



## **Legal Services Board – decision notice issued under Part 3 of Schedule 4 to the Legal Services Act 2007**

### **The Solicitors Regulation Authority (SRA) rule change application for approval to alterations to the SRA’s regulatory arrangements relating to its Red Tape Initiative**

The Legal Services Board (LSB) has granted an application from the SRA who sought approval to changes to the SRA Handbook to give effect to the SRA’s Red Tape Initiative reforms.

This decision notice sets out the basis for the LSB granting the application and the decision taken, including a brief description of the changes.

#### **Introduction**

1. The LSB is required by Part 3 of Schedule 4 to the Legal Services Act 2007 (the Act) to review and grant or refuse applications by approved regulators to make alterations to their regulatory arrangements. The Law Society is an approved regulator and the SRA is the regulatory arm to which the Law Society has delegated its regulatory functions.
2. Paragraph 25 of Schedule 4 to the Act explains that the LSB may only refuse an application setting out a proposed change to the regulatory arrangements if it is satisfied that by granting the application one or more of the criteria specified in sub paragraph 25(3) (and listed in the footnote below<sup>1</sup>) will be met. For example, the LSB’s granting of the application to alter the regulatory arrangements must not be prejudicial to the regulatory objectives overall. Accordingly, if the LSB is not satisfied that one or more of the criteria for refusal are met, then it must approve the application in whole, or the parts of it that can be approved.
3. As provided for by paragraphs 20(1) and 23(3) of Schedule 4 to the Act, the LSB has made rules<sup>2</sup> about how the application to alter the regulatory arrangements must be made including the contents of that application. The rules highlight the applicant’s obligations under section 28 of the Act to have regard to the Better Regulation Principles. The rules also require that the applicant provides information about the nature and effect

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<sup>1</sup> The Board may refuse the application only if it is satisfied that—(a) granting the application would be prejudicial to the regulatory objectives, (b) granting the application would be contrary to any provision made by or by virtue of the Act or any other enactment or would result in any of the designation requirements ceasing to be satisfied in relation to the approved regulator, (c) granting the application would be contrary to the public interest, (d) the alteration would enable the approved regulator to authorise persons to carry on activities which are reserved legal activities in relation to which it is not a relevant approved regulator, (e) the alteration would enable the approved regulator to license persons under Part 5 to carry on activities which are reserved legal activities in relation to which it is not a licensing authority, or (f) the alteration has been or is likely to be made otherwise than in accordance with the procedures (whether statutory or otherwise) which apply in relation to the making of the alteration.

<sup>2</sup> [Rules for Rule Change Applications – Version 2 \(November 2010\)](#)

of each proposed change and of appropriate consultation undertaken. Sub paragraph 25(3)(f) of Schedule 4 to the Act requires that each proposed alteration has been made or is likely to be made in accordance with the procedures (whether statutory or otherwise) which apply in relation to the making of the alteration. This therefore includes the LSB's rules.

4. The chronology for the LSB's handling of this application can be found towards the end of this decision notice.

### **Proposed alterations**

5. The proposed alterations encompass the following changes:
  - Removal of restrictions on charging by in-house solicitors, Registered European Lawyers (RELS) and Registered Foreign Lawyers (RFLs) employed in not-for-profit organisations.
  - Allowing in-house solicitors, RELs and RFLs employed by local authorities to charge charities and voluntary organisations for whom they are acting.
  - Approval of RELs and RFLs as new managers and owners.
  - Approval of a single Compliance Officer for Legal Practice (COLP) or Compliance Officer for Finance and Administration (COFA) in related authorised bodies.
  - Simplification of the SRA's regulation of training contracts for trainee solicitors.
  - Simplification of the SRA's pre-admission processes and requirements.
6. The specific changes are summarised below:
  - Deletion of the provision which will then enable in-house solicitors, RELs and RFLs employed by a law centre, charity or other non-commercial advice service, to charge for the provision of the legal services. This is an amendment to the current Rules 4.16(b)(i) and (ii) of the SRA Practice Framework Rules 2011.
  - Amendment to enable local authority in-house solicitors, RELs and RFLs to act for charities and voluntary organisations and make a charge for contentious and non-contentious work. This is an amendment to the current Rule 4.15(e) of the SRA Practice Framework Rules 2011.
  - Amendments so that RELs and RFLs will be deemed to be approved as suitable managers or owners of authorised bodies provided there are no conditions on that person's registration. A further related amendment will allow the SRA to require an individual, who is deemed suitable, to produce documentation to satisfy the SRA that they continue to meet the criteria for approval. This is an amendment to the current Rule 13.2 of the SRA Authorisation Rules 2011 plus an addition to Rule 14 of the same.
  - Amendments to allow COLP/COFA of an authorised body to be able to apply to be COLP or COFA of any related authorised body, without the need to be a manager or employee of that related authorised body. This is an amendment to the current Rule 8.5 of the SRA Authorisation Rules 2011; the current Regulation 4.8 of the SRA Practising Regulations 2011; and the inclusion of the definition of "related authorised body" to the SRA Handbook Glossary 2012.

- Removal of the trainee solicitor secondment approval requirements, including the need for approval from the SRA to second a trainee solicitor to another organisation for more than one year; and removal of the ‘half-equivalence’ requirement in respect of experience required. These are amendments to the current Regulations 11 and 7 respectively of the SRA Training Regulations 2011 Part 2 – Training Provider Regulations.
- Removal of the requirement for would be entrants to the Legal Practice Course to have received academic awards made within the previous seven years; and removal of the requirement for students to enrolled with the SRA to re-enrol every four years. These are amendments to the current Regulations 4, 5 and 14 of the SRA Training Regulations 2011 Part 1 – Qualification Regulations.
- Removal of the requirement on solicitors from the Republic of Ireland and Northern Ireland to obtain a certificate of eligibility for QLTS assessments from which they are in any case exempt. This is a proposed amendment to the current Regulations 2.5 and 2.6 of the SRA Qualified Lawyers Transfer Scheme Regulations 2011.

## Decision

7. As noted in our review of the SRA’s regulatory effectiveness self-assessment, the LSB welcomes the Red Tape Initiative and the SRA’s commitment to the removal of unnecessary processes and restrictions as demonstrated in this suite of changes. The LSB considers that the SRA has shown imagination and thoroughness in identifying a raft of deregulatory measures which should improve access to justice by empowering not for profit bodies and others to reach a wider range of clients and give them greater flexibility by enabling a wider range of staff to fulfil key functions. The LSB is content that the SRA evaluated the points made in response to the consultation properly in reaching its final decision. Although the individual elements are each restricted in their impact, as a package the LSB considers this a valuable liberalising measure.
8. There is only one substantive issue about which the LSB has concerns. This is in respect of the amendments to Rule 4.15(e) of the SRA Practice Framework Rules 2011 and the SRA’s continued inclusion of “whose objects relate wholly or partly to the employer’s area”. The LSB sought clarification from the SRA about a number of issues concerning whether it was appropriate for the “employer’s area” restriction to remain. The SRA said that removing this restriction on local authorities providing legal services beyond its area, while enabling “*local authorities to provide legal services to a much wider range of consumers*” would do so “*without the protection of such services being provided through a regulated entity*”. The SRA said it therefore needed to examine the issue in more detail as part of its review of in-house rules. The SRA could not confirm when that review would end or what its outputs would be.
9. The LSB’s view is that the SRA’s response does not take into account that no local authority will be an SRA-regulated entity. So, for example, if Local Authority A can act for charities and voluntary organisations that are situated in Area A without Local Authority A being an SRA-regulated entity, we do not understand why the lack of regulation at entity level is a factor if Local Authority A acts for charities and voluntary organisations in Local Authority B’s area. We do not consider it adequate for the SRA to

say that it will consider this issue in the future but not to give any indication of a timescale and outputs for such a review.

10. The SRA further contended that removing the “employer’s area” restriction could “*result in an undesirable position having regard to the fact that the further the client is geographically from the local authority, the less likely the client will have a nexus to the local authority and could be considered a member of the public which potentially raises issues under [the Legal Services Act] as well as public protection issues*”. The LSB’s view on this aspect is that if a charity or voluntary organisation is not a member of the public at one address, it seems unlikely that it would become a member of the public because it moved to a different local authority area. In any event, provisions within the Act would allow the SRA to look at a particular case, decide whether the charity or voluntary organisation was a member of the public and invite the local authority to become authorised.
11. While the LSB does not agree with the position of the SRA on maintaining the “employers area” restriction, it does not have the power to substitute an alternative form of wording into an approved regulator’s proposed rule changes. Given that the existing Rule 4.15(e) of the SRA Practice Framework Rules 2011 pre-dates the coming into force of the Localism Act 2011, the LSB does not consider that there are grounds to refuse the proposed change on the basis that it would be contrary to any provision made by any other enactment. Accordingly, the LSB has granted the application for approval. Nevertheless, we expect the SRA to review quickly, particularly given the context of the Localism Act 2011, whether it should remove this additional element of red tape and, separately, to publish a timescale and the scope for its review of in-house rules. If the SRA decides in principle to remove the “employer’s area” restriction but considers that changes can only be made in the context of the wider review, the LSB suggests that it makes a statement on its position and waives this provision in the intervening period.

### *Conclusion*

12. The LSB is satisfied that, having considered the SRA’s application against the criteria in paragraph 25(3) of Schedule 4 to the Act, there is no reason to refuse this application; accordingly, the LSB grants this application.
13. Annex A to this decision notice contains a table setting out all the SRA’s proposed changes, which the LSB has now approved.

## **Chronology**

- The LSB confirmed receipt of an application from the SRA on 4 March 2013.
- The 28 day initial decision period for considering the application ends on 31 March 2013.
- This decision notice is being issued to the SRA on 28 March 2013 and will be published on our website on the next working day, 2 April 2013.

**Chris Kenny, Chief Executive**

**Acting under delegated authority granted by the Board of the Legal Services Board  
28 March 2013**

Annex A

**SRA Amendments to Regulatory Arrangements (Red Tape Initiative) Rules [2013]**

Rules dated [XX 2013] made by the Solicitors Regulation Authority Board under Part I, Part II, sections 79 and 80 of the Solicitors Act 1974 and section 9 and 9A of the Administration of Justice Act 1985 and section 83 of, and Schedule 11 to, the Legal Services Act 2007, with the approval of the Legal Services Board under paragraph 19 of Schedule 4 to the Legal Services Act 2007.

1. The instruments referred to in Column (1) of the table set out below shall be amended in accordance with the corresponding entry in Column (2).

<b>(1) Instrument</b>	<b>(2) Provision</b>
SRA Practice Framework Rules 2011	<p>In Rule 4.15(e) delete ", provided that there is no charge to the <i>charity</i> or voluntary organisation in non-contentious matters, and in contentious matters the <i>employer</i> indemnifies the <i>charity</i> or voluntary organisation in relation to your costs insofar as they are not recoverable from any other source".</p> <p>Delete Rule 4.16(b) and re-number paragraphs "(c)", "(d)" and "(e)" as paragraphs "(b)", "(c)" and "(d)" respectively.</p>
SRA Authorisation Rules for Legal Services Bodies and Licensable Bodies 2011	<p>In Rule 8.5 insert "Subject to Rule 8.5(h)" at the beginning of Rule 8.5(b) and substitute "A" with "a".</p> <p>In Rule 8.5 insert "Subject to Rule 8.5(i)" at the beginning of Rule 8.5(d) and substitute "A" with "a".</p> <p>In Rule 8.5 insert the following:</p> <p><b>"(h)</b> An <i>authorised body</i> is not required to comply with Rule 8.5(b)(i) where the individual designated as its <i>COLP</i>:</p>

	<p>(i) has been approved by the <i>SRA</i> as a <i>COLP</i> for a <i>related authorised body</i>; and</p> <p>(ii) is a <i>manager</i> or <i>employee</i> of that <i>related authorised body</i>.</p> <p>(i) An <i>authorised body</i> is not required to comply with Rule 8.5(d)(i) where the individual designated as its <i>COFA</i>:</p> <p>(i) has been approved by the <i>SRA</i> as a <i>COFA</i> for a <i>related authorised body</i>; and</p> <p>(ii) is a <i>manager</i> or <i>employee</i> of that <i>related authorised body</i>."</p> <p>In Rule 13.2(a)(i) delete "or" and after Rule 13.2(a)(ii) insert the following:</p> <p>"(iii) an <i>REL</i>; or</p> <p>(iv) an <i>RFL</i>;"</p> <p>In Rule 13.2(b) insert ", registration" after "certificate".</p> <p>In Rule 13.2(c) insert "at least 7 days" after "form".</p> <p>In the heading of Rule 14 after "<b>process</b>" insert "<b>and production of information or documentation</b>".</p> <p>In Rule 14.8(a) insert after "Part" the following:</p> <p>"(including a deemed approval under Rule</p>
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	13.2)".
SRA Practising Regulations 2011	<p>In regulation 4.8 insert "Subject to regulation 4.8(h)" at the beginning of regulation 4.8(b) and substitute "A" with "a".</p> <p>In regulation 4.8 insert "Subject to regulation 4.8(i)" at the beginning of regulation 4.8(d) and substitute "A" with "a".</p> <p>In regulation 4.8, insert the following:</p> <p><b>"(h)</b> <i>A recognised sole practitioner's firm</i> is not required to comply with regulation 4.8(b)(i) where the individual designated as its <i>COLP</i>:</p> <p style="padding-left: 40px;"><b>(i)</b> has been approved by the <i>SRA</i> as a <i>COLP</i> for a <i>related authorised body</i>; and</p> <p style="padding-left: 40px;"><b>(ii)</b> is a <i>manager</i> or <i>employee</i> of that <i>related authorised body</i>.</p> <p><b>(i)</b> <i>A recognised sole practitioner's firm</i> is not required to comply with regulation 4.8(d)(i) where the individual designated as its <i>COFA</i>:</p> <p style="padding-left: 40px;"><b>(i)</b> has been approved by the <i>SRA</i> as a <i>COFA</i> for a <i>related authorised body</i>; and</p> <p style="padding-left: 40px;"><b>(ii)</b> is a <i>manager</i> or <i>employee</i> of that <i>related authorised body</i>."</p>
SRA Training Regulations 2011 Part 1 -	Delete regulation 4.2.

<p>Qualification Regulations</p>	<p>Renumber regulation "4.3" as "4.2" and delete "Subject to regulation 4.2".</p> <p>Renumber regulation "4.4" as "4.3".</p> <p>In regulation 5.1 insert "once granted" after "force" and delete "for seven years after 1 October in the year in which <i>you satisfactorily completed a QLD, Diploma in Law or a CPE</i>".</p> <p>Delete regulation 5.2.</p> <p>Delete Guidance note (i) to regulation 5.</p> <p>For regulation 14 substitute the following:</p> <p><b>"14.1</b> <i>A certificate of enrolment once granted, is valid for the lifetime of the applicant subject to the cancellation provisions regulation 33.</i>"</p> <p><b>14.2</b> <i>A certificate of enrolment will automatically expire upon the admission as a solicitor.</i>"</p>
<p>SRA Training Regulations 2011 Part 2 - Training Provider Regulations</p>	<p>Substitute for Regulation 7.2 the following:</p> <p><b>"7.2</b> <i>If you are a training establishment, you may grant a reduction in the period of the training contract in recognition of previous experience of not less than one month (30 days) and no more than six months (183 days).</i>"</p> <p>Delete Guidance notes (ii) and (iii) to regulation 7 and renumber the note "(iv)" as "(ii)".</p> <p>Delete regulations 11.2 to 11.6 and substitute the following:</p> <p><b>"11.2</b> <i>If you are a training establishment, and you arrange a secondment for a trainee, you must ensure that the secondment complies with the requirements in regulation</i></p>

	10".
SRA Qualified Lawyers Transfer Scheme Regulations 2011	<p>In regulation 2.5 delete "we must issue a <i>QLTS certificate of eligibility</i> to that effect" and insert "and we have determined that you must pass one or more of the <i>QLTS assessments</i>, we must issue a <i>QLTS certificate of eligibility</i> to that effect".</p> <p>Delete regulation 2.6 and substitute the following:</p> <p><b>"2.6</b> Where regulation 3.3 applies, if we are satisfied that you are eligible, and we have determined that you do not need to take any of the <i>QLTS assessments</i>, then you may proceed to admission."</p>
SRA Handbook Glossary 2012	<p>After the definition of "<b>REL-controlled body</b>" insert:</p> <p><b>"related authorised body</b></p> <p>means an <i>authorised body</i> which has a <i>manager</i> or <i>owner</i> in common with another <i>authorised body</i>."</p> <p>In the definition of "<b>secondment</b>" substitute "employer, or an overseas branch office," with "organisation".</p>

2. These rules come into force on [1 April 2013] or the date of the approval of the Legal Services Board, whichever is the later. the