



Decision notice

Issued by the Legal Services Board under Part 3 of Schedule 4 to the Legal Services Act 2007

The Solicitors Regulation Authority's application for approval of changes to its regulatory arrangements in respect of entities owned or managed by Registered European Lawyers

The Legal Services Board (**LSB**) has granted an application from the Solicitors Regulation Authority (**SRA**) approving alterations to the regulatory arrangements in respect of entities owned or managed by Registered European Lawyers (**RELS**). The Law Society is an approved regulator and the SRA is the regulatory arm to which The Law Society has delegated its regulatory functions.

This decision notice sets out the decision taken, including a brief description of the changes. The notes at the end of this notice explain the statutory basis for the decision. The chronology for the LSB's handling of this application is set out at the end of this decision notice.

Proposed changes

1. The changes, referred to as 'Changes to regulation of entities owned or managed by Registered European Lawyers Rules [2014]', are to implement the SRA's proposed new framework for entities that are owned or managed by RELs and which are not carrying on reserved legal activities. The proposed alterations consist of a suite of technical and consequential changes to the SRA's Principles; Code of Conduct; Accounts Rules; Practice Framework Rules; Practising Regulations; Compensation Fund Rules; and Glossary, in order to enable the following:
 - Create a new category of entity which the SRA will term an "Exempt European Practice" (**EEP**). These will be European practices formed in an Establishment Directive¹ European state, which is regulated and permitted to practise in that state, whose ultimate beneficial owners do not include any practising lawyers of England and Wales and whose main place of business is situated and carried on in a European Establishment Directive country (other than the UK). The EEP will

¹ The Establishment Directive (98/5/EC) and the UK implementation legislation, European Communities (Lawyer's Practice) Regulations 2000 provide the basis for the regulation of RELs in England and Wales. Under the regulations 2000, those lawyers from the member states set out in the Directive, who want to practise on a permanent basis under their home country title in England, Wales or Northern Ireland, may do so provided they are registered as a European Lawyer with the relevant regulatory body – in most cases this is the SRA.

not carry out any reserved legal activity as defined in the Legal Services Act 2007 (**the Act**).

2. A European law firm wanting to operate in England or Wales could still choose to become an authorised body regulated by the SRA. Under the proposals, it could instead become an EEP not regulated by the SRA but be the equivalent of a foreign firm, with the practice rights that follow, and thus be allowed to take any form that was permitted for a law firm in the firm's home country jurisdiction. RELs working in EEPs will need to be registered with the SRA in accordance with the EU's Establishment of Lawyers Directive 98/5/EC and would be treated the same as solicitors working in foreign firms. RELs who practise through an EEP will be required to give the name and address of the EEP through which they are practising and notify the SRA of any changes in that respect.

Key issues considered in the assessment of the application

3. The LSB welcomes the overall intention behind the change to remove unnecessary regulatory arrangements in respect of RELs that manage or own European firms, while maintaining a proportionate risk based framework, so that more European firms which want to establish in England and Wales can do so. However, it was unclear to the LSB from the SRA's explanation in the application how the proposed regulatory framework would apply to EEPs and those working within them. As part of the assessment of the application, we therefore asked the SRA to clarify a number of points and the outcome of our enquiries is presented below.

The SRA's regulatory framework for EEPs and employees of EEPs

4. We wanted to know how the SRA intended to regulate SRA authorised persons working within EEPs. Our question arose because we were informed by the SRA during our assessment of the application, that EEPs themselves will not be required to give undertakings or declarations about their practising addresses or acknowledge that they understand their rights and responsibilities as firms with EEP status (as the SRA had stated in its application). The SRA confirmed that while EEPs will not be required to give undertakings or provide information, RELs who practise through an EEP will be required to give the name and address of the EEP through which they are practising, and notify the SRA of any changes relating to this. The SRA could also request additional information if it concluded this was needed. The SRA said the proposed amendments aim to ensure that the SRA Principles apply to RELs and that the SRA Code of Conduct applies in the same way as it does to in-house solicitors. RELs will be fully regulated as individuals within EEPs in a similar way to those that are regulated within a foreign firm in accordance with the SRA Practice Framework Rules.
6. The LSB also wanted to know to what extent and in what way the SRA's regulatory framework would apply in practice to firms designated as EEPs, which included solicitors authorised by the SRA, or other authorised persons as employees (as opposed to owners or managers). The SRA explained that in the case of solicitors, the effect of the amendment to Rule 4.19 within the SRA Practice Framework Rules

2011, is that while solicitors authorised by the SRA can be employees of EEPs, they cannot undertake work in relation to the clients of EEPs. Accordingly, solicitors could be employed in-house to solely advise the EEP itself, but in the SRA's view there would be little, if any, demand for such a role. The SRA believes that as solicitors will not be permitted to advise clients, it is unlikely that solicitors would be employed in an in-house capacity by EEPs, but if they were, they would be regulated in the same way as solicitors employed by entities unregulated by the SRA.

7. In respect of RELs, they will be able to practise through an EEP as an employee, subject to certain conditions set out in the Practice Framework Rules. They would not undertake reserved legal activities. The amendments would mean that the RELs could practise in a similar way to those who work in unauthorised foreign firms as currently permitted. Registered foreign lawyers (**RFLs**) could also be employees of EEPs but would not be practising in the capacity of an RFL and the SRA would not regulate such lawyers.
8. Consequently, having sought clarification from the SRA on how the proposed regulatory framework applies to EEPs and their employees, the LSB is reassured that the arrangements are proportionate and do not pose undue risk to consumers. There is no significant regulatory difference between how authorisation and supervision arrangements apply to solicitors, RELs and RFLs working in foreign firms and how the arrangements apply to those working within EEPs. While EEPs will not be regulated by the SRA as entities, SRA authorised persons (solicitors or RELs) within them will be regulated as individuals.
9. The LSB is further reassured that the SRA consulted fully on the proposals and no issues with respect to the regulatory scope of the SRA in respect of EEPs or their employees were raised. The SRA further confirmed that while it had no plans to review the implementation of the alterations, it would expect to identify any issues arising from the changes through its usual monitoring and analysis of intelligence and information.

Application of section 131 of the Act to EEPs

10. The LSB raised with the SRA how section 131(1) (the ombudsman scheme) of the Act would apply to EEPs and their employees. In its response, the SRA stated that in its view section 131(1) would not apply to EEPs as employers, since they were not SRA authorised bodies carrying on reserved legal activities. The LSB's view is that section 131(1) is applicable, since it states that for the purposes of *Part 6 Legal Complaints* of the Act and the ombudsman scheme, any act or omission by a person in the course of the person's employment is to be treated as also an act or omission *by the person's employer*, whether or not it was done with the employer's knowledge or approval. In short, whether or not the employer is an authorised person or entity is not, in the LSB's view, the issue in hand.
11. Accordingly, the LSB is of the opinion that section 131(1) does apply to EEPs as an entity if the authorised person is an employee of the EEP and is the subject of the complaint at the time the services were provided. This would be the case whether or

not the complaint relates to a reserved legal activity. The current Legal Ombudsman Scheme Rules are clear that the act or omission complained about does not have to relate to a reserved legal activity.

12. The proposed changes are silent on the applicability of section 131(1). Moreover, the SRA and LSB concurred in the application assessment process that any decisions on Legal Ombudsman jurisdiction in individual complaints arising in respect of EEPs or their employees, would be a matter for the Legal Ombudsman depending on the circumstances of each case and in accordance with the Legal Ombudsman Scheme Rules.

Decision

13. The LSB has considered the SRA's application against the criteria in paragraph 25(3) of Schedule 4 to the Legal Services Act 2007 (the Act). It considers that there is no reason to refuse this application; accordingly, the application is granted.
14. The Annex to this decision notice contains the specific amendments to the SRA's regulatory arrangements changes approved by the LSB.

Chronology

- The LSB confirmed receipt of an application from the SRA on 25 September 2014.
- The 28 day initial decision period for considering the application ended on 22 October 2014 and on that date, was extended to 5 November 2014.
- The initial decision period was further extended by 90 days from receipt of the application, to 23 December 2014.
- This decision notice is effective from 25 November 2014.
- The decision notice will be published on our website on 26 November 2014.

Chris Kenny, Chief Executive
Acting under delegated authority granted by the Board of the Legal Services Board
25 November 2014

Notes:

1. The LSB is required by Part 3 of Schedule 4 to the Act to review and grant or refuse applications by approved regulators to make alterations to their regulatory arrangements.
2. Paragraph 25(3) of Schedule 4 to the Act explains that the LSB may refuse an application setting out a proposed change to the regulatory arrangements 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 this 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 [of the Act] 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.
3. The designation requirements referred to in paragraph 2(b) above are set out in paragraph 25(4) of Schedule 4 to the Act and are
 - (a) a requirement that the approved regulator has appropriate internal governance arrangements in place
 - (b) a requirement that the applicant is competent, and has sufficient resources to perform the role of approved regulator in relation to the reserved legal activities in respect of which it is designated, and
 - (c) the requirements set out in paragraphs 13(2)(c) to (e) of Schedule 4, namely that the regulatory arrangements are appropriate, comply with the requirements in respect of resolution of regulatory conflict (imposed by sections 52 and 54 of the Act) and comply with the requirements in relation to the handling of complaints (imposed by sections 112 and 145 of the Act).
4. In accordance with paragraphs 20(1) and 23(3) of Schedule 4 to the Act, the LSB has made rules² about the manner and form in which applications to alter regulatory arrangements must be made. Amongst other things, the rules highlight the applicant's obligations under section 28 of the Act to have regard to the Better Regulation Principles. They also require applicants to provide information about each proposed change and details of the consultation undertaken.
5. 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.

² Rules for Rule Change Applications – Version 2 (November 2010)

Annex A

SRA Amendment to Regulatory Arrangements (Changes to regulation of entities owned or managed by Registered European Lawyers) Rules [2014]

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

Made under Part I, Part II, sections 79 and 80 of the Solicitors Act 1974 and sections 9 and 9A of the Administration of Justice Act 1985, section 89 of and Part 1 of Schedule 14 to the Courts and Legal Services Act 1990, with the approval of the Legal Services Board under paragraph 19 of Schedule 4 to the Legal Services Act 2007.

Rule 1

The SRA Principles 2011 shall be amended as follows:

- (a) insert paragraph 3.3 as follows:

"3.3 The *Principles* apply to you if you are an *REL practising as a manager, employee, member or interest holder, of an Exempt European Practice.*"

Rule 2

The SRA Code of Conduct 2011 shall be amended as follows:

- (a) in paragraph 13.1(a) insert "(subject to paragraph 13.12)" after "*REL*";
- (b) insert paragraph 13.12 as follows:

" 13.12 This Code applies to an *REL practising as a manager, employee, member or interest holder, of an Exempt European Practice* to the same extent that it applies to *In-house practice.*"

Rule 3

The SRA Accounts Rules 2011 shall be amended as follows:

- (a) in rule 3.1 insert "and the practice of an *REL* from an office in England and Wales of an *Exempt European Practice*" after "Wales" at the end of the rule";
- (b) in the heading of Part 7 insert "**and from an office in England and Wales of an Exempt European Practice**" after "Wales";

- (c) in rule 47.1 insert ":" after "provisions" and number the remaining part of the rule "(a)";
- (d) insert rule 47.1(b) as follows:
 - "(b) to the practice of an *REL* from an office in England and Wales of an *Exempt European Practice* is to ensure similar protection for *client monies* but by way of rules which are more adaptable to such practices.";
- (e) insert rule 48.3 as follows:
 - " 48.3 Part 7 of these rules applies to the practice of an *REL* from an office in England and Wales of an *Exempt European Practice* but for this purpose only all references in these rules to *client monies (overseas)* shall be substituted with *client monies*.";
- (f) in rule 48.3 insert guidance note as follows:
 - "Guidance note
 - (i) If you are an REL practising from an office in England and Wales of an Exempt European Practice and you hold or receive client money you must comply with rules 49.2 and 49.3, 50.3 to 50.6 and 51."

Rule 4

The SRA Practice Framework Rules 2011 shall be amended as follows:

- (a) in Rule 2.1(e) replace "." with ";" and insert the following Rule 2.1(f) as follows:
 - "(f) as a *manager, employee, member* or *interest holder* of an *Exempt European Practice*, provided that you meet the conditions set out under Rule 4.20 (a), (b) and (c).";
- (b) in Rule 2.2(e) insert "or is an *Exempt European Practice*" after "Wales", and insert ", and that you meet the conditions set out under Rule 4.20 (a), (b) and (c)" after "above"; and
- (c) in Rule 4.19 insert " Unless your employer is an *Exempt European Practice*" at the beginning and replace "Y" with "y".

Rule 5

The SRA Practising Regulations 2011 shall be amended as follows:

- (a) in regulation 12.2(l) delete "and";
- (b) in regulation 12.2(m) replace "." with "; and";

- (c) insert regulation 12.2(n) as follows:

"(n) whether the *lawyer* is practising through an *Exempt European Practice* and if so the name and address of the *Exempt European Practice*."

Rule 6

The SRA Compensation Fund Rules 2011 shall be amended as follows:

- (a) in rule 8.1(g)(i) delete "or" and after rule 8.1(g)(ii) replace "." with "; or";
- (b) insert rule 8.1(g)(iii) as follows:

"(iii) the loss was incurred in relation to the *practice* of an *REL* in an office in England and Wales of an *Exempt European Practice*."

Rule 7

The SRA Handbook Glossary 2012 shall be amended as follows:

- (a) in the definition of "**client account (overseas)**", insert "or for an *REL* practising from an office in England and Wales through an *Exempt European Practice*, an account at a bank or building society in England and Wales which is used only for the purpose of holding *client money*," after "*trust money*";
- (b) after the definition of "**execution-only**", insert:

"**Exempt European Practice**

means:

- (i) a *lawyer's* practice formed in an *Establishment Directive state* which is regulated as such in that state and which is a structure in which *lawyers* are permitted to practise in that state; and
- (ii) whose ultimate beneficial owners do not include any *practising lawyers of England and Wales*; and
- (iii) whose main place of business is situated and carried on in an *Establishment Directive state* other than the United Kingdom; and
- (iv) which does not carry on any *reserved legal activity*."
- (c) in the definition of "**firm**", insert " or an *Exempt European Practice*" in paragraph (C) after "*non-SRA firm*"; and

- (d) in the definition of "**private practice**", insert "or by an REL through an *Exempt European Practice*" in paragraph (D) after "*non-SRA firm*".

Rule 8

These amendment rules shall come into force on [2014].