



Legal Services Board – Decision Notice issued under Part 3 of Schedule 4 to the Legal Services Act 2007

Solicitors Regulation Authority (SRA) rule change application for approval of changes to the regulatory arrangements for consumer credit activities

The Legal Services Board (LSB) has granted an application from the SRA for approval of alterations to the SRA Financial Services (Scope) Rules 2001 and related alterations to the SRA Handbook Glossary. The revised rules set out the arrangements that will come into force on 1 April 2014.

This Decision Notice sets out the basis for the LSB granting the application and the decision taken, including a brief description of the changes.

Introduction

1. The LSB is required by Part 3 of Schedule 4 to the Legal Services Act 2007 (the Act) to review and grant or refuse applications by approved regulators for approval of alterations to their regulatory arrangements. The Law Society is an approved regulator and the SRA is the regulatory arm to which The Law Society has delegated its regulatory functions.
2. Paragraph 25 of Schedule 4 to the Act explains that the LSB may only refuse an application setting out a proposed alteration to the regulatory arrangements if it is satisfied that by granting the application one or more of the criteria specified in sub paragraph 25(3) (and listed in the footnote below¹) will be met. For example, the LSB's granting of the application to alter the regulatory arrangements must not be prejudicial to the regulatory objectives overall. Accordingly, if the LSB is not satisfied that one or more of the criteria for refusal are met, then it must approve the application in whole, or the parts of it that can be approved.
3. As provided for by paragraphs 20(1) and 23(3) of Schedule 4 to the Act, the LSB has made rules² about how the application for approval of alterations to the regulatory arrangements must be made, including the contents of that application. The rules highlight the applicant's obligations under section 28 of the Act to have regard to the Better Regulation Principles. The rules also require that the applicant provides information about the nature and effect of each proposed change and of appropriate

¹ The Board may refuse the application only if it is satisfied that—(a) granting the application would be prejudicial to the regulatory objectives, (b) granting the application would be contrary to any provision made by or by virtue of the Act or any other enactment or would result in any of the designation requirements ceasing to be satisfied in relation to the approved regulator, (c) granting the application would be contrary to the public interest, (d) the alteration would enable the approved regulator to authorise persons to carry on activities which are reserved legal activities in relation to which it is not a relevant approved regulator, (e) the alteration would enable the approved regulator to license persons under Part 5 to carry on activities which are reserved legal activities in relation to which it is not a licensing authority, or (f) the alteration has been or is likely to be made otherwise than in accordance with the procedures (whether statutory or otherwise) which apply in relation to the making of the alteration.

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

consultation undertaken. Sub-paragraph 25(3)(f) of Schedule 4 to the Act requires that each proposed alteration has been made or is likely to be made in accordance with the procedures (whether statutory or otherwise) which apply in relation to the making of the alteration. This therefore includes the LSB's rules.

4. The chronology for the LSB's handling of this application can be found towards the end of this Decision Notice.

Proposed changes

5. Currently, firms authorised by SRA may undertake consumer credit activities under an Office of Fair Trading (OFT) group licence held by The Law Society (and managed by the SRA). This means that SRA regulated firms do not need to be individually licensed by OFT to undertake certain consumer credit activities (eg. consumer credit, debt counselling and debt collecting).
6. On 1 April 2014, regulation of consumer credit activities will transfer from OFT to the Financial Conduct Authority (FCA) and the group licensing arrangement will end.
7. From that date, SRA authorised firms will become subject to FCA rules on consumer credit activities. Part XX of the Financial Services and Markets Act 2000 (FSMA) has an exemption which means that firms that are authorised by SRA and only undertake consumer credit activities that arise out of or are incidental to the provision of their professional service do not need an individual licence with FCA. However, such firms will have to follow FCA's consumer credit rules.
8. The changes to consumer credit regulation mean that firms undertaking FSMA regulated consumer credit activities have to:
 - be individually authorised by FCA
 - fall within the Part XX regime; or
 - cease to carry on consumer credit activities.
9. This rule change application relates to those that fall under the Part XX regime.
10. For a transitional period, 1 April 2014 to 30 September 2014, the FCA will apply the OFT's consumer credit rules followed by firms under the old group licence regime. After the transitional period, FCA expects to have new rules in place for the regulation of consumer credit activities.
11. SRA's revised rules make clear that the OFT's existing consumer credit rules will be transferred to the FCA for the transitional period. There is likely to be a further rule change once the SRA has finalised its approach in light of the FCA's recently published new consumer credit rules, which take effect from October 2014.
12. Credit activities have never previously been referred to in the SRA's Handbook or specifically in the SRA's Financial Services (Scope) Rules. The SRA has therefore added the definition of a "credit-related regulated activity" following its agreement with the FCA that the SRA's Scope Rules will need to reflect the credit-related activities

specified in the FSMA Regulated Activities Order (as amended). These activities were previously listed in the OFT's group licence, which, as explained, ceases to have effect.

13. SRA will not be defining in the Glossary the term “connected activity”, a term featured in the new rule. This is not expected to cause any difficulty during the transitional period as firms will only be required to comply with the same requirements as they were subject to immediately before 1 April 2014. However, SRA may need to reconsider this when developing new regulatory arrangements for the post- transitional regime.

Decision

14. During its consideration of the application, the LSB sought clarification from the SRA on matters to do with the potential impact of the rules change. While the SRA explained how it would be communicating these changes to those it regulates, the LSB remains concerned about the extent to which the potential impact has been understood. There is a risk that some firms may not be aware of the need to seek FCA authorisation and that others may be confused about whether they need to do so. While this is not in itself a reason for refusal under the Act, particularly as the new rule is for a transitional arrangement, the LSB considers that the SRA should ensure that it has a robust communication strategy over the coming months to ensure that the transitional period is used to best effect.
15. In relation to the more permanent changes, the LSB considers that the SRA should seek to:
- replicate FCA requirements, rather than introduce regulatory arrangements unique to legal firms offering this service for example, the SRA could provide links from its Handbook to relevant parts of the FCA Consumer Credit Sourcebook
 - identify and communicate how it will seek to identify the particular risks arising from consumer credit activities and integrate their management within its supervisory approach.
16. The LSB has considered the SRA's application against the criteria in paragraph 25(3) of Schedule 4 to the Act, and considers that there is no reason to refuse this application; accordingly, the LSB grants this application.
17. The Annex to this Decision Notice contains the rule changes approved by the LSB.

Chronology

- The LSB confirmed receipt of an application from the SRA on 24 February 2014.
- The 28 day initial decision period for considering the application ends on 23 March 2014.
- This Decision Notice is effective from and is being issued to SRA on 19 March 2014.
- The Decision Notice will be published on our website on 20 March 2014.

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

Annex

SRA Amendment to Regulatory Arrangements (Consumer Credit) Rules [2014]

Preamble

Rules dated [date of approval by the Legal Services Board] made by the Solicitors Regulation Authority Board under sections 31, 79 and 80 of the Solicitors Act 1974, sections 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, and for the purposes of section 332 of the Financial Services and Markets Act 2000.

Rule 1

The SRA Financial Services (Scope) Rules 2001 shall be amended as follows:

(a) insert rule 5.11 as follows:

"5.11 Credit-related regulated activities

(a) Where a *firm* carries on a *credit-related regulated activity* or a connected activity it must comply with the provisions and guidance set out in Rule 1.3R of the transitional provisions in the *FCA's CONC* as they were in force immediately before 1 April 2014 in relation to that activity, with any appropriate modification to take into account the coming into force of HM Treasury Orders that give effect to the transfer of consumer credit regulation from the OFT to the *FCA*."

(b) insert note (ii) to rule 5 as follows:

"(ii) During the transitional period between 1 April 2014 and 30 September 2014, *firms* carrying on *credit-related regulated activities* will be required to comply with the guidance and other provisions listed in the transitional provisions in the *FCA's CONC*. These provisions should not impose any new obligations as *firms* should already be complying with them but *firms* will need to adopt a common sense approach in interpreting them, for example, references to the OFT in these provisions and guidance should be read as if they referred to the *FCA* and references to the relevant supervisory authority mean the *SRA*."

Rule 2

The SRA Handbook Glossary 2012 shall be amended as follows:

(a) after the definition of "**compulsory professional indemnity insurance**" insert:

"**CONC**

means the *FCA's* Consumer Credit sourcebook"

(b) after the definition of “CPE” insert:

“credit-related regulated activity

means any of the following activities specified in Part 2 or 3A of the *Regulated Activities Order*:

- (i) entering into a regulated credit agreement as lender (article 60B(1));
- (ii) exercising, or having the right to exercise, the lender’s rights and duties under a regulated credit agreement (article 60B(2));
- (iii) credit broking (article 36A);
- (iv) debt adjusting (article 39D(1) and (2));
- (v) debt counselling (article 39E(1) and (2));
- (vi) debt collecting (article 39F(1) and (2));
- (vii) debt administration (article 39G(1) and (2));
- (viii) entering into a regulated consumer hire agreement as owner (article 60N(1));
- (ix) exercising, or having the right to exercise, the owner’s rights and duties under a regulated consumer hire agreement (article 60N(2));
- (x) providing credit information services (article 89A);
- (xi) providing credit references (article 89B);
- (xii) operating an electronic system in relation to lending (article 36H);
- (xiii) agreeing to carry on a regulated activity (article 64) so far as relevant to any of the activities in (i) to (xii);

which is carried on by way of business and relates to a specified investment applicable to that activity or, in the case of (x) and (xi), relates to information about a person’s financial standing.”

Rule 3

These amendment rules shall come into force on 1 April 2014.