



The Bar Council

Bar Council response to the Legal services Board's (LSB) consultation titled, 'Proposed rules for arrangements to alter regulatory arrangements'

1. This is the response of the General Council of the Bar of England and Wales (the Bar Council) to the Legal Services Board's (LSB) consultation titled, 'Proposed rules for arrangements to alter regulatory arrangements'.¹
2. The Bar Council represents approximately 17,000 barristers in England and Wales. It promotes the Bar's high quality specialist advocacy and advisory services; fair access to justice for all; the highest standards of ethics, equality and diversity across the profession; and the development of business opportunities for barristers at home and abroad.
3. A strong and independent Bar exists to serve the public and is crucial to the administration of justice. As specialist, independent advocates, barristers enable people to uphold their legal rights and duties, often acting on behalf of the most vulnerable members of society. The Bar makes a vital contribution to the efficient operation of criminal and civil courts. It provides a pool of talented men and women from increasingly diverse backgrounds from which a significant proportion of the judiciary is drawn, on whose independence the Rule of Law and our democratic way of life depend. The Bar Council is the Approved Regulator for the Bar of England and Wales. It discharges its regulatory functions through the independent Bar Standards Board (BSB).

Overview

4. We do not intend to respond to each of the questions but instead offer some general comments on the proposals laid out in the consultation document.

¹ Available here: <https://legalservicesboard.org.uk/wp-content/uploads/2021/06/20210615-Regulatory-Arrangements-Consultation-with-annexes.pdf>

5. We support the principle that the LSB ought to have sufficient information to enable them to assess applications for regulatory arrangement rule change applications as well as exemption applications. A clearly laid out process will assist Approved Regulators and regulators to make both types of application as well as enabling the LSB to assess them within the statutory timeframe whilst minimising the need to revert to applicants with requests for further information.

6. We have no objection to the requirement for applicants to consider the impact of their proposals on the regulatory objectives and better regulation principles.

7. We support the inclusion of consultation with regulated persons into the process at draft rule 11. This will give the Bar the opportunity to highlight the potential impact of the proposed regulatory change on their practices and clients as well as any points that have not be considered. We agree with the point made in the draft guidance that where the rule change will result in a more significant change, a more detailed assessment of the impact of it on various categories of stakeholder will be required. This is proportionate and helps mitigate against any unintended consequences. We note that it is possible for the impact assessment not to be carried out where the applicant gives an explanation of why this is “reasonable and proportionate”. It would be useful to have the circumstances under which an exemption to this requirement would be permitted by the LSB expressly set out or that it be phrased as only where the applicant gives an explanation of why “the circumstances are exceptional and so that exemption is reasonable and proportionate”. We would hope that reliance on this exemption would only happen infrequently.

8. We welcome the integration of diversity and inclusion impact assessments into the application process at draft rule 12. This is clearly consistent with the regulatory objectives and is aligned with the Bar Council’s strategy in this area.

9. The scope of regulatory changes that will fall within the exemption application process seems reasonable. Their engagement when a proposed amendment will impose a regulatory obligation on any of the regulated community seems sensible and ensures Approved Regulators and regulators can make minor amendments to the regulatory arrangements without incurring disproportionate administration.

10. The LSB recognises that the more detailed rules will increase the regulatory burden on Approved Regulators but believe the benefits outweigh the negatives, because they think it will, “lead to greater focus on the regulatory objectives, provide clarity, and will reduce regulatory burden in relation to minor, low risk alterations and support a more diverse and inclusive legal profession, which is in the public

interest".²The additional information sought in the proposed application process will in all likelihood make the application process more time-consuming and take more staff time to complete it. Given there is a real prospect that completing the application process for rule change applications will take longer, to ensure that the additional burden placed on applicants is not disproportionate to the resultant benefits, we would request that the LSB consider evaluating the new process to determine whether it has the anticipated benefits for them as well as measuring the impact on applicants. Conducting such an exercise would also serve to identify areas where the process can be improved and is consistent with the LSB's increased emphasis on evaluation and monitoring.

Bar Council

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² <https://legalservicesboard.org.uk/wp-content/uploads/2021/06/20210615-Regulatory-Arrangements-Consultation-with-annexes.pdf>, p.19