



## **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 of alterations to the regulatory arrangements on professional indemnity insurance**

The Legal Services Board (LSB) has granted an application from the SRA who sought approval of the SRA Indemnity Insurance Rules [2013] and related changes to the SRA Authorisation Rules for Legal Services Bodies and Licensable Bodies 2011, the SRA Practising Regulations 2011 and the SRA Handbook Glossary 2012. The revised rules set out the professional indemnity insurance arrangements that will come into force on 1 October 2013.

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

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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)

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 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 changes**

5. In April 2011 the SRA published the SRA Financial Protection Policy Statement<sup>3</sup> which set out a three year programme of change. This application covers the third and final year of that programme.
6. The principal changes to the SRA Indemnity Insurance Rules [2013] are:
  - a. Removal of provisions relating to the assigned risks pool (ARP) following the closure of the ARP at the end of the 2012/13 indemnity period; firms who have not been able to secure insurance cover will no longer be able to enter the ARP;
  - b. The introduction of the Extended Indemnity Period (EIP) and Cessation Period (CP) on policies of Qualifying Insurance. The effect of this is that if a firm is unable to secure indemnity insurance at the end of a policy, the cover under the existing policy is extended for 30 days in which time the insured must obtain a further policy of Qualifying Insurance. After those 30 days the firm must cease practice in 60 days (the CP) unless it obtains a policy of Qualifying Insurance which is effective (either inception from or backdated) from expiry of the last period;
  - c. The introduction of variable renewal dates, replacing the single renewal date of 1 October; and
  - d. Changing the name from "Qualifying Insurance Agreement" to "Participating Insurance Agreement" (and "qualifying insurers" to "participating insurers"); this is to avoid creating the erroneous impression that the SRA undertakes any kind of assessment on the financial stability of insurers.
7. The changes to the SRA Authorisation Rules for Legal Services Bodies and Licensable Bodies 2011 and the SRA Practising Regulations 2011 limit the activities that an authorised body and recognised sole practitioner can undertake when subject to cover under the CP. In this situation they must desist from carrying out any legal activities (as defined in the SRA Handbook Glossary) other than necessary activity to discharge obligations under existing instructions.

### **Decision**

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<sup>3</sup> <http://www.sra.org.uk/solicitors/code-of-conduct/professional-indemnity/financial-protection-policy-statement.page>

8. During its consideration of the application, the LSB queried with the SRA why it was necessary to retain Rule 19.1(b) of the SRA Indemnity Insurance Rules (which prohibits an application for a waiver under the Solicitors Indemnity Insurance Rules 2000 unless that application is made no later than 28 February 2002) since the dates suggested that this rule was no longer necessary. The SRA responded stating that removing the rule would have the effect of allowing firms with ARP premiums outstanding in respect of the 2000/2001 indemnity period to seek a waiver of that outstanding premium. The SRA has indicated that it will consider this provision again next year.
9. The LSB has considered the SRA's application against the criteria in paragraph 25(3) of Schedule 4 to the Act, and is satisfied that there is no reason to refuse this application; accordingly, the LSB grants this application. The revised rules are therefore approved.
10. The Annex to this decision notice contains the approved SRA Indemnity Insurance Rules [2013] and the SRA Authorisation, Practising and Handbook Glossary (Amendment) Rules [2013]. The annexes to the SRA Indemnity Insurance Rules [2013] have not been included in this decision notice but are available from the LSB.

## **Chronology**

- The LSB confirmed receipt of an application from the SRA on 22 May 2013.
- The 28 day initial decision period for considering the application ends on 17 June 2013.
- This decision notice is effective from and is being issued to the SRA on 13 June 2013. It will be published on our website on 14 June 2013.

**Chris Kenny, Chief Executive**  
**Acting under delegated authority granted by the Board of the Legal Services Board**  
**13 June 2013**

## SRA Indemnity Insurance Rules [2013]

The commentary provided with these Rules does not form part of the Rules, is provided for guidance only, and does not affect the meaning or interpretation of the Rules in any way.

### Part 1: General

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#### Rule 1: Authority and commencement

- 1.1 These Rules are made on [date to be inserted] by the Solicitors Regulation Authority Board under sections 31, 37, 79 and 80 of the Solicitors Act 1974, section 9 of the Administration of Justice Act 1985, and paragraph 19 of 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.
- 1.2 These Rules come into force on 1 October 2013.
- 1.3 These Rules require *solicitors*, *REs*, *RFLs*, *recognised bodies* and their *managers* and *licensed bodies* (in respect of their *regulated activities*) in *private practice* in England and Wales to take out and maintain professional indemnity insurance with *participating insurers* with effect from 1 October 2013.

#### Commentary:

These Rules apply to:

- solicitors
- REs
- RFLs
- recognised bodies and their managers and
- licensed bodies in respect of their regulated activities (but not to any other activities that may be undertaken by the licensed body concerned)

carrying on private practice in England and Wales as a firm at any time after 1 October 2013. Refer to the interpretation provisions in Rule 3 and the SRA Handbook Glossary 2012 (the Glossary) and to the definitions in the Glossary for guidance on the exact meanings of these terms.

- 1.4 These Rules will apply to any *indemnity period* beginning on or after 1 October 2013.

#### Commentary:

Before 1 September 2000, firms were required to take out insurance with the Solicitors Indemnity Fund. Since 1 September 2000, firms have been required to take out insurance in

accordance with the Solicitors' Indemnity Insurance Rules and SRA Indemnity Insurance Rules. From 1 October 2013, firms must take out insurance in accordance with these Rules with one or more participating insurers. Continuing arrangements dealing with past claims on the Solicitors Indemnity Fund are covered in the Solicitors' Indemnity Rules and the SRA Indemnity Rules.

- 1.5 The SRA Indemnity Insurance Rules 2012 shall not apply in respect of any *indemnity period* beginning on or after 1 October 2013 but they shall remain in force in respect of the *indemnity period* from 1 October 2012 to 30 September 2013 inclusive subject to the provisions of Rules 19.1(a), 19.1(b), 19.1(c) and 19.1(d) below.

**Commentary:**

You should refer to previous Solicitors' Indemnity Insurance Rules and SRA Indemnity Insurance Rules in relation to earlier indemnity periods since 1 September 2000. However, you should refer to Rules 19.1(a) to 19.1(d) in relation to time limits in respect of an application for a waiver of the provisions of the Solicitors' Indemnity Insurance Rules 2000 to 2010 and the SRA Indemnity Insurance Rules 2011 and 2012.

**Rule 2: Citation**

- 2.1 These Rules may be cited as the SRA Indemnity Insurance Rules 2013.

**Rule 3: Definitions and interpretation**

- 3.1 The SRA Handbook Glossary 2012 (the Glossary) shall apply and, unless the context otherwise requires:
- (a) all italicised terms shall be defined in accordance with the Glossary;
  - (b) terms shall be interpreted in accordance with the Glossary;
  - (c) a reference to a Rule is to a Rule forming part of these Rules;
  - (d) these Rules will be governed by and interpreted in accordance with English law.

**Part 2: Responsibility and monitoring**

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**Rule 4: Obligation to effect insurance**

- 4.1 All *firms* carrying on a *practice* during any *indemnity period* beginning on or after 1 October 2013 must take out and maintain *qualifying insurance* under these Rules.
- 4.2 A *firm* must:
- (a) obtain a *policy* of *qualifying insurance* prior to the expiry of the *policy period* that provides cover incepting on and with effect from the expiry of the *policy period*;

- (b) if the *firm* has been unable to obtain a *policy of qualifying insurance* prior to the expiry of the *policy period* in accordance with Rule 4.2(a), obtain a *policy of qualifying insurance* during or prior to the expiry of the *extended indemnity period* that provides cover incepting on and with effect from the expiry of the *policy period*; and
- (c) if the *firm* has been unable to obtain a *policy of qualifying insurance* prior to the expiry of the *extended indemnity period* in accordance with Rule 4.2(b), cease practice promptly, and by no later than the expiration of the *cessation period*, unless the *firm* obtains a *policy of qualifying insurance* during or prior to the expiry of the *cessation period* that provides cover incepting on and with effect from the expiry of the *policy period* and covers all activities in connection with *private legal practice* carried out by the *firm* including, without limitation, any carried out in breach of Rule 5.2.

4.3 A *solicitor* or *REL* is not required to take out and maintain *qualifying insurance* under these Rules in respect of work done as an employee or whilst otherwise directly engaged in the *practice* of another *firm* (including without limitation as an *appointed person*), where that *firm* is required by these Rules to take out and maintain *qualifying insurance*.

#### **Commentary:**

Under these Rules, firms have a continuing obligation to ensure that they have qualifying insurance in place at all times with effect from 1 October 2013. Refer to the definitions of practice, amongst others, to establish whether a firm falls within the scope of these Rules. Firms should also check that any insurance that they take out in order to comply with these Rules (as opposed to any 'top-up' cover) is taken out with a participating insurer. A list of participating insurers appears on the website of the SRA at [www.sra.org.uk](http://www.sra.org.uk), and is also available from the SRA. Contact details appear at the end of the introductory commentary.

Firms should note in particular that work carried out by an appointed person for that firm may be covered by the firm's policy, whether that person is engaged as an employee or on a contract for services.

If a firm, on or before the expiry of the policy period, fails to obtain a policy of qualifying insurance from a participating insurer commencing on the day following such expiration, the firm's participating insurer is required to extend cover under the existing policy for a further 30 days. If a firm fails to obtain an alternative policy of qualifying insurance during or prior to the expiration of the 30 day extended indemnity period it must cease practice within a further period of 60 days (known as the cessation period) unless the firm obtains a policy of qualifying insurance on or before the expiry of the cessation period which provides cover that incepts or is backdated to incept with effect on and from the expiry of the policy period. Any such policy of qualifying insurance must cover all activities carried out in connection with private legal practice by the firm, including any carried out during the cessation period in breach of Rule 5.2. During the cessation period, the firm (and its principals, employees, consultants and agents) may only engage in activities in connection with private legal practice on behalf of the firm to discharge its obligations within the scope of the existing

instructions the firm held before the cessation period commenced or which are necessary in connection with the discharge of such obligations. Disciplinary action will be taken against those who accept new instructions and/or engage in other non-permitted legal activities during the cessation period. The firm's participating insurer is required to provide cover during the cessation period which, as a minimum, satisfies the MTC.

The SRA will work with the firm to ensure that it has ceased practice prior to the expiration of the 60 day cessation period. Firms must be aware that the participating insurer under the existing policy will not be required to provide any cover beyond this period except for run-off cover for a period of six years commencing on the expiry of the firm's final policy of qualifying insurance (excluding any extended indemnity period and cessation period (as may be applicable)).

Note that, under the MTC, a policy, once taken out, cannot be cancelled unless:

1. the firm merges with another firm and a policy of qualifying insurance is in place for the merged firm; or
2. it subsequently transpires that the firm was not in fact required to take out and maintain a policy under these Rules; or
3. the participating insurer which issues the policy becomes the subject of an insolvency event, and the firm has replaced the policy with another policy of qualifying insurance.

Most recognised bodies and licensed bodies (in respect of their regulated activities) are required to obtain cover complying with the MTC and with a sum insured of £3 million, rather than £2 million for other firms. The definition of "relevant recognised body" and "relevant licensed body" in these Rules indicates which recognised bodies and licensed bodies this requirement applies to.

- 4.4 The provisions of this Rule 4 shall be without prejudice to the ability of *firms* to include as insureds on a *policy* persons not required under these Rules to be insured.

## **Rule 5: Responsibility**

- 5.1 Each *firm* carrying on a *practice* on or after 1 October 2013, and any person who is a *principal* of such a *firm*, must ensure that the *firm* has in place and maintains *qualifying insurance* at all times.

### **Commentary:**

Note that the duty to ensure that qualifying insurance is in place rests not just on the firm as a whole, but also on every principal within that firm.

- 5.2 Each *firm* that has been unable to obtain a *policy* of *qualifying insurance* prior to the expiration of the *extended indemnity period*, and any *person* who is a *principal* of such a *firm*, must ensure that the *firm*, and each *principal* or *employee* of such *firm*, undertakes no activities in connection with *private legal practice* and accepts no instructions in respect of any such activities during the *cessation period* save to the extent that the activity in connection with *private legal*

*practice* is undertaken to discharge its obligations within the scope of the *firm's existing instructions* or is necessary in connection with the discharge of such obligations.

#### **Rule 6:           Insolvency of participating insurer**

- 6.1     If a *firm* is carrying on a *practice* which is being provided with *qualifying insurance* by a *participating insurer* (whether alone or together with other *participating insurers*) and that *participating insurer* is the subject of an *insolvency event* then, subject to any waiver under Rule 19.1, the *firm* and any person who is a *principal* of the *firm* must ensure that the *firm* has in place *qualifying insurance* with another *participating insurer* which must be arranged as soon as may be reasonably practicable and in any event within four weeks of such an *insolvency event*.

#### **Commentary:**

It is important to be aware that the arrangements for professional indemnity insurance put in place by the SRA do not seek to protect firms against the insolvency of a participating insurer. If an insolvency event occurs in respect of an insurer, that insurer will cease to be a participating insurer for the purposes of writing new policies and firms insured by that insurer must effect alternative insurance in accordance with these Rules. This is because, in such circumstances, the insurer may not be in a position to pay claims in full. Any firm which has qualifying insurance with a participating insurer which is the subject of an insolvency event is required therefore to obtain replacement cover as soon as possible, and in any event within four weeks of the insolvency event occurring. Having done so, a firm should cancel the policy with the insolvent insurer and, if entitled to do so, seek a return of the premium relating to the balance of the policy period from the insurer which has become the subject of the insolvency event.

#### **Rule 7:           Monitoring**

- 7.1     The *Council* may require from a *firm* or any *principal* in a *firm* carrying on, or reasonably believed by the *Council* to be carrying on, a *practice* such information and evidence as it may reasonably require to satisfy itself that such a *firm* has in place *qualifying insurance*.

#### **Rule 8:           RELS**

- 8.1     The special provisions contained in Appendix 3 to these Rules shall apply to a *firm* that has at least one *principal* who is a *REL*.

### Part 3: The ARP

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Rule 9: [Deleted]

Rule 10: [Deleted]

Rule 11: [Deleted]

Rule 12: [Deleted]

#### Rule 13: Power to collect contribution from firms

13.1 Every *firm* and/or *principal* shall make contributions in such amounts, at such times and in such circumstances, as may be prescribed from time to time by the *SRA* in respect of the *ARP*, the cost of funding all or any part of the *ARP* or funding or providing any contribution, consideration, payment, undertaking, reimbursement, guarantee, surety or security in respect of the *ARP*, in each case, that the *SRA* agrees or determines is to be contributed or made available on behalf of *firms* and/or *principals* to or in consideration for *participating insurers* agreeing to underwrite the liabilities of the *ARP* in respect of the *indemnity period* commencing on 1 October 2012.

13.2 Any unpaid contribution under Rule 13.1 may be recovered as a debt due to the *Society*. The *SRA* may recover any unpaid contribution from a *licensed body*, and may require *licensed bodies* to make such further contributions as the *SRA* considers necessary in respect of the *ARP*, the cost of funding all or any part of the *ARP* or funding or providing any contribution, consideration, payment, undertaking, reimbursement, guarantee, surety or security in respect of the *ARP*, in each case, that the *SRA* agrees or determines is to be contributed or made available to or in consideration for *participating insurers* agreeing to underwrite the liabilities of the *ARP* in respect of the *indemnity period* commencing on 1 October 2012.

### Part 4: [Deleted]

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Rule 14: [Deleted]

Rule 15: [Deleted]

### Part 5: Disciplinary offences and reporting

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#### Rule 16: Disciplinary consequences of failure to comply with these Rules

16.1 Without prejudice to any other disciplinary offence which may arise under these Rules, it shall be a disciplinary offence for any *firm* or any person who is at the relevant time a *principal* in a *firm* to

- (a) be in *policy default*, and

- (b) undertake any activities in connection with *private legal practice* in breach of Rule 5.2.

## Rule 17: Use of information

17.1 Any *participating insurer* shall, in relation to any *firm* which applies to it for *qualifying insurance*, bring to the attention of the *Society* (including, in the case of the matters referred to in Rule 17.1(f), the Office for Legal Complaints (including the *Legal Ombudsman*)) at any time and without notice to the *firm* concerned:

- (a) any failure on the part of the *firm* or any person who is a *principal* of that *firm* to pay any sum on or before the date specified in these Rules or to reimburse any amount falling within a *policy* excess which has been paid out by a *participating insurer* to a *claimant*;
- (b) a material inaccuracy in any proposal form submitted by or on behalf of the *firm*;
- (c) the fact that the *firm* has become or is believed to have become a *run-off firm*;
- (d) any matter or circumstances that would entitle the *firm's participating insurer* to avoid or repudiate a *policy* but for the provisions of clause 4.1 of the *MTC* (and/or the corresponding of the *policy*);
- (e) any dishonesty or fraud suspected by a *participating insurer* on the part of any *insured*; and
- (f) any *claim* of inadequate professional services made against the *firm* or any *insured* of that *firm* of which it becomes aware.

### Commentary:

All firms are deemed to have consented to their participating insurer bringing to the attention of the SRA any of the matters referred to Rule 17.1 that may be applicable to the firm. Any such information is subject to the confidentiality provisions of Rule 17.4.

- 17.2 The *Council* may require any *participating insurer* to bring to the attention of the *Society* any of the matters referred to in Rule 17.1 where it reasonably believes there are matters which ought to be brought to the attention of the *Society* in accordance with Rule 17.1.
- 17.3 Each *firm* shall notify the *Society* (or such *person* as the *Society* may notify to the *firm* from time to time) and its *participating insurer* in writing as soon as reasonably practicable and in no event later than five (5) business days after the date on which:
- (a) the *firm* enters the *extended indemnity period* under its *policy*;
  - (b) the *firm* enters the *cessation period* under its *policy*; and

- (c) the *firm* obtains a *policy* of *qualifying insurance* where the *firm* is in the *extended indemnity period* or the *cessation period*, and in such case the notification shall include the name of the *participating insurer* who has issued the *policy* of *qualifying insurance* and the *policy* number.

17.4 In respect of any information that may be brought to the attention of the *Society* in accordance with Rules 17.1, 17.2 and 17.3:

- (a) the *Society* shall keep all such information confidential;
- (b) the *Society* shall not (except where and to the extent required by law or in the proper performance by the *Society* of its regulatory functions) at any time reveal any such information to any person other than a duly authorised employee of the *Society* or any of its subsidiaries; and
- (c) any privilege attaching to such information shall not be regarded as having been waived whether by virtue of such information having been provided to the *Society* or otherwise.

17.5 The provisions of Rule 17.4 shall not prevent the *Society* from:

- (a) making use of any information referred to in that Rule for the purpose of bringing disciplinary proceedings against any person; or
- (b) in relation to information about a *firm's policy* under Rule 18, disclosing that information, where and to the extent that the *Society* in its absolute discretion considers it appropriate, to any person entitled to such information, and to any other department or office of the *Society*, including without limitation to the Office for Legal Complaints (including the *Legal Ombudsman*).

17.6 The *Society* may, without limitation and in its absolute discretion, disclose and make available for public inspection the identity of a *firm's participating insurer*. Nothing in these Rules shall act to prohibit the *Society* from making such a disclosure nor give rise to any liability of the *Society*, for breach of any obligations of confidentiality or otherwise.

## **Rule 18: Details of participating insurer**

18.1 If a *claimant* asserts a *claim* against a *firm* or any person insured under that *firm's policy*, and where such *claim* relates to any matter within the scope of cover of the *MTC* (whether or not such *claim* would or may be upheld), the *firm* and any person who is at the relevant time (or, in the case of a *firm* which has ceased *practice*, any person who was immediately before that *firm* ceased *practice*) a *principal* in that *firm* shall be required, upon being so requested by that *claimant*, by any person insured under that *firm's policy*, or by any other person with a legitimate interest, to provide to that person the following details in relation to that *firm's policy*:

- (a) the name of the *participating insurer(s)* who issued the *policy*; and
- (b) the *policy* number; and

- (c) the address and contact details of the *participating insurer(s)* for the purpose of making a *claim* under the *policy*;

in each case in respect of the *policy* which it is reasonably believed to be the relevant *policy* to respond to the *claim*, or, if applicable, the fact that the *firm* or person against whom the *claim* is asserted is covered by *supplementary run-off cover*.

**Commentary:**

A firm, and each principal in that firm, is required to provide details of that firm's policy of qualifying insurance to any person who asserts a claim against anyone insured under that firm's policy. Under Rule 17, the SRA has the power to disclose information regarding a firm's participating insurer where it considers it appropriate to do so.

## Part 6: General powers of the Council

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### Rule 19: Waiver powers

- 19.1 The *Council* shall have power on such terms and conditions as it shall think fit to waive any Rule or part of any Rule in a particular case or cases including extending the time, either prospectively or retrospectively, for the doing of any act under any Rule.
- (a) Any application by any person for a waiver of any Rule or part of any Rule under the Solicitors' Indemnity Insurance Rules 2001 to 2010 or SRA Indemnity Insurance Rules 2011 to 2013 must be made in writing to the *Society* as soon as reasonably practicable.
- (b) No application by any person for a waiver of any Rule or part of any Rule under the Solicitors' Indemnity Insurance Rules 2000 may be considered unless it was made in writing to the *Society* as soon as reasonably practicable and in any event no later than 28 February 2002.
- (c) Any appeal against any decision made by the *Society* in respect of any application for a waiver of any Rule or part of any Rule under the Solicitors' Indemnity Insurance Rules 2000 to 2010 or SRA Indemnity Insurance Rules 2011 to 2013 must be made in writing to the *Society* within 21 days from the date of the decision.
- (d) An application for a waiver as contemplated by this Rule 19.1 or the making of an appeal against any decision made by the *Society* in respect of such application shall not relieve any person from any obligation under the Solicitors' Indemnity Insurance Rules 2000 to 2010 or SRA Indemnity Insurance Rules 2011 to 2013 pending the determination of any such application or appeal.

**Commentary:**

It is envisaged that Rules will be waived only in exceptional circumstances. Anyone who wishes to apply for a waiver, or to appeal against an initial decision, must do so in

accordance with the time limits set out in this Rule. Contact details appear at the end of the introductory commentary. The Panel of Adjudicators Sub Committee has adopted a waiver policy, which is available on request. Unless and until any waiver is granted, the person concerned must comply with the requirements of these Rules in full. A waiver may be granted subject to conditions, and may be revoked without notice.

- 19.2 The **Council** shall have power to treat any **firm** as complying with any Rule or Rules for the purposes of the **SA** notwithstanding that the **firm** has failed to comply with a Rule or Rules where such non-compliance is regarded by the **Council** in a particular case or cases as being insignificant.
- 19.3 For the purposes of the **SA** (including without limitation section 10 of that Act), any person who is in breach of any Rule or part of any Rule under the Solicitors' Indemnity Insurance Rules 2000 to 2010 or SRA Indemnity Insurance Rules 2011 to 2013 shall be deemed, for so long as he remains in breach, not to be complying with these Rules.

#### Commentary:

The effect of this general power is that, for example, a practising certificate may be issued to a person notwithstanding a technical and insignificant breach by that person or a firm of any provision of these Rules.

## Part 7: Other obligations

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### Rule 20: Accountants' reports

- 20.1 Any accountant's report which a **solicitor**, **REL** or **RFL** who is a **principal** in a **practice** or a **recognised body** or a **licensed body** is required to deliver to the **Society** under section 34 of the **SA** or paragraph 8 of Schedule 14 to the Courts and Legal Services Act 1990 or under section 83(5)(h) of and paragraph 20 of Schedule 11 to the **LSA** containing such information as is prescribed by rule 35 of the Solicitors' Accounts Rules 1998 (as amended from time to time), or any rules (including, without limitation, the **SRA Accounts Rules**) which replace the Solicitors' Accounts Rules 1998 in whole or in part, must contain a statement certifying (if it is the case) for the whole period covered by the report (excluding any part of that period falling before 1 September 2000) that the **firm** has one or more certificates of **qualifying insurance** (or in respect of any period prior to 1 October 2013, that the **firm** has been issued with one or more policies by the **ARP manager**).

#### Commentary:

Firms are required to provide evidence to their accountants that a policy of qualifying insurance is in place. Each participating insurer is required under the participating insurer's agreement to provide a certificate of qualifying insurance to each firm within 20 working days of the start of the period covered by the policy. Producing the relevant certificate(s) to the reporting accountant will satisfy the requirement of this Rule.

## **[Draft] SRA Authorisation, Practising and Handbook Glossary (Amendment) Rules [2013]**

Rules dated [date of LSB approval to be inserted] made by the Solicitors Regulation Authority Board.

Made under Part I, Part II, sections 13,13ZA, 31, 79 and 80 of, and paragraph 6B of Schedule 1 to, the Solicitors Act 1974 and sections 9 and 9A of, and paragraphs 14A, 14B and 32 to 34 of Schedule 2 to, the Administration of Justice Act 1985, paragraphs 2 and 3 of Schedule 14 to the Courts and Legal Services Act 1990 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.

### **Rule 1**

The SRA Authorisation Rules for Legal Services Bodies and Licensable Bodies 2011 shall be amended as follows:

(a) insert Rule 8.11 as follows:

"8.11 Condition relating to the cessation period for indemnity purposes

(a) When an *authorised body* becomes subject to cover under the *cessation period*, it must immediately, and for the duration of the *cessation period*, desist from carrying out any *legal activities*, save that it may undertake work required to discharge its obligations within the scope of *existing instructions*, or which is necessary in connection with the discharge of such obligations.";

(b) in Guidance note (xv)(a) to Rule 8, replace "." with ";" at the end of (E) and insert:  
"(F) Rule 17.3 of the SRA Indemnity Insurance Rules 2013 or any subsequent rules thereto."

### **Rule 2**

The SRA Practising Regulations 2011 shall be amended as follows:

(a) insert regulation 4.15 as follows:

"4.15 Condition relating to the cessation period for indemnity purposes

(a) When a *recognised sole practitioner's firm* becomes subject to cover under the *cessation period*, it must immediately, and for the duration of the *cessation period*, desist from carrying out any *legal activities*, save that it may undertake work required to discharge its obligations within the scope of *existing instructions*, or which is necessary in connection with the discharge of such obligations.";

- (b) in Guidance note (xii)(a) to regulation 4, replace "." with ";" at the end of (D) and insert:

"(E) Rule 17.3 of the SRA Indemnity Insurance Rules 2013 or any subsequent rules thereto."

### Rule 3

The SRA Handbook Glossary 2012 shall be amended as follows:

- (a) replace the definition of "**ARP**" with:

**"ARP**

means the Assigned Risks Pool, namely, the arrangements by which certain *firms* obtained professional indemnity insurance against civil liability up to 30 September 2013 pursuant to and on the terms set out in the SRA Indemnity Insurance Rules 2012 (and prior variations thereof).";

- (b) delete the definition of "**ARP policy**";
- (c) delete the definition of "**ARP premium**";
- (d) delete the definition of "**ARP run-off policy**";
- (e) delete the definition of "**ARP run-off premium**";
- (f) replace the definition of "**cessation period**" with:

**"cessation period**

means the period commencing on the expiry of the *extended indemnity period* where, during the *extended indemnity period* the relevant *firm* has not ceased *practice* or obtained a *policy of qualifying insurance* incepting with effect on and from the day immediately following expiration of the *policy period*, and ending on the date which is the earlier to occur of:

- (i) the date, if any, on which the *firm* obtains a *policy of qualifying insurance* incepting with effect on and from the from the day immediately following expiration of the *policy period*;
- (ii) the date which is 90 days after the commencement of the *extended indemnity period*; or
- (iii) the date on which the *insured firm's practice* ceases.";
- (g) in the definition of "**difference in conditions policy**", replace "*qualifying insurers*" with "*participating insurers*";
- (h) delete the definition of "**eligible firm**";

- (i) replace the definition of "**extended indemnity period**" with:

**" extended indemnity period**

means the period commencing at the end of the *policy period* and ending on the date which is the earlier to occur of:

- (i) the date, if any, on which the *firm* obtains a *policy of qualifying insurance* incepting on and with effect from the day immediately following the expiration of the *policy period*;
- (ii) the date which is 30 days after the end of the *policy period*; or
- (iii) the date on which the *insured firm's practice* ceases.";

- (j) delete the definition of "**firm in default**";

- (k) in the definition of "**insolvency event**", replace "*qualifying insurer*" with "*participating insurer*", and replace "*qualifying insurer's*" with "*participating insurer's*";

- (l) after the definition of "**parent training establishment**", insert:

**"participating insurer**

means an *authorised insurer* which has entered into a *participating insurer's agreement* with the *Society* which remains in force for the purposes of underwriting new business at the date on which the relevant contract of *qualifying insurance* is made.

**participating insurer's agreement**

means an agreement in such terms as the *Society* may prescribe setting out the terms and conditions on which a *participating insurer* may provide professional indemnity insurance to *solicitors* and others in *private practice* in England and Wales.";

- (m) delete the definition of "**period of default**";

- (n) replace the definition of "**policy**" with:

**"policy**

means a contract of professional indemnity insurance made between one or more *persons*, each of which is a *participating insurer*, and a *firm*.";

- (o) in the definition of "**policy default**":

- (i) in paragraph (i)(A) delete "(including without limitation any payment due under Rule 15.1 of those Rules)",

- (ii) replace paragraphs (i)(B) and (C) with:

"(B) to reimburse within two months a *participating insurer* in respect of any amount falling within a *firm's policy excess* which has been paid on an insured's behalf to a claimant by a *participating insurer*";

(p) replace the definition of "**policy period**" with:

**"policy period**

means the *period of insurance* in respect of which risks may attach under a *policy*, but excluding the *extended indemnity period* and the *cessation period*.";

(q) delete the definition of "**qualifying insurer**";

(r) delete the definition of "**qualifying insurer's agreement**";

(s) in the definition of "**run-off firm**", replace "*qualifying insurer*" with "*participating insurer*";

(t) in the definition of "**SIIR**", after "2011" insert "to 2012,";

(u) delete the definition of "**special measures**";

(v) in the definition of "**SRA Indemnity Insurance Rules**", replace "2012" with "2013"; and

(w) delete the definition of "**successor firm**".

#### **Rule 4**

These amendment rules shall come into force on [1 October 2013].