SRA BOARD
27 February 2013

CLASSIFICATION – PUBLIC

Red Tape Initiative

EXECUTIVE SUMMARY

Summary

1. The Board is asked to consider the SRA's Red Tape Initiative which sets out ten initial proposals to remove, curtail and simplify a number of processes and regulations that do not appear to benefit the public or align with Outcomes Focused Regulation (OFR).

2. This paper:

   - Sets out the issues in relation to each proposal; and
   - Provides a recommendation for the approval of each proposal.

Background

3. As part of our commitment to become a risk-based, outcomes-focused regulator, the SRA considered it necessary to remove or simplify a number of unnecessary or our of date processes. In December 2012, we issued a consultation which affirmed our commitment to have in place a regulatory framework which was fit for purpose and consistent with our approach to regulation and allowed us to focus on the areas of greatest risk and the issues which really matter. The consultation asked stakeholders to comment on ten proposed amendments to the SRA Handbook.

4. Many of the proposals in the consultation were set out to enable firms and providers of services to manage their own risks whilst reducing their administrative burdens at the same time. The proposals focused on those processes which could be removed or amended, relatively easily, in the short term. The consultation also confirmed our commitment to consider looking at more complex areas where we could reduce bureaucracy and simplify our processes and be more proportionate, and areas where it was necessary to be extremely robust.

5. The consultation was also designed to give our stakeholders the opportunity to suggest more ways we could remove, curtail or simplify any of our regulations or processes without compromising our ability to regulate in the public interest.

6. The closing date for responses was 8 February 2013. Attached at **Annex 1** is a report on the responses. The Law Society response is attached in **Annex 2**. The majority of responses received were in favour of the proposals.

7. Considering the proposals and the responses received, the proposed changes to the SRA Handbook are attached in **Annex 3.**

8. It is recommended that the SRA Board makes the amendments to the Code and the Glossary, subject to the LSB approval.

Recommendations

9. The Board is invited to:

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a) **consider** this paper and its annexes
b) **make** the SRA Amendments to Regulatory Arrangements (Red Tape Initiative) Rules [2013], subject to the approval of the Legal Services Board.

Annexes:

Annex 1: Report on consultation responses
Annex 2: Law Society response (separate document)
Annex 3: [Draft] SRA Amendments to Regulatory Arrangements (Red Tape Initiative) Rules [2013]
Annex 4: SRA Board risk assessment

Authors: Jatinderpal Loyal and Tim Pearce
Executive Director: Richard Collins

Date: 13 February 2013

This paper is for decision

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27 February 2013

CLASSIFICATION – PUBLIC

Red Tape Initiative

Introduction

1. The Board is asked to consider the SRA's Red Tape Initiative proposals to remove, curtail and simplify a number of processes and regulations that do not appear to benefit the public or align with Outcomes Focused Regulation (OFR).

Background

2. The issues surrounding the SRA's Red Tape Initiative are set out in the SRA's consultation document – Annex 2 to this paper. The Red Tape proposals continue the drive towards OFR, including requiring firms and others we regulate to manage their own risks in line with the SRA Principles and Outcomes that should drive the provision of services to clients.

3. Since we introduced OFR, we have become increasingly aware that there remain some bureaucratic processes which have been carried through from our old rules-based approach to regulation. We have considered feedback from our stakeholders and examples of regulation which are unnecessary or need to be amended having regard to the changing face of the legal landscape.

4. It is with this is mind that in November 2012, the Chair of the SRA Board announced the SRA's Red Tape Initiative with a view to ensuring that unnecessary bureaucratic processes and regulations are amended or removed and ensuring that we have in place "....*a regulatory regime that focuses on the high level Principles and Outcomes that should drive the provision of services to clients*...". The initiative is to review and make changes to our regulatory framework so that the Code of Conduct and Handbook contain only those provisions which are necessary and in the public interest.

5. In December 2012, the 'Red Tape Initiative: Removing unnecessary regulations and simplifying processes' consultation was launched seeking comments on the removal or amendment of ten regulations and processes which we had indentified as outdated and bureaucratic. The consultation endorsed the SRA's determination to champion better regulation and ensure that our processes and regulations were fit for purpose and the SRA's commitment to continually review our regulatory processes so that they are risk-based, proportionate and effective.

6. The closing date for responses was 8 February 2013. 93 responses were received in total, 56 of which came from individuals at one local authority - Kent County Council, primarily in response to Proposal 2. Attached at **Annex 1** is a report on the responses. The Law Society response is attached in **Annex 2**.

The proposals

Proposal 1 - Remove restrictions on charging by in-house lawyers employed in not-for-profit organisations

7. It is proposed that Rule 4.16 (b) (i) and (ii) of the Practice Framework Rules is deleted to allow in-house lawyers employed by law centres, charities or other non-commercial advice services (special bodies) to charge for the provision of legal services. The Legal Services Board (LSB) in April 2012 consulted on the licensing of these special bodies and raised the issue of the removal of the rule which prevented solicitors employed by these special bodies from charging clients.

8. The SRA has engaged with a number of law centres, not-for-profit organisations and similar advice agencies to discus the pressures such bodies are experiencing due to changes in the provision of legal aid and reductions in local authority funding. Many of these bodies have decided to supplement their resources by charging for their services, and it is intended that after April 2015, these organisations will become regulated under the Special Bodies regime and will be able to charge for their services.

9. We have considered whether the proposed amendments would impact on our regulatory objectives or increase risks. The amendment will allow for special bodies to develop their charging structures and for clients to consider from whom they sought advice. Responses to this proposal were broadly in favour of the proposed amendment.

Impacts, risks, benefits and recommendation

10. No impacts in terms of equality and diversity, human rights or competition law were identified. However, if the change is not made there is a potential negative impact on the sector and consequential impact on consumers seeking the services of special bodies.

11. The proposed change to Rule 4.16 will allow for such organisations "…*to expand their resources and therefore, improve the legal services which they offer*…". We therefore recommend that the Board make this amendment.

Proposal 2 - Allow in-house solicitors employed by local authorities to charge charities for legal services

13. We propose to amend Rule 4.15 (e) of the Practice Framework Rules to allow local government in-house solicitors to act for charities and to charge for both contentious and non-contentious work. The current provisions allow for solicitors employed in local government to act for a charity or voluntary organisation provided that there is no charge to the charity or voluntary organisation.

14. Local government is and has undergone significant changes to how it operates and as a result some bodies which fell under or were part of a local authority have been transformed into stand-alone entities and in some cases have set up as charities. This is particularly noticeable in cases of schools, previously governed by local authorities, now setting up as academies or colleges with charitable status.

15. Discussions between the SRA and local authorities have identified that new challenges are being presented as a result of changes in the structure of local government departments and how these departments provide services. By way of example, local government departments can at present provide legal services to schools in respect of contentious and non-contentious matters, however, a number of schools have applied for academy status, which means a charity status. Current regulations do not allow solicitors employed by local authorities to charge charities for services delivered, while in the same time the budget for the academy is removed from the local authority.

16. An amendment of the rule, as proposed, will allow for solicitors employed by local authorities to charge for and continue to provide specialist legal services to charitable organisations. The change will allow local government to continue to provide specialist legal services to charities in areas such as education law, child exclusions, special educational needs, parental access to records, and compliance with data protection law on both a contentious and non-contentious basis.

Impacts, risks, benefits and recommendation

17. There are potential equality and access to justice issues which have been identified during this consultation, namely charities who have relied on 'free' advice from local authorities may now find themselves unable to seek advice in respect of their affairs due to lack of resources. However, the rule change will not compel local authorities to charge for any such services but merely enable them to do so. Therefore we consider the likelihood of any negative impact to be slight.

18. Maintaining the current provisions, in our view, is not consistent with the principles of better regulation in that it does not identify any regulatory risk which is not addressed in another regulatory provision. This is evidenced by the strong response received from interested parties.

19. Benefits of the change will allow local authority solicitors to deliver services in a way which is in the public interest. We therefore recommend that the Board make this amendment.

Proposal 3 - Approval of RELs and RFLs as new managers and owners

20. An individual applying to become a Registered European Lawyer (REL) or Registered Foreign Lawyer (RFL) is at present, required to complete the application process in order to be registered and then complete a further application should they wish to be a manager or owner of an authorised body. Solicitors, provided they satisfy certain criteria, are deemed to be approved for the purposes of becoming a manager or owner.

21. It is therefore, proposed that the SRA Authorisation Rules for Legal Services Bodies and Licensable Bodies (SRA Authorisation Rules) are amended so that RELs and RFLs are deemed to be approved as suitable managers or owners of authorised bodies. A REL or RFL would only be deemed where they are able to satisfy specific criteria including no conditions on their registration and prior notification requirements.

22. The majority of responses received with regards to this proposal were in agreement with the suggested change. However, those against the proposal raised a common

concern with regards to the quality of education and training undertaken by RELs and RFLs and their understanding of the regulatory requirements applicable to individuals and authorised bodies regulated by the SRA.

23. With the development of outcomes-focused risk-based regulation, these proposed changes will place an increased onus on firms to take responsibility for proper due diligence and the assessment of candidates before appointment. The SRA will also be reviewing the application process for RELs and RFLs so that it is sufficiently robust to manage any associated risks following the proposed changes to the Authorisation rules.

Impacts, risks, benefits and recommendation

24. No impacts in terms of equality and diversity, human rights or competition law have been identified. The proposed changes are consistent with the development of risk-based outcomes-focused regulation. We therefore recommend that the Board make this amendment.

Proposal 4 - COLPs and COFAs in related entities

26. Every authorised body must have in place a Compliance Officer for Legal Practice (COLP) and a Compliance Officer for Finance and Administration (COFA) and each role holder must be a manager or employee of the authorised body in question. Similar provisions apply to recognised sole practitioners. The requirement to be a manger or employee of the authorised body is important so as to ensure that the individual has sufficient seniority within the firm to ensure compliance with legal and regulatory obligations.

27. Approval of a COLP/COFA is granted to an individual in respect of one entity and is not transferable to other entities. An individual must submit a separate application for each body he/she wishes to be a COLP/COFA. In addition, an individual cannot apply to be a COLP/COFA of a related entity if they are not a manager or employee of that entity.

28. The SRA has seen many structures where firms operate as a single entity although they comprise a number of separate authorised bodies. In such cases, it may be appropriate for a single person to hold the role of COLP/COFA operating across all the related separate entities in the group. Furthermore, where an individual is not a manager of all entities or the employee of only a single entity, an application must be made for the waiver of the ‘manager/employee’ provision.

29. It is therefore, proposed that the SRA Authorisation Rules and SRA Practising Regulations are amended so as to allow the COLP/COFA to be able to apply to be the COLP/COFA for any related authorised body, without the need to be a manager or employee of the related authorised body. It is also proposed that it should be possible to complete applications relating to multiple entities in one process.

30. The consultation paper provided a proposed definition of related authorised body to be added to the SRA Handbook Glossary. Having considered the responses to this proposal and the different structures which may exist, the definition has been reviewed and an amended definition is included in the draft amendment rule. The proposed definition of a related authorised body now reads:

"***related authorised body*** *means an authorised body which has a manager or owner in common with another authorised body."*

31. Approval, in such circumstances, will never be automatic. The SRA needs to be satisfied in all cases that risks relating to conflict of interest, confidentiality, independence, geographical location of the related authorised body can be properly managed and that the applicant has the time and resource to fulfil the role.

Impacts, risks, benefits and recommendation

32. No impacts in terms of equality and diversity, human rights or competition law can be envisaged. We therefore recommend that the Board make this amendment.

Proposal 5 - Remove the need for SRA approval for trainee secondments

33. We propose to remove the requirement for firms / in-house legal departments that take trainees (training establishments) to obtain our approval to second a trainee solicitor to another organisation for more than one year, or to an organisation not authorised to take trainees.

34. Based on a perception that seconded trainees were at greater risk of receiving an inadequate training experience, SRA approval was meant to ensure that seconded trainees receive the training that we require.

35. However, we already require training establishments to ensure that all trainee secondments comply with the same SRA training and supervision requirements that apply to non-seconded trainees. There is no evidence that seconded trainees receive an inadequate training experience.

36. Therefore, the need to obtain SRA approval process adds unnecessary administration, but does not address any identified risk.

37. Stakeholders' responses to the SRA consultation on this issue were broadly in favour of the proposal

Impacts, risks, benefits and recommendation

38. Factors dictating numbers of secondments are firms' business needs and the opportunities of secondment that are presented. We do not therefore expect this proposal to cause any significant increase in the number of secondments.

39. The lifting of the restriction will apply equally to all training establishments and trainees. Therefore, no impacts in terms of equality and diversity, human rights or competition law can be envisaged.

40. Both training establishments and trainees will benefit in terms of simplicity and speed. SRA staff will no longer undertake an activity which does not address risk. We therefore recommend that the Board make this amendment.

Proposal 6 - Introduce a lifetime authorisation for training establishments

41. We propose removing the requirement for training establishments to seek reauthorisation every three years.

42. The three-year reauthorisation requirement was designed to allow the SRA to check for any changes to training establishments impacting on their capability to provide adequate training.

43. However, all training establishments must nominate a training principal is responsible to us for the provision of adequate training, and we require firms to notify us of any material changes which might affect their capability to operate effectively, including training of their trainees and other staff.

44. Therefore, the need for 3-yearly reauthorisation adds an unnecessary regulatory burden for training establishments, but does not address any identified risk.

45. Stakeholders' responses to the SRA consultation on this issue were evenly divided, although it is arguable that those in favour of the proposal were able to marshal more specific evidence that the current system does not add regulatory value or address risk.

Impacts, risks, benefits and recommendations

46. Moving from three-yearly to lifetime authorisation will apply equally to all training establishments. Therefore, no impacts in terms of equality and diversity, human rights or competition law can be envisaged.

47. Training establishments will benefit from the reduced administrative burden and the SRA's staff will no longer undertake an activity which does not address risk. We therefore recommend that the Board make this amendment.

Proposal 7 - Remove half-equivalence provisions in training contract reductions

48. We propose removing our half-equivalence restriction, which allows training establishments to recognise a trainee's previous legal experience, but only allows them to reduce the period of the training contract by half of this time.

49. The half-equivalence restriction sought to counter a perceived risk that experience prior to a training contract might lack the supervisory and learning requirements of the training contract.

50. Our requirements already recognise that training principals are best placed to judge trainees' previous experience and assess the risk of reducing the overall training contract period. Our proposal logically extends training principals' discretion to the judgement of the quality of trainees' previous legal experience.

51. Stakeholders' responses to the SRA consultation on this issue were significantly in favour of the proposal.

Impacts, risks, benefits and recommendations

52. Removal of half-equivalence will apply equally to the previous experience of all trainees. Therefore, no impacts in terms of equality and diversity, human rights or competition law can be envisaged.

53. Removal of this restriction will benefit training establishments and trainees, but present a low risk because of the regulatory role of the training principal. We therefore recommend that the Board make this amendment.

Proposal 8 - Remove the time limit or an academic award to remain valid

54. Would-be entrants to the Legal Practice Course (LPC) must have an academic award (Qualifying Law Degree, Graduate Diploma in Law or Common Professional Examination) awarded within the last seven years. The aim of the requirement was to ensure that LPC entrants have the necessary underpinning knowledge of the law.

55. However, the time limit is not based on any specific evidence regarding decline of knowledge and currency following degree level study. LPC providers and the would-be entrants themselves are best placed to assess the risks of investing time and resource in training some years after completing the academic stage. The requirement may also act as a barrier to those who have maintained their knowledge (e.g. through working in the legal sector) over several years since their academic award.

56. Stakeholders' responses to the SRA consultation on this issue were significantly in favour of the proposal.

Impacts, risks, benefits and recommendations

57. No impacts in terms human rights or competition law can be envisaged. No impacts in terms of equality and diversity can be envisaged except the removal of an unjustifiable barrier to some would-be LPC entrants who may have protected characteristics under the Equality Act.

58. No risk to the public interest has been identified. The SRA safeguards the competence of those qualifying through the standards required to pass the LPC and to successfully complete the training contract, through which would-be solicitors must demonstrate that they are competent before qualification as a solicitor, including the possession of up to date knowledge of the law.

59. Benefits are the removal of an artificial, unjustifiable barrier, and the simplification of our regulation. We therefore recommend that the Board make this amendment.

Proposal 9 - Remove the need for student re-enrolment after 4 years

60. All students have to enrol with the SRA before starting the LPC. Periodically, we require students to re-enrol – in 2011, we moved from an annual requirement for student re-enrolment to a four-year enrolment period.

61. Re-enrolment allows us to make a periodic check on a student's suitability before their admission. However,

- the risk of unsuitable individuals qualifying as solicitors is now minimised through the enhanced admission process which includes Criminal Records Bureau disclosure and the enhanced Suitability Test;

- students have an ongoing duty to notify us of any new information which might affect their character and suitability, and

- recent data suggests that very few re-enrolment applications indicate new character and suitability issues.

62. Stakeholders' responses to the SRA consultation on this issue were significantly in favour of the proposal.

Impacts, risks, benefits and recommendation

63. Removal of the re-enrolment requirement will apply equally to all students. Therefore, no impacts in terms of equality and diversity, human rights or competition law can be envisaged.

64. Removal of the requirement presents a low risk, but will benefit both students and the SRA. We therefore recommend that the Board make this amendment.

Proposal 10 - Remove the need for QLTS certificates of eligibility in certain, specified circumstances

65. The requirement to apply for a certificate of eligibility was introduced to ensure that applicants have their eligibility checked by us before they register with the assessment body and proceed to the QLTS assessments. The aim is to minimise the risk of unsuitable individuals taking the assessments only to be refused admission at a later date.

66. However, some applicants - Republic of Ireland solicitors who benefit from Directive 2005/36 and Northern Irish solicitors - do not need to take any of the QLTS assessments. We propose allowing such applicants to progress to admission without a certificate of eligibility being issued.

67. Stakeholders' responses to the SRA consultation on this issue were significantly in favour of the proposal.

Impacts, risks, benefits and recommendation

68. This proposal will remove costs and a regulatory burden for applicants who do not have to take any assessments. It will also ensure that there are no artificial barriers to gaining admission, which would put us in breach of Directive 2005/36. No impacts in terms of equality and diversity, human rights or competition law can be envisaged.

69. The risks associated with this amendment are minimal since these applicants will still be subject to a full assessment of eligibility and suitability prior to admission. Applicants will benefit, and the SRA will demonstrably be complying with Directive 2005/36. We therefore recommend that the Board make this amendment.

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Recommendations

70. The Board is invited to:

a) **consider** this paper and its annexes
b) **make** the SRA Amendments to Regulatory Arrangements (Red Tape Initiative) Rules [2013], subject to the approval of the Legal Services Board.

Annexes:

Annex 1:	Consultation document
Annex 2:	Report on consultation responses
Annex 3:	Law Society response
Annex 4:	[Draft] SRA Amendments to Regulatory Arrangements (Red Tape Initiative) Rules [2013]
Annex 5:	SRA Board risk assessment

Authors: Jatinderpal Loyal and Tim Pearce

Date: 13 February 2013

This paper is for decisio

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27 February 2013

CLASSIFICATION – PUBLIC

Solicitors Regulation Authority

Red Tape Initiative: Removing unnecessary regulations and simplifying processes - Qualitative analysis of responses and SRA response

Introduction

1. This report follows the SRA's recent consultation on its 'Red Tape Initiative: Removing unnecessary regulations and simplifying processes' which was launched in December 2012. The consultation confirms the SRA's commitment to continually review our regulatory processes so that they are risk-based, proportionate and effective.

2. The consultation paper included ten initial proposals for changes to the SRA Handbook.

3. On each of the proposals, we asked stakeholders to comment on whether:

    - They agreed with the proposal?
    - There were any consequences, risk and/or benefits that had not been outlined?
    - There were any costs that had not been anticipated?

Responses received

4. 93 responses were received from a wide variety of stakeholders, including individual solicitors and firms of varying sizes; local government departments, charitable organisations, local Law Societies, member groups, the Legal Ombudsman and the Law Society. A list of respondents is attached at the end of the paper.

5. The range of responses varied from substantive comments on each of the proposals to single yes/no responses. Respondents commented on many different aspects of our proposals which related to their business model and these comments are summarised below.

Feedback

6. We have received positive comments in support of our Red Tape Initiative. It is clearly contributing to our vision of being the leading regulator on legal services and demonstrates our commitment to engaging constructively with our stakeholders. Comments included:

    "*We would very much like to congratulate the SRA on this initiative and are very supportive of the idea that it should be continued and become a regular feature in the regulatory landscape."* – DLA Piper

    "*We agree this is a sensible endeavour that fits within the outcome focussed regulatory environment*." – The Legal Ombudsman

"*We are encouraged by the intention behind this initiative, particularly the SRA's firm commitment to regularly reviewing its regulatory processes and procedures."* – The Law Society

"*The Committee welcomes the SRA's initiative to remove red tape*." – City of London Law Society's Training Committee

"*We have carefully considered the SRA's consultation on the red tape initiative and we applaud the motivation behind it"* – City of Westminster and Holborn Law Society

"*We welcome the initiative and the advantages that may result in flexibility in complying with the SRA Handbook."* – Morrisons Solicitors LLP

"*I applaud the intention behind it."* – Trafford Council

The Proposals

Proposal 1 - Remove restrictions on charging by in-house lawyers employed in not-for-profit organisations

7. Of the responses received to this proposal the majority have welcomed removing the current restrictions which are in place. The responses echoed concerns identified in the consultation paper which highlighted that the sector was facing unprecedented pressure on funding and the need to explore all avenues to ensure that services are maintained.

8. Citizens Advice in their response stated that "...*The sector has huge potential to innovate in order to provide services for its key client groups, who may be overlooked by more commercial providers as potential profit margins may be low*...".

   "... *We welcome the prompt and positive manner that the SRA has considered this issue*...".

9. The Law Society in response, however, objected to the proposal and set out their understanding as to the existence of 'special bodies' which primarily was to provide free advice. The Law Society are concerned that allowing special bodies to charge may diminish the distinction between special bodies and practices which provide advice on a commercial basis.

SRA response:

10. We are pleased with the support we received for this proposal. As stated in the consultation paper, a number of these bodies prepare to become licensed they will look to develop charging arrangements for their clients and areas of their activities in order to support their wider work. With this in mind, it is preferable that these bodies look to develop their structures before the implementation of licensing. This will afford us the opportunity to identify appropriate regulatory arrangements that address any regulatory risks posed by these bodies in the context of how they will operate.

11. It is imperative that special bodies and solicitors employed in such organisations understand the provisions relating to client care and fee arrangements as set out in Chapter 1 of the SRA Code of Conduct 2011 so that clients are able to make informed decisions and are not taken advantage of. Going forward this area will be monitored closely as part of the 'special bodies' review and we will engage with the Legal Ombudsman to ensure that there is sufficient information for consumers informing them of what to expect and rights of redress.

Proposal 2 - Allow in-house solicitors employed by local authorities to charge charities for legal services

12. A significant number of responses agreeing with this proposal were received, the majority (56) of which came from individual employees of Kent County Council. The responses to the proposal from the individuals at Kent County Council are all very similar and are, therefore, treated as one response in respect of this proposal.

13. The responses received indicate that the proposal as set out in the consultation paper is a long awaited amendment having regard to the change in local government, the evolution of charities and voluntary organisations and how services are provided.

14. Responses from Kent County Council and some other local authorities have suggested that the proposal should be extended so that the rule does not make reference to "…*the employer's area*…". Respondents have stated that with the change in the way legal services are provided and the composition of charities and similar voluntary organisations means that users will not always be located in the same area as the provider. As local authorities are able to provide goods and services to other public bodies who are not located in the same area (as defined by the Local Authority (Goods and Services) Act 1970), it is suggested that the provision of legal services to charities and voluntary organisations should not, therefore, be governed by geographical area.

15. The Law Society in their response, disagree with the proposal and suggest that the proposed change to allow in-house solicitors employed by local authorities to charge for legal services should be considered in the wider context as part of the SRA's in-house review. Whilst they do not consider that the specific example provided in the consultation paper of local authorities offering legal services to charities/academies which were once schools to be problematic, they consider that there are wider implications which need to be considered. The Law Society are concerned that in-house solicitors will be able to compete with private practitioners, without entity regulation, in areas where previously this would not have been possible.

SRA response:

16. We are pleased with the strong support we received for this proposal. We believe this change will improve the operation of the market in this area and

respond to changing structure of local authorities and the economic environment, while in the same time not increasing any significant risks.

17. There are potential equality and access to justice issues which have been identified during this consultation, namely charities who have relied on 'free' advice from local authorities may now find themselves unable to seek advice in respect of their affairs due to lack of funds and resources. Local authorities may in addition, agree to continue to provide 'free' advice. No specific response has been received from a charity/academy with regards to this proposal.

18. We propose that the suggestion of removing reference to "…*the employer's area*...", which is outside the current consultation, is considered at a further date as part of the in-house review. In our assessment this suggestion may increase risk as local authorities would be allowed to provide legal services on effectively a commercial basis, without the public protections attached to entity regulation, for clients with whom the local authority has no connection.

Proposal 3 – Approval of RELs and RFLs as new managers and owners

19. 28 responses were received in response to the proposal that changes be made to the SRA Authorisation Rules so that Registered European Lawyers (RELs) and Registered Foreign Lawyers (RFLs) are deemed to be approved to be managers or owners of authorised bodies. The majority of responses received considered that the proposal was effective and reduced unnecessary duplication in applications to the SRA. The responses in support of the proposal stated that the change would allow firms to take active steps in competing to recruit and retain the best international lawyers to enhance and support good quality legal services.

20. The Legal Ombudsman in their response stated that "...*The legal profession is becoming increasingly globalised and managed correctly this can be a positive; encouraging and promoting competition in the provision of services and encouraging an independent, strong, diverse and effective legal profession*...".

21. Linklaters LLP supported the proposal and stated that in their view "...*we are confident that our rigorous internal processes for LLP member appointments will mitigate any risk that this could lead to unsuitable people becoming owners and managers*...".

22. Those in agreement with the proposal also asked that the proposal was extended to include reference to Exempt European Lawyers (EELs).

23. Some responses, however, disagreed with the proposed amendment on the grounds that in certain cases there were concerns about the RELs/RFLs level of understanding of the regulatory framework within which solicitors of England and Wales operated and the training which they had received.

24. Birmingham Law Society stated in their view "...*In the experience of members of the Society the number of RELs is small and generally speaking RELs are*

of a high quality and there is not a problem there. However RFLs from certain jurisdictions are considered more of a problem in that the standard of professional training in certain non EU jurisdictions may generally be very low. The ability to write or speak in the English language is generally also sometimes very poor...".

25. The Law Society in their response agreed that there were significant advantages linked to this proposal. They were however, concerned that "...*in the context of smaller practices, there may be significant regulatory risks in RELs and RFLs becoming owners and managers if they do not have sufficient knowledge of the regulatory system and requirements, particularly if a strong COLP and COFA are not present. The requirements governing RELs and RFLs are relatively light and, in particular, RELs do not have to demonstrate any knowledge of the regulatory requirements here. This could lead to dangers for the integrity of practices where such RELs were owners or managers and the SRA may wish to scrutinise, in particular, practices with a small number of owners and managers who are RELs and RFLs. This may produce additional work for the SRA in approving an REL or RFL as a COLP or COFA if then nominated to either of those positions*...".

SRA response:

26. The SRA has committed, as part of the consultation, to review the approval process for RELs and RFLs so that any risks identified as part of the proposed change can be adequately managed. Issues identified which relate to knowledge of regulatory obligations, the adequacy of training and data will be incorporated into the review so that appropriate measures are in place to ensure that only those individuals we consider to be fit and proper will be granted registration.

27. In addition, we hope that the Legal Education and Training Review (LETR) will highlight areas relating to education and training which need to be developed and improved that can then be linked to the registration requirements for RELs and RFLs.

28. Exempt European Lawyers (EELs) have not been included in the proposed amendment because they do not apply to the SRA to register as an EEL. EELs by virtue of the fact that they practice in an office outside of England & Wales and will be regulated by their home regulator means that the SRA holds little or no data about these individuals. Should an EEL wish to be a manager or owner of an SRA authorised body, we consider that the need to apply the approval process should remain so that we are satisfied that they are fit and proper to fulfil that role.

Proposal 4 – COLPs and COFAs in related entities

29. 29 responses to this proposal have been received, 25 of which have supported the recommended amendment. It has been stated that the SRA should not use an individual's employment status as a measure of their ability to carry out the role of COLP/COFA but consider their position within the organisation/group of companies. There is however, a call for greater

emphasis to be placed on the requirement of a 'related entity' to ensure that there is an element of common ownership and control. A definition of 'related authorised body' has been provided in proposed amendments to the Handbook glossary.

30. The Law Society in their response agreed with this proposal and commented that it appeared "...*sensible and proportionate*...".

31. Those against the proposal say that given that the introduction and approval process of COLPs/COFAs is recent any change at this stage would be premature. It has also been stated in group structures, each entity which sits within it will carry its own risks and therefore, the larger the group structure and diversity of work carried out, the less likely it will be for a single person to effectively carry out the role of COLP/COFA effectively.

32. The Sole Practitioners Group considers the proposal as undesirable as in their view "... *multiple applications will still have to be checked and there is a danger that blanket applications will not be scrutinised by SRA sufficiently*...".

SRA response:

33. The SRA is committed to ensuring that firms have in place effective controls and mechanisms to manage risk. In certain circumstances, it will be appropriate to have a single COLP or COFA operating across a group to ensure good risk management. The SRA will consider each application carefully to ensure that risks can be properly managed in the structure which is presented.

34. Approval, in such circumstances, will never be automatic. The SRA needs to be satisfied in all cases that risks relating to conflict of interest, confidentiality, independence, geographical location of the related authorised body can be properly managed and that the applicant has the time and resource to fulfil the role.

Proposal 5: Remove the need for SRA approval for trainee secondments

35. This question was addressed by 33 respondents, with most in favour of the proposal. Typical views were that *"There is a risk that trainees could be placed with unsatisfactory establishments for part of their training contract, but it is accepted that it is the responsibility of the Training Principal and authorised training establishment to ensure that this does not occur, and that the SRA has sanctions it can apply should it do so."* (Cartwright King) and *"At the time of qualification, our trainee solicitor partner would never sign off [seconded trainees] unless satisfied that the training requirements had been fulfilled."* (Linklaters LLP)

36. One counter-argument to this point was presented *"We would question whether a training principal would be in a position to confirm that a trainee has completed the necessary training to qualify as a solicitor where that*

trainee has spent more than half of the training period away from the authorised training establishment." (Junior Lawyers' Division)

37. However, it was also contended that *"We would suggest that 'abuse' should be addressed through the SRA's monitoring processes rather than needing to rely on the current authorisation process."* (City of London Law Society Training Committee). And some larger firms set out the business benefits of the proposal - *"Business demands often require us to resource a project or respond to a client request within a much shorter timeframe than 12 week*s [the typical timeframe for SRA approval]." (Berwin Leighton Paisner LLP)

38. The Law Society expressed concern over the proposal, stating that *"the existing system is laborious and provides little value to anyone* [but] *there is a danger that some practices …may arrange secondments which are unhelpful or unsuitable…if this amendment were to be made, the SRA would need to have in place procedures to ensure that the dangers that concern us do not arise…this proposal requires a great deal more consideration before it is progressed."*

39. Two respondents, Leicestershire Law Society and the Association of Women Solicitors, advocated waiting for the LETR and considering any reform in that context.

SRA response:

40. We are pleased with the support received from most respondents for this proposal. The role of the training principal already includes compliance with the requirements for trainees' training, experience and supervision, including during a secondment of any length at any organisation. This, and not SRA approval of some secondments, is the means by which the quality of trainees' training experience is and should be secured. We recognise the business needs of firms to provide secondment opportunities within short timeframes, and agree with respondents' comments in this respect.

41. We consider that this is a discrete measure which can immediately simplify and improve trainee secondments without increasing risk, and there is therefore no need to wait for wider review under the Legal Education and Training Review.

Proposal 6: Introduce a lifetime authorisation for training establishments

42. 32 respondents addressed this proposal, with views evenly divided. Opponents argued that *"There is a world of difference between a COLP observing the regulations when running his / her practice and actually delivering a decent education to the trainee."* (SPG) and *"Training principals…should be focused on ensuring quality of the training given to the individual trainee. These considerations are separate from considerations regarding the suitability of a training establishment to provide such training."* (Junior Lawyers' Division)

43. The Law Society argued that *"There is anecdotal evidence which suggests that some training contracts are not meeting the present basic requirements. Reauthorisation provides an opportunity for the SRA to check that the practice is providing a suitable environment and suitable training* [but] *we recognise that many practices will continue to provide excellent training, with no need for reauthorisation, and that the requirement in these circumstances is unnecessarily bureaucratic."*

44. Supporters of the proposal argued from their own experience of the current reauthorisation process, stating that it provides little or no regulatory benefit - *"The current responsibilities of the training principal suggest that periodic authorisation as a training establishment is an unnecessary bureaucracy."* (Association of Council Secretaries and Solicitors) and *"The current authorisation renewal process is largely a 'tick box' exercise managed by each firm's Training Principal."* (City of London Law Society Training Committee)

45. Some respondents suggested that this proposal should only be brought into force once the COLPs / COFAs system had been running for some time and evaluated. However, these suggestions did not address the points about the lack of regulatory value of the current authorisation system.

46. There were no significant points raised in respect of the notion of not extending the proposal to in-house training establishments, suggesting that there is no case for restricting the proposal in that way.

SRA response:

46. We have effective requirements for firms to notify us of any material changes which might affect their capability to operate effectively - including their capability to train trainees and other staff. The current reauthorisation requirement is therefore unnecessary.

47. The proposal aligns with our wider approach to the authorisation of firms under the Legal Services Act. We have no evidence to show that the COLPs / COFAs notification system is ineffective. Arguably, even if issues arose with that system, the answer would be to address any issues with that system rather than retain a parallel set of notification requirements in respect of training alone.

Proposal 7: Remove half-equivalence provisions in training contract reductions

48. This proposal was addressed by 31 respondents: almost all were in favour of the proposal. A typical view was *"The half-time equivalence restriction is illogical."* (Eversheds LLP). The Law Society was *"…in favour of this move to recognise equivalent time spent undertaking relevant legal work within the environment of a regulated legal entity."*

49. The only significant counter-argument was expressed as follows *"When individuals have obtained legal experience prior to commencing their training*

contract they are often in paralegal roles, where they may operate at a level of a trainee, but our experience tells us that they do not operate consistently at that level." (Berwin Leighton Paisner LLP)

SRA response:

50. We are pleased with respondents' support for this proposal. Whilst we recognise that pre-training contract experience may not be commensurate with experience within a contract, we believe that any judgement on the pre-contract experience is best made by the training principal in the light of all the facts of each case. To grant the training principal discretion in that judgement, and then restrict the scope of that judgement with the half-equivalence requirement, is unnecessary and not logical.

Proposal 8: Remove the time limit for an academic award to remain valid

51. 28 respondents addressed this proposal: most were in favour of it. Supporters raised some diversity issues with the current time limit – "*Risk of discrimination against women who had children in the period after qualification academically."* (Kent County Council); *"Our members should have the autonomy to decide when in their careers they want to take the LPC whether it be after 6 years or more."* (Junior Lawyers' Division)

52. The Law Society stated that it is *"very likely that academic knowledge will date significantly as the law changes…we recognise however that the barrier may well cause difficulties for people with protected characteristics or from disadvantaged socio-economic backgrounds who may well need to work elsewhere before taking the LPC…the Society would not oppose the SRA providing a small extension of the current time limit, although this should be approached with caution."* In line with these concerns, a small number of other respondents opposed the proposal, but none was able to put forward evidence of the decline of academic knowledge after 7 years, or of any risk to consumers of legal services. Some of these respondents also suggested extending the 7-year limit but again this was not based on any identifiable evidence. While in favour of extending rather than removing the limit, the City of London Law Society's Training Committee stated *"It is true that the current time limit is probably an arbitrary one which may avoid risk in some cases while representing an unnecessary barrier in others."*

SRA response:

53. We are pleased with the support from most respondents for this proposal. We recognise the potential benefits of the proposal and this is supported by the comments made by respondents. While we note the Law Society's and others' suggestion to extend rather than remove the current limit, we are mindful that there is no specific evidence regarding how quickly academic knowledge declines or becomes anachronistic, and therefore a longer limit would be subject to the same problems as the current one. Risks to consumers of legal services are eliminated by the standards applied through the LPC and training contract stages of qualification.

Proposal 9: Remove the need for student re-enrolment after 4 years

54. This proposal was addressed by 31 respondents: almost all were in favour of the proposal. The typical view of supporters was *"It removes an unnecessary burden which is covered by other regulatory processes."* (Macfarlanes LLP) The Law Society was also in favour of the proposal.

SRA response:

55. We are pleased with respondents' support for this proposal. We recognise the potential benefits of the proposal and this is supported by the comments made by the respondents.

Proposal 10: Remove the need for QLTS certificates of eligibility in certain, specified circumstances

56. 23 respondents addressed this proposal: almost all, including the Law Society, were in favour of the proposal. Typical supporters' views were *"It is a sensible step to remove bureaucratic hurdles, as long as there is still the full assessment of eligibility for all candidates prior to admission."* (Macfarlanes LLP) and *"We agree that there should not be undue barriers to Irish lawyers practising in England and Wales."* (Linklaters LLP)

SRA response:

57. We are pleased with respondents' support for this proposal. We recognise the potential benefits of the proposal and this is supported by the comments made by the respondents.

Red Tape Initiative - looking ahead

58. The purpose of the consultation was not only to consult on proposals to reduce red tape which had been indentified, but to open up the challenge to everyone, asking "*Where else, in your opinion, could our regulations and processes be removed, curtailed or simplified*?"

59. We solicited a wide range of suggestions and a number of themes have emerged which include:

- Suggested improvements to the **online PC renewals exercise**
- Changing our policy on **reporting requirements**, particularly in relation to non-material breaches, with some respondents commenting that the new reporting requirements place an unnecessary burden on the profession.
- **Amendments to education and training regulations,** including simplifying the process for registering training contracts, relaxing

QLTS requirements, abolishing QASA and subsuming the role of the training principals into that of the COLP.

- **Simplifying the complex regulatory maze**, in regards to improving signposting and a suggestion to create a single regulator so there is a level regulatory playing field for all those working in the legal service market.

- **Improvements to operational administration** – we received suggestions on ways we can improve operational administration, including difficulty in updating firm's details, notifications of new managers should be done electronically and to review the timescale and process for new manager approvals.

60. Each of the suggestions will be considered and where there are on-going reviews, the suggestions will be incorporated for review and we will outline the steps we are taking to implement the change(s). New initiatives which have been suggested will be considered and where appropriate, we will consult further with our stakeholders. Where we cannot make the proposed changes we will explain our reasons why.

61. This consultation is part of an ongoing initiative and we will accept and consider further suggestions as we receive them.

List of respondents

Accutrainee Ltd
Allan Wells, Surrey County Council
Amanda Debono, Kent County Council
Andrew Astachnowicz, Kent County Council
Association of Council Secretaries and Solicitors
Association of Women Solicitors
Ben Fearnley, Kent County Council
Benjamin Watts, Kent County Council
Berwin Leighton Paisner LLP
Birmingham Law Society
British Printing Industries Federation
Carolyn Barber, Kent County Council
Cartwright King
Catherine Lloyd, Kent County Council
Christine Ajayi, Kent County Council
Citizens Advice
City of London Law Society's Training Committee
City of Westminster & Holborn Law Society
Clare Warren, Ministry of Justice
David Burrin, Kent County Council
David Carter, Warwickshire County Council
David Coleman, Lincolnshire County Council
Diane Hayes, Kent County Council
DLA Piper LLP

Emily Johnson, Kent County Council
Erica Ffrench, Kent County Council
Eversheds LLP
Frances Frankham, Kent County Council
Geoff Wild, Kent County Council
Harris & Harris
Hilary Palmer, Kent County Council
James Pigott, Kent County Council
Jane Kostelnyk, Kent County Council
Jennifer Usher, Kent County Council
Jo Marshall, Kent County Council
John Wynn, Birmingham City Council
Jon Ludford-Thomas, Nottingham City Council
Julia Dolan, Kent County Council
Julia Sweeting, Kent County Council
Junior Lawyers' Division
Jyoti Dholakai, Kent County Council
Kate Kremers, Kent County Council
Kerry Short, Kent County Council
Kim Ogle, Kent County Council
Laura Spicer, Kent County Council
Lauren McCann, Kent County Council
Law Society of England and Wales
Lawyers with Disabilities Division
Legal Ombudsman
Leicestershire Law Society
Lewis Silkin LLP
Liezl Emsley, Kent County Council
Linda Harrison, Kent County Council
Ling Yip, Kent County Council
Linklaters LLP
Louise Carter, Kent County Council
Lucinda MacKenzie-Ingle, Kent County Council
MacFarlanes
Mark Radford, Kent County Council
Mark Rummins, Kent County Council
Michaela Hupe
Michelle Brown, Kent County Council
Michelle Martin, Kent County Council
Morrisons LLP
Nana Bowen, Kent County Council
Nasim Ismail, Kent County Council
NHS Outer North East London
Nicola Everden, Kent County Council
Oliver Bussell, Kent County Council
Olswang
Pannone LLP
Philip Horsfield, Broxtowe Borough Council
Pinsent Masons LLP
Quentin Baker, Cambridgeshire County Council
Richard Collett, Kent County Council

Rodgers & Burton
Sarah Bonser, Kent County Council
Sarah Bowman, Kent County Council
Slaughter and May
Sole Practitioners' Group
Trevor Chapman, Kent County Council
Tricia Lawlor, Kent County Council
Vatau Sagaga, Kent County Council
Vicki Watts, Kent County Council
Victoria Judge, Kent County Council
Vivienne Geary, North Tyneside Council
Yinka Akinyemi, Kent County Council

6 respondents requested that they remain anonymous.

SRA BOARD
27 February 2013

CLASSIFICATION – PUBLIC

[Draft] 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).

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

	(i) has been approved by the *SRA* as a *COLP* for a *related authorised body*; and **(ii)** is a *manager* or *employee* of that *related authorised body*. **(i)** An *authorised body* is not required to comply with Rule 8.5(d)(i) where the individual designated as its *COFA*: **(i)** has been approved by the *SRA* as a *COFA* for a *related authorised body*; and **(ii)** is a *manager* or *employee* of that *related authorised body*." In Rule 13.2(a)(i) delete "or" and after Rule 13.2(a)(ii) insert the following: "(iii) an *REL*; or (iv) an *RFL*;". In Rule 13.2(b) insert ", registration" after "certificate". In Rule 13.2(c) insert "at least 7 days" after "form". In the heading of Rule 14 after "**process**" insert "**and production of information or documentation**". In Rule 14.8(a) insert after "Part" the following: "(including a deemed approval under Rule 13.2)".
SRA Practising Regulations 2011	In regulation 4.8 insert "Subject to regulation 4.8(h)" at the beginning of regulation 4.8(b) and substitute "A" with

	"a". In regulation 4.8 insert "Subject to regulation 4.8(i)" at the beginning of regulation 4.8(d) and substitute "A" with "a". In regulation 4.8, insert the following: "**(h)** A *recognised sole practitioner's firm* is not required to comply with regulation 4.8(b)(i) where the individual designated as its *COLP*: **(i)** has been approved by the *SRA* as a *COLP* for a *related authorised body*; and **(ii)** is a *manager* or *employee* of that *related authorised body*. **(i)** A *recognised sole practitioner's firm* is not required to comply with regulation 4.8(d)(i) where the individual designated as its *COFA*: **(i)** has been approved by the *SRA* as a *COFA* for a *related authorised body*; and **(ii)** is a *manager* or *employee* of that *related authorised body*."
SRA Training Regulations 2011 Part 1 - Qualification Regulations	Delete regulation 4.2. Renumber regulation "4.3" as "4.2" and delete "Subject to regulation 4.2". Renumber regulation "4.4" as "4.3". In regulation 5.1 insert "once granted" after "force" and delete "for seven years after 1 October in the year in which *you satisfactorily completed* a *QLD, Diploma in Law* or a *CPE*".

	Delete regulation 5.2. Delete Guidance note (i) to regulation 5. For regulation 14 substitute the following: "**14.1** A *certificate of enrolment* once granted, is valid for the lifetime of the applicant subject to the cancellation provisions regulation 33." **14.2** A *certificate of enrolment* will automatically expire upon the admission as a *solicitor*."
SRA Training Regulations 2011 Part 2 - Training Provider Regulations	Substitute for Regulation 7.2 the following: "**7.2** 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)." Delete Guidance notes (ii) and (iii) to regulation 7 and renumber the note "(iv)" as "(ii)". Delete regulations 11.2 to 11.6 and substitute the following: "**11.2** 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 10".
SRA Qualified Lawyers Transfer Scheme Regulations 2011	In regulation 2.5 delete "*we* must issue a *QLTS certificate of eligibility* to that effect" and insert "and *we* have determined that *you* must pass one or

	more of the *QLTS assessments*, *we* must issue a *QLTS certificate of eligibility* to that effect". Delete regulation 2.6 and substitute the following: "**2.6** 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 *QLTS assessments*, then you may proceed to admission."
SRA Handbook Glossary 2012	After the definition of "**REL-controlled body**" insert: "**related authorised body** means an *authorised body* which has a *manager* or *owner* in common with another *authorised body*." In the definition of "**secondment**" substitute "employer, or an overseas branch office," with "organisation".

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.

Annex 4

SRA BOARD
27 February 2013

CLASSIFICATION – PUBLIC

Solicitors Regulation Authority

Board Risk Assessment

Summary of issues for consideration:

The Board is asked to consider the SRA's Red Tape Initiative proposals to remove, curtail and simplify a number of processes and regulations that do not appear to benefit the public or align with Outcomes Focused Regulation (OFR) and make the SRA Amendments to Regulatory Arrangements (Red Tape Initiative) Rules [2013].

Report is for:

☐ Noting / Information ☒ Decision ☐ Approval

Business/Operational Risk:

The Red Tape Initiative is an effort to remove, curtail or simplify regulations and processes which are not demonstrably in the public interest, impeding both those we regulate and our ability to focus on the issues that really matter. This will only be achieved when our Code of Conduct and Handbook contain no more than what is necessary – and what is unnecessary is taken away. There are therefore, perceived benefits for those we regulate and the SRA.

Finance:

There are no financial implications for the SRA.

Communications:

Stakeholders have been fully informed and involved throughout the progress of this consultation. We will continue to work with stakeholders who will be directly/indirectly impacted by the changes as set out in the proposals. An announcement of the Board decision will be made by press release and information on the SRA website.

Equality and Diversity Implications:

We will assess the equality impact of the proposed changes where necessary once implemented as at present no data is available which supports the need for a full impact assessment.

We will focus on the potential equality impact of our approach on the profession generally and those bodies which are likely to be impacted (positively or negatively) by the proposed changes.

Author: Jatinderpal Loyal/Tim Pearce
Date of Report/Paper being drafted: 13 February 2013