

By email only (under s203 of the Legal Services Act 2007)



**LEGAL SERVICES
BOARD**

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Paul Philip,
Solicitors Regulation Authority,
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199 Wharfside Street,
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9 February 2015

Dear Paul,

Decision notice for the Solicitors Regulation Authority (SRA) application for approval of changes to its regulatory arrangements relating to continuous professional development and other miscellaneous changes

Please find enclosed our final decision notice granting the SRA's application for approval of changes to regulatory arrangements relating to continuous professional development (CPD) and other miscellaneous changes.

The changes have been approved in full. The LSB welcomes the move from a prescriptive regulatory arrangement for CPD, currently based on arbitrary hours, to a more outcomes focussed framework that places responsibility on firms and solicitors to manage their continuing competence. We recognise that this policy has been the subject of lengthy review, development and consultation by the SRA.

Whilst supporting the SRA's overall aim, we are also mindful that the intended benefits will only be fully realised if the new arrangements are effectively implemented. We would like to make two observations in this respect.

First, we were pleased to see that the SRA will be putting in place active review and evaluation processes, including for the opt-in period. As the SRA has acknowledged, the change is a big cultural shift for the SRA's regulated community. In addition, the Legal Services Consumer Panel has said that the effectiveness of the approach in delivering competent services will depend on the capability of the SRA's monitoring and supervision framework. It is therefore essential the SRA is able to know how well the changes are working in practice and to address any emerging issues both at a macro level and at the level of individual solicitors and firms.

Second, we welcome that the SRA's post-implementation review will look at cost impacts on solicitors and firms. While outcomes focussed measures generally help to reduce unnecessary burdens for business, it is important that these changes are supported by clear and effective communication to minimise any indirect costs that might arise for the regulated community from any uncertainty and confusion.

Finally, I would like to thank the SRA for providing additional information during the process which helped us fully to assess the application and reach a decision.

This decision notice should be considered effective as of today, 9 February 2015. A copy of the notice and this letter will be published on our website within two working days.

I have sent an identical letter to Enid Rowlands and copied this letter to Mark Stobbs and Simon Garrod at The Law Society.

Yours sincerely,



Richard Moriarty
Chief Executive

E richard.moriarty@legalservicesboard.org.uk

Enclosures



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 continuing professional development and other miscellaneous changes

The Legal Services Board (LSB) has granted an application from the Solicitors Regulation Authority (SRA) approving alterations to the regulatory arrangements in respect of Continuing Professional Development (CPD) and miscellaneous rules. 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.

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| Purpose of notice |
| To grant an application from the SRA approving alterations to its regulatory arrangements in respect of its Continuous Professional Development (CPD) and miscellaneous rules |
| Main changes being made by SRA |
| <ul style="list-style-type: none">• Removal of requirement for solicitors to undertake a minimum of 16 hours of CPD, including to complete 25% of annual CPD in accredited activities.• Introduction of a requirement for solicitors to demonstrate their continuing competence to provide a proper standard of service for clients.• Sunset clause for current arrangements to be switched off, and for the new arrangements to come into force fully from 1 November 2016.• Option for solicitors and firms to opt-in to the new arrangements early from 1 April 2015• Welsh language added to Outcomes of the Qualified Lawyers Transfer Scheme (QLTS) Regulations• Removal of requirement for solicitors to attend the SRA Management Course Stage 1 |

| Why the LSB is granting the application in full |
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| <p>The changes, which have been the subject of lengthy policy review and consultation by SRA, are in keeping with the LSB's broad view that regulation should be more outcomes focussed. They are also a policy response to the Legal Education and Training Review report that identified weaknesses in the SRA's existing arrangements linked to an arbitrary obligation to undertake hours of CPD rather than supporting effective ongoing competence.</p> <p>The LSB recognises however that the changes are not without risk and there were concerns expressed in the SRA consultation around implementation and monitoring. The LSB therefore welcomes the SRA's intention to proactively monitor and review implementation, including cost impacts to solicitors and firms, and for the SRA's Risk Centre to use information from mandatory CPD declarations in its profiling of individual and firm risk.</p> |
| LSB Decision |
| <p>Having fully assessed the application against the refusal criteria in the Legal Services Act 2007, the LSB sees no reason to refuse this application.</p> <p>The Decision Notice covers the above issues and other matters the LSB considered it should comment on.</p> |

Proposed changes

1. The proposed changes are to the SRA's CPD requirements as follows:

- to remove the requirement to undertake a minimum of 16 hours of CPD during each complete CPD year, including the requirement to complete 25% of annual CPD in accredited activities. In future, solicitors will need to be able to demonstrate their continuing competence to comply with Principle 5 of the SRA's Code of Conduct: 'provide a proper standard of service to your clients'
- to remove the requirement for solicitors to attend, within the first three years following admission, the SRA Management Course Stage 1
- to allow solicitors to voluntarily "opt-in" to the new framework from 1 April 2015, before full implementation from the start of the 2016-2017 CPD year on 1 November 2016. Full implementation is proposed without further SRA Board or LSB approval
- a sunset clause that will remove the existing SRA CPD regulations from 1 November 2016
- to add the Welsh spoken language to English in one of the Outcomes of the Qualified Lawyers Transfer Scheme regulations in order to comply with the Welsh Language (Wales) Measure 2011 to ensure that Welsh speakers are treated no less favourably than English speakers

- to amend other relevant regulations to ensure they are consistent with the changes proposed. These mostly involve the removal of CPD as a defined term.

Key issues considered in the assessment of the application

2. The LSB broadly welcomes the SRA's approach in making these changes, which have been subject to a long period of policy review and consultation by the SRA. The changes address some of the weaknesses identified in the Legal Education and Training Review (LETR) report¹ such as the obligation to complete an arbitrary number of hours of CPD activity and not enough focus on relating learning and development to a solicitor's role and ensuring ongoing competence. We consider that the changes are also consistent with the LSB's guidance on education and training², published in March 2014.
3. The LSB raised some questions with the SRA around how the new framework would be implemented. The LSB sought to reassure itself that the SRA would have in place adequate safeguards in the period of implementation to address concerns raised in the SRA consultations about how the new arrangements would work in practice, including in the period when solicitors will be able to opt-in to the new approach prior to full implementation from 1 November 2016. In particular, the LSB considered the SRA's approach to risk, especially monitoring of continuing competence under the proposals, and whether it had taken into account its public sector equality duty in developing its new approach. The outcome of our enquiries is presented below.

Opt-in period and sunset clause

4. The LSB notes that the opt-in period will commence on 1 April 2015 and then align with the CPD year from 1 November 2015 to 31 October 2016. Given the concerns raised in the responses to the SRA's consultations about moving to an outcomes-focused approach in an area of regulatory activity where the regulated community has been used to more structured requirements, the LSB considers it reasonable for the SRA to have this period of adjustment for solicitors and firms. The SRA confirmed that solicitors will be required to make a declaration when renewing their Practising Certificates in October 2015 that they have either undertaken 16 hours of CPD or that they have opted in to the new arrangements and ensured that they are competent.
5. The sunset clause means that the existing CPD rules will be switched off from 1 November 2016. The LSB concludes that it is appropriate in the particular circumstances of these alterations that the change be approved in advance and at this time. This will give the regulated community time to adjust and SRA opportunity to assess how the arrangements have worked in practice for those that chose to opt-in.

¹ <http://www.lettr.org.uk/the-report/>

² www.legalservicesboard.org.uk/.../20140304_LSB_Education_And_Training_Consultation_Response_And_Guidance.pdf

Monitoring risk and review

4. Given the issues raised in the SRA consultation on the proposals, the LSB sought clarification on how SRA intended to assess implementation. The SRA explained that it will monitor and review implementation in several ways:
 - at the mid-point in the opt-in period, it will review how the new approach has been working with those solicitors and firms that have voluntarily opted into the new arrangements
 - it will assess implementation to identify competence based risks and whether they are a result of a decrease or absence of learning and development activity resulting from the changes
 - the SRA's Risk Centre will also use information generated from the annual declaration process in its profiling of individual and firm risk
 - the SRA will undertake a post-implementation evaluation. It has already benchmarked the learning and development approaches adopted by the profession and will undertake similar research once the new approach has been launched.

5. The effectiveness of this change in delivering the desired outcome of the continuing competence of solicitors will depend on the ability of the SRA's monitoring and supervision framework. By undertaking proactive and ongoing evaluation as intended, the LSB envisages that the SRA will be in a position to review whether the change is delivering its intended purpose. The LSB also welcomes the SRA's confirmation that a review would include consideration of the cost impact of the changes on solicitors and firms.

Competence Statement

6. A Competence Statement for Solicitors (on which the SRA recently consulted) will act as guidance to solicitors for CPD purposes. It is the SRA's intention to publish this on 1 April 2015 when the 'opt-in' phase commences. The SRA has stated that it does not expect many solicitors to take up the opt-in opportunity until the start of the CPD year from 1 November 2015, when the Competence Statement will have been available for several months. The LSB consider it important that solicitors who choose to opt-in are provided with as much support and guidance as possible and have the Competence Statement available to them.

Public sector equality duty

7. We asked the SRA to what extent it had considered the Public Sector Equality Duty and whether there would be any disproportionate impact on those with protected characteristics, as defined in the Equality Act 2010. The application acknowledged the risk that some firms may devote fewer resources to training/development if there is no mandatory defined hours of CPD requirement, and that this risk may be greater amongst smaller firms, which have a higher proportion of black and ethnic minority solicitors.

8. SRA confirmed that a full Equality Impact Assessment (EIA) was carried out to support its consultation and policy development on the changes. It also set up an Equality Reference Group to consider the proposals in detail and this included groups representing those with protected characteristics. The SRA concluded that since the new framework provides freedom and flexibility to firms and individuals to determine how they address any identified training need, it was unlikely to result in a disproportionate adverse impact on those with protected characteristics. The LSB is reassured that the SRA has committed to review the effects of the new approach on the profession and if any further concerns are raised about the potential equality impact, the SRA will consider how best to address these.

Decision

9. 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.
10. The Annex to this decision notice contains the specific amendments to the SRA's regulatory arrangements approved by the LSB.

Chronology

- The LSB confirmed receipt of an application from the SRA on 23 December 2014.
- The 28 day initial decision period for considering the application ended on 19 January 2015.
- An extension notice was issued on 16 January 2015.
- This decision notice is effective from 9 February 2015.
- The decision notice will be published on our website on 10 February 2015.

Richard Moriarty, Chief Executive

**Acting under delegated authority granted by the Board of the Legal Services Board
9 February 2015**

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 rules³ 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.

³ Rules for Rule Change Applications – Version 2 (November 2010)

SRA Amendments to Regulatory Arrangements (CPD and miscellaneous) Rules [2015]

Rules dated [] made by the Solicitors Regulation Authority Board.

Made under Part I, Part II, sections 79 and 80 of the Solicitors Act 1974 and paragraphs 2 and 3 of Schedule 14 to the Courts and Legal Services Act 1990.

Subject to the approval of the Legal Services Board under paragraph 19 of Schedule 4 to the Legal Services Act 2007 and coming into force on [1 April 2015].

Rule 1

The SRA Qualified Lawyers Transfer Scheme Regulations 2011 shall be amended as follows:

- (a) in Outcome O(QR4) of the Outcomes section, insert “or Welsh” after “spoken English”;

Rule 2

The SRA Training Regulations 2011 Part 3 – CPD Regulations shall be amended as follows:

- (a) replace regulation 3.1 as follows:

“3.1 *You must:*

- (a) undertake 16 hours of *CPD* during each complete CPD year in legal practice or employment in England and Wales; or
- (b) consider and undertake the learning and development *you* deem necessary to ensure *your* ongoing competence and that *you* are in a position to provide a proper standard of service to *your clients*.”

- (b) replace guidance note (ii) to regulation 3 as follows:

“(ii) The *SRA* Competence Statement for *solicitors* sets out what we mean by ‘ongoing competence’ in regulation 3.1(b)”;

- (c) delete regulations 4.1 to 4.4, and renumber 4.5 to 4.7 accordingly;
- (d) in regulation 4.5, delete “also”;
- (e) in regulation 4.6, replace “4.5” with “4.1”;
- (f) in regulation 4.7, replace “4.5 and 4.6” with “4.1 and 4.2”;

- (g) delete the guidance note to regulation 4;
- (h) delete regulations 8.1, 8.2, 8.4, delete "The" from regulation 8.3, and renumber 8.3 and 8.5 accordingly;
- (i) replace the guidance note to regulation 8 as follows:
 - "(i) For the purposes of regulation 8, the following will be deemed to be *CPD* activities where they are relevant and beneficial to *your* area of work and/or *practice*:
 - (a) structured training, coaching or mentoring sessions;
 - (b) live or recorded webinars;
 - (c) writing on law or *practice*, for example law books, journals, publications for *clients*, *client's* own publications, newspapers and magazines, online or in print;
 - (d) structured work shadowing schemes with clear aims and objectives and requiring feedback or reflection on the activity;
 - (e) research which relates to legal topics or has relevance to the *practice/organisation* which results in some form of written document, precedent, memorandum, questionnaire/survey etc;
 - (f) study for or production of a dissertation counting towards a qualification recognised by *us*;
 - (g) watching DVDs, webcasts, podcasts, television broadcasts or videotapes and/or listening to audio podcasts, radio broadcasts or audio tapes produced by learning and development providers;
 - (h) work towards the Qualification Credit Framework (QCF) awards relating to assessment, verification and/or quality assurance of competence-based assessment models (such as, for example, National Vocational Qualifications);
 - (i) participating in the development of specialist areas of law and *practice* by attending meetings of specialist committees and/or working parties of relevant professional or other competent bodies charged with such work;
 - (j) work towards the achievement of an National Vocational Qualifications in any business-related area and at any level;
 - (k) study towards professional qualifications.
 - (ii) These activities can be completed face-to-face or by distance learning, where appropriate.

- (iii) Preparing and delivering these activities can count where appropriate, as well as attendance.
- (iv) Actual time may be claimed."
- (j) delete regulation 9.2;
- (k) delete regulation 10.2 and renumber 10.3 to 10.5 accordingly;
- (l) delete "other" from guidance note (i) to regulation 10;
- (m) delete regulation 17.1(a) and (e), and renumber 17.1(b) to (c) accordingly;
- (n) in regulation 17.1(b) delete ", and the requirement to satisfy a minimum of 25 per cent of the CPD requirement by *participation* in accredited courses";
- (o) in regulation 17.1 (c), after "CPD training records;" insert "and";
- (p) in regulation 17.1(d) replace ";" with "."
- (q) add a new regulation 18 as follows:
"Regulation 18: Repeal of these regulations
18.1 These regulations will be repealed on 1 November 2016."

Rule 3

The SRA Training Regulations 2014 – Qualification and Provider Regulations shall be amended as follows:

- (a) in Outcome O(TR5) in the Outcomes section, insert "or Welsh" after "spoken English".

Rule 4

Rule 2 of the SRA Handbook Glossary Rules shall be amended as follows:

- (a) delete the definition of "authorised CPD course providers";
- (b) delete the definition of "participation".

Rule 5

The SRA Higher Rights of Audience Regulations 2011 shall be amended as follows:

- (a) in regulation 9.1, replace "If" with "Subject to regulation 9.3, if";
- (b) in regulation 9.2, replace "If" with "Subject to regulation 9.3, if";

- (c) insert new regulation 9.3 as follows: "If *you* have chosen to comply with regulation 3.1(b) of the SRA Training Regulations 2011 Part 3 - CPD Regulations, neither regulation 9.1 or 9.2 applies."
- (d) in the guidance to regulation 9, insert new guidance note (iii) as follows:
 - "(iii) Regulation 9.3 means that, if *you* have opted to meet *your* responsibilities on ongoing competence through learning and development *you* deem necessary rather than the hours-based approach of the *CPD* regime, *you* should consider how the development activity *you* do contributes to maintenance of competence in higher courts advocacy and provision of a proper service to *your clients*."

Rule 6

The SRA Quality Assurance Scheme for Advocates (Crime) Regulations 2013 shall be amended as follows:

- (a) in regulation 16.2, replace "continuing professional" with "learning and".

Rule 7

These amendment rules come into force on 1 April 2015 or the date of approval of the Legal Services Board, whichever is the later.