

Internal Governance and Practising Fee Rules

*Supplementary Consultation on proposed rules
to be made under sections 30 and 51 of the
Legal Services Act 2007 (c.29)*

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1. Introduction

- 1.1. Section 30 of the Legal Services Act 2007 (c.29) requires the Legal Services Board (LSB) to make Internal Governance Rules (IGRs). Those rules must be made no later than 31 December 2009.
- 1.2. The LSB must also make rules under section 51 of the Act, making provision for the approval of practising fees levied by approved regulators. The LSB proposed to make those rules at the same time as it makes the IGRs under section 30.
- 1.3. The LSB has developed proposals on IGRs and Practising Fee Rules (PFRs) in light of the responses to its consultation paper, *Regulatory Independence*, issued on 25 March 2009. A response to the consultation, summarising submissions received, is published alongside this consultation paper.
- 1.4. This consultation paper is issued under section 205 of the Legal Services Act. It includes, at **Annex A**, a set of rules which the LSB proposes to make. In accordance with section 205(3), the consultation paper invites representations about the proposed rules by **noon on Friday 30 October 2009**.
- 1.5. This six-week consultation period is shorter than the standard twelve-week period. As informal engagement has been ongoing since October 2008; the full consultation between March and June lasted longer than thirteen weeks; and a stakeholder event was held between the two formal consultation periods, the LSB considers a further twelve-week consultation period is unnecessary. In any event, as statute requires rules to be made under section 30 before the end of this calendar year, the six-week consultation proposed seems both sensible and reasonable.

How to respond

- 1.6. This consultation paper invites representations on the proposed rules set out at **Annex A**. We would prefer to receive responses electronically (in Microsoft Word format), but hard copy responses by post or fax are also welcome. Responses should be sent to:

Email: consultations@legalservicesboard.org.uk; or

Post: Rosaline Sullivan
Legal Services Board
7th Floor, Victoria House
Southampton Row
London WC1B 4AD

Fax: 020 7271 0051

1.7. We intend to publish all responses to this consultation on our website unless a respondent explicitly requests that a specific part of the response, or its entirety, should be kept confidential for good reason(s). We will record the identity of the respondent and the fact that they have submitted a confidential response in our decision document.

2. Development of proposed rules

- 2.1. In the consultation paper, *Regulatory Independence*, published in March 2009, proposed rules to be made by the LSB under sections 30 and 51 of the legal Services Act were set out.
- 2.2. Submissions received in response to the consultation exercise are available on the LSB's website¹. The LSB has summarised those submissions in its response to consultation document, which is also available on the website². Ideas on how to develop those early proposals were discussed at a stakeholder event on 29 July 2009. A note of that event, which includes as an annex the discussion paper that was circulated to invitees in advance, is available on the LSB's website³.
- 2.3. The proposed rules set out in this consultation paper have been significantly revised and developed following consideration of the evidence submitted in response to the earlier consultation.

Risks, principles, rules and guidance

- 2.4. The LSB has recently issued a number of consultations on rules it proposes to make under provisions in the Legal Services Act. Each of those consultations is built on the premise that rules (and supporting guidance) must be developed directly from risks which need to be mitigated and principles which must be observed.
- 2.5. In summary:
 - adherence to **principles** will be mandatory. Although usually broad in scope, such principles will define what might best be described as the 'spirit' of the rules and highlight the outcomes to be achieved;
 - where appropriate, **rules** will dictate specific measures that must be taken, among others, to ensure compliance with overarching principles. However, remaining within the technical ambit of rules will not divest approved regulators from the need to observe those higher level principles; and
 - **illustrative guidance** may support those rules, and approved regulators must have regard to that guidance when seeking to comply with the specific rules and overarching principles (representing the spirit of the rules). In general, the less that guidance is observed by an approved

¹ See: http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/submissions_regulatory.htm

² See: http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/index.htm

³ See: http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/submissions_regulatory.htm

regulator, the more the LSB will look to monitor and scrutinise performance.

- 2.6. The LSB proposes to adopt this approach when making its Internal Governance and Practising Fee Rules.

Basis of current proposals

- 2.7. As set out in Chapter 5 of the response to consultation, the basis upon which this latest set of proposals has been made can be summarised as follows:

- (a) in making/applying the IGRs the LSB must act in a way which:
- is compatible with the regulatory objectives⁴;
 - is considered by the LSB to be most appropriate for meeting those objectives⁵;
 - has regard to the principles of better regulation⁶; and
 - has regard to the principle that its principal role is one of oversight⁷;
- (b) the public interest is served by ensuring, insofar as is reasonable, confidence (including the confidence of consumers and lawyers) in the regulatory arrangements applicable to lawyers;
- (c) the purpose⁸ of the IGRs is to ensure that the exercise of an approved regulator's regulatory functions is not prejudiced by its representative functions and that decisions relating to the exercise of an approved regulator's regulatory functions are – so far as reasonably practicable – taken independently from decisions relating to representative functions;
- (d) the objective behind the IGRs is to ensure that they achieve their purpose and are perceived (by *reasonable* stakeholders) to achieve that purpose; and
- (e) the requirement to make IGRs gives the LSB discretion to determine the necessary detail. That discretion must be exercised reasonably and in line with the above, including in relation to proportionality.

⁴ LSA07, section 3(2)(a).

⁵ LSA07, section 3(2)(b).

⁶ LSA07, section 3(3)(a) and (b). In drafting the rules, the LSB has also had regard to the *Regulators' Compliance Code – Statutory Code of Practice for Regulators*, which is published by the Department for Business, Innovation and Skills. It is anticipated that the LSB will be subject to this code from November 2009.

⁷ For example, see LSA07, section 49(3).

⁸ LSA07, section 30(1)(a) and (b).

- 2.8. On that basis, the LSB proposes to make rules that ensure that governance structures and individual people with representative functions cannot and do not exert undue influence or control over the discharge of regulatory functions – and prevent the appearance or perception that there is any such undue influence/control.
- 2.9. The set of rules the LSB proposes to make are set out at **Annex A**. **Representations are sought on the proposed rules. The next chapter highlights significant policy issues to which consultees' attention is specifically drawn.**

3. Significant changes to the first set of draft rules consulted upon

- 3.1. This consultation paper does not re-cross ground covered by the previous consultation paper, *Regulatory Independence*. That paper set out the LSB's broad philosophy about how it considered rules made under sections 30 and 51 of the Legal Services Act should operate. The response to consultation document, published alongside this supplementary consultation paper, explains what the LSB has decided in light of the submissions it received.
- 3.2. However, it is necessary to draw attention to specific modifications between the latest set of proposed rules and that which was put out for consultation back in March.
- 3.3. Attention is therefore drawn to the following paragraphs which highlight significant or otherwise notable policy changes and other issues arising out of the new set of proposed rules.

The structure of the rules

- 3.4. The *Regulatory Independence* consultation paper included, in chapter 5, a set of draft rules which the LSB proposed to make. The proposals represented the LSB's first attempt at producing a scheme of rules to fit the policy set out in earlier chapters of the consultation paper.
- 3.5. Since that consultation paper was published, the LSB has launched separate consultation exercises in respect of rules which must be made under other statutory provisions. Having developed its rule-making processes through these further consultations, the LSB has settled on what might be described as a 'house style' for statutory rules.
- 3.6. In developing proposals between the end of the March-June *Regulatory Independence* consultation and the start of this particular consultation exercise, the LSB has modified the structure of its proposed Internal Governance and Practising Fee Rules so as to fit with that house style. In particular, and in keeping with the general consensus to emerge during the March-June consultation, the latest set of proposals is built around the concept of principles, rules and guidance (summarised in the previous chapter⁹).

Application to all approved regulators

- 3.7. In the March-June consultation paper, the draft IGRs introduced the concept of "applicable approved regulators". Rule 1(2) of that early draft defined an

⁹ See from paragraph 2.4 above.

applicable approved regulator (or AAR) as “an approved regulator that has responsibility for the discharge of representative functions as well as for the discharge of regulatory functions”¹⁰. Subject to compliance with the overarching ‘spirit’ of the rules, it was proposed that only AARs should be bound by the detail of the IGRs.

- 3.8. No consultee voiced concern about this approach. However, on reflection, it is not entirely consistent with the requirements of the 2007 Act. Section 30(2) provides, in terms, that the rules made by the LSB “must require *each* approved regulator to have in place arrangements which ensure” that regulatory independence criteria are observed.
- 3.9. Accordingly, the set of draft rules set out in this document extend, at least in part, to require all approved regulators to establish appropriate arrangements. However, the concept of AARs is also retained. Above the base requirement to have in place some arrangements (which should not be unduly burdensome for approved regulators without representative functions), more detailed principles, rules and guidance are set out in a schedule to the proposed rules. Those principles, rules and guidance will be for AARs only to meet. Further, only AARs will be required to submit to the proposed dual self-certification process, so targeting the mechanism at those approved regulators which need to separate out representative and regulatory functions.
- 3.10. The LSB considers that this new formulation, while bringing the rules into compliance with the Act, will remain proportionate for approved regulators whether with or without representative functions.

Definitions

- 3.11. In keeping with the house style of LSB rules now being developed, the opening section of each set of draft rules annexed in this paper sets out definitions of terms adopted by the proposed rules. In the main, the terms employed and their definitions were carried across from the earlier set of draft rules. However, the new proposed rules introduce certain new terms.
- 3.12. Where the LSB introduces new concepts or definitions, it generally does so to respond to submissions calling for further clarity. Consultees are in particular referred to the following definitions, which the LSB considers helpful in explaining what risks it is seeking to mitigate through the scheme of rules proposed.

“The principle of regulatory independence: 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”

¹⁰ Of the eight approved regulators overseen by the LSB, six have representative functions. The two exceptions are the Council for Licensed Conveyancers and the Master of the faculties.

“Prejudice: the result of undue influence, whether wilful or inadvertent, causing or likely to cause the compromise or constraint of independence or effectiveness”

“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”

- 3.13. In addition, in response to calls from consultees, the LSB has proposed to define in specific terms what it considers a **“lay person”** should mean in the context of members of regulatory boards. It is proposed that the definition adopted should be that used by the Legal Services Act in relation to members of the LSB Board¹¹.

Composition of regulatory boards

- 3.14. Many submissions received in response to the March-June consultation focused in particular on the composition of regulatory boards. Appointments to those boards was a major issue.
- 3.15. In its response to consultation document, the LSB said that it was minded to retain the policy line initially adopted in its first consultation paper. Namely, that regulatory boards should be formed of a majority of non-lawyers and there should be no restriction on persons (whether lawyers or non-lawyers) being selected to chair regulatory boards.
- 3.16. While the principle of appointment on merit must be paramount, other sectors, like the medical profession¹², have formal rules about the split between professional and lay members. The LSB continues to propose that the legal services sector should be treated in similar vein.
- 3.17. However, the LSB has modified its initial proposals in one significant respect here. Previously, draft rules and guidance suggested that regulatory arms should take control of the process for appointing the regulatory boards. After considering submissions, the LSB now considers that is not essential for regulatory arms to have full control of all aspects of the appointments process, but, where they do not have control, there must be compelling evidence that they have a strong voice in the process and that the appointment arrangements put in place satisfy the wider scheme of rules.

¹¹ See Legal Services Act 2007, Schedule 1, paragraphs 2(4) and (5). In summary, a lay person is anyone who has never been a qualified lawyer authorised under what is now the Legal Services Act framework.

¹² The General Medical Council, for example, is established with 50% of its members from the medical community and 50% from a non-medical/lay background. That constitutional structure is fixed by statutory instrument (SI2008/2554).

Provision of shared services

- 3.18. Another area of significant focus for consultees in the March-June exercises was on the management and control of shared corporate services like accommodation, HR, finance and IT. After initial discussions with stakeholders, the LSB consulted on draft rules and guidance that would have prescribed what shared services models should (or might best) look like.
- 3.19. None of the approved regulators (including regulatory arms) favoured the precise model proposed, although some saw benefits in certain respects. After considering the submissions received, the LSB proposes to afford greater flexibility to approved regulators. Rather than including rules about what corporate structures should look like¹³, the LSB will instead issue principles, rules and guidance applying generally to the provision of resources. Resources means financial and other resources, including shared corporate services, and human/staff resources.
- 3.20. The scheme of rules proposed in this document requires regulatory arms to have the freedom to pursue a regulatory strategy of their own choosing, which must be resourced in a way that is reasonable – and which in particular protects independence and effectiveness.
- 3.21. The LSB proposes to require AARs to have in place a resources/budget approval mechanism. That mechanism must approve a regulatory budget proposed by the regulatory arm. We expect that where resources can reasonably and efficiently be provided through a shared corporate services provider model, however structured and managed¹⁴, that will be what is agreed. A regulatory arm should not be free unilaterally to refuse to accept such services offered through that route. However, if it considers that the shared services offered fail to meet its reasonable requirements, that regulatory arm will be free (under the Act) to ask the LSB to intervene.
- 3.22. Ultimately, if the budget approval process cannot arrive at an outcome that is acceptable, the LSB will have to make a determination as to reasonableness. It may well be that a regulatory arm can make a case that services should be purchased otherwise than from the corporate service provider. If that case is demonstrated (i.e. it is shown that the independence and/or effectiveness of the regulatory functions would be harmed unless freedom was given), then the LSB can exercise its formal powers. Issues like proportionality (including the relative size of the approved regulator, the costs involved, and the potential impact on the regulatory objectives and on consumer confidence across the sector) would have to be considered carefully here.

¹³ For the avoidance, the model proposed in the March-June consultation remains one of a range of models that is likely to be compliant with the proposed IGRs.

¹⁴ Any arrangements in place must at all times observe and respect the principle of regulatory independence, and structures here must adhere to that principle.

- 3.23. The LSB does not expect to be required to act in this way very often if at all. It expects AARs' processes to work effectively so that any potential disputes are resolved. It also expects that corporate services provider models should be capable of working effectively so as to enable all service users to operate efficiently in pursuance of their own strategies and business plans.
- 3.24. The LSB considers that reliance on the budget process to achieve a suitable outcome is flexible and proportionate. If this process cannot be made to work, IGRs could be modified in future to provide a more prescriptive approach, if that were to prove necessary. However, the LSB hopes that this will not be necessary.

Practising Fee Rules: the permitted purposes

- 3.25. In response to the March-June consultation, the Bar Standards Board (BSB) suggested that the permitted purposes (i.e. the purposes for which approved regulators will be allowed to apply funds raised through mandatory practising fees) should be extended specifically to cover all barristers, not just barristers with practising certificates. In its Response to consultation document, the LSB said that it agreed with the BSB's argument.
- 3.26. Accordingly, the Practising Fee Rules proposed in this document introduced the concept of "applicable persons". Applicable persons are defined as "[including] "relevant authorised persons" as defined in Section 51(8) of the Act but extends also to other persons over which, by virtue of current or previous membership of the Approved Regulator, the Approved Regulator has regulatory powers". The permitted purposes then include, for example, "(a) the regulation, accreditation, education and training of *applicable persons* and those *either holding themselves out as or wishing to become such persons*".
- 3.27. The LSB considers that this meets the point made by the BSB and that it should assist other approved regulators which might be in a similar position.
- 3.28. **When inviting representations on the draft rules now proposed, the LSB in particular invites representations on how they complement the principles highlighted in this chapter.**

4. Implementing proposals

- 4.1. By 31 December 2009, the day appointed by the Lord Chancellor under section 30(4) of the Legal Services Act¹⁵, the LSB must have made its IGRs. The LSB also plans to make its PFRs at the same time.
- 4.2. This chapter outlines how the LSB proposes to implement and operate its rules, once made. The LSB proposes to engage with approved regulators and others during this consultation period to refine proposals so as to ensure maximum efficiency and effectiveness.

Internal Governance Rules (Section 30)

- 4.3. Section E of the proposed IGRs deals with “ensuring ongoing implementation”. The rules are of necessity pitched at a high level. Some of the approved regulators have made very significant changes to their internal governance arrangements over the years since Sir David Clementi published his final report¹⁶. However, others have yet to make significant progress towards what the LSB is now proposing.
- 4.4. The approach the LSB takes to implementation and onward compliance will therefore need to be managed carefully. The approach adopted must be proportionate. The Legal Services Act requires that. The LSB considers that the starting point must be to adopt a risk-based approach.
- 4.5. Rule 9 of the IGRs carries over the LSB’s original consultation proposal in respect of dual self-certification. Rule 10 cements the ‘dual’ aspect of that mechanism. The LSB proposes to monitor implementation and compliance through that mechanism.
- 4.6. The IGRs are drafted in such a way that the LSB will be required to prescribe, from time to time, the form and manner of the certification required. In practice, the proposals outlined in this consultation on dual self-certification process in Year One (i.e. 2010/11) will form the first phase of the Regulatory Reviews announced by the LSB in its 2009/10 Business Plan¹⁷.
- 4.7. The LSB will develop a template certificate, in collaboration with the approved regulators, which the AARs will use to demonstrate the extent to which they have arrangements in place to meet the IGR requirements. The template certificate will set out the principles and rules to be met – and possibly the illustrative guidance issued alongside them – and provide space for the AAR to explain how its

¹⁵ See Regulation 6 of Legal Services Act 2007 Commencement Order No. 4, SI 2009/503.

¹⁶ *Review of the Regulatory Framework for Legal Services in England and Wales – Final Report* (December 2004), Sir David Clementi: <http://www.legal-services-review.org.uk/content/report/report-chap.pdf>.

¹⁷ LSB Business Plan 2009/10, Chapter 5D (pages 20 and 21): http://www.legalservicesboard.org.uk/news_publications/publications/pdf/business_plan_2009_10.pdf

arrangements comply. The arrangements themselves would, it is envisaged, be appended to the certificate submitted to the LSB.

- 4.8. To ensure accountability, the LSB proposes that certificates should be signed by an appropriate office-holder (which would probably mean President, Chair or equivalent), whether to certify compliance or the fact that compliance cannot yet be certified. The certificate, once submitted, would then be published. In particular, it would be posted on the LSB's website.
- 4.9. Where any AAR is unable to demonstrate compliance, it must assess the risk of non-compliance in light of:
- actual or potential impact on the regulatory objectives;
 - the steps necessary to remedy the non-compliance and how the principles of better regulation can best be met when so remedying; and
 - the impact or likely impact of a failure to meet the 'principle of regulatory independence' on the confidence in the regulatory arrangements of the general public, of consumers of legal services, and of the regulated community.
- 4.10. Any risk assessment and accompanying action plan should, it is proposed, be annexed to the covering certificate, and published accordingly.

Proposed timetable

- 4.11. The proposed rules will be made, subject to any necessary modification in light of representations received, before 31 December 2009. The rules will come into force on **1 January 2010**.
- 4.12. The LSB proposes to require each AAR to self-certify, in accordance with the rules once made, by **30 April 2010**.
- 4.13. The LSB does not necessarily expect or demand each AAR to be fully compliant with the IGRs immediately once made. It does, however, expect each AAR:
- to have conducted a thorough analysis of its arrangements against the requirements of the IGRs;
 - to have undertaken a risk assessment in respect of any non-compliance; and
 - to have set out (in line with draft Rule 9(b)(ii) and (iii)) a plan which will see the AAR meeting the requirements of the IGRs within a reasonable time, with an explanation of how that compliance will be achieved.

- 4.14. Proportionality is important. The LSB will work with AARs during the period in which they are undertaking their self-certification assessments and afterwards if it proves necessary to put in place a plan to bring the AAR into compliance. The LSB expects this process to be conducted collaboratively and flexibly, within the context of sensible negotiation. The criteria identified at paragraph 4.9 above will be important in determining how far and how fast any necessary change must come about.
- 4.15. Ultimately, the LSB can consider whether the AAR's acts or omissions during the self-certification process have been unreasonable. If it concludes they were unreasonable, the LSB can consider whether it should pursue the matter using its formal enforcement powers, including the power of direction. However, the LSB does not expect to rely on such powers, in particular because of the constructive way in which all approved regulators have worked with it thus far on the regulatory independence agenda.
- 4.16. The LSB will aim to consider the certificates, risk assessments and plans submitted to it by **31 July 2010**, having formally accepted the certificates or approved the proposed plans by that stage or as soon as practicably afterwards.

Practising Fee Rules (Section 51)

- 4.17. Section D of the proposed PFRs is material insofar as annual practising fee applications from approved regulators are concerned. Draft Rule 9 provides that the LSB will set out, from time to time:
- timetables for approved regulators to meet when making their applications, and for the LSB to meet when determining those applications;
 - any requirements with respect to necessary consultation prior to an application's submission; and
 - the criteria against which applications will be judged and the evidence necessary to meet those criteria.
- 4.18. In practice, the LSB envisages writing separately to each approved regulator¹⁸ setting out the necessary requirements under Rule [9]. It is envisaged that the letter would be published, and posted on the LSB's website so as to facilitate transparency and accountability.
- 4.19. That letter would set out the formal LSB requirements. Prior to that letter being issued however, it is envisaged that the LSB would work closely with each of the approved regulators, insofar as possible to agree the letter's contents. It is likely to

¹⁸ The internal governance arrangements in place within the approved regulator, overseen by the LSB under the IGRs, are likely to determine which part of an AAR is most appropriate for the LSB to deal with for most of its interaction during the practising fee application process.

be most effective if the LSB and respective approved regulators liaise closely during the development of the application, prior to formal submission, so that the process after formal submission can be as expedited as soon as possible.

- 4.20. It will be important for the LSB to engage with each approved regulator, following the launch of this consultation paper, to liaise closely so that arrangements can be put in place in good time for 2010/11 applications to be handled.

5. Next steps

- 5.1. The period during which the LSB invites representations on the proposed rules annexed to this paper will end at **noon on Friday 30 October 2009**.
- 5.2. During the period in which representations are invited, the LSB will engage with key stakeholders and others on the detail of the proposals set out. If any person or organisation wishes to meet with the LSB, the LSB would welcome an approach during the consultation period.
- 5.3. Once the deadline for representations has passed, the LSB will consider any submissions received. Before 31 December, the LSB will decide on the final form of rules that will make. It will then publish those rules, once made, alongside a document explaining what representations had been received and how, if at all, the rules made differ from the draft rules being consulted upon now. It is hoped that rules can be made in early-to-mid December.
- 5.4. Alongside this work, the LSB will engage in particular with each approved regulator to determine how best to implement and operate the rules, once made. Attention must now be dedicated to both:
 - the self-assessment under the IGRs, to ensure implementation and onward compliance; and
 - finalising arrangements for PFR applications, both in terms of delivering the formal applications and of working together prior to formal submission to narrow any likely issues of contention or complexity.
- 5.5. The LSB remains committed to engaging with the widest possible cross-section of interested parties and would welcome an approach from any person or organisation wanting to discuss the details of these proposals.

Annex A – Draft Rules

INTERNAL GOVERNANCE RULES

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 functions and representative functions
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
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 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
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 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, certify 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. The certification under Rule 9 must be accompanied by a certification in the same form and manner from the Applicable Approved Regulator's regulatory board.
- 11. 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

12. Approved Regulators must, in seeking to comply with these Rules, have regard to any guidance issued by the Board under this Rule.
13. For the avoidance of doubt, any guidance issued under Rule 12 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>Principle 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 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>Principle 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 principle of this Part of this Table.</p>	<p>Appointment panels or equivalent should be established following the guidance set out in the Board's letter of 2 December 2008¹⁹.</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>
		<p>The appointments process should be conducted with regard to the desirability of securing a diverse board with a broad range of skills. The</p>

¹⁹ See: <http://www.justice.gov.uk/news/docs/legal-services-board-open-letter-021208.pdf>

<p>(2) All persons appointed to regulatory boards must respect the duty to comply with the requirements of the Legal Services Act 2007.</p>		<p>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 principle of this Part of this Table.</p>	<ul style="list-style-type: none"> • Remuneration – the regulatory board should control its own board remuneration strategy, within its agreed budget; • 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. No person appointed to a regulatory board must be dismissed except with the concurrence of the Board.</p>	<p>Where an AAR proposes to discipline one or more member(s) of a regulatory board, the Board should be consulted privately in advance of the action being taken, and the AAR must consider any representations the Board may chose to make.</p>
	<p>E. No person appointed to and serving on a regulatory board must also be responsible for any representative function(s).</p>	<p>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.</p>

		<p>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.</p> <p>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.</p>
<p>Principle 3: Strategy and Resources etc</p> <p>Persons performing regulatory functions must have the freedom to define a strategy of their choosing for the performance of those functions; and work to implement that strategy independently.</p>	<p>A. Defining and implementing a strategy should include:</p> <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 those resources; and • 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, arrangements should make clear that authority to direct employees in the discharge of their duties vests solely with the regulatory board. In particular:</p> <ul style="list-style-type: none"> • line management responsibility for staff performing regulatory functions should be to the regulatory board's senior officer; • any potential conflicts of interest with members of staff performing regulatory functions as well as other functions should be managed appropriately; • subject only to agreed budgets, the regulatory body/bodies should have access to such staff at such pay levels and on such conditions as it determines

		<p>necessary after due consultation with the AAR; and</p> <ul style="list-style-type: none"> the AAR should not exercise its powers as employer without the concurrence of the regulatory board and in any event having regard to the principle of regulatory independence when so exercising. <p>Each regulatory body must act reasonably when defining and implementing its strategy, and must in particular have regard to the provisions of Section 28 of the Act.</p>
	<p>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.</p>	
	<p>C. Insofar as provision of resources is concerned, arrangements must provide for transparent and fair budget approval mechanisms.</p>	<p>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).</p>
	<p>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.</p>	<p>Subject only to the formal budgetary approval process, 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.</p>

		<p>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>
		<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>Principle 4: Oversight etc</p> <p>Oversight and monitoring by the AAR 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 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>
	<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.</p>	<p>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.</p>

PRACTISING FEE RULES

A. DEFINITIONS

1. The words defined in these rules have the following meanings:

Act	the Legal Services Act 2007 (c.29)
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
Legal services	means services provided by a person which consist of or include “legal activities” as defined by Section 12(3) and 12(4) of the Act
Permitted purposes	the purposes which an Approved Regulator may apply amounts raised by practising fees, as set out in Rule 6 of these Rules
Person	includes a body of persons (corporate or unincorporated)
Practising fees	has the meaning given by Section 51(1) of the Act
Applicable persons	includes “relevant authorised persons” as defined in Section 51(8) of the Act but extends also to other persons over which, by virtue of current or previous membership of the Approved Regulator, the Approved Regulator has regulatory powers
Regulatory functions	has the meaning given by Section 27(1) of the Act
Reserved legal services	has the meaning given in Section 207(1) of the Act

B. WHO DO THESE RULES APPLY TO?

2. These Rules are the rules that the Board has made in compliance with 51(3) and 51(6) of the Act relating to the control of practising fees charged by Approved Regulators.
3. Accordingly, these Rules apply to each Approved Regulator that proposes to charge practising fees as part of its regulatory arrangements.
4. In the event of any inconsistency between these Rules and the provisions of the Act, the provisions of the Act prevail.

C. THE PERMITTED PURPOSES

5. Monies raised through practising fees must not be applied for any purpose other than one or more of the permitted purposes.
6. The permitted purposes are:
 - (a) the regulation, accreditation, education and training of applicable persons and those either holding themselves out as or wishing to become such persons, including:
 - (i) the maintaining and raising of their professional standards; and
 - (ii) the giving of practical support, and advice about practice management, in relation to practices carried on by such persons;
 - (b) the payment of a levy imposed on the approved regulator under section 173;
 - (c) the participation by the approved regulator in law reform and the legislative process;
 - (d) the provision by applicable persons, and those either holding themselves out as or wishing to become such persons, of legal services including reserved legal services, immigration advice or immigration services to the public free of charge;
 - (e) the promotion of the protection by law of human rights and fundamental freedoms;
 - (f) the promotion of relations between the Approved Regulator and relevant national or international bodies, governments or the legal professions of other jurisdictions;

(g) increasing public understanding of the citizen's legal rights and duties.

D. THE APPROVAL MECHANISM

7. Where an Approved Regulator proposes to charge practising fees as a part of its regulatory arrangements, the Approved Regulator must apply to the Board for approval of the level of that practising fee.
8. In making an application under Rule 7, an Approved Regulator must comply with the provisions of this Part of these Rules.
9. In respect of each Approved Regulator, the Board will set out from time to time:
 - (a) a timetable including key decisions and submission dates that must be observed by the Approved Regulator and the Board respectively;
 - (b) the persons that should be consulted by the Approved Regulator before submitting its application;
 - (c) the criteria against which the Board will decide on applications put to it; and
 - (d) the evidence required by the Board to satisfy it against the agreed criteria.
10. Insofar as the criteria mentioned in Rule 9 (c) are concerned, the Board and Approved Regulator should have regard to factors including the following:
 - (a) evidence which demonstrates that reasonable care was taken in settling the application in the context of the budget necessary for the immediate and medium term;
 - (b) evidence which demonstrates that the revenue raised through the practising fee charge will be applied solely to purposes which are permitted purposes;
 - (c) clarity and transparency over the revenue raised through practising fees to be applied for permitted purposes which are regulatory functions;
 - (d) clarity and transparency over the revenue raised through practising fees to be applied for permitted purposes which are not regulatory functions; and
 - (e) evidence that persons paying practising fees will have explained to them how revenue raised through the charging of practising fees will be applied as between the Approved Regulator's performance of regulatory functions and any other functions also carried on by the Approved Regulator.
11. Insofar as the evidence mentioned in Rule 9 (d) is concerned, the Board and Approved Regulator should have regard to factors including the following:

- (a) a description of how the application was developed and settled, including any consultation carried out, whether or not such consultation was required by the Board;
 - (b) a budget showing anticipated income from practising fees, all other expected income to be applied to permitted purposes and planned expenditure of income against the permitted purposes;
 - (c) an explanation of how the cost to each regulated person is to be broken down as between income to be allocated to the discharge of regulatory functions and income allocated to any other functions;
 - (d) an explanation of contingency arrangements where unexpected regulatory needs arises in-year;
 - (e) evidence of how the previous year's practising fee income was allocated only to permitted purposes; and
 - (f) a regulatory and diversity impact assessment.
12. In considering an application submitted to it under this Part of these Rules, the Board reserves the right to consult any person it considers appropriate. In particular, it reserves the right to consult the Consumer Panel about the impact of the proposed fee on persons providing non-commercial legal services.
13. If the Board approves an application under this Part of these Rules, it must notify the Approved Regulator concerned.
14. If the Board does not approve an application under this Part of these Rules, it must:
- (a) notify the Approved Regulator concerned;
 - (b) give reasons for its decisions;
 - (c) require the Approved Regulator to submit a revised application which addresses the Board's reasons for withholding approval previously; and
 - (d) specify the circumstances (if any) in which the Approved Regulator may charge a limited practising fee under its regulatory arrangements as an interim measure pending consideration and approval of its full application.