

Legal Services Board (LSB) Consultation on Designating Approved Regulators and Approving Rule Changes

Rules for New Body Designation Applications

Questions 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?

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?

The Commissioner agrees with the Board's approach.

It would not be practicable for the Board to routinely examine each detail of an applicant's policies and procedures during the application process; nor can it be assumed that the Board would necessarily be in a position to comment on such matters.

It is right, therefore, that the Board focuses on the key issues generated by each application.

It is also right that it places the onus on applicants to submit well-prepared and pre-consulted applications rather than wasting its resources chasing information that should have been supplied at the outset (though equally it needs to make as clear as possible the information it requires).

Finally, it is reasonable for the Board to expect executives of applicant bodies to certify the accuracy of information provided where there is any reason to doubt it; though this should not be relied upon to the exclusion of independent verification where this is a practicable option.

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

The Commissioner has no suggestions for any alterations or additions to the application process as set out in the discussion paper.

Question 4: What do you think the appropriate level of, and method of calculation of the prescribed fee should be?

The Commissioner believes 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 applications.

At the same time, she 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.

She considers that this may act as an additional encouragement to applicants to prepare applications thoroughly.

Question 5: Do you think we should reduce the Prescribed fee for Applications from existing Approved Regulators to take on additional reserved activities?

The Commissioner considers that it would be unfair for 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.

Question 6: Do you agree that the Board should use external advisers when necessary with the cost of these being met by way of an adjustment to the prescribed fee?

The Commissioner supports the use of external advisers where necessary because of specialist issues raised by an application and agrees that it would be appropriate for the costs of using them to be met by the applicant through an adjustment to the application fee.

In the interests of fairness and transparency, however, she considers that the applicant body should be given written reasons for such a decision and an estimate of costs. They should then be given an opportunity to make representations, which the Board will duly consider before proceeding.

Questions 7: Do you agree with the approach taken to oral representations?

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.

The Commissioner 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. As they are likely to be in the interests of the applicant body, it is right that the applicant body pay the costs of facilitating those representations.

The Commissioner has no suggestions for improving the process outlined in the discussion paper.

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

The Commissioner is satisfied that the criteria set out in the discussion paper for determining applications are appropriate. However, she notes some of them are very broad (e.g. that the Applicant's proposed Regulatory Arrangements make appropriate provision for the regulation of its members).

While she does not consider that these basic criteria need to be made more specific, she 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.

For example, it might set out what it considers to be the essential procedures and capabilities for any putative regulator to possess, or for any Applicant proposing to regulate a certain type or size of profession.

Presumably, it expects each prospective regulator to be able to handle conduct complaints about the people it proposes to regulate; but would it also expect each of them to have the capability to (e.g.) share intelligence or carry out audits? If it would not expect this of all of them, would it perhaps expect it of, say, those regulating large numbers of people in high-risk professions?

Rules 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.

The Commissioner considers that the Board has probably maintained an appropriate balance in its approach to potentially low impact rule changes. It would seem to be prudent for the LSB and other approved regulators to be made aware of all rule changes even if the Applicant regulator does not think they are material, as others may not agree. On the other hand, it would be unduly onerous for all rule changes to go through the same process as material changes.

At the same time, the Commissioner suggests that these arrangements are reviewed after, say, a year of operation to ensure that they are proportionate to the risks involved. If all non-material changes are going unchallenged and the consideration of material changes is being unduly delayed because of the

volume of applications, then the LSB may wish to restrict itself to consideration of material changes.

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?

The Commissioner agrees with the requirements set out in the discussion paper and has nothing to add.

Questions 12: Do you agree with the approach taken to oral representations?

Question 13: 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.

The Commissioner agrees with the approach the Board has taken to oral representations, for the same reasons stated in her response to Question 7.

She has nothing to add as regards the suggested process.

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

The Commissioner considers that the criteria set out are appropriate, but, as in her response to question 9, she would suggest that guidance be published explaining in more detail the circumstances in which the LSB would be likely to consider that the criteria had and had not been satisfied. Some examples would also be helpful.

Suzanne McCarthy
Immigration Services Commissioner
12 October 2009