

**Application made by the Solicitors Regulation Authority Board to the Legal Services Board under Part 3 of Schedule 4 to the Legal Services Act 2007, for the approval of the SRA Amendment to Regulatory Arrangements (Changes to regulation of entities owned or managed by Registered European Lawyers) Rules [2014]**

## **A. Summary**

1. This application is made to the Legal Services Board for approval of changes to the SRA's regulatory arrangements in relation to the regulation of entities owned or managed by Registered European Lawyers (RELs). The detail of the proposed new arrangements is set out in section C below, but in summary these changes will allow a European law firm to choose whether to establish as an authorised body or as the equivalent of a foreign firm, with the rights of practice that follow. The changes will also allow RELs to work in European firms that are established under the "foreign" regime and will apply the same conduct regime to those individuals as is applied to solicitors who are employed in foreign law firms.

## **B. Details of the SRA's current regulatory arrangements**

2. The current regime which is applied to Registered European Lawyers is derived from the Establishment Directive (98/5/EC) and its UK implementing legislation, the European Communities (Lawyer's Practice) Regulations 2000 (the 'Establishment Regulations').
3. Under the Establishment Regulations, those lawyers who wish to practise on a permanent basis under their home country title in England and Wales or Northern Ireland may do so provided they are registered as a European lawyer with the relevant regulatory body. Most European lawyers establishing in England and Wales choose to register with the SRA. Once registered, a REL is permitted to undertake under their home professional title any work that may lawfully be carried out by a lawyer in England and Wales. There are, however, exclusions from this general rule: Court advocacy must be conducted in conjunction with host state lawyers and, in the UK, given that solicitors have a wider scope of practise than lawyers in many other European countries, the conduct of probate and conveyancing work is excluded for most RELs. In practice, around one third of all 409 RELs currently registered with the SRA are working in English law firms, mainly large international firms but occasionally smaller firms offering clients specific services such as family law in both English and another European law, around one third are working in-house in corporate law departments and the remainder are working in branches of European law firms.
4. The Establishment Directive also provides some guidance on how host Member States should treat law firms from other EU countries:

“Extract from Article 11

- (1) One or more lawyers who belong to the same grouping in their home Member State and who practise under their home-country professional title in a host Member State may pursue their professional activities in a branch or agency of their grouping in the host Member State. However, where the fundamental rules governing that grouping in the home Member State are incompatible with the fundamental rules laid down by law, regulation or administrative action in the host Member State, the latter rules shall prevail insofar as compliance therewith is justified by the public interest in protecting clients and third parties.
  - (2) Each Member State shall afford two or more lawyers from the same grouping or the same home Member State who practise in its territory under their home country professional titles access to a form of joint practice. If the host Member State gives its lawyers a choice between several forms of joint practice, those same forms shall also be made available to the aforementioned lawyers. The manner in which such lawyers practise jointly in the host Member State shall be governed by the laws, regulations and administrative provisions of that State.”
5. This article has been used to guide the approach historically taken by the SRA which has been to treat European law firms as if they were purely solicitor owned and managed recognised bodies and to apply exactly the same regulatory regime to both types of firm.

### **C. Rationale for amendment**

6. Although, in general, the equal treatment of European law firms and recognised bodies worked reasonably well in the past, the introduction of entity based regulation has had some undesirable side effects. For example, under the SRA Practice Framework Rules 2011, authorised bodies must meet certain structural requirements and these can sometimes be difficult to marry with the domestic regulations that apply in some other European Union Member States. This can result in situations, for example, in which lawfully constituted law firm practices in EU jurisdictions are only permitted in England and Wales if a legally recognised ‘manager’, as defined in the SRA Glossary, is running the English branch. Where this is not the case, e.g. because the partner in charge of the English office is not on the firm’s management board, EU firms may either be asked to restructure or register all of their management board as Registered Foreign Lawyers. Both of these responses, required by the current rules, seem disproportionate in cases where European law firms wish to practise purely as ‘foreign’ law firms, often supporting their home country clients who are active in the London financial markets.
7. There have also been cases arising more recently where European law firms with non-lawyer partners practising in their home member states have wished to establish in England and Wales to practise purely home country law through lawyers whose titles are recognised in the Establishment Directive. This poses a problem since, under the SRA Practice Framework Rules, such law firms are not eligible either to be authorised bodies, because of the non-lawyer ownership back home, or to be alternative business structures, because they do not have an authorised person in the practice who could qualify to be a COLP nor do they wish to practise any reserved areas of English law.
8. It is also the case that the legitimate requirements that the SRA may impose on authorised bodies may appear disproportionate when applied to a European law firm

that is not practising English law and may have no lawyers other than RELs practising in it. This is particularly true in cases where the REL home country's rules prohibit the holding of client money. Requirements to put in place COLPs, COFAs, provide equality and diversity benchmarking data, pay turnover based fees, are all less relevant to what are effectively, foreign law firms who are required to register in England and Wales purely to obtain access under the Establishment Directive that they would have largely been granted in any case.

9. In short, the impact of the Establishment Directive has brought benefits to individual European lawyers but the interplay of the Directive and the SRA Practice Framework Rules can cause problems for European law firms. Given that law firms from jurisdictions outside the European Union may establish freely in England and Wales to practise outside of reserved areas of work, and have done so over many decades without causing problems, the SRA is proposing Handbook amendments which will offer law firms owned or managed by RELs, the option a choice of establishing under a similar regime.

#### **D. Nature and effect of the proposed alterations to the SRA's regulatory arrangements**

10. The SRA Amendment to Regulatory Arrangements (Changes to regulation of entities owned or managed by Registered European Lawyers) Rules [2014], which are set out at annex 1, were made by the SRA Board on 17 September 2014, subject to approval by the Legal Services Board (LSB). These changes are intended to address the issues with the current application of the SRA Handbook to law firms owned or managed by RELs, as identified above. The amendments do the following:
  - i) European groupings of lawyers (i.e. law firms) may choose on setting up in England and Wales whether to become
    - a) a fully authorised SRA entity, with identical rights and responsibilities to SRA authorised entities comprised of English lawyers; or
    - b) an "Exempt European Practice" (EEP) which explicitly undertakes not to practise activities reserved to authorised individuals and entities. Although EEPs would not be regulated by the SRA, individual RELs within them would need to be registered with the SRA, given the Establishment Directive. An EEP would be allowed to take any form that was permitted to a law firm in the firm's home jurisdiction. The SRA would only require details of the firm's practising address and an initial declaration about the form of its practice, which would provide acknowledgement that the firm understood its rights and responsibilities under the exempt regime.
  - ii) An individual REL would still need to register with the SRA and would still be subject to the SRA Practising Regulations 2011, to the SRA Principles and to the SRA Code of Conduct 2011. The way in which the Code of Conduct will apply will depend on the vehicle through which the REL is practising – RELs practising in exempt European law firms will have the code applied to them in the same way as in-house lawyers. This is analogous to the treatment of employed solicitors working in foreign law firms. This application would also involve a proportionate application of the accounts rules for those who handle client money in England and Wales and would provide access to the compensation fund for acts undertaken in England and Wales by RELs working in exempt practices.

- iii) All RELs, whatever entities they practise in, will be entitled to the privileges of a European lawyer as foreseen in the Establishment Directive and unchanged from current application to individuals, i.e.
- The right to register with the SRA;
  - The right to requalify as an English solicitor on meeting the requirements set out by the SRA;
  - The right to be listed in the SRA's public register alongside solicitors;
  - The right to be represented in the Law Society;
  - The right to appear in an English court alongside a solicitor or barrister

11. The SRA Board is satisfied that its proposals will assist the SRA's regulatory arrangements in the following way:

***(a) Authorisation***

12. The adoption of a greater degree of flexibility for European law firms choosing to set up in England and Wales will bring their treatment into line with that of purely foreign firms. It will therefore greatly simplify the task that the authorisation team faces when new European law firms apply for recognition.

***(b) Legal and Enforcement***

13. There have historically been very few disciplinary cases involving RELs but the SRA believes that the design of a tailor made European law firm regime which requires a newly establishing European law firm to declare clearly that it understands its rights and responsibilities in England and Wales, as well as those of its employees, will be helpful.

**E. Statement in respect of the Regulatory Objectives**

14. The SRA Board is satisfied that its proposed new rules on entities owned or managed by Registered European Lawyers will support the regulatory objectives contained in the Legal Services Act 2007

***Protect and promote the public interest***

15. The proposed amendments will help to support the growth of European legal advisory capacity in England and Wales which will, in turn, support the continued development of the financial and professional services sector. The approach we are proposing is also a proactive contribution to the debate taking place at a European level about how EU jurisdictions can accommodate the different vehicles for legal practice that exist in different Member States without undermining public policy goals.

***Protect and promote the interests of consumers***

16. Our proposed amendments maintain existing protections for consumers. Individual RELs will still be subject to the Code of Conduct and will need to observe key aspects of the Solicitors Accounts Rules in circumstances in which they hold client money in England and Wales. Consumers will also have continue to have recourse to the

compensation fund when dealing with RELs who are working in Exempt European Practices.

### ***Promote adherence to the professional principles***

17. The SRA Principles, which embody the Professional Principles set out in the Legal Services Act 2007, apply to all of those who are registered with the SRA and will therefore also apply to RELs practising in Exempt European Practices.

## **F. Statement in respect of the Better Regulation Principles**

18. The SRA considers that the proposed amendments to the Handbook fulfil our obligation under section 28 of the Legal Services Act to have regard to the Better Regulation Principles.
19. The proposals are proportionate in that they apply rules to the entities owned or managed by Registered European Lawyers that are in line with the risks that such practices pose both to the SRA's regulatory objectives and to consumers. There are around 20-30 European law firms practising in England and Wales which might choose to become Exempt European Practices because of the nature of the business that they conduct. Virtually all of these firms operate purely as 'City' law firms offering home country legal advice to home country clients who have set up in England and Wales.
20. The proposals are targeted and avoid the application of unnecessarily onerous rules in situations where the application of these rules is not warranted. The fact that the scope of practice that would be undertaken by Exempt European Practices is already permitted to foreign law firms who cause no regulatory concerns, suggests that the full application of the SRA Handbook to all REL firms in all circumstances is unwarranted.
21. We have been transparent in developing our proposed amendment to the rules governing RELs since we have undertaken two consultations on the proposed regime and engaged in direct discussion both with European law firms and interested European bar associations.

## **G. Statement in relation to desired outcomes**

22. The SRA's desired outcome is to offer a proportionate risk based regime for European law firms wishing to establish in England and Wales whilst maintaining the rights of practise conferred on individual European lawyers by the European Establishment Regime and ensuring adequate protection for consumers in England and Wales.

## **H. Statement in relation to stakeholder engagement**

23. The SRA has published two consultations on this issue, the last of which contained the specific wording that we are now proposing. We have also engaged directly with those European law firms most likely to be affected by our proposals and a number of these responded to our consultation.

## **I. Statement in relation to impact on other Approved Regulators**

24. All of the other approved regulators were invited to comment on our various consultations. They have chosen not to do so, no doubt because their regulatory arrangements and the position of the individuals whom they regulate is unaffected by the changes we propose.

#### **J. Implementation timetable**

25. We are proposing to introduce the amending rules as outlined in annex 1 on publication of version 11 of the SRA Handbook on 31 October 2014.

#### **K. SRA Contact**

Richard Collins, Executive Director, SRA

## **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 13.11)" after "*REL*";
- (b) insert paragraph 13.11 as follows:

" 13.11 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";
- (b) in the heading of Part 7 insert " **and from an office in England and Wales of an Exempt European Practice**" after "outside England and 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, if you *practise* from an office of an *Exempt European Practice*, you meet the conditions set out under Rule 4.20 (a), (b) and (c)" after "above".

(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 31 October 2014.