



Framework for considering the significance, impact and risk of proposed alterations to Regulatory Arrangements

Regulatory arrangements

The Legal Services Act (“the Act”) provides that Approved Regulators (“ARs”) must obtain approval from the LSB to alter any of their Regulatory Arrangements unless the LSB has directed it to be considered exempt from the requirement for approval.

Section 21 of the Act 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 previous approval regime that was limited to alterations to qualification regulations and rules of conduct relating to the rights of audience and rights to conduct litigation.

However, having listened to feedback during consultation the LSB intends to use its power to exempt some changes from the requirement for LSB approval. This provides the option to each AR of submitting to the LSB an annual forward plan detailing the changes to the Regulatory Arrangements that it anticipates wanting to make throughout that year. The LSB would review the plan and decide which changes it will want to scrutinise in detail, based on an evaluation of significance, impact and risk. The LSB would direct all other proposed amendments within the plan to be exempt from the requirement for prior approval from the LSB. The LSB has already directed specified de minimus alterations to be exempt and has and will continue to exempt changes that are covered by other LSB requirements such as the process set out for compliance with the Internal Governance Rules.

It should be clear that the determining factor in deciding whether the LSB will direct a particular change to be exempt will be the outcome of the evaluation of significance, impact and risk irrespective of the title or definition of the type of regulatory arrangement being changed. For example, if an AR proposed a major change to a rule relating to handling client money we are likely to want to consider the rule change **and** the draft guidance that would support it. It is the totality of the changes that will dictate how strongly the change is felt. However, if there were a fundamental re-write of the guidance without a corresponding rule change we may also wish to

consider this alone as the significance, impact and risk may still be considerable. The Act moves the ambit of the approval regime beyond the text of rules and regulations alone.

Purpose

This document is designed to set a framework for considering significance, impact and risk and inform discussions between the ARs and the LSB about which alterations proposed within the annual forward plan will be subject to full and advanced LSB scrutiny.

It is not intended to provide a definitive and strict set of criteria and a good deal of flexibility, discussion and discretion will be required at the outset of this new process. Furthermore, it is intended that significance, impact and risk will be considered in the round based on an overall assessment. ARs are not required to provide an answer for each question presented in this document but in reaching an assessment of overall significance, impact and risk for each change, all factors should be carefully considered.

It is intended that this will be a living document and will be reviewed and developed as we learn from dealing with the first year's forward plans, exemptions, applications and decisions. We will also consider how our evaluation may change as ARs move towards more outcome focused and principle based regulation.

Significance

By significance we mean how fundamental and big the change is. We will consider the following areas to help determine significance.

1. Would the change require approval under the previous Ministry of Justice / Legal Service Consultative Panel system? This includes "changes relating to qualification regulations and rules of conduct relating to the rights of audience and rights to conduct litigation". Potential impacts on rights of audience and fit with court rules has been a primary concern when considering any change in the past.
2. Is there a direct impact on or synergy with the Regulatory Objectives as detailed in Part 1 of the Act? All of the Regulatory Objectives are equally important but areas that we will particularly be considering when determining significance include:
 - a. Impacts on competition in the provision of services, either increasing or restricting.

- b. Protecting and promoting the interests of consumers. As two of the areas highlighted as being of key concern to consumers we are likely to consider as being of particular significance:
 - i. alterations to how complaints are dealt with; and
 - ii. arrangements relating to financial protection including the handling of client money (account rules), indemnification and compensation.
 - c. Encouraging an independent, strong, diverse and effective legal profession. Changes likely to impact on equalities and diversity will be of particular interest. Changes to core training and qualification and training requirements will also be deemed significant.
 3. Is the change consistent with the Better Regulation Principles? Has consideration been given to the need to move to outcome and principle based regulation?
 4. Will the change require a statutory instrument and / or parliamentary time in order to be completed?
 5. Has there been activity in relation to changing the regulatory arrangement in the past two years for example an application made under the previous system, change considered by internal Board, consultation with regulated community or others? If so did the advice received, responses to consultation, or decision made raise any issues, either positive or otherwise indicate significance?
 6. How much interest in the alteration is there within the Justice system and therefore how much is the confidence of those with an interest in the Justice system likely to be impacted by the alteration?

Impact

By impact we mean what are the potential ramifications of pursuing a particular alteration? We will consider the following areas to help determine impact

7. The number and proportion of people (consumers, procurers, regulated community) that will be affected by the alteration?
8. Is there an anticipated impact on the ability of members to practise, operate effectively, make a profit, and earn a livelihood?

9. Will the change affect the ability of or requirements for prospective members to enter and/or operate effectively within the regulated community?
10. Is there any crossover and / or conflict with other bodies regulating the same area or person? Are there differences in standards (standards must be comparable not necessarily the same)?
11. The number of alterations included within the application.
12. What are the integrated consumer protection and competition impacts? Will the proposed alteration result in the addition of regulation or the removal of regulation (as opposed to a neutral amendment to existing regulation)?

Risk

By risk we mean potential for having a detrimental impact on the regulatory arrangements. We will consider the following areas to help determine risk.

13. Previous track record of the AR in competently making changes that have been fully consulted on and the impacts fully assessed.
14. How transparent and robust are the internal processes that the AR will follow in making changes? In particular does the process incorporate appropriate consultation and use of impact assessments (please see paragraph 13)?
15. Is there a high level of good quality data and evidence to support / justify the making the change? If not are there robust plans to obtain this information and for it to inform the change and enable actual impacts to be assessed.
16. How many would be impacted how quickly (immediacy of impact)?
17. If the change did not go ahead, what would the impact be?
18. How and when does the AR plan to assess the impact of the change following its introduction? What action would be taken if the benefits were not realised? Has consideration been given to whether there is need to include a defined sunset clause?
19. Has there been activity in relation to changing the regulatory arrangement in the past two years (see paragraph 5)? Has any other AR made a similar change or undertaken activity relating to a similar regulatory arrangement in

the past and was there any detrimental outcome or did the change process identify the potential for a detrimental impact?

20. If the change introduces regulation, does the AR have the capability of identifying breaches and providing / ensuring appropriate remedy and / or enforcement (see paragraph 12)?