LEGAL SERVICES BOARD

Designating new approved regulators and approving rule changes

Response to Consultation

December 2009

Table of Contents

1. Introduction

1.1 This document sets out the Legal Services Board's response to the consultation "Designating new approved regulators and approving rule changes - Discussion paper on developing rules to approve applications for designation as an approved regulator and to approve changes to the rules of approved regulators".

1.2 Annex 3 and 4 set out the final form of the rules. Included within the rules is the prescribed fee in relation to designation applications that have been consented to by the Lord Chancellor.

1.3 These rules are made in accordance with Schedule 4 of the Legal Services Act 2007 (the **Act**) following a consultation process which involved the publication of a consultation document on 21 July 2009. This consultation ran until 13 October.

1.4 The Legal Services Board (the **LSB**) also held two roundtable discussions on the scope of the LSB's use of the provision at paragraph 19(3) and (4) of Schedule 4 of the Act to exempt general or specific alterations to the Regulatory Arrangements from the requirement for pre-approval from the LSB.

1.5 We received 16 responses to our Consultation. A list of these respondents is set out at Annex 1. Full copies of the responses can be found on the LSB website.

1.6 This response document includes:

- An executive summary
- A summary of responses to each of the questions posed by the consultation paper and the LSB response
- An outline of the next steps
- List of respondents (Annex 1)
- An impact assessment (Annex 2)
- The final rules
    - Rules for Approved Regulator Designation Applications (Annex 3)
    - Rules for Rule Change Applications (Annex 4)

2. Executive Summary

2.1 The LSB consultation proposed adopting a front-loaded approval process that requires all applications submitted to it for approval to be well prepared and have already been subject to wide stakeholder consultation (and with representations made having been addressed and / or explained). We will also expect appropriate certification by executive, honorary officer and independent external adviser (s) where appropriate. In return the LSB would not then go back over the detail within the application. It is envisaged that this approach will aid expedient and high quality decision making.

2.2 The consultation responses broadly supported this proposed approach and the rules criteria and architecture for governing it. Therefore, there are few material changes to

the draft rules that we consulted on. Any material changes are discussed throughout this document but in summary, and to comply with Section 205(5) of the Act, the material changes between the draft rules consulted on and our final draft rules are as follows:

Rules for Approved Regulator Designation Application

- the initial draft rules the LSB consulted on did not include any mechanic in relation to the "prescribed fee". Having considered responses from respondents, the LSB has now developed a formula for the "prescribed fee" which has been given Lord Chancellor's consent. Further details about this proposal are set out in the body of the rules contained in Annex 3, in paragraphs [2.13] and [2.14] below and in paragraphs [3.16] to [3.21] of Section 3;

- the initial draft rules contained some guidance within them. Some respondents to our consultation recommended that the guidance be removed from the body of the rules and be placed in the schedule. We have adopted this approach in the final rules.

Rules for Rule Change Applications

- there has been a substantial change in the way the LSB will use paragraphs 19(3) and 19(4) of Schedule 4 to the Act to allow certain alterations to an Approved Regulator's "Regulatory Arrangement" to be exempt from the approvals process. Details of the changes are set out in the body of the rules contained in Annex 4, in paragraphs [2.6] to [2.12] below and in paragraphs [3.52] to [3.59] of Section 3.

2.3 The rules proposed aimed to provide a principle and outcome based approach, which defined the main criteria for approval, but were not prescriptive about the precise form of evidence required to demonstrate compliance. This would have allowed the LSB to consider each application on its merits to reach judgement as to whether or not it should be approved. The onus would have been on the applicant to demonstrate to the LSB that it should. Should the LSB have decided to refuse an application, full reasons behind the decision would have been published on the LSB website.

2.4 The consultation responses also offered broad support for this approach however there were some differing opinions about whether the LSB should issue detailed guidance to accompany the rules and criteria. The LSB wishes to strike a balance between offering certainty for applicants and maintaining a level of flexibility within the new statutory framework. We do not wish to give detailed criteria at this early stage, as there is no definitive view of what the criteria that could cover all eventualities should look like and we would not want to place unnecessary restrictions on applicants.

2.5 Therefore, we have chosen to adopt the pragmatic approach suggested by some respondents of not issuing detailed guidance but keeping this under review as our internal processes develop and we learn from the experiences of dealing with early applications.

2.6 There was one major sticking point with our proposals, which was expressed by a large majority of consultation responses. This centres around the proposed use of the provision at paragraph 19(3) and (4) of Schedule 4 to the Act to exempt general or specific alterations to the Regulatory Arrangements of existing ARs from the requirement for pre-approval from the LSB.

2.7 At present the only "Regulatory Arrangements" that existing approved regulators (**ARs**) are required to seek approval (from the Secretary of State) in order to amend are qualification regulations and rules of conduct relating to the rights of audience and rights to conduct litigation.

2.8 The Act provides that an AR must obtain approval from the LSB to alter any of its "Regulatory Arrangements" unless the LSB has directed it to be considered exempt from the requirement for pre-approval.

2.9 The Act (Section 21) defines "Regulatory Arrangements" broadly so as to apply to all rules and regulations **and** any other arrangements which apply to regulated persons apart from those made for representational or promotional purposes. This expands considerably the range of the existing approval regime.

2.10 We did not consult on using the powers provided within the Act to exempt less substantive changes from the pre-approval process but rather provide an expedited process for them. This would have required each application to be published for 28 days on the LSB website for consultation and if the LSB did not identify any major issues and no objections were raised the application would lapse after 28 days and would be considered granted.

2.11 This approach was not welcomed by respondents, especially the ARs. It was argued that the volume of changes that this would encompass may place an unsustainable burden on ARs in submitting applications, as well as on the LSB in processing them. It was argued that it is not necessary for the LSB as oversight regulator to mandatorily require the submission of applications for less substantive alterations to the Regulatory Arrangements of the front-line regulators and therefore a fuller exemption process should be utilised.

2.12 We have listened to these concerns and discussed them with representatives from the ARs and propose an alternative position that we believe will be acceptable to them, as well as to the LSB. This provides the option to each AR of providing the LSB with an annual forward plan detailing the changes to the Regulatory Arrangements that it anticipates wanting to make throughout that year. The LSB would review the plan and decide which changes it will want to scrutinise in detail, based on an evaluation of significance, impact and risk. The LSB would direct all other proposed amendments within the plan to be exempt from the requirement for

pre-approval provided certain conditions were met. The draft rules have been amended to facilitate this (please see Section C of Annex 4). Where an AR fails to agree an acceptable plan with us, all changes, with the exception of those within the agreed de minimis requirements (which the LSB will direct before January) or any other changes that have been exempted by direction from the LSB, will need to be submitted to the LSB for approval.

2.13 The LSB sought views on the appropriate level and method of calculation of the "prescribed fee" that paragraphs 3(3) and 3(4) of Schedule 4 requires that the LSB must set, with the consent of the Lord Chancellor. The prescribed fee must accompany any application by new bodies wishing to be designated as an AR and any application from existing ARs wishing to be designated to regulate additional reserved activity.

2.14 The prescribed fee has been set based on a forecast of the **direct cost** of LSB resource (staff and overheads) required to process a typical application. We anticipate the there will be less resource required to process an application from an existing AR applying to take on additional reserved legal activities than from a brand new applicant and there will therefore be a lower prescribed fee for such applications. An additional fee may be charged if further information is required and this will increase the LSB's costs for processing applications above the relevant fee. An additional fee may also be charged if the nature of the application means that we need to seek external advice and the cost of this advice will increase the LSB's costs above the relevant fee (please see Section D of the rules for more information).

3. Responses to our Consultation

Introduction

3.1 This section of the paper sets out a summary of the range of responses that we received to each question that we posed in our Consultation Paper and sets out the final position the LSB has reached as a result of these responses.

Rules for New Body Designation Applications

Question 1 – Bearing in mind the Regulatory Objectives and the Better Regulation Principles, do you agree with the Board's approach to its requirements for the content of Applications?

Responses

3.2 All but one respondent agreed with the LSB's approach to its requirements for the contents of Applications.

3.3 Responses received include:

- a response from The Society of Scrivener Notaries (the "**Scrivener Notaries**") who "*acknowledge that the approach taken is consistent with the Regulatory Objectives and the Better Regulation Principles*";

- a response from the Office of the Immigration Services Commissioner ("**OISC**") who "*agrees with the LSB's approach*";

- a response from the Solicitors Regulation Authority (the "**SRA**") who "*support the broad approach set out in the paper*". The SRA do, however, recommend that it would be helpful for the LSB to offer some initial guidance, particularly to new bodies that may be unsure as to whether a full application would be successful;

- a response from the Council for Licensed Conveyances (the "**CLC**") who agree with the approach but predicate this "*on the understanding that any applicant will be able to have informal discussions with the LSB as to the form and content of any application in advance of any formal submission*";

- a response from the Master of Faculties who was the only respondent not to agree with the LSB's approach. The Master of Faculties states that "*the draft rules in section C do not reflect the clarity and rigour anticipated in the rule-making powers conferred on the LSB by Part 2 of Schedule 4 of the Legal Services Act 2007. Whilst we recognise that the LSB seeks to be helpful in providing guidance for applicants, the inclusion of guidance within the body of the rules obscures the distinction between what the Act makes mandatory in terms of information to be provided ... and guidance which is advisory only*".

LSB position

3.4 We note the majority of respondents are supportive of our approach in relation to our requirements for the contents of applications for designation as an AR. We have noted the suggestion from the SRA that we develop further guidance for applicants and we will consider whether this is desirable as we develop our own internal processes for considering applications and learn from working with early applicants.

3.5 The intention is for the approach to be compatible with the holding of informal discussions with the LSB prior to an application being submitted. We will revisit our draft rules to make sure this is clear.

Question 2 – If you do not agree with the Board's approach to its requirements for the content of Applications, what alternative approaches would you suggest and why?

Responses

3.6 A number of the respondents grouped their answer to this Question in with their answer to Question 1. For this reason, many of the comments referred to at Question 1 also apply to this Question 2. Responses (other than those referred to at Question 1) include:

- a recommendation from the Master of Faculties that "*guidance should be presented separately in a schedule, if it is to be contained in Rules at all, because it does not fit within the body of rules. Guidance is advisory whereas rules are legally binding*"; and

- a response from the Law Society who "*broadly agree with the LSB's approach...*".

LSB position

3.7 The LSB notes that the majority of respondents endorse the LSB's proposed approach. The LSB has considered the Master of Faculties' observations on guidance and has redrafted its rules accordingly.

Question 3 – What additions to or alterations to the Application process would you suggest?

Responses

3.8 A number of the respondents grouped their answer to this Question in with their answers to Questions 1 and 2. For this reason, many of the comments referred to at Questions 1 and 2 also apply to this Question 3. Responses (other than those referred to at Questions 1 and 2) include:

- a response from the Scrivener Notaries who raise some concerns in relation to the details of the rules. In particular, the Society would like to have greater clarification on the level of consultation required;

- a suggestion from the Fellowship of Professional Willwriters and Probate Practitioners (the "**Fellowship of Willwriters**") that "*advice and guidance should be available to all applicants at each stage of the application process*";

- a request from the Office of Fair Trading (the "**OFT**") that the LSB should discuss any proposed deadline for obtaining advice from the OFT before setting it. The OFT states that "*given that the OFT will be providing specialist competition advice regarding Applications, the LSB may not initially realise the complexity (or lack of complexity) of the Application in relation to these issues and therefore the deadline required*";

- a response from the Law Society who raise a concern about draft Rule 13 which states that "*Board approval of a new body as an Approved Regulator, or of an existing Approved Regulator as an Approved Regulator in relation to an additional Reserved Activity represents an assessment that: ... the Applicant appears well prepared and appears to understand the roles and responsibilities granted to Approved Regulators under the Act*". The Law Society comments that "*the word 'appears' is not robust enough in this context. Applicants must be well prepared and the LSB should be satisfied that they do understand the responsibilities as placed on them under the Act. Becoming an Approved Regulator or adding new Reserved Legal Activities to a current regulator's remit entails a significant responsibility. The LSB must be certain that those who apply can fulfil all the necessary duties from day one, otherwise there would be significant risk of consumer detriment*";

- a response from the Institute of Professional Willwriters (the "**Institute of Willwriters**") who raise concerns about LSB requirements for the publication of information in relation to an application. The Institute of Willwriters "*have concerns about the publication of commercially sensitive or personal information*". In particular, it states that "*while the consultation paper states that applicants can request redaction of information, we believe that redaction should be automatic for certain types of information...*" The Institute of Willwriters also believes that the "*requirement is unfair on early Applicants because it requires them to disclose the*

content of their Application to other, competing, organisations who can subsequently use the information to submit their own Applications". In a similar vein, the Institute of Willwriters "*are cautious to consult with members of, and representative bodies for, professions which may be affected by the Application. This requirement has the potential to 'tip off' other organisations*".

LSB position

3.9 The level of consultation that an applicant will need to undertake will depend on the applicant's individual circumstances. Ultimately, it is for the applicant to decide what it thinks is the correct level, though the LSB would be happy to informally discuss the applicant's proposals before a formal application is submitted. The LSB is however clear that all applications will require proportionate consultation with the ARs, other relevant regulators, the prospective regulated community and the likely consumers of the relevant reserved activity and / or their representatives.

3.10 As mentioned at paragraph [2.5] above, the LSB has noted the suggestion that it provide further advice and guidance and it will review this position as it develops its own internal processes for considering applications and learns from working with early applicants.

3.11 The LSB welcomes the comments from the OFT and is engaging with the OFT both about deadlines and the process for obtaining the advice it requires.

3.12 The LSB notes the concerns raised by the Law Society in relation to draft Rule 13. Though the LSB agrees that applicants must be well prepared and that the LSB should be satisfied that they understand the responsibilities as placed on them under the Act, the LSB's assessment of these criteria can only be based upon the information provided to it. The LSB therefore considers the use of the qualifier "appears" appropriate. The LSB agrees that becoming an AR or adding a new reserved legal activity entails a significant level of responsibility. The LSB further agrees with the Society's recommendation that applications should only be granted if it appears from the application submitted that the applicant could fulfil all the necessary duties.

3.13 The LSB is committed to having a fully transparent application process. For these reasons the LSB does not agree with the concerns raised by the Institute of Willwriters. As a principle the LSB recognises that there will be certain information that an applicant may not want to see published. However, the redaction of this information should be dealt with on a case by case basis rather than being automatic.

Question 4 – What do you think the appropriate level of, and method of calculation of the Prescribed Fee should be?

Responses

3.14 The majority of respondents were of the view that the Prescribed Fee should either be:

- a set fee calculated to recover the LSB's direct cost of the staff resources and the associated overheads deployed in considering a typical application; or

- a set fee, as suggested above, but with the ability for: (i) a refund to be given back to the applicant if the LSB's costs turn out to be significantly less than the set rate; or (ii) the fee to be increased in the event that the LSB envisages significantly more work is required.

3.15 Responses received include:

- a response from the Fellowship of Willwriters who observe that "*the suggestion that the fee should be calculated to recover the LSB's direct cost of the staff resources and the associated overheads deployed on considering a typical application is therefore considered appropriate*";

- a response from OISC who believe that "*the introduction of a set fee calculated to recover the direct cost of the LSB's staff resources and associated overheads would be the simplest, most transparent and generally the fairest way of meeting the costs of application*". At the same time OISC "*recognises that some applications may be much more expensive to process than others and therefore considers that it would be reasonable for the LSB to reserve the right, in exceptional circumstances, to adjust the fee to take account of any significant extra costs*". OISC considers that this approach may act as an additional encouragement to applicants to prepare applications thoroughly;

- a response from the Master of Faculties that "*a set fee would be clear because it would be limited to those bodies making an application under the Rules and would be fair and proportionate for that reason. The second option would lack clarity at the outset and would be likely to be more costly overall due to the additional work in assessment which would have been done by the LSB*";

- comments from the Institute of Legal Executives and ILEX Professional Standards Limited (together "**ILEX**") who state that "*we have considered the issue of the prescribed fee ... and recommend that debate focus on the first two bullet points. The attraction of the first bullet point is that it would be simple for both the LSB to administer and the applicant to understand... The second bullet point would certainly be more accurate than the first. Although it may be more onerous than bullet one for the LSB itself ...*";

- a response from the Scrivener Notaries who favour "*a set fee that can be adjusted to reflect the actual work involved*";

- a response from the SRA who conclude that "*the fairest way is clearly ... a set fee with the ability for a refund to be provided to the applicant if the LSB's costs turned out to be significantly less than set rate, or indeed for the fee to be increased*".

LSB position

3.16 The LSB welcomes the responses it received to this question as it has helped isolate the options which it believes are the most appropriate. Having considered the issues further the LSB has agreed with the Lord Chancellor that the Prescribed Fee should be a set fee calculated to recover what the LSB believes will be its direct costs of staff resources and associated overheads in considering a typical application.

3.17 It is likely that less information will be required from an applicant who is already an AR which is applying to add an additional reserved activity to its competencies than to a wholly new organisation as the internal arrangements are likely to already be deemed to be effective. Therefore, the LSB's costs are also likely to be lower and we have decided that it is appropriate that there is a reduced prescribed fee for such applications.

3.18 The different levels of the prescribed fee will therefore be set at £[22,000] if the applicant is not an existing AR and £[16,000] if the applicant is an existing AR.

3.19 The Prescribed Fee for an existing AR applicant is based on a day rate of £562 over 28.5 business days. In respect of a Prescribed Fee for an applicant who is not an existing AR applicant, this is based on a day rate of £562 over 39 business days.

3.20 To promote simplicity the set fees will not be recalculated with each application but there will also be a variable element allowing the LSB to charge an additional amount in excess of the amounts specified above if:

- the LSB requests further information from the Applicant in accordance with Rule 14 and the LSB's costs in processing this information exceeds the relevant amount specified above. In these circumstances, any such additional costs will be charged at the day rate of £562;

- the nature of the application means that the LSB has to seek external advice and the cost of this advice would mean that the LSB's cost in processing the application would exceed the relevant amount specified above.

3.21 Given the newness of the approval process the LSB will review the set fee against actual costs incurred on an annual basis.

Question 5 – Do you think we should reduce the Prescribed Fee for Applications from existing Approved Regulators to take on additional Reserved Legal Activities?

Responses

3.22 The majority of respondents were of the view that there should be a reduction in the Prescribed Fee for Applications from existing ARs to take on additional Reserved Legal Activities.

3.23 Responses received include:

- comments from OISC who "*considers it would be unfair to existing approved regulators who only apply to take on additional reserved legal activities to pay the same application fee as bodies applying to be designated as new regulators, as the former type of application is likely to involve much less work for the Legal Services Board*";

- a response from the SRA who state "*it is reasonable that Reserved Legal Activity applications from existing approved regulators should attract fees that reflect the assessment and consideration required of them by the LSB*"; and

- comments from the Scrivener Notaries who do not agree that a reduction is appropriate. They state that they "*do not see why this should be policy*";

- a response from the City of London Law Society who express the view that if the Prescribed Fee is set as an adjustable amount (as referred to above) it follows that "*if it transpires that an application for an existing Approved Regulator in fact costs less than the set fee, that Regulator will be entitled to a refund*".

LSB position

3.24 As discussed at paragraph [3.17] above, The LSB proposes a reduced Prescribed Fee for Applications from existing ARs

3.25 The LSB will also charge a nominal fee only for specific applications from ILEX as these applications were submitted under the existing system that does not require the payment of a fee and have already reached an advanced stage of the process but will not be completed under the current arrangements. These applications will therefore require significantly less work when they are re-submitted under the new system.

Question 6 – Do you agree that the Board should use external advisors when necessary with the cost of these being met by way of an adjustment to the Prescribed Fee?

Responses

3.26 The majority of respondents agree that the LSB should use external advisors when necessary with the cost of these being met by way of an adjustment to the Prescribed Fee.

3.27 Responses received include:

- a response from the CLC who agree that the LSB should use external advisors "*on the assumption that external advisors will only be used in exceptional circumstances, and not because the LSB is insufficiently resourced*";

- comments from the Law Society who state that "*applicants should be charged the full amount if the LSB feels that it needs to buy in external technical advice*". The Law Society does add that they "*would hope that this option is not used excessively*";

- agreement from the City of London Law Society but with a note that the approach "*should be part of an encouragement/incentive for applicants to make applications as effective as possible and thereby reduce the need for external advice*"; and

- comments from ILEX who state "*in principle we have no objection to the notion of using external expert advisers from time to time. It is realistic when applications*

may be technically complex or where data is unusually intense. However, we would not expect the LSB to consider at all poorly prepared applications, and we would imagine that the occasions of an application needing to be made urgently will be very limited indeed".

LSB position

3.28 The LSB is pleased that the majority of respondents agree that the LSB should be able to use external advisors where necessary with the cost of these being met by way of an adjustment to the Prescribed Fee. As discussed at paragraph [3.20] above, the LSB proposes to allow for an increase in the level of the Prescribed Fee in these instances. This may mean that subsequent invoices are issued part way through the application process where we have been in a position to anticipate the level of expertise required at the outset.

3.29 The LSB would not envisage having to use the power to use external advisers on a routine basis but recognises that there are likely to be occasions when it does not have the in-house competencies to deal with certain aspects of an application effectively.

Question 7 – Do you agree with the approach taken to oral representations?

Responses

3.30 The majority of respondents agreed with the approach taken to oral representations.

3.31 Responses received include:

- a response from the Fellowship of Willwriters who comment that "*the draft rules state that oral statements will only be accepted in exceptional circumstances. It is difficult to envisage what these circumstances might be... The LSB's approach is therefore considered appropriate if exceptional circumstances can be clarified*";

- comments from OISC who "*agrees with the approach the Board has taken to oral representations. While oral representations should be available as an option, they should not generally be necessary and should not, therefore, become routine*";

- comments from the Law Society who "*think the approach suggested underplays the value of oral discussion with new applicants". The Law Society "believe that all new applicants to be an Approved Regulator should be required to participate at least once in a face-to-face questioning with the LSB*"; and

- a response from the Institute of Willwriters who are "*concerned that oral representation is being promoted as a process of last resort*". The Institute points to a recent experience it has had with applying for an approval from the OFT under its Consumer Codes Approval Scheme. Here it "*experienced how a 30 minute meeting can clear up months of 'log jams' in paperwork*". The Institute "*hope that oral hearings will be made available rather more than the consultation seems to indicate*".

LSB position

3.32 The LSB welcomes these comments on the approach it has taken to oral representations. The LSB would like to clarify that the approach it has adopted is only

applicable in relation to oral representations that may be made to the LSB in relation to the advice that the LSB receives from consultees. The Act mandates that the LSB make formal rules governing this interface[1]. This does not mean that discussions between the LSB and the applicant will not be allowed in other circumstances or that discussions would be governed by these rules in other circumstances.

3.33 The LSB is happy to amend the Rules to give clarity as to the circumstances in which it might allow oral representations in relation to the advice it receives from consultees. In short, the LSB will remain open to discussion with applicants throughout different stages of their application process and the approach outlined above solely relates to oral representations that may be made to the LSB in relation to the advice that the LSB receives from consultees.

Question 8 – Bearing in mind the Regulatory Objectives, the Better Regulation Principles and the need to operate efficiently in relation to the Freedom of Information Act, please could you suggest improvements to the suggested process.

Responses

3.34 A number of the respondents grouped their answer to this Question in with their answer to Question 7. For this reason, many of the comments referred to at Question 7 also apply to this Question 8. Responses (other than those referred to at Question 7) include:

- a response from the Fellowship of Willwriters who suggest that "*it may well be appropriate to allow an Applicant to appeal (possibly to the Lord Chancellor) ...*" if the LSB exercises its discretion to refuse to consider, or to continue its consideration of, an Application if it believes that it has not received all the information it requires;

- a response from the Master of Faculties who recommend a number of drafting changes to the Rules; and

- comments from ILEX who "*suggest there should be criteria to support Rule 51 against which the LSB should determine whether to adjourn a meeting*". They also "*would welcome some guidance from the Board as to what the Board might consider to be a valid objection to an application*". In particular ILEX states that "*guidance would also be helpful on the use of optional consultees and who that optional consultee might be in any specific circumstance*."

LSB position

3.35 The LSB does not believe that it is necessary to allow an appeal to the Lord Chancellor, or any other body, if it uses its discretion to refuse to consider or continue its consideration of an application if it has not received all of the information that it requires. The LSB envisages that in most instances it will quickly identify applications that do not include all the information that it requires and may refuse to start considering applications that are obviously incomplete at the time of first attempted submission. In this instance, the LSB will give the Applicant notice of the decisions and the reasons why. This will assist the applicant in identifying areas for remedial work before potential resubmission.

[1] Schedule 4, paragraph 11(3)

3.36 The LSB wishes to maintain flexibility with what is a new process but notes the suggestions from ILEX that further guidance for applicants be developed. The LSB will review this position as it develops its own internal processes for considering applications and learns from working with early applicants. The LSB will likely require broad discretion initially and use its judgement about whether to use optional consultees and whether any objections made during consultation are valid.

Question 9 – Do you consider that these are the appropriate criteria?

Responses

3.37 A majority of respondents agreed that the criteria proposed are the appropriate criteria.

3.38 Five respondents did not offer a specific response to this question.

3.39 Responses received include:

- a response from the Fellowship of Willwriters saying that the criteria are *"definitely"* appropriate;

- a response from the Master of Faculties stating that the rules *"correctly apply the criteria set out in paragraph 13 of part 2 of Schedule 4 of the Act";*

- a response from the Law Society agreeing that *"the criteria for determining applications are appropriate";*

- a response from the OISC who *"is satisfied that the criteria set out ..are appropriate"* but notes *"that some of them are very broad".* The Commissioner "*does not consider that these basic criteria need to be made more specific.."* but "*..considers that it may be helpful for the LSB to publish some detailed guidance indicating the sort of arrangements that an Applicant might typically need to make in order to satisfy the criteria".* The Commissioner suggests that this "*might set out ..the essential procedures and capabilities for any putative regulator to possess, or for any Applicant proposing to regulate a certain type of size of professions";*

- a detailed response from the SRA who agree that the criteria seem appropriate but make several suggestions. The SRA suggest that the LSB should enhance the importance of the criterion *"that the Applicant's proposed regulatory arrangements make appropriate provision for the regulation of its members".* A drafting point is made that criteria should perhaps refer to the regulation of "*..those it wishes to authorise" rather than "the regulation of its members".* This is because new forms of regulators may have contractual arrangements that may not be the same as membership. The SRA further recommend that more emphasis is placed on the requirement to produce "*a statement of the Reserved Legal Activities or Activities to which the Application relates*" and "*any limitations or conditions on activities should be detailed and made clear in the application statement".* The SRA believes that the LSB's role should be to *"ensure that the AR has acted appropriately in reaching decisions on rules, has undertaken appropriate consultation, and has then reached a reasonable conclusion as to the way forward. The SRA does not believe that this process requires the LSB to consider what its own approach might have been when considering rule*

changes". The SRA recommends that the LSB supports an approach of early engagement with ARs that enables applicants to "front load" as much of their application work as possible, avoiding surprises for the LSB or those applying.

- a response from the Scrivener Notaries who "*urge the LSB to treat new applications with the utmost caution* as the existing Regulatory Arrangements of the notaries already "*offer consumers effective redress and access to a high level service in a competitive market".* The Scrivener Notaries argue that the designation of new ARs for notaries is not only unnecessary but may undermine the perception of independence in their position as *"public, independent certifying officer"* and the Scrivener Notaries *"strongly suspect that a proliferation of regulators will not help English notaries in their campaign for fair treatment and recognition across the EU".*

LSB position

3.40 The LSB notes that a majority of respondents support the proposed criteria.

3.41 The LSB notes the suggestion from the OISC that we publish further guidance indicating the sort of arrangements that an applicant might need to satisfy the criteria. However, the LSB believes that it is for the prospective AR to determine appropriate arrangements to fulfil the rules and criteria, in consultation with interested parties and affected stakeholders. This is not least because setting a rigid framework may negate innovation and mitigate the potential benefits of regulatory competition. The LSB will also require broad discretion initially to consider each application on its merits to reach judgement as to whether or not it should be approved. However, we will keep this position under review and will publish full reasons for the decisions that we make;

.

3.42 The LSB notes the concerns of the Scrivener Notaries but also notes that during evidence given to the Joint Committee on the Draft Legal Services Bill, Ministers explicitly endorsed the idea of new entrants creating competition between ARs on the basis that regulatory diversity within a framework of oversight regulation would help to drive up standards of regulation and improve the performance of regulated organisations;

3.43 We welcome the detailed comments of the SRA. The importance of an applicant's Regulatory Arrangements cannot be overstated as they provide the authority and mechanism for regulatory activity. Paragraph 13 of Schedule 4 lists the statutory criteria that must be satisfied in order for the LSB to approve an application. This includes the criterion that "the applicant's proposed Regulatory Arrangements make appropriate provision". The wording of the rules reflects this. As the SRA has highlighted, the schedules to the rules make clear the significance the LSB places on this criterion. The LSB thanks the SRA for the drafting point they have suggested and we have substituted "members" with "those it wishes to authorise" within the relevant rule.

3.44 The LSB appreciates the SRA's recommendation that greater emphasis should be placed on the requirement that the applicant be explicit in stating the range and limitations on reserved activity that an applicant is proposing to regulate. The LSB would certainly expect this to be made clear within any application.

3.45 Many of the points raised by the SRA in relation to rule changes will be covered in the LSB's response to question 10 and will not be specifically addressed here.

Rule for Rule Change Applications

Question 10 – Do you agree with the Board's view that the process suggested is the most effective way to address the Regulatory Objectives and the Better Regulation Principles in relation to approaching potentially low impact rule changes? If not, then please can you suggest how the Objectives and Principles could be better addressed?

Responses

3.46 The majority of respondents disagree with the proposed approach to potentially low impact rule changes. It was argued that the exemption power provided to the LSB by paragraph 19(3) of Schedule 4 of the Act should be used to wholly exempt certain or all types of lower impact alterations to the "Regulatory Arrangements" from pre-approval requirements.

3.47 The majority of the respondents argue that it is not proportionate to require that all proposed alterations to all types of Regulatory Arrangements as broadly defined by paragraph 21 of the Act are subject to pre-approval requirements even if there is a reduced and expedited approval process for potentially less substantive changes. The view was put forward that this would place an unsustainable burden on the ARs in submitting applications and potentially on the LSB in processing them.

3.48 This was set out as the key concern for many respondents and was the focus of the general (non-question specific) parts of many responses. This concern also formed a running theme across the answers to question 10 and onwards.

3.49 Some respondents emphasised the need for certainty about which amendments will be subject to pre-approval requirements, or for the opportunity to seek clarification from the LSB being built in to the process. Several respondents also suggest that flexibility and the ability to review the process would be beneficial whilst the LSB and applicants build up their experience of the new arrangements.

3.50 A number of respondents argued that there should be flexibility in the process to allow the LSB to exercise its judgement as to whether any objection to a proposed alteration made during consultation is valid when considering whether or not to approve the application.

3.51 Responses received include:

- a response from the SRA who "...*do not find the process set out in the consultation paper appropriate for the many other changes to regulatory arrangements which are not formal changes to rules and regulations"* stating that it would be *"disproportionate".* The SRA suggest that such alterations "do not require an application at all..." The SRA also raise a technical point that there should be an exemption for *"alterations to regulatory arrangements that are already subject to the practicing fees approval process set out in Section 51 of the LSA";*

- a response from the BSB saying that they are "*broadly content with the procedure for dealing with exempt alterations (where rules fall sensibly within the*

parameters of the scheme).” The bracketed point is important as elsewhere in their response, including within the introduction, the BSB highlight the absence of any provision to wholly exempt change to certain types of regulatory arrangement as a “*considerable concern*”;;

- support from ILEX for attempts to create certainty as to *“when applications need to be made and what that application needs to say”.* However, they warn that “*the ambition to attain certainty appears to be at the expense of proportionality”.* They suggest a wider exemption process and the inclusion within the process for a facility to “*gain the view of the LSB at an early stage as to whether a full application is required”.* They also recommend that the further consideration of an expedited application should be required only if there has been “*no **valid** representation from any other Approved Regulator”* to distinguish from representations aimed at *“..protecting market position, reducing competition, consumer choice and so forth”;*

- a recommendation from the Master of Faculties that “*.. a direction is made is made by the Board stating that proposed alterations to rules which are of a minor, non-material or technical nature are exempt..”* from pre-approval requirements. The Master of Faculties also recommends that “*until such time as the Board has gained the experience in this area, and is able to include a list of examples in its guidance, the Board could appoint a member of its staff to deal with informal inquiries as to whether a proposed alteration can be regarded as minor or non-material”;*

- concern from the CLC that the “*arrangements proposed will have the effect of increasing the regulatory burden on the Approved Regulator without delivering proportionate benefits for the LSB”.* The Council suggest that no formal notification should be required for “*changes that are routine in nature”* such as “... *changes to application forms, updates of rules and guidance notes to ensure they refer to statutes and rules currently in force, informal guidance or advice provided...to the regulated community or consumers”.* The Council proposes that “*..the fact that the changes have been made could be included in the Annual Report ...made to the LSB”;*

- support from the Law Society for the LSB’s *“desire to create a process to quickly deal with applications, and....the emphasis being placed on the regulator to get the process right themselves.”* However, the Society emphasises that the*”..new system should be no more complicated than the current system...”* and that *“there is now less need for scrutiny on rule changes...because regulatory boards now operate independently of professional bodies representative activities”.*

- a response from the Scrivener Notaries who ask for greater clarification of the meaning of “non-material” changes. The Society also suggests that “*there should be objections from more than one source for the Board to decide that an Alteration requires further consideration”.* The consultation proposes that an application may require further consideration if there are any representations suggesting the Alteration should not be exempt. The Society argue that: “*this provision could quite easily be used by any disgruntled individual or entity, simply to delay a matter....”.*

- a response from the OISC who “*considers that the Board has probably maintained an appropriate balance in its approach..”.* The Commissioner is the one respondent that explicitly supported the proposal to require all proposed

alterations to be subject to a reduced pre-approval process that allows for LSB and public scrutiny as *"even if the Applicant regulator does not think they are material… others may not agree".* However, the OISC goes in to say *"on the other hand, it would be unduly onerous for all rule changes to go through the same approval process".* The Commissioner then suggests that "*these arrangements are reviewed after, say, a year of operation to ensure that they are proportionate to the risks involved";*

- a request from the OFT to allow flexibility extend the proposed 28 day consultation period for "exempt" changes at the request of the third party. The OFT also request further information on how the LSB will determine whether or not to consult the OFT.

LSB position

3.52 The LSB has considered carefully the concerns raised by respondents, and particularly the ARs, about the proposal that all amendments to each AR's Regulatory Arrangements would require pre-approval of some kind. We have also met with and corresponded with representatives from many of the ARs on this subject during the course of the consultation process. In light of these discussions the LSB has agreed an alternative position with the ARs that will see less being submitted to the LSB whilst maintaining the visibility and safeguards that the LSB requires.

3.53 The amended approach is based around each AR providing the LSB with an annual forward plan outlining proposed changes to the Regulatory Arrangements for the year ahead. The LSB will determine which of these changes will be subject to full scrutiny through the pre-approval process, based on an assessment of significance, impact and risk. The LSB will direct that all other changes within the plan are to be exempt under the provision of paragraph 19(3) & (4) of Schedule 4 of the Act, provided that certain conditions are met. The LSB will retain the right to revisit any exempted changes at a later date if significant concerns are raised, as well as the right to give notice to all or any individual AR that other changes require approval. Any changes that arise in year which have not been included in an agreed forward plan and are not exempted will need to be submitted to the LSB for approval.

3.54 The LSB will direct that all low impact amendments falling below a de minimis line, for example amendments relating to internal administration, to be entirely exempt from the requirement for LSB approval and will not require to be detailed within the annual forward plans.

3.55 The details of this process are still being finalised but the rules have been amended to facilitate the approach. Final details and any supporting information will be published on the LSB's web-site and disseminated to each AR;

3.56 The forward plan will allow changes that will be subject to the full pre-approval process to be timetabled in advance. This will facilitate more effective resource planning by both the LSB and the ARs. This "project" approach will also provide clear and continuous communication lines and points between the LSB and each AR.

.

3.57 Aside from the scope of the approval process, the LSB notes concerns raised about the potential for unmeritorious objections to an application from interested parties to

bear disproportionate weight on decision making relating to an application. The amended exemption proposal will result in little if any reliance being placed on an automated approval process for "lower impact" proposals and therefore for representations, irrespective of validity, to slow the process down. However, we do expect that each AR consults appropriately on the changes that it wishes to make whether being submitted to the LSB or that are exempt and that the any evidence received is properly considered. For applications submitted to the LSB, we will expect the application to detail the evidence received and the analysis of this information and the action taken as a result. Information should also be provided where the AR can identify that the consultees in question were offered the opportunity to be consulted on the proposal and the consultee declined the opportunity.

3.58 The LSB thanks the SRA for raising the technical point that there should be an exemption to amendment to Regulatory Arrangements that are already subject to the practicing fees approval process set out in Section 51 of the Act. The LSB has amended the draft rules accordingly.

3.59 The LSB welcomes the OFT's response and is engaging with the OFT on the points raised.

Question 11 – Bearing in mind the Regulatory Objectives and the Better Regulation Principles, do you agree with the requirements specified above? If not, why not? What alternative or additional requirements would you recommend?

Responses

3.60 A majority of respondents broadly agreed with the LSB's proposed requirements for the contents of application.

3.61 Responses received include:

- a response from the OISC who *"agrees with the requirements set out in the discussion paper..."*
- a response from the SRA saying "*the suggested approach ...seems reasonable. The ability to group together inter-related alterations under one application, or indeed to require unrelated alterations to be the subject of individual applications, should ensure sufficient flexibility..to accommodate all eventualities";*
- a response from ILEX who *"agree broadly with the contents of an application for rule change".* However, whilst supporting the objective of consultation between Approved Regulators in order to share best practice, ILEX "...*would be concerned if 'harmonisation' of the regulatory arrangements of Approved Regulators moves too far towards all regulation looking the same, and removing appropriate areas of competition";*
- agreement from the Law Society, who observe that *"all the information requested should be easily available as long as a regulator has consulted openly and effectively".* The Society suggest that the LSB should guard against new rules, if different from those of another regulator , leading to the prevention of *"lawyers from different backgrounds from working in the same organisation, as well as ensuring that the difference will not cause any consumer detriment".* Further , the

Society recommends a short delay between the submission and approval of an application to *"..allow other stakeholders to lobby the LSB if they strongly believe that the rule is undesirable or unworkable";*

- a response from the BSB who "*welcomes the LSB's intention to rely on Approved Regulator's consultations".* The BSB emphasise that "*if the consultations are comprehensive and the alterations based on the analysis of the evidence gathered it would be an unnecessary duplication of effort for the LSB to conduct its own investigation into the reasons for change".* The BSB further "*agrees that it should be the responsibility of the Approved Regulator to show how the objectives of the Act are met"* but "..*once that has been satisfied, the onus should be on the LSB to justify any refusal to approve".* The BSB also recommends that there be flexibility in the procedures to facilitate proportionality for alterations *ranging from a single small but material change to a major revision of the entire Code of Conduct..".* They suggest that this could be achieved by taking some of the detail out of the rules, and putting it in guidance. The BSB finally urge that "*where the LSB has concerns about a particular alteration, it would be beneficial for those concerns to be raised at the earliest opportunity";*

- A response from the Scrivener Notaries, who acknowledge the intention of the requirements but do not agree with them due to their "*complexity".* The Society specifically refers to the *"additional burden"* presented by the requirements to "*indicate how the Alteration will be positive, neutral or detrimental to each of the Regulatory Objectives"* and to *"provide evidence of consultation with ... approved regulators".* The Society further expresses concern about the proposal that unrelated alterations be subject to separate applications because " *an Approved Regulator wishing to amend several Arrangements at the same time would be unable to do so in a single Application, leading to more regulatory complexity and more work*";

- A response from the CLC, who broadly agree with the proposals provided that the way in which the rules are interpreted in practice do not make them unduly onerous. The Council also raises a concern about the requirement that unrelated alterations be subject to separate applications because they believe "*this may result in one set of rules being amended a number of times within a short period".*

LSB position

3.62 The LSB notes that the majority of respondents broadly agree with the LSB's proposed requirements for the contents of application.

3.63 The LSB acknowledges ILEX's recommendation that requiring "harmonisation" of the Regulatory Arrangements is not pushed too far at the expense of competition and the benefits this may bring. The LSB would not wish to stifle competition between regulators nor the opportunity for innovation. However, at the same time consumer protection is of paramount importance and we will be robust in ensuring that standards remain comparable between regulators in order to protect the consumer.

3.64 The LSB notes the Law Society's recommendation that there be a short delay to allow stakeholders to lobby if they strongly believe that the rule is undesirable or unworkable. The LSB has made appropriate consultation with interested parties a cornerstone of the approval process which will provide opportunity for concerns to be aired and considered.

3.65 The LSB accepts the BSB's analysis that comprehensive consultation with alterations reflecting the evidence gathered will negate the need for the LSB to conduct its own investigation into the needs for the change. The LSB further reflects that that it should be the responsibility of the applicant to demonstrate that any change would not be detrimental to regulatory objectives. We further note the request that the LSB engages the applicant at an early stage if it has concerns about a particular alteration. The LSB sees this as being consistent with the partnership approach being developed. As for the suggestion that the onus should be on the LSB to justify any refusal to approve an alteration, the LSB will be open in providing its reasons for any refusal but maintains that applicants must submit a well constructed and supported application that demonstrates compliance with the criteria set by the rules in order for it to be considered and approved. The application must convince the LSB that it should be approved.

3.66 The Scrivener Notaries and the CLC have both raised concerns about the proposal that unrelated alterations be subject to separate applications. The LSB believes that the likely benefits of efficiency and good decision making from separating out unrelated changes will outweigh any potential inconvenience to applicants. It is important that alterations are aligned by their likely impact rather than according to a pre-defined bracketing. However, in light of the responses above we have amended the rule to allow some discretion around linked and separate applications.

3.67 The LSB also notes the Scrivener Notaries objection to the "additional burden" presented by the requirement to include an analysis of the likely impact of the alteration on the regulatory objectives and to provide evidence of consultation with ARs. The LSB does not accept this concern – these requirements are fundamental to the new approach of front-loading the application process to provide greater efficiency in determining the application. This approach has received wide support from respondents.

Question 12 – Do you agree with the approach taken to oral representations?

Responses

3.68 A majority of responses agreed with the approach taken to oral representations. A number of respondents grouped their answer to this question in with their answer to Question 7. For this reason, many of the comments referred to at Question 7 also apply to this Question and have not been repeated here.

3.69 Responses received include:

- a response from the SRA saying *"the proposed approach seems adequate. Formal oral representation should be rare if appropriate informal discussions have taken place at an earlier stage";*

- a response from the Law Society who believe *"that the proposed approach for an existing approved regulator to change its rules is appropriate, and that oral representations should not be necessary for those approved regulators who have gone through the process properly. The LSB will already have a working relationship with the existing approved regulator so the risk we identified in*

respect of prospective new approved regulator of the LSB being deceived by an applicant will not arise";

- a response from the BSB who is *"content with the proposed arrangements for oral representations...the BSB believes that there will be times where the LSB will benefit from taking oral evidence on applications. The absence of an ability to do so could well inhibit the LSB's proper consideration of an application".*

LSB position

3.70 The LSB notes that a majority of respondents agreed with the approach taken to oral representations.

Question 13 – Bearing in mind the Regulatory Objectives, the Better Regulation Principles and need to operate efficiently in relation to the Freedom of Information Act, please could you suggest improvements to the suggested process.

Responses

3.71 A number of respondents grouped their answer to this question in with their answer to Questions 11 and / or 12. For this reason, many of the comments referred to at Question 11 and / or 12 also apply to this Question and have not been repeated here;

3.72 Eight respondents did not offer a specific response to this question.

3.73 Responses received include:

- a response from the Fellowship of Willwriters suggesting that "*the key objectives in dealing with applications should be fairness, consistency and transparency".* The Fellowship further suggests that *"the LSB is able under the Draft Rules to exercise discretion e.g. It can refuse to consider, or to continue its consideration of, an Application if it believes that it has not received all the information it requires. It may well be appropriate to allow an Applicant to appeal if this discretion is exercised";*

- a statement by the Scrivener Notaries that *"the scope of this question is too broad for us to be able to comment meaningfully";*

- ILEX who *"broadly support the processes and procedures set out in the consultation"* but would like to see *"in the rules a statement that approval of an application will not be unreasonably withheld or refused by the LSB".* ILEX also state that they *"would certainly expect to see in guidance a fair bit of the detail in this area, not least to save the time of those potentially being consulted on a rule change application, and to save time and effort on the part of the applicants;*

- a response from the OFT which asks that the LSB should always approach the OFT for advice if there is uncertainty about issues of competition rather than only when it has issued a warning notice. The OFT observes *"there are situations where rule amendments may appear simple and unlikely to cause any competition law issue.. however this may not always be clear".* The OFT further points out that "*competition issues can be complex*" and the LSB may lack the internal expertise to consider areas of potential uncertainty. The OFT

recommends that "*the Rules state the criteria the LSB will use when deciding whether to consult the OFT or guidance be provided at a later date following discussions between the LSB and the OFT."* It is suggested that *"this would provide additional clarity for both organisations regarding the consultation process."* Finally, the OFT ask that similar rules to those for designating ARs that oblige the LSB to provide all copied of the underlying documents to the OFT when consulting them be included here also;

- a response from the Law Society saying *"the proposed process is adequate. It would be beneficial if those who are called to appear before an oral process are given information about what areas the LSB would like to cover, what concerns they may have and what the background is to these concerns";*

- a series of recommendations from Master of Faculties based on their interpretation of the wording of specific parts of the Act including:

LSB position

3.74 The LSB will endeavour to set a clear agenda in advance for any applicant called to appear before an oral process, as recommended by the Law Society.

3.75 As covered in paragraph 3.34 the LSB does not agree with the Fellowship of Willwriters suggestion that there should be a right to appeal should the LSB refuse to consider, or to continue to consider, an application that it believes that it has not received all the information it requires. The LSB will be open in providing its reasons for its actions in a manner that would allow the applicant to redress the deficiency in the original application.

3.76 The LSB welcomes the OFT's response and is engaging with the OFT on the points raised.

3.77 The LSB does not believe that it is necessary to include within the rules a statement that an application will not be "unreasonably withheld or refused by the LSB". It is incumbent on the LSB to make only reasonable decisions and where it decides to refuse an application, "to specify the reason for that decision". Furthermore, the allowable reasons for the refusal of an application are contained within statute and reflected in the rules at Section G of the final rules.

Question 14 – Do you consider that these are the appropriate criteria?

Responses

3.78 All responses to this question agreed that the criteria for determining applications are appropriate.

3.79 Responses received include:

- An observation from the Master of Faculties that the criteria are *"the only criteria which the Board may apply, as laid down in paragraph 25 (3) of Part 3 of Schedule 4";*

- A response from the Scrivener Notaries who state that *"the criteria seem reasonable, as there is a presumption that a Rule Change Application should be approved unless there is a valid reason for refusal";*

- Support from the Law Society who *"considers the criteria appropriate, especially the emphasis on the importance of the regulatory objectives";*

- A response from OISC saying that the Commissioner thinks the criteria is appropriate but *"that guidance be published explaining in more detail the circumstances in which the LSB would be likely to consider that the criteria had not been satisfied*" and that *"some examples would also be helpful".*

LSB position

3.80 The LSB notes that all responses agreed that the proposed criteria for determining applications are appropriate. The OISC has suggested that further guidance and examples may be helpful for applicants and we will review this position as we develop our internal processes for considering applications and learn from the experience of working with early applicants.

4. Next Steps

4.1 The LSB will continue to engage with ARs and other interested parties as we develop our internal processes for receiving and considering applications - including developing the forward plan and exemption process for existing ARs wishing to alter their Regulatory Arrangements that is set out in this paper.

4.2 The LSB will also continue to engage with prospective early applicants, and the MoJ, to ensure a smooth transition into the new process so that applications can be dealt with as quickly and efficiently as possible after we receive our powers to consider and determine these applications in the New Year.

Annex 1 – List of respondents

- Legal Services Commission
- The Society of Scrivener Notaries
- Fellowship of Professional Willwriters and Probate Practitioners
- Office of the Immigration Services Commissioner
- Solicitors Regulation Authority
- Master of the Faculties
- Office of Fair Trading
- The City of London Law Society
- The Crown Prosecution Service
- The Bar Council
- The Bar Standards Board
- The Institute of Legal Executives and ILEX Professional Standards Limited
- The Law Society
- The Institute of Professional Willwriters
- Council for Licensed Conveyancers
- Legal Complaints Service

Annex 2 – Final Impact Assessment

Introduction

1.1 The LSB considers that the impacts in making these largely administrative rules are broadly negligible but potentially positive.

1.2 Those directly impacted by these rules will be the current ARs and those seeking to become an AR.

What is the problem under consideration? Why is intervention necessary?

1.3 The Act sets out a new legal framework for the regulation of the legal profession and industry. The LSB must take over from the MoJ most of the existing obligations of the MoJ in respect of New Designation Applications and Rule Change Applications. The rules provide the framework for the LSB to do this.

What are the policy objectives and the intended effects?

1.4 The LSB must promote the Regulatory Objectives set out in the Act. The Act also includes a duty on the LSB to adhere to "best regulatory practice".

What policy options have been considered? Please justify any preferred option

1.5 In formulating its policy the LSB has considered:

- general policy options around how the rules for New Designation Applications and Rule Change Applications should be framed; and
- specific policy options around the amount of the "prescribed fee" that must accompany any New Designation Application.

General policy options

1.6 Three policy options have been considered:

- replicate the MoJ process;
- make detailed rules for ARs and prospective ARs to adhere to in all circumstances; and
- regulate at a level of principle with supporting rules and guidance only to the extent required.

1.7 The preferred option is the third option because it is likely to be the fastest and most effective to operate for ARs and the LSB. It is also likely to be the lowest cost as it will allow ARs freedom to find the most appropriate solution in their particular context within the parameters set out in the rules. This is because it promotes early development of applications to the required standards and thus eliminates wasteful communication.

1.8 A simple and focussed process that sets out principles to adhere to but is not prescriptive on the exact design of Regulatory Arrangements will also promote innovation and competition through providing for flexibility in how to meet the Regulatory Arrangements in a proportionate manner. This option received broad support upon consultation.

Specific policy options – The "prescribed fee"

1.9 A number of potential options were considered including:

- a set fee calculated to recover the LSB's direct cost of the staff resources and the associated overheads deployed on considering a typical New Designation Application. The benefit of this approach would be that it avoids adding to the practising certificate levy that is applied to all ARs for costs that relate to the activities of one regulator only, but is not sensitive to the actual level of work of any individual application;

- a set fee as suggested above but with the ability for: (i) a refund to be given back to the applicant if the LSB's costs turn out to be significantly less than the set rate; or (ii) the fee to be increased in the event that the LSB envisages significantly more work is required. This is more accurate than the first option, but considerably more burdensome for the LSB itself to assess and could be less predictable for applicants;

- a fee based on the marginal cost of the LSB's staff time, assessed case by case, but without associated overheads; and

- having no fee, with the costs being covered by the overall levy. A potential disadvantage of this approach is that having no fee may result in the LSB receiving vexatious or poorly put together applications which have no prospect of success with the costs involved in the LSB considering these being met by the existing ARs.

1.10 The large majority of responses to the LSB's consultation paper favoured the first or second of the first two options described above. Having considered these responses, the LSB has agreed with the Lord Chancellor that the "prescribed fee" should be a set fee calculated to recover what the LSB believes will be its direct costs of staff resources and associated overheads in considering a typical application

1.11 It is likely that less information will be required from an applicant who is already an AR which is applying to add an additional reserved activity to its competencies than to a wholly new organisation as the internal arrangements are likely to already be deemed to be effective. Therefore, the LSB's costs are also likely to be lower and we have decided that it is appropriate that there is a reduced prescribed fee for such applications.

1.12 The different levels of the prescribed fee will therefore be set at £[22,000] if the applicant is not an existing AR and £[16,000] if the applicant is an existing AR.

1.13 The Prescribed Fee for an existing AR applicant is based on a day rate of £562 over 28.5 business days. In respect of a Prescribed Fee for an applicant who is not an existing AR applicant, this is based on a day rate of £562 over 39 business days.

1.14 To promote simplicity the set fees will not be recalculated with each application but there will be a variable element allowing the LSB to charge an additional amount in excess of the amounts specified above if:

- the LSB requests further information from the Applicant in accordance with Rule 14 and the LSB's costs in processing this information exceeds the relevant amount specified above. In these circumstances, any such additional costs will be charged at the day rate of £562;

- the nature of the application means that the LSB has to seek external advice and the cost of this advice would mean that the LSB's cost in processing the application would exceed the relevant amount specified above.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

1.15 We expect to review our rules on New Designation Applications and Rule Change Applications not later than by the end of 2011/12 in order to consider early operation and links with the introduction of a licensing regime for ABS. The level of prescribed fee will be reviewed after a year of operating the new process.

Annual Costs

1.16 One-off (transition): £ negligible.

1.17 Average annual cost (excluding one-off): £ negligible.

Annual Benefits

1.18 One-off: £ negligible.

1.19 Average annual benefit: £ negligible.

What is the geographic coverage of the policy/option?

1.20 England and Wales.

On what date will the policy be implemented

1.21 Early 2010 will see the LSB taken on full powers but transitional arrangements will apply prior to this to ease the implementation of the Act.

Which organisation will enforce the policy?

1.22 The LSB.

Does enforcement comply with Hampton principles?

1.23 Yes.

Will implementation go beyond minimum EU requirements?

1.24 Yes. EU requirements do not require the regulatory framework set out in the Act.

What is the value of the proposed offsetting measure per year?

1.25 Nil.

What is the value of changes in greenhouse gas emissions?

1.26 Nil.

Will the proposal have a significant impact on competition?

1.27 No.

Annual cost (£-£) per organisation (excluding on-off)

1.28 Micro: negligible; Small: negligible; Medium: Negligible; Large: Negligible.

Are any of these organisations exempt?

1.29 No.

Impact on Admin Burdens Baseline (2005 Prices)

1.30 Increase of £: approximately nil.

1.31 Decrease of £: approximately nil (although potential for small decrease).

1.32 Net Impact £: approximately nil.

Evidence Base

1.33 We consider that the cost of these changes is significantly below the generally accepted threshold of £5 million costs, below which an impact assessment is not necessary. However, we believe that in setting out how we have considered the various elements of the impact assessment will help us consider future impacts as they arise.

Competition

1.34 We believe that a principles-based approach provides ARs and prospective ARs the flexibility to innovate on how to meet the Regulatory Objectives in a proportionate manner that is appropriate to their particular regulated community and market sector. We believe that this will allow existing ARs to amend existing regulation and thus promote better regulation. It will also allow new ARs the freedom to mitigate risks to, and promote, the Regulatory Objectives at the lowest appropriate cost.

Small Firms Impact Test

1.35 The regulated community is diverse and that is likely to continue as the Act takes effect, although we will need to monitor the impact of the changes. The contents of the rules for both New Designation Applications and Rule Change Applications are proportionate in that they set the same principles and objectives for both large and small ARs but give freedom for a proportionate level of regulation – thus allowing a small regulator freedom to meet the principles and requirements in a proportionate manner. This proportionality will be fed down to the regulatory community through both the cost of the practicing fee and the cost of regulatory compliance and thus will serve to protect small firms from a one size fits all regulatory framework.

Legal Aid

1.36 We expect minimal impact through rules, although greater competition between ARs and within regulated community may enhance the competitiveness of the Legal Aid market.

Race/Disability/Gender equalities

1.37 There is no direct or indirect impact expected. However, competition between ARs may enhance the opportunity for proportionate and flexible regulation. The focus of the rules on the Regulatory Objectives may promote equalities in the longer term as they provide for proportionate risk assessment and response.

Human Rights

1.38 In promoting a proportionate response to risks the rules proposed are likely to protect Human Rights.

Rural Proofing

1.39 There is no direct or indirect impact expected. However, competition between ARs may enhance the opportunity for proportionate and flexible regulation. Similarly the commitment to proportionate regulation may protect small firms that are often found in rural areas. The focus of the rules on the Regulatory Objectives, such as promoting access to justice, may protect and promote rural services in the longer term.

Sustainability, carbon emissions, environment and health

1.40 There is no impact expected on sustainability, carbon emissions, environment and health.

Annex 3 – Rules for Approved Regulator Designation Applications

A. PREAMBLE

1. These Rules are made by the Board (as defined below) under paragraphs 3(3), 4(2), 11(3), and 13(1) of part 2 of schedule 4 to the Act (as defined below). In accordance with paragraph 3(4) of part 2 of schedule 4 of the Act (as defined below), the consent of the Lord Chancellor has been given in respect of the Rules made under paragraph 3(3).

B. DEFINITIONS

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

Act	the Legal Services Act 2007
Applicant	a body who submits an Application
Application	an application to be designated as an Approved Regulator in relation to one or more Reserved Legal Activities that is submitted to the Board in accordance with these Rules
Approved Regulator	has the meaning given in section 20(2) of the Act
Authorised Person	has the meaning given in section 18 of the Act
Better Regulation Principles	the five principles of good regulation (being proportionality, accountability, consistency, transparency and targeting) as set out in both sections 3(3) and 28(3) of the Act
Board	the Legal Services Board
Consultees	the Mandatory Consultees and any Optional Consultee
Consumer Panel	the panel of persons established and maintained by the Board in accordance with section 8 of the Act
Existing AR Applicant	an Applicant who is already an Approved Regulator in respect of certain Reserved Legal Activities and who is submitting an Application to be designated as an Approved Regulator in relation to one or more additional Reserved Legal Activities
ILEX	the Institute of Legal Executives
Mandatory Consultees	the OFT, the Consumer Panel and the Lord Chief Justice
OFT	the Office of Fair Trading

OLC	the Office of Legal Complaints established in accordance with section 114 of the Act
Ombudsman Scheme	the scheme referred to in section 115 of the Act
Optional Consultee	any person (other than a Mandatory Consultee) who the Board considers it reasonable to consult regarding an Application
Prescribed Fee	the fee that must accompany an Application as described in Section E of these Rules
Regulatory Arrangements	has the meaning given in section 21 of the Act
Regulatory Objectives	has the meaning given in section 1 of the Act
Reserved Legal Activity	has the meaning given in section 12 of and schedule 2 to the Act
Reserved Legal Services	has the meaning given in section 207 of the Act
Schedule	the schedule to these Rules
Transitioned Applications	means any one of the following Applications, a form of which was originally submitted to the Ministry of Justice for approval prior to the date of these Rules coming into force: a) an Application in respect of the exercise of a right of audience and the conduct of litigation in respect of associate prosecutor members of ILEX; b) an Application in respect of Probate Activities

C. WHO DO THESE RULES APPLY TO?

3. These are the Rules that apply if a body wishes to apply to the Board, under part 2 of schedule 4 to the Act, for the Board:

   a) to make a recommendation to the Lord Chancellor that an order be made that the body be designated as an Approved Regulator in relation to one or more activities which constitute one or more Reserved Legal Activities; and

   b) to approve what the body proposes as its Regulatory Arrangements if such an order is made.

4. These Rules set out:

   a) the required content of any Application to the Board and some guidance in relation to that content (**see Section D**);

b) the amount of the Prescribed Fee that must accompany any Application (**see Section E**);

c) the processes and procedures that the Board will undertake in considering the Application (**see Section F**);

d) the manner in which the Applicant can make representations to the Board about its Application (**see Section G**);

e) the Board's criteria for determining Applications (**see Section H**); and

f) whom a body should contact if it has a question in relation to the Application process (**see Section I**).

5. The Board reserves the right to amend these Rules from time to time. If the amendments made to the Rules are, in the opinion of the Board, material the Board will publish a draft of the amended rules and will invite consultations in accordance with section 205 of the Act.

D. CONTENTS OF APPLICATION

6. The Act requires the Board to consider certain factors and to consult with other parties in order to reach its determination. Accordingly, the Application must contain sufficient information to allow the Board to make a proper consideration of the Application and to provide sufficient information to the Consultees to enable them to consider the Application in a meaningful way. Attached as a Schedule to these Rules is:

a) details of the administrative information that must be provided to enable processing of an Application (see Part 1 of the Schedule) and guidance on the possible evidence that could be provided to satisfy these requirements;

b) guidance on the kind of evidence which the Board may consider in determining whether an Applicant's proposed Regulatory Arrangements are sufficient to guarantee delivery of the Regulatory Objectives (see Part 2 of the Schedule); and

c) guidance on how the Board expects to treat Applications (see Part 3 of the Schedule).

7. The Board does not prescribe the form which an Application should take. The onus is on the Applicant to supply all materials completely and accurately in the format that it thinks fit.

E. PRESCRIBED FEE

8. Any Application must be accompanied by the Prescribed Fee set out in Rule 9 below. The Prescribed Fee must be paid by electronic funds transfer to the following bank account:

Bank:	HM Paymaster General
Sort code:	10-14-99
Account No:	10610000
Account Name:	Legal Services Board
Reference:	[*Insert Applicant name*]/ AR Designation Application

9. The Prescribed Fee that must accompany an Application will depend on the type of Application being made. The different levels of the Prescribed Fee are as follows:

   a) subject to Rule 9(c) below, if the Applicant is an Existing AR Applicant, the Prescribed Fee is £16,000;

   b) if the Applicant is not an Existing AR Applicant the Prescribed Fee is £22,000;

   c) if the Applicant is ILEX and the Application is one or more of the Transitioned Applications, the Prescribed Fee is £20.

10. The amounts specified in Rule 9(a) and Rule 9(b) are each the average costs that the Board anticipates it will incur in considering these different types of Application. In respect of the Prescribed Fee for an Existing AR Applicant this is based on a day rate of £562 over 28.5 business days. In respect of a Prescribed Fee for an Applicant who is not an Existing AR Applicant, this is based on a day rate of £562 over 39 business days

11. The Board reserves the right to charge an additional amount in excess of the amounts set out in Rule 9 in the following circumstances:

    a) if the Board requests further information from the Applicant in accordance with Rule 15 and the Board's costs in processing this information exceeds the relevant amount specified in Rule 9. In these circumstances, any such additional costs will be charged at the day rate of £562;

    b) the nature of the Application means that the Board has to seek external advice and the cost of this advice would mean that the Board's cost in processing the Application would exceed the relevant amount specified in Rule 9.

F. PROCESSES AND PROCEDURE

Sending the Application

12. Subject to Rule 13 below, the Applicant must submit their Application (and, proof of transmission of the Prescribed Fee) either by email, post or courier to the relevant address shown below:

a) If by email to: schedule4approvals@legalservicesboard.org.uk

b) If by post or courier to:

Address: Legal Services Board
7th Floor Victoria House
Southampton Row
London WC1B 4AD

For the attention of: AR Designations Administrator

13. The Applicant must, unless otherwise agreed with the Board, submit their Application (and, proof of transmission of the Prescribed Fee) to the Board using the online tool at www.legalservicesboard.org.uk, once this has been developed.

14. On receipt of the Application and the Prescribed Fee, an acknowledgement email will be sent to the Applicant by the Board.

15. The Board will consider the Application and may ask the Applicant for such additional information as the Board may reasonably require.

16. The Board has the discretion to refuse to consider, or to continue its consideration of, an Application. The Board will exercise this discretion if it believes that it has not received all the information it requires.

17. Where the Board decides to refuse to consider, or to continue its consideration, of an Application it will give the Applicant notice of that decision and the reasons for it. Any such notice will be published by the Board on its website.

18. An Applicant may at anytime withdraw or amend their Application by giving notice to that effect to the Board.

Obtaining advice

19. On receipt of an Application, and all further information that the Board may require under Rule 15, the Board will send a copy of the Application (together with any further information received) to the Consultees.

20. The Board will specify to the OFT, the Consumer Panel and any Optional Consultee a time period in which each body must provide their advice on the Application to the Board. The Board intends to request that these bodies provide their advice within a time period which is reasonable, published and variable dependent on the volume and complexity of the Application received.

21. The OFT, the Consumer Panel and any Optional Consultee will then each consider the Application within the specified time period and will provide its advice to the Board.

22. In providing its advice to the Board, each Consultee may ask the Applicant (or any other person) to provide such additional information as may be required.

23. The Board will then provide the advice it receives from the OFT, the Consumer Panel and any Optional Consultee to the Lord Chief Justice and will specify to the Lord Chief Justice a time period in which he must provide his advice on the Application to the Board. Again, the time period that the Board will specify will depend on the particular circumstances of the Application.

24. The Lord Chief Justice will then consider the Application and will provide his advice to the Board.

25. Once the Board has received the advice of the Lord Chief Justice, it will provide to the Applicant a copy of all the advice that has been given by the Consultees.

Representations

26. The Applicant has **28 days** beginning on the day on which a copy of the advice referred to in Rule 25 is given to the Applicant, or such longer period as the Board may specify in a particular case, to make representations to the Board about the advice. Any representations made by the Applicant must be made in accordance with Section G of these Rules.

Publication of Advice

27. As soon as practicable after the end of the period within which representations under Rule 26 may be made, the Board will publish on its website:

    a) the advice received from the Consultees; and

    b) subject to Rule 28, any written representations duly made by the Applicant (and the report of oral representations (if any) prepared under Rule 46).

28. Prior to the publication of any written representations (and the report of oral representations (if any) prepared under Rule 46) the Board will decide whether any parts of the representations shall remain private and, if so why, taking account of representations from the Applicant. The Board will so far as practicable exclude any material which relates to the private affairs of a particular individual the publication of which, in the opinion of the Board, would or might seriously and prejudicially affect the interests of that individual.

The Board's Decision

29. After considering the items listed in paragraph 14(1) of schedule 4 to the Act, the Board will decide whether to grant the Application.

30. If the Board decides to grant the Application, it will notify the Applicant and will recommend to the Lord Chancellor that an order be made.

31. If the Board decides not to grant the Application, the Board will write to the Applicant with the reasons for its decision.

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

33. Where an Application relates to more than one Reserved Legal Activity, the Board may grant the Application in relation to all or any of them.

The Lord Chancellor's Decision

34. The Lord Chancellor has up to 90 days from the date on which the Board makes its recommendation in accordance with Rule 30 to notify the Applicant of whether or not he will make an order in accordance with the recommendation.

35. Where the Board's recommendation relates to more than one Reserved Legal Activity, the Lord Chancellor may make an order in relation to all or any of them.

36. If the Lord Chancellor decides not to make an order in accordance with the Board's recommendation, the Lord Chancellor's notice to the Applicant must state the reasons for that decision. The Lord Chancellor will publish any notice given under Rule 34.

Timing

37. Under the provisions of the Act the Board has 12 months from the date of the Application to give its decision to the Applicant and its recommendation to the Lord Chancellor (if appropriate). The Board may extend this period up to a maximum of 16 months from the date of Application by giving notice to the Applicant. The Board may only give such a notice if it has first consulted with the Mandatory Consultees in relation to such an extension. Such notice will state the Board's reasons for extending the period and will also be published by the Board on its website.

38. Notwithstanding Rule 37, the Board will aim to deal with an Application within six months from the later of:

    a) the date of submission of the Application; and

    b) the final date of submission of any further information that the Board may request under Rule 15.

G. FORM OF REPRESENTATIONS

Written representations

39. Subject to Rules 40 and 42, all representations made to the Board about advice received by the Board must be in writing and must be submitted to the Board either by email, post or courier to the relevant address set out at Rule 12.

40. The Applicant must, unless otherwise agreed with the Board, submit all representations to the Board using the online tool at www.legalservicesboard.org.uk, once this has been developed.

41. All representations must be received by the Board within the period set out in Rule 26. Representations out of this time will not be considered unless, exceptionally and at the sole discretion of the Board, they appear to raise matters of substance relevant to the Application which are not already under consideration.

Oral representations

42. The Board may, at its sole discretion authorise an Applicant to make oral representations about advice received by the Board. On grounds of cost, efficiency, transparency and consistency of treatment between Applicants, the Board will not normally accept oral representations unless the particular circumstances of the Applicant or the complexity of the issues merit an exception to the normal process in individual cases. If the Board grants such an exception, it will publish its reasons for doing so.

43. Should the Board authorise an Applicant to make oral representations, the representations will take place at a hearing to be held either by telephone, video conference or in person. The Board will give the Applicant not less than ten business days notice that there will be a hearing. If the hearing is to be held in person the notice will specify the place and time at which the hearing will be held. If the hearing is to be held by telephone or video conference, the notice will specify the time of the telephone call or video conference and also the arrangements for facilitating the telephone call or video conference.

44. Hearings conducted in person (rather than by telephone or video conference) will normally be open to the public. However, within the period ending four business days prior to the scheduled date of the hearing, the Applicant may submit to the Board a written request, with reasons, that aspects of the hearing be held in private. The Board will consider the reasons given and will then publish the reasons for any decision that it reaches. Where the hearing is held in private, the Board will only admit persons, other than representatives of the Applicant and the Board, after obtaining the agreement of the Applicant.

45. The Applicant must appear at the hearing, either in person, by telephone or by video conference (as the case may be), and may be represented by any persons whom it may appoint for the purpose. The proceeding of the hearing will be recorded on behalf of the Board and will be transcribed onto paper.

46. Where oral representations are made, the Board will prepare a report of those representations which will be based on the transcription of the hearing made in accordance with Rule 45. Before preparing the report, the Board:

    a) must give the Applicant a reasonable opportunity to comment on a draft of the report; and

b) must have regard to any comments duly made by the Applicant.

47. Subject to complying with the timing requirements set out in Rule 37, the Board reserves the right to extend processes to take account of the need to transcribe and verify oral submissions.

48. The Board may from time to time adjourn the hearing.

49. For the avoidance of doubt, this Section G only applies to representations made to the Board by the Applicant in relation to the advice provided by the Consultees.

H. CRITERIA FOR DETERMINING APPLICATIONS

50. In accordance with paragraphs 13(2) and 13(3) of schedule 4 to the Act, the Board will only grant an Application if it is satisfied:

a) that, if the Lord Chancellor were to make an order designating the Applicant in relation to the particular Reserved Legal Activity, the Applicant would have appropriate internal governance arrangements in place at the time the order takes effect and, in particular that the exercise of the Applicant's regulatory functions would not be prejudiced by its representative functions and, so far as is reasonably practicable, regulatory decisions would be taken independently of representative ones;

b) that, if such an order, were to be made, the Applicant would be competent, and have sufficient resources, to perform the role of Approved Regulator in relation to the Reserved Legal Activity at that time;

c) that the Applicant's proposed Regulatory Arrangements make appropriate provision for the regulation of those it wishes to authorise. Details of the kind of evidence that the Board may consider in determining whether an Applicant's proposed Regulatory Arrangements make such provision can be found in Part 2 of the Schedule to these Rules;

d) that the Applicant's proposed Regulatory Arrangements comply with the requirements of section 52 of the Act in that they must make such provision as is reasonably necessary to prevent regulatory conflicts;

e) that the Applicant's proposed Regulatory Arrangements comply with requirements of section 54 of the Act in that they must make such provision as is reasonably practicable and, in all the circumstances appropriate: (a) to prevent external regulatory conflicts; (b) to provide for the resolution of any external regulatory conflicts that arise; and (c) to prevent unnecessary duplication or regulatory provisions made by an external regulatory body;

f) that the Applicant's proposed Regulatory Arrangements comply with the requirements of section 112 of the Act in that they must make provision requiring each relevant Authorised Person: (a) to establish and maintain procedures for the

resolution of relevant complaints; or (b) to participate in, or to make arrangements to be subject to, such procedures established and maintained by another person, and provision for the enforcement of that requirement;

g) that the Applicant's proposed Regulatory Arrangements comply with the requirements of section 145 of the Act in that they must make: (a) provision requiring each relevant Authorised Person to give ombudsmen all such assistance requested by them, in connection with the investigation, consideration or determination or complaints under the Ombudsman Scheme, as that person is reasonably able to give; and (b) provision for the enforcement of that requirement.

51. In addition, when considering an Application the Board will consider how consistent an Applicant's proposed Regulatory Arrangements are with the requirements of section 28 of the Act (duty to promote the Regulatory Objectives, pursue best regulatory practice etc).

I. FURTHER INFORMATION

52. If you have any questions about the Application process or the preparation of an Application, you should contact the Board at:

Address:	Legal Services Board 7th Floor Victoria House Southampton Row London WC1B 4AD
Email:	schedule4approvals@legalservicesboard.org.uk
Telephone:	020 7271 0050

SCHEDULE

Part 1 - Administrative Information Needed to Enable Processing of an Application for Approved Regulator Designation

	What is required	Section of Act	Possible Evidence
1.	Background information	N/A	Contact details in relation to the person(s) the Board should contact in relation to the Application, including job title, email address and phone number, a physical address for communication and the Applicant's registered office address (if different from communication address) and company registration number if applicable
2.	A statement of the Reserved Legal Activity or Activities to which the Application relates	Sch. 4, paragraph 3(3)(a)	Specification of: • Which of the Reserved Legal Activities set out in section 12 and schedule 2 to the Act the Applicant proposes to regulate • The context within which the Applicant proposes to regulate such Activities (i.e. will the Applicant only be providing authorisation to provide the Reserved Legal Activities in limited circumstances?)
3.	Details of the Applicant's proposed Regulatory Arrangements	Sch. 4, paragraph 3(3)(b)	Relevant documentation on how the Applicant proposes to establish and discharge its Regulatory Arrangements, as defined in section 21 of the Act i.e.: • Authorisation processes • Practice rules • Code of conduct • Disciplinary arrangements • Qualification regulations • Indemnification arrangements • Compensation arrangements • Licensing rules • Other related rules A clear explanation of how the Applicant's Regulatory Arrangements actively contribute to the achievement of the Regulatory Objectives and remove risks to their delivery

	What is required	Section of Act	Possible Evidence
4.	Such explanatory material (including material about the Applicant's constitution and activities) as the Applicant considers is likely to be needed for the purposes of part 2 of schedule 4	Sch. 4, paragraph 3(3)(c)	Memorandum and articles of association or equivalent constitutional documentation Current details of legal entity structure, ownership, list of directors Statement of the non-regulatory activities the Applicant intends to carry out and how these will be managed in accordance with the requirements of the Act and such rules as the Board shall make from time to time A business plan for the activity to be regulated, demonstrating the proposed governance and funding arrangements and sensitivity analysis showing how it relates to different forecasts
5.	Details of the authority which the Applicant proposes to give persons to carry on activities which are Reserved Legal Activities	Sch. 4, paragraph 3(5)(a)	See Item 3
6.	Details of the nature of the persons to whom *each aspect of* the authority is to be given	Sch. 4, paragraph 3(5)(a)	See Item 3
7.	Regulations (however they may be described) as to the education and training which persons must receive, and any other requirements which must be met by or in respect of them, in order for them to be authorised	Sch. 4, paragraph 3(5)(b)	Details might include: • Split between general principles (i.e. duty to the Supreme Court) and specific activity (i.e. staff training, client money handling etc) • Split between mandatory elements and guidance • Explanation of any variation with the practices adopted by others currently regulating the activity
8.	Rules (however they may be described) as to the conduct required of persons in carrying on any activity by virtue of the authority	Sch. 4, paragraph 3(5)(c)	Details of the activities within each relevant Reserved Legal Activity (e.g. conducting CPD eligible training, handling client money, supervising trainees, supervising lawyers or other disciplines)
9.	In deciding what advice to give, the **OFT** must, in particular, have regard to whether an order ... would (or would be likely to) prevent, restrict or distort competition within the market for reserved legal services to any significant extent	Sch. 4, paragraph 6(2)	The OFT is considering whether to issue its own guidance on the issues to which it is likely to have regard in giving advice

	What is required	Section of Act	Possible Evidence
10.	In deciding what advice to give, the **Consumer Panel** must, in particular, have regard to the likely impact on consumers of the making of an order	Sch. 4, paragraph 7(2)	Explanation of how the Regulatory Arrangements will: • Protect and promote the interests of consumers generally • Meet the specific requirements in terms of indemnification and complaint handling
11.	A **selected consultee** may give the Board such advice as the selected consultee thinks fit in respect of the Application	Sch. 4, paragraph 8	Information on any matters specified by a selected consultee
12.	The **Lord Chief Justice** must, in particular, have regard to the likely impact on the courts in England and Wales of the making of an order	Sch. 4, paragraph 9(3)	Information on any matters specified by the LCJ
13.	The Board may grant an Application in relation to a particular Reserved Legal Activity only if it is satisfied that, if an order were to be made designating the body in relation to that activity, the Applicant would have appropriate internal governance arrangements in place at the time the order takes effect	Sch.4, paragraph 13(2)(a)	See Item 4
14.	The Board may grant an Application in relation to a particular Reserved Legal Activity only if it is satisfied that, if such an order were to be made, the Applicant would be competent, and have sufficient resources, to perform the role of Approved Regulator in relation to the Reserved Legal Activity at that time	Sch. 4, paragraph 13(2)(b)	Statement from authorised staff/officeholders in the organisation that there are sufficient resources, an explanation of how this has been assessed Documents signed off by an external accountant as being calculated, presented and supported to a standard that could pass a statutory audit Business Plan for coming year and 3 year forward look Risk management strategy Staff development and retention strategies
15.	The Board may grant an Application in relation to a	Sch. 4, paragraph	Assessment of how the proposed Regulatory Arrangements are consistent with Better Regulation

	What is required	Section of Act	Possible Evidence
	particular Reserved Legal Activity only if it is satisfied that, the Applicant's proposed Regulatory Arrangements make appropriate provision	13(2)(c)	Principles
16.	Compliance with the requirement imposed by sections 52 and 54 (resolution of regulatory conflict)	Sch. 4, paragraph 13(2)(d)	A statement identifying regulators with whom conflict might arise and the work undertaken to date and proposed to avoid this, in particular in relation to the interaction between an individual regulated by one Approved Regulator and an employing entity regulated by another Approved Regulator
17.	Compliance with the requirements imposed by sections 112 and 145 (requirements imposed in relation to the handling of complaints)	Sch. 4, paragraph 13(2)(e)	Current or draft policies showing compliance with any rules made under sections 112 and 145 of the Act and any OLC guidance
18.	The rules made for the purposes of sub-paragraph 2(a) must in particular require the Board to be satisfied that the exercise of the Applicant's regulatory functions would not be prejudiced by any of its representative functions	Sch. 4, paragraph 13(3)(a)	Statement on how the arrangements comply with the principles of the Act and such rules as the Board may make from time to time
19.	The rules made for the purposes of sub-paragraph 2(a) must in particular require the Board to be satisfied that decisions relating to the exercise of the Applicant's regulatory functions would so far as reasonably practicable be taken independently from decisions relating to the exercise of the Applicant's representative functions	Sch. 4, paragraph 13(3)(b)	See Item 18

Part 2 – Evidence in relation to Regulatory Arrangements

Principles (each principle may relate to more than one risk)	Risks	Relates to Regulatory Objectives (see section 1(1))	Relates to Regulatory Arrangement (see section 21(1))	Evidence to underpin approval of designation as an Approved Regulator
Clients money must be protected	Clients money is misused by regulated person or unprotected from entity failure	(d), (f), (h)	(h)	Approved Regulators must ensure that Authorised Persons must keep clients money separate from own Approved Regulators must be able to compensate clients as per section 21(2) May involve client account rules; insurance requirements; compensation fund or insurance *or alternatives*
Authorised Persons must act in clients' interests subject to duty to court	Authorised Persons do not or are unable to act in the clients interest	(a), (b), (d), (e), (h)	(g), (d)	Approved Regulators must demonstrate how regulated persons and entities are indemnified against losses arising from claims in relation to any description of civil liability incurred by them, or by employees or former employees of theirs, in connection with their activities as such regulated persons or entities Approved Regulators must have a code of conduct that enshrines the primacy of acting in the client interest and subjugates other pressures, be they commercial or otherwise to that principle
Reserved Legal Services should only be delivered by regulated persons of appropriate skill and competence	Reserved Legal Services are not of the appropriate quality	(c), (d), (e), (h)	(a), (b), (c)	Approved Regulators must ensure that definitions of appropriate skill and competence are proportionate in order to ensure both value and professionalism Easily accessible redress should be in place
Compliance with professional principles should be enshrined in regulation	Reserved Legal Services are not delivered in accordance with professional principles	(a), (d), (h)	(d), (f)	Approved Regulators must have a code of conduct that defines the professional principles that are compulsory for regulated community
Ditto above	Authorised Persons and	(a), (b), (c), (d), (e), (f),	(e)	Approved Regulator must have a disciplinary remit and processes

Principles (each principle may relate to more than one risk)	Risks	Relates to Regulatory Objectives (see section 1(1))	Relates to Regulatory Arrangement (see section 21(1))	Evidence to underpin approval of designation as an Approved Regulator
	entities do not comply with regulation	(g), (h)		that allow for setting standards and managing compliance of Authorised Persons and entities, efficient investigatory systems and disciplinary powers in the event of breaches of the regulatory framework
Responsibilities for front line complaints handling and interactions with the OLC should be clear	Consumers do not receive timely complaint investigation or redress when justified	(a), (b), (c), (d), (h)	(c), (d), (h)	Approved Regulator must have rules specifying how rights to complain and redress can be accessed, including the right of access to the OLC at an appropriate stage
Regulatory Arrangements should advance the objective of supporting competition	Regulatory requirements act as a barrier to competition by restricting legitimate entry	(d), (e)	(c), (d)	Approved Regulator should be able to demonstrate that their rules are the minimum necessary to address the full set of objectives and do not have unintended consequences in terms of restricted entry
Representative and regulatory functions should be discharged and decisions made, so far as reasonably practicable, independently of each other	Decisions lack credibility and independence because of actual or perceived influence from the representative arm of an Approved Regulator	(a), (d), (f)	(c), (d)	Approved Regulators should have arrangements which implement the Act and such rules as the LSB make on the issue in relation to regulatory strategy, decisions and resourcing of the regulatory arm
Regulation should clearly support the rules of law	Commercial considerations undermine duty to the court	(b), (c), (d), (f)	(a), (c), (d)	Approved Regulators' rules and processes should unequivocally give priority to this duty
The legal professions make up should reflect the population it serves	Public confidence is lost if the profession appears to be a "closed shop"	(c), (d), (f)	(a), (b), (f)	Approved Regulators should be able to demonstrate processes which address diversity concerns
Consumers should be actively involved in decision making throughout their dealings with the profession	Consumers poor understanding restricts their ability to access justice	(a), (c), (d), (g)	(a), (d), (h)	Approved Regulators can demonstrate how their processes address public legal education

Part 3 – How the Board expects to treat Applications

1. The Board expects carefully prepared documentation which the executives and/or honorary officers of the Applicant (and the Applicant's independent advisors when applicable) are prepared to put their name to in stating that the information supplied is accurate or, in the case of forecast data, is a best estimate based on good research and informed professional judgement. If the Applicant cannot demonstrate this level of executive and advisory confidence then it is not appropriate for an Application to be made.

2. The Board expects that some parts of this Schedule will be less relevant to an Applicant who is already an Approved Regulator which is applying to add an additional Reserved Legal Activity to its competences or to a new Applicant which has a strong record of regulatory performance in a related sector than to a wholly new organisation. Hence, the Board will take a proportionate view of risk in deciding precisely how much information to seek in any given case.

3. All documents supplied will be subject to publication and to the scrutiny of the Consultees whom the Act prescribes must consider Applications. Consequently Applicants should have regard to this in relation, in particular, to supplying information which might be commercially sensitive and/or contain personal data. The Board will consider limited requests for redaction of information from documents that are published on these grounds but will not be able to redact information from materials sent to the Mandatory Consultees. The Board requires successful Applicants to maintain a publicly accessible internet space containing all of the materials that are submitted by the Applicant in its Application.

4. The Board will normally expect to see evidence of consultation with other Approved Regulators and the OLC on matters (such as code of conduct) where there is likely to be an interaction between the Applicant and the existing Approved Regulators. The Applicant should also consult with members of, and representative bodies for, professions that may be affected by the Application and with the regulators of these professions. The Board will also normally expect the Applicant to consider, and if appropriate consult with, any other relevant stakeholders including consumers.

5. The Board reserves the right to retain advisors to consider the information supplied. The retention of such advisers may result in an increase to the Prescribed Fee as described in Rule 11. Applicants are encouraged to consider how in preparing, presenting and in certifying the information that they submit, they can minimise the need for the Board to take external advice.

6. The Board's decision will take account of professional guidance, Consultee responses received and on the overall competence, completeness and executive and advisor endorsement of the Applications received. The Board, as an oversight regulator, will not usually reanalyse the information supplied unless there are compelling reasons for doing so.

7. Board approval of a new body as an Approved Regulator, or of an Existing AR Applicant as an Approved Regulator in relation to an additional Reserved Legal Activity represents an assessment that:

   a) the Applicant appears well prepared and appears to understand the roles and responsibilities granted to Approved Regulators under the Act; and

   b) no valid objections have been made to the Applicant's Application by the Consultees.

Annex 4 – Rules for Rule Change Applications

A. PREAMBLE

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

B. DEFINITIONS

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

Act	the Legal Services Act 2007
Alteration	has the meaning given in paragraph 19(5) of schedule 4 to the Act
Applicant	an Approved Regulator who submits an Application
Application	an application to approve an Alteration to the Regulatory Arrangements of an Approved Regulator that is submitted to the Board in accordance with part 3 of schedule 4 to the Act and these Rules
Approval Notice	has the meaning given in Rule 16
Approved Regulator	has the meaning given in section 20(2) of the Act
Authorised Person	has the meaning given in section 18 of the Act
Better Regulation Principles	the five principles of good regulation (being proportionality, accountability, consistency, transparency and targeting) as set out in both sections 3(3) and 28(3) of the Act
Board	the Legal Services Board
Designation Requirements	the requirements set out in paragraph 25(4) of schedule 4 to the Act
Exempt Alteration	an Alteration to an Approved Regulator's Regulatory Arrangements that the Board has directed (in accordance with paragraphs 19(3) and (4) of schedule 4 to the Act) is to be treated as exempt from the approval requirements contained in part 3 of schedule 4 to the Act
Initial Decision Period	has the meaning given in Rule 16
Licensing Authority	has the meaning given in section 73 of the Act

Regulatory Arrangements	has the meaning given in section 21 of the Act
Regulatory Objectives	has the meaning given in section 1 of the Act
Reserved Legal Activity	has the meaning given in section 12 of and schedule 2 to the Act
Warning Notice	has the meaning given in Rule 16

C. WHO DO THESE RULES APPLY TO?

3. These are the Rules that apply if an Approved Regulator wishes to make an Alteration to its Regulatory Arrangements[2]. For the avoidance of doubt, these Rules do not apply to any Alteration of an Approved Regulator's Regulatory Arrangements to the extent that such Alteration is governed by section 51 of the Act.

4. An Alteration to an Approved Regulator's Regulatory Arrangements does not have effect unless:

   - it is an Alteration approved as a result of the Lord Chancellor making an order to approve a body as an Approved Regulator in accordance with part 2 of schedule 4 to the Act;
   - it is an Alteration made in compliance with a direction under section 32 of the Act;
   - it is approved by virtue of paragraph 16 of schedule 10 to the Act (approval of licensing rules on designation by order as Licensing Authority);
   - it is approved by virtue of paragraph 7 of schedule 18 to the Act (approval of proposed regulatory arrangements when granting "qualifying regulator" status for the purposes of Part 5 of the Immigration and Asylum Act 1999 (c. 33));
   - it is an Exempt Alteration;
   - it is an Alteration approved by the Board in accordance with part 3 of schedule 4 to the Act.

5. These Rules set out:

   - how the Board will direct that an Alteration is an Exempt Alteration (**see Section D**);
   - the required contents of an Application to the Board for approval in accordance with part 3 of schedule 4 to the Act (**see Section E**);

[2] These rules will be updated to take account of alterations to deal with the Regulatory Arrangements of Licensing Authorities once the regime under part 5 of the Act (Alternative Business Structures) has been finalised

- the processes and procedures that the Board will undertake in considering the Application (**see Section F**);

- the manner in which the Applicant can make representations to the Board about its Application (**see Section G**);

- the Board's criteria for determining Applications (**see Section H**); and

- whom a body should contact if they have a question in relation to the Application process (**see Section I**).

6. The Board reserves the right to amend these Rules from time to time. If the amendments made to the Rules are, in the opinion of the Board, material the Board will publish a draft of the amended rules and will invite consultations in accordance with section 205 of the Act.

D. EXEMPT ALTERATIONS

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

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

E. CONTENTS OF APPLICATION

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

    - the name, address, telephone number and email address of the person whom the Board should contact in relation to the Application;

    - details of the proposed Alteration;

    - details of such of the Applicant's Regulatory Arrangements as are relevant to the Application including a statement setting out:

        i) the nature and effect of the existing Regulatory Arrangement;

        ii) the nature and effect of the proposed Alteration; and

        iii) an explanation of why the Applicant wishes to make the Alteration in question;

    - a statement in respect of each proposed Alteration explaining how and why the Alteration will either help to promote, be neutral towards or be detrimental to each of

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

- a statement explaining how and why the Applicant, feels that the Alterations requested fulfil the Applicant's obligations to comply with its obligations under section 28 of the Act to have regard to the Better Regulation Principles;

- a statement explaining the desired outcome of the Alteration and how the Applicant intends to assess whether the desired outcome has been achieved;

- a statement explaining whether the proposed Alteration is one that affects areas regulated by other Approved Regulators. If this is the case, the Applicant should provide evidence of consultation with, and responses from, these other Approved Regulators. This consultation should deal with the possibility of any regulatory conflicts and also the possibility of harmonising the Regulatory Arrangements of Approved Regulators regulating the same Reserved Legal Activities. The purpose of this requirement is to ensure that sections 52 to 54 of the Act are complied with and that best practice is shared in common areas of regulation;

- details of when the Applicant hopes to implement the Alteration;

- full details of all consultation processes undertaken and responses received by the Applicant in relation to the Alteration, which should include consultations of Approved Regulators and other appropriate regulators when applicable;

- such other explanatory material as the Applicant considers is likely to be needed for the purposes of part 3 of schedule 4 to the Act.

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

F. PROCESSES AND PROCEDURE

Sending the Application

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

- If by email to : schedule4approvals@legalservicesboard.org.uk

- If by post or courier to:

  Address: Legal Services Board
  7th Floor Victoria House
  Southampton Row
  London WC1B 4AD

  For the attention of: Rule Change Administrator

12. The Applicant must, unless otherwise agreed with the Board, submit their Application to the Board using the online tool at www.legalservicesboard.org.uk, once this has been developed.

13. On receipt of the Application a copy of the proposed Alterations to the Applicant's Regulatory Arrangements will be published on the Board's website.

14. The Board will consider the Application and may ask the Applicant for such additional information as the Board may reasonably require.

15. The Board has the discretion to refuse to continue its consideration of an Application if it believes that it has not received all the information it requires – this power is granted under paragraph 25(3)(f) of schedule 4 to the Act as the Board will, in these circumstances, feel that the approval of the Alteration would occur otherwise than in accordance with the procedures for review established by the Board under the Act.

Initial determination

16. On receipt of an Application, the Board has **28 days** (beginning on the day the Board receives the Application) (the "**Initial Decision Period**") to:

    - grant the Application and give the Applicant notice to that effect (an "**Approval Notice**") (paragraph 21(1)(a) of schedule 4 to the Act);

    - give the Applicant a notice stating that the Board is considering whether to refuse the Application (a "**Warning Notice**") (paragraph 21(1)(b) of schedule 4 to the Act); or

    - give neither an Approval Notice or a Warning Notice in which case, the Application is deemed granted by the Board at the end of the Initial Decision Period (paragraph 21(3) of schedule 4 to the Act).

17. The Board will publish on its website any Approval Notice or any Warning Notice given to the Applicant.

18. The Board may extend the Initial Decision Period with the consent of the Applicant or by giving an extension notice to the Applicant. An extension notice must specify the period of the extension and must state the Board's reasons for extending the Initial Decision

Period. Any period of extension specified in the notice must end no later than the end of the period of 90 days beginning on the day the Application was made.

Advice

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

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

Representations

21. The Applicant has **28 days** beginning on the day on which a copy of the advice referred to in Rule 20 is given to the Applicant, or such longer period as the Board may specify in a particular case, to make representations to the Board about the advice. Any representations made by the Applicant must be made in accordance with Section G of these Rules.

Publication of Advice

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

    c) any advice received pursuant to Rule 19; and

    d) subject to Rule 23, any written representations duly made by the Applicant (and the report of oral representations (if any) prepared under Rule 39).

23. Prior to the publication of any written representations (and the report of oral representations (if any) prepared under Rule 39 the Board will decide whether any parts of the representations shall remain private and why, taking account of representations from the Applicant. The Board will so far as practicable exclude any material which relates to the private affairs of a particular individual the publication of which, in the opinion of the Board, would or might seriously and prejudicially affect the interests of that individual.

The Board's Decision

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

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

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

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

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

Timing

29. Subject to Rule 30, if the Board gives the Applicant a Warning Notice it has 12 months (beginning with the day the Applicant receives the Warning Notice) to give its decision to the Applicant. If the Board fails to make a decision within this period, the Application is deemed to have been granted by the Board at the end of that period.

30. The Board, may, on one or more occasions, give the Applicant a notice extending the decision period from 12 months up to maximum of 18 months from the day the Applicant receives the Warning Notice. The Board will publish on its website any such notices.

31. The Board will endeavour to deal with an Application within the Initial Decision Period, however, where this is not possible and the Board has extended the Initial Decision Period in accordance with Rule 18 or served a Warning Notice on the Applicant, notwithstanding other provisions in these Rules, the Board will aim to deal with:

- any Application involving a simple Alteration within 30 business days from the later of: (a) the date of submission of the Application; and (b) the final date of submission of any further information that the Board may request under Rule 14;

- any Application involving a more complex Alteration within 3 months from the later of: (a) the date of submission of the Application; and (b) the final date of submission of any further information that the Board may request under the Rules.

G. FORM OF REPRESENTATIONS

Written representations

32. Subject to Rules 33 and 35, all representations made to the Board about advice received by the Board must be in writing and must be submitted to the Board either by email, post or courier to the relevant address set out at Rule 11.

33. The Applicant must, unless otherwise agreed with the Board, submit all representations to the Board using the online tool at www.legalservicesboard.org.uk, once this has been developed.

34. All representations must be received by the Board within the period set out in Rule 21. Representations out of this time will not be considered unless, exceptionally and at the

sole discretion of the Board, they appear to raise matters of substance relevant to the Application which are not already under consideration.

Oral representations

35. The Board may, at its sole discretion authorise an Applicant to make oral representations about the advice received by the Board. The Applicant must bear its own costs in relation to any such representations. On grounds of cost, efficiency, transparency and consistency of treatment between Applicants, the Board will not normally accept oral representations unless the particular circumstances of the Applicant or the complexity of the issue merit an exception to the normal process in individual cases. If the Board grants such an exception, it will publish its reasons for doing so.

36. Should the Board authorise an Applicant to make oral representations, the representations will take place at a hearing to be held either by telephone, video conference or in person. The Board will give the Applicant not less than ten business days notice that there will be a hearing. If the hearing is to be held in person, the notice will specify the place and time at which the hearing will be held. If the hearing is to be held by telephone or video conference, the notice will specify the time of the telephone call or video conference and also the arrangements for facilitating the telephone call or video conference.

37. Hearings conducted in person (rather than by telephone or video conference) will normally be open to the public. However, within the period ending four business days prior to the scheduled date of the hearing, the Applicant may submit to the Board a written request, with reasons, that aspects of the hearing be held in private. The Board will consider the reasons given and will then publish the reasons for any decision that it reaches. Where the hearing is held in private, the Board will only admit persons other than representatives of the Applicant and the Board after obtaining the agreement of the Applicant

38. The Applicant must appear at the hearing, either in person, by telephone or by video conference (as the case may be) and may be represented by any persons whom it may appoint for the purpose. The proceeding of the hearing will be recorded on behalf of the Board and will be transcribed onto paper.

39. Where oral representations are made, the Board will prepare a report of those representations which will be based on the transcription of the hearing made in accordance with Rule 38. Before preparing the report, the Board:

    - must give the Applicant a reasonable opportunity to comment on a draft of the report; and

    - must have regard to any comments duly made by the Applicant.

40. Subject to complying with the timing requirements set out in Rules 29 and 30, the Board reserves the right to extend processes to take account of the need to transcribe and

verify oral submissions and to require the Applicant to pay the transcription provider for the cost of the transcription service.

41. The Board may from time to time adjourn the hearing.

42. For the avoidance of doubt, this Section G only applies to representations made to the Board by the Applicant in relation to any advice provided under Rule 19.

H. CRITERIA FOR DETERMINING APPLICATIONS

43. In accordance with paragraph 25(3) of schedule 4 to the Act, the Board may refuse an Application only if it is satisfied that:

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

I. FURTHER INFORMATION

44. If you have any questions about the Application process or the preparation of an Application, you should contact the Board at:

Address:	Legal Services Board 7th Floor Victoria House Southampton Row London WC1B 4AD
Email:	schedule4approvals@legalservicesboard.org.uk
Telephone:	020 7271 0050