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| Policy name: | **Commencing & Implementing Change Procedure** |
| Who it applies to: | All staff, board members and other associated persons |
| Date of issue: | July 2023 |
| Date last revised: | - |
| Approved by: | Executive |
| Review date: | July 2024 |

**Commencing & Implementing Change Procedure**

## 1. Background

The world we live in changes continually, and, as a regulator of legal services, CILEx Regulation (CRL) must develop and enhance its regulatory approach both proactively and reactively to meet these changes. Often, when CRL is contemplating change, regulatory rules will also need to be amended or introduced (and sometimes withdrawn) to accommodate a new or different approach to risks that regulation is seeking to address.

## 2. Introduction

This procedure details the processes followed by CRL when new regulatory requirements are being contemplated or changes to rules and guidance are required. Rules changes include reactive changes due to external or internal changes to the environment in which CRL operates, or alternatively changes identified as a result of re-consideration of the nature and purpose of rules and guidance or to address new risks to the public or profession..

## 3. Process for Change[1]

**a.** CRL may identify the need for change either through:

- Horizon-scanning,
- As a result of an internal or external change in the regulatory environment, or
- New legislation being put in place

**b.** Once this has been identified, a paper should be presented to the CRL Board, which sets out the issue identified and the proposed options to address the matter[2]. At this stage the CRL Board will be asked to agree in principle an alteration to the regulatory approach.

**c.** Once an 'in principle' decision is made to pursue a change which requires an alteration to regulatory rules, CRL should consider the type of evidence required to support the change. Depending on the nature of the proposed change, CRL should undertake some, or all, of the following activities to provide an evidence-base for the change:

[1] Change refers to both new regulatory requirements or changes to existing regulatory arrangements.
[2] At this point in the process, there will be limited evidence available to support the proposal. The comprehensive evidence gathering stage will commence once the Board has made an in-principle decision to pursue the proposal.

- Horizon-scanning: to identify options for different approaches to an issue affecting CRL's activities or its regulated community (for example: changes to the availability of technology and innovation could change the delivery and, therefore, regulation of legal services)
- Research: to assess the level of demand for the proposed change. This could be internal or from an external provider, desk-based (i.e., reviewing research undertaken by other bodies) or bespoke (commissioned by CRL), quantitative or qualitative or both.
- Discussion with experts to inform proposals for change (for example, as part of the Higher Rights development work, legal academics with expertise in advocacy were used to develop the education and training requirements).
- Discussion with other regulators to establish whether there are any unintended consequences, particularly related to regulatory arbitrage.
- Consideration of the impact to the regulatory objectives and the better regulation principles to ensure that proposals and subsequent developments comply with these, or if not, that the deviation can be justified.
- Engagement with the LSB that CRL anticipates making a rule change application, the nature of the application and indicative timetable.
- Formal consultation with stakeholders to test proposals. Nature and length of the consultation will depend on the size and impact of the proposed change. In some situations, there may be more than one consultation or different types of consultation (e.g., one to one engagement as well as a formal consultation document).
    - Changes such as those to the compensation arrangements and introducing new rights are subject to wide consultation for a 12-week period.
    - Administrative changes are subject to a short, targeted consultation with affected stakeholders.
    - Consultation with the Legal Services Consumer Panel (LSCP) is required on issues which may affect the consumer interest. There are two other statutory consultees mentioned in the Legal Services Act 2007 (the Lord Chief Justice and the CMA) consideration should be made as to whether these consultees should be provided with a copy of the consultation.

The proposed rule change (draft rules) will need to be consulted on. This should follow the process set out in the rule change section below.

**d.** Once the evidence has been gathered, an analysis of the findings and a review of the proposal should be carried out after which a reasoned recommendation should be provided to the Board to enable them to determine next steps. Any evidence received in response to a consultation should be published on the website. Next steps may include:

- approving a rule change submission to the LSB
- seeking further evidence
- seeking further engagement with affected stakeholders
- amending the proposals for change
- not proceeding with the change

**e.** In some cases, the proposed rule change (see below) can be presented to the Board at the same time as the analysis of the evidence provided. In either case, the proposed rules changes should follow the process at paragraph 4 below.

**f.** In preparing the rules, CRL should consider:

- How similar issues are dealt with in other regulators' rules/ guidance
- How the changes impact on other regulatory arrangements/ guidance across CRL, taking care to ensure cross reference any relevant provisions where

needed. It may be necessary to liaise with relevant managers across CRL to minimise the risk of any gap or overlap in regulatory arrangements.
- Whether the drafting is clear, concise and meets the intended purpose for which the change is being sought.

## 4. Rule Change

CRL should prepare one tracked change copy and one clean copy of any rules and/ or guidance (including possible webpage) to be introduced, enhanced or removed.

These draft rules should form part of the original consultation where possible, otherwise a short, targeted consultation[3] should take place prior to submitting an application to the LSB, to test the operation of the proposed rules to ensure (as far as possible) that the intended changes will meet the requirements of the change.

## 5. Legal Services Board: Rules and Guidance

CRL should refer to the LSB Rules and Guidance to ensure compliance with the current rules made by the LSB under the terms of the Legal Services Act 2007.

A minor alteration may be made under ED181 General exemption but should be discussed with the LSB prior to submission.

## 6. Compiling the LSB application

The LSB has provided a template to use when making an application for rules change. Whilst this provides a useful guide, CRL's experience is that additional information may be required to make an effective submission which is not covered by the template. As a result, CRL has created an additional section to address previous feedback from the LSB on making future applications.

The CRL template is attached at **Appendix 1**. Guidance on completion of each section is set out below.

I. Background to the application

*This section should provide the background to the application. It is particularly important to explain the current regulatory approach and CRL's rationale for its approach to the regulation of its regulated community. Consideration should be given to the impact the changes will have during any transitional period. In addition, any related rules or guidance should be explained and how these related rules interact with the proposed rules. Once the current position has been explained, identify the relevant members of the regulated community affected by the current approach, the application should set out the proposed changes and why these are considered necessary. In addition to reference to the regulated community, this should include a clear statement in relation to the impacts that the changes will have for the benefit of consumers and the promotion of the regulated objectives. Evidence should be presented to support these statements. There should be a brief outline of why this approach is the most suitable mechanism for CRL's regulated community.*

II. Summary/Overview.

*The application should be summarised to provide an overview of the proposal and the evidence-base which supports the application, including any consultation findings and*

[3] Timescales may vary; however, 4-6 weeks may be appropriate provided the consultation has been provided to key stakeholders. Also consider time of year in relation to response times (e.g., will it be affected by summer holidays or winter breaks?)

*impact assessments.*

III. Regulatory objectives and better regulation principles – details on the impact of the proposals on the regulatory objectives, including assessment of potential benefits and detriments against those objectives, having regard to the better regulation principles. Where there are negative impacts, how the alterations nonetheless comply with and thus promote the regulatory objectives overall and are in the public interest.

*It is important to consider both benefits and detriments to the regulatory objectives and better regulation principles.*

*Where no detriment is identified, this should be stated in the application to demonstrate that consideration has been given to both positive and negative impacts.*

IV. Alterations
   a. Full details and explanation of each alteration. This includes a schedule of changes, a track change word document or any other method the approved regulator considers appropriate.
   b. Rationale, intent, purpose, and effect of each alteration, including detail on any defect in the regulation of regulated persons that will be remedied by the alteration.
   c. Details on how and when the alterations will be implemented.
   d. An assessment of whether the alterations impact on the regulation of regulated persons by another approved regulator or approved regulators, and where there is impact details of consultation with the affected approved regulator, any regulatory conflict and how it will be resolved as is reasonably practicable.
   e. The above applies to any conflict with an external regulatory body – and include measures as is reasonably practicable and appropriate in the circumstances to prevent unnecessary duplication of regulatory provisions.

V. Consultation and Engagement: Information on the consultation/engagement undertaken by the approved regulator when developing the proposals. This must include information on the approved regulator's consideration of any responses to the consultation, any consequential changes made to the alterations, and an explanation of why the approach to consultation and engagement was proportionate in the circumstances.

*This section goes beyond consultation and considers all evidence which has been used to support the change to the rules. This could include pilot information, customer feedback which prompts consideration of a change or contact from a stakeholder (e.g., MoJ)*

VI. Impact Assessment: An assessment of the impact of the alterations on persons with protected characteristics as defined by section 4 of the Equality Act 2010 along with details of any measures to mitigate any adverse impacts and why any remaining adverse impact is proportionate, reasonable and not prejudicial to the regulatory objectives overall. To include details on how the alterations advance equality of opportunity between persons who share protected characteristics and persons who do not, and on how the alterations support the aim of dismantle barriers to a diverse and inclusive profession where relevant.

VII. An assessment of the impact of the alterations on the conduct of legal services by regulated persons, consumers and the public interest, along with details of measures to mitigate any adverse impacts. Where adverse impact remains, explain why this is proportionate, reasonable and will not be prejudicial to the regulatory objectives overall. If significant alterations to the regulatory framework is proposed, an approved regulator must undertake a proportionately more detailed assessment of the potential

impact on the regulated persons, consumers and the public interest.

VIII. Information on the evaluation and monitoring the approved regulator will undertake of the impact of the alterations once they have been implemented.

*This is a key section of the application and should include all actions that will be taken to measure the impact of the changes once implemented, including impacts on EDI. To develop monitoring and evaluation actions, the reasons for the rule change should be considered and measurable outcomes identified. Timescales should be included as part of this section of the report and the evaluation should be added to CRL's post-implementation tracker to ensure that an evaluation report can be published. The report will include recommendations for further changes if required to ensure that the intended effects have been met.*

IX. Any draft guide or policy that will support implementation of the alterations.

*Draft guidance in the form of handbooks, website pages etc. must be provided as part of the application.*

## 7. Quality assurance of the application

Once the application has been drafted, it should progress through the necessary quality assurance (QA) processes set out below:

### a. First draft reviewed by Director owning the change

The Director should read through the document carefully, ensuring that it covers all relevant areas as set out in the preceding sections of the document. There should be no grammatical or spelling errors and the review should ensure that the documentation is understandable to individuals not familiar with CRL's internal processes.

### b. Second draft review by opposing Director

The second draft review is a sense check of the document to ensure that all elements of the draft application make sense to an individual unfamiliar with CRL's processes. This read-through should also ensure that where the content may be contentious that this is intentional and the decision to proceed is in line with decisions of the CRL Board.

### c. Final read through by CEO

The final read through checks that the document makes sense to the reader, is grammatically correct and aligns with Board decisions.

Once the final read-through is complete, the application can be submitted to the LSB at schedule4approvals@legalservicesboard.org.uk.

## 8. Review of Application Process

Once an application has been approved by the LSB and as part of the implementation process, there will be a review of the Application Process to identify learning points, particularly where the LSB has made a request for additional evidence or documentation. Each review will cover:

a) Application Name
b) Director/CEO review comments
c) Date submitted to LSB

d) If an extension notice was required and reason.
e) Engagement with LSB prior to decision being made.
f) Date of Decision
g) Key Issues identified from LSB comments related to quality of application and information provided.

This is designed to be a learning document for all those who are part of the application process, as well as providing quality assurance and oversight by the CRL Board, who may have seen the original rule change application (3e).

A report summarising the conclusions of all reviews will be made each year to the CRL Board, as part of the Annual cycle of business, reporting on the effectiveness of each stage of the application process.

In addition, any approved application is added to the CRL's post-implementation tracker which is maintained for the purpose of reviewing the impact of changes on consumers and regulated members. The measurable outcomes and timescales identified within 6 VIII above should be included in the tracker as part of the post implementation report.

## APPENDIX 1

Optional Proforma/Information required in an application

# Information requirements: application by approved regulators for approval by the LSB of alterations to their regulation arrangements under Part 3 of Schedule 4 to the Legal Services Act 2007 (the Act)


**Summary**

An application by an approved regulator for approval by the LSB of alterations to their regulatory arrangements under Part 3 of Schedule 4 to the Act must include the information set out in this proforma, which summarises the requirements for applications under the Part E of the Application to Alter Regulatory Arrangements Rules 2021.[4]

Use of this proforma for making applications is optional to assist applicant approved regulators.

An approved regulator must comply with the Rules and have regard to the Guidance in applying to the LSB. In case of conflict between the Rules, Guidance and the Act, the provisions of the Act prevail.

As set out in paragraph 94 of the Guidance, the LSB may provide informal feedback on some proposals before an application is submitted.

The approved regulator submitting an application takes responsibility for the accuracy and completeness of the information provided.

On receipt of an application, the LSB will acknowledge receipt and confirm to the approved regulator in writing the end date for the initial decision period of 28 days, subject to any extension by consent or notice, or as a consequence of a warning notice given by the LSB. The LSB will notify the approved regulator of its decision pursuant to paragraph 25(6) of Schedule 4 to the Act and publish that notice on its website.


**Publication**

We publish all applications on our website, along with any extension notice, warning notice and the decision notice once made.

[4] The information requirements in Part E of the Rules are summarised here.

Ordinarily we publish third party correspondence received on applications with personal data redacted unless a request is made to keep it confidential.

**Confidential or commercially sensitive information**

If any information submitted as part of the application is considered by the approved regulator to be confidential or commercially sensitive, please state this in the cover email or letter which accompanies the application and provide reasons as to why the information in question should not be published.

**Contents**

I. Background to the application
II. Summary/Overview.
III. Regulatory objectives and better regulation principles – details on the impact of the proposals on the regulatory objectives, including assessment of potential benefits and detriments against those objectives, having regard to the better regulation principles. Where there are negative impacts, how the alterations nonetheless comply with and thus promote the regulatory objectives overall and are in the public interest.
IV. Alterations
    a. Full details and explanation of each alteration. This includes a schedule of changes, a track change word document or any other method the approved regulator considers appropriate.
    b. Rationale, intent, purpose, and effect of each alteration, including detail on any defect in the regulation of regulated persons that will be remedied by the alteration.
    c. Details on how and when the alterations will be implemented.
    d. An assessment of whether the alterations impact on the regulation of regulated persons by another approved regulator or approved regulators, and where there is impact details of consultation with the affected approved regulator, any regulatory conflict and how it will be resolved as is reasonably practicable.
    e. The above applies to any conflict with an external regulatory body – and include measures as is reasonably practicable and appropriate in the circumstances to prevent unnecessary duplication of regulatory provisions.
V. Consultation and Engagement: Information on the consultation/engagement undertaken by the approved regulator when developing the proposals. This must include information on the approved regulator's consideration of any responses to the consultation, any consequential changes made to the alterations, and an explanation of why the approach to consultation and engagement was proportionate in the circumstances.
VI. Impact Assessment: An assessment of the impact of the alterations on persons with protected characteristics as defined by section 4 of the Equality Act 2010 along with details of any measures to mitigate any adverse impacts and why any remaining adverse impact is proportionate, reasonable and not prejudicial to the regulatory objectives overall. To include details on how the alterations advance equality of opportunity between persons who share protected characteristics and persons who do not, and on how the alterations support the aim of dismantle barriers to a diverse and inclusive profession where relevant.
VII. An assessment of the impact of the alterations on the conduct of legal services by regulated persons, consumers and the public interest, along with details of measures to mitigate any adverse impacts. Where adverse impact remains, explain why this is proportionate, reasonable and will not be prejudicial to the regulatory objectives overall. If significant alterations to the regulatory framework is proposed, an approved regulator must undertake a proportionately more detailed assessment of the potential impact on the regulated persons, consumers and the public interest.
VIII. Information on the evaluation and monitoring the approved regulator will undertake of the impact of the alterations once they have been implemented.
IX. Any draft guide or policy that will support implementation of the alterations.

The minimum level of information we expect from approved regulators is set out above. However, additional information may be provided, for example by reference to the Guidance. The LSB may also request further information.

**Submission**

We would prefer to receive applications electronically, but hard copy applications are also welcome. Applications should be sent to:

Email: schedule4approvals@legalservicesboard.org.uk

Posted applications should be sent to:

Legal Services Board
3rd floor, The Rookery
2 Dyott Street
London
WC1A 1DE

**Information required in an application**

**I. Background to the application**

Provide detail in relation to the current approach to regulation, impact the changes will have during any transitional period, any related rules or guidance and how these related rules interact with the proposed rules, relevant members of the regulated community affected, the proposed changes and why these are considered necessary. Include any impacts that the changes will have for the benefit of consumers and the promotion of the regulated objectives and why this approach is the most suitable mechanism for CRL's regulated community.

**II. Summary and overview**

Briefly summarise the application

**III. Regulatory objectives and better regulation principles (rule 9)**

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| Provide details on the impact of the proposals on the regulatory objectives, including assessment of potential benefits and detriments against those objectives, having regard to the better regulation principles. Where there are negative impacts, how the alterations nonetheless comply with and thus promote the regulatory objectives overall and are in the public interest. Please focus on those regulatory objectives that are meaningfully engaged by the proposals. |
| |
| **IV. Alterations - detail of each proposed alteration (rule 10)**<br><br>This must provide full details on, and explanation of each alteration, including any regulatory arrangements they will amend. This can include a schedule of changes, a track change word document or any other method the approved regulator considers appropriate. Details must include: (a) the rationale, intent, purpose, and effect of each alteration; (b) if applicable, the gap or defect in existing regulatory arrangements that the alteration is intended to remedy; (c) how and when the alterations will be implemented; (d) assessment of whether the alterations impact on the regulation of regulated persons by another approved regulator or approved regulators, and where there is impact details of consultation with the affected approved regulator(s), any regulatory conflict and how it will be resolved; and (e) the details in (d) applies to any conflict with an external regulatory body – and include measures to prevent unnecessary duplication of regulatory provisions. |
| |
| **(a) Rationale, intent, purpose, and effect of proposed alterations**<br><br>This section should include information and evidence setting out:<br>why the approved regulator is making the alteration or alterations.<br>what defects are intended to be remedied.<br>what the intent, purpose and effect of the alteration or alterations will be.<br>what impact the proposals are anticipated to have on the regulatory objectives. |
| |

**(b) The gap or defect in existing regulatory arrangements that the alteration is intended to remedy**

**(c) Implementation**

Detail setting out how and when the alteration or alterations will be implemented.

**(d) and (e) Impact on other regulated persons/approved regulators**

Provide an assessment of whether the alteration or alterations impact on the regulation of regulated persons by another approved regulator(s) and/or external regulatory bodies. If there is impact please provide detail of any consultation or engagement with the affected regulator and details of any regulatory conflict and how such conflict will be addressed, as is reasonably practicable.

## V. Consultation and Engagement (rule 11)

Provide detail of the consultation and engagement process undertaken when developing the proposals leading to the alterations. This must include detail of any responses/feedback along with information on your consideration of that, and any consequential changes to the alterations. This section must also provide an explanation of why the approach taken to consultation and engagement was proportionate in the circumstances.

**VI. & VII. Impact Assessment (rule 12)**

a) Equality impact assessment: Provide an assessment of the impact of the alterations on persons with protected characteristics as defined by section 4 of the Equality Act 2010. Please include in this section details of any positive impacts as well as any adverse impacts, measures that will be implemented to mitigate any adverse impacts, and on why any remaining adverse impact is proportionate, reasonable, and not prejudicial to the regulatory objectives overall. To include details on the consideration given to how the alterations advance equality of opportunity between persons who share protected characteristics and persons who do not and support the aim of dismantle barriers to a diverse and inclusive profession where relevant.

b) Impact on regulated persons, consumers and the public interest

Provide an assessment of the impact of the alteration or alterations on the conduct of legal services by regulated persons, consumers and the public interest. Please include in this section details of any measures to mitigate any adverse impacts. Where adverse impact remains, an explanation of why this is proportionate, reasonable and will not be prejudicial to the regulatory objectives overall.

Where significant alterations to the regulatory 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.

**VIII. Evaluation and monitoring**

Provide full details on the evaluation and monitoring the approved regulator will undertake to assess the impact of the alterations once they have been implemented. This should include specific plans and timescales for carrying out the monitoring and evaluation work.

**IX. Any draft guide or policy that will support implementation of the alterations**

These documents can give necessary context to how the alterations will work in practice which may be important in assessing their impact on the regulatory objectives, and against the refusal conditions. It also may be the case that these documents may fall within the meaning of regulatory arrangements and having them enclosed with an application will assist in determining this.