



LEGAL SERVICES
BOARD

Proposed Internal Governance Rules

Enhancing the separation and independence of regulatory functions within the current legislative framework

This consultation will close on **21 January 2019**

This Consultation Paper will be of interest to:

Approved Regulators

Providers of Legal Services

Legal Representative Bodies

Legal Advisory Organisations

Other Third Sector Organisations

NDPBs

Consumer Groups

Law Schools/Universities

Legal Academics

Members of the Legal Profession

Accountancy Bodies

Potential new entrants to the ABS market

Think Tanks

Political Parties

Government Departments

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Executive summary

1. This consultation seeks views on drafts of proposed new Internal Governance Rules (“IGR”) and supporting statutory guidance. It follows on from our decision document (published in July 2018) in which we set out the high level decisions we made in response to our consultation (launched in November 2017) which sought to explore whether changes were needed to the IGR to enhance regulatory independence. This document contains an introduction to and overview of the proposed new rules and guidance and sets out a number of questions to which we are seeking responses.
2. We want the new IGR to enhance regulatory independence within the framework provided by the Legal Services Act 2007 (“the Act”). Consumers and the public as a whole are more likely to have confidence in legal services if regulation is, and is seen to be, independent. Regulatory independence also gives the providers of legal services the certainty they need to grow and innovate.
3. The decision document which we published in July 2018 set out our commitment to creating new IGR with a principled and outcome-focused approach and including more detailed obligations where the evidence showed these to be necessary. Moreover, we committed to ensuring that the new rules would be clear and understandable as well as straightforward to comply with and enforce. The proposed rules reflect these commitments.
4. The starting point for these proposed IGR is the Act where we have drawn more explicitly from section 28 (*Approved regulators duty to promote regulatory objectives etc*) and section 30 (*Rules relating to the exercise of regulatory functions*). The IGR therefore reflect the requirements and parameters set out in the Act and use the terminology from the Act wherever appropriate. We have limited the creation of new terms. Alongside the specific requirements of the legislation, we have carefully considered the lessons learned from the existing IGR in order to ensure that the proposed IGR cover the areas most likely to need rules and statutory guidance.
5. The result of our review is that a number of rules have been removed, some rules have been retained in a modified version and some new rules have been added. As we committed to doing in the decision document, we have removed the definition of ‘Applicable Approved Regulator’ (AAR) so that all rules now apply to all approved regulators unless they are expressly exempt because they only have regulatory functions. We have also removed the definition of regulatory independence which used terms which were open to interpretation. Our expectation of how the separation and independence of regulatory functions will be achieved shapes the proposed rules and guidance.

6. Approved regulators may need time to assess and make any changes in order to comply with the new IGR and therefore a transition period of six months will begin on publication of the final version of the new IGR. Following the end of the transition period we will require a certificate of compliance from each approved regulator and from each regulatory body. Following that, LSB oversight of compliance with the IGR will be carried out as part of the regulatory performance framework. This framework will be modified to include IGR compliance and will therefore apply to approved regulators only in as far as it relates to IGR compliance.

The consultation will close at 5pm on Monday **21 January 2019**.

Introduction

About the Legal Services Board

1. The LSB is the independent body that oversees the regulation of legal services in England and Wales. The LSB was created by the Act to hold regulators for the different branches of the legal services profession to account.
2. The legal services sector:
 - supports the rule of law and access to justice, which are fundamental pillars of a fair society and central to our unwritten constitution;
 - underpins the operation of English and Welsh law, which in turn supports all economic activity including the growth and development of new businesses and protection of employee and consumer rights; and
 - employs 341,000 people and has an annual turnover of over £32 billion; is of major economic importance in its own right.
3. The legal services market requires a regulatory framework which commands the trust and confidence of consumers and the public. The separation of regulatory functions from representative functions and interests underpins this aim.

Internal Governance Rules

4. The Act does not create a framework in which a regulatory body is structurally separate from its representative body. Rather, it creates approved regulators¹ which may have both representative and regulatory functions. The Act then gives the LSB responsibility for their oversight², but only in relation to regulatory functions³ and, in particular, the separation of those functions from any representative functions which the approved regulator may have.
5. Section 30 of the Act obliges the LSB to make internal governance rules which set out requirements for each approved regulator to ensure the separation of regulatory and representative functions (amongst other obligations). These requirements must ensure that:
 - the exercise of regulatory functions by an approved regulator is not prejudiced by its representative functions or interests; and
 - decisions relating to the exercise of regulatory functions by an approved regulator are, so far as reasonably practicable, taken independently from

¹ On commencement of part 1 of Schedule 4 to the Act, or as a consequence of designation by order of the Lord Chancellor, following a recommendation by the LSB.

² Part 4 of the Act.

³ Section 29 of the Act.

decisions relating to the exercise of any representative functions or interests.

6. In November 2017 the LSB published a consultation document which sought to explore whether changes were needed to the IGR to enhance the independence of regulatory functions. This provided the LSB with further evidence of the issues arising under the current rules. These issues particularly related to governance, appointments, strategy and resources and the residual functions of the approved regulator after it has delegated its regulatory functions. The consultation presented high level options for new IGR for stakeholders to consider.

Decisions following November 2017 consultation

7. In July 2018 we published our decision document. We committed to developing new IGR which are principled and outcome-focused (supplemented, where necessary by more specific requirements). Additionally, the IGR would be enforceable, clear and supported by statutory guidance. We specifically committed to:
 - removing the definition of regulatory independence from the IGR but explaining our expectations for the separation and independence of regulatory functions more clearly;
 - removing the definition of AAR to improve clarity and in order that (i) all approved regulators with both representative and regulatory functions will be subject to the same obligations under the new IGR and that (ii) approved regulators with only regulatory functions (and which therefore face lower risks to the independence of their regulatory functions) will be exempted from particular IGR where appropriate;
 - clarifying the respective roles of the LSB and the approved regulator once it has delegated its regulatory functions;
 - considering a duty of candour or similar; and
 - introducing a mechanism for approved regulators to provide the LSB with compliance assurance (but specifically ruling out third party assurance).
8. In reviewing the options for the IGR, the November 2017 consultation considered tailored agreements with each approved regulator. This option was rejected on the grounds that it would be resource intensive, could result in an inconsistent approach across the approved regulators and would therefore not be in line with the better regulation principles. The LSB will therefore continue with a single set of IGR for all approved regulators.

Purpose of this consultation

9. The purpose of this consultation is to seek feedback on the proposed IGR and accompanying statutory guidance. The LSB wants the new rules to be as effective as possible in achieving the objectives set out above. In creating the new IGR, the LSB wants to meet its obligations set out in section 3 of the Act; to act in a way that is compatible with the regulatory objectives, and to have regard to the better regulation principles. It is acknowledged that every approved regulator and regulatory body is unique and it is important to receive feedback at this stage about any unforeseen and unintended consequences of introducing the proposed rules.
10. This consultation only covers matters related to section 30 of the Act (*Approved regulators duty to promote regulatory objectives etc.*) and section 28 of the Act (*Rules relating to the exercise of regulatory functions*) [in so far as the latter interacts with the former]. Areas outside of these two sections which also affect the relationship between the approved regulator and its regulatory body are beyond the scope of this consultation. An example of such an area is the approval of practising certificate fees, which has its own distinct set of rules under section 51 of the Act.

New IGR and guidance

11. The proposed IGR would apply in whole or in part to all approved regulators. The proposed IGR are intended, amongst other things, to address known issues with the current IGR. In the decision document of July 2018 the LSB committed to developing IGR which are principled and outcome-focused, clear and readily enforceable. The LSB wants the rules and guidance to:
 - enhance the separation and independence of regulatory functions within the current legislative framework;
 - provide clarity for every approved regulator and its regulatory body to decrease the number of independence-related disputes between them and referrals of such matters to the LSB for clarification or resolution; and
 - be readily enforceable for speedier resolution of issues referred to the LSB. This should ultimately benefit consumers as approved regulators and regulatory bodies can focus on their respective roles rather than being diverted by disagreements about compliance with the IGR.
12. The existing IGR were introduced when requirements mandated by the Act were still new. Now the approved regulators and regulatory bodies have established track records of working under the Act. The maturity of the regulatory framework means that the LSB is now able to propose revisions to the IGR in light of experience.

13. The proposed IGR focus wherever possible on *what* outcomes approved regulators and regulatory bodies must achieve rather than specifying *how* to do so. They use the terminology from the Act where appropriate to help approved regulators and regulatory bodies more easily interpret these rules within the statutory framework.
14. The Act creates a challenging framework for the LSB and approved regulators, particularly in respect of the IGR. There are fundamental tensions in the Act in that it requires the LSB to create IGR to separate an approved regulator's regulatory and representative functions. At the same time compliance with the Act remains the responsibility of the approved regulator. Additionally, the LSB only has the power to take enforcement action against the approved regulators designated in or under the Act. Moreover, the Act uses a single broad term "approved regulator" for a disparate group of entities with a broad spectrum of structures. These challenges have been taken into account in drafting the new IGR.
15. The proposed IGR are intended to create and maintain clear divisions which prevent the representative functions or interests of an approved regulator influencing its regulatory functions. The proposed IGR aim to balance the interests of the approved regulator in ensuring that its regulatory body is accountable and the public interest in fair and proper regulation which is not, and is seen not to be, undermined or prejudiced by any representative interests.

Assurance and oversight

16. A common theme of the responses to the November 2017 consultation was a desire for a clearer understanding of the role of the approved regulator and the oversight role of the LSB. This has been addressed to help approved regulators and regulatory bodies understand and comply with the new IGR. First, the new rules and guidance clarify the three roles as set out below:
 - the LSB is the oversight regulator;
 - after delegation of regulatory functions, the approved regulator's role is one of assurance (not oversight). The approved regulator must have assurance that regulatory functions are being discharged in accordance with section 28 of the Act; and
 - the regulatory body must provide information to the approved regulator so that the approved regulator can be confident that the delegated responsibilities are being fulfilled in line with the Act.
17. The proposed IGR use the term *oversight* only in regard to the LSB's role as oversight regulator. They use the term *assurance* to describe the residual role performed by the approved regulator after delegation of regulatory functions has

taken place. This is intended to provide clarity for both approved regulators and regulatory bodies.

18. The diagram below shows how regulatory and representative functions are separated under the proposed IGR, for those approved regulators that have both types of function. Under the proposed IGR the approved regulator must delegate its regulatory functions⁴ to the regulatory body but the approved regulator must be assured that regulatory functions are being discharged in compliance with section 28 of the Act. For clarity the proposed IGR refer to an approved regulator which has delegated its core regulatory functions as an approved regulator with a residual role.

Roles of LSB, Approved Regulator and regulatory body

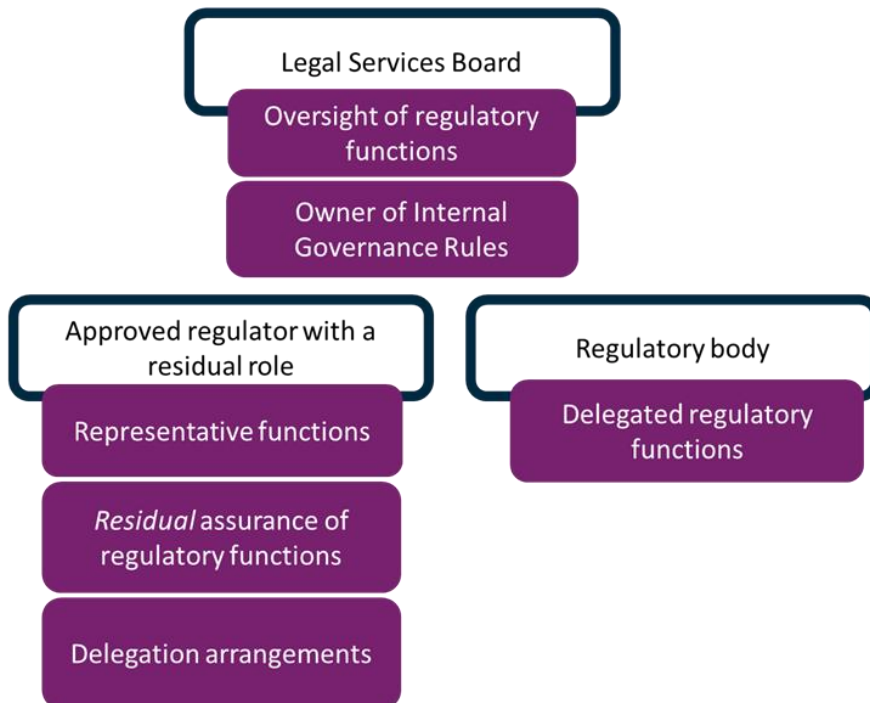


Diagram 1

The proposed rules

19. The proposed IGR are different from the existing IGR in a number of ways. A number of requirements have been retained, some have been modified, some new rules have been added and some old rules which are no longer relevant have been removed.

⁴ Except for the delegation of regulatory functions and assurance that those functions are discharged in compliance with Section 28 of the Act (which are both themselves regulatory functions). Please refer to 'Interpretation' section in the IGR and Guidance on this.

20. The purpose of each proposed rule is set out below together with an explanation of how it relates to either the current IGR or the Act. The full set of proposed IGR are included in Annex A.

Rule 1: The overarching duty

21. The overarching duty reflects section 30 of the Act and sets the context for the rest of the IGR. This duty is pre-eminent and shapes all of the rules. It sets out the duty of each approved regulator in complying with the IGR and managing the relationship between its regulatory and representative functions. Approved regulators are required to take a holistic approach and not simply adhere to specific rules without due regard to the overarching duty or the full set of rules. Whilst an approved regulator may comply with the letter of another rule, it could still be in breach of its overarching duty if that compliance allows for any influence on regulatory functions by representative functions or interests.
22. Whilst the current IGR simply repeat the wording of section 30, the rule sets out the requirements for achieving the outcomes specified in section 30. The rule requires an approved regulator to put in place arrangements to separate regulatory functions and maintain their independence as effectively as reasonably practicable, which are consistent with its duties under section 28 of the Act. It further requires that these arrangements are subject to periodic review and, if reasonably practicable, are improved upon.
23. Whether or not the requirement that these arrangements are the most effective “reasonably practicable” is not a subjective assessment for the approved regulator. In this rule and all other IGR which include the concept of reasonableness, it is being used in the objective legal sense; what would the reasonably informed onlooker think? It is recognised that approved regulators and regulatory bodies may be best placed to make the initial assessment as they will be most aware of the practical challenges depending on their own structures and other considerations. However those assessments must be justified and may be subject to LSB scrutiny.

Rule 2: Duty to delegate

24. This rule requires the approved regulator to delegate regulatory functions to a separate body and sets out what must be achieved by that delegation. It requires that regulatory functions are delegated almost entirely⁵ such that the approved regulator retains a role only to be assured that they are discharged in accordance with section 28 of the Act or as otherwise required by law.
25. The current IGR contain an equivalent provision, however this rule goes further in that it clarifies the extent of the delegation required by subsection 2. The rule also

⁵ Subject only to the exceptions of the delegation itself and the residual role, please refer to ‘Interpretation’ section and the Guidance above.

provides for the first time, by subsection 3, that the approved regulator must inform the regulatory body of any decisions or arrangements which may undermine the proper discharge of regulatory functions. Overall, Rule 2 has been amended compared to the current IGR to provide additional clarity about the residual role of the approved regulator following delegation. Misunderstandings about the residual role have underpinned a significant number of disagreements between approved regulators and their regulatory bodies under the current IGR. This rule should be read in conjunction with Rule 3: Provision of assurance to approved regulator

Rule 3: Provision of assurance to approved regulator

26. This rule sets out the expectation that information will be required by an approved regulator from its regulatory body in order to be assured that regulatory functions are being discharged in compliance with section 28 of the Act. The approved regulator with a residual role should receive sufficient information from the regulatory body to be able to satisfy its assurance role. It further prohibits the use of this information to further representative interests.
27. This rule is intended to recognise and clarify the position of the approved regulator after delegation. It is intended to ensure that the approved regulator receives the information it needs to carry out its assurance role, but also limits that exchange of information to when it is reasonably required for that purpose. It prohibits the approved regulator from requiring information which may undermine the independence or effectiveness of the regulatory body.
28. This rule clarifies the assurance role which rests with the approved regulator and is intended to address a core commitment in the decision document published in July 2018. Lack of a shared understanding of the extent and nature of the information that the approved regulator can request from its regulatory body (and the use to which that information can be put by the approved regulator) have been at the heart of a number of disagreements between approved regulators and their regulatory bodies under the current IGR.

Rule 4: Regulatory autonomy

29. This rule sets out that a regulatory body must be free from influence from the approved regulator in determining how it carries out its regulatory functions. This rule is proposed to ensure that a regulatory body is as independent as possible within the current legislative framework and supports the separation of regulatory and representative functions.
30. While the current IGR deal with the issue of independence more broadly in respect of strategy and resources, this rule sets parameters within which the approved regulator must not influence. It is intended to make clear that these areas are the sole responsibility of the regulatory body. This rule is intended to ensure regulatory independence and to address issues about the extent of the regulatory body's

freedom to act. Such issues have resulted in a number of disagreements between approved regulators and their regulatory bodies and were also explored by the LSB in its recent investigation into the Law Society when breaches of the current IGR were found.

Rule 5: Prohibition on dual roles

31. This rule makes clear that those who hold a material role in representative functions are prohibited from also holding a material role in regulatory functions. This rule would apply to all individuals who hold such roles, whether or not they are remunerated. It would not apply to those with (what might be described as) ancillary roles such as administrative assistance.
32. The current IGR limits this prohibition to Board members. The rule goes further and applies to anyone who has a “material role”, which is defined in the guidance. This rule would contribute to enhanced regulatory independence and enhanced public perception of regulatory independence. It supports our commitment to ensuring that regulation is, and is seen to be, free from representative influence.

Conduct and responsibility

Rule 6 Individual conduct

33. This rule is new. It specifies that it is the responsibility of the approved regulator (or, where appropriate under Rule 1, the regulatory body) to ensure that all individuals whose roles may be affected by the IGR are aware of and comply with the IGR and the arrangements in place under them.
34. There is no equivalent provision in the current IGR. This addition is intended to support separation by ensuring compliance with the IGR throughout both the approved regulator and the regulatory body. This rule is proposed to reflect best regulatory practice and is necessary to ensure that the IGR are effective – and are able to be demonstrated to be effective - in creating separation.

Governance

Rule 7: Governance: Lay composition

35. This rule specifies that there must be a lay chair and a lay majority of members on the governing board of a regulatory body and, in particular, when decisions are taken relating to the discharge of regulatory functions. It repeats a rule contained in the present IGR. This rule reflects good governance, supports independence and perceptions of independence and mirrors the framework applied to the LSB under the Act.

Rule 8: The regulatory board: appointments & terminations

36. This rule specifies that each regulatory body is solely responsible for all appointments and terminations of regulatory board members, including the Chair

of the regulatory board. Under this proposed rule, the approved regulator must not be involved or exert any influence on these procedures.

37. The current IGR allow for more involvement by the approved regulator in appointments. The proposed rule significantly limits this as the approved regulator's involvement is only permitted if written authorisation from the LSB is obtained under the saving provisions (see Rule 16). The proposal to narrow this rule is made by the LSB to contribute to enhanced independence of regulatory functions and to reinforce that independence. This reflects concerns about approved regulator involvement in appointments processes brought to the LSB under the current IGR.

Budget and resources

Rule 9: Regulatory resources

38. This rule requires that the regulatory body is appropriately resourced to allow the regulatory functions to be both efficiently and effectively carried out. It reflects the requirement in Section 30 of the Act and the present IGR.

Rule 10: Regulatory body budget

39. This rule specifies that the regulatory body must be free from influence from the approved regulator in formulating its budget and determining how its resources are allocated. Under this proposed rule, the approved regulator may only provide input to that process when the regulatory body conducts a consultation.

40. This rule is different from the current IGR, which provide for an approval process by the approved regulator. Under the rule, the approved regulator does not have the ability to approve or reject the budget of the regulatory body, which is a decision for the LSB in determining the practising certificate fee (PCF) application. This rule is proposed to clarify the scope of the residual assurance role of the approved regulator with regard to the regulatory body's budget.

Rule 11: Shared services

41. This rule prohibits the sharing of services between the approved regulator and the regulatory body except in certain circumstances. Under this proposed rule, the approved regulator and regulatory body must agree that: the separation of representative and regulatory functions will not be infringed; sharing the service would be effective and appropriate for the regulatory body to discharge regulatory functions; and sharing the service is necessary to be efficient and cost-effective. Further, if services are to be shared the regulatory body must be in no less favourable a position under any contract than the approved regulator.

42. This rule is different from the current IGR as it specifies the requirements to be met for the option of shared services to be available to the approved regulator and its

regulatory body. It is more restrictive than the current IGR in response to the number of issues which have been brought to the LSB relating to the impact of shared services on the separation and independence of regulatory functions.

Communication and candour with the LSB

Rule 12: Communication by persons involved in regulation

43. This rule requires a direct line of communication between persons involved in the exercise of regulatory functions and the Legal Services Board, Consumer Panel, Office for Legal Complaints and other approved regulators. This reflects a specific requirement under section 30 of the Act and reflects a rule in the current IGR.

Rule 13: Candour about compliance

44. This rule requires the approved regulator to monitor its own compliance and remedy any instances of non-compliance which occur. It is a duty made up of two parts; firstly, an approved regulator must be able to respond promptly and fully to a request for information about compliance from the LSB; and secondly, an approved regulator must proactively inform the LSB of any issue with compliance which cannot be resolved or has not been resolved in a reasonable time. The emphasis is on the approved regulator seeking to resolve any non-compliance issue without the need for LSB involvement unless those issues are of such a degree that efficient remedy is not possible. The guidance makes it clear that in order for an approved regulator to comply with this rule it must ensure that it is aware and maintains a record of all incidents of non-compliance.

45. This rule differs from the LSB powers to require information by notice under section 55 of the Act. It is limited to requiring information about compliance with the IGR only and does not involve the same formality as section 55 or have the same consequences. It is proposed that this power to require information about compliance from approved regulators will be used as part of the LSB's periodic assessments of compliance with the IGR and in any other circumstances when the LSB deems this appropriate or necessary.

46. This rule replaces the current IGR on certification of compliance and is intended to support the LSB's role as an oversight regulator proactively monitoring compliance. It fulfils the commitment in the consultation decision document (of July 2018) to introduce a mechanism for approved regulators to provide the LSB with compliance assurance.

Rule 14: Disputes & referrals for clarification

47. This rule provides that the approved regulator may refer any matter arising under the rules to the LSB for clarification if it has not been able to resolve the issue itself. It also provides that if there is a dispute between the approved regulator and its regulatory body about any matter under the IGR, which cannot be resolved, it must

be referred to the LSB before any action is taken. The rule does not oblige the LSB to opine on the issue, but does provide that its response is determinative if given.

48. There is no equivalent provision in the current IGR, which has led to referrals to the LSB being largely made on an ad-hoc and informal basis. This rule clarifies the circumstances in which the LSB may provide clarification in relation to issues affecting separation and independence, but is intended to encourage approved regulators to resolve issues themselves if possible. This rule clarifies the oversight role of the LSB in setting the expectation that the LSB should only be viewed as the final arbiter.

Rule 15: Guidance

49. This rule sets out that approved regulators and regulatory bodies must have regard to the statutory guidance in seeking to comply with the IGR. The guidance sits alongside the rules and explains in more detail the steps approved regulators should follow to comply with the IGR and meet LSB expectations. The LSB intends to have regard to the guidance in assessing compliance with the IGR but enforcement action will only be taken if there is a breach of any of the rules. This is the same as the position under the current IGR.

Rule 16: Saving provisions

50. This rule concerns those limited situations where the approved regulator cannot comply with the IGR as it would prevent the approved regulator from carrying out the residual role. The purpose of this rule is to recognise these situations, such as where an approved regulator has specific requirements set out in primary legislation which are incompatible with the IGR, and establish the process for dealing with such situations.

51. It further provides for written authorisation to be given by the LSB so that an approved regulator will not be in breach of the IGR by any action or omission. This enables an approved regulator to put a case to the LSB where there are good reasons why it cannot comply.

52. There are no saving provisions in the current IGR. The inclusion of saving provisions in the proposed IGR is intended to help provide a clearer framework for the approved regulator's residual role and to allow some discretion to the LSB to authorise non-compliance with the IGR when this can be justified.

Exemptions

53. To take account of approved regulators with only regulatory functions (and where the risks to regulatory independence are therefore lower), a number of exemptions have been proposed where specific rules do not apply and these have been listed. The applicability of each rule is also repeated in the 'Application' section of the

Guidance and is, as far as reasonably possible, clear in the drafting of the rule itself.

Question 1: Do you agree that the proposed rules would enhance the independence of regulatory functions and improve clarity leading to fewer disputes and more straightforward compliance/enforcement? If not why not?

Guidance

54. The LSB has produced proposed statutory guidance to help approved regulators and regulatory bodies comply with the proposed IGR. The guidance explains in more detail what the LSB is seeking in order for approved regulators to comply with the IGR and meet expectations. In doing so the guidance is intended to be clear on the indicators for compliance that the LSB expects to see. While the LSB intends to have regard to the guidance in assessing compliance with the IGR, the guidance will not be relied upon in isolation. Enforcement action will only be taken if there is a breach of any of the IGR but the guidance will inform the LSB's assessment of whether there has been a breach.

55. The guidance follows the principled and outcome-focused approach, but is more detailed than the IGR. It sets out the relationship between different rules IGR and provides guidance on interpretation to help approved regulators and regulatory bodies to comply. The proposed guidance is included in Annex B.

Question 2: Does the proposed guidance provide sufficient detail to help you to interpret and comply with the proposed IGR? Please provide specific comments on any areas of the guidance where further information would improve clarity.

LSB assurance of compliance with proposed IGR

Transition period

56. A transition period of six months will begin on publication of the final version of the new IGR. The LSB believes that this will allow sufficient time for approved regulators to comply with the new IGR. During this time approved regulators are expected to assess their internal procedures and working practices and put in place arrangements to ensure full compliance with the IGR by the end of the six-month transition period.

57. At the end of the transition period the LSB will require a certificate of compliance from each approved regulator. This should include details of the steps the approved regulator has taken to review current practices against the new IGR and to provide a self-assessment of its own compliance. Where an approved regulator has a separate regulatory body, a separate certificate of compliance must be submitted to the LSB by the regulatory body which should include details of how the regulatory body is meeting the obligations in the IGR that apply to it. There may

be some duplication in the matters covered in the approved regulator's certificate of compliance and that of the regulatory body, as some of the obligations in the proposed IGR (if enacted) fall jointly on the approved regulator and the regulatory body and there are some proposed Rules (such as Rules 2 and 3) with which both bodies would need to certify compliance. Each approved regulator and regulatory body is expected to be in full compliance within the six-month transition period.

58. If an approved regulator or regulatory body is unable to certify its compliance with the new IGR at the end of the transition period, it will need to apply to the LSB for *prior* written authorisation for any ongoing non-compliance under Rule 16 (if enacted). Sufficient time would need to be allowed for this application to be made and considered by the LSB. Under the proposed Rule 16, the LSB would expect, at minimum, the approved regulator or regulatory body to fully explain why the 6-month transition period has not enabled it to become fully compliant and to provide a comprehensive plan to remedy this as quickly as reasonably possible. If an approved regulator or regulatory body does not obtain written authorisation prior to the end of the transition period, any ongoing issues would be in breach of the IGR. Written authorisation under Rule 16 is not intended to be retrospective. Reference should be made to the proposed guidance on this section for further detail.

Ongoing LSB assurance of compliance with the proposed IGR: after the transition period

59. Assurance of compliance with the IGR after the end of the transition period will be carried out as part of the regulatory performance framework. At present this framework applies only to regulatory bodies and is one of the main ways that the LSB carries out its oversight role. The framework has five standards under which performance is monitored. Assurance of compliance with the IGR will be monitored through the Governance and Leadership standard. In future, approved regulators, not already subject to the regulatory performance framework, will be included but only to monitor their compliance with the IGR. For the avoidance of doubt, the LSB has no intention of seeking assurance from these approved regulators on the full regulatory performance framework.

60. Under the regulatory performance framework the LSB will adopt the same approach with approved regulators as applies to regulatory bodies. Information will be collected from submissions, information provided to the LSB and information which is publicly available. A baseline assessment will be carried out based on the certificate of compliance that the approved regulator provides at the end of the transition period and performance will be monitored on an ongoing basis.

Question 3: Is there any reason that your organisation would not be able to comply with the proposed IGR within six months? Please explain your reasons.

Impact assessment

61. The proposed rules will affect different approved regulators in different ways. The LSB has carried out an initial qualitative impact analysis to ascertain the work that each approved regulator and regulatory body would need to undertake during the six-month transition period and on compliance thereafter. Each proposed rule was examined and an initial assessment was formed of what, if anything, would be required to comply based on the LSB's understanding of the current arrangements in place within the approved regulators. The anticipated operational impact given how the bodies currently work was taken into account.
62. It is recognised that, initially, additional resources would be required to assess the effect of compliance with the proposed IGR beyond the resources already involved in meeting regulatory obligations under the Act. The transition period will require each approved regulator and regulatory body to assess what changes are required to comply with the new IGR and then to make those changes. The need for this assessment will be common to all approved regulators and regulatory bodies and the resource implications for changes will depend on the circumstances of each body.
63. The initial work by approved regulators and regulatory bodies to comply with the proposed IGR is likely to be the most resource intensive part of implementing them. This work is likely to include:
- assessment of the new IGR against current practice to determine the scope of changes required and implementation of any changes needed.
 - review of governance and assurance arrangements, operational practices, including shared services, and the roles of individuals.
64. The impact on approved regulators will depend on the particular arrangements in place for each body. The LSB's overall assessment is that:
- for approved regulators with existing regulatory bodies that have a closely linked structure and to which all of the proposed IGR apply, more extensive changes may be necessary. However, as there will be existing arrangements or protocols governing their relationship in place already, these should facilitate a smoother transition.
 - for approved regulators with both regulatory and representative functions who have not been required under the current IGR fully to separate these

functions (as would be required under the proposed IGR), more substantive changes are likely to be necessary to ensure compliance.

- for approved regulators who have already chosen fuller separation or who only have regulatory functions this should require fewer changes in complying with the proposed IGR (only some of which would apply to the latter category of approved regulators).

65. Following the transition period as we move into business as usual, we have set our assessment of the additional resource impact from the proposed IGR against what stakeholders told us in their responses to our November 2017 consultation about the resources required to deal with problems with the current IGR. This included resources dedicated to understanding the language in the current IGR (which was viewed as being qualified, open to interpretation and difficult to apply in practice) and to dealing with continuing disagreement about what is and is not permitted under the current IGR. The practical consequence of disagreements is that additional resources, beyond the ongoing cost of regulatory compliance, is spent dealing with issues which we hope would be avoided by implementing the proposed IGR.

66. We are of the opinion that the ongoing cost of compliance to regulators and regulatory bodies would be reduced as a result of the proposed IGR. This is based on our assessment that the proposed IGR set a clearer framework which should be straightforward to comply with and enable effective enforcement by the LSB. This takes account of the net effect of what should be a reduction in the number of issues and disputes that approved regulators and regulatory bodies deal with and which have been historically brought to the LSB.

67. At this time, and on the basis of the information available to us, the draft impact assessment indicates that the initial resource requirements to implement the proposed IGR are justified. We will complete the impact assessment by incorporating feedback from approved regulators and regulatory bodies on their perspectives of the resources required for implementation and will publish that impact assessment in our final statement in response to this consultation.

Question 4(a): Beyond the usual resources allocated to compliance with the IGR what, if any, additional resource do you anticipate you will need: (i) to assess compliance with the proposed IGR and then to make changes to come into compliance, if any are required; and (ii) to comply with the IGR on an ongoing basis?

Question 4(b): Do you agree with our assessment that the cost of compliance (which includes the costs of dealing with disputes and disagreements) will reduce under the proposed IGR?

Please provide details of your assessment of the costs and actions associated with the initial assessment of compliance under the transition period and your estimation of the difference in the ongoing cost of compliance with the proposed IGR compared to the existing IGR.

Equality Act assessment

68. The LSB has given due consideration to its obligations under the Equality Act 2010⁶. We do not consider that this consultation raises any issues in light of the public sector equality duty, as the LSB is proposing rules that apply to approved regulators and regulatory bodies and not directly to authorised persons or members of the public. However, we would welcome any comments respondents may have on any equality issues they believe arise as a result of the proposed IGR.

Question 5: Please provide comments regarding equality issues which, in your view/experience, may arise from implementation of the proposed IGR.

Responding to the consultation

69. The questions posed in this consultation are listed below for reference:

Question 1: Do you agree that the proposed rules would enhance the independence of regulatory functions and improve clarity leading to fewer disputes and more straightforward compliance/enforcement? If not why not?

Question 2: Does the proposed guidance provide sufficient detail to help you to interpret and comply with the proposed IGR? Please provide specific comments on any areas of the guidance where further information would improve clarity.

⁶ [Public Sector Equality Duty](#): public authorities have to consider all individuals when carrying out their day-to-day work – in shaping policy, in delivering services and in relation to their own employees. It also requires that public authorities have due regard to the need to: eliminate discrimination, advance equality of opportunity, and foster good relations between different people when carrying out their activities. The LSB is a public authority listed in [Schedule 19](#) of the Equality Act 2010.

Question 3: Is there any reason that your organisation would not be able to comply with the proposed IGR within six months? Please explain your reasons.

Question 4(a): Beyond the usual resources allocated to compliance with the IGR what, if any, additional resource do you anticipate you will need: (i) to assess compliance with the proposed IGR and then to make changes to come into compliance, if any are required; and (ii) to comply with the IGR on an ongoing basis?

Question 4(b): Do you agree with our assessment that the cost of compliance (which includes the costs of dealing with disputes and disagreements) will reduce under the proposed IGR?

Please provide details of your assessment of the costs and actions associated with the initial assessment of compliance under the transition period and your estimation of the difference in the ongoing cost of compliance with the proposed IGR compared to the existing IGR

Question 5: Please provide comments regarding equality issues which, in your view/experience, may arise from implementation of the proposed IGR.

70. Any representations should be made to the Board by 5pm on Monday **21 January 2019**. Please ensure that responses reach us by the closing date as we cannot guarantee that responses received after this date will be considered.

71. We would prefer to receive responses electronically (in MS Word format), but hard copy responses by post or fax are also welcome.

72. Responses should be sent to:

- Email: consultations@legalservicesboard.org.uk
- Post: Legal Services Board, One Kemble Street, London, WC2B 4AN
- Fax: 020 7271 0051

73. We intend to publish all responses on our website unless a respondent explicitly requests that a response (or a specific part of it) should be kept confidential. We will record the identity of the respondent and the fact that they have submitted a confidential response in our summary of responses.

74. If you wish to discuss any aspect of this paper, or need advice on how to respond to the consultation, please contact the LSB by one of the methods described above or by telephone (020 7271 0050).

75. Any complaints or queries about this process should be directed to the Consultation Co-ordinator, Ian Wilson, at the following address:

Consultation Co-ordinator, Legal Services Board, One Kemble Street, London WC2B 4AN

Email: consultations@legalservicesboard.org.uk

Glossary of terms

The Act	Legal Services Act 2007
Approved regulator	A body which is designated as an approved regulator by Parts 1 or 2 of schedule 4, and whose regulatory arrangements are approved for the purposes of the Legal Services Act 2007 and which may authorise persons to carry on any activity which is a reserved legal activity in respect of which it is a relevant AR
Consultation	The process of collecting feedback and opinions on a policy proposal
Better Regulation Principles	The principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed (see Section 3(3)(a) and Section 28(3)(a) of the Act)
Impact Assessment	An assessment of the likely impact of a policy on cost, benefits, risks and the likely or actual effect on people in respect to diversity
IGR or the Rules	The Internal Governance Rules, as created by the LSB under Section 30 of the Act.
Lay Person	As defined in Schedule 1, paragraph 2(4) of the Act
LSB or the Board	Legal Services Board – as defined in Section 2 of the Act
OLC	As defined in Section 114 of the Act
Regulatory Arrangements	As defined in Section 21 of the Act, except for the arrangements for delegation of regulatory functions to a regulatory body and assurance of compliance with section 28 of the Act, in accordance with Rule 2 of the IGR.
Regulatory Functions	As defined in Section 27(1) of the Act, except functions relating to arrangements for delegation of regulatory functions to a regulatory body and assurance of compliance with section 28 of the Act, in accordance with Rule 2 of the IGR.
Regulatory Objectives	As defined in Section 1 of the Act
Representative Functions	As defined in Section 27(2) of the Act
Residual Role	As defined in Rule 2 of the IGR
Services	Information technology, equipment, administration, human resources, finance and corporate services, office space and facilities.

Annex A: Proposed Rules

INTERNAL GOVERNANCE RULES (NEW)

The Legal Services Board has on [date] made the following rules under the Legal Services Act 2007 (c.29), section 30.

The previous rules made by the Legal Services Board under this provision are hereby revoked.

DEFINITIONS

Act	The Legal Services Act 2007
Approved Regulator	As defined in Schedule 4, Part 1 of the Act or designated under Schedule 4, Part 2 of the Act
Better Regulation Principles	The principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed (see Section 3(3)(a) and Section 28(3)(a) of the Act)
Lay Person	As defined in Schedule 1, para 2(4) of the Act
Legal Services Board	As defined in Section 2 of the Act
OLC	As defined in Section 114 of the Act
Regulatory Arrangements	As defined in Section 21 of the Act, except for the arrangements for delegation of regulatory functions to a regulatory body and assurance of compliance with section 28 of the Act, in accordance with Rule 2.
Regulatory Body	A body which has been delegated the regulatory functions of an Approved Regulator, as defined in Rule 2(1)
Regulatory Functions	As defined in Section 27(1) of the Act, except functions relating to arrangements for delegation of regulatory functions to a regulatory body and assurance of compliance with section 28 of the Act, in accordance with Rule 2.
Regulatory Objectives	As defined in Section 1 of the Act.
Representative Functions	As defined in Section 27(2) of the Act
Residual Role	As defined in Rule 2(2)
Services	Information technology, equipment, administration, human resources, finance and corporate services, office space and facilities.

PREAMBLE

These rules are created to comply with the Legal Services Board's duty under Section 30 of the Act.

Independent regulation is essential to maintain the integrity of legal services and to give confidence to consumers, providers, investors and society as a whole that legal services work in the public interest and support the rule of law.

The Legal Services Board recognises the inherent tension for approved regulators, defined by Schedule 4 of the Act, who have both representative and regulatory functions and are required to separate their regulatory functions whilst remaining responsible for assuring compliance by their regulatory body with Section 28 of the Act. In this situation, the Act does not allow for complete separation or complete independence.

These rules are intended to enhance regulatory independence as far as reasonably practicable; to create and maintain clear divisions which prevent the representative functions prejudicing the regulatory functions, to promote the regulatory objectives and to uphold the better regulation principles.

These rules aim to balance the interest of the approved regulator in ensuring that its regulatory body is accountable and the public interest in fair and proper regulation which is not, and is not seen to be, undermined or prejudiced by any representative interests.

1. THE OVERARCHING DUTY

- (1) Each approved regulator has an overarching duty to ensure that decisions relating to its regulatory functions are not influenced by any representative functions or interests it may have.
- (2) In particular, each approved regulator must have arrangements in place to:
 - a. separate its regulatory functions from any representative functions or interests it may have; and
 - b. maintain the independence of its regulatory functions.as effectively as is reasonably practicable and consistent with Section 28 of the Act.
- (3) Each approved regulator must periodically review and, if reasonably practicable, improve its arrangements under subsection (1)

SEPARATION & ASSURANCE

2. DUTY TO DELEGATE

- (1) Each approved regulator with both representative and regulatory functions must delegate the discharge of its regulatory functions in compliance with Section 28 of the Act to a separate body ('the regulatory body').
- (2) After delegating its regulatory functions, the approved regulator must only retain a role to the extent that this is reasonably necessary to be assured that regulatory functions are being discharged in compliance with Section 28 of the Act or as otherwise required by law ('the residual role').
- (3) The approved regulator must promptly inform the regulatory body if the approved regulator makes a decision, plan or other arrangement which may reasonably be considered likely to undermine the discharge of regulatory functions in compliance with section 28 of the Act.

3. PROVISION OF ASSURANCE TO APPROVED REGULATOR

- (1) Each regulatory body shall provide sufficient information to the approved regulator with a residual role as is reasonably required for the approved regulator to be assured of the regulatory body's compliance with section 28 of the Act.
- (2) The approved regulator with a residual role:

- a. may only question the information supplied by the regulatory body where it has reasonable grounds to do so;
- b. must not require the regulatory body to provide information which may reasonably be considered likely to undermine the regulatory body's independence or effectiveness; and
- c. must not use the information it receives for the representation, protection or promotion of the interests of the persons it represents unless and until it receives that information for that purpose or that information is made publicly available.

REGULATORY AUTONOMY

4. REGULATORY AUTONOMY

- (1) The regulatory body must independently determine the most appropriate and effective way of discharging its functions to meet the regulatory objectives in accordance with the better regulation principles.
- (2) In particular, the regulatory body must determine:
 - a. its own governance, structure, priorities and strategy; and
 - b. whether any amendment to the regulatory arrangements is necessary and, if so, what form that amendment should take.
- (3) The approved regulator with a residual role must not influence these determinations except if the regulatory body conducts a consultation, then its views may be taken into account.

5. PROHIBITION ON DUAL ROLES

- (1) No person, whether remunerated or not, shall be involved in a material way in both the regulatory and representative functions of the approved regulator.
- (2) In particular, no person who is materially involved in representative functions may be a member of the board, council or committee which makes decisions about how to exercise regulatory functions.

CONDUCT & RESPONSIBILITY

6. INDIVIDUAL CONDUCT

Each approved regulator must ensure that each individual, whether remunerated or not, with a role:

- a. in the exercise of regulatory functions; or
- b. which may otherwise reasonably be considered likely to affect regulatory functions

is aware of and complies with these Rules and the arrangements in place under Rule 1.

GOVERNANCE

7. GOVERNANCE: LAY COMPOSITION

The board or equivalent body which makes decisions about how to exercise regulatory functions must be comprised of a majority of lay persons and the chair of that body must be a lay person.

8. THE REGULATORY BOARD: APPOINTMENTS & TERMINATIONS

- (1) The regulatory body must independently determine and carry out its procedures for appointing, re-appointing and terminating members of its board or equivalent decision-making body including the chair, assessing their remuneration and carrying out appraisals.
- (2) The approved regulator with a residual role must not be involved in or otherwise influence these determinations or procedures.

BUDGET & RESOURCES

9. REGULATORY RESOURCES

Each approved regulator must provide such resources as are reasonably required for its regulatory functions to be efficiently and effectively discharged.

10. REGULATORY BODY BUDGET

- (1) The regulatory body shall independently:
 - a. formulate its own budget in accordance with its priorities and strategy under Rule 4; and
 - b. determine the allocation of its resources.
- (2) The approved regulator with a residual role must not influence these decisions except if the regulatory body conducts a consultation, then its views may be taken into account.

11. SHARED SERVICES

- (1) An approved regulator with a residual role and its regulatory body must not share any services unless they are in agreement that:
 - a. this will not undermine or otherwise infringe the separation of regulatory and representative functions;
 - b. this is effective and appropriate for the regulatory body to discharge its regulatory functions; and
 - c. this is necessary to be efficient and reasonably cost-effective.
- (2) Any services shared between the approved regulator with a residual role and the regulatory body under Rule 11(1) must be provided to the regulatory body on a basis no less favourable than to the approved regulator with a residual role.

COMMUNICATION & CANDOUR WITH THE LEGAL SERVICES BOARD

12. COMMUNICATION BY PERSONS INVOLVED IN REGULATION

- (1) Each approved regulator must have arrangements in place for persons involved in the exercise of its regulatory functions to communicate directly with the Legal Services Board, Consumer Panel, OLC and other approved regulators.
- (2) In particular these arrangements must enable individuals to notify the Legal Services Board directly if they consider that the independence or effectiveness of regulatory functions is being or will be prejudiced.

13. CANDOUR ABOUT COMPLIANCE

- (1) Each approved regulator must respond promptly and fully to all requests for information by the Legal Services Board made for the purposes of assessing and assuring compliance with these Rules.
- (2) Each approved regulator must ensure that any issue in relation to compliance with these Rules which cannot be or has not been remedied within a reasonable period is reported in writing to the Legal Services Board, whether this information is requested or not.

14. DISPUTES & REFERRALS FOR CLARIFICATION

- (1) If an approved regulator has been unable to resolve any point arising under or in connection with these Rules, it may refer that point to the Legal Services Board for clarification.
- (2) In the event of a dispute between an approved regulator with a residual role and its regulatory body in relation to any point arising under or in connection with these rules, the dispute must be referred to the Legal Services Board before any further action is taken.
- (3) Any response provided by the Legal Services Board shall be determinative unless expressly indicated otherwise.

GUIDANCE

15. GUIDANCE

In seeking to comply with these Rules, each approved regulator must have regard to any Guidance issued by the Legal Services Board under section 162 of the Act.

SAVING PROVISIONS

16. SAVING PROVISIONS

- (1) No approved regulator shall be in breach of these Rules if the action or omission, which would otherwise constitute the breach, is:
 - a. in relation to an approved regulator with a residual role, reasonably necessary to satisfy its residual role;

- b. required by primary legislation; or
- c. carried out with the prior written authorisation of the Legal Services Board.

(2) In the event of a dispute as to whether any of these Saving Provisions apply, the matter must be referred to the Legal Services Board before any action is taken and any response will be determinative (in accordance with Rule 14).

EXEMPTIONS

17. EXEMPTIONS

The following Rules do not apply to an approved regulator with only regulatory functions:

- a. Rules 2-5;
- b. Rule 8⁷;
- c. Rules 10-11;
- d. Rule 14(2); and
- e. Rule 16(1)(a).

⁷ 12 November 2018 - Rule 17 has been updated. In the version published on 2 November the rule was 17(b) Rules 7-8. The affected ARs have been notified.

LSB Guidance on Internal Governance Rules

This is statutory guidance under section 162 Legal Services Act 2007

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Introduction

1. The LSB is the independent body which oversees the regulation of legal services in England and Wales. The LSB was created by the Legal Services Act 2007 (the Act) to hold regulators for the different branches of the legal services profession to account.
2. Section 30 of the Act obliges the LSB to make internal governance rules ('IGR') which set out requirements for each Approved Regulator ('AR') to ensure the separation of its regulatory and representative functions. These requirements must ensure that:
 - the exercise of regulatory functions by an AR is not prejudiced by its representative functions or interests; and
 - decisions relating to the exercise of the regulatory functions by an AR are, so far as reasonably practicable, taken independently from decisions relating to representative functions.
3. The IGR must also include requirements to ensure that sufficient resources are allocated to regulatory functions and that those engaged in regulatory functions are able to communicate with the LSB, the OLC, the Consumer Panel and other ARs.
4. This guidance must be taken into account by ARs in determining their approach to the IGR. In accordance with section 162(5) of the Act, the LSB will have regard to an AR's compliance with this Guidance in assessing regulatory performance and considering any enforcement action.
5. The new IGR and Guidance were created in response to a consultation with ARs and regulatory bodies carried out between November 2017 and January 2019. That consultation identified a number of issues with the previous IGR. These issues included, in particular, the need for greater clarity on the approach for each AR to separate its regulatory functions from any representative functions it might have whilst remaining responsible for their discharge in compliance with section 28 of the Act.
6. The new IGR and Guidance are intended to address known issues with the previous IGR and concerns raised with the LSB and through the consultation. The IGR and Guidance are principled and outcome focused, provide clarity on how ARs and regulatory bodies should comply which will make the IGR easier to enforce. The LSB intends the IGR and Guidance to:
 - a. enhance regulatory independence within the current legislative framework
 - b. provide clarity for each AR and regulatory body leading to a decrease in the number of independence-related disputes and referrals to the LSB for clarification or resolution

- c. be straightforward to comply with and enforce, which should lead to speedier resolution of issues referred to the LSB. This should ultimately benefit consumers as ARs and regulatory bodies can focus on their respective roles rather than being diverted by disagreements about compliance with the IGR.
7. This Guidance is created to assist each AR to comply with the new IGR which came into effect on 1 January 2010. The IGR set out what must be achieved, this Guidance provides supporting information to assist understanding of how to comply.
8. The first section 'Legal Context' sets out the relevant sections of the Act for creation of and compliance with the IGR. It sets out, in brief, the role of the LSB, the AR and regulatory body to provide a context and framework for the IGR and Guidance which follows it.
9. The second (and final) section sets out the Guidance on each rule. With the exception of the Guidance on Rules 15 (Guidance) and 17 (Exemptions), the Guidance for each rule is divided into three parts, as follows:
 1. Application: This section sets out who the rule applies to. Some rules apply to all ARs and some apply only to ARs with both representative and regulatory functions.
 2. Relationship with other IGR: This section sets out how this rule relates to and interplays with other IGR
 3. Compliance: This section set how the LSB expects an AR to comply with a rule.

Section 1: The Legal Context

The Statutory Duties & The IGR

1. Under Section 3 of the Act, the LSB has a duty to promote the regulatory objectives and have regard to the better regulation principles in discharging its functions.
2. Under Section 28 of the Act, each AR has a duty to promote the regulatory objectives and have regard to the better regulation principles in discharging its regulatory functions.
3. Under Section 29 of the Act, the LSB may not exercise any of its functions in relation to representative functions except to ensure their separation from regulatory functions.
4. Under Section 30 of the Act, the LSB must make rules which set out requirements on each AR to (essentially) separate and maintain the independence of its regulatory functions from its representative functions. In discharging this obligation, the LSB must comply with its duty under Section 3.

Compliance with the IGR & Section 28 of the Act

5. In following the IGR, the AR must comply with its duty under Section 28 of the Act. The rules and the duty must be complied with simultaneously.
6. The LSB recognises the difficulty which this creates for each AR with both regulatory and representative functions. It must separate its regulatory functions but has a duty to discharge those functions in accordance with Section 28 of the Act.
7. The LSB believes that there are three central requirements for compliance with both Section 28 of the Act and the IGR:
 - 1) Each AR must put in place arrangements for separating its regulatory functions which are, themselves, consistent with Section 28 of the Act (i.e. transparent, proportionate etc.).
 - 2) Each AR with both representative and regulatory functions must delegate its regulatory functions to a body who will act on the AR's behalf to discharge those functions in compliance with Section 28 of the Act.
 - 3) Each AR which has delegated its functions must be confident that they are being discharged in compliance with its statutory duty under Section 28 of the Act, however its ability to influence must be limited to prevent infringing the separation of those functions from the representative functions which the AR has retained.

The Effect of Delegation on Section 28 of the Act

8. Each AR is required under these IGR to delegate the discharge of its regulatory functions to a separate body ('the regulatory body'). The regulatory body must act independently of the AR to prevent any prejudice on those functions by the AR's representative functions.
9. The LSB's powers to enforce the proper discharge of regulatory functions lie against the AR as a whole, not the regulatory body.
10. By delegation, the regulatory body assumes responsibility for discharging regulatory functions. It therefore is the "AR" in relation to that role. The AR's duties under Section 28 in discharging regulatory functions must be met by the regulatory body (except in relation to assurance of compliance and the delegation itself¹). The regulatory body must promote the regulatory objectives and have regard to the better regulation principles in discharging regulatory functions. The regulatory body *is* the AR for the purposes of all obligations related to the functions delegated to it.

The AR's Residual Role

11. It is recognised that ultimate responsibility for compliance with the Act remains with the AR as only the AR can be enforced against, including by cancellation of the AR's designation as an AR.
12. Due to this responsibility, the AR cannot separate regulatory functions completely. They may be discharged by a regulatory body at arm's length, but the AR must be assured that they are being discharged correctly.
13. However, the assurance of the AR must not infringe the separation or independence of the discharge of regulatory functions from the representative functions which the AR has retained. To prevent this, the AR must retain only the limited role which it needs to be assured of compliance with Section 28 of the Act (and the IGR) in the discharge of regulatory functions, and responsibility for the delegation arrangements.
14. This is the "residual role"; to be assured of the proper and lawful discharge of regulatory functions by the regulatory body.

The AR's Assurance & the LSB's Oversight

15. The LSB works directly with regulatory bodies to assess and improve their performance, decide any applications they make to change their regulatory arrangements (rule change applications) and consider their budgetary requirements (PCF Applications). The AR should not duplicate any of these roles.

¹ See Guidance on Rule 2: Delegation of Regulatory Functions

16. The AR needs to be assured that its regulatory body is discharging its functions properly. This must be carried out in a way which does not infringe the separation of regulatory functions or duplicate the LSB's oversight role. The AR is simply entitled to the information reasonably required so that it may be assured that the regulatory body is operating properly.
17. The LSB will monitor compliance with the IGR through its regulatory performance framework. Assurance of compliance with the IGR will be considered within the Governance and Leadership standard. For those approved regulators who have delegated regulatory functions, the performance framework will only apply to IGR compliance and not to all of the standards.

Section 2: Guidance on the IGR

Interpretation

“Regulatory Arrangements” & “Regulatory Functions”

1. The terms used in the IGR adopt the same definitions as in the Act, with two exceptions. For the purposes of the IGR, “Regulatory arrangements”² and “Regulatory functions”³ do not include delegation of regulatory functions, or the residual role to be assured of compliance with Section 28 of the Act in the discharge of those functions.
2. These two functions have been carved out of the definition in the IGR in recognition that these are functions which cannot be carried out by the regulatory body.
3. However, each AR should note that both of these functions are regulatory functions under the definition in the Act and are therefore subject to the other requirements which apply to regulatory functions outside the IGR. For example amendments to delegation arrangements must comply with the separate LSB Rules and Guidance on Rule Change applications.

“Regulatory Body” and “Residual Role”

4. Two terms have been created which are used in the IGR. Both of these terms are created by Rule 2: Delegation of Regulatory Functions. The first; “regulatory body” is the body to whom the functions are delegated. The second; “residual role” is the assurance role retained by the AR after delegation.

Rule 1 - The Overarching Duty

Each AR must determine and implement arrangements which are as effective as reasonably practicable for separation of its regulatory functions and which are consistent with Section 28 of the Act.

Application

This rule applies to every AR.

² defined in Section 21 of the Act

³ defined in Section 27 of the Act

Relationship with Other IGR

This rule is pre-eminent; it runs through every other rule and the relationship between the regulatory and representative functions and interests of an AR. Each AR is obliged to adhere to this duty when interpreting and complying with the IGR and managing the relationship between its regulatory functions and any representative functions or interests it may have.

The IGR apply to each AR, which includes its 'regulatory body'⁴. In order to comply with the overarching duty, the regulatory body should have responsibility for any of the other rules or parts of the rules where this facilitates effective separation of regulatory functions. For example:

Rule 5: Individual Conduct

- Effective separation would include the regulatory body ensuring the awareness and compliance of individuals with a role in only regulatory functions.

Rule 13: Candour about Compliance

- Effective arrangements for separation would include that information requested by the LSB should be provided directly by the regulatory body when that information relates to regulatory functions under its exclusive control.
- Equally it should be the regulatory body which remedies and, when necessary, reports issues of non-compliance where these occur exclusively within that body.

Compliance

This rule applies to both representative functions and representative interests, which must be separated from regulatory functions. An AR with only regulatory functions is required to separate those functions from any representative interests it may have.

Arrangements for Separation & Independence

The AR must put in place arrangements to separate its regulatory and representative functions (or interests) which are as effective as is:

- i) reasonably practicable; and
- ii) consistent with Section 28 of the Act.

In order to comply with this rule, each AR should consider the areas in which there is potential for its regulatory functions to interact with its representative functions or interests and identify the reasonably practicable options for separating its regulatory functions in these areas. The duty recognises that different ARs have different structures, it is for each AR to identify which methods of separation are practicable in its particular circumstances.

Where there are a number of alternatives, the AR is obliged to implement the arrangement which separates its regulatory functions from its representative functions or interests as

⁴ Please refer to Legal Context above and Rule 2: Duty to Delegate

effectively as it is able to, but may not disregard its duty under the Act to promote the regulatory objectives and have regard to the better regulation principles.

If, for example, there were two alternative arrangements available to an AR, one of which was slightly more effective for achieving separation but disproportionately more expensive, the AR would not be obliged to implement the first arrangement as it may not be consistent with its duty under Section 28 to promote the regulatory principle of 'protecting and promoting the interests of consumers' (onto whom the cost would be passed) and to have regard to the better regulation principle of proportionality.

The Act does not require full legal and structural separation, however an AR with both representative and regulatory functions should consider whether it may be practicable for its regulatory body to have the ability to enter into contracts (such as employment contracts or contracts for goods and services) without the AR's participation. This would strongly support the separation of the regulatory functions from representative functions. If this was practicable, the AR would be obliged to take this approach (or another practicable approach which was equally or more effective in achieving separation) unless it was inconsistent with its duty under section 28 of the Act.

Periodic Review & Improvement

By subsection (3), each AR must periodically review and, if reasonably practicable, improve its arrangements for separation of its regulatory functions.

It is a matter for each AR to determine the frequency of reviews, but the requirement that the reviews be "periodic" means that each AR must review its arrangements regularly and consistently. The LSB would expect the arrangements to be reviewed, at least, every two years and for the results of that review to be recorded in writing.

In order to comply with the duty to "review", the AR must assess whether the arrangements in place under subsection (1) continue to comply with the requirements of that section, i.e. are they as effective as is reasonably practicable for separation and consistent with the duty under Section 28 of the Act.

The obligation to improve the arrangements if "reasonably practicable" recognises that the degree of separation which is achievable may increase over time as circumstances develop and change. The LSB expects each AR to be alert to areas where there is scope for greater independence for its regulatory functions and to update and improve its arrangements on a regular basis.

Rule 2 - Duty to Delegate

Representative and Regulatory Functions shall be discharged by separate bodies.

Application

This rule applies only to ARs with both representative and regulatory functions.

Relationship with Other IGR

This rule is the starting point for compliance with the IGR by each AR with both representative and regulatory functions.

After delegation has taken place, primary responsibility for compliance with a number of the other rules will rest with the regulatory body, e.g. Rule 5: Individual Conduct – the regulatory body will be responsible for the knowledge and compliance of its employees and board members.

This rule has a particularly close relationship with Rule 3: Provision of Assurance. This rule requires that, after delegation, the AR only retains a role to be assured that regulatory functions are being discharged in compliance with Section 28⁵ and is expressly curtailed by the limitations on questioning the assurance provided by subsection (2) of Rule 3: Provision of Assurance.

Whilst the AR is entitled to be assured of compliance with section 28 of the Act, it may not:

- question the assurance so provided unless it has reasonable grounds to do so⁶; or
- require information to be provided by the regulatory body which may undermine its independence or effectiveness⁷.

Each AR should further be aware of Rule 14(2), which provides that if there is a dispute between itself and its regulatory body about any matter arising under the IGR, it must be referred to the LSB before any further action is taken.

Compliance

Three Stages to Compliance: (1) Action, (2) Result and (3) Communication

This rule is in three parts;

1. Subsection (1) is what the AR must *do* – delegate its regulatory functions to a separate body
2. Subsection (2) is what the AR must *achieve* by delegation – retaining a role in regulatory functions only to the extent that this is necessary to be assured of compliance with section 28 of the Act or as otherwise required by law.
3. Subsection (3) requires the AR to inform the regulatory body if it makes any decision which may undermine the regulatory body's ability to properly discharge regulatory functions.

⁵ Or as otherwise required by law

⁶ See Rule 3(2)(a)

⁷ See Rule 3(2)(b)

Delegation of Regulatory Functions

“Regulatory Arrangements” are defined in Section 21 of the Act and “Regulatory Functions” are consecutively defined in Section 27 of the Act as, essentially, any function relating to “Regulatory Arrangements”.

In order to comply with this Rule, each AR must delegate these functions *in their entirety* to the regulatory body⁸. Following delegation, those functions should be carried out solely by the regulatory body.

Section 28 of the Act places a duty on each AR in relation to the discharge of regulatory functions. In delegating those functions to a separate body, that separate body must also assume responsibility for compliance with this duty⁹ in order to create effective separation.

In order to comply with this Rule, the delegation must ensure that it is for the regulatory body:

- to determine how to discharge its regulatory functions to meet the regulatory objectives,
- to assess, under s28(2)(b), the “most appropriate” way of meeting those objectives,
- to have regard to the better regulation principles in discharging its regulatory functions, and
- to determine any principles beyond the better regulation principles which represent the best regulatory practice under s28(3)(b)

without input or influence from the AR¹⁰.

Retaining a Role to be Assured of Compliance

Following delegation, the AR’s role in regulatory functions should go no further than is “reasonably necessary” for it to be assured of compliance with section 28 of the Act in the discharge of regulatory functions. It is expected that the AR’s assurance will come via the regulatory body’s concurrent obligation in Rule 3(1) to provide sufficient information for assurance.

Each AR should have regard to good corporate governance in assessing what role is “reasonably necessary” to be assured of the regulatory body’s compliance and should not duplicate the oversight role of the LSB. In particular, the AR should not duplicate (in whole or part) the LSB’s role in assessing regulatory performance, assessing PCF applications or assessing applications by regulatory bodies to change regulatory arrangements.

It would be “reasonably necessary” for the AR to be provided with information about the regulatory body’s:

⁸ Noting the exceptions in relation to: the arrangements for delegation themselves, the making of which cannot be delegated; and assurance of the regulatory body’s compliance with section 28 of the Act, please see below

⁹ Please refer to ‘Legal Context’ section

¹⁰ With the exception of specific provisions in other rules which allow for the AR to be consulted and its views taken into account

1. governance arrangements,
2. arrangements for financial management and control, and
3. systems and processes for risk management and internal audit

in order for it to be assured that the regulatory body is in compliance with section 28.

This information may be provided by reports from the board of the regulatory body which oversees these arrangements or a committee (such as an audit committee) within the regulatory body. It would not be “reasonably necessary” for assurance that this information contains minute detail or evidences day-to-day adherence to these arrangements.

Unless there are reasonable grounds for questioning the information provided by the regulatory body, the AR should accept it as sufficient for it to be confident of the regulatory body’s compliance¹¹.

It is therefore highly desirable that each AR and its regulatory body endeavour to agree a protocol for the provision of information, which sets out:

1. what information must be provided,
2. how often,
3. in what form; and
4. the methods by which the AR may seek further information, clarification or detail where appropriate.

The publication of this protocol would be in compliance with the better regulation principle of transparency and support the principle of consistency.

As set out above, if the AR and regulatory body are unable to agree on whether any information is “reasonably necessary”, this must be referred to the LSB under Rule 14(2) before any further action is taken.

It is recognised that there may be circumstances in which the AR must intervene in regulatory functions in order to ensure compliance with Section 28 of the Act. It is expected that this will be exceptional, arising only when the regulatory body becomes ineffective or ceases to operate within the ambit of the Act or the IGR and, due to delegation, the issues fall outside the AR’s control.

As the oversight regulator the LSB will work with the AR to remedy the situation and recognise the ultimate responsibility borne by the AR. For example, the LSB may provide written authorisation under Rule 16(1)(c) for any action by the AR which would otherwise constitute a breach of (any of) the rules. ARs should also note the saving provisions in Rule 16(1)(a)-(b) that any act required for the residual role or by primary legislation does not constitute a breach of the Rules¹².

¹¹ See Rule 3(2)(a)

¹² Please refer to the Guidance on Rule 16: Saving Provisions.

Retaining a Role as otherwise Required by Law

This provision recognises that an AR may have a legal role in regulatory functions beyond its obligations under the Act.

For example:

- Some ARs are governed by Royal Charters which can only be amended on application by the AR to the Privy Council. Where the amendment involves regulatory arrangements¹³, the AR's involvement is therefore "otherwise required by law". However, the AR must limit their role to only that which is legally necessary. If the amendment relates to the arrangements under which the AR has delegated its regulatory functions, the LSB will need to be involved and will ultimately need to approve the changes to those arrangements under Schedule 4, Part 3 of the Act. If the amendment relates to matters which have been delegated to the regulatory body, the AR must not influence the substance of the application insofar as it relates to those matters - these decisions must be made by the regulatory body. Again, the LSB will need to be involved and will ultimately need to approve the changes under Schedule 4, Part 3 of the Act.
- It is highly desirable that the regulatory body has its own legal personality for the purposes of compliance with Rule 1: Overarching Duty¹⁴. However, if this is not the case, the AR may be the named party to any contract and some matters arising from that contract, such as legal claims, will necessitate the AR's involvement.
- If the regulatory body falls into non-compliance with the IGR and the AR does not remedy this, the LSB can issue directions under Section 32 of the Act. These directions will be issued to the AR, who will then be obliged to ensure that its regulatory body complies with them.

This provision also recognises that there may be legal obligations under other legislation which necessitate the AR's involvement. If it is not agreed by the regulatory body that the AR's involvement is legally required, the matter must be referred to the LSB under Rule 14(2) before any action is taken.

Informing of Decisions or Arrangements which may undermine the Regulatory Body

Compliance with this section requires the AR to communicate with the regulatory body when it makes a plan which may undermine the regulatory body's ability to discharge regulatory functions in accordance with Section 28 of the Act. In seeking to comply with this section, the AR must consider whether any decision, plan or arrangement it makes may undermine the efficacy of the regulatory body or require the regulatory body to discharge regulatory functions in a way which may undermine the regulatory objectives or be inconsistent with the better regulation principles. If the decision, plan or arrangement may reasonably be considered likely to undermine the discharge of regulatory functions then the AR must inform the regulatory body immediately.

¹³ Changes to regulatory arrangements require LSB approval in accordance with Schedule 4, Part 3 of the Act. Please refer to the separate LSB Rules and Guidance on Rule Change Applications.

¹⁴ Please refer to the Guidance on Rule 1: Overarching Duty

Examples would include:

1. A management decision made by the AR which negatively affected the resources of the regulatory body, as it is reasonably likely that this would curtail the regulatory body's ability to "act in a way which [it] considers most appropriate for the purpose of meeting [the regulatory] objectives".
2. An arrangement put in place by the AR which negatively affects public confidence in the regulator as a whole as this may undermine the regulatory body's ability to discharge its functions in a way which protects and promotes the public interest.

Compliance with this section will enable the regulatory body to:

1. Take whatever preventative action is available to it to mitigate the impact of the decision, plan or arrangement so that it may continue to comply with Section 28 of the Act,
2. Work with the AR to see if there may be a more favourable alternative, or
3. If neither of the above are sufficient and the risk is significant, contact the LSB for advice.

Rule 3 - Provision of Assurance to Approved Regulator

The AR and regulatory body shall cooperate with one another to provide and accept assurance.

Application

This rule applies only to ARs who have delegated their regulatory functions to a regulatory body in accordance with Rule 2.

Relationship with Other Rules

This rule has a particularly close relationship with Rule 2: Duty to Delegate.

- Subsection (1) of this rule obliges each regulatory body to provide assurance to the AR and is reciprocal to the duty of the AR to retain only an assurance role in regulatory functions under Rule 2(2).
- Subsection (2) of this rule limits the ability of the AR to require more information (and the use of that information) and follows the provision in Rule 2(2) that the AR must only retain a role which is "reasonably necessary" to be assured of the regulatory body's compliance. It would not be reasonable to question the information supplied without proper grounds or to require information which would undermine the regulatory body's independence or effectiveness.

This rule further relates to those other rules in the IGR which, by delegation, the regulatory body has assumed responsibility for as it must provide sufficient information to the AR about its compliance. This includes:

- Rule 6 – The regulatory body will have responsibility for ensuring the knowledge and compliance of its employees and board members
- Rule 7 – The regulatory body must ensure that its board consists of a lay majority with a lay chair
- Rule 13 – The regulatory body must ensure that it has systems in place to monitor compliance, respond to requests for information and report issues of non-compliance when necessary.

Compliance

This Rule is divided into two parts:

1. Subsection (1) places a duty on the regulatory body (as a part of the AR) to provide sufficient information to the AR for the AR to be assured that regulatory functions are being discharged in compliance with Section 28 of the Act.
2. Subsection (2) places limits on the AR's right to require further information and the use of information received for assurance purposes.

(1) The Regulatory Body's Duty to provide Sufficient Information for Assurance

In order to comply with this section, each regulatory body must cooperate with its AR to provide the information needed for the AR to be confident that the regulatory body is discharging regulatory functions in accordance with Section 28 of the Act.

It is not purely for the regulatory body to determine what information is required:

- If the AR requests information, its need for which can be justified on reasonable grounds, the regulatory body should provide it.
- The regulatory body should equally volunteer information when of the view that it is reasonable that the AR should be aware of this information to be assured of the compliance of the regulatory body.

In order for the AR to be "assured" of the regulatory body's compliance, it must also be confident that, if there were an issue of non-compliance, it would be informed of the issue and the actions to be taken to remedy this. The regulatory body must therefore provide the AR with sufficient information about issues in its discharge of regulatory functions.

Each AR and regulatory body should refer to the Guidance under Rule 2 regarding what information will be necessary for assurance and how this information should be provided.

(2) Limits on Requests for Further Information & Use

There are three limitations placed on each AR in subsection (2):

1. it may not question the information received without reasonable grounds,

2. it must not require information which may undermine the independence or effectiveness of the regulatory body; and
3. it must not use the information received for representative functions.

1. Not to question assurance without reasonable grounds

It is strongly recommended that each AR and its regulatory body agree and publish a protocol which sets out how and what information is to be provided by the regulatory body¹⁵. If this has been carried out and is adhered to, there should be consistency about what information the AR receives, how often and in what form which will significantly reduce the likelihood of reliance being placed on this provision.

The regulatory body must assess what information is reasonably necessary for the AR to be assured of compliance with section 28 of the Act, and then provide that information under Rule 3(1). In the event that an AR deems it to be insufficient (either incomplete or questionable), it may request further information (i.e. “question” what has been received) *only* if it has reasonable grounds to do so.

Whether the AR has “reasonable grounds” is not a subjective assessment. The AR must not request information unless it can be objectively justified, nor can the regulatory body provide the information unless it can be objectively justified. The LSB will pro-actively seek assurance that these provisions are being properly followed¹⁶, in particular the LSB may request that the AR and regulatory body provide the written correspondence setting out the basis for the request and agreement to it.

Examples of when the AR would have reasonable grounds to question the information provided include:

- where the level of detail is inadequate for the AR to comply with other statutory obligations,
- where the information is materially inconsistent with other information it has received from the regulatory body or from other reliable sources, or
- where the information indicates that there have been issues of non-compliance with delegated duties which have not been disclosed to the AR.

It would not include information which suggests that the regulatory body has a different view on how to meet the regulatory objectives or how to uphold the better regulation principles than the AR (as these are assessments which have been delegated) unless that view appears to be outside the range of reasonable responses. This is a very high bar and is likely to apply only in the exceptional circumstances where the regulatory body appears to be discharging its functions in a way which no reasonable person, acting reasonably, would.

In order for the regulatory body to assess whether the information requested should be provided, the AR must communicate its grounds for making the request. If the regulatory body agrees, it should provide the information. If it does not, the parties should endeavour to discuss

¹⁵ For more detail, please refer to the Guidance on Rule 2: Duty to Delegate

¹⁶ E.g. by requests for information under Rule 13: Candour about Compliance

and reach an agreement, failing which they will have to refer the dispute to the LSB under Rule 14(2) and the information must not be provided until the LSB responds.

An example of how to comply with this section in stages:

1. The AR and its regulatory body agree what information must be provided, by whom, in what form, how often and how to consider further or ad hoc requests. This agreement is published in the form of a protocol.
2. The regulatory body provides information under the protocol in the specified time and form.
3. The AR assesses that information and either deems it to be sufficient or insufficient for it to be assured of compliance with Section 28 of the Act.
4. If it deems it insufficient, the AR follows the provisions in the agreed protocol for making further requests for information. This includes setting out in writing what it considers to be reasonably necessary, why and the grounds for questioning the adequacy of what the regulatory body has already provided.
5. The regulatory body reviews this and (again following the protocol for these requests) responds in writing; either agreeing the grounds and providing the information requested or not agreeing the grounds.
6. If the grounds are not agreed, the parties attempt to reach an agreement, or a middle-ground (e.g. redacted or reduced information). This agreement is recorded and the information is provided.
7. If no agreement is reached, the dispute is referred to the LSB under Rule 14(2). No further information is provided until this is resolved.

2. Not to require information which may undermine the independence or effectiveness of the regulatory body

It is recognised that there will be situations in which the interests or priorities of the AR and its regulatory body diverge. This section is intended to prevent the requirement on the regulatory body to provide assurance being misused in such situations.

Examples of requirements for information which would undermine the regulatory body's *independence* would include requirements targeted at issues in dispute between the parties relating to the IGR or other matters affecting their separation, e.g. disputes between the parties about the IGR which have been referred to the LSB for clarification under Rule 14(2).

Examples of requirements for information which would undermine the regulatory body's *effectiveness* would include overly onerous, repetitive or duplicative requirements which would impair the regulatory body's ability to execute its duties on a day-to-day basis, unduly divert it away from pursuing its legitimate strategy or otherwise require it to allocate resources to the detriment of effective regulation.

3. Not to use information for representative purposes (until so received or published)

This provision creates a “Firewall” to prevent information received by the AR for its residual role being used for its representative functions.

To ensure compliance with this section, the AR should consider carefully which persons are party to the assurance information, their obligations in respect of its use and how to prevent the dissemination of the information more widely within its organisation or outside of it.

Under this provision, the prohibited ‘use’ of information for representative purposes includes situations where the data itself (e.g. the report) has not been shared. If the knowledge of the contents of the document is used (either by the individual who was privy to it, or by another to whom it has been communicated) in any way for representative purposes, that will be in breach of this provision.

In pro-actively monitoring compliance, the LSB would expect each AR to be able to evidence the safeguards put in place to prevent the misuse of information received for assurance purposes.

Rule 4 - Regulatory Autonomy

The regulatory body shall decide how to regulate free from influence by the AR.

Application

This rule applies only to ARs who have delegated their regulatory functions to a regulatory body in accordance with Rule 2.

Relationship with other IGR

This Rule follows on from Rule 2: Duty to Delegate. After delegation, the regulatory body assumes responsibility for compliance with Section 28 of the Act. This includes making assessments; i.e. of how to meet the regulatory objectives and have regard to the better regulation principles. Subsection (1) of this rule makes clear that those assessments now fall to the regulatory body.

Compliance

The regulatory body must act independently without influence from the AR when:

1. assessing *how to* comply with section 28 of the Act, and
2. determining its structure, strategy and any amendments to the regulatory arrangements.

(1) Assessing how to Comply with Section 28 of the Act

Section 28 is an outcome-focused, qualitative duty. It essentially requires that the discharge of regulatory functions follows the regulatory objectives and is conducted in a manner which is transparent, proportionate, consistent and targeted only at cases in which action is needed¹⁷.

As such, the manner of compliance is based on an assessment of *how to* regulate to achieve this. This assessment is for the regulatory body, it is not open to the AR to influence or challenge this assessment¹⁸.

¹⁷ The better regulation principles.

¹⁸ other than in the limited circumstances allowed under Rule 3: Provision of Assurance to AR, please refer to the Guidance on this Rule.

(2) Determining Governance & Structure, Priorities & Strategy and Amendments to Regulatory Arrangements

In order for the regulatory body to execute its assessment of how regulatory functions should be discharged to comply with Section 28, it must have autonomy over all of the constituent parts. This section of the Rule defines those parts as:

1. Governance and Structure
2. Priorities and Strategy
3. Amendments to Regulatory Arrangements

It makes an exception only when the regulatory body chooses to carry out a consultation, in which case the response by the AR may be taken into account.

Governance & Structure

Determining its own governance and structure, essentially requires that the regulatory body has control over its constitution including;

- its hierarchy,
- its decision-making processes,
- the make-up of its board(s) and committee(s),
- election of members,
- the division of power between those bodies and its executive,
- its conduct rules, and
- terms of reference for its bodies.

In order to comply with this section, each AR must carefully consider its own arrangements and the extent to which these include or dictate any of the above. Where they do, changes must be made so that control is passed to the regulatory body.

For example, if an AR has provisions in its constitution about the election of members of the regulatory board or recruitment to senior positions in the regulatory body, this must be removed or amended so that sole control lies with the regulatory body itself.

It is expected that once the AR has implemented the necessary changes (if any) it will have no ongoing role, though the regulatory body's governance and structure may be subject to regular revision by the regulatory body.

Priorities & Strategy

Independently determining its priorities and strategy essentially requires that the regulatory body decides its own strategy and business plan. It is for the regulatory body to determine

what it should prioritise at any given time and how best to operate to meet those priorities. For example, the regulatory body may choose to focus on price transparency or updating certification requirements. In making these determinations, the regulatory body must work towards the regulatory objectives and observe the better regulation principles.

The LSB would expect any significant changes or new ventures to be subject to a consultation which includes the AR. However, beyond the AR's right to respond to such a consultation, it should have no further influence on these decisions.

Amendments to Regulatory Arrangements

The regulatory body should have sole control over regulatory arrangements (as defined in the IGR) including any revisions or amendments. It follows from the regulatory body's autonomy in determining its priorities and strategy under subsection (2)(a), that it must also have autonomy to make any changes necessary to execute that strategy without influence from the AR.

In particular, it should be the regulatory body (not the AR) who drafts the application notice to the LSB for a Rule Change, setting out the context and policy rationale for the amendment as well as the justification for the change. It should be the regulatory body that submits the application and the LSB will recognise that it acts with the delegated authority of the AR.

Rule 5 - Prohibition on Dual Roles

No person may have a material role in both representative and regulatory functions

Application

This rule applies only to ARs who have delegated their regulatory functions to a regulatory body in accordance with Rule 2.

Relationship with Other IGR

This rule stands alone, though it complements and follows on from Rule 1: Overarching Duty.

A person engaged in services which are shared between the AR and regulatory body under Rule 11: Shared Services is unlikely to be in breach of this rule as they will not be involved in either regulatory or representative functions in a "material way" (if the provisions of Rule 11 have been correctly complied with).

Compliance

Compliance with this rule is made up of two (overlapping) parts:

1. No person may be involved in a *material way* in both representative and regulatory functions; and

2. No person who is *materially involved* in representative functions may be a member of the board which makes decisions about the exercise of regulatory functions.

The starting point for compliance is to identify those individuals who are involved in a *material way* or *materially involved* with representative functions, and then ensure that those persons do not become involved in a *material way* in regulatory functions (including by joining the board which controls those functions).

Involved in a “Material way” or “Materially involved” in Representative Functions

In order to assess whether an individual is affected by this provision, the AR should consider roles on a case-by-case basis. The AR should ask whether a reasonable person could consider that their representative role may prejudice their judgment in a regulatory role in any way. It should be noted that this covers individuals “whether remunerated or not” and so applies to elected or voluntary positions as well as employees.

There will be cases in which the materiality of the role is clear, such as a member of a decision-making committee or an individual elected to represent a particular group of regulated persons.

There may be some cases in which the materiality of the role is less clear. The AR must carefully consider the level of representative involvement the role requires and whether that involvement could lead to a reasonable impression of a conflict of interest. For example, an individual working in a general administrative capacity limited to processing documents, copying and filing is unlikely to have a material role, whereas the personal assistant to a senior executive for the AR is likely to have a material role.

Avoiding Dual Roles

It will be necessary to assess any person who applies for a role in regulatory functions, whilst holding another position with the AR. Records should be made of the decisions in relation to each role and how those decisions were reached. The AR should cooperate with the regulatory body in providing this information when required. The regulatory body should also consider whether their application process (both for employment and to elected or voluntary positions) covers questions about any representative role and, if not, they should amend it accordingly.

Rule 6 - Individual Conduct

The AR is responsible for the knowledge and compliance of each individual with a role within regulation or which may affect regulation.

Application

This rule applies to every AR.

Relationship with other IGR

This rule relates to all other rules and the arrangements in place under them. Individuals should have knowledge of the rules and arrangements and act in compliance with them.

Each AR should note the particularly close relationship between this rule and Rule 13: Candour about Compliance. In order for the AR to comply with its obligation to remedy any issues relating to compliance with the IGR or, failing this, notify the LSB, the AR must be aware of every such issue. This relies on individuals complying and consistently internally reporting any issue which comes to their attention.

Compliance

Whilst this rule is focused on individual knowledge and conduct, responsibility for ensuring compliance rests on the AR. It is for the AR to put in place effective systems to ensure that relevant individuals are: firstly, aware of the IGR and arrangements and, secondly, comply with them. The overarching duty applies to this rule and so it is expected that responsibility for individuals working for the regulatory body will primarily rest with that body.

This Rule applies to individuals with:

- a role in regulatory functions; or
- a role which may reasonably be considered likely to affect regulatory functions.

Therefore individuals working solely within representative functions will be affected only if their role may reasonably be considered likely to affect regulatory functions.

Although this rule does not apply to roles which are unlikely to affect regulatory functions, the AR should be aware of its overarching duty under Rule 1 which may include arrangements for ensuring that these roles do not infringe or undermine the separation of regulatory functions.

Individuals with a Role (whether remunerated or not)

This rule is limited to individuals “with a role” in regulatory or representative functions which may reasonably be considered likely to affect regulatory functions. Note that the inclusion of “whether remunerated or not” means that the AR is not only responsible for its employees, but also for board members or other officer-holders.

Whether an individual has “a role” is a question of fact and degree. The AR should assess whether the rules, arrangements or any part thereof will have a bearing on what the individual does (or does not do). For example, an individual employed in IT support (whether shared or

for one or other function) may not “have a role” under this rule, whereas a board member with decision making powers regarding the allocation of resources is likely to “have a role”.

The LSB expects each AR to identify which individuals are caught by this rule, and keep this under review as their roles and responsibilities change.

Role which may affect Regulatory Functions

It should be straightforward to identify, in accordance with the above section, which individuals have a role in regulatory functions.

However the rule also applies to other roles which “may reasonably be considered likely to affect regulatory functions”. The LSB recognises that there may be persons (both employed and elected) working for the AR in solely representative functions whose roles have no bearing on the regulatory functions.

These IGR go only to the separation and independence of the regulatory functions. If the AR considers that any part of these IGR or the arrangements made under them may reasonably affect the way a role is carried out, then the individual in that role should be aware of and comply with the IGR.

It is expected that persons occupying oversight or senior decision-making positions for the AR will be included, whereas persons working on ancillary representative functions only, may not be.

It should be noted that the application of this rule is distinct from the application of Rule 4: Prohibition on Dual Roles, which affects individuals “involved in a material way” in regulatory or representative functions.

Awareness & Compliance

There are two aspects to the obligation, the AR must *ensure* that every individual:

1. is *aware of* the IGR and arrangements; and
2. *complies* with them.

Each AR should note that the obligation is to “ensure” the individuals’ awareness and compliance which is a high standard. The AR must do enough to be confident at all times of the relevant individuals’ knowledge and compliance.

Awareness

Ensuring the awareness of relevant individuals is a matter of providing appropriate and comprehensive training. The regularity and form of the training is a matter for the AR. To

ensure that relevant individuals are continuously aware of the IGR and any arrangements made under them is likely to require:

- initial training for persons entering the organisation or moving within the organisation
- update training whenever there is a change to the IGR or arrangements
- refresher training at regular intervals, to be determined based on the scale and scope of the organisation and its operating environment
- training and supportive materials to be available to relevant individuals at all times
- a clear route for assistance when required.

In pro-actively seeking assurance of compliance with this rule, the LSB would expect the AR to be able to produce training materials for each course and logs of dates the courses were provided, attendees and requests for assistance. The LSB would also expect knowledge of the IGR and arrangements to form part of the role description and the individuals' objectives, it may also be included in appraisals.

Compliance

The compliance of individuals relies on effective mechanisms for the AR to:

1. monitor and be notified of issues with compliance; and
2. enforce relevant individuals' compliance when this is necessary.

The Guidance under Rule 13: Candour about Compliance, addresses what is likely to be required for each AR to remedy or report issues of non-compliance. This includes having arrangements in place for individuals to internally report any such issues which come to their attention.

When an incident of non-compliance by an individual is reported to the AR, it must be in a position to take effective action to remedy this. With respect to employees, disciplinary or similar internal procedures may be sufficient.

With respect to Board members or other officer-holders, the AR must give careful consideration to how it can enforce compliance. The LSB expects this will involve appropriate and enforceable provisions in the organisation or board's constitution or terms of appointment for the individuals, or an equivalent enforceable procedure which applies to these positions.

In pro-actively seeking assurance, the LSB will require the AR to provide evidence of the procedures adopted for ensuring and enforcing compliance.

Rule 7 - Governance: Lay Composition

Regulation should be predominantly governed by lay persons.

Application

This rule applies to every AR.

Relationship with other IGR

This rule stands alone, however (as with all other IGR) the Rule 16: Saving Provisions apply. Therefore, if a non-lay chair is required by primary legislation, this will not be a breach due to Rule 16(1)(b).

Equally if there is some other reason why an AR cannot comply with one or both parts of this obligation, it may apply to the LSB for written authorisation under Rule 16(1)(c). Each AR should note that authorisation is only likely to be given if compliance is clearly impracticable.

Compliance

This rule applies to the “board or equivalent body which makes decisions about *how to exercise* regulatory functions”. It is concerned only with the decision-making body in control of regulatory functions. Therefore where regulatory functions have been delegated in accordance with Rule 2: Duty to Delegate, the obligation for a lay majority and lay chair affects the board of the regulatory body only.

This rule applies to every AR. For an AR with only regulatory functions, it is likely that this will be the senior decision-making body of that organisation.

There are two parts of this obligation. The board, council or committee must:

1. be comprised of a lay *majority*, and
2. have a lay *chair*.

It should be noted that both requirements must be met every time that body is making a decision about how to exercise regulatory functions. The AR (or regulatory body, where the functions have been delegated) must ensure that there is a majority of lay members and a lay chair, each time the body meets and in particular every time a decision about regulatory functions is taken.

It is recognised that not all members of the board may be required or available for every meeting, but the AR must take steps to ensure that there is always a lay (acting) chair and a lay majority. It is likely that this can be achieved by appropriate mechanisms in the procedure for such meetings, such as including a provision for a lay member to act as chair in the absence of the (official) chair of the board and including the lay majority as a requirement for the meeting to be quorate.

“Lay Person” is defined in the Act as, essentially, a person who is not and has never been authorised to conduct any reserved legal activities¹⁹.

¹⁹ Please refer to full definition at Schedule 1, para 2(4) of the Act

Rule 8 - The Regulatory Board: Appointments & Terminations

The regulatory body shall independently appoint, appraise, remunerate and terminate the members of its board.

Application

This rule applies only to ARs who have delegated their regulatory functions to a regulatory body in accordance with Rule 2.

Relationship with other IGR

This rule stands alone, but (as with all other rules) the Saving Provisions apply.

Compliance

In order to comply with this rule, the AR must have no role, nor otherwise influence the regulatory body's decisions about the appointment, reappointment, termination, remuneration and appraisals of members of its board (or equivalent body).

The procedure must be carried out and the decisions must be made independently by the regulatory body. The regulatory body may choose to involve other external persons where appropriate, such as those on the panel for appointment of the Chair, but must not involve the AR.

Must not be "Involved in"

The AR will be "involved in" the appointment, reappointment, termination, remuneration and appraisals of members of the regulatory board if it takes any part (at all) in those processes or the decisions about the procedure to be followed.

For example, if an employee or board member of the AR were to attend a recruitment panel (even without a vote) for a member of the Board, this would be involvement in the procedure and would be in breach of this rule.

Must not otherwise Influence

If the AR expresses a view, whether formally or informally, to the regulatory body or in public about the appointment, re-appointment or termination of a particular board member, or their appraisal or remuneration, this may amount to "otherwise influencing" these decisions depending on the circumstances.

In order to comply with this rule, each AR should be circumspect about any comment on a member of the regulatory board outside its response to a formal consultation. This is particularly important when the regulatory body is about to begin an appointment or re-appointment procedure or when any of these procedures are underway.

Rule 9 - Regulatory Resources

Regulation shall have the resources it requires to be effective.

Application

This rule applies to all ARs.

Relationship with other IGR

For ARs with both regulatory and representative functions, this Rule has a particularly close relationship with Rule 10: Regulatory Budget. This essentially specifies that it is for the regulatory body to determine what resources are “sufficient” for the efficient and effective discharge of regulatory functions.

Compliance

In order to comply with this Rule, each AR must assess what resources are reasonably required to exercise its regulatory functions *efficiently* and *effectively*. It must then allocate those resources to regulatory functions. For an AR who has delegated its regulatory functions, this assessment will be carried out by the regulatory body.

The limitation that it is only those resources “reasonably required” reflects the better regulation principles of proportionality and targeting action only at cases where action is needed. The resources will be “reasonably required” if regulatory functions are being discharged in accordance with these principles.

The requirements that the resources are provided for regulatory functions to be “efficiently” and “effectively” discharged should be given their natural meaning. The resources should be supplied for the discharge of regulatory functions to meet their objectives, without excess or unnecessary cost.

Rule 10 - Regulatory Body Budget

It is for the regulatory body to determine and allocate the resources required for regulatory functions.

Application

This rule applies only to ARs who have delegated their regulatory functions to a regulatory body in accordance with Rule 2.

Relationship with other IGR

This rule expands upon Rule 9: Regulatory Resources but applies only to ARs with both regulatory and representative functions, who have delegated their regulatory functions to a separate body.

Whilst Rule 9 obliges each AR to allocate sufficient resources to regulatory functions, this rule places decision-making power over the budget (i.e. the “sufficient resources”) and allocation of funds on the regulatory body.

It should also be noted that this rule may affect Practising Certificate Fee applications, reference should be made to Section 51 of the Act and the separate Rules and Guidance on this.

Compliance

To comply with this rule, the regulatory body should independently carry out its own budget process in accordance with its priorities and strategy.

Once the budget has been determined by the regulatory body, it will then form part of the PCF application²⁰. It should be noted that, by Rule 10(3), the AR cannot influence the budget proposed by the regulatory body beyond providing its views if the regulatory body carries out a consultation. The AR cannot approve or reject the proposed budget from the regulatory body, though it may seek further information under Rule 3(2)(a) where it has reasonable grounds to do so.

When the PCF has been approved by the LSB, it will be for the regulatory body to determine how to allocate the resources it receives from this, and any other source, without influence from the AR.

Rule 11 - Shared Services

The AR and Regulatory Body must not share services unless specific requirements are met.

Application

This rule applies only to ARs who have delegated their regulatory functions to a regulatory body in accordance with Rule 2.

Relationship with other IGR

This rule complements Rule 1: The Overarching Duty. If an AR and its regulatory body share any service, it must be in accordance with the provisions of this rule to be deemed to be in compliance with the overarching duty, i.e. an arrangement for separation of regulatory and

²⁰ subject to the separate practising fee rules, guidance and procedures

representative functions which is as effective as reasonably practicable and consistent with Section 28 of the Act.

Compliance

In order for an AR and its regulatory body to share services:

1. they must be in agreement that this satisfies the factors listed under subsection (1); and
2. the services themselves must be provided to the regulatory body on terms (at least) as favourable as the services are provided to the AR.

Agreement regarding Shared Services

The requirement that an AR and regulatory body must agree about shared services operates on two levels. Firstly, considering the service in principle (e.g. office space, IT or HR support) and, secondly, looking at the detail of the exact service which they propose to share.

They must agree that:

1. it does not undermine or otherwise infringe the separation of regulatory and representative functions;
2. it is effective and appropriate for the regulatory body to discharge its regulatory functions; and
3. it is reasonably necessary to be effective and cost efficient.

In order to comply with this section, the LSB would expect these assessments to be undertaken regularly. At minimum this would include at the point that the service is first contracted and then, again, on any renewal or significant variation to the terms of that service. In pro-actively seeking assurance, the LSB may request the documentation containing the agreement to share services and assessments of how these services comply with the requirements of this section.

1. Sharing the Service does not undermine or infringe the Separation of Regulatory and Representative Functions

In order for the shared service not to undermine the separation of functions, the AR and regulatory body must consider carefully what areas will, by the sharing of this service, necessarily overlap and any risks that this might create in terms of compliance with the IGR or to separation more generally.

For example, if the AR and regulatory body propose to share office space, they should consider the extent to which the proposed space will keep their personnel, files and IT systems separate. If, for example, by sharing facilities there was a risk of information being inappropriately shared between the two bodies, then the service would not be in compliance

with the provision. If, however, the shared office space provided for completely distinct working areas and facilities, it may be in compliance.

The AR and regulatory body should take into account other linked matters, such as whether they would have a single or separate mail addresses and facilities and whether they would have shared meeting rooms. Where there is overlap in the use of the shared service, they should consider carefully how any risks generated by this may be effectively mitigated.

There are some services the sharing of which, by their nature, would undermine or infringe separation. This would include services which necessarily involve the mixing of information, documentation or correspondence, such as a shared printer/photocopier or a shared single DX number.

The LSB would expect a full assessment including a risk assessment relating to IGR compliance to be undertaken by both the AR and regulatory body at the time of first contracting and at the point of any significant change.

2. Sharing the Service is Effective and Appropriate for the Regulatory Body to Discharge its Functions

Whether or not the proposed service meets this requirement is primarily a matter for the regulatory body to determine, however they should seek the agreement of the AR to that assessment if the regulatory body is of the view that the service is effective and appropriate.

The regulatory body should consider its own requirements in relation to the service and whether the proposed shared services meet these requirements. For example, if an AR and regulatory body were proposing to share IT services, the regulatory body should first assess what it requires of IT services to operate effectively including; the speed of services, the amount of technical support, the number of computers, options for remote working and level of security.

The regulatory body should then look closely at the proposed service to assess whether it meets or exceeds all of its requirements. Only if this is satisfied, may the regulatory body and AR agree that the service is effective and appropriate for the regulatory body to discharge its functions.

3. Sharing the Service is Necessary to be Efficient and Reasonably Cost-Effective

This requirement focusses on the efficiency and cost-efficacy of the AR and regulatory body together. The sharing of services between regulatory and representative functions necessarily creates risks to the separation and independence of regulatory functions. To justify those risks, there must be a marked benefit in terms of cost.

In order for the proposed shared service to be *necessary to be efficient and reasonably cost-effective*, it must provide a material cost saving overall. If, for example, the regulatory body is able to obtain the same service by itself elsewhere at a similar level of cost and sharing the service provides the AR with only a small saving, it is unlikely that it is *necessary* to be efficient and reasonably cost effective. Under no circumstances should the regulatory body pay *more* for a shared service than if it contracted independently, irrespective of the saving to the AR.

The LSB would expect both the AR and the regulatory body to obtain quotes for comparable services individually in order to make an informed assessment of whether this provision is met. If there is no material overall cost benefit in sharing the service, it is not open to the AR and regulatory body to share that service.

Services must be provided on (at least) an equal footing

This provision requires that the AR does not receive the service on a preferential basis to the regulatory body and that both the AR and the regulatory body have the same powers and authority under the contract for the service. The regulatory body must be able to enforce the terms of the service provision and alter those terms to suit its requirements as and when necessary.

Compliance with this provision is likely require that either the regulatory body is a party to the contract or is able to enforce as a third party. If only the AR is a party to the contract and the regulatory body cannot enforce compliance without its participation, then this provision will not be satisfied.

Rule 12 - Communication by Persons Involved in Regulation

There should be a direct line of communication between the regulator and key statutory bodies including the Legal Services Board.

Application

This rule applies to every AR.

Relationship with other IGR

This rule supports compliance with all of the IGR by ensuring that issues, including issues of compliance and independence, can be raised directly by persons involved in regulation.

For each AR who has delegated its regulatory functions to a regulatory body, it has a particularly close relationship with:

- Rule 13: Candour about Compliance– the LSB may require information directly from (amongst others) a regulatory body and the regulatory body must directly report to the LSB issues of non-compliance which it cannot resolve.
- Rule 14: Disputes and Referrals for Clarification – the regulatory body may directly refer a matter or dispute for clarification to the LSB.

Compliance

In order to comply with this rule, ARs may not (in any way) inhibit direct contact and communication between the LSB, Consumer Panel, OLC or other ARs and any person involved in the discharge of the regulatory functions²¹.

It should be noted that this rule requires all such *individuals* to be able to contact the LSB directly, therefore a limitation placed purely on, for example, one employee or board member would be in breach of this section if it restricted contact regarding independence or effectiveness issues.

Alternatively if, for example, an AR in any way limits the sharing of certain information regarding the IGR with the LSB, this would be in breach of this section as the LSB acts as the oversight regulator to ensure the independence of regulatory functions. Therefore any restrictions on the sharing of information regarding the IGR with the LSB would potentially prejudice the independence or effectiveness of those functions²².

Non-disclosure agreements are also likely to be in breach of this rule if the information restrained relates, in any way, to the independence or effectiveness of regulatory functions.

Rule 13 - Candour about Compliance

Each AR shall be honest and open with the Legal Services Board about compliance issues.

Application

This rule applies to every AR.

Relationship with other IGR

This is a duty regarding information about compliance with all of the rules. As such, this applies to every other rule affecting the AR.

This rule has a particularly close relationship with Rule 3: Individual Conduct. In order for the AR to provide full information and notify the LSB when necessary, it must ensure that individuals are raising every issue of non-compliance.

The overarching duty²³ applies to this rule, therefore it is expected that the monitoring and responses to requests from the LSB for information will come directly from the regulatory body where they have primary responsibility.

Rule 16: Saving Provisions apply to this rule and so an AR may request written authorisation from the LSB (e.g. an extension to a deadline for providing information to the Board) under Rule 16(1)(c) if they are unable to respond promptly or fully. However it should be noted that

²¹ including those regulatory functions which remain with the approved regulator after delegation, namely assurance of compliance with section 28 of the Act and the delegation itself

²² See subsection (2) of this rule.

²³ Rule 1

it is unlikely that authorisation will be given unless the AR is in a position to explain why it did not have the monitoring in place so that it could respond promptly and fully.

Compliance

There are two aspects to this rule:

1. Responding promptly and fully to requests for information from the LSB
2. Notifying the LSB of non-compliance which cannot be or has not been remedied

Responding to Requests for Information from the LSB

This rule requires the AR to monitor its own compliance so that it is in a position to respond promptly and fully to a request for information from the LSB at any point.

It should be noted that the requirement to respond “promptly” means as quickly as possible, within a maximum period of 10 clear working days²⁴. The requirement to respond “fully” means providing the information requested in full and any further information which is directly relevant.

In devising the arrangements under the IGR, ARs must have regard to this. Systems should be in place for logging and recording compliance matters so that the information is accessible and can be provided when required.

This would include (but may not be limited to):

- Logs of training provided to relevant individuals
- Protocols setting out the separation arrangements and the justification for choosing these arrangements
- Logs of any referrals to the LSB for clarification including the efforts made internally (including between the with a residual role and its regulatory body, where relevant) to resolve the issue
- Records of any disputes referred to the LSB and the discussion between the regulatory body and AR prior to the referral
- Delegation agreements
- Protocols for information exchange between the regulatory body and AR
- Written agreements for any shared services between a regulatory body and AR
- Logs of non-compliance issues, action taken and result²⁵

²⁴ See Glossary

²⁵ See below

Notifying the Board of Non-Compliance

In order to comply with (2) of this rule, each AR must ensure that it is notified of non-compliance issues and remedies these (if possible) within a reasonable time. The AR will therefore need to put in place a system for the internal reporting of issues arising under the rules.

It is expected that this would involve:

- nominating an individual or department to receive reports of issues from individuals
- ensuring all individuals to whom Rule 3 applies are aware of the system for reporting non-compliance
- retaining centralised logs of reports
- escalating the issues to nominated persons involved in the management of the regulator, to consider what remedial action should be taken
- carrying out the remedial action with specified targets to resolve the issue
- recording the action taken and result
- reporting the issue where it cannot be remedied or the remedial action does not remedy it within a reasonable time.

There are two situations in which an AR will be required to notify the board of non-compliance:

1. If the issue *cannot be* remedied within a reasonable time, or
2. If the issue *has not been* remedied within a reasonable time.

Can the issue be remedied?

When the AR first becomes aware of the issue, it should evaluate whether it is possible to remedy it within a reasonable time. For a breach to be “remedied”, it must be undone and prevented from recurring in future. What is a “reasonable time” depends on all the circumstances but is subject to an overall limit of three months.

For example, if in breach of Rule 6: Governance Lay Composition - a decision was made by a regulatory board without a lay majority or lay chair, “remedying” the breach would include that decision and any action taken on it being set aside and the decision being taken again by a properly constituted board. The AR would then need to consider how this error came about and take steps to ensure no recurrence, for example – by update training to members of the board and/or amendments to its procedure for arranging board meetings to ensure a lay chair or majority at every meeting in future.

The AR is required to objectively consider the breach and its consequences to form a judgment as to whether it can be remedied within a reasonable time. It is likely that small breaches of the rules by individuals should be remediable quite quickly, however systemic or long-term breaches are less likely to be remediable within a reasonable time.

If the AR is of the view that the issue cannot be remedied within a reasonable time, it must report it immediately to the LSB.

Has the issue been remedied?

If the AR is of the view that it can remedy the issue within a reasonable time, it should identify what needs to be done and set a date for completion (i.e. the end of the “reasonable time”).

On the date set, the AR must reconsider the issue, the action taken and whether the issue has been remedied.

- If the steps have not been carried out effectively or, for any reason, they have failed to fully remedy the issue, the AR will now be obliged to report the issue to the LSB.
- If the steps have been effective and the issue has been remedied, the AR should ensure it has complete records to provide to the LSB as and when required.

Rule 14 - Disputes & Referrals for Clarification

The LSB may provide clarification to assist with compliance if an AR cannot resolve an issue.

Application

This rule applies to every AR, with the exception of subsection (2) which applies only to ARs which have delegated their regulatory functions to a regulatory body in accordance with Rule 2.

Relationship with other IGR

This rule applies to all issues or disputes arising under the IGR.

Compliance

(1) Voluntary Referral for Clarification

Subsection (1) provides that an AR *may* refer a point arising under the IGR to the LSB which it has been unable to resolve. This provision is not obligatory, it is open to the AR to resolve the issue by another reasonable means. It is advised that if all other reasonable means are exhausted, the AR should refer to the LSB to avoid non-compliance.

It should be noted that it is open to a regulatory body (alone) to refer a matter to the LSB which arises under its delegated duties²⁶.

“Point arising under the IGR”

A “point arising under the IGR” should be given its ordinary meaning. If the matter goes directly to compliance with a rule or the Guidance attached to the IGR, it will fall within this definition. Equally issues over, for example, delegation arrangements or shared services, will fall into the definition.

Where unclear, the question is whether it is a matter that relates to the separation of regulatory and representative functions.

Which the AR has been “Unable to Resolve”

It is for each AR and regulatory body (where applicable) to determine how to comply with the IGR. The LSB will not intervene unless there is a genuine difficulty which cannot be resolved without the assistance of the LSB.

In order to refer a matter to the LSB for clarification, the AR must first make a reasonable effort to resolve the matter itself and be able to demonstrate that effort when the matter is referred. If the LSB is of the view that the effort made was insufficient, it is likely to require the AR to take further steps before providing the clarification requested. It should be noted that the LSB is not obliged to provide clarification under subsection (3).

In relation to smaller issues, such as the lay make-up of a regulatory board, the LSB would expect in most circumstances that an AR will be able to resolve these, if necessary by seeking external advice or assistance. In relation to larger issues, such as the arrangements under Rule 1: The Overarching Duty, the LSB would expect the AR to make a concerted effort at resolution before referral but recognises (particularly during the transition period) that assistance may be required.

(2) Obligatory Referral for Clarification

Subsection (2) provides that an AR and/or regulatory body *must* refer a point arising under the IGR which is in dispute between them *before any further action is taken*. The obligation to refer only arises when the disagreement has evolved into a *dispute* and, at the point of referral, any action in relation to that matter must cease.

“Dispute”

A disagreement between an AR and regulatory body is not a dispute unless, and until, all reasonable efforts at resolution have been exhausted. Each AR and its regulatory body should

²⁶ See Rule 1: Overarching Duty and Rule 12: Communication by persons involved in Regulation and Guidance.

therefore agree a system for attempting to resolve these issues as and when they arise. This may involve an informal discussion, followed by a formal negotiation, followed by referral to an external source for advice. The AR and regulatory body should recognise that urgency may curtail the time available and tailor their resolution process to be as expedient as reasonably possible.

All persons with a role in regulatory functions or which may reasonably be considered likely to affect regulatory functions must be aware of and follow this process in accordance with Rule 6: Individual Conduct. The AR and its regulatory body should ensure that their resolution process is formally set out and available to all such persons, such as by publication of its website(s) and in training documentation.

When a dispute is referred to the LSB, evidence should be provided about the internal resolution process and what (if anything) it achieved. The LSB is unlikely to interfere with any progress in resolving the matter unless it is of the view that it is incorrect and may lead to non-compliance. If the LSB does not receive this information, or finds that no process exists or the process has not been properly followed, the matter is likely to be remitted to the AR and regulatory body to resolve before any clarification is given.

(3) Response by the LSB

The LSB is not obliged to respond to any referral for clarification, whether voluntary under subsection (1) or mandatory under subsection (2). The LSB is more likely to provide clarification if there is clear evidence that all reasonable efforts have been made by the AR and/or the regulatory body to resolve the issue.

When the LSB provides clarification, it is determinative. This means that the AR and/or regulatory body must then accept and follow the clarification, to be in compliance. If the clarification is interim or provisional, it will be expressly indicated that it is not determinative.

Rule 15 - Guidance

This Rule requires ARs to have regard to this Guidance in seeking to comply with the IGR. Under Section 162(5) of the Act, the LSB will have regard to the extent to which an AR has complied with this Guidance when the LSB exercises its statutory functions, including enforcement powers.

Rule 16 – Saving Provisions

No AR will breach the IGR if its action or omission is necessary to comply with its legal obligations or authorised by the LSB

Application

This rule applies to every AR.

Relationship with other IGR

This rule relates to all other rules in the IGR. It provides that an action or omission which, but for this rule, would constitute a breach of any rule in the IGR will not be a breach if it falls within the exceptions in subsection (1).

Compliance

Subsection (1) sets out three circumstances in which an action or omission by an AR (or regulatory body) which appears to breach a rule will not be in breach of that rule:

1. where the action or omission is reasonably necessary for the AR to satisfy its residual role,
2. where the action or omission is required by primary legislation, and
3. where the AR has prior written authorisation from the LSB for the action or omission.

Reasonably Necessary for Residual Role

This saving provision only applies to each AR with both regulatory and representative functions, who has delegated its representative functions and retained a residual role in accordance with Rule 2: Duty to Delegate.

Each AR should refer to the Guidance on Rules 2 and 3 which sets out the parameters of the 'residual role'. Ordinarily, the residual role should be limited to receiving assurance from the regulatory body of compliance with section 28 of the Act²⁷. However, it is recognised that there may be exceptional circumstances in which an AR must intervene to ensure that compliance, i.e. when the regulatory body has ceased to operate within the ambit of the Act or the IGR. This saving provision enables that intervention when it is reasonably necessary.

Each AR should note that reliance on this saving provision is subject to subsection (2). If there is a dispute with the regulatory body about whether the AR's intervention is reasonably necessary, it must be referred to the LSB before any action is taken.

Required by Primary Legislation

This saving provision recognises that there are numerous legal requirements on ARs and those obligations may not always be consistent with their obligations under the IGR. Any AR who relies on this saving provision is advised to notify the LSB in writing of the legislation relied upon for its action or omission.

Carried out with the Prior Written Authorisation of the LSB

This Saving Provision gives the LSB discretion to allow an AR to breach a rule if it can demonstrate good reasons why that breach is necessary. It should be noted that this discretion

²⁷ Or as otherwise required by law

will be used sparingly. The starting point is that each AR must comply with each and every rule in the IGR which applies to it.

If an AR wishes to receive authorisation for an action or omission which would otherwise be breaching the IGR, it must apply to the LSB *before* taking any action. The discretion of the LSB to provide authorisation or refuse to provide authorisation is absolute. The LSB will consider each application on a case-by-case basis. The LSB will expect, at minimum, a strong case for authorising breach supported by clear evidence that compliance with the rule would cause substantial problems for the AR.

The LSB may also provide written authorisation without a formal application when it identifies that this is necessary for a particular AR.

Referring Disputes to the LSB

Subsection (2) provides that “disputes” about the application of any of the saving provisions must be referred to the LSB. This recognises the risk to an AR if it erroneously relies on a saving provision as it will be in breach of the IGR by that reliance. Equally the AR may voluntarily refer the matter to the LSB for clarification under Rule 14²⁸.

Rule 17 - Exemptions

This Rule sets out which of the IGR do not apply to ARs which have only regulatory functions.

All of the IGR apply to ARs with both regulatory and representative functions.

²⁸ Please refer to the Guidance on Rule 14.

Glossary of Terms

Act	The Legal Services Act 2007
AR	Approved Regulator, as defined in Schedule 4, Part 1 of the Act or designated under Schedule 4, Part 2 of the Act
Better Regulation Principles	The principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted
LSB	Legal Services Board – the independent body responsible for overseeing the regulation of lawyers in England and Wales, as defined in and created by Section 2 of the Act.
IGR	Internal Governance Rules
Lay Person	As defined in Schedule 1, para 2(4) of the Act
OLC	As defined in Section 114 of the Act
Regulatory Arrangements	As defined in Section 21 of the Act, except for the arrangements for delegation of regulatory functions to a regulatory body and assurance of compliance with section 28 of the Act, in accordance with Rule 2.
Regulatory Body	A body which has been delegated the regulatory functions of an Approved Regulator, as defined in Rule 2(1)
Regulatory Functions	As defined in Section 27 of the Act, except for functions relating to the arrangements for delegation of regulatory functions to a regulatory body and assurance of compliance with section 28 of the Act, in accordance with Rule 2.
Regulatory Objectives	<p>As defined in Section 1 of the Act, apart from arrangements for delegation of regulatory functions to a regulatory body and assurance of compliance with section 28 of the Act, in accordance with Rule 2.</p> <p>There are eight regulatory objectives:</p> <ul style="list-style-type: none"> • protecting and promoting the public interest • supporting the constitutional principle of the rule of law • improving access to justice • protecting and promoting the interests of consumers • promoting competition in the provision of services in the legal sector • encouraging an independent, strong, diverse and effective legal profession • increasing public understanding of citizens legal rights and duties • promoting and maintaining adherence to the professional principles of independence and integrity; proper standards of work; observing the best interests of the client and the duty to the court; and maintaining client confidentiality
Representative Functions	As defined in Section 27(2) of the Act
Residual Role	As defined in Rule 2(2)
Services	Information technology, equipment, administration, human resources, finance and corporate services, office space and facilities.