

Internal Governance Rules

Enhancing regulatory independence

**LSB decision on revised IGR and supporting Guidance
following November 2018 and May 2019 consultations**

24 July 2019

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Executive summary

1. Following an extensive consultation process, the LSB is revoking the current internal governance rules 2009 (as amended 20 February and 30 April 2014 (IGR) and replacing them with revised IGR and statutory Guidance. The revised IGR and statutory Guidance have been finalised and will come into effect on 24 July 2019. This document sets out the LSB's decisions following the two final consultations in the IGR review process.¹
2. Publication marks the beginning of a 12 month transition period for approved regulators and regulatory bodies to come into compliance with the revised IGR. During this period, the approved regulators and regulatory bodies must make an assessment of their existing procedures and practices relating to the IGR and, where necessary, they must make changes to ensure full compliance with the revised IGR. If it is anticipated that compliance is not feasible within this 12 month period, the approved regulator or regulatory body must obtain the prior written approval of the LSB. Further details on the transition can be found at paragraphs 54 to 62.
3. This document sets out the results of both the November 2018 and May 2019 consultations, the Board's decision and the final revised IGR and supporting Guidance. As we set out during our consultation in November 2017² on our approach to reviewing the IGR, we have revised the IGR with the aims of :
 - a) enhancing the separation and independence of regulatory functions within the current legislative framework;
 - b) providing more clarity to decrease the number of independence-related disputes; and
 - c) making the rules readily enforceable for speedier resolution of issues.

What we did

4. In November 2017, we published a consultation document³ which explored the need for and the aims of our IGR review and suggested high level options for how the internal governance rules could be reformed. Following feedback to this consultation, we

¹ The LSB first consulted on "Reviewing the Internal Governance Rules" in November 2017 and published a decision document in July 2018 setting out its high level decisions in response to that consultation.

https://www.legalservicesboard.org.uk/what_we_do/consultations/open/pdf/2017/IGR_consultation_doc_-_final_version.pdf

² https://www.legalservicesboard.org.uk/what_we_do/consultations/open/pdf/2017/IGR_consultation_doc_-_final_version.pdf

³ https://www.legalservicesboard.org.uk/what_we_do/consultations/open/pdf/2017/IGR_consultation_doc_-_final_version.pdf

published a decision document⁴ that set out several key decisions that would guide the development of a set of revised IGR. These draft proposed IGR were published for consultation⁵ in November 2018. As a result of feedback on the November 2018 consultation, the LSB launched a supplementary consultation in May 2019 with the aim of seeking views on altering elements of certain sub-rules of Rules 4 (Regulatory autonomy), 8 (The regulatory appointments and terminations) and 10 (Regulatory body budget) in the proposed IGR. The reason for this further consultation was that, having listened to stakeholder feedback, the LSB considered that it might be appropriate to replace the term *influence* with *prejudice* in Rule 1 (The overarching duty). This more closely reflects the terminology of Section 30 of the Legal Services Act 2007 (“the Act”). As a result, consequential amendments would be required to Rules 4, 8 and 10 and the May 2019⁶ consultation presented revised Rules and amended Guidance on these three Rules only.

5. We received 18 responses to the November 2018 consultation and 13 responses to May 2019 consultation. A list of the individual respondents is at Annex B and copies of the responses can be found on the LSB website.

Changes we have made

6. The main body of this document discusses the key cross cutting issues raised by the consultation responses and sets out the LSB position on these issues. More detailed summaries of the feedback we received are in the annexes of this document in relation to (i) the proposed rules and the Guidance (Annex C) and (ii) the consultation questions (Annex D). A tracked version of the changes made to the IGR is included at Annex E and a summary of the key changes to the Guidance is included at Annex F.
7. We have made the following main changes to the proposed IGR and Guidance published in November 2018 as a result of the responses to the November 2018 and May 2019 consultations:

- a) **Influence versus prejudice:** We have amended Rule 1 (The overarching duty) to use the term *prejudice* instead of *influence* which is consistent with the wording of the

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https://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/2018/20180724/Consultation%20response%20July%202018.pdf

5

https://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/2018/LSB_consultation_Proposed_Internal_Governance_Rules_Nov_2018.pdf

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https://www.legalservicesboard.org.uk/what_we_do/consultations/open/pdf/2019/LSB_consultation_Proposed_Internal_Governance_Rules_02_May_2019_publication.pdf

Act. This change is a response to feedback from a number of respondents who questioned whether the use of the word *influence* was outside the ambit of the Act. As a result of this change we have made consequential amendments to Rules 4 (Regulatory autonomy), 8 (The regulatory board: appointment and terminations) and 10 (Regulatory body budget) (see below).

- b) **Approved regulators seeking to influence:** We have amended Rules 4, 8 and 10 to make clear that an approved regulator can only seek to influence its regulatory body where this is in exercise of its representative functions, and that it must not prejudice the independent judgement of the regulatory body in doing so. This change follows feedback that the proposed IGR would put an approved regulator with representative functions at a relative disadvantage compared to other stakeholders seeking to influence the regulatory body.
- c) **Constraints on the role of the approved regulator:** We have amended the Guidance to make it clear that Rules 4, 8 and 10 are, like all other rules in the IGR, subject to Rule 2, sub-rule (2) and Rule 16⁷ (Saving provisions). We made this change in response to concerns that the new wording in Rules 4, 8 and 10 could be ultra vires because, amongst other things, it may unduly restrict the role of the approved regulator to a residual one.
- d) **Dual roles:** We have redrafted Rule 5 (Prohibition on dual roles) in two ways:
 - a. to clarify that an individual who is involved in decisions relating to regulatory functions cannot be involved in representative functions, by removing the requirement that this involvement be in a material way; and
 - b. to make it clear that dual roles are permitted where the roles are related to shared services in accordance with Rule 11 (Shared services). This change has been made to address the concerns raised by some respondents who considered that the prohibition on dual roles in Rule 5 would otherwise make shared services impossible.
- e) **Governance: Lay composition:** Rule 7 (Governance: Lay composition) remains unchanged. However, we have changed the Guidance on Rule 7 to be less prescriptive, in that it no longer sets out that a lay majority and a lay chair is required

⁷ Rule 2(2) allows the approved regulator to retain a role after delegating its regulatory function such that it can be assured of compliance with Section 28 or as otherwise required by law and Rule 16 preserves the ability for an AR to do whatever it is required to do by primary legislation.

every time a decision about a regulatory matter is taken. We expect decisions on regulatory matters taken without a lay majority or a lay chair to be ratified subsequently when there is both a lay majority and a lay chair within a reasonable time, either at the next meeting of the board or by correspondence.

- f) **Shared services:** We have changed the emphasis in Rule 11 (Shared services) to make it clearer that an approved regulator with a residual role and its regulatory body may share services, provided they agree and the other conditions in Rule 11 are met.
 - g) A minor cross-referencing error has been corrected in Rule 1, sub-rule (3) regarding the periodic review of arrangements set out in sub-rule (2). The published draft proposed IGR incorrectly referenced sub-rule (1). We have also made other **minor terminology changes** to Rule 2 (Duty to delegate), Rule 3 (Provision of assurance to approved regulator) and to the Definitions. We have amended Rule 4, sub-rule (1) so that the terminology it uses in relation to the regulatory objectives and the better regulation principles reflects more accurately the terminology used in Section 28 of the Act.
 - h) **Length of transition period:** We have extended the transition period from the six months originally proposed to 12 months in recognition of (i) the challenges associated with the timing of budget cycles and the time required to make the necessary changes to current arrangements, particularly in relation to shared services agreements and (ii) that a shorter transition may result in a greater number of requests for short-term written authorisations⁸. Written authorisation can be sought under Rule 16 (Saving provisions).
8. We are grateful to every stakeholder that responded to the three consultations that were part of the current IGR review. We recognise that stakeholders have dedicated time and effort to analysing our proposals and providing us with constructive feedback. We have carefully considered all the submissions received and the issues raised by stakeholders. We want the IGR to work in practice and we recognise that understanding stakeholder's views is critical to the success of the IGR.

⁸ In the consultation version of the IGR and Guidance we referred to 'waivers'. We have standardised the terminology and will from this point onwards use the term 'written authorisation' rather than 'waiver' for any authorisation granted by the LSB under Rule 16 not to comply with any element(s) of the IGR. This does not reflect any change in our policy on the use of such written authorisations as described elsewhere in this document.

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 Legal Services Act 2007 (the Act) to hold regulators across the legal services professions to account.
2. The legal services sector:
 - a) supports the rule of law and access to justice, which are fundamental pillars of a fair society and central to our unwritten constitution;
 - b) 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;
 - c) has 177,000 authorised persons in England and Wales; and
 - d) has an annual UK turnover of over £33 billion and is of major economic importance in its own right⁹.
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 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 regulators¹⁰ which may have both representative and regulatory functions. The Act then gives the LSB responsibility for their oversight¹¹, but only in relation to regulatory functions¹² and, in particular, the separation of those functions from any representative functions which the approved regulator may have.

⁹ Figures are from 2017, source:

<https://www.ons.gov.uk/businessindustryandtrade/business/businessservices/bulletins/uknonfinancialbusinesseconomy/2017provisionalresults>

¹⁰ 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.

¹¹ Part 4 of the Act.

¹² Section 29 of the Act.

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:
 - a) the exercise of regulatory functions by an approved regulator is not prejudiced by its representative functions or interests; and
 - b) decisions relating to the exercise of regulatory functions by an approved regulator are, so far as reasonably practicable, taken independently from decisions relating to the exercise of any representative functions.

The IGR review

6. The IGR were first published in 2009 and amended in part in 2014. In 2017 we launched a full review of the IGR. Since the IGR were introduced evidence from a number of sources has indicated that the rules are not as effective as they could be in securing regulatory independence.
7. In November 2018, the LSB published a consultation on proposed changes to its IGR to enhance regulatory independence.¹³ Regulatory independence is important in legal services because it gives consumers confidence to use legal services, it gives providers confidence to grow and innovate and it gives consumers and society as a whole confidence that regulation is being carried out in the public interest.
8. The LSB's November 2018 consultation set out draft proposed IGR and accompanying statutory Guidance. The consultation was open for 12 weeks and closed on 21 January 2019. We also undertook supplementary activities aimed at exploring the views of stakeholders, in order to inform the consultation. These activities included several stakeholder meetings following the launch of the consultation. We published a combined record of these meetings on 21 December 2018.
9. In May 2019 we published a focussed consultation on elements of the specific sub-rules contained in Rules 4, 8 and 10. Thus consultation ran for six weeks closing on 12 June 2019.

¹³https://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/2018/LSB_consultation_Proposed_Internal_Governance_Rules_Nov_2018.pdf

Analysis of consultation responses by major themes

10. This section contains an overview of cross cutting issues raised in responses to the November 2018 and May 2019 consultations. A more detailed summary of the responses and the LSB's position on the issues raised is included in Annexes C and D.
11. The main cross cutting issues raised by the respondents to the consultations were:
 - a) The use of the term *influence* in Rule 1 (The overarching duty), rather than *prejudice* which is the word used in the Act - and the associated proposed prohibition in the November 2018 consultation document on approved regulator influence in Rules 4 (Regulatory autonomy), 8 (The regulatory board: appointments and terminations) and 10 (Regulatory body budget). Additionally, following the May 2019 consultation, it was argued that we should provide a definition of prejudice in the revised IGR.
 - b) The use of the phrase *seek to prejudice* in the proposed further revisions to Rules 4, sub-rule (3), 8, sub-rule (2) and 10, sub rule (2) as set out in the May 2019 consultation.
 - c) The nature of the residual role of the approved regulator once it has delegated its regulatory functions.
 - d) The limited conditions under which services can be shared as set out in Rule 11 (Shared services) and the perceived tension between the apparent ability to share services on one hand (as described in Rule 11) and the prohibition on individuals holding dual roles in both representative and regulatory functions in Rule 5 (Prohibition on dual roles) on the other hand.
 - e) The difficulties created for the Institute of Chartered Accountants in England and Wales (ICAEW) and the Association of Chartered Certified Accountants (ACCA) by their becoming subject to the full range of the IGR requirements, having previously been carved out of many of the core requirements (such as delegation of their regulatory functions to a separate body as required by Rule 2).
 - f) The LSB's power to make, and its rationale for making, new rules requiring separation of an approved regulator's regulatory functions and representative functions and delegation of the former functions to a regulatory body. In

addition, concerns were raised about the extent to which these rules are consistent with the Act.

- g) The LSB's power to use terminology in the proposed IGR in relation to the regulatory objectives that is different from terms used in the Act, and a further point relating to the role of the IGR in the context of other matters in the Act.
- h) The length of the transition period, which was argued should be longer than the proposed six months. It was also argued that it was unclear as to how written authorisations will be dealt with during this period and subsequently.
- i) Queries regarding how the LSB's on-going assurance of compliance with the IGR (through its regulatory performance framework) will work in practice.

Influence versus prejudice

12. A significant number of respondents to the November 2018 consultation (including for example the Bar Council (BC), ACCA, Association of Costs Lawyers (ACL), Chartered Institute of Legal Executives (CILEx), Chartered Institute of Patent Attorneys (CIPA), Chartered Institute of Trade Mark Attorneys (CITMA), ICAEW, the Intellectual Property Regulation Board (IPReg), The Honourable society of Lincoln's Inn (Lincolns Inn), the Law Society (TLS), objected to the use of the word *influence* in the draft Rule 1 of the proposed IGR. They also submitted that the prohibition in draft Rules 1 (Overarching duty), 4 (Regulatory autonomy), 8 (Regulatory board appointments and terminations) and 10 (Regulatory body budget) on approved regulators' influencing regulatory bodies went beyond what was permitted under Section 30 of the Act, which uses the term *prejudice*.
13. These stakeholders argued that seeking to influence the regulatory body is a legitimate exercise of an approved regulator's representative functions, and the LSB is prohibited from interfering with representative functions by Section 29 of the Act. Respondents said that the approved regulators should not be left in a worse position than third party stakeholders in terms of inability to influence the regulatory body.
14. We recognise that, where the approved regulator has both representative and regulatory functions, the approved regulator has a legitimate role in seeking to influence the regulatory body. In this situation, as the representative body for the regulated profession, the approved regulator may hold key practical experience of how a policy would affect its members or have relevant data or information that

should be considered as part of the decision making of the regulatory body. However, we consider that the IGR should ensure that the approved regulator does not use its approved regulator delegation and assurance relationship (which gives it, amongst other things, a number of contact points and communications channels with the regulatory body which are not available to other stakeholders) to prejudice the independent judgement of its regulatory body.

15. As a result of this feedback, in May 2019 we published a supplementary consultation indicating that the Board was considering replacing *influence* with *prejudice* in the proposed IGR. This consultation presented a re-draft of Rule 1, provided as context for the proposed substantive changes to draft Rules 4, 8 and 10 to remove the prohibition on influence in those rules. The proposed amended Guidance on these rules was also included in the May 2019 consultation.
16. All respondents to the May 2019 consultation commented on the LSB proposal to replace the term *influence* with *prejudice* in the draft Rule 1. The majority welcomed the intent to more closely reflect the wording of the Act but one respondent was not supportive of the change of term as it considered this to be a weakening of the rule. Another respondent proposed that a definition of prejudice be included in the proposed IGR, as exists in the current IGR. Other respondents raised concerns about the LSB's proposal in the May 2019 consultation to use the phrase *seek to prejudice* in Rules 4, sub-rule (3)b, 8, sub-rule (2) b and 10, sub-rule (2)b including the view that this wording goes beyond the Act and is ambiguous.
17. Having considered all the views expressed, we have amended Rule 1, sub-rule (1) so that the approved regulator is obliged not to let the exercise of its regulatory functions be prejudiced by any representative functions it may have. In addition we have removed the reference to *interests* in draft Rule 1, sub-rule (1) and 1, sub-rule (2)(a) which is not in the Act and which one respondent pointed out was undefined. In response to the request to define prejudice in the IGR, we do not consider that it is necessary to define this word and we consider that the definition of prejudice in the previous IGR contributed to lack of clarity in the IGR in the past. We intend that prejudice as used in the revised IGR should have its ordinary meaning.
18. In changing from influence to prejudice in Rule 1, we consider that there remains a need to mitigate the potential risk of the inappropriate use of or reliance on the approved regulator's position, given its unique relationship with the regulatory body, which could otherwise put it in a more powerful position than other stakeholders

when seeking to influence the regulatory body. We have therefore made amendments to Rules 4, 8 and 10 to reflect the fact that the versions of these rules on which we consulted in November 2018 would no longer be consistent with the revised version of Rule 1. The amended versions of Rules 4, 8 and 10 set out in the May 2019 consultation acknowledge that the approved regulator may *seek* to influence the regulatory body's decisions on its strategy, appointments, budget etc, but only in the exercise of its representative functions and it must not prejudice the independent judgement of the regulatory body in doing so. In response to the concerns about the use of the term *seek to prejudice* in Rules 4, sub-rule (3), 8, sub-rule (2) and 10, sub-rule (2), we have redrafted the provisions to remove this term. The prohibition on prejudicing the independent judgement of the regulatory body remains in these sub-rules and this is the key (along with Rules 4, sub-rule (3)(a), 8, sub-rule (2)(a) and 10, sub-rule (2)(a) requiring influencing only to be undertaken as part of the approved regulator's representative functions) to ensuring that these decisions are made independently by the regulatory body.

The nature of the residual role of the approved regulator once it has delegated its regulatory functions

19. Some respondents (BC, CIPA, CITMA, Liverpool Law Society and TLS) considered that the nature of the approved regulator's residual role was too limited and/or unclear. Some respondents asked for further guidance on the kind of assurance information that an approved regulator can request and how the LSB would carry out the oversight function. One approved regulator argued that it will continue to carry organisational and financial risk while accountability for regulatory activities lies in another body – and this will prevent it from carrying out the approved regulator role as intended under the Act. Another approved regulator expressed concern about the use of the term *residual* and considered that to be an inappropriate description for a role they interpret to be a *primary* role.
20. The term *residual* is intended to describe the important regulatory role the approved regulator continues to play in the regulatory scheme after it has delegated its other regulatory functions. It is, however, a role that is constrained by statute. It is also not intended to encompass any representative functions an approved regulator may have. The IGR are clear that an approved regulator can seek to influence its regulatory body's determinations provided it does this in exercise of its representative functions and does not prejudice the independent judgement of the regulatory body. We consider that it is appropriate to refer to the role of the approved regulator as

residual as it refers to the regulatory functions that remain with the approved regulator after delegation of the regulatory functions to the regulatory body. The boundaries of the approved regulator's residual role take into account the existence and nature of the LSB's oversight role. This is consistent with the requirements of the Act and the need to avoid inefficient duplication of effort. We explained the respective roles of the LSB, the approved regulator and the regulatory body in our November 2018 consultation document¹⁴. Furthermore, the saving provisions in Rule 16 of the revised IGR provide the approved regulator with a safeguard to ensure that it can meet its duties under Section 28 of the Act or other statutory obligations. Finally, any approved regulator will have been closely involved in the design of the arrangements under which its regulatory functions are delegated to its regulatory body. This should be a significant additional source of assurance to an approved regulator that the regulatory body is well governed and set up to function appropriately.

Shared services

21. We received feedback (BC, the Bar Standards Board (BSB), ICAEW and TLS) that draft Rule 5 (Prohibition on dual roles) would effectively make shared services impossible. In response to these concerns, we have amended Rule 5 to make it clear that dual roles are permitted where the roles are related to shared services in accordance with the redrafted Rule 11 (Shared services). Respondents were also concerned that the conditions for shared services to be permitted under draft Rule 11 were overly restrictive and burdensome. In response to these concerns we have changed the emphasis on Rule 11 to make it clearer that shared services are possible, provided the approved regulator and regulatory body are in agreement and the other conditions in Rule 11 are met. We have not amended the conditions for shared services in Rule 11, given that disagreements about shared services have been a significant trigger of problems in the past. The Guidance has been updated to reflect these changes. Furthermore, we agreed with one respondent that noted that shared services can easily give rise to the perception that regulatory and representative bodies are not truly separate. We provide more detail on shared services in Annex C, paragraphs 92 to 98.

¹⁴ See paragraphs 16-18 of this document:
https://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/2018/LSB_consultation_Proposed_Internal_Governance_Rules_Nov_2018.pdf

Approved regulators with both regulatory and representative functions (including the accountancy regulators) becoming subject to all the IGR

22. The approved regulators, and particularly ACCA and ICAEW, have raised concerns about how the proposed IGR would affect them. The LSB decided (in its July 2018 decision document) to abolish the *applicable approved regulator* definition and make the ICAEW and the ACCA subject to all the proposed IGR requirements, as is the case for all the other approved regulators that combine regulatory and representative functions. This means that ACCA and ICAEW will now be required (amongst other things) to delegate their regulatory functions to separate regulatory bodies.
23. The ACCA and ICAEW argue that as regulators that predominantly regulate accountancy rather than legal services, the proposed IGR impose unreasonable burdens on them. Both ACCA and ICAEW argue that their existing structures separate accountancy and legal regulatory functions from representative functions sufficiently, even if this is not as much as envisaged by the proposed IGR. They argue that strict delineation is unnecessary, and not outcomes focused.
24. Arguments made by ACCA and ICAEW in this context include:
- a) The IGR could lead to a reduction in competition if approved regulators are forced to change their governance structures and incur the associated costs (or even leave the market), where those governance structures have been deemed by other oversight regulators to be fit for the regulation of arguably riskier services.
 - b) The current IGR are proportionate in that they recognise that some approved regulators have another oversight regulator.
 - c) The accountancy regulators only undertake regulation of probate services, which are argued to be low risk.
 - d) Representation of the regulatory body on the approved regulator's main board (which appears not to be permitted by Rule 5) allows the regulatory body to be provided with early information on future plans and to flag potential concerns.
25. We have carefully considered these submissions but are not persuaded to revise our July 2018 position that ICAEW and ACCA should be subject to all the rules in the proposed IGR. In our July 2018 decision, we explained why we considered that the

approved regulators that are also accountancy regulators should observe the same standards of regulatory separation as other approved regulators that combine regulatory and representative functions¹⁵.

26. We note that the LSB's statutory role as oversight regulator of legal services is different from the role of other regulators that oversee the accountancy regulators. As such we cannot rely on 'read across' of oversight by e.g. the Financial Reporting Council. In addition, probate is not necessarily low risk – consumers may be vulnerable as the ICAEW acknowledges in its response. As regards dual regulatory and representative roles, other approved regulators, regulatory bodies and the public may not see it as acceptable that a member of the main representative board has a senior role in its regulatory body. The claimed informational benefits of such an arrangement seem small given that there will be a specific obligation on approved regulators to let their regulatory bodies know about any decisions or plans that might undermine the discharge of regulatory functions - Rule 2, sub-rule (3). We remain of the view that the prohibition on dual roles in Rule 5 is necessary, unless that role is within a shared service in accordance with Rule 11.

27. We recognise that there will be some costs and disruption for the accountancy bodies if they have to restructure in order to delegate their regulatory functions to a separate regulatory body. However, written authorisation may be available for these approved regulators under Rule 16 (Saving provisions). They have the option of applying for permission not to comply with particular rules on a temporary or longer term basis, where they can build a compelling case that compliance would, for example, be disproportionate.

LSB evidence and rationale for making new IGR

28. One respondent submitted that the LSB has not explained its reasons for making new IGRs. We do not agree. As mentioned above we have consulted extensively on the policy of the proposed IGRs and draft versions of the IGR, and in the course of doing so, we have set out the evidence and reasons for making changes.

¹⁵ See paragraphs 32-34
https://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/2018/20180724/Consultation%20response%20July%202018.pdf

Power to make new IGR

29. Some respondents questioned the scope of the LSB's power under the Act to make the IGR, and in particular certain rules which they consider to unduly restrict an approved regulator's ability to comply with its statutory duties under the Act.
30. In response, we note that Section 30 of the Act imposes a duty on the LSB to make internal governance rules. In doing so, the statutory framework gives the LSB discretion to make rules that are necessarily wider than simply repeating the words of the empowering provision, so as to describe how the two statutory objectives in paragraphs (a) and (b) to Section 30(1) are to be achieved through the IGR.

Separation of regulatory functions and representative functions

31. One respondent submitted that Rule 1, sub-rule (2) of the IGR, which requires an approved regulator to have arrangements in place to separate its regulatory functions from any of its representative functions, and to maintain the independence of its regulatory functions, was not entirely consistent with the Act. It asserted that the Act does not require this separation but instead requires that there to be no prejudice to the exercise of regulatory functions and that decisions relating to regulatory functions be taken independently so far as reasonably practicable (Section 30(1)). It submitted that the Act does not presume that independence of decision-taking must be achieved through independence or separation. It was also submitted that Rule 1, sub-rule (2) removes approved regulators' discretion under the Act as to how they make appropriate arrangements to ensure prejudice does not take place and independent decision making is maintained having regard to better regulation principles and other best regulatory practice (Section 28).
32. As noted above, we consider that the statutory framework gives the LSB the discretion to make rules in a wider setting than simply repeating the statutory objectives of Section 30(1)(a) and 30(1)(b). Section 30 of the Act imposes an obligation on the LSB to make internal governance rules setting out requirements to be met by approved regulators *for the purpose of ensuring* [emphasis added]: that the exercise of an approved regulator's regulatory functions is not prejudice by its representative functions (subsection (1)(a)) and that decisions relating to the former are so far as reasonably practicable, taken independently from those relating to the exercise to the latter (subsection 1(b)). Thus, Section 30 permits the Board to develop rules to ensure that the objectives in paragraphs (a) and (b) are met, and

which are consistent with Section 28 of the Act. We consider that Rule 1(2) is within the LSB's duty in Section 30 to make rules for the purposes of ensuring the above. It appropriately sets the broad policy for the new IGR in requiring the separation of regulatory functions and representative functions.

Duty to delegate

33. One respondent questioned whether the LSB had power to impose a duty, under Rule 2 of the IGR, on an approved regulator with both representative and regulatory functions to delegate the discharge of its regulatory functions to a regulatory body and thereafter retain only a 'residual role', particularly in the situation where the regulatory body is not a separate legal entity (see paragraphs 19 and 20 on the nature of residual role once regulatory functions are delegated).
34. We have considered this submission and concluded that the wording of Rule 2 and the IGR more broadly is sufficient to permit an approved regulator to achieve the most appropriate delegation arrangement to comply with its legal obligations, including those in Section 28 of the Act, regardless of whether its regulatory body is a separate legal entity or not.

Prohibition on an approved regulator prejudicing regulatory body's independent judgement

35. We received several submissions responding to the May 2019 consultation on proposed amendments to Rules 4, 8 and 10. While most of the respondents generally supported the proposed amended wording to Rule 4, sub-rule (3), a number of concerns were raised. One key concern was that it was beyond the powers of the LSB to impose the proposed amended versions of Rule 4, sub-rule (3) (as well as Rules, 8, sub-rule (2) and 10, sub-rule (2)). Another key concern was that the use of the imperative *must not* rather than *as far as reasonably practicable* in these sub-rules was inappropriate in relation to the prohibition on prejudicing the independent judgment of the regulatory body.
36. In relation to concerns about the LSB's powers, we have explained above that we consider that the statutory framework gives the LSB the discretion to make rules in a wider setting than simply repeating the statutory objectives of Section 30(1)(a) and 30(1)(b). In that context, in our view the amended sub-rules in Rules 4, 8 and 10, including the prohibition on prejudicing the regulatory body's independent judgement, are appropriate and within the LSB's powers.

37. In relation to concerns about the use of the imperative *must not* in paragraph (b) to Rules 4, sub-rule (3), 8, sub-rule (2) and 10, sub-rule (2), rather than *as far as reasonably practicable*, we note that Rule 1(2) says that separation and the maintenance of independence of regulatory functions need only be as effective as is reasonably practicable and consistent with Section 28 of the Act. In addition, the revised IGR provide for the approved regulator to be able to assure itself that it is continuing to fulfil its statutory duties after it has delegated its regulatory functions to a separate body, including in relation to the matters covered in Rules 4, 8 and 10 – for example through AR involvement in devising the delegation arrangements, obligations on the regulatory body to provide assurance information and the AR’s ability to act as required by primary legislation and bring disputes to the LSB.

Other issues

38. One approved regulator and one regulatory body noted that Rule 4 expects the regulatory body to *meet the regulatory objectives in accordance with the better regulation principles*, which is not a requirement of the Legal Services Act. In response, we have amended Rule 4, sub-rule (1) so that the terminology it uses in relation to the regulatory objectives and the better regulation principles reflects more accurately the terminology used in Section 28 of the Act.

39. One respondent asked for the IGR expressly to state they apply to an approved regulator’s ongoing obligations under Section 30 in relation to governance, and also that they apply to applications for designation as an approved regulator and licensing authority respectively under Schedules 4 and 10 to the Act.

40. In response, we note that the IGRs expressly apply to approved regulators to the extent provided by the various provisions of the IGR. We do not consider that the IGR need to include a separate provision stating that they apply to on-going obligations of an approved regulator in their governance. In relation to the relevance of the IGR to applications for designation, matters relating to the LSB’s designation rules are beyond the scope of the LSB’s IGR review.

Length of transition period

41. We received strong representations (ACCA, ACL, BC, BSB, CILEx, CILEx Reg, CITMA, CIPA and IPReg) against the proposed six month transition period. Of those that expressed concerns about meeting the deadline, a majority indicated that they would need to apply for written authorisation not to comply with the IGR for certain arrangements that extend beyond the six month period. Other stakeholders noted a six month transition period was likely to be too short. These stakeholders told us that, until the final IGR had been published and stakeholders had assessed their arrangements against the revised rules, they could not be certain whether they would be able to comply within six months. Several stakeholders noted that the negotiation of a new delegation agreement would likely take longer than the six month transition period.
42. The concern about not being able to comply in the six month transition period appears to be particularly relevant where the regulatory body shares services with the approved regulator. Even those stakeholders that expected to be able to comply with the IGR once adjustments to their arrangements had been made noted that it would be a challenge to achieve full compliance within six months. In response to these concerns we have decided to extend the transition period to twelve months. We have taken this step to minimise the administrative burden on approved regulators and the regulatory bodies as well as the LSB during the transition phase. In particular, we think this change will help minimise the additional resource required to address requests for temporary written authorisation not to comply with the IGR which respondents suggested would otherwise be necessary as a result of a shorter transition period.
43. Some respondents stated that there has been insufficient time to prepare for implementation and compliance with the revised IGR, which would have a consequential effect on the transition timeframe. We note that the review and subsequent amendment of the IGR has been part of the LSB business plan since 2017/18¹⁶. We have consulted with stakeholders as part of the IGR review three times and we believe that sufficient detail has been contained in these consultation documents to allow stakeholders to make provision for the likely changes within their regular business planning cycles.

¹⁶ https://www.legalservicesboard.org.uk/news_publications/publications/pdf/2017/Business%20Plan%20201718.pdf

44. Furthermore approved regulators and regulatory bodies will have the option of applying to the LSB for either a temporary or longer term written authorisation not to comply with the IGR. The first type of written authorisation would be temporary in nature and have a set end date. This will be likely to cover situations where there are arrangements that would be disproportionate to change or end within the transition period, which may include the shared services issues identified by CILEx, CILEx Regulation (CILEx Reg), BC, BSB, TLS and the Solicitors Regulation Authority (SRA). The second type of written authorisation might be for permission for longer term or even on-going non-compliance with particular rules.
45. We will carefully consider any requests for written authorisations. We note that requests for written authorisations will allow us to scrutinise specific circumstances for specific approved regulators and regulatory bodies where compliance may, for example, be impractical or otherwise disproportionate. However, we are conscious that granting long term written authorisations in particular can be seen as unfair by other approved regulators which are obliged to comply with all the IGR without the benefit of a written authorisation, and that it is undesirable in terms of good regulatory practice to grant excessive numbers of written authorisations. We expect that the granting of long term written authorisations will be rare.

Ongoing assurance of compliance with the IGR

46. Assurance of compliance with the revised IGR after the end of the transition period will be carried out as part of the LSB's 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 revised IGR will be monitored through the Governance and Leadership standard and one or more IGR-specific outcomes will be developed. The LSB will consult on this new element of the regulatory performance assessment framework in time for its introduction at the end of the transition period. Approved regulators that also have separate regulatory bodies are not themselves currently subject to the regulatory performance framework, only their regulatory bodies are. In future, such approved regulators will be included in the regulatory performance framework but only in regard to their residual regulatory functions and specifically 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. We will set out our proposals to incorporate IGR compliance into the existing regulatory

performance framework in a forthcoming consultation which we intend to publish in the Spring of 2020.

Impact Assessment

47. Before publishing the IGR consultation in November 2018 we undertook an initial qualitative impact analysis to explore the work that approved regulators and regulatory bodies will need to undertake during the transition phase. This was based on the information available to us on the working procedures used by the approved regulators and regulatory bodies. We examined each IGR and made an initial assessment of what, if anything, approved regulators and regulatory bodies would need to do to comply with the revised IGR. Our assessment was based on both the operational impact and the cultural changes needed around how approved regulators delegated their regulatory functions.
48. To test our initial analysis we included a question in the November 2018 consultation document seeking details of the costs and actions associated with both the initial compliance during the transition period and ongoing compliance. Responses to this question tended to be high level and lacked detail. We received the following responses in relation to the costs of coming into compliance with the proposed IGR initially:
- a) Six respondents broadly agreed that the IGR could be implemented and complied with without any additional cost (ACL, CILEx, CIPA, CITMA, Costs Lawyer Standards Board (CLSB) and IPReg).
 - b) Four respondents thought that implementing the proposals would have resource implications (CILEx Reg, BC, BSB and ICAEW)¹⁷.
 - c) Only two respondents provided costs in their answers (BSB¹⁸ and BC¹⁹).
 - d) A number of respondents qualified their answer by saying that they will only know costs for certain once the revised rules have been finalised and they have carried out an assessment.

¹⁷ Five respondents did not provide an answer to this question.

¹⁸ BSB estimated that reforming its shared services would cost between £50 and £100K.

¹⁹ BC stated that, for the 2019/20 finance year, there would be an additional £100k (staff costs) as a result of delays to its Finance Improvement Programme. For each additional six-month delay there would be a £100k cost, which could rise to £250k. In addition, the cost of assessing Information Services compliance could be around £70k and the cost of implementing the proposed IGR for Information Services could be anything between £100K and £1M, depending on how far reaching the changes are and how quickly they happen.

49. We received the following feedback in relation to the costs of ongoing compliance:

- a) Five respondents agreed that cost of compliance would reduce due for example to the reduction in disputes (ACL, BSB, CILEx, CILEx Reg and EY Riverview Law).
- b) Six respondents did not agree that cost of compliance will reduce (ACCA, the Council for Licensed Conveyancers (CLC), CLSB, BC, ICAEW, and IPReg)²⁰. We are aware that two of the respondents that did not agree that the cost of compliance would reduce (CLC and CLSB) said that they currently have very low costs related to IGR compliance and that bringing themselves into compliance with the revised IGR would be relatively straightforward.

50. Our impact assessment, taking into account responses in the round, did not indicate costs that were likely to outweigh the benefits in the medium term. This was on the clear evidence of the costs of the current IGR, in terms of disagreements and disputes, and distraction from regulatory and representative activities, and the potential – as a number of respondents agreed – for the revised IGR to deliver enhanced regulatory independence.

51. In any event, approved regulators may apply for written authorisation not to comply with the IGR in relation to specific rules in light of their particular circumstances, where they can make the case (for example) that compliance would be disproportionate. This is an additional mitigation against the risk that the costs of change will outweigh the benefits.

52. We do not consider that the proposed amendments to the sub-rules of Rules 4, 8 and 10 as set out in the supplementary consultation published in May 2019 present any additional impact beyond the version of the IGR published in November 2018. No respondents to the May 2019 consultation drew any such additional impacts to our attention. Therefore, our impact assessment was unaltered by the proposals in the May 2019 consultation.

Equality Impact Assessment

53. Based on the consultation feedback we have concluded that the impact of the IGR on groups protected by equality legislation is limited. Respondents to the November 2018 and May 2019 consultations told us that any cost of implementing and

²⁰ Seven respondent did not provide an answer to this question.

complying with the IGR will inevitably be passed on to the profession through the practising certificate fee and ultimately on to consumers of legal services. On the other hand, the cost of implementing and complying with the IGR forms only a limited proportion of the overall cost of being an approved regulator or regulatory body. In addition, as set out at paragraph 50 above, our impact assessment did not indicate costs that were likely to outweigh the benefits in the medium term. We therefore believe that adverse equality impacts from any increases in practicing certificate fee should be small and/or transitory.

Conclusion and next steps

Transition to revised IGR

54. The revised IGR and supporting Guidance come into effect on 24 July 2019.
55. A transition period of up to 12 months begins on publication of the revised IGR, which have been published alongside this document. The transition period will therefore end by 24 July 2020. During this time approved regulators and regulatory bodies are expected to assess their internal procedures and working practices and put in place arrangements to ensure full compliance with the revised IGR by the end of the 12 month transition period.
56. The LSB will support ARs and regulatory bodies during the transition to compliance with the IGR and will write to each body setting out the steps the approved regulators and regulatory bodies should take in certifying full compliance with the revised IGR. This may include details of the main areas the LSB considers likely to require attention based on our understanding of the structure and practices of each individual body. This detail will be non-exhaustive. The LSB's letter will also include a template certificate of compliance.
57. Where an approved regulator has delegated its regulatory functions to a separate body, it is likely that, where specific provisions of the revised IGR apply to both bodies, discussions between the two bodies will be needed to agree the procedures each will follow, for example the provision of information for assurance purposes. This will be particularly important for Rules 2, 3 and 4 which apply jointly to both bodies. However, the LSB does not require dual-reporting and each body should submit a separate certificate of compliance covering the specific regulatory functions and rules which apply to it.

58. Each approved regulator and regulatory body is responsible for carrying out a full assessment and identifying what changes are needed to bring them into full compliance. Where changes are required these should be made promptly to ensure implementation of any further steps needed for full compliance before the end of the twelve month transition period.
59. On submission of the certificate of compliance to the LSB, the approved regulator and/or regulatory body should include details of the steps taken to review current practice against the IGR and to provide a self-assessment of its own compliance.
60. If an approved regulator or regulatory body anticipates that it will not be able to certify its compliance with the IGR by the end of the transition period, it must apply to the LSB for prior written authorisation for any ongoing non-compliance under Rule 16 (Saving provisions). Written authorisation must be in place before the end of the transition period. Approved regulators and regulatory bodies should allow sufficient time for the LSB to consider any application. In any application for a written authorisation the LSB would expect, at a minimum, the approved regulator or regulatory body to explain in detail why the 12 month transition period will not enable it to become fully compliant, to provide a comprehensive plan to remedy this as quickly as reasonably practicable and to set out when it expects to be fully compliant.
61. If an approved regulator or regulatory body is not granted written authorisation prior to the end of the transition period, any ongoing non-compliance would be in breach of the IGR and enforcement action may be taken. Written authorisation under Rule 16 is not intended to be retrospective once the 12 month transition period is over.
62. It is also possible that approved regulators and regulatory bodies may need to make changes to their regulatory arrangements requiring an application for approval from the LSB under Part 3 of Schedule 4 to the Act. As the arrangements for each approved regulator and regulatory body are different, we do not anticipate issuing a blanket exemption direction for any necessary rule changes to support the implementation of the revised IGR. However the LSB will consider on a case-by-case basis whether an exemption direction is appropriate upon receipt of a rule change application for any necessary rule change(s).

Annex A: Consultation questions

November 2018

- 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.
- 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.

May 2019

Question 1: Do you agree that the amendment to Rules 4, 8 and 10 as set out in this document should be adopted into the new IGR? Please provide your reasons.

Question 2: Does the proposed revised Guidance on Rules 4, 8 and 10 at Annex A provide sufficient detail to help you to interpret and comply with the proposed revised versions of Rules 4, 8 and 10? Please provide specific comments on any areas of the Guidance for Rules 4, 8 and 10 where further information would improve clarity.

Annex B: List of consultation respondents

Respondent	Consultation	
	Nov 2018	May 2019
1. The Association of Chartered Certified Accountants (ACCA)	Yes	Yes
2. The Association of Costs Lawyers (ACL)	Yes	No
3. The Bar Council (BC)	Yes	Yes
4. The Bar Standards Board (BSB)	Yes	Yes
5. The Chartered Institute of Legal Executives (CILEx)	Yes	Yes
6. The Chartered Institute of Patent Attorneys (CIPA)	Yes	Yes
7. The Chartered Institute of Trade Mark Attorneys (CITMA)	Yes	Yes
8. CILEx Regulation (CILEx Reg)	Yes	Yes
9. The Costs Lawyer Standards Board (CLSB)	Yes	No
10. The Council for Licensed Conveyancers (CLC)	Yes	No
11. EY Riverview Law	Yes	No
12. The Faculty Office	Yes	Yes
13. The Honourable Society of Lincoln's Inn	Yes	Yes
14. The Institute of Chartered Accountants in England and Wales (ICAEW)	Yes	Yes
15. The Intellectual Property Regulation Board (IPReg)	Yes	Yes
16. The Law Society (TLS)	Yes	Yes
17. Liverpool Law Society	Yes	No
18. The Solicitors Regulation Authority (SRA)	Yes	Yes

Annex C: Analysis of responses by rule

1. This section is a summary of comments made by respondents to the November 2018 and May 2019 consultations. This section does not repeat the LSB responses to the main cross-cutting issues set out in the main body of this document but may provide additional detail where we considered it necessary.
2. Some respondents proposed specific drafting amendments that did not change the substance of the Rules or Guidance. Where we considered that these would enhance clarity or otherwise help with interpretation, we have made these changes in the Rules and Guidance.
3. Where respondents supported our proposals, we have not detailed their comments in this annex in the interests of brevity.

Rule 1: The overarching duty

November 2018 Consultation

4. There were 11 respondents who commented directly on Rule 1.
 - a) Seven approved regulators (ACCA, BC, CILEx, CIPA, CITMA, ICAEW and TLS)
 - b) Three regulatory bodies (BSB, IPReg and SRA)
 - c) One other organisation (the Honourable Society of Lincoln's Inn)
5. As set out in paragraphs 12 to 18 of the main body of this document, a number of respondents raised concerns about the use of the term *influence* instead of *prejudice* which is the term used in the Act. One regulatory body raised issues that included:
 - a) the use of definitions for regulatory arrangements and regulatory functions that differ from the definitions in the Act
 - b) the LSB has not explained how it has come to the view that the delegation of regulatory functions and the residual role to be assured of compliance with Section 28 of the Act are regulatory arrangements/regulatory functions
 - c) the proposed Guidance states that approved regulators have a duty *to promote the regulatory objectives*, whereas the actual duty in Section 28 of the Act is for an approved regulator *so far as reasonably practicable to act in a way (a) which is compatible with the regulatory objectives and (b) which [it] considers most appropriate for the purpose of meeting those objectives.*

6. Another regulatory body felt that Rule 1 should not make reference to Section 28 of the Act as this would require the approved regulator when delegating the regulatory functions to consider and assess how best to meet and balance the regulatory matters and how best to achieve the principles of best regulatory practice. In the view of this regulatory body, these are considerations for the regulatory body not the representative body.
7. One approved regulator was concerned that, the rules as a whole appear to strive for independence above everything else, including the objectives and the application of the 'five Hampton Principles'.

May 2019 consultation

8. Although the redrafted Rule 1 was not a formal part of this consultation, several respondents commented on the LSB proposal to replace the term *influence* with *prejudice*. Of those who commented, all but one body was supportive of the change of term. The majority welcomed the intent to more closely reflect the wording of the Act. The respondent which did not support the change considered it to be a weakening of the rule and suggested *improper influence* as alternative wording to reflect the acceptance of an approved regulator's influencing rights but that such influencing should be open, transparent and at arm's length. One approved regulator proposed that a definition of *prejudice* should be included in the IGR.

LSB response

9. The LSB has addressed concerns about the use of *influence* and *prejudice* in the IGR as described at paragraph 12 to 18 of the main body of this decision document.
10. We considered the comment that the definitions for *regulatory arrangements* and *regulatory functions* in the proposed IGR differ from the definitions of those terms in the Act. We have retained our proposed definitions in the revised IGR – these are the same definitions as used in the Act save that the two regulatory functions that remain with the approved regulator (delegation and assurance of compliance with Section 28 of the Act) are excluded. This is to distinguish between what is properly an approved regulator's regulatory functions from the rest which it delegates to the

regulatory body. This is also practical from a drafting perspective, otherwise these two functions would have to be excluded explicitly every time the terms are used in the body of the IGR and Guidance.

11. We consider that the residual role of the approved regulator to delegate regulatory functions to the regulatory body and to be assured of that body's compliance with Section 28 of the Act (and the arrangements for carrying out those functions) are themselves regulatory functions and regulatory arrangements respectively. This is because:

- Section 21 of the Act defines regulatory arrangements of a body as including *any other arrangements, which apply to or in relation to regulated persons, other than those made for the purposes of any function the body has to represent or promote the interests of persons regulated by it*. For example, the arrangements for delegation of the other regulatory functions apply in relation to regulated persons (in that the delegation relates to which body will exercise the regulatory functions over regulated persons) and those arrangements are not related to representing or promoting the interests of regulated persons.
- Section 27 of the Act defines *regulatory functions* as any functions the approved regulator has under or in relation to its regulatory arrangements.

12. In response to the comment that the draft Guidance refers to the approved regulators having a duty to *promote* the regulatory objectives which is not consistent with the wording of the Act, we have amended the Guidance so that the terminology it uses in relation to the regulatory objectives and the better regulation principles reflects more accurately the terminology used in Section 28 of the Act in the Guidance.

13. In response to the comment that consideration of how to balance the regulatory objectives is for the regulatory body and not the representative body, as explained above, delegation of regulatory functions and assurance of compliance by the regulatory body with Section 28 of the Act are themselves regulatory functions. As such, the approved regulator must, when carrying out these functions, comply with the Section 28 obligations (namely, to act in a way which is compatible with the regulatory objectives, and which it considers most appropriate for the purpose of meeting those objectives; and to have regard to the better regulation principles).

14. The LSB disagrees that it has focussed on independence to the exclusion or detriment of the regulatory objectives and better regulation principles. We have explained in our previous IGR consultation and in paragraphs 29 to 31 of the decision document²¹ published in July 2018 how we have balanced our obligations under the Act.

15. In response to the submission to retain *influence* but with the added emphasis of including *improper* as a qualifying term, we consider that this would move away from our desire to more closely reflect the wording of the Act in this rule and would also require a further definition to aid interpretation. We consider this to be a move away from the clarity we have sought to introduce in the revised IGR.

16. In response to the request for a definition of *prejudice* in the IGR, we do not consider that it is necessary. This is because we think that clarity is enhanced by limiting the number of special definitions that are unique to the IGR. The previous IGR contained a definition of prejudice, which referred to *undue influence* which in turn was defined with reference to the undefined term *due proportion*. This contributed to the considerable lack of clarity in the previous IGR. We intend that *prejudice* as used in the revised IGR should have its ordinary meaning.

Rule 2: Duty to delegate

17. There were nine respondents who commented directly on Rule 2.

- a) Four approved regulators (ACCA, BC, CIPA and TLS)
- b) Three regulatory bodies (BSB, IPReg and SRA)
- c) Two other organisations (EY Riverview Law and The Honourable Society of Lincoln's Inn)

18. Points raised by the four approved regulators included:

- a) Rule 2(1) requires approved regulators to delegate the discharge of regulatory functions to a *separate body*. However, the Act only provides that

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https://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/2018/20180724/Consultation%20response%20July%202018.pdf

the single approved regulator will have two functions that work *so far as is reasonably practicable*, independently.

- b) Rule 2(2) would seem to implicitly limit the ability of the approved regulator to share services with the regulator and contrasts with Rule 11 which permits such sharing of services in certain circumstances.
- c) The way that the Guidance document describes information that would be reasonably necessary for the approved regulator to demand from the regulator to fulfil its assurance role is either overly prescriptive or not well enough defined, leaving the approved regulator to trust that what the regulatory body says at all times as being, complete, accurate and correct.

19. A regulatory body sought clarification that this rule would allow two (or more) approved regulators jointly to delegate regulatory functions to one single body.

20. One respondent to the May 2019 consultation expressed concern that the term residual role was inappropriate and that it failed to recognise the approved regulator's dual representative and regulatory role. This approved regulator argued that the primary role assigned to the approved regulator by the Act is to carry out and discharge its regulatory functions. This approved regulator noted that the Act did not require an approved regulator to delegate its regulatory functions to a separate legal entity and considered that, where the regulatory functions are not so delegated, the approved regulator's regulatory functions would be limited by the IGR but the approved regulator would still have statutory duties as an approved regulator under the Act. Constraints on the powers and functions of approved regulators in this position, including in relation to influencing the regulator, was therefore argued to be beyond the LSB's powers.

LSB response

21. The current IGR contain a requirement for an applicable approved regulator to delegate performance of its regulatory functions to a body or bodies without any representative functions. The revised IGR carry across this requirement (albeit that the requirement now applies to all approved regulators with both regulatory and representative functions – see paragraphs 22 to 25 of the main body of this document).

22. The conditions under which an approved regulator and its regulatory body may share services are set out in Rule 11. We believe that, in light of Rule 11, it is sufficiently clear that services can be shared in certain circumstances. We have also amended Rule 5 to make clear that roles with a shared service in accordance with Rule 11 do not violate the prohibition on dual roles.
23. We have moved the guidance material on the nature of the assurance information that should be provided by the regulatory body to the approved regulatory from the Guidance on Rule 2 to the Guidance on Rule 3, and we respond to the comments on the nature of assurance information under the Rule 3 heading below.
24. As under the current IGR, it will be possible for two (or more) approved regulators jointly to delegate regulatory functions to one single body.
25. We agree that approved regulators can have both regulatory and representative roles (although some approved regulators only have regulatory roles). Section 30(1) of the Act requires the LSB to make IGR *setting out requirements to be met by approved regulators for the purpose of ensuring* compliance with the two limbs of Section 30(1). This wording allows the LSB to develop its rules in a wider setting than simply repeating the two limbs of Section 30(1), including in pursuit of the policy objective of maximising regulatory independence within the current legislative framework. Both the initial and revised IGR require the approved regulator to delegate its regulatory functions (as defined in the IGR, so with the exception of the delegation function and the assurance function) to a separate body. The IGR do not (and in the LSB's view – as explained in Annex A to the LSB's November 2017 consultation – cannot) require this separate body to be a separate legal entity. But the revised IGR provide for the approved regulator to be able to assure itself that it is continuing to fulfil its statutory duties, regardless of its corporate structure. The relevant provisions allow for approved regulator involvement in devising the delegation arrangements, obligations on the regulatory body to provide assurance information and the approved regulator's ability to act as required by primary legislation and bring disputes to the LSB. In addition, Rule 1 expressly provides that each approved regulator must have arrangements in place for separation and maintenance of the independence of regulatory functions only *effectively as is reasonably practicable and consistent with Section 28 of the Act*. However, in the

interests of clarity, we have made it explicit in the Guidance that Rules 4, 8 and 10 are, like all other rules in the IGR, subject to Rules 2(2) and 16.

Rule 3: Provision of assurance to approved regulators

26. There were ten respondents who commented directly on Rule 3.
- a) Five approved regulators (BC, CIPA, CITMA, ICAEW and TLS)
 - b) Three regulatory bodies (BSB, IPReg and SRA)
 - c) Two other organisations (Liverpool Law Society and the Honourable Society of Lincoln's Inn)
27. Some approved regulators and another respondent raised concerns about the ability of the approved regulator to question the information shared by a regulatory body for assurance purposes. They also requested more detail about the residual role of the approved regulator and the role of the LSB.
28. One regulatory body queried how the information that the proposed guidance suggested an approved regulator could reasonably request was related to compliance with Section 28 of the Act.
29. Another regulatory body considered that the LSB should make it clear that 'the approved regulator to whom the rules apply (and who consequentially carries out a residual assurance role) is the regulatory council or board, and that this does not include – and should not be supported or advised by - any representative arm of the organisation'.

LSB response

30. We believe that the Guidance provides sufficient detail about the approved regulator's residual role and the LSB's oversight role, and the relationship between them. We explain why we believe that the balance between the approved regulators residual role and the LSB's oversight role is appropriate in paragraph 20 of the main body of this document. The approved regulator is able to request further information from the regulatory body under Rule 3, but only where it has reasonable grounds to do so.

31. In the interests of clarity and as noted above, we have moved the guidance material on the nature of the assurance information that should be provided by the regulatory body to the approved regulator from the Guidance on Rule 2, to the Guidance on Rule 3. Some examples of assurance information are listed in the Guidance. This is not an exhaustive list. This information would assist with assurance of compliance by the regulatory body with Section 28 of the Act by providing assurance that the regulatory body has sound structures, processes and resources in place to carry out its functions effectively and in accordance with Section 28.

32. We do not think it is appropriate to prescribe that the approved regulator be the regulatory council or board of the organisation only, as distinct from the representative arm of the organisation. The Act explicitly refers to the approved regulator as a whole and therefore its internal structure is a matter for it, subject to the requirements of the revised IGR. Further, Rules 4, 8 and 10 make clear that an approved regulator may only seek to influence its regulatory body where this is in exercise of its representative functions, and that it must not prejudice the independent judgement of the regulatory body in doing so.

Rule 4: Regulatory autonomy

November 2018 consultation

33. There were eight respondents who commented directly on Rule 4.

- a) Five approved regulators (BC, CIPA, CITMA, ICAEW and TLS)
- b) Two regulatory bodies (BSB and IPReg)
- c) One other organisation (the Honourable Society of Lincoln's Inn)

34. Approved regulators were concerned about Rule 4(3) which restricts an approved regulator's ability to influence the governance arrangements of a regulatory body unless the regulatory body consults on these arrangements. This was considered to go beyond what is permitted by the Act.

35. One approved regulator called for more clarity of what is meant by regulatory body, and noted that the IGR do not appear to distinguish between the roles of the executive and board of the regulatory body.

36. A regulatory body noted that the draft Guidance states that Section 28 of the Act requires that the discharge of regulatory functions *follows* the regulatory objectives. The draft Guidance also states the need to *work towards the regulatory objectives* and *observe the better regulation principles*. However, these phrases do not reflect the requirements in the Act.

May 2019 consultation

37. There were 12 respondents who commented on the revised text for sub-rule (3) of Rule 4 (and subsequently Rules 8 and 10):

- a) Seven approved regulators (ACCA, BC, CILEx, CIPA, CITMA, ICAEW and TLS)
- b) Four regulatory bodies (BSB, CR, IPReg and SRA)
- c) One other organisation (the Honourable Society of Lincoln's Inn)

38. Most of the respondents generally supported the proposed amended wording to sub-rule (3) of Rule 4. We have addressed two of the key concerns raised in paragraphs 12 to 18 of the main body of this document. In addition to these two concerns, one approved regulator questioned the need for both elements of the Rule 4(3), considering that paragraph (b) is sufficient in all circumstances without the need for paragraph (a).

39. Two approved regulators questioned the appropriateness of including the phrase *seek to prejudice* in the new sub-rule, one arguing that it is focused on behaviours when the LSB's stated intent was for the IGR to be outcome-focused and the other arguing that it goes beyond what the LSB is permitted to do under the Act.

LSB response

40. We have explained in paragraphs 12 to 18 of the main body of this document how we have addressed concerns about the extent of the approved regulator's ability, once it has delegated its regulatory functions, to seek to influence the regulatory body.

41. We have also explained in these paragraphs how we have addressed concerns about the phrase *seek to prejudice* in Rules 4(3)(b), 8(2)(b) and 10(2)(b).

42. As noted above (see paragraph 25 of this Annex), we do not agree that the proposed IGRs unlawfully limit the powers and functions of approved regulators which have both regulatory and representative functions.

43. We have amended the Guidance so that the terminology it uses in relation to the regulatory objectives and the better regulation principles reflects more accurately the terminology used in Section 28 of the Act.

44. We consider that Rules 4(3)(a) and 4(3)(b) provide different restrictions on an approved regulator and that it is appropriate to include both in the IGR, bearing in mind our that one of our objectives for our IGR review is to maximise regulatory independence within the current legislative framework.

Rule 5: Prohibition on dual roles

45. There were eight respondents who commented directly on Rule 5.

- a) Four approved regulators (ACCA, BC, CILEx and ICAEW)
- b) Three regulatory bodies (BSB, the Faculty Office and SRA)
- c) One other organisation (the Honourable Society of Lincoln's Inn)

46. One approved regulator suggested that the wording could be amended to reflect a unitary structure 'that provides separation of the regulatory and representative functions at the operational level, but also has in place an independent board to oversee the regulatory functions to ensure their integrity'. Another approved regulator called for more clarity, including on terminology such as 'involved in a material way'. An approved regulator said that it was unclear as to whether a person who is materially involved in regulatory functions is considered to be materially involved in representative functions if that person sits on the Board of an approved regulator in order to represent the Regulatory Body on that board.

47. Two regulatory bodies sought clarification that their arrangements in relation to shared services and advisory boards would meet the requirement of Rule 5. One regulatory body suggested that the wording should be expanded further so that instead of prohibiting those with representative functions being a member of the board, council

or committee *which makes decisions about how to exercise regulatory functions*, this refers to decisions *which affect the exercise of regulatory functions*. This regulatory body also suggested that shared services arrangements agreed under Rule 11 should be the subject of an express carve out in Rule 5.

LSB response

48. The point raised about how this rule would take into account a unitary structure that provides separation of regulatory and representative functions at operational level is broader than Rule 5 and relates to what structure the LSB would consider to be compliant with Rule 2. Rule 2 is clear that delegation must be to a separate body. The implications of this requirement for the accountancy bodies is discussed further in paragraphs 22 to 27 of the main body of this document.
49. We have amended Rule 5 to remove the reference to *in a material way* as this term was not clear to stakeholders. We have instead used the wording that *no person...who is involved in decisions relating to regulatory functions may also be involved in the representative functions of the approved regulator*. We have also amended Rule 5 to make clear that those with shared services roles in accordance with Rule 11 are excluded from the Rule 5 (Prohibition on dual roles).
50. At paragraph 26 of the main body of this document, we address the issue about the appropriateness of someone materially involved in regulatory functions sitting on the Board of an approved regulator.
51. We have endeavoured to provide further clarity on the application of this rule in the Guidance.

Rule 6: Individual conduct

52. There were five respondents who commented directly on Rule 6.
- a) Two approved regulators (ACCA and TLS)
 - b) Two regulatory bodies (BSB and SRA)
 - c) One other organisation (the Honourable Society of Lincoln's Inn)

53. One approved regulator considered that the Guidance on this rule was too long and prescriptive. The other approved regulator sought clarification that this rule would not prevent individuals with roles in the representative body speaking out publicly on regulatory matters, on behalf of the profession they represent.

54. The regulatory body which commented on this rule suggested that this rule be extended to those with representative roles (not just those whose role specifically touches on regulation), as those individuals might be in a position to inadvertently breach the IGRs, if not properly informed.

LSB response

55. We have removed some of the more detailed elements of the Guidance on this rule. We have also clarified, by means of the new text in Rules 4, 8 and 10, the ability of the approved regulator to seek to influence the regulatory body.

56. The LSB does not consider it appropriate to extend the requirements of Rule 6 to all those with representative roles. The LSB has aimed to be proportionate in its requirements on individual conduct by targeting these requirements at individuals with roles where the risk of an adverse effect on regulatory functions is greatest.

Rule 7: Governance: Lay composition

57. There were ten respondents who commented directly on Rule 7.

- a) Three approved regulators (ACCA, BC and ICAEW)
- b) Six regulatory bodies (BSB, CILEx Reg, CLC, the Faculty Office, IPReg and SRA)
- c) One other organisation (the Honourable Society of Lincoln's Inn)

58. Two of the three approved regulators that commented on this rule have not been subject to rules about lay majorities before in relation to their legal services regulatory work. One of these approved regulators raised concerns that this rule, and other elements of the IGR, were disproportionate for bodies whose members only undertook non-contentious probate work. However, another approved regulator in a similar position said that it could apply this rule with no significant additional cost.

59. The last approved regulator wanted this rule to be amended to ensure that there would be representation from the profession on the relevant boards.

60. Some of the regulatory bodies that commented directly on this rule queried the Guidance that all regulatory board decisions must be made by lay majority and with lay chairing. One regulatory body suggested that the lay majority requirement to be expanded to include all regulatory board subcommittees.

LSB response

61. We explain why we consider that all the IGR should apply to all approved regulators with representative and regulatory functions (including the accountancy regulators) in paragraphs 22 to 27 of the main body of this document.

62. We do not think it is necessary or desirable to specify in the IGR that there should be representation from the profession on the regulatory board. Rule 7 specifies that the regulatory board must have lay majority and a lay chair, which helps safeguard the independence of the regulatory board. How the remainder of the board roles are filled will be a matter for the regulatory body. The amendments to Rules 4, 8 and 10 (as explained at paragraph 12 to 18 of the main body of this document) ensure that the approved regulator can seek to influence the regulatory body on behalf of the profession.

63. We have amended the Guidance so that a lay majority and a lay chair is not necessarily required every time a decision about regulatory matters is taken. The Guidance does however now emphasise that, when there are issues around availability of members or the chair for board meetings, decisions on regulatory functions must be ratified at the next meeting where there is both a lay majority and a lay chair (or by correspondence if necessary to ensure ratification within a reasonable time).

64. Because Rule 7 safeguards the independence of the regulatory board, we consider that it should be a matter for the regulatory board if it wishes to expand the lay majority requirement to its subcommittees.

Rule 8: The regulatory board: Appointments and terminations

November 2018 consultation

65. There were eight respondents who commented directly on Rule 8.
- a) Four approved regulators (BC, CIPA, CITMA and TLS)
 - b) Three regulatory bodies (BSB, IPReg and SRA)
 - c) One other organisation (the Honourable Society of Lincoln's Inn)
66. A number of respondents pointed out that this rule as drafted uses the word influence instead of the word prejudice which is the term used in the Act. They argued that this would prevent the approved regulator, in its representative capacity, legitimately seeking to influence the regulatory body.
67. One regulatory body called for this rule to be extended to prevent involvement more widely with the regulatory board's constitution, including matters relating to size, composition, and what constitutes a professional member.

May 2019 consultation

68. Further feedback was received in response to the May 2019 consultation. Details of the respondents are given in paragraph 37. In addition to the general feedback on sub-rule (2) as set out in our analysis of the comments on Rule 4 above, specific comments were made in relation to appointments and terminations. One regulatory body requested that the LSB clarify the consistency between Rule 4 and Rule 8 on the prohibition of any approved regulator involvement in recruitment to regulatory boards and that it must not seek to influence the recruitment panel.

LSB response

69. We have explained in paragraphs 12 to 18 of the main body of this document how we have addressed concerns about the prohibition on influence in this rule. We have amended Rule 8 accordingly.
70. We consider that Rules 4 and 8, and the Guidance on Rules 4 and 8, together make clear that it is for the regulatory body to determine its own governance and structure and its board members' remuneration and terms of appointment. We consider that

Rule 8(1) is clear that if there is a role for the approved regulator in the regulatory body recruitment processes, it is for the regulatory body to determine the extent of that involvement and therefore we do not consider further guidance is necessary.

Rule 9: Regulatory resources

71. There were six respondents who commented directly on Rule 9.

- a) Two approved regulators (CILEx and TLS)
- b) Three regulatory bodies (BSB, IPReg and SRA)
- c) One other organisation (the Honourable Society of Lincoln's Inn)

72. The two approved regulators that commented directly on Rule 9 both called for clarification on what reasonable means in the context of regulatory resources. One approved regulator queried how unforeseen in-year requirements for additional resources should be dealt with. This approved regulator also considered that the draft rules failed to make clear where the accountability and assurance around financial probity lay. The other approved regulator asked the LSB to clarify why the resource is no longer tied into and aligned to an approved plan and budget and asked that an approved regulator not have to provide resources requested if it considers the requested resource to be disproportionate.

73. One regulatory body called for the rule to be redrafted to align more closely with the Act and another regulatory body called for the rule to be extended to give the regulatory body complete autonomy for the regulatory board in the matter of resources; setting the budget and managing reserves.

LSB response

74. The Guidance on Rule 9 explains what is meant by 'reasonably required' in this context.

75. The LSB does not consider that it is necessary for the IGR to prescribe how regulatory bodies carry out their budget planning processes, including provision for how unforeseen in-year demands on resources are dealt with. To the extent that these in-year resource requirements meet the criteria in Rule 9, they will need to be met.

76. The Guidance on Rule 9 makes it clear that it is for the regulatory body to make the assessment of the resources it requires. The Guidance also explains that a regulatory body must provide sufficient information under Rule 3 to assure the approved regulator that the resources are reasonably required, and that the regulatory body has complied, in determining its resources, with Section 28 of the Act.

77. If the approved regulator does not agree that the resources are reasonably required, and cannot resolve the matter with its regulatory body, Rule 14 provides mechanisms for referrals (including of disputes) to the LSB.

78. The IGR and Guidance, taken as a whole, explain the extent of autonomy of the regulatory body in relation to resources (and other matters).

Rule 10: Regulatory body budget

November 2018 Consultation

79. There were six respondents who commented directly on Rule 10.

- a) Three approved regulators (BC, ICAEW and TLS)
- b) Two regulatory bodies (BSB and SRA)
- c) One other organisation (the Honourable Society of Lincoln's Inn)

80. Two approved regulators raised concerns that this rule prevented them having any control over the regulatory body budget while they remained accountable for it.

81. One approved regulator suggested that it was preferable that funding for regulatory activities be completely separate from any fees for membership of the approved regulator. This approved regulator suggested that, if separate funding was in place, the LSB should take this into account in its decisions on granting written authorisations in relation to non-compliance with other IGR.

82. A regulatory body provided a list of items that it considered that are key features of a truly independent regulator, including complete autonomy for the regulatory body in the matter of resources - budget setting and managing its balance sheet and reserves.

May 2018 Consultation

83. Further feedback was received in response to the May 2019 consultation. Details of the respondents are given in paragraph 37 of this Annex. In addition to the general feedback on sub-rule (2) as set out in our analysis of the comments on Rule 4 above, specific comments were made in relation to the regulatory budget. One approved regulator disagreed with the LSB's Guidance that regulatory budgets are a matter for regulatory bodies, arguing that the approved regulator is accountable to the profession for the PCF level and therefore should continue to have the power to challenge the budget.

LSB response

84. We have explained in paragraphs 12 to 18 of the main body of this document how we have addressed concerns about the prohibition on influence in this rule. We have amended Rule 10 accordingly.

85. The LSB's approach to written authorisations is set out in the Guidance on Rule 16 and is discussed further in paragraphs 44 to 45 of the main body of this document. The LSB will consider each application on a case-by-case basis. The LSB agrees that separate arrangements for the funding of regulatory and representative activities provides clarity and transparency. However, the extent to which this is relevant to consideration of applications for written authorisations in relation to the other IGR will depend on the circumstances in each case.

86. The IGR and Guidance seek to enhance the independence of the regulatory functions within the current legislative framework. The legal context, which explains the limits this places on the ability of the LSB to require full independence, is set out in Annex A of our November 2017 IGR consultation document.²²

87. We consider that it is essential that the regulatory body has control over its own budget to maximise regulatory independence. The LSB has oversight of the regulatory body's budget through the LSB's role in approving PCF applications each year. The saving provisions included in the IGR provide the approved regulator with a safeguard to ensure that it can meet its duties under Section 28 of the Act or other

²² https://www.legalservicesboard.org.uk/what_we_do/consultations/open/pdf/2017/IGR_consultation_doc_-_final_version.pdf

statutory obligations. An approved regulator will also have been closely involved in the design of the arrangements under which its regulatory functions are delegated to its regulatory body, which should provide it, and the profession it represents, with a significant additional source of assurance that the regulatory body is well governed and set up to function appropriately, including in respect of setting its budget appropriately.

Rule 11: Shared services

88. There were eight respondents who commented directly on Rule 11.

- a) Five approved regulators (ACCA, BC, CILEx, ICAEW and TLS)
- b) Two regulatory bodies (BSB and SRA)
- c) One other organisation (the Honourable Society of Lincoln's Inn)

89. The approved regulators that commented on this rule queried its proportionality, including the Guidance on expectations around ongoing review requirements and using quotations for comparable services to inform the assessment of shared services. The approved regulators also queried the impact of this rule on the efficiency of the regulatory body and the approved regulator, and its compatibility with Rule 5 (Prohibition on dual roles). It was considered that the rule gave a power of veto to the regulatory body which could be misused.

90. One regulatory body suggested that the Guidance on Rule 11 make clear that, if a regulatory body is satisfied that shared services are efficient for it, this should be overwhelmingly persuasive for the LSB in assessing compliance with this rule. This regulatory body also considered that a) the sunk costs of existing shared services arrangements, and b) the costs of delivering all the permitted purposes activities under Section 51 of the Act should be taken into account in assessing the appropriateness of shared services.

91. One other organisation was concerned about the risk that shared services could create a consumer and public perception of lack of separation of regulatory and representative functions and suggested additional elements be included in Rule 11 to further address this risk.

LSB response

92. We have amended Rule 11 slightly to make it clearer that shared services are possible, provided certain conditions are met. We have also amended Rule 5 to make it clear that those with shared services roles in accordance with Rule 11 are excluded from the Rule 5.
93. We have changed the Guidance on Rule 11 to remove the reference to the need for the shared services assessments to be carried out on contract renewal to reduce burdens, given the possible frequency of contract renewal. We continue to consider that Rule 11 is a proportionate response to the risk that shared services can present to the independence – and to perceptions of the independence - of regulatory functions, as evidenced by the history of disagreements in this area.
94. Rule 11 envisages that shared services are only possible if both the regulatory body and the approved regulator are in agreement that the conditions set out in Rule 11(1)(a) to (c) are met. The Guidance on Rule 11 makes it clear that whether or not the proposed services meets the condition in Rule 11(1)b is primarily a matter for the regulatory body to determine, but if the regulatory body considers that the condition is met that it should seek the agreement of the approved regulator to that assessment. We do not agree that this gives the regulatory body inappropriate control, nor that the regulatory body will misuse this role, given the key part that shared services will play in its own effectiveness and the adverse impact that any problems or uncertainty in the provision of these services would have on the regulatory body. We recognise that the assessment of the appropriateness of shared services will need to take into account the size and therefore purchasing power of both regulatory body and approved regulator.
95. In assessing compliance with the rule, the LSB consideration will take into account the regulatory body's view as to whether the three conditions in Rule 11(1)(a) to (c) are met.
96. In relation to the sunk costs of existing shared service arrangements, these could be taken into account provided a) the requirements of Rule 11 are met, including that the shared service arrangements are effective and appropriate for the regulatory body (sub-rule (1)(b)) and that they are necessary to be efficient and reasonably

cost-effective (sub-rule (1)(c) and b) such sunk costs have been incurred in the relatively recent past and could not be considered to already have been written off in the normal course of events. The latter condition is important to avoid hard-wiring pre-existing shared service arrangements in perpetuity.

97. In relation to the suggestion that the costs of delivering all the permitted purposes activities under Section 51 of the Act should be taken into account in assessing the appropriateness of shared services, the Guidance on Rule 11 does not preclude this. The Guidance is, however, clear that there must be a material cost saving overall and that under no circumstances should the regulatory body pay more for a shared service than if it contracted independently, irrespective of the saving to the approved regulator.

98. We agree with the respondent who highlighted the risk that shared services can give the appearance of lack of appropriate separation and independence between regulatory and representative functions. We consider that Rule 11 and the Guidance on Rule 11 should help mitigate this risk but will not completely eliminate it. We therefore encourage all approved regulators and regulatory bodies to communicate as effectively as possible their arrangements for separation and independence to stakeholders.

Rule 12: Communication by persons involved in regulation

99. There were two respondents who commented directly on Rule 12.

- a) One regulatory body (BSB)
- b) One other organisation (the Honourable Society of Lincoln's Inn)

100. The one regulatory body which commented on this rule did not make any suggestions for change. The other organisation which commented on this rule suggested some redrafting of the rule.

LSB response

101. We have drafted Rule 12 to more accurately reflect the provisions in Section 30 of the Act.

Rule 13: Candour about compliance

102. There were six respondents who commented directly on Rule 13.

- a) One approved regulator (ACCA)
- b) Three regulatory bodies (BSB, IPReg and SRA)
- c) Two other organisations (EY Riverview Law and the Honourable Society of Lincoln's Inn)

103. The one approved regulator that commented directly on Rule 13 noted the importance of culture in promoting candour about compliance and the importance of the Guidance in explaining how the right outcomes may be achieved.

104. The regulatory bodies that commented on this rule raised a number of issues, including:

- a) Why the LSB appears to consider that the powers that it already has under Section 55 of the Act are insufficient to enable it to gather information about compliance with the IGRs
- b) The specificity of the timescales in the Guidance on Rule 13 for responding to an LSB request
- c) Which body is responsible for remedying a breach.

LSB response

105. The LSB agrees that organisational culture and guidance are both important in delivering candour about compliance. We have endeavoured to provide contextual material, further explanation and examples in the Guidance to promote understanding of what is required and how compliance can be achieved.

106. We explained at paragraph 45 of our November 2018 consultation on the proposed IGR²³ why Rule 13 contains an information gathering power, given that the LSB already has information gathering powers under Section 55 of the Act. This is

²³https://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/2018/LSB_consultation_Proposed_Internal_Governance_Rules_Nov_2018.pdf

because the power in Rule 13 is limited to requiring information about compliance with the IGR and does not involve the same formality as Section 55 nor have the same consequences.

107. In the interests of flexibility, we have amended the Guidance on Rule 13 in relation to the timescales for response to an LSB request to avoid a specific timescale but to require that the information be provided within the timescale set by the LSB.

108. The Guidance on Rule 13 sets out that the responsibilities under Rule 13, including for remedying any breach, lie with the approved regulator and/or the regulatory body, according to whether the breach relates to functions of the approved regulator or functions that have been delegated to the regulatory body.

Rule 14: Disputes and referrals for clarification

109. There were six respondents who commented directly on Rule 14

- a) Three approved regulators (CIPA, CITMA and TLS)
- b) Three regulatory bodies (BSB, IPReg and SRA)

110. The three approved regulators that commented directly on Rule 14 broadly welcomed this rule but were concerned (as was a regulatory body) that the rule left open the possibility that the LSB might not respond to a dispute referred to it. One approved regulator and one regulatory body were concerned that the rule did not explicitly state that the regulatory body can refer disputes to the LSB.

111. Another regulatory body queried the obligation in Rule 14 to refer disputes to the LSB before further action is taken on the basis that this could 'lead to ambiguity if for example the dispute results in in-action and a state of limbo arising'.

LSB response

112. The Guidance on Rule 14 provides more detail on some of the circumstances in which the LSB may not respond to a dispute or point referred to it for clarification. We have added a statement to the Guidance that, where the LSB does not respond, it will provide reasons.

113. The Guidance on Rule 14 also makes it clear that referrals may be made directly by the regulatory body. In relation to the concern that the obligation in Rule 14 to refer disputes to the LSB before action is taken could exacerbate any problems as a result of such inaction, Rule 14 provides for referral of matters to the LSB for clarification if necessary and Rule 16 provides for prior written authorisation for non-compliance to be sought from the LSB. These provisions could be used to address such circumstances.

Rule 15: Guidance

114. There were three respondents who commented directly on Rule 15

- a) One approved regulator (ICAEW)
- b) One regulatory body (BSB)
- c) One other organisation (The Honourable Society of Lincoln's Inn)

115. In summary, the substantive issue raised was to caution against the Guidance becoming prescriptive. The approved regulator expressed the view that the use of *must*, *shall* and *due regard* should be reviewed but it saw no difficulty with complying with Rule 15.

LSB response

116. We have reviewed the Guidance to ensure that, where possible, it remains outcomes focused and that the language used is appropriate.

Rule 16: Saving provisions

117. There were three respondents who commented directly on Rule 16:

- d) Two approved regulators (CILEx and ICAEW)
- e) One regulatory body (SRA)

118. One approved regulator suggested that more detail was required on this Rule in the Guidance as it expected the provision to be used extensively. Another approved regulator argued that the provisions should be used on an exceptional rather than on a regular basis, which would require the high level outcomes expressed in the rules themselves to not be too prescriptive and to recognise effective alternative regulatory models.

119. One regulatory body said that it would only be appropriate for the LSB to grant an application for the rules to be breached with the agreement, or following consultation, with the regulatory body. The regulatory body was uncertain why it was appropriate to allow breaches.

LSB response

120. We consider that it is necessary in the interests of proportionality to have a provision in the IGR that allows an approved regulator or regulatory body to seek the prior written authorisation of the LSB for an action or omission that would otherwise constitute a breach of the IGR. The LSB cannot foresee all circumstances that may arise, and this provision allows the LSB to consider any issues that may arise on a case-by-case basis.

121. We have provided more detail in paragraphs 44 to 45 of the main body of this document about the process for applying for written authorisation and why we expect the granting of long term written authorisations not to comply with the IGR to be rare.

Rule 17: Exemptions

122. There was one respondent who commented directly on Rule 17, Lincoln's Inn.

123. This respondent did not believe that Rule 17 was necessary as the rules referred to in Rule 17 (except for rules 7 and 8(1)) could not apply to an approved regulator with

only regulatory functions. According to this respondent, if Rule 17 was deemed necessary only rules 7 and 8(b) should be referenced.

LSB response

124. We consider that it is desirable, in the interests of clarity and for the avoidance of doubt, to list in Rule 17 all the IGR that do not apply to an approved regulator with only regulatory functions.

Annex D: Analysis of responses by consultation question

1. The November 2018 consultation document asked a number of questions about the proposed IGR and accompanying statutory Guidance. This was supplemented by the May 2019 consultation. This annex provides more detail about the responses to the questions posed in both consultations.
2. The majority of respondents also provided comments directly in response to individual proposed rules. We have summarised and responded to these comments in Annex C. In this Annex, we have summarised the main comments made in response to each consultation question but, to limit unnecessary repetition, we have not repeated the LSB's responses in detail here if the point is already covered earlier in this document.

November 2018 consultation

Question1: 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?

3. There were 16 respondents to this question:
 - a) Eight approved regulators (ACCA, ACL, BC, CILEx, CIPA, CITMA, ICAEW and TLS)
 - b) Five regulatory bodies (BSB, CILEx Reg, CLC, CLSB and SRA)
 - c) Three other organisations (EY Riverview Law, the Honourable Society of Lincoln's Inn and Liverpool Law Society)
4. The views from the eight approved regulators ranged from generally agreeing, to agreeing subject to specific changes to terminology and clarity on definitions. Others disagreed that the proposed rules were necessary at all, as drafted.
5. The views of the five regulatory bodies ranged from generally agreeing, to agreeing subject to specific amendments being made. One regulatory body stated that it could not see how the proposed changes to the IGRs would prevent the issues that it has experienced arising in the future.
6. Of the three other organisations, one respondent generally agreed that the independence of regulatory functions would be enhanced under the revised Internal Governance Rules. The other two respondents offered qualified support in response to this question.

7. General points made include:

- a) Calls for greater consistency with the Act including on the use of influence or prejudice.
- b) Calls for more definitions such as a *regulatory body* and for further explanation where it was felt that subjective language had been used which could result in different interpretations.
- c) That the IGR and Guidance should be more outcomes focused and be less prescriptive.
- d) That the current IGR work and as such there is no need to change the rules.
- e) Concern about the distinction drawn between *oversight* and *assurance* and whether this distinction is in line with an approved regulator's responsibilities under Section 28 of the Act.

LSB response

- 8. In light of the changes we have made to the IGR and Guidance (summarised in the executive summary at paragraph 11 of the main body of this document), we are confident that the IGR will enhance the independence of regulatory functions and improve clarity leading to fewer disputes and more straightforward compliance/enforcement.
- 9. We have summarised the points made by respondents on the use of influence versus prejudice in paragraphs 12 to 18 of main body of the document and in paragraph 5 to 7 in Annex C.
- 10. We have considered the terminology used and made changes in several places for further clarity and to limit potential misinterpretation, such as in Rule 5 (Prohibition on dual roles) where we have removed the term *material* and instead placed the emphasis on the *involvement in decision making relating to regulatory functions by an individual*.
- 11. We believe that the proposed IGR are outcomes focused and only engage in detail where we have evidence to suggest that this is necessary. However, in light of the feedback, we have reviewed the Guidance and removed some of the more

prescriptive detail where, on reflection and in light of the comments we received, we no longer considered it necessary.

12. As set out in the consultation document published in November 2017²⁴ and in the responses to that consultation, we have evidence to suggest that the current IGR are not as effective as they could be. In addition, there has been considerable support from a number of stakeholders for the proposed IGR and Guidance.

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.

13. There were 13 respondents to this question:

- a) Six approved regulators (ACCA, ACL, BC, CILEx, CITMA, ICAEW)
- b) Four regulatory bodies (BSB, CILEx Reg, CLC, CLSB)
- c) Three other organisations (EY Riverview Law, the Honourable Society of Lincoln's Inn, Liverpool Law Society)

14. The views from the six approved regulators ranged from three respondents which raised significant concerns to three respondents which liked the proposed Guidance subject to certain amendments.

15. The views of the four regulatory bodies ranged from two that were generally supportive of the proposed Guidance to two stakeholders which had suggestions for how the Guidance could be improved.

16. Of the three other organisations, one respondent was generally supportive, one was supportive subject to some amendments being made and the last respondent raised serious concerns.

17. General points made include:

- a) Calls for changes to the Guidance (and rules) to allow an approved regulator to legitimately influence the regulatory body where this is right and proper.

²⁴ https://www.legalservicesboard.org.uk/what_we_do/consultations/open/pdf/2017/IGR_consultation_doc_-_final_version.pdf

- b) A concern that the Guidance around providing assurance to the approved regulator needs to set out more detail about what represents reasonable grounds to avoid future disputes on this point.
- c) That the proposed Guidance is excessive, and would serve to constrain approved regulators and the LSB in delivering the required outcome of independent regulatory decision-making
- d) That the Guidance needed to provide more detail on the process for obtaining a written authorisation.

LSB response

- 18. We have reviewed the Guidance in light of the feedback received in response to the consultation and made a number of amendments with the aim of further assisting the approved regulators and regulatory bodies to interpret and comply with the IGR. As a result of this review we have simplified the Guidance in a number of areas to provide for approved regulators and regulatory bodies to apply their own judgment in how best to meet a given outcome.
- 19. We have set out in more detail the feedback from respondents on the use of influence versus prejudice in paragraphs 12 to 18 of main body of the document and in paragraphs 5 to 7 in Annex C.
- 20. The Guidance contains a non-exhaustive list of examples of assurance information. We note that the approved regulator is able to request further information from the regulatory body under Rule 3 (Provision of assurance to approved regulator), but only where it has reasonable grounds to do so. The Guidance includes advice on how the reasonableness test should be applied in this context.
- 21. The process for obtaining a written authorisation is set out in more detail in paragraphs 44 to 45 of the main body of this document and in the Guidance at Rule 16 (Saving provisions).

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?

22. There were 12 respondents to this question:

- a) Six approved regulators (ACCA, ACL, BC, CILEx, CITMA and ICAEW)
- b) Six regulatory bodies (BSB, CR, CLC, CLSB, IPReg and SRA)

23. The views from the approved regulators ranged from two approved regulators which expected to be able to comply within six months, those that were certain that six months is too short and those that were unable to make an assessment until the IGR are finalised.

24. Of the regulatory bodies, the feedback ranged from two respondents which could comply immediately or with only very minor changes to their current set up to two regulatory bodies that could not see how they could comply within six months due to resource constraints and the current set up of shared services.

25. General points made include:

- a) The likely need for written authorisations not to comply with the IGR around shared services that may take longer to bring into compliance with the revised rules
- b) That some approved regulators and regulatory bodies had resource constraints that limit the pace of bringing themselves into compliance
- c) That the redrafting of e.g. delegation agreements can only begin once the final IGR has been published. As it will be important to ensure that any governance reforms are done well, they are likely to take more than six months
- d) That approved regulators cannot assess how long achieving compliance will take until the final IGR have been published
- e) That annual budget cycles do not match the IGR implementation timetable

LSB response

26. In response to the issues raised by respondents in relation to a six month transition period, we have extended the transition to 12 months. We have addressed the key

points in relation to the transition period in paragraphs 41 to 45 of the main document.

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?

27. There were 13 respondents to this question:

- a) Seven approved regulators (ACCA, ACL, BC, CILEx, CIPA, CITMA and ICAEW)
- b) Four regulatory bodies (BSB, CR, CLSB and IPReg)
- c) Two other organisations (EY Riverview Law and Liverpool Law Society)

28. Four approved regulators and two regulatory bodies broadly agreed that the IGR could be implemented and complied with without any additional cost. Two approved regulators and two regulatory bodies thought that implementing the proposals would have resource implications. Only one approved regulator and one regulatory body provided costings as part of their responses.

29. The key points noted by stakeholders included:

- a) Stakeholders will only know costs for certain once the revised rules have been finalised and they have carried out an assessment
- b) The cost of compliance will be influenced by the impact of any changes required where there are shared services
- c) Cost of compliance is dependent on whether the LSB implements burdensome compliance or monitoring requirements

LSB response

30. We consider that we have provided considerable detail on the rationale for the revised IGR. Our aims in reviewing and revising the IGR have been clear for some time which should have allowed approved regulators and regulatory bodies to provide an estimate of implementation costs in areas where changes must be made to comply with the IGR.

31. We recognise that some costs may be unknown for example where there are shared services, and we have altered Rule 11 (Shared services) to be clearer that shared services are allowed if the approved regulator and regulatory body are in agreement and the other conditions in that rule are met.
32. Paragraphs 47 to 52 of the main body of this document set out how the LSB has taken into account the responses to this consultation question in its impact assessment.
33. Paragraph 46 of the main body of this document sets out more detail about the LSB's approach to compliance monitoring with the IGR.

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.

34. There were 11 respondents to this question:

- a) Five approved regulators (ACCA, ACL, BC, CILEx, ICAEW)
- b) Five regulatory bodies (BSB, CR, CLC, CLSB and IPReg)
- c) One other organisation (EY Riverview Law)

35. Two approved regulators, two regulatory bodies and one other stakeholder agreed with our assessment that the cost of compliance (which includes the costs of dealing with disputes and disagreements) will reduce under the proposed IGR. Three approved regulators and three regulatory bodies did not agree that the cost of compliance would reduce under the proposed IGR. Key comments made by the respondents to this question include:

- a) That if disputes decrease, the cost of compliance will likely be reduced. Alternatively, the cost of compliance may increase if new disputes arise (where none exists at present) if the revised IGR create uncertainty about responsibilities and accountabilities
- b) Costs of compliance with current IGR have been negligible and with that baseline a reduction in costs is unlikely

- c) There will be an initial cost to adapt to the revised IGR but once that process is complete, the cost of compliance will not change materially under the proposed IGRs

LSB response

36. We note just under half of respondents agree with the LSB that the ongoing cost of compliance is expected to reduce under the revised IGR. In addition some of those that disagreed currently have such low compliance costs that these were unlikely to be reduced and they also said that bringing themselves into compliance with the IGR was likely to be relatively straightforward. The combination of those that expected to see a reduction in compliance costs with those that expected to maintain low compliance costs contributes to a positive picture of expected compliance costs overall.
37. Paragraphs 47 to 52 of the main body of this document set out how the LSB has taken into account the responses to this consultation question in its impact assessment.

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

38. There were 13 respondents to this question:

- a) Six approved regulators (ACCA, ACL, BC, CILEx, CIPA and CITMA)
- b) Five regulatory bodies (BSB, CR, CLC, CLSB and IPReg)
- c) Two other organisations (EY Riverview Law and Liverpool Law Society)

39. The views from approved regulators ranged from four approved regulators which listed no equality concerns to two approved regulators which considered that any cost of implementing the IGR would be passed on to the profession through the practising certificate fee which might impact on the diversity of the profession. One approved regulator noted that any costs would ultimately be passed on to consumers and that this would have a disproportionate negative impact on small practices and their clients. However, neither approved regulator submitted quantitative evidence to document the equality implications.

40. The views from the regulatory bodies ranged from four respondents which did not list any equality concerns to one regulatory body which noted that should regulatory costs increase significantly, this could disadvantage some practitioners more than others, such as part-time regulated individuals. Part-time regulated individuals with a protected characteristic may be working part-time out of necessity due to the nature of their protected characteristic (child-care; disability etc).

LSB response

41. We set out in paragraph 53 of the main body of this document how we have taken responses to this question into account in our equality impact assessment for the revised IGR.

May 2019 consultation

Question 1: Do you agree that the amendment to Rules 4, 8 and 10 as set out in this document should be adopted into the new IGR? Please provide your reasons.

42. There were 12 respondents to this question:

- a) Seven approved regulators (*ACCA, BC, CILEx, CIPA, CITMA, ICAEW and TLS*)
- b) Four regulatory bodies (*BSB, CR, IPReg and SRA*)
- c) One other organisations (Lincoln's Inn)

43. Most of the approved regulators generally supported the proposed amended wording to rules 4, 8 and 10 but one approved regulator raised significant concerns about the proposed amendments. This respondent argued that while rules 4(3), 8(2) and 10(2) were an improvement upon the language used in the first proposed rules, they were *ultra vires*. Furthermore, this approved regulator objected to the term *residual role* as this respondent suggested it failed to recognise the approved regulator's dual representative and regulatory role, particularly in the situation where the regulatory body is not a separate legal entity. Finally, the same respondent asserted that there is a lack of evidence of disputes and that the LSB has not made the case for change.

44. Among the other approved regulators some had suggestions for how the sub-clauses could be amended. These included:

- a) removing the words 'seek to prejudice' as deciding on intent was considered to be very subjective and not outcomes focused
- b) querying the rationale for sub-rule (3)(a) limiting an approved regulator's ability to seek to influence the regulatory body's governance, structure, priorities and strategy in the exercise of the approved regulator's representative functions.

45. The views from the regulatory bodies were generally supportive of the proposed amendments although one regulatory body was opposed to the proposed amendments. One regulatory body proposed adding the concept of *improper influence* in order to make it clear that representative functions can legitimately lobby on behalf of those they represent as long as they do not use the governance and related arrangements to do so. Another regulatory body suggested that the LSB should review the drafting of Rule 8 (The Regulatory Board: Appointments and Terminations) and related Guidance to make it clear (and consistent with Rule 4 (Regulatory Autonomy)) that the approved regulator cannot be involved with recruitment to regulatory boards and must not seek to influence the recruitment panel.

LSB response

46. We have carefully considered each proposal regarding Rules 4(3), 8(2) and 10(2) and consider the phrase *seek to* is unnecessary and that the safeguards to ensure independent judgement are sufficiently served by the remainder of Rules 4(3)(b), 8(2)(b) and 10(2)(b).

47. We considered that some of the other proposed changes to terminology would have altered the intent of the Rules, complicated matters by introducing new terms which would require further explanation or would have reinstated terms which the Board has already taken a decision to remove, as explained in the decision document published in July 2018.

48. We have explained at paragraph 25 of Annex C of this document how we have addressed concerns about the use of the term residual role and the about perceived constraints on the approved regulator's role, particularly in the situation where its regulatory body is not a separate legal entity.

49. We have addressed the question of the evidence base for our review of the IGR at paragraph 28 of the main body of this document.

Question 2: Does the proposed revised Guidance on Rules 4, 8 and 10 at Annex A provide sufficient detail to help you to interpret and comply with the proposed revised versions of Rules 4, 8 and 10? Please provide specific comments on any areas of the proposed Guidance for Rules 4, 8 and 10 where further information would improve clarity.

50. There were 9 respondents who commented on this question:

- a) Five approved regulators (*ACCA, BC, CILEx, CITMA and ICAEW*)
- b) Three regulatory bodies (*BSB, CR and IPReg*)
- c) One other organisations (Lincoln's Inn)

51. The views from approved regulators ranged from one approved regulator which raised significant concerns about the proposed amendments, to two approved regulators which called for a simplification of the Guidance in general terms, to one which expressed general support and finally to one which expressed general support subject to some suggested clarifications being made. The first respondent expressed serious concerns about the fact that the Guidance on Rule 10 (Regulatory body budget) sets out that the approved regulator cannot approve or reject the proposed budget. This respondent argued that without this power it would be placed in the untenable position of being accountable to the profession for the PCF level but with very little control over the level at which it is set. Another respondent sought clarity on the Guidance that *the regulatory body assumes responsibility for compliance with Section 28 of the Act...* in relation to the regulatory bodies' responsibility and the approved regulators' liability for non-compliance. Finally this respondent requested greater clarity around the proposed Guidance and sought reassurance that the IGR would not in any way act as any impediment to the right to whistle blow if such circumstances arose.

52. The views from the regulatory bodies ranged from two which broadly supported the Guidance subject to suggested amendments to one which supported the suggested Guidance on rules 4, 8, and 10 without further comments. One respondent suggested that that proposed Guidance should be amended as follows to provide greater clarity: *“In seeking to influence the regulatory body the role of the AR is strictly limited to when it is acting in its representative capacity. The AR must only use its residual role in overseeing the regulatory function when carrying out its assurance functions and the AR must explicitly make clear whenever it is acting in its AR capacity, including (but not limited to) in discussions and correspondence.”* Another respondent suggested that the Guidance on Rule 4 should be changed from ‘election of members’ to ‘election and/or recruitment of members’.
53. One other respondent repeated its comments about the substitution of a requirement for *separation* in the IGRs that is not part of the language of the Act. If Rule 1 itself should not require separation, then the Guidance should also be amended to remove references to it.

LSB response

54. Our position regarding whether the approved regulator or regulatory body should be the decision-maker on the regulatory budget is explained in paragraph 87 of Annex C.
55. Regarding the point raised about the compliance liability resting with the approved regulator following delegation of regulatory functions, we consider that our Guidance is clear on this point. The IGR provide sufficient safeguards in the other Rules, in particular Rule 3 (Provision of assurance to approved regulator); Rule 13 (Candour about compliance); Rule 14 (Disputes and referrals for clarification) and Rule 16 (Saving provisions) to ensure that the approved regulator is able to comply with its legal duties.
56. We have considered the proposals for additions to the Guidance and have amended the Guidance on Rule 4 to include *election...and recruitment of members.*

Annex E: Changes to IGR

IGR WITH SUBSTANTIVE PROPOSED POST-CONSULTATION AMENDMENTS TRACKED

INTERNAL GOVERNANCE RULES

The Legal Services Board has on 24 July 2019 made the following rules under the Legal Services Act 2007 (c.29), Section 30.

The Internal Governance Rules 2009 (as amended 20 February and 30 April 2014) made by the Legal Services Board under Section 30(1) are hereby revoked.

DEFINITIONS

Act	The Legal Services Act 2007.
Approved Regulator	As defined in Part 1 of Schedule 4 to the Act or designated under Part 2 of Schedule 4 to 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).
Consumer Panel	The Consumer Panel established by the Legal Services Board in accordance with Section 8 of the Act.
Lay Person	As defined in paragraph 2(4) of Schedule 1 to the Act.
Legal Services Board	As defined in Section 2 of the Act.
OLC	The Officer for Legal Complaints established by 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	For the purposes of Rule 11, <i>Services</i> includes 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 to 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 the exercise of~~ its regulatory functions ~~are-is~~ not ~~influenced prejudiced~~ 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 sub-rule (42).

SEPARATION AND 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 ('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 ('residual role').
- (3) ~~he-An~~ approved regulator must promptly inform ~~the-its~~ regulatory body if the approved regulator makes or intends to make a decision, plan, communication 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~~ require further information supplied by from the regulatory body ~~where-if~~ 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 in a way which is compatible with to meet the regulatory objectives and having regard to 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.~~
- (3) The approved regulator with a residual role:
 - a. may only seek to influence these determinations in the exercise of its representative functions; and
 - b. must not prejudice, ~~or seek to prejudice,~~ the independent judgement of the regulatory body.

5. PROHIBITION ON DUAL ROLES

No person, whether remunerated or not, shall be who is involved in a material way in both the decisions relating to regulatory functions may also and be involved in the representative functions of the approved regulator, unless that person's role is within a shared service in accordance with Rule 11.-

~~(1) 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 AND RESPONSIBILITY

6. INDIVIDUAL CONDUCT

Each approved regulator must ensure that any 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 AND 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 influence these determinations except if the regulatory body conducts a consultation, then its views may be taken into account.~~

(2) The approved regulator with a residual role:

- a. may only seek to influence these determinations in the exercise of its representative functions; and
- b. must not prejudice, ~~or seek to prejudice,~~ the independent judgement of the regulatory body.

BUDGET AND 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 determinations except if the regulatory body conducts a consultation, then its views may be taken into account.~~

(2) The approved regulator with a residual role:

- a. may only seek to influence these determinations in the exercise of its representative functions; and
- b. must not prejudice, ~~or seek to prejudice,~~ the independent judgement of the regulatory body.

11. SHARED SERVICES

- (1) An approved regulator with a residual role and its regulatory body may ~~only must not~~ share any services ~~unless if~~ they are in agreement that:
 - a. this will not undermine, and could not reasonably be seen to 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 AND 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 AND 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 to 5;
- b. Rule 8;
- c. Rules 10 and 11;
- d. Rule 14(2); and
- e. Rule 16(1)(a).

Annex F: Key changes to IGR Guidance

1. The LSB has responded to requests from respondents to the consultation to ensure that the Guidance is less repetitive and prescriptive only where it needs to be.
2. In general we have:
 - removed repetition within and between rules
 - removed additional cross-referencing of relationships between rules
 - made minor drafting changes to be clearer on our expectations.
3. The following table is a record of the key changes that have been made and it should be read alongside the Guidance:

	Amendments made
Introduction	<ul style="list-style-type: none"> • Removed text relating to the implementation and commencement • More closely aligned with the terminology in the Act • Highlighted text on the detail on delegation of regulatory functions and moved to the interpretation section • Added text on the role of the approved regulator in setting up the regulatory body as additional assurance measure • Removed detail on LSB assurance of IGR compliance which is now set out in the decision document
Rule 1	<ul style="list-style-type: none"> • Updated to reflect change of term from <i>influence</i> to <i>prejudice</i> • Deleted reference to interests to mirror change to rule • Emphasis added that periodic reviews should be carried out • Corrected mis-referencing in 1(3)
Rule 2	<ul style="list-style-type: none"> • Detail of approved regulator assurance moved to Rule 3
Rule 3	<ul style="list-style-type: none"> • Detail of approved regulator assurance inserted from Rule 2 and unnecessary repetition removed • Removed illustrative examples • Added New section on agreeing protocol for the provision of information
Rule 4	<ul style="list-style-type: none"> • Updated to reflect amended sub-rule (3) • Clarified that the outcome at the top of the rule now refers to inappropriate influence rather than just influence. Supporting text has been removed for clarity • Removed references to regulatory bodies consultation • Removed examples of regulatory policy
Rule 5	<ul style="list-style-type: none"> • Updated to reflect change from <i>materiality</i> judgement to <i>decisions relating to regulatory decisions</i>. • Clarified who this Rule applies to • Moved the detail on definition of a role moved from Rule 6

	Amendments made
	<ul style="list-style-type: none"> • Clarified that dual role restrictions do not apply to those involved in shared services
Rule 6	<ul style="list-style-type: none"> • Language on who this rule applies to have been simplified and clarity on relationship with Rule 5 added. • Removed assurance reference • Added that refresher training must happen at regular intervals
Rule 7	<ul style="list-style-type: none"> • Amended to increase flexibility on regulatory decision making when lay chair and lay majority are not present
Rule 8	<ul style="list-style-type: none"> • Updated to reflect amended sub-rule (2)
Rule 9	<ul style="list-style-type: none"> • Added clarity on the consideration of <i>reasonable</i> with regards to the justification of resources
Rule 10	<ul style="list-style-type: none"> • Updated to reflect amended sub-rule (2) • Replaced 'Without influence from approved regulator" by 'independently' • Removed references to regulatory body consultation
Rule 11	<ul style="list-style-type: none"> • Clarified that dual role probation does not apply to those involved in shared services and cross reference to Rule 5 has been added • Added example of how to achieve equal footing without separate legal personalities • Removed prescription on risk assessment and how shared services should be agreed
Rule 12	<ul style="list-style-type: none"> • Removed repetition
Rule 13	<ul style="list-style-type: none"> • Reordered and streamlined list of tools for compliance monitoring • Text has been edited for clarity and example removed • Removed prescription on non-compliance notification – but added option for the LSB to specify this later • Added text to set out LSB expectation of robust procedures which includes records of non-compliance and remedies of non-compliance
Rule 14	<ul style="list-style-type: none"> • Clarified that a regulatory body can refer a dispute directly to the LSB • Clarified that the LSB will provide reason should it take a decision on a dispute • The following text has been added: 'It is expected that the approved regulator will seek relevant external advice if none is available in-house before referring the issue to the LSB.' • Removed example
Rule 15	<ul style="list-style-type: none"> • No change
Rule 16	<ul style="list-style-type: none"> • Clarified the basis on which the LSB will decide to issue a non-compliance waiver – that in doing so the regulatory body's independence or effectiveness would not be undermined.
Rule 17	<ul style="list-style-type: none"> • No change

Annex G: Glossary

The Act	Legal Services Act 2007
ACCA	The Association of Chartered Certified Accountants
ACL	Association of Costs Lawyers
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 approved regulator
BC	The Bar Council
BSB	The Bar Standards Board
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)
CILEx	The Chartered Institute of Legal Executives
CILEX Reg	CILEX Regulation
CIPA	The Chartered Institute of Patent Attorneys
CITMA	The Chartered Institute of Trade Mark Attorneys
Consultation	The process of collecting feedback and opinions on a policy proposal
OLC	As defined in Section 114 of the Act
CLSB	Costs Lawyer Standard Board
ICAEW	The Institute of Chartered Accountants in England and Wales

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.
IPReg	the Intellectual Property Regulation Board
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
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 body	A body which has been delegated the regulatory functions of an approved regulator, as defined in 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.
SRA	The Solicitors Regulation Authority
TLS	The Law Society