act. It should also have due regard to the position of the AAR and in particular to any responsibilities or liabilities it may have as AAR.
	C. Insofar as provision of resources is concerned, arrangements must provide for transparent and fair budget approval mechanisms.	The process established by the AAR should provide appropriate checks and balances between it and the regulatory body (or bodies) so as to ensure value for money and observe the wider requirements of the Act, without impairing the independence or effectiveness of the regulatory body (or bodies).
	D. Insofar as provision of any non-financial resources is concerned (for example, services from a common corporate service provider, or staff), arrangements must provide for transparent and fair dispute resolution mechanisms.	Subject only to the formal budgetary approval process and the operation of its dispute resolution mechanism(s) , an AAR's arrangements should not prevent those performing regulatory functions, where they believe their independence and/or effectiveness is compromised or prejudiced, from obtaining required services otherwise than through the AAR.
		AARs and regulatory bodies should be particularly careful to ensure that, in respect of public and/or consumer-facing services (including media relations and marketing-type activities), the principle of regulatory independence should be seen to be met, as well as

		being met.
		<p>When considering whether arrangements meet the required standards, the Board will consider factors such as:</p> <ul style="list-style-type: none"> • evidence that the provision of services to the regulatory body (or bodies) is not subordinate to the provision of services to any other part of the AAR; • provision being made for service level agreements agreed between respective parties; and • transparent, fair and effective dispute resolution mechanisms being in place.
<p>Part 4: Oversight etc Oversight and monitoring by the AAR (which is ultimately responsible and accountable for the discharge of its regulatory functions) of persons performing its regulatory functions must not impair the independence or effectiveness of the performance of those functions.</p>	<p>A. Arrangements in place must be transparent and proportionate.</p>	<p>In making its arrangements, an AAR should balance its ultimate responsibility for the discharge of regulatory functions with its responsibilities to ensure separation of regulatory and representative functions.</p> <p>In considering proportionality, AARs should consider the risk of Board intervention. Note the Board’s policy statement on compliance and enforcement powers, and in particular the Board’s intention to use its most interventionist powers only when other measures (including informal measures) have failed.</p>

	B. Arrangements in place must prohibit intervention, or the making of directions, in respect of the management or performance of regulatory functions unless with the concurrence of the Board.	In determining whether to give concurrence, the Board will consider the extent to which the process leading to the proposed intervention or directions complies with the principle of regulatory independence.
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