

Rules for Rule Change Applications - Version 2 (November 2010)

Following the consultation on 29 October 2010 on the application of sections 178-79 of the Legal Services Act 2007, the LSB revised the Rules for Rule Change Applications. Changes to the original Rules are in red text.

A. PREAMBLE

1. These Rules are made by the Board (as defined below) under paragraphs 20(1) and 23(3) of Part 3 of Schedule 4 to the Act (as defined below).

B. DEFINITIONS

2. Words defined in these Rules have the following meanings:

Act	the Legal Services Act 2007
Alteration	has the meaning given in paragraph 19(5) of Schedule 4 to the Act
Applicant	an Approved Regulator who submits an Application; and the Tribunal where it makes an alteration to its rules under section 46(9)(b) of the Solicitors Act 1974 and seeks the Board's approval to the alteration by virtue of sections 178(2) and (3) of the Act.
Application	an application to approve an Alteration to the Regulatory Arrangements of an Approved Regulator that is submitted to the Board in accordance with Part 3 of Schedule 4 to the Act and these Rules; and an application submitted by the Tribunal to the Board to approve an Alteration to the Tribunal's rules in accordance with Part 3 of Schedule 4 to the Act.
Approval Notice	has the meaning given in Rule 16
Approved Regulator	has the meaning given in section 20(2) of the Act
Authorised Person	has the meaning given in section 18 of the Act
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 Act
Board	the Legal Services Board
Designation Requirements	the requirements set out in paragraph 25(4) of Schedule 4 to the Act
Exempt Alteration	an Alteration to an Approved Regulator's Regulatory Arrangements, or the Tribunal's rules, that the Board

has directed (in accordance with paragraphs 19(3) and (4) of Schedule 4 to the Act) is to be treated as exempt from the approval requirements contained in Part 3 of Schedule 4 to the Act

Initial Decision Period	has the meaning given in Rule 16
Licensing Authority	has the meaning given in section 73 of the Act
Regulatory Arrangements	has the meaning given in section 21 of the Act
Regulatory Objectives	has the meaning given in section 1 of the Act
Reserved Legal Activity	has the meaning given in section 12 of and Schedule 2 to the Act
Tribunal	the Solicitors Disciplinary Tribunal
Warning Notice	has the meaning given in Rule 16

C. WHO DO THESE RULES APPLY TO?

3. These are the Rules that apply if an Approved Regulator wishes to make an Alteration to its Regulatory Arrangements. For the avoidance of doubt, these Rules do not apply to any Alteration of an Approved Regulator's Regulatory Arrangements to the extent that such Alteration is governed by section 51 of the Act. **These Rules also apply where the Tribunal seeks the Board's approval to an alteration of a rule it has made under section 46(9)(b) of the Solicitors Act 1974.**
4. An Alteration to an Approved Regulator's Regulatory Arrangements, **and the Tribunal's rules (as appropriate), does** not have effect unless:
 - it is an Alteration approved as a result of the Lord Chancellor making an order to approve a body as an Approved Regulator in accordance with Part 2 of Schedule 4 to the Act;
 - it is an Alteration made in compliance with a direction under section 32 of the Act;
 - it is approved by virtue of paragraph 16 of Schedule 10 to the Act (approval of licensing rules on designation by order as Licensing Authority);
 - it is approved by virtue of paragraph 7 of Schedule 18 to the Act (approval of proposed regulatory arrangements when granting "qualifying regulator" status for the purposes of Part 5 of the Immigration and Asylum Act 1999 (c. 33));
 - it is an Exempt Alteration;

- it is an Alteration approved by the Board in accordance with Part 3 of Schedule 4 to the Act.

5. These Rules set out:

- how the Board will direct that an Alteration is an Exempt Alteration (**see Section D**);
- the required contents of an Application to the Board for approval in accordance with Part 3 of Schedule 4 to the Act (**see Section E**);
- the processes and procedures that the Board will undertake in considering the Application (**see Section F**);
- the manner in which the Applicant can make representations to the Board about its Application (**see Section G**);
- the Board's criteria for determining Applications (**see Section H**); and
- whom a body should contact if they have a question in relation to the Application process (**see Section I**).

6. 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 Act.

D. EXEMPT ALTERATIONS

7. In accordance with paragraph 19(3) of Schedule 4 to the Act, the Board may direct, from time to time, that an Alteration to an Approved Regulator's Regulatory Arrangements, **or to the Tribunal's rules**, is an Exempt Alteration.

8. A Direction given by the Board under paragraph 19(3) of Schedule 4 to the Act may be specific or general and will be published by the Board on the Board's website. A Direction will, unless the Board specifically provides otherwise, take effect from the date being 14 days from the publication of the direction on the Board's website.

E. CONTENTS OF APPLICATION

9. The Applicant must include the following information in their Application:

- the name, address, telephone number and email address of the person whom the Board should contact in relation to the Application;
- details of the proposed Alteration;
- details of such of the Applicant's Regulatory Arrangements **or rules** as are relevant to the Application including a statement setting out:
 - i) the nature and effect of the existing Regulatory Arrangement **or rules**;
 - ii) the nature and effect of the proposed Alteration; and
 - iii) an explanation of why the Applicant wishes to make the Alteration in question;
- a statement in respect of each proposed Alteration explaining how and why the Alteration will either help to promote, be neutral towards or be detrimental to each of

the Regulatory Objectives. If relevant, the Applicant must explain why the benefit of the Alteration in relation to some of the Regulatory Objectives outweighs its negative effect on other Regulatory Objectives;

- a statement explaining how and why the Applicant, feels that the Alterations requested fulfil the Applicant's obligations to comply with its obligations under section 28 of the Act to have regard to the Better Regulation Principles;
- a statement explaining the desired outcome of the Alteration and how the Applicant intends to assess whether the desired outcome has been achieved;
- a statement explaining whether the proposed Alteration is one that affects areas regulated by other Approved Regulators. If this is the case, the Applicant should provide evidence of consultation with, and responses from, these other Approved Regulators. This consultation should deal with the possibility of any regulatory conflicts and also the possibility of harmonising the Regulatory Arrangements of Approved Regulators regulating the same Reserved Legal Activities. The purpose of this requirement is to ensure that sections 52 to 54 of the Act are complied with and that best practice is shared in common areas of regulation;
- details of when the Applicant hopes to implement the Alteration;
- full details of all consultation processes undertaken and responses received by the Applicant in relation to the Alteration, which should include consultations of Approved Regulators and other appropriate regulators when applicable;
- such other explanatory material as the Applicant considers is likely to be needed for the purposes of Part 3 of Schedule 4 to the Act.

10. For reasons of efficiency and so that the affect of Alterations can be seen cumulatively, any Application should, unless otherwise agreed by the Board, be only in respect of related Alterations to an Applicant's Regulatory Arrangements **or rules**. For example, all Alterations relating to training requirements should be presented in one Application but Alterations to a code of conduct definition on "independence" and an Alteration to "client money" handling rules that arise independently of one another should be made in separate Applications. If in doubt, an Applicant should contact the Board prior to making an Application.

F. PROCESSES AND PROCEDURE

Sending the Application

11. Subject to Rule 12 below, the Applicant must submit their Application, either by email, post or courier to the relevant address shown below:

- If by email to : schedule4approvals@legalservicesboard.org.uk
- If by post or courier to:
Address: Legal Services Board
7th Floor Victoria House
Southampton Row
London WC1B 4AD
For the attention of: Rule Change Administrator

12. The Applicant must, unless otherwise agreed with the Board, submit their Application to the Board using the online tool at www.legalservicesboard.org.uk, once this has been developed.
13. On receipt of the Application a copy of the proposed Alterations to the Applicant's Regulatory Arrangements **or rules** will be published on the Board's website.
14. The Board will consider the Application and may ask the Applicant for such additional information as the Board may reasonably require.
15. The Board has the discretion to refuse to continue its consideration of an Application if it believes that it has not received all the information it requires – this power is granted under paragraph 25(3)(f) of Schedule 4 to the Act as the Board will, in these circumstances, feel that the approval of the Alteration would occur otherwise than in accordance with the procedures for review established by the Board under the Act.

Initial determination

16. On receipt of an Application, the Board has **28 days** (beginning on the day the Board receives the Application) (the "**Initial Decision Period**") to:
 - grant the Application and give the Applicant notice to that effect (an "**Approval Notice**") (paragraph 21(1)(a) of Schedule 4 to the Act);
 - give the Applicant a notice stating that the Board is considering whether to refuse the Application (a "**Warning Notice**") (paragraph 21(1)(b) of Schedule 4 to the Act); or
 - give neither an Approval Notice or a Warning Notice in which case, the Application is deemed granted by the Board at the end of the Initial Decision Period (paragraph 21(3) of Schedule 4 to the Act).
17. The Board will publish on its website any Approval Notice or any Warning Notice given to the Applicant.
18. The Board may extend the Initial Decision Period with the consent of the Applicant or by giving an extension notice to the Applicant. An extension notice must specify the period of the extension and must state the Board's reasons for extending the Initial Decision Period. Any period of extension specified in the notice must end no later than the end of the period of 90 days beginning on the day the Application was made.

Advice

19. Where the Board has given the Applicant a Warning Notice, the Board may invite such persons as it considers appropriate to give the Board advice regarding whether the Application should be granted. A person to whom such an invitation is given, may for the purposes of giving their advice, ask the Applicant (or any other person) to provide them with such additional information as they may require.

20. Once the Board has received any advice provided under Rule 19, it will provide a copy of that advice to the Applicant.

Representations

21. The Applicant has **28 days** beginning on the day on which a copy of the advice referred to in Rule 20 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

22. As soon as practicable after the end of the period within which representations under Rule 21 may be made, the Board will publish on its website:

- a) any advice received pursuant to Rule 19; and
- b) subject to Rule 23, any written representations duly made by the Applicant (and the report of oral representations (if any) prepared under Rule 39).

23. Prior to the publication of any written representations (and the report of oral representations (if any) prepared under Rule 39) the Board will decide whether any parts of the representations shall remain private and 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

24. After considering the items listed in paragraph 25(1) of Schedule 4 to the Act, the Board will decide whether to grant the Application.

25. The Board will give notice of its decision to the Applicant. Where the Board decides to refuse the Application, the notice will specify the reasons for that decision.

26. The Board will publish on its website a copy of any decision that it gives to the Applicant.

27. The Board may grant the Application in whole or in part.

28. The Board is obliged to analyse and make its decision in accordance with the explicit provisions of paragraphs 25(3) of Schedule 4 to the Act, the details of which are specified in Section H of these Rules.

Timing

29. Subject to Rule 30, if the Board gives the Applicant a Warning Notice it has 12 months (beginning with the day the Applicant receives the Warning Notice) to give its decision to the Applicant. If the Board fails to make a decision within this period, the Application is deemed to have been granted by the Board at the end of that period.
30. The Board, may, on one or more occasions, give the Applicant a notice extending the decision period from 12 months up to maximum of 18 months from the day the Applicant receives the Warning Notice. The Board will publish on its website any such notices.
31. The Board will endeavour to deal with an Application within the Initial Decision Period, however, where this is not possible and the Board has extended the Initial Decision Period in accordance with Rule 18 or served a Warning Notice on the Applicant, notwithstanding other provisions in these Rules, the Board will aim to deal with:
- any Application involving a simple Alteration within 30 business days 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 14;
 - any Application involving a more complex Alteration within 3 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 the Rules.

G. FORM OF REPRESENTATIONS

Written representations

32. Subject to Rules 33 and 35, 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 11.
33. 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.
34. All representations must be received by the Board within the period set out in Rule 21. 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

35. The Board may, at its sole discretion authorise an Applicant to make oral representations about the advice received by the Board. The Applicant must bear its own costs in relation to any such representations. 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 issue 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.

36. 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 10 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.
37. 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
38. 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.
39. 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 38. Before preparing the report, the Board:
- must give the Applicant a reasonable opportunity to comment on a draft of the report; and
 - must have regard to any comments duly made by the Applicant.
40. Subject to complying with the timing requirements set out in Rules 29 and 30, the Board reserves the right to extend processes to take account of the need to transcribe and verify oral submissions and to require the Applicant to pay the transcription provider for the cost of the transcription service.
41. The Board may from time to time adjourn the hearing.
42. For the avoidance of doubt, this Section G only applies to representations made to the Board by the Applicant in relation to any advice provided under Rule 19.

H. CRITERIA FOR DETERMINING APPLICATIONS

43. In accordance with paragraph 25(3) of Schedule 4 to the Act, the Board may refuse an Application only if it is satisfied that:
- a) granting the Application would be prejudicial to the Regulatory Objectives;

- b) granting the Application would be contrary to any provision made by or by virtue of the Act or any other enactment or would result in any of the Designation Requirements ceasing to be satisfied in relation to the Approved Regulator;
- c) granting the Application would be contrary to the public interest;
- d) the Alteration would enable the Applicant to authorise persons to carry on activities which are Reserved Legal Activities in relation to which it is not a relevant Approved Regulator;
- e) the Alteration would enable the Approved Regulator to licence persons under part 5 of the Act to carry on activities which are Reserved Legal Activities to which the Applicant is not a Licensing Authority; or
- f) the Alteration has been or is likely to be made otherwise than in accordance with the procedures (whether statutory or otherwise) which apply in relation to the making of the Alteration.

Paragraphs (d) and (e) of Rule 43 do not apply to an application by the Tribunal for approval of an alteration to a rule made by it under section (46)(9)(b) of the Solicitors Act 1974.

I. FURTHER INFORMATION

44. 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