

Application made by the Solicitors Regulation Authority Board to the Legal Services Board under Part 3 of Schedule 4 to the Legal Services Act 2007, for the approval of SRA amendments to regulatory arrangements (Continuing Professional Development and miscellaneous) Rules [2015]

A PROPOSED ALTERATIONS

1 This application is made to the Legal Services Board (LSB) for approval of changes to the SRA's regulatory arrangements in relation to the post qualification training requirements of solicitors. The detail of the proposed arrangements is set out in Section C.

2 The proposed changes enable us to reform our existing Continuing Professional Development (CPD) requirements and remove prescriptive, blanket and disproportionate rules. The changes mean that we can better target our regulatory resources appropriately to ensure that solicitors remain competent to provide a proper standard of service to clients.

In outline, the changes:

- remove the requirement to undertake 16 hours of CPD during each complete CPD year including the requirement to complete 25% of annual CPD in accredited activities;
- remove of the requirement on solicitors to attend within the first three years following admission SRA Management Course Stage 1 (MCS1);
- permit solicitors to adopt our new approach from 1 April 2015, on a voluntary basis; and
- enable full implementation of our new approach by removing existing regulations from 1 November 2016 without further SRA Board or LSB approval.

3 If approved, the changes will come into effect from 1 April 2015 and will be included in Version 13 of the SRA Handbook.

4 We are currently consulting on our proposed Competence Statement. The Statement defines what solicitors should be able to do to practice effectively. As part of our new approach to ensuring ongoing competence, we expect solicitors to use the statement to identify possible learning and development needs. We will take the outcome of the consultation into account in finalising our approach.

B NATURE AND EFFECT OF THE SRA's CURRENT ARRANGEMENTS

5 The SRA has adopted a proportionate and targeted approach to regulation. This approach focuses on the high-level principles and outcomes that should drive

the provision of services to clients. It allows the SRA to focus on issues that really matter, whilst giving authorised firms and practitioners the freedom and flexibility to decide how best to deliver services in the context of managing their own risks.

6 The current SRA Training Regulations 2011 Part 3 CPD regulations govern the ongoing training of all practising solicitors and Registered European Lawyers (REL's). They ensure that solicitors remain competent to practice by undertaking relevant ongoing training. The regulations require all solicitors and RELS to:

- undertake 16 hours of CPD during each complete CPD year (each year commencing 1 November to 31 October) in legal practice or employment in England and Wales;
- attend within the first three CPD years following admission the SRA MCS1 (solicitors only);
- undertake at least 25 per cent of the CPD requirement by participation in accredited courses;
- keep a record of training undertaken.

7 Solicitors and RELs make an annual declaration that they have complied with these regulations.

8 Our current CPD requirements are not consistent with our approach to regulation nor do they guarantee the outcome they were designed to ensure. They are prescriptive, blanket and impose unnecessary regulatory burdens on individual solicitors and entities.

C NATURE AND EFFECT OF THE PROPOSED AMENDMENTS TO THE CURRENT ARRANGEMENTS

9 The SRA amendments to Regulatory Arrangements (Continuing Professional Development and miscellaneous) Rules [2015], annexed to this application, were made by the SRA Board on 3 December 2014, subject to approval by the LSB. They are designed to:

- enable individual solicitors and entities to adopt our new approach to ensuring ongoing competence from April 1 2015 on a voluntary basis, before full implementation on 1 November 2016;
- remove unnecessary prescription from existing regulations;
- enable full implementation of our new approach by removing existing regulations from 1 November 2016 without further SRA Board or LSB approval.

10 The changes enable the implementation of our new approach to ensuring the ongoing competence of solicitors as approved by the SRA Board on 21 May 2014. This approach ensures the ongoing competence of solicitors by the requirement to comply with Principle 5 in the SRA's Code of Conduct 2011 and provide a proper standard of service. Our new approach involves:

- solicitors reflecting on the quality of their practice by reference to our proposed Competence Statement for solicitors and addressing identified learning and development needs;

- solicitors making an annual declaration that they have considered their training needs and taken measures to maintain their competence;
- removing the current requirement that solicitors must undertake 16 hours of CPD annually;
- removing prescriptive training requirements and providing freedom and flexibility to solicitors to meet identified learning and development needs.

11 All solicitors will be required to comply with our new approach from the 1 November 2016.

12 The amendment to Regulation 3.1 introduces arrangements that enable solicitors to adopt our new approach from 1 April 2015, if they wish. This means that solicitors do not need to undertake 16 hours of CPD and can ensure their ongoing competence by reflecting on the quality of their practice and addressing identified learning and development needs.

13 The amendment to Regulation 4.1 removes the requirement on solicitors to undertake MCS1 within three years post admission. This is a prescriptive requirement and specifies the type and nature of training that must be undertaken and when. It is inconsistent with our approach to continuing competence.

14 We are also seeking approval for the removal of Regulation 8.1. The effect of this amendment is to remove the prescriptive requirement to undertake accredited training and enable solicitors to choose the learning and development they believe is appropriate to ensure their ongoing competence.

15 We are also seeking approval for the introduction of new regulation. We propose the introduction of a "sunset clause" that removes existing regulations entirely on 1 November 2016 without the need for further SRA Board or LSB approval in the future.

16 The effect of the remaining amendments in this application ensure that our other regulations are consistent with the changes we are proposing. They primarily involve the removal of CPD as a defined term and subsequent changes to guidance notes.

D RATIONALE FOR PROPOSED AMENDMENT

17 The need to reform our current approach to CPD was a central feature of the Legal Education and Training Review report (LETR). LETR confirmed our view that our current approach to CPD has a number of weaknesses. These are:

- competence is linked and based on the completion of an arbitrary number of hours of CPD activity;
- compliance with the regulatory requirement to undertake 16 hours of CPD is often the key driver for individual solicitors rather than ensuring learning and development undertaken is related to their role or ensuring competence;
- it applies to all qualified solicitors; our requirements do not take into account the varied contexts within which solicitors now work and the way in which legal services are now delivered;
- there are a range of tools used by professional and regulatory bodies to assure the ongoing competence of their regulated community and the imposition of mandatory training requirements through input based CPD

scheme is a weak tool for ensuring competence when compared to other forms of professional regulation;

- the current requirement to undertake mandatory CPD is not linked to our wider regulatory framework and does not enable us to target our regulatory resource to the areas of highest risk;
- is difficult to enforce in a meaningful way.

18 Our analysis has also identified issues with the requirement on individual solicitors to undertake MCS1. These include:

- the structure of the course provides only a very high level of awareness of management issues and may be inadequate for those who wish to set up on their own or irrelevant for those who do not;
- our stakeholder engagement has indicated that many solicitors have no desire to pursue a management position or that the requirement to undertake MCS1 comes too early in their career to be of any practical benefit;
- for many regulated entities, MCS1 is considered difficult to accommodate within existing training programmes that focus on roles and the career progression of individual solicitors;
- The prescriptive requirement of MCS1 is inconsistent with our proposed approach to ensuring the ongoing competence of individual solicitors. This approach provides freedom and flexibility for individual solicitors to identify and determine how they meet training needs. Continuing to require individual solicitors to undertake MCS1 reduces this freedom and flexibility.

19 The weaknesses described above evidence the need for reform. The amendments to our regulations outlined in this application, if approved, allow us to address these weaknesses through the implementation of a new approach that:

- is proportionate, flexible and targeted, works better for consumers and those we regulate in the increasingly diverse legal services market and which imposes a reduced burden on those we regulate;
- focuses on competence rather than compliance;
- offers greater regulatory protections by enabling us to focus our regulatory effort on those that do not deliver competent services to consumers who cannot judge for themselves.

E STAKEHOLDER ENGAGEMENT

20 We consulted on proposals to reform our existing approach to continuing professional development from 5 February to 2 April 2014. 64 stakeholders responded. We also engaged with the profession through a series of road shows, webinars and a comprehensive programme of visits to regulated entities to discuss our proposals.

21 We stated in the consultation document that the implementation of our preferred approach would require the removal all of the regulatory arrangements in Part 3 of our existing CPD Training Regulations 2011.

22 Respondents to the consultation raised a number of concerns with the implementation of our preferred approach. Our Consultation Response (Annex 2) provides more detail on how we addressed these concerns.

23 Respondents indicated that the implementation our preferred approach would require a culture change within the profession. This culture change relates not just to the development of new systems and processes for reflecting on and recording training but also to ensure individuals and entities commit appropriate time and resource to this process without the compulsion of a minimum hours requirement.

24 We addressed this concern by delaying full implementation of our new approach until 1 November 2016 to allow additional time for individual solicitors and regulated entities to adapt to the new approach. We will also deliver a programme of stakeholder engagement and ongoing communication to support the profession before 1 November 2016.

25 Respondents also suggested that, if our preferred approach was adopted, some entities, particularly smaller ones, might reduce training budgets. This might result in some solicitors being denied access to training, restrict the ability of solicitors to ensure their own competence, and therefore affect the quality of advice they provide. Similarly, there was a concern that some solicitors might see our new approach as a green light to stop undertaking training and development, which again, in turn, might affect the quality of advice

26 We have addressed these concerns by:

- requiring all solicitors to continue to meet their obligation under Principle 5 of the Handbook to provide a proper standard of service to clients. This involves reflecting on the quality of their practice by reference to our proposed Competence Statement that states what solicitors should be able to do and addressing identified learning and development needs. As far as solicitors are concerned, complying with the proposed Competence Statement is one requirement of providing a proper standard of service in accordance with Principle 5;
- requiring all solicitors to make an annual declaration to demonstrate that they have considered their learning and development needs and taken appropriate steps to address them;
- focusing our regulatory effort on those that do not deliver competent services to consumers who cannot judge for themselves;
- signposting solicitors to a wide range of cost effective learning and development approaches that they can adopt to ensure they remain competent to provide a proper standard of service;
- ensuring clear and ongoing communication with the profession to remind them of their obligations under our new approach.

27 Many respondents expressed concern that, in the absence of a mandatory hour's requirement, they will not know what they need to do to comply with our

requirements under our new approach. To address this concern, we issued a Position Statement in October 2015 to provide clarity and guidance on how individual solicitors can continue to meet their regulatory requirements during the period prior to full implementation in November 2016.

28 We will also issue a toolkit in Spring 2015 to provide further guidance to individual solicitors and regulated entities on how they can meet our requirements and ensure that they do not overcompensate for the lack of clarity by investing unnecessary time and money in CPD in order to demonstrate compliance. The online resource will provide guidance for solicitors and entities on:

- ways to reflect on their practice and identify training needs;
- the range of ways in which training needs might be addressed;
- how to record and reflect on training undertaken;
- tools that are available to assist with this process;
- examples of good practice.

29 Some respondents suggested that we had provided insufficient details about how we would ensure compliance with our requirements under our preferred option while others suggested that it would be more costly to ensure compliance under our new approach than under the existing requirements.

30 We are committed to regularly communicating with the profession to provide clarity on the requirements of our new approach. We issued a Position Statement in October 2015 to provide clarity on how individual solicitors can comply with the requirements of our new approach and we will continue to issue further information up until 1 November 2016.

31 We are clear that we must take a realistic and pragmatic approach to regulating competence within the profession. We do not wish to introduce monitoring and compliance arrangements that significantly increase the cost of regulation or impose further burdens on those we regulate. We know that it will not be possible, or desirable, to pick up every instance of incompetence, but we will develop an approach which embeds the concept of competence more clearly within our regulatory activities and seeks proactively to identify any significant risks or trends related to competence which require our attention.

32 There are three instances which might justify a regulatory intervention:

i) Firm based competence - Where we identify a cluster of issues which may relate to competence linked to a particular firm, we may take action. We would investigate whether the firm had in place appropriate systems for identifying development needs, training staff and evaluating the impact of learning. Where these systems did not exist, our regulatory action would be more robust.

ii) Thematic or sector issues - Where we identify concerns relating to competence in a specific sector or relating to a particular thematic aspect of competence we may

take action. These issues might be picked up through media scanning, analysis of trends in incoming data or intelligence gathered by relationship managers or supervisors. Where we have evidence of incompetence in a particular sector, we have a range of regulatory tools at our disposal.

iii) Individual competence - We will not usually seek to take action in the event of individual matters of incompetence because these will normally be dealt with elsewhere e.g. by the firm, the Legal Ombudsman or the courts. However, there may be cases where action on our part may be appropriate, for example, where the seriousness of the incompetence justifies it, where there are repeated instances of incompetence or where the court refers a case to us. Where the individual cannot demonstrate that they have taken a responsible approach to their learning and development, this will be an aggravating factor in relation to enforcement action.

33 Some respondents were concerned that, if consumers of legal services believed that solicitors were no longer required to keep up with changes in the law and regulation, this would damage the reputation of the profession generally.

34 We will address this risk through a comprehensive stakeholder engagement strategy which will make clear that the new approach does not represent any downgrading of the importance which we attach to the delivery of competent legal services (and therefore of learning and development). Under our new approach, solicitors will be required to make an annual declaration to demonstrate that they have considered their learning and development needs and taken appropriate steps to address them. We believe that the new approach demonstrates our intention to focus more rigorously on competence within our regulatory activity.

35 We recently consulted on the removal of the requirement on individual solicitors to undertake MCS1 as part of our Red Tape initiative. Some consultation responses suggested that if the requirement to undertake MCS1 was removed, individual solicitors would not undertake or regulated entities would not provide financial and client management training. It was felt that this could lead to an increase in poor client service and a risk in the way that firms are managed.

36 We said in our consultation response (Annex 3) that we did not consider our proposal would lead to a lack of financial and client management training for solicitors and subsequent risks because:

- as part of our new approach to ensuring ongoing competence, all solicitors must continue to meet their obligation under Principle 5 of the Handbook to provide a proper standard of service to clients;
- persons who must be 'qualified to supervise' – i.e. sole practitioners, managers of authorised bodies, supervisors of those who undertake reserved work – will still be required to undertake at least 12 hours of management skills training by rule 12 of the Practice Framework Rules. This means that those people who hold roles demanding specific management training will still be under a regulatory obligation to undertake that training.

F STATEMENT IN RESPECT OF THE REGULATORY OBJECTIVES

37 The SRA Board is satisfied that the proposed new rules support the regulatory objectives contained in the Legal Services Act 2007.

Protect and promote the public interest

38 The implementation of our new approach will shift our regulatory focus from compliance with an arbitrary CPD hours requirement to the outcome that CPD is designed to promote: competent solicitors and the delivery of competent legal services. Being transparent that our focus is on competence and the delivery of competent legal services rather than prescriptive regulatory requirements will help increase public confidence in our regulation, the competence of solicitors and the legal system.

Support the constitutional principle of the rule of law

39 Solicitors play a fundamental role in protecting the rule of law. In order to carry out this duty, solicitors must behave ethically, in accordance with the Code of Conduct and must be competent to deliver legal services. Our new approach supports this regulatory objective by requiring all individual solicitors to ensure that they provide a proper standard of service by reflecting on the quality of their practice by reference to our proposed Competence Statement.

Improve access to justice

40 The current requirement on all solicitors to meet our existing regulations is restrictive, costly and prevents solicitors and regulated entities from determining how best to ensure that they deliver competent legal services to consumers. We do not expect our proposals will have a negative effect on access to justice.

Protect and promote the interests of consumers

41 Our proposed amendments will increase protections for consumers. Our current approach promotes compliance with an arbitrary regulatory requirement rather than the promotion of regular reflection on the quality of practice and ensuring that identified learning needs are addressed to ensure the delivery of proper standard of service.

42 Our new approach will support this objective by requiring all solicitors to regularly reflect on the quality of their practice and address any identified learning and development needs to ensure they continue to meet their regulatory requirement to provide a proper standard of service. Our proposed Competence Statement will define what a competent solicitor looks like. Complying with the proposed Competence Statement is one requirement of providing a proper standard of service in accordance with Principle 5.

Promote competition in the provision of legal services

43 Our new approach promotes competition in the provision of legal services. The introduction of our proposed Competence Statement will mean that consumers of legal services are better placed to understand and recognise quality legal service provision. This will drive competition in the provision of legal services.

44 The removal of prescriptive training requirements provides freedom and flexibility for solicitors and regulated entities to adopt new, innovative and cost effective approaches to ensure ongoing competence and the delivery of a proper

standard of service. This reduces the cost of regulation that often acts as a barrier to entry into the market.

Encourage an independent, strong, diverse and effective legal profession

45 The legal profession is independent, strong, diverse and effective when it is able to respond to the changing needs of consumers. Quality will be promoted through the continued obligation to provide a proper standard of service and regular reflection on the delivery of legal services by solicitors. Our new approach also takes into account the varied ways in which solicitors learn and accommodates their varied development needs.

Increase public understanding of the citizen's legal rights and duties

46 Solicitors play a vital role in empowering consumers to understand their legal rights and duties. They can only do this effectively if they are competent to do so. Our proposed amendments enable us to introduce a clearer articulation of competence for solicitors and require them to regularly reflect on the quality of their practice and address any identified learning and development needs.

G STATEMENT IN RESPECT OF THE BETTER REGULATION PRINCIPLES

47 The SRA considers that the proposed amendments to the Handbook fulfill our obligation under section 28 of the Legal Services Act to have regard to the Better Regulation Principles.

Transparent

48 We have been transparent during the development of our proposals to implement a new approach. We have engaged widely with the profession regarding our proposals, including a formal consultation, regional road shows, meetings with regulated entities and through attendance at stakeholder meetings. The changes to our Handbook will be communicated widely to the profession. The development of our proposed Competence Statement also articulates what we expect every solicitor to be able to do and by meeting the statement, how solicitors can meet their regulatory obligation under our new approach.

Proportionate

49 Our existing requirements impose prescriptive and inflexible regulation and this places unnecessary regulatory burdens on solicitors and regulated entities. Whilst our new approach to ensuring the ongoing competence applies to all solicitors, there will be freedom and flexibility to determine how competence is maintained. Solicitors can take a more proportionate approach to learning and development based on their identified needs, role and experience.

Targeted

50 Our proposals are targeted and avoid the application of unnecessarily onerous rules in situations where the application of these rules is unnecessary. Regulatory action and resources will be targeted to areas where we have evidence that competence is a specific problem and where there is regulatory justification for action.

Consistent

51 Our proposals are consistent with our wider approach to regulation and align with wider regulatory obligations we place on individual solicitors. These proposals ensure the ongoing competence of all solicitors by requiring all solicitors to continue to meet their obligation under Principle 5 of the Handbook to provide a proper standard of service to clients.

Accountability

52 Our approach to regulation is subject to political and professional scrutiny. Our proposals have been subject to robust analysis and scrutiny: through a public consultation process; through our own internal governance arrangements; and now, as part of the LSB's oversight and approval process.

H STATEMENT IN RELATION TO DESIRED OUTCOMES

53 The changes are made in accordance with the strategic objectives of the SRA Board. These are outlined in our recent Corporate Strategy, Equality and Diversity Inclusion Strategy and Business Plan and include:

- reforming regulation to enable growth and innovation in the market and to strike the right balance between reducing regulatory burdens and ensuring consumer protection;
- working with solicitors and firms to improve standards and uphold core professional principles;
- helping firms and individuals to understand and comply with our regulatory requirements;
- improving our regulatory approach so that it is more proportionate and targeted, works better for consumers and those we regulate in the increasingly diverse legal services market and which imposes a reduced burden on those we regulate.

I STATEMENT IN RELATION TO IMPACT ON OTHER APPROVED REGULATORS

54 We have not identified any adverse impact on people regulated by other approved regulators.

J IMPLEMENTATION TIMETABLE

55 We are proposing to introduce the proposed rules as outlined in Annex 1 on publication of version 13 of the SRA Handbook on 1 April 2015. Existing regulations will be removed on 1 November 2016.

K SRA CONTACT FOR MATTERS RELATING TO THIS APPLICATION

56 If the Board have any queries in relation to this application please contact:

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Annex 1 The SRA amendments to Regulatory Arrangements (Continuing
Professional Development and miscellaneous) Rules [2015]
Annex 2 Consultation Response
Annex 3 MCS1 Consultation Response