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Legal Services Board
By email
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Response to Legal Services Board (LSB) consultation on proposed rules for applications to alter regulatory arrangements

Thank you for the opportunity to respond to your consultation on proposed rules for applications to alter regulatory arrangements. We hope that you find our responses to your questions helpful. Please find our response at Annex 1.

Please do not hesitate to get in touch should you require any further information.

Yours sincerely,



Ewen Macleod
Director of Strategy & Policy
Bar Standards Board

Annex 1 – Response to LSB Consultation

Question 1: Do you have any comments on the above draft rules 1 to 4? Do you have any comments on the associated draft Guidance?

1. We do not have any specific comments on the draft rules 1 to 4.
2. In relation to the associated draft guidance, we note the LSB's expectation that (i) before applications or requests for exemption are made to the LSB, they are subject to the regulator's internal quality assurance and governance checks and processes, and (ii) the boards of regulators need to take ultimate responsibility for the applications and thus be sighted of proposals. With regard to (ii), while we agree that the boards of regulators should be sighted of proposals, our current arrangements for exemption applications are that they are submitted to the LSB by the executive under delegated authority from the BSB Board. Given the purpose of the new rules and guidance is to help streamline the approval process and make it more proportionate, we would welcome the LSB's clarification on whether these arrangements can continue under the new rules – we would not expect it to be a requirement for the BSB Board to approve every exemption application in advance, particularly the types of changes for which it is proposed there would be general exemption directions (please see our response to Question 5 below.) If the LSB wishes to ensure Board awareness and oversight of any problems with the regulatory arrangements, we believe that could be achieved by reporting such amendments to the Board after the event.
3. We also welcome the LSB's clarification that, ordinarily, changes to guidance or policy documents that do not impose mandatory requirements will not be considered to be regulatory arrangements and therefore will not require LSB approval; however, the focus ought to be on content and intent, rather than what a particular document might be labelled as. If, in the future, we are unsure as to whether proposals amount to an alteration to regulatory arrangements, we welcome the opportunity to consult with the LSB in advance of implementing the relevant proposals.

Question 2: Do you have any comments on the above draft rules 5 and 6? In particular, do you have any comments on the information required to be included in applications or requests for exemption specified in Section E (rules 8 to 13) and rule 17 of the draft Rules? Do you have any comments on the associated draft Guidance?

4. We do not have any specific comments on the draft rules 5 and 6.
5. In relation to rule 10(h), that 'an application must include any draft guide or policy that will support implementation of the alteration or alterations', we welcome the clarification in the associated draft guidance that while these documents must be sufficiently advanced to enable meaningful consideration, they do not necessarily have to be in final form.
6. In relation to rule 12(c), that in addition to an equality impact assessment 'an application must include an assessment of the impact of the alteration or alterations on regulated persons, consumers and the public interest', we would welcome further clarification in the guidance of the LSB's expectations in this area. While the associated draft guidance states that 'where significant changes to the regulatory

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framework are proposed, an approved regulator must undertake a proportionately more detailed assessment of the potential impact on the regulated persons, consumers and the public interest', it would be helpful for the LSB to give consideration to publishing a proforma for what such an impact assessment should look like (there can still be flexibility on what form an impact assessment should take even if a proforma is published).

7. We do not have any specific comments on the draft rule 17.
8. In relation to the associated draft guidance, we note at paragraph 37 that 'approved regulators should check whether their proposed alterations are covered by a general exemption direction before seeking approval'. In this regard it would be helpful for general exemption directions to be displayed prominently on the LSB's website. We also welcome the LSB's recognition at paragraph 58 that 'it will not always be the case that every regulatory objective is impacted equally by proposed alterations', and the expectation that applications 'focus in particular on the regulatory objectives which applicants consider are meaningfully engaged by their proposals'.
9. We also welcome the helpful proformas at Annex A and B to the guidance, which respectively summarise the information requirements in Section E (for full applications) and the information required for requests for exemption.

Question 3: Do you have any comments on draft rule 7 above? Do you have any comments on the associated draft Guidance?

10. We do not have any specific comments on the draft rule 7 or the associated draft guidance.

Question 4: Do you have any comments on the process for requests for exemption? Do you have any comments on draft rules 15 to 17? Do you have any comments on the associated Guidance?

11. We agree that the LSB's revised process for requests for exemption is a good basis for providing clarity and consistency, which should avoid different approaches from regulators to requests for exemption.
12. In relation to rule 17(g), that an exemption application 'must include a summary of any impact assessment undertaken, including the impact on persons with protected characteristics, and if not why', we would welcome further clarification in the guidance of the LSB's expectations in this area (beyond such an assessment, if carried out, being proportionate to the alteration). For example, the circumstances in which an exemption application should include an assessment of the impact on regulated persons, consumers and the public interest, and what such an impact assessment should look like. Again it would be helpful for the LSB to give consideration to publishing a proforma (there can still be flexibility on what form an impact assessment should take even if a proforma is published).
13. In relation to the associated draft guidance, where it states that requests for exemption must include the alteration(s) and the regulatory arrangements it will amend, if any, we welcome the clarification that the LSB expects this to include information on any alteration to the regulatory arrangements approved over the past 2 years.

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Question 5: Do you have any comments on the proposals and scope for new general exemption directions?

14. We agree with the LSB's proposals to issue a general exemption direction or directions that will enable approved regulators:
 - To make alterations to a range of internal documents, forms and standalone guidance.
 - To make alterations to regulatory arrangements that correct minor drafting errors and make minor changes (such as changes to grammar, punctuation, pronouns) by way of notification with a 14-day window for LSB consideration of whether the proposals are in scope of the exemption.
 - To make consequential minor changes (linked to alterations previously exempted or approved by the LSB) by way of notification with a 14-day window for LSB consideration of whether the proposals are in scope of the exemption.
15. A significant number of the BSB's exemption applications to date would fall within the scope of these proposed general exemption directions, and so we agree with the LSB that this would streamline the approval process and make it more proportionate.