

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 (REGULATORY REFORM PROGRAMME) RULES [2015]

A. INTRODUCTION

1. The SRA's May 2014 policy statement "[Approach to regulation and its reform](#)" set out our rationale and a framework for a reform programme designed to:
 - remove unnecessary regulatory barriers and restrictions and enable increased competition, innovation and growth to better serve consumers of legal services;
 - reduce unnecessary burdens and cost on regulated firms;
 - ensure regulation is properly targeted and proportionate for all solicitors and regulated businesses, particularly small businesses.
2. The SRA Amendment to Regulatory Arrangements (Regulatory Reform Programme) Rules [2015] include a diverse range of rule changes aimed at reducing unnecessary burdens and costs on regulated firms and ensuring proportionate and targeted regulation.

B. PROPOSED ALTERATIONS

3. The proposed alterations are as follows.
 - **COLP/COFA deemed approval** - measures to deem the approval of compliance officers in sole practices and small firms;
 - **COLP/COFA candidate declaration** - removal of the requirements for separate declarations from and notifications to prospective role holders, in addition to the applicant firm;
 - **Reserved activities** - amendment of provisions in the Authorisation Rules which currently suggest that firms are required to carry out reserved legal activities in order to obtain/maintain authorisation;
 - **ABS authorisation** - removal of the requirements for
 - the SRA to approve individual managers within ABS corporate owners, and
 - firms to notify the SRA of a manager deemed to be authorised as a manager or owner of an ABS at least 7 days in advance;
 - **Insolvency** - measures to allow the SRA to refuse or impose conditions on renewal of a practising certificate, where applicants have been involved in partnerships that have entered administration but have not yet been subject to insolvency or bankruptcy;
 - **Diversity data** - measures which will
 - require firms to have in place appropriate arrangements for monitoring, reporting and publishing diversity data, and
 - clarify that firms' written equality and diversity policies need not be contained in one separate document;

- **Apprenticeship pathway** - amendment of our training requirements to permit qualification as a solicitor through an apprenticeship route.

C. NATURE AND EFFECT OF THE SRA'S CURRENT ARRANGEMENTS

4. At present our current regulatory arrangements include some provisions which could be better targeted. Since May 2014, the SRA has been in regular engagement with firms and representative bodies, and in particular with small firms, and has also initiated an ongoing internal review of operational processes. This led to the identification of a small number of overly burdensome authorisation requirements in the existing rules, where simplification could be achieved without increasing risk to consumers. We also identified three areas where we needed to make minor amendments to the current rules to close a minor loophole in the insolvency rules, to better reflect our position on recording and reporting of diversity data, and to reflect the introduction of a new apprenticeship route to qualification as a solicitor. The current requirements are summarised below.

- **COLP/COFA deemed approval** – currently we require an application to be made for approval of all firms' compliance officers - their Compliance Officer for Legal Practice (COLP) and Compliance Officer for Finance and Administration (COFA) - both at the time of the firm's initial application for authorisation, and in the event of any change to the individuals occupying these roles;
- **COLP/COFA candidate declaration** - we presently require all candidates for approval as a manager, owner or compliance officer to declare (in the application put forward by the firm in which they propose to take on that role) that the information supplied about them is correct and complete. The rules also require that the SRA has to notify each separate candidate, as well as the firm, of our decision to approve or refuse approval;
- **Reserved activities** - we list, among the circumstances where the SRA may revoke or suspend a firm's authorisation, the circumstance where the SRA is satisfied that the body has no intention of carrying on the legal services for which it has been authorised;
- **ABS authorisation** - our current procedures require us to separately assess and approve each individual manager in an ABS corporate owner, and require that we are informed 7 days in advance where our existing rules allow the deeming of an authorised manager or owner of an ABS;
- **Insolvency** - we may refuse or impose conditions on an application for renewal of a practising certificate following certain events. These events include the bankruptcy, insolvency or administration of individual applicants, or any entities in which they have been partners (members), managers or directors. However, the regulation does not currently cover the situation where the applicant is a member of a partnership that has entered into administration but where there has not yet been an individual voluntary arrangement, partnership voluntary arrangement or declared bankruptcy. Our regulations cover this event for member of an LLP or director of a company, and should cover partnerships, because administration can often precede any of the individual types of insolvency arrangement;
- **Diversity data** - we require firms to submit data regarding the diversity make up of their workforce on an annual basis, in line with LSB guidance. To date, we have advised firms on how to do this through providing information and ad hoc advice. However, although we have placed this requirement on firms, it is set out in guidance, and is not currently reflected in Chapter 2 of the SRA's Code of Conduct;
- **Apprenticeship pathway** – currently, admission as a solicitor is through a limited number of pathways - through the completion of specified academic and

vocational stages of training, through exemption from all or part of the academic or vocational stages (through the process of equivalent means), and for lawyers from other jurisdictions, through compliance with Qualified Lawyer Transfer Scheme (QLTS) Regulations. However, the development of new apprenticeship schemes include an apprenticeship route to qualification as a solicitor.

D. NATURE AND EFFECT OF THE AMENDMENTS TO THE CURRENT ARRANGEMENTS

5. The SRA Amendment to Regulatory Arrangements (Regulatory Reform Programme) Rules [2015] are attached as Annex 1. The amendments that they would make to our regulatory arrangements are:
 - **COLP/COFA deemed approval** – we propose measures to permit deemed approval of compliance officers in sole practices and small firms;
 - **COLP/COFA candidate declaration** – we propose no longer requiring prospective role holders to make separate declarations from their applicant firm, and simplifying our notification requirements;
 - **Reserved activities** – we propose amending the Authorisation Rules so as to no longer require firms to carry out the reserved legal activities they are authorised for in order to maintain authorisation;
 - **ABS authorisation** – we propose removing the requirements for
 - the SRA to approve individual managers within ABS corporate owners, and
 - firms to notify the SRA of a manager deemed to be authorised as a manager or owner of an ABS at least 7 days in advance;
 - **Insolvency** – we propose that we should be able to refuse or impose conditions on renewal of a practising certificate, where applicants have been involved in partnerships that have entered administration but have not yet been subject to insolvency or bankruptcy, closing a current inconsistent gap in our regulation;
 - **Diversity data** – we propose
 - requiring firms to have in place appropriate arrangements for monitoring, reporting and publishing diversity data, and
 - clarifying that firms' written equality and diversity policies need not be contained in one separate document;
 - **Apprenticeship pathway** - amendment of our training requirements to permit qualification as a solicitor through an apprenticeship route.

E. RATIONALE FOR THE PROPOSED AMENDMENTS

COLP/COFA deemed approval

6. In line with our commitment to reducing regulatory burdens on small firms, the SRA has made rules to introduce a process for deeming approval of compliance officers in small firms (those with 1 to 4 managers) where that person is a sole practitioner or lawyer manager, provided they had not previously had approval to be a compliance officer withdrawn by the SRA. The firm would be required to notify the SRA in advance of the person becoming the compliance officer. The rule change removes the burden on firms of making a separate application and removes the burden on the SRA of assessing the application form.
7. We considered a separate application unnecessary in these circumstances because sufficient checks around character and suitability will have already been undertaken when the individual was authorised as a lawyer and/or as a manager.
8. The proposal was limited to small firms. The proposal stems from specific work in

relation to the SRA's commitment to reducing regulatory burdens on small firms. In sole practices and smaller firms it is highly likely that a sole practitioner or lawyer manager will have sufficient power, seniority, oversight of the operation of the whole business and responsibility for management decisions requisite to undertaking the compliance roles. Therefore, we consider that assessing the candidate to ensure appropriate understanding of and influence over the organisation is unnecessary. This is less likely to be the case in larger firms.

9. The proposals that we consulted on were tailored to recognised sole practices and recognised bodies, not ABS. However, we asked for views on whether it was right to limit to certain types of provider. Most respondents considered it was not and we agree so the rule change allows deemed authorisation in relation to ABS also.
10. We have taken into account that some legal services providers, particularly some ABS, may be authorised with a small number of managers, but may in fact be very large practices with complex structures. In these cases, it cannot necessarily be assumed that a lawyer manager will have sufficient seniority and responsibility in relation to the business in order for the test to be met, and this will have to be assessed on an individual basis. We therefore intend to include a £600k limit on firm annual turnover¹, to exclude outliers who may otherwise be deemed, but which may be very large practices with complex structures. Our rule change therefore represents a proportionate and targeted approach. We noted responses emphasising the significant and onerous nature of compliance roles, and so we have made an exception to the deemed approval criteria where the compliance officer performs the role for more than one firm. This will allow us to assess capacity where there is an enhanced risk of insufficient oversight of the whole of the legal services business
11. The deemed authorisation proposal was supported by a significant majority of respondents. A small number of respondents, including the Law Society, suggested that deemed approval should not be extended to ABS. The reasons given were not the related to specific risks but because of the relatively recent emergence of ABS. We do not agree. we consider that there is a strong case for providing consistency. While the compliance picture may (or may not) be different depending on the structure of the firm, we do not think there is any difference in terms of the fundamental qualities we, as a regulator, require in terms of our fitness tests for compliance officers. It is also important to note the compliance roles themselves have not changed, and firms will still need to satisfy themselves that the person they appoint is able to fulfil that role, bearing in mind the specific risk profile of their organisation²
12. The rules include the safeguard of excluding from the deeming provision any individual that has in the past been subject to a disciplinary decision or findings by a regulator or regulatory tribunal or is currently subject to an investigation of which they are aware. And approval may also be subsequently withdrawn if we have or obtain information that suggests that the criteria may not be met.

¹ The figure of £600k is based on the SRA's internal analysis of data held on current firms and structures, firms with turnover of under £600k are consistent with the SRA's definition of small firms.

² A small number of respondents made the same argument that no changes should be made to any rules relating to ABS because of their relative newness. Our response is as above and will not be repeated throughout the application.

13. . We noted consultation responses emphasising the significant and onerous nature of compliance roles, and so we have made a further exception to the deemed approval criteria where the compliance officer performs the role for more than one firm. This will allow us to assess capacity where there is an enhanced risk of insufficient oversight of the whole of the legal services business.
14. We will no longer undertake a separate check for spent convictions for those lawyer managers benefiting from the new deeming process, because this does not represent a significantly elevated risk if the spent conviction has not prevented admission to the profession or resulted in regulatory intervention. In this context, We are not aware of any instances when checking for spent convictions has unearthed issues that have impacted on the result of the assessment of a lawyer-manager applying as a compliance officer that were not already known about from previous checks.

COLP/COFA candidate declaration

15. The SRA has amended rules so as to remove the requirement for candidates to be COLPs / COFAs to sign a declaration separate to the applicant firm. We have also removed the requirement to separately notify each individual manager named in that application. Instead, the notification will be to the applicant or authorised body. We may however continue to send a notification to a candidate direct, for example where they have requested that we do so, or where we intend to place conditions on a candidate's approval, or to refuse an application.
16. The changes remove an additional level of administrative burden on both firms (who are required to collate and provide the information) and on the SRA (which needs to process multiple declarations for the same entity). Almost all consultation respondents agreed with the proposal, with only minor concerns being raised regarding the accuracy of information, if not signed or verified by the candidate. We considered those concerns, but consider the existing measure is disproportionate to ensure the accuracy of information provided (and we are not aware that there is a problem anyway). Furthermore, it is the firm that is responsible for the application and for providing a full and accurate declaration.

Reserved activities

17. The SRA has amended the Authorisation Rules so as to no longer require firms to carry out the reserved legal activities they are authorised for in order to maintain authorisation. Our rationale is that the purpose of authorisation is to confer an entitlement on bodies to carry out certain (in particular, reserved) legal activities. Therefore, in our view it is entirely reasonable for them to retain their authorisation if they are considered suitable to deliver reserved legal activities even if they choose not to do so at any particular point in time.
18. We also propose to make further changes to the SRA Authorisation Rules to make it clear that the SRA may grant an application in relation to one or more reserved legal activities, but remove the current requirement for a body to include a statement setting out which reserved legal activities it seeks authorisation for, which once again suggests a requirement that the firm will be carrying out reserved legal activities in order to obtain authorisation.

19. Most respondents to the consultation agreed with the proposal. Respondents perceived firms that undertake niche work that rarely includes reserved legal activities to be the likely main beneficiaries of the proposal. We consider that the change is likely to have positive impacts on access to justice and competition by allowing new and existing firms the flexibility to develop services to meet their needs and the needs of consumers.

ABS authorisation

20. Our experience of authorising ABS indicates that the requirement for us to separately assess and approve each individual manager in an ABS corporate owner adds complexity, delay and cost to the authorisation process for firms and for the SRA but is not necessary to address an identified issue. This is particularly so as individuals within corporate owners are often remote from the legal services business seeking authorisation itself, so have limited influence over, and present limited risk to, the delivery of legal services. The corporate body as a whole must be approved by the SRA. Concerns about individual managers that may affect the suitability of the body to own a legal business can be considered as part of this approval. Therefore, the SRA has amended rules to remove the requirement for us to separately approve individual managers within ABS corporate owners.
21. The SRA has also made rules to remove the requirement that we are informed 7 days in advance where our existing rules allow the deeming of an authorised manager or owner of an ABS. We consider it unnecessary to prescribe this timeframe, although we would still require advance notification.
22. The majority of consultation respondents did not raise any specific concerns, but some were concerned about perceived risks relating to ABS owners including them “being hidden”. We carefully considered these concerns. The owners will not be hidden - the corporate body will be required to provide details of its governance as part of the approval process. We are satisfied that removing the requirement to approve individual managers will not adversely affect professional standards. No information was provided that changes our original assessment that the requirement adds burdens on firms and the SRA whilst providing no identified benefit. There was no opposition to the removal of the seven day notification requirement for deeming managers.

Insolvency

23. Regulation 3 of the SRA Practising Regulations 2011 allows the SRA to refuse or impose conditions on an application for renewal of a practising certificate following certain events. These events include the bankruptcy, insolvency or administration of individual applicants, or any entities in which they have been partners (members), managers or directors. However, the regulation does not cover the situation where the applicant is a member of a partnership that has entered into administration but where there has not yet been an individual voluntary arrangement (IVA), partnership voluntary arrangement (PVA) or declared bankruptcy.
24. We require the regulations to cover such an event, as administration can often precede any of these individual insolvency arrangements. Regulation 3.1(k)(iv) already covers the situation where the applicant is a member of an LLP or director of a company that has gone into administration, and the amendment is needed to close this gap for partnerships. Respondents were unanimously in favour of this proposal, with a large number of respondents noting that it was “logical” and “sensible”.

Diversity data

25. We already require firms to submit data regarding the diversity make up of their workforce on an annual basis. This is consistent with LSB guidance. To date, we have advised firms on how to do this through providing information and ad-hoc advice. However, although we have placed this requirement on firms, it is set out in guidance, and is not currently reflected in Chapter 2 of the SRA's Code of Conduct.
26. The SRA has made rules to include a new Outcome 2.6 to the Code, to reflect the requirement for firms to have in place appropriate arrangements for monitoring, reporting and publishing workforce diversity data, and consequential amendments to the Indicative Behaviours to clarify that firms' written equality and diversity policies need not be contained in one separate document. We intend this new Outcome to provide greater transparency and clarity about the status of this requirement, as well as assisting firms in meeting the obligation.
27. We noted in the consultation that there should be no impact on firms as they are already required to collect and report this data and we proposed no change to this policy. This is a small amendment to the rules to reflect existing requirements, which we consider will provide greater transparency and clarity for those that we regulate.

Apprenticeship pathway

28. Our regulations currently restrict the route to admission as a solicitor to the following pathways:
 - through the completion of specified academic and vocational stages of training;
 - through exemption from all or part of the academic or vocational stages (through the process of equivalent means); or
 - for lawyers from other jurisdictions, through compliance with Qualified Lawyer Transfer Scheme (QLTS) Regulations.
29. In Training for Tomorrow (published in 2013) we signalled our support for the development of a new apprenticeship route to qualification. Since then we have worked in partnership with an employers group established by the Department of Business Innovation and Skills and Skills for Justice to develop an Apprenticeship Standard and Framework leading to qualification as a solicitor in both England and Wales.
30. Our role has been to ensure that these pathways have appropriate mechanisms to require individuals seeking to qualify via these routes to demonstrate that they have met the standards set out in the Competence Statement published on 1 April 2015 for safe practice as a solicitor. The first apprenticeship assessments will not be available before 2018. The amendment to the Training Regulations made by the SRA is to allow qualification as a solicitor through the apprenticeship routes, and proposes that qualification through these pathways will include a requirement to pass an assessment conducted or approved by the SRA.
31. Consultation respondents who agreed with the proposal were supportive of opening up routes to qualification and therefore opening up the profession. A key stakeholder which supported the proposal emphasised that apprentices should still meet "the same high standards as other currently existing routes". However, some respondents expressed reservations about the apprenticeship route as having the perceived potential to dilute the profession's skills and expertise.

32. The SRA has previously committed to developing this pathway to admission as a solicitor and we are satisfied that the schemes developed ensure that those that qualify through this route will meet the same high standards required of those qualifying through alternative routes.

F. STATEMENT IN RESPECT OF THE REGULATORY OBJECTIVES

33. This statement comprises an assessment of the SRA Amendment to Regulatory Arrangements (Regulatory Reform Programme) Rules [2015] against our regulatory objectives, our public sector equality duty and the better regulation principles. The SRA has made a series of minor changes to rules and processes where we, in discussion with stakeholders, have concluded that they add regulatory burdens and costs while being unnecessary to address any significant regulatory risk. These changes are squarely in line with the better regulation principles and best regulatory practice. The changes are important in the context of momentum of the overall reform programme as well as to some firms, but their overall impact on the regulatory objectives, while being positive, is limited. Other changes clarify current requirements and in the case of the inclusion of the Apprenticeship Route to qualification, reflects the existing direction of travel.
34. The rationale for change and our assessment against the regulatory objectives in this section apply similarly to most of the changes. We have highlighted where a particular change is likely to have a specific impact.
35. **Protecting and promoting the public interest.** The changes aim to remove unnecessary regulatory barriers and restrictions, reduce unnecessary burdens and cost on regulated firms, and ensure that regulation is properly targeted and proportionate for all solicitors and regulated businesses, particularly small businesses. This will promote increased competition, innovation and growth, which in turn should better serve consumers of legal services. Removing unnecessary requirements and restrictions helps ensure that the benefits of regulation outweigh the costs and disbenefits of restrictions imposed by regulation, to operate in the wider public interest³.
36. **Supporting the constitutional principle of the rule of law.** Nothing in the rule changes conflicts with this regulatory objective.
37. **Improving access to justice.** As described, the rule changes aim to increase competition, innovation and growth, and some of the changes will especially benefit smaller firms. This should permit better provision of services that meet the needs of consumers, including access to justice. Removing the requirement to carry out reserved legal activities in particular will allow firms greater flexibility in how they develop services to meet the needs of consumers to meet the needs of consumers and potential consumers. This in time may result in new services and greater choice that may help access to justice.
38. **Protecting and promoting the consumer interest.** As described, the changes are aimed at increasing competition and innovation in the provision of legal services by removing unnecessary regulatory costs and burdens, especially for smaller firms, and enabling greater flexibility. This should foster the growth of cost-effective services that meet consumer needs. Removing the requirement to carry out reserved legal activities may encourage some existing providers of legal services who carry

³ file:///I:/mydocs/Downloads/SRA_Org_Uk_16_09_2015_11432738.pdf

out non-reserved legal activities only and do not have to be regulated to enter regulation for the first time. Provided that regulation does not lead to prohibitive price rises, consumers of these providers would benefit from the guaranteed protections that come with regulation.

39. **Promoting competition in the provision of services provided by authorised persons.** As described, the changes should foster competition among legal services providers.
40. **Encouraging an independent, strong, diverse and effective legal profession.** Nothing in the rule changes conflicts with this regulatory objective. In addition, the increased clarity of the diversity data collection requirement may improve our information gathering capability, assisting our policies which are aimed at improving diversity, and additionally will raise awareness of our requirements among our regulated community, promoting understanding and compliance. The apprenticeship route to qualification is likely to have a positive impact on aspirant solicitors of any kind who will find this route more accessible than the traditional route. In the long term this may have a positive impact on the diversity of the profession.
41. **Increasing public understanding of citizens' legal rights and duties.** Nothing in the rule changes conflicts with this regulatory objective.
42. **Promoting and maintaining adherence to professional principles by authorised persons.** The changes will ensure more targeted and proportionate regulatory requirements in a number of situations. This will likely promote compliance. In addition, some changes (insolvency, diversity data) will help ensure effective regulation by the SRA, and compliance with the professional principles by individuals and firms.

G. STATEMENT IN RESPECT OF THE BETTER REGULATION PRINCIPLES

43. The SRA considers that the alterations requested fulfil our obligation to have regard to the Better Regulation Principles, under section 28 of the Legal Services Act.
44. **Transparent.** The changes provide increased clarity and simplification. The requirement relating to diversity data will help ensure that firms understand the requirements on them.
45. **Accountable.** The changes ensure that those that we regulate are fully accountable for compliance with our regulatory requirements. Most of the changes remove unnecessary requirements on our regulated community, helping ensure that we exercise our regulatory powers in an accountable way.
46. **Proportionate.** Most of the alterations remove unnecessary regulatory burdens and procedural requirements which do not address risk. As such, they are proportionate to the need to protect the public and to promote the regulatory objectives. The measures proposed are narrow in focus, and we do not consider that they significantly raise the level of risk to consumers (as noted in paragraph 4 above). In the main, they are minor simplification measures, with an emphasis on reducing the regulatory burden, and duplication of effort, on the part of firms and the SRA.
47. **Consistent.** The changes ensure simplicity and, wherever appropriate, a level playing field for all those we regulate. Additionally, the apprentice pathway amendment ensures more consistent opportunity for all individuals who can demonstrate that they meet our requirements for admission. Those amendments

which do affect different members of our regulated community differently (in particular, the COLP / COFA deemed approval amendment for small firms) reflect our aim to ensure proportionate and targeted regulation and reduce unnecessary burdens.

48. **Targeted.** By removing unnecessary requirements and burdens, the changes help ensure that we regulate in a way which targets risk and, in risk-free situations, permits freedom of practice.

H. STATEMENT IN RELATION TO DESIRED OUTCOMES

49. The changes are being made in accordance with the programme of reform set out in the SRA Board's recent policy statement "[Approach to regulation and its reform](#)" - in particular, the objective of reducing unnecessary regulatory burdens and cost on regulated firms, especially smaller firms.

I. STATEMENT IN RELATION TO IMPACT ON OTHER APPROVED REGULATORS

50. There are no impacts on other approved regulators.

J. IMPLEMENTATION TIMETABLE

51. If approved, the changes will come into effect on 1 November 2015.

K. STAKEHOLDER ENGAGEMENT

52. Our consultation on the proposals opened on 16 April 2015 and closed on 11 June 2015. A summary of the consultation responses and our response to them appears at Annex 2, and key issues raised by respondents in relation to each proposed measure are discussed in relation to our rationale for the rule changes, at paragraphs 6-28 of this application document.

ANNEXES

- Annex 1 The SRA Amendment to Regulatory Arrangements (Regulatory Reform Programme) Rules [2015]
- Annex 2 SRA Board paper "Improving regulation: targeted and proportionate measures", 9 September 2015.

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