



Consultation by the Legal Services Board on Proposed Rules for Applications to Alter Regulatory Arrangements

Response by the Council for Licensed Conveyancers

30 July 2021

The CLC would like to thank the Legal Services Board for the opportunity to comment on the proposed new rules for applications and the supporting guidance. We would be happy to discuss or clarify any part of our response if necessary.

- 1. Do you have any comments on the above draft rules 1 to 4? Do you have any comments on the associated draft guidance?**

No.

- 2. Do you have any comments on the above draft rules 5 and 6? 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 Do you have any comments on the associated draft Guidance?**

5(1) has a minor typo: 'regulator arrangements' should say regulatory arrangements.

Rule 9(2) (and guidance paragraph 59) states that where an alteration is not compatible with one or more regulatory objectives "...the application must include details on why the approved regulator considers they are nonetheless not prejudicial to the regulatory objectives overall, and in the public interest". This wording needs to be clarified as it would seem that, by default, if an alteration is not compatible with one or more of the regulatory objectives it *will* be detrimental to the regulatory objectives overall. It is confusing to require regulators to argue that non-compatibility with certain regulatory objectives is justified because others are met. It would seem that what the rule is actually asking the regulators to do is to make an assessment of whether overall the benefits outweigh the detriments and that the changes are in the public interest.

Besides these two points, the rules and guidance are clearly expressed.

- 3. Do you have any comments on draft rule 7 above? Do you have any comments on the associated draft guidance?**

No.

- 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?**

The rules and guidance are clearly expressed. We welcome the clarity and specificity provided by Rule 17 in particular.

However, the rules and guidance might benefit from also setting out the circumstances in which the LSB might decline a request for an exemption direction.

For example, the LSB recently communicated that all proposed changes to regulators' PII terms to clarify the extent of coverage for cyber events *must* entail a full rule-change application to the LSB. In this case, regulators were not given the opportunity to provide the information or reasoning as proposed in new Rule 17, nor were they able to consult with the LSB as is recommended in the guidance at paragraph 28. Regulators will have different approaches and proposals to dealing with alterations to rules, whether those alterations are minor or very substantial. We hope that the proposed new rules will allow each application for an exemption to be considered individually.

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

The CLC agrees with the LSB's proposals for new general exemption directions.

It would be useful to have more examples or a threshold for what is considered 'minor drafting errors' and 'minor changes' beyond "changes to grammar, punctuation and pronouns". For example, if a provision is duplicated in two parts of a rule book, would its deletion be a minor change eligible for the 14-day window for LSB consideration? Or, if additional wording or examples are added to a clause to clarify its meaning and application, whether this would fall within the proposed new general exemption direction.

The Rules and Guidance should also cover when the LSB is able to direct that something is *not* eligible for an exemption direction when the regulator has not been given an opportunity to make a full and reasoned request.