



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

The Solicitors Regulation Authority (“SRA”) has made an application to the Legal Services Board (“the Board”) under the Legal Services Act 2007 (“the Act”) to change its regulatory arrangements. As part of its Outcome Focused Regulation Programme it has reviewed most of its rules and brought them together in one Handbook for all of its current regulatory community of firms and solicitors (recognised bodies and solicitors).

The Board has approved the SRA’s application. This Notice sets out the basis for the LSB approval and the decision taken, including a brief description of the changes.

Introduction

1. The LSB is required by Part 3 of Schedule 4 of the Legal Services Act 2007 (“the Act”) to review and approve or reject alterations to the regulatory arrangements of the Approved Regulators. The SRA carries out the regulatory functions of the Law Society; the Law Society is an approved regulator.
2. Paragraph 25 of Schedule 4 explains that the LSB must approve a proposed change to the Regulatory Arrangements unless we are “...satisfied that...” the approval would fall within one or more of the criteria specified in sub paragraph 25(3) (and listed in the footnote below¹). If the LSB is not satisfied that one or more of the criteria are met, then it must approve the application in whole, or at least the parts of it that can be approved when only part of the application meets the criteria.
3. As provided for by paragraphs 20(1) and 23(3) of Schedule 4 to the Act, the LSB has made rules about how the application to alter 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 consultation undertaken. Sub paragraph 25(3)(f) requires that each proposed alteration has been made or is

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.

likely to be made in accordance with the procedures which apply in relation to making of the alteration. This includes the LSB's rules.

4. The LSB will approve regulatory arrangements in so far that they appear to achieve their intended outcome and satisfy the criteria in paragraph 25(3) of Schedule 4. For example, there must be no adverse impact on the Regulatory Objectives overall and the alterations and the process by which they have been produced must be consistent with Better Regulation Principles. We must also ensure that the designation requirements continue to be met.²
5. The chronology for handling of this application can be found at the end of this Decision Notice.

Background

6. As part of the delivery of its outcomes-focused approach to regulation, the SRA has developed a new Handbook which, for the first time, brings together the SRA's regulatory arrangements in one place. Although it has been developed from the Handbook published in 2007 in respect of most of its detailed content, it offers a revised strategic framework, which gives solicitors and recognised bodies considerably more freedom about how they achieve specific outcomes.
7. This is a significant change for solicitors and recognised bodies in terms of how they are regulated. Putting in place the necessary risk management and supervision strategies to supervise this revised framework has also presented some challenges to the SRA. Given the wider context of changes in the legal service market and the scale of organisational change, it is the SRA's judgement that this version of the Handbook represents as far as it can reasonably go in modernising the current detailed framework at this stage.

Summary of the changes

8. Annex 1 summarises the main changes to the individual sets of rules that make up the Handbook.
9. The new SRA Code of Conduct sets out the new outcomes-focused requirements in the form of Principles, Outcomes and Indicative Behaviours. The ten Principles apply to all solicitors (whether working in a body regulated by the SRA or as in-house solicitors) and to all bodies regulated by the SRA and those working within them.

² The designation requirements are

(a) a requirement that the approved regulator has appropriate internal governance arrangements in place,
(b) a requirement that the applicant is competent, and has sufficient resources to perform the role of approved regulator in relation to the reserved legal activities in respect of which it is designated, and
(c) the requirements of paragraph 13(2)(c) to (e).

13 (2) Rules under sub-paragraph (1) must, in particular, provide that the Board may grant an application in relation to a particular reserved legal activity only if it is satisfied:

(c) that the applicant's proposed regulatory arrangements make appropriate provision,
(d) that the applicant's proposed regulatory arrangements comply with the requirement imposed by sections 52 and 54 (resolution of regulatory conflict), and (e) that those arrangements comply with the requirements imposed by sections 112 and 145 (requirements imposed in relation to the handling of complaints).

10. The Principles are mandatory and are mostly based on Rule 1 of the current Code of Conduct. All Outcomes are considered mandatory but they are not an exhaustive list; in practice there may be other outcomes which will be consistent with the Principles. The Indicative Behaviours are non-mandatory and describe how the Outcomes may be met.
11. The new Code of Conduct is divided into chapters dealing with particular regulatory issues, for example client care, conflicts of interests and publicity. Each chapter shows how the Principles will apply through mandatory and non-mandatory provisions.
12. The Handbook will come into force for all firms in October 2011 and will introduce different systems, supervisory and reporting requirements from that date.
13. One of the most significant changes for traditional law firms is the requirement to appoint a Compliance Officer for Legal Practice (CoLP) and Compliance Officer for Financial Administration (CoFA) to be in place from October 2012. Before this the reporting requirements will be the responsibility of the firm. These roles (which mirror the responsibilities placed upon the equivalent statutory roles of Head of Legal Practice and Head of Finance and Administration in an Alternative Business Structure) are central to the supervisory and enforcement components of OFR³. This is discussed in more detail in paragraphs 25 to 27.

Issues arising from assessment of the application

Delivery of OFR - Capacity and Capability

14. Currently, the SRA provides effective regulation of approximately 125,000 individual solicitors and 10,000 firms. The change to outcome-focused regulation means that regulation will be delivered differently and we have considered how SRA has prepared itself for this change without risking a diminution in standards.
15. The transition to outcomes focused regulation is about more than a revised Handbook. It will change the nature of the relationship between the SRA and its regulated community. To be effective, the SRA itself will need to develop a new culture, skills and knowledge across all of its operations.
16. The SRA is part way through a root and branch review and internal reorganisation to facilitate this shift. This is challenging, particularly at the same time there are changes in the market. However, the Board agrees with the SRA's judgement that the scale of change in the market necessitates a programme of change of this level of ambition. While the SRA has come a long way, the transformation programme is not yet complete. The Board has therefore made a forward-looking assessment of its likely readiness at the time that the reforms are due to go live in October 2011.
17. Although the criteria for assessing the Handbook as a change to regulatory arrangements are tightly defined, this transformation is about more than a change to the rules. The capacity and capability of the SRA will be central to the success of outcomes-focused regulation. This has therefore been a focus of our review
18. We have sought to establish how much of the transformation programme has been completed and what still needs to be done to enable SRA to be deliver outcomes-focused regulation. There are two main strands to the SRA transformation programme.

³ The reporting obligations of individuals are untouched by this change

The first is the OFR programme, which will deliver the necessary changes to the way the SRA regulates, including the changes to the organisational structure and ways of working. The second part is the Enabling Programme, which is essentially about the technology needed to enable the delivery of outcome-focused regulation.

19. Outcomes-focused regulation involves less prescription and more flexibility for both the regulator and the regulated. By its very nature, this approach involves more discretion in decision-making and the capability of the SRA as a whole and the ability of individual staff to exercise judgement and discretion soundly will be fundamental. The new approach to authorisation of firms will lead to a more comprehensive understanding of the regulated businesses and the risks they pose which will be one of the key determinants of supervisory activity.
20. The SRA proposes to take a risk-based approach to supervision, where the risk rating of the firm will determine how regulation will be delivered. Depending on the level of risk assessment, this may involve a desk-based assessment, risk based visits to firms or more intensive relationship management. Non-compliance can be dealt through more active supervision rather than, as now, relying primarily on enforcement activity to deal with rule breaches.
21. The SRA has provided us with additional information on the delivery of both the OFR and Enabling Programmes. We have received confirmation that the recruitment of staff to the key senior posts in the authorisation and supervision directorates has been completed, and both directorates are already operating. A recruitment strategy, including contingency plans, has been produced to ensure that the right level of staff will be in place. The timescales are challenging but SRA has confirmed it is on track. In parallel, the wider leadership group are undertaking further leadership training to support them in the challenge of delivery and talent management for a broader group of staff within the organisation is being enhanced. We have also sought and received assurance from the SRA that it has appropriate contingency plans in place for the delivery of the Enabling Programme.
22. In order to facilitate the Law Society's approving and making the licensing authority application, the SRA Board provided a number of assurances on their satisfaction with the arrangements proposed by their Executive for delivering outcome-focused regulation. These assurances (for which we have reviewed a number of underlying documents) have been a significant factor in our own assessment of the application.
23. In giving these assurances, the SRA Board has been able to rely on a series of checkpoint reports which have been carried out by an external assurance provider. These reports have provided the SRA Board with regular progress updates and a mechanism for addressing any issues. A dashboard reporting process is also at an advanced state of development which will give the SRA Board the information they need to ensure that things remain on track or allow them to take action where there is slippage.
24. The Board has sought and received access to many of the external reports and other governance materials in making its assessment. SRA has agreed to provide regular reports to the LSB, as oversight regulator, between now and October when the Handbook comes into effect for recognised bodies and solicitors. From October the SRA will provide a suite of management information. The details of this will be

developed by the end of June but will include both quantitative and qualitative data. This regular monitoring will in turn inform a full review of the operation of OFR towards the end of 2013.

Delivery of OFR - CoLP and CoFA requirements

Impact on firms

25. One of the more significant changes for traditional firms will be the regulatory requirement to appoint a CoLP and CoFA who will be responsible for recording and reporting instances of non-compliance. These individuals must be authorised by the SRA and may be held personally accountable in the circumstances that systemic failures are found. Although the CoLP and CoFA will have specific responsibilities, this does not remove from management the overall responsibility for the proper running of the firm (and in fact the reporting requirements will rest with the governing body of the firm until the compliance roles are in place).
26. Fundamental to the change is the enhanced reporting requirements on firms which may be a cause for concern, particularly within firms that do not already have formal compliance and reporting processes in place. However the SRA considers, and the Board agrees, that this is the right approach to take in encouraging a culture of compliance. It will also allow resources to be targeted in areas presenting most risk. Additionally, the obligation to report is already one which rests on each individual lawyer but the new arrangements have a sharper focus on personal responsibility for delivery in relation to entities.
27. The SRA has undertaken several rounds of consultation, starting with the principles behind the move to outcome-focused regulation and moving towards more detail on both the Handbook and broader approach. A series of communications activity including roadshows, webinars and information to raise awareness of the changes and invite feedback from the profession has also taken place. This communication programme is continuing.

Impact on SRA

28. In imposing specific reporting responsibilities on CoLPs and CoFAs, SRA needs to have in place arrangements that will allow them to manage the information that could be submitted. We have sought assurance on its ability to manage mandatory disclosure of non-compliance and whether the present arrangements can be adequately scaled up to reflect potentially larger volumes of information. We have also sought and received further information from SRA on how the information will be utilised in the new risk framework and inform the approach to supervision and enforcement.
29. The SRA recognises the risk that it could face a marked increase in notifications. The SRA is mitigating this risk by enabling online information returns and development of system based prioritisation criteria, which will continue to evolve as more data is collected from firms. It has also developed a flexible approach to resourcing which enables staff to be reallocated if necessary.

30. The information submitted by firms will be one element of the data which will determine the supervisory and enforcement approach that the SRA takes with a particular firm.
31. One of the tests on which the Board must be satisfied when assessing an application to change regulatory arrangements is that “the applicant is competent, and has sufficient resources to perform the role of approved regulator in relation to the reserved legal activities in respect of which it is designated” (Schedule 4, 25(4)(b)). Based on the information and assurances from the SRA we have concluded that the SRA will continue to be competent to deliver effective regulation.

SRA Waiver Policy

32. Historically, there has been limited transparency of the SRA’s general approach to waivers and where they have been issued. If used effectively, waivers can be a powerful regulatory tool to ensure avoidance of the potential perverse impact of a ‘one size fits all’ approach.
33. The success of the OFR Programme will be judged by the way the rules are used both properly and flexibly in authorisation, supervision and enforcement approaches. We consider that an effective waiver policy, which preserves the “exceptional circumstances” test but nevertheless gives greater visibility to the market about the SRA’s willingness to consider requests and how they will approach the assessment of such requests is an important element of this policy. If this is clearly communicated to the market, the Board considers that it should mitigate any inadvertent exclusionary effects that may be inferred from a reading of the Handbook alone.
34. We have therefore agreed with SRA that it will make a public statement on its general approach to waivers.

Restriction on fee charging for solicitors employed by ‘Not for Profit’ organisations

36. One of the issues we have raised in relation to an unintended but potential exclusionary component of the Handbook is the restriction on the ability of solicitors working in Not for Profit organisations (NfPs) to charge. This is not a new provision but has been carried over into the new Handbook on the basis that the issue will be considered more widely as part of the work on the Special Bodies regime. Although this rule is not changing we have raised the issue in relation to the wider context of the rules and in relation to the waiver policy.
37. Currently NfPs employing solicitors are unable to charge generally for their services. An identical agency (in terms of services provided) which does not employ any solicitors can charge a contribution towards costs or full cost recovery (subject, in some cases, to Charity Commission rules) because it will be outside SRA regulation.
38. In the SRA’s view, since NfPs often deal with vulnerable consumers it is not appropriate to give a general power to enable them to charge in the absence of a regulatory framework.
39. We do not agree with the SRA’s arguments that the risks posed by charging or securing a contribution to fees are such that it should be prohibited, particularly as there are already exemptions for SRA regulated NfPs which allow them to charge through public

funding (which has in practice meant legal aid, local authority funding, National Lottery and other charitable sources of income). We consider the SRA's approach is therefore potentially contradictory and as public funding streams come under pressure, potentially exclusionary to those NfPs that may wish to operate some kind of cross subsidy in order to continue providing services. Furthermore, we consider the option for these bodies to be brought within the full licensing regime to be potentially disproportionate in that it forces their business model to respond to one particular regulatory framework which has clearly been mandated through legislation for another purpose.

40. From our discussions with the SRA we understand it does not want to pre-empt its approach to the regulation of special bodies by changing its policy on NfP charging now. The SRA has confirmed that waiver applications will be considered (and has in fact granted such waivers in the past) and that the waiver policy will make this clear. The Board will continue to discuss how to make further progress on this issue in the coming months before it commences its full project on the regulation of special bodies.

Decision

41. Having considered all of the information provided and completed a detailed review of the proposed Handbook, the Board is satisfied that none of the criteria on which it may refuse an application (paragraph 25(3) of Schedule 4 to the Act) are met and therefore it should approve the change to regulatory arrangements.
42. In producing a new Handbook, the SRA repealed almost all previous sets of rules and regulations so in effect this Decision Notice approves the entire Handbook (with the exception of the Qualified Lawyers Transfer Regulations 2009 and Higher Courts Qualification Regulations 2000 which were not repealed).
43. This Decision Notice also approves changes to the Minimum Terms and Conditions of Cover and the Assigned Risks Pool Policy (contained in the Qualifying Insurers Agreement) to reflect changes made in the Solicitors Indemnity Insurance Rules 2011.
44. The approval does not cover any guidance that is contained in the Handbook, as the SRA has confirmed that it considers such guidance to be clarificatory information to the market, rather than forming part of its regulatory arrangements.

Actions

- SRA and LSB to agree management information (both quantitative and qualitative) and a programme of reviews covering the pre-launch period and first two years of the OFR regime. To be agreed by 30 June 2011

Chronology

- The LSB received an application from the SRA on 18 March 2011
- The 28 day initial decision period for considering the application ended on 17 April 2011
- The Decision Period was extended to 17 June 2011 on 14 April 2011 to allow for a detailed assessment of the changes to be completed
- This Decision Notice is being published on our website on 17 June 2011

The Legal Services Board
17 June 2011

Summary of main changes to the SRA Handbook

Annex 1

| Nature of change | Relevant provisions | Purpose and outcome |
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| SRA Principles 2011 | | |
| New set of Principles | Principles 1-10 | To encourage firms and individuals to act in a principled manner. The desired outcome is the promotion of the regulatory objectives by focusing on the long-term objectives (“principles”) rather than simply on compliance with detailed rules. |
| Dealing with your regulator in an open, timely and co-operative manner | Principle 7 | To encourage firms to deal with the SRA in an open manner. The desired outcomes are: <ul style="list-style-type: none"> • the SRA is aware of key risks associated with that firm • the SRA can respond appropriately and swiftly in terms of supervision and enforcement to identified issues • trust is built between the SRA and its regulated community. |
| Running your business or carrying out your role in the business with proper governance, etc. | Principle 8 | To encourage effective management of firms at all levels within the firm. The desired outcomes are: <ul style="list-style-type: none"> • firms are properly governed; • firms identify their risks and implement appropriate mitigation controls • financial dishonesty is reduced through stronger financial oversight of firms by their management; • risks associated with firm failure (including the significant costs of interventions in firms) are mitigated either through reduced volumes of failures or through effective wind-down of firms; • staff within firms are properly supervised encouraging better service to clients and more effective risk mitigation. |
| Running your business in a way that encourages equality of opportunity and respect for diversity | Principle 9 | To encourage firms to act in accordance with the regulatory objective concerning diversity. The desired outcomes are: <ul style="list-style-type: none"> • firms respect equality and diversity • firms, in their recruitment and management of staff, encourage equality of opportunity • firms respect clients, regardless of equality strand. |
| Protect client money and assets | Principle 10 | To ensure that client money and assets are properly protected. Desired outcomes are: <ul style="list-style-type: none"> • client money is ring-fenced to reduce the risk of misappropriation and prevent clients from being impacted when a firm fails; • claims on the compensation fund are reduced through greater protection of client money. |
| SRA Code of Conduct 2011 | | |
| Mandatory outcomes: client care | Chapter 1 | <p>To ensure that clients receive a proper standard of service, which takes into account the client’s individual needs and circumstances; provide clients with the information they need to make informed decisions about the services they need, how these will be delivered and how much they will cost. There is greater emphasis on the needs of vulnerable clients.</p> <p>The chapter is also about ensuring that if clients are unhappy with the services they have received, they know how to make a complaint and that all complaints are dealt with properly. there is now a specific requirement to tell clients about their right to complain to the Legal Ombudsman.</p> <p>Rather than prescribing client information, the outcomes illustrate what should be achieved. How the outcomes are achieved will be determined by the type of firm and the needs of individual clients.</p> |

Summary of main changes to the SRA Handbook

Annex 1

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| Mandatory outcomes: management of firms and in-house practices | Chapter 7 | To ensure that firms are properly managed and the work carried out for clients is properly supervised. This expands on the new Principle 8, “run your business or carry out their role in the business effectively and in accordance with proper governance and sound financial and risk management principles”. This places a greater emphasis on managing risk. |
| Mandatory outcomes: Publicity | Chapter 8 | To ensure that publicity is not misleading and allows clients and members of the public to identify those they are dealing with and the extent to which they are regulated. Most of the detailed requirements concerning firms’ notepaper has been removed and replaced with a more general requirement to provide appropriate information about the firm and how it is regulated. |
| Mandatory outcomes : fee sharing and referrals | Chapter 9 | To ensure that when firms have arrangements with third parties for the introduction of work that such arrangements do not compromise independence, the client’s best interests, or the trust clients place in the firm. This will now apply to referrals between lawyers as well as non-lawyers. Much of the prescriptive detail, which focuses on process, has been removed and replaced with more general outcomes which emphasise the importance of independence, transparency and acting the client’s best interests. |
| Mandatory outcomes: firms’ and individuals’ relationship with their regulator | Chapter 10 | To ensure that firms and individuals co-operate fully with the SRA and the Legal Ombudsman. This includes new requirements to report specific information to the SRA, e.g. when the firm is in serious financial difficulty, and other indicators of when clients’ interests may be at risk. |
| Application of the Code. | Chapter 13 | Provisions have been adapted so that they can be applied to ABS and the remit of the Code to overseas practice is defined. This will give firms have clarity on the application of the Code. |
| Interpretations | Chapter 14 | Definitions have been updated. (SRA are developing a single glossary for the whole of the Handbook) |
| <p>The following chapters of the Code do not introduce any significant changes to the requirements of the current Code. The requirements are now expressed in terms of outcomes rather than prescriptive rules or processes:</p> <p>Chapter 2 Equality and Diversity Chapter 3 Conflicts of Interest Chapter 4 Confidentiality and disclosure Chapter 5 Your client and the Court Chapter 6 Introductions to third parties Chapter 11 Relations with third parties Chapter 12 Separate Businesses</p> | | |
| SRA Accounts Rules 2011 | | |
| Bringing ABS within the scope of the Accounts Rules, including the application of the rules to client money arising from the SRA-regulated activities of an ABS MDP | Introduction and rules 2(2), 4, 12(1), 17, 18, 29, 34; and Part G in relation to practice outside England and Wales. | To set out the obligations of ABS in relation to the holding of client money, In relation to and ABS MDP, to provide that client money arising from the SRA-regulated activities be held in a ring-fenced client account, separate from money arising from the other activities of the MDP which fall outside the regulatory reach of the SRA. Where an accountancy practice which has an ownership interest in, or is part of the group structure of, an ABS, to prohibit that practice from preparing an accountant’s report for the ABS. |

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| | | <p>Desired outcomes are:</p> <ul style="list-style-type: none"> • client money relating to SRA regulated activity is protected whether it is held by a traditional law firm or ABS; • firms understand which money is within and outside of the scope of the SRA Accounts Rules; • accountant’s reports are independent of ownership of an ABS. |
| Restating in rule form the overriding objective of the Accounts Rules, and introducing a specific obligation to comply with the Handbook Principles, and to satisfy the outcomes in relation to the effective financial management of the practice. | Rule 1 | <p>To reinforce and give greater prominence to the fundamental principle of keeping client money safe and to apply the Handbook Principles, and the outcomes in relation to the effective financial management of the firm, in the context of the handling of client money.</p> <p>Desired outcomes are that:</p> <ul style="list-style-type: none"> • client money is protected in the event of firm failure; • the risk of misappropriation of client money arising from a firm’s financial instability is reduced; • client and public confidence in the way in which firms run their practices is maintained. |
| Giving firms flexibility in relation to the payment of interest to clients. | Rules 22 to 25 | <p>Introducing an OFR approach to the payment of interest, requiring the payment of a fair and reasonable amount of interest, when it is fair and reasonable to do so. Firms will be required to have a policy on interest, the terms of which must be drawn to the attention of clients. The guidance notes have been expanded to assist firms in setting their interest policies.</p> <p>Desired outcomes are that:</p> <ul style="list-style-type: none"> • clients can make informed decisions concerning the provider of their legal services, including those relating to the holding of their money and the payment of interest; • firms develop policies for the payment of interest that are fair and reasonable; • firms (largely from the Muslim community) have the flexibility not to earn or pay interest for reasons connected with their faith. |
| Removing the prescriptive signing provisions in relation to withdrawals from client account. | Rule 21 | <p>Introducing an OFR approach to who may authorise withdrawals from client account, with a requirement for firms to have appropriate systems and controls in place for signing on client account. The rule, however, does not permit an owner, who is neither a manager nor an employee and not, therefore, involved in the day to day running of the practice, from being a signatory on client account (whether as the sole signatory or a co-signatory).</p> <p>Desired outcomes are that firms take greater responsibility for controls relating to withdrawals from client account and that external owners are prevented from having inappropriate access to the client account.</p> |
| Distinguishing between mandatory rules and non-binding guidance. | Throughout | <p>All the binding provisions contained in the current mandatory notes have been moved to the rules, and the purely explanatory provisions have been retained in non-mandatory guidance notes. These changes retain prescription only where necessary, providing clarity and giving firms greater flexibility.</p> <p>Desired outcome is that firms have clarity concerning the mandatory requirements of the SRA.</p> |
| Increasing the frequency of reconciliations for certain passbook- | Rule 29(12) | <p>Extending the obligation for five weekly reconciliations has been to passbook-operated separate designated client accounts of solicitor-trustees, in place of the current 14 weekly requirement. There is no longer any justification for a less frequent checking of this type of account, and the change will result in the rationalisation of</p> |

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| operated accounts. | | the reconciliation provisions. Desired outcome is that regulation is proportionate to identified risks. |
| Modernising the Rules in relation to the use of electronic signatures and electronic bank statements. | Rules 21 and 29 | The Rules have been updated to allow firms to use electronic copies of bank statements, in place of paper statements, and to permit electronic authorities for client account withdrawals. Desired outcome is that Rules reflect current banking practices. |
| SRA Practice Framework Rules 2011 | | |
| Changes to provide for the structure of ABS within the framework of SRA regulation | Most provisions in these rules | Creating the framework to enable the establishment of a wider legal services market including ABS. Desired outcomes are: <ul style="list-style-type: none"> • a consistent level of consumer protection across SRA-regulated firms; • a framework for the regulation of legal services that provides for full interaction of firms and individuals within the wider regulated legal services sector e.g. permitting individuals and firms regulated by other regulators to be managers and owners of ABS; • a competitive legal services market with proportionate regulation. |
| Changes to deal with sole practitioners being treated as recognised bodies from 31 March 2012 (or such later date as the relevant order is made) | Throughout the rules, | To bring sole practitioners into regulation as recognised bodies, so that all non-ABS firms are regulated similarly. Desired outcome is that all firms are subject to a common approach to authorisation in order to ensure appropriate consumer protection. |
| The in-house exemption in relation to reserved legal work has been amended. | Rules 4.14, 4.16, 4.10 and 4.12 | To continue to permit in-house solicitors to act for clients other than their employer within the boundaries set by the LSA. In limited circumstances (where there is a nexus between the organisation and the client) an in-house solicitor will be able to provide reserved services (e.g., acting for fellow employees or related companies in the employer’s group). Where there is insufficient nexus the client will be regarded as “a section of the public” for the purposes of the LSA, and the body would need to be licensed to provide reserved services. <ul style="list-style-type: none"> • Commercial legal advice services (4.14) –drafted to prevent in-house solicitors in these circumstances providing reserved work. • Law centres and other not-for-profit organisations (4.16) – as such bodies have an 18 month grace period the need for amendments will be addressed as part of the work on special bodies. • Pro bono work (4.10) – because of the lack of any nexus between the organisation and the clients, in-house solicitors will only be able to provide pro bono reserved legal services, if doing so is clearly not part of the employer’s business • Associations (4.12) – because of the lack of nexus between the association and the clients in-house solicitors will not be able to carry out reserved legal activities for association members. Desired outcomes are that: <ul style="list-style-type: none"> • in-house exceptions reflect the LSA provisions; • the public interest is served through the provision of pro bono legal services in the restricted circumstances possible. |

Summary of main changes to the SRA Handbook

Annex 1

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| <p>The exception that allows in-house solicitors working for associations limited so that it applies to organisations whose members have a specialist interest in common.</p> | <p>Rule 4.12</p> | <p>The association exemption will not cover organisations whose members do not share a specialist interest. If such organisations wish to employ solicitors to carry out legal work for their members they will have to apply for a licence as an ABS.</p> <p>Desired outcome is that firms that should be authorised as ABS cannot avoid regulation by use of the in-house exceptions.</p> |
| <p>SRA Authorisation Rules 2011</p> | | |
| <p>Application of the SRA's regulatory provisions to ABS and to recognised bodies</p> | <p>Most provisions in these rules</p> | <p>To provide for equivalent regulation and client protections regardless of the business model through which legal services are provided.</p> <p>All applications will be considered in light of the regulatory objectives and the Authorisation Rules will ultimately apply ongoing regulatory standards to all firms. Transitional provisions will bring all provisions into effect for firms via a staged process. Common standards will provide flexibility for firms and enable them to move from ABS to recognised body status and vice versa.</p> <p>Rule 12 (Waivers) allows for provisions of the rules to be waived in exceptional cases where for example the impact of a particular rule in a particular case is not in the public interest.</p> <p>Desired outcomes are:</p> <ul style="list-style-type: none"> • only firms that are fit and proper are authorised and continue to be authorised; • the public is protected against the risk of unsuitable/disreputable providers of legal services; • the SRA is enabled to risk assess firms and supervise them appropriately through the provision of information from firms and other sources. |
| <p>The requirement to have a Compliance Officer for Legal Practice (COLP) and a Compliance Officer for Finance and Administration (COFA)</p> | <p>Rule 8.5</p> | <p>The requirements for COLP/COFA roles are flexible and outcomes-focused so that the status, experience and competence of the person fulfilling the role can be tailored to the risk represented by particular business models.</p> <p>Desired outcomes are that:</p> <ul style="list-style-type: none"> • firms implement appropriate systems and controls to manage their regulatory risks (including risks to clients); • the SRA is able to identify those persons who have responsibility for implementing controls and to take appropriate regulatory action in the event of the failure of those controls leading to poor client outcomes/other risks to the public. |
| <p>The requirement for suitability</p> | <p>Rule 8.5 (Compliance officers) and 8.6 (Management and control) and Part 4.</p> | <p>The rules require managers, and owners of a material interest, in all authorised bodies, and all COLPs and COFAs to be subject to assessment of their suitability. This is done via the Suitability Test under Part 4 of the rules and ensures that firms cannot take on individuals or bodies to those roles unless assessed as appropriate.</p> <p>(NB: the requirements in respect of managers and owners are dependent on securing an Exemption Order from the Rehabilitation of Offenders Act; this is the subject of ongoing discussions with the Ministry of Justice).</p> <p>The test is based on the current tests for admission as a solicitor, which is also the basis for assessing eligibility of non-lawyers of an LDP. The test is based on the SRA's current Character and Suitability guidelines.</p> <p>Approval may be withdrawn under rule 17 and, where unforeseen circumstances occur the rules allow for</p> |

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| | | <p>Temporary emergency approvals for compliance officers (rule 18) to ensure continuing compliance is possible.</p> <p>Because the test is based on admission criteria that solicitors have satisfied (and on which they are required to make annual declaration), they will be deemed to be approved. In addition other existing managers and owners of firms, at the point when recognised bodies are transitioned to regulation under the Authorisation Rules, will be deemed approved for those roles in their firm. This will apply to approved non-lawyers and to lawyers authorised by another approved regulator.</p> <p>Desired outcome is that only suitable firms, individuals, and entities are authorised/approved to hold roles in firms and remain to be authorised/approved to hold that role.</p> |
| <p>Remove annual renewal process; introduce a system of unlimited licensing for authorised bodies; requirement to pay an annual fee and to provide an annual information report</p> | <p>Rules 7, 8.3, 9, 10, 21 and 23</p> | <p>Under rule 21 (Effect and validity of authorisation) authorisation will be granted for the lifetime of the firm and allows for businesses to make long term plans. Rules 7 (grant of authorisation) 8.3 (Payment of periodical fees), 9 (Further conditions), Rule 10 (Modification of terms and conditions of an authorisation) and 23 (Suspension or revocation) support the system of such licensing.</p> <p>The Authorisation Rules require applicants for authorisation to submit information, including a compliance plan and a business plan. These will enable the SRA to identify any key risks posed by the prospective firm and assess whether or not it should be authorised and, if so, whether further licence conditions imposed on the firm.</p> <p>Although authorisations will be unlimited (in terms of time) SRA may revoke or suspend an authorisation if necessary. The rules contain requirements to pay periodical fees and for an information gathering process. The SRA's ability to revoke/suspend authorisation and the ongoing requirement for approval of (or withdraw approval from) key role holders i.e. managers and owners obviates the need for review of authorisation as part of an annual renewal process.</p> <p>Desired outcomes are:</p> <ul style="list-style-type: none"> • reduced administrative requirements for firms and the SRA through the removal of annual renewal; • greater efficiency in the SRA's operations through a single approach to authorisation. |
| <p>Information requirements at the point of authorisation and ongoing</p> | <p>Rules 3, 8.7, 8.8, 8.9, 8.10, 18, 23, 24 and 25</p> | <p>The rules contain a range of information-giving requirements both at the point of applying for authorisation and on an ongoing basis where authorisation is granted.</p> <p>Desired outcomes are that:</p> <ul style="list-style-type: none"> • the SRA is in a position to risk assess firms and therefore to determine the appropriate form and level of supervision for that firm; • the SRA can respond proportionately to issues identified through supervisory/disciplinary action; • the SRA can co-operate with other regulators in sharing information concerning its regulated community to facilitate the better regulation of legal services generally and of MDPs. |
| <p>SRA Practising Regulations 2011</p> | | |
| <p>Adding ABS into provisions for apportionment of fees on splits and mergers of firms</p> | <p>Regulation 4A</p> | <p>The purpose and desired outcome is the effective apportionment of regulatory fees between all types of firms.</p> |

Summary of main changes to the SRA Handbook

Annex 1

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| Updating the appeal period to the High Court | 7.6(b) | To bring the Rules in line with the Civil Procedure Rules. |
| SRA Recognised Bodies regulations 2011 | | |
| Adding ABS into provisions for apportionment of fees on splits and mergers of firms | Regulation 2A | The purpose and desired outcome is the effective apportionment of regulatory fees between all types of firm. |
| Updating the appeal period to the High Court | 7.5(b) | To bring the Rules in line with Civil Procedure Rules. |
| Inclusion of provisions from the Authorisation Rules | Regulation 5 and 10 | To bridge the gap and provide equivalent regulatory provisions as those applying to ABS until recognised bodies are regulated under the Authorisation Rules e.g. to deal with change in composition of firms and expiry of recognition. Desired outcome is a common standard of consumer protection across all firms. |
| SRA Training Regulations 2011 | | |
| Removal of age criteria for eligibility to attempt the Common Professional Examination (CPE) | Part 1 – regulation 6 | Removed the mature student age limit requirement and the requirement for non graduate CPE students to demonstrate character and suitability and English language abilities. Desired outcome: <ul style="list-style-type: none"> • removal of unjustifiable age limit; • people under the age of 25 can now apply for 'mature student' status and attempt the CPE. |
| Removal of age requirement from “qualifying employment” definition | Part 1 – regulation 1 | Removed, because unjustifiable, the requirement that only experience attained after age 18 can count towards “qualifying employment”. (Used to describe the experience that Members of ILEX must have in order to be eligible to attempt the Common Professional Examination (CPE) and enter into a training contract). All relevant experience can now be taken into account. |
| Amendment to the point at which Exempting Law Degree Students must apply for student enrolment | Part 1 – regulation 12 | Amended the Regulations to state that Exempt Law Degree (ELD) students must apply for student enrolment before they begin year three of the course (rather than not proceeding beyond year one without enrolment). This aligns student enrolment requirements aligned for ELD, QLD and LPC students. ELD providers’ administrative burden is reduced. |
| Amendment to the validity period of certificates of student enrolment | Part 1 – regulation 14 | Regulations amended to extend the validity period of a certificate of student enrolment to the remainder of the calendar year in which they apply plus another four years (previously required to re-enrol after 2 years, then annually). |
| Additional requirement on providers of training contracts to check potential trainees’ student enrolment | Part 2 – regulation 4 | Training providers to ensure that the trainee has valid student enrolment before entering a training contract. Desired outcome is that organisations will be satisfied that their trainees have had their character and suitability checked and that there are no issues that could delay or prohibit their eventual admission. This change also provides an added protection for consumers. |
| Additional regulation to govern termination of training contracts arising from case law | | Additional regulation to provide more clarity about the requirements for termination of a training contract. The Training Regulations do not currently specify the grounds upon which the SRA can order the termination of the training contract and the template training contract wording is inconsistent with guidance. In addition to providing this will facilitate easier removal from training contracts of those who do not meet the required standard. |

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| Amendment to the Professional Skills Course (PSC) and training contract commencement requirements | Part 1 – regulations 20 and 21 | Amended the regulations to allow individuals who have taken all of the LPC assessments but not received their stage 2 results to be able to start a training contract and commence the Professional Skills Course. This will allow the flexibility in training offered by the restructured LPC to be exploited. |
| SRA Admission Regulations 2011 | | |
| Remove right to appeal for those who have been refused mature student status under regulation 9(1)(iii) of the Solicitors' Training Regulations 2009 | Part 2 - Appeals | As the requirement to prove character and suitability (mature students) to attempt the Common Professional Examination has been removed from the Training Regulations, there is no need for a right of appeal. |
| SRA Qualified Lawyers Transfer Scheme Regulations 2011 | | |
| Overseas lawyers who have completed the LPC should be exempt from the Multiple Choice Test | Regulation 3 | Exemption from the Multiple Choice Representation Test for 'international lawyer' applicants (who must complete an England and Wales LPC as part of their qualification process) who have successfully completed a substantial part of our domestic qualification process. The SRA will require such people to apply to us for such an exemption. Desired outcome is that people who have already demonstrated competence at LPC level will not have to take unnecessary additional assessment. |
| Re-instatement of commencement and repeal, and transitional arrangement sections | Regulations 9 and 10 | Transitional arrangements added as regulations (previously in schedules that have now been deleted). Also, representations have been made recently by part-time BVC students who felt that were treated less favourably than full-time students. Although they commenced the course at the same time as the full-time cohort, their completion date would come after the deadline for applications under the QLTR 2009 meaning they would not be eligible, whereas the full-timers would be eligible. SRA have considered this and decided that they should be covered by the transitional arrangements and thus avoid unfair treatment. |
| SRA Solicitors Keeping of the Roll Regulations 2011 | | |
| Amending the description of the roll to be a list of all solicitors of the Senior Courts of England and Wales, rather than the Supreme Court | Regulation 2A | To reflect changes under section 59(1) of the Constitutional Reform Act 2005 |
| Inclusion of a transitional provision to amend the information to be held on the Roll when sole practitioners are regulated as recognised bodies and the addition of guidance to explain these changes | Regulation 16 and Guidance to regulation 2C | Provide for future changes to information on the roll, and explanatory text, to reflect changes on the passporting of existing recognised sole practitioners to become recognised bodies. Firms and the public understand the location of regulatory information when the regulation of sole practitioners changes. |
| Updating the appeal period to the High Court | Regulation 14 | To bring in line with the Civil Procedure Rules |
| SRA Indemnity Insurance Rules 2011 | | |
| Extension of the Solicitors Indemnity Insurance Rules to accommodate ABS | Various | Accommodate ABS within the Rules to ensure clients of ABS receive same level of protection |

Summary of main changes to the SRA Handbook

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| Definition of “eligible firm” | Rule 3.1 | Amended to limit the period a firm is eligible to be in the ARP from 12 months to six (with transitional provisions for firms already in the ARP) |
| Identity of each firm’s qualifying insurer to be a matter of public record | Rule 17.6 and clause 16.3 of QIA | Improve transparency by including this as part of the publicly available information held on each firm (available on request) |
| Clarification of insurers obligation to provide information to SRA | Clauses 6.2 and 6.3.2 of QIA | Insurers will be required to notify SRA and the ARP manager where a firm refuses to pay any sum due to the insurer |
| Removal of provision for recalculation of ARP participation in the event of insurer insolvency | Paragraph 9.3 to Schedule 1 of QIA | Removes insurers open-ended, unquantifiable risk. It is expected that this will improve competition in the market for solicitors professional indemnity insurance |
| Removal of references to the Legal Complaints Service | Clauses 1.2.6 of QIA Clauses 1.8, 7.11 and 8.1 of Schd 2 to QIA Rule 17 Clauses 1.8 and 8.1.1 of Appendix 1 to the Rules | Consequential amendments following closure of Legal Complaints Service and the establishment of the Office for Legal Complaints |
| SRA Indemnity (Enactment) Rules 2011 | | |
| Extension of the existing Solicitors’ Indemnity Rules to accommodate ABS. | Changes made throughout the rules | To ensure that clients of an ABS receive the same level of protection as clients of a traditional firm of solicitors and that the level of protection is proportionate to the risk. ABS will be entitled to indemnification from the SIF in the same way and on the same terms as other persons and entities. |
| Deletion of rule 22 | Rule 22 | Rule 22 specifically dealt with return of contributions made to the Solicitors Indemnity Fund in 2001/02 and 2002/03 indemnity years. Rule deleted as redundant. |
| SRA Compensation Fund Rules 2011 | | |
| The existing compensation arrangements are applied to an ABS in respect of its “regulated activity”. | Rule 1(1) | This delineates the SRA’s jurisdiction in relation to an ABS which is an MDP, and mitigates the risks of claims not related to SRA regulated activity. |
| The Law Society/SRA is enabled to maintain a single fund and to make grants from it in respect of default by an ABS in the course of performance of the ABS’s regulated activity. | Rule 2 | <ul style="list-style-type: none"> • To provide clarity for consumers; • To avoid complex disputes about which compensation fund should deal with particular losses, especially where a firm may have changed between being an ABS and traditional law firm; and • To avoid the disproportionate costs associated with establishing a new fund, which would create a bar to new entrants, including traditional law firms wanting to be ABS. <p>Desired outcome is that consumers are protected to a common standard from defaults of traditional law firms and ABS.</p> |

Summary of main changes to the SRA Handbook

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| ABS are required to make contributions to the Fund. | Rule 2 | Desired outcome is that consumers are protected to a common standard from defaults of traditional law firms and ABS. |
| The arrangements are expressed as being in force until 31 December 2012 | Rules 1(4) and (5); 2(1)(c)-(e); 2(3); 25 | This is an interim solution, the duration of which has been agreed with the LSB. |
| The fund covers acts or omissions by regulated firms (including licensed bodies and former licensed bodies), managers, employees and owners. | Rules 1(1); 3(2) | In relation to acts or omissions by owners of licensed bodies, who are neither managers nor employees, we believe that clients should be compensated for the acts or omissions of such persons, and we understand this will be addressed in the section 69 order. Desired outcome is that consumers are protected against defaults by persons who own firms; we consider this to be in the public interest. |
| SRA Intervention Powers (Statutory Trust) Rules 2011 | | |
| Extend application of existing rules to ABS | Throughout draft STR | Extension of the rules is necessary to ensure clients of an ABS receive the same protection as those of a traditional firm of solicitors. |
| SRA Disciplinary Procedure Rules 2011 | | |
| To include the powers to fine ABS / those involved in an ABS and provide for appropriate criteria and procedure. | Rule 3, appendix 1, rule 8 and Part 2 (procedure). | To set out the SRA's power to fine ABS / those involved in ABS. To provide for transparent criteria and a fair procedure for imposing fines. Rule 6 provides for the preparation of a disclosable report setting out the details of the disciplinary matter and an opportunity for the regulated person to make representations in the matter. Desired outcome is that any financial penalty is proportionate to the means of the regulated person and the criteria at appendix 1 have been drafted accordingly. |
| To include the power to disqualify a person from involvement in an ABS and provide for appropriate criteria and procedure. | Rule 3, appendix 3, rule 9 and Part 2 (procedure). | To set out the SRA's power to disqualify persons (individuals and entities) from involvement in an ABS. To provide for transparent criteria for disqualifying persons and for a fair procedure which allows regulated persons to make representations in their matter. Desired outcomes are that: <ul style="list-style-type: none"> • consumers are protected through the disqualification of individuals whom the SRA believe put consumers at risk; • disqualification procedures are transparent for the regulated community; • the SRA responds proportionately to disciplinary matters. |
| Applying the 'written rebuke' and publication procedures and criteria to ABS. | Rule 1 (definitions of 'regulated person', 'SRA Finding' and 'disciplinary decision') and rule 3(1); Rule 3(5) and Apdx 2 | The SRA view is that, as with traditional law firms now, there should be a disciplinary outcome which sits underneath the powers to fine and rebuke. This makes provision for SRA to issue a written rebuke in appropriate cases. Desired outcomes are that: <ul style="list-style-type: none"> • consumers and the general public are made aware of decisions related to regulated persons in order to maintain confidence in the regulation of legal services; • the SRA deters firms from breaching Handbook requirements including the outcomes in the Code by taking proportionate disciplinary action; • disciplinary procedures are transparent for the regulated community. |

Summary of main changes to the SRA Handbook

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| <p>To vary one decision making procedure and apply the others (including the application of the civil standard of proof) to ABS.</p> | <p>The variation of rule 7(9) and the application of rules 7-9.</p> | <p>The LSA allows for the SRA for the first time to impose the most severe disciplinary sanctions available (in respect of ABS only) 'in-house'. The SRA is therefore proposing to vary rules in respect of decision making procedure in order to set out a broader range of options for how evidence can best be heard in individual cases.</p> <p>Otherwise, the SRA is proposing to apply the current decision making procedures (as approved by the LSB previously) to ABS as it is felt that these are appropriate in order to ensure a fair, consistent, transparent and proportionate decision making process.</p> <p>Desired outcomes are that:</p> <ul style="list-style-type: none"> disciplinary proceedings are fair and the manner of the hearing is proportionate to the complexity and seriousness of the matter; disciplinary procedures are transparent for the regulated community. |
| <p>To allow for the suspension of financial penalties.</p> | <p>Rule 8(2)</p> | <p>The SRA will suspend financial penalties in some cases. The intention is that the payment of the penalty can be suspended provided that, for example, a regulated person is not subject to any further disciplinary findings over a fixed period of time.</p> <p>Desired outcomes are that:</p> <ul style="list-style-type: none"> the SRA deters firms from breaching Handbook requirements including the outcomes in the Code by taking proportionate disciplinary action and encourages improvement in outcomes for consumers, whilst ensuring that cases which ultimately require sanction are dealt with in an appropriate, proportionate and cost effective manner; disciplinary procedures are transparent for the regulated community. |
| <p>SRA Cost of Investigations Regulations 2011</p> | | |
| <p>Application of the costs recovery provisions to ABS.</p> | <p>Various</p> | <p>The desired outcomes are:</p> <ul style="list-style-type: none"> that the regulators costs are recovered from persons subject to investigation, deterring malpractice and ensuring regulatory effectiveness; that the existing costs recovery provisions for law firms will be applied to ABS. |
| <p>SRA Property Selling Rules 2011</p> | | |
| <p>Transfer of conduct obligations currently found in rule 18 of the Solicitors' Code of Conduct 2007 to the SRA Property Selling Rules so that there are requirements relating to standards of property selling, statements of agreement, and transactions in which the solicitor has a personal interest</p> | <p>Rules 3-5</p> | <p>These proposals are designed to ensure that the requirements of the EAA are replicated, and that solicitors providing estate agency services through their law firms can continue to rely on the exemption in the EAA. This is in the interests of the public and a competitive market place.</p> |
| <p>SRA Financial Services (Scope) Rules 2001</p> | | |
| <p>Extension of regulatory reach to ABS</p> | <p>Application</p> | <p>The provisions will enable ABS which are licensed by the SRA to benefit from the Part XX exemption and carry</p> |

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| | provisions and Rule 2 | on exempt regulated activities for their clients (insofar as these apply in respect of the licensed activities of the firm). Desired outcome is that a competitive legal services market is maintained by enabling ABS to conduct exempt financial services. |
| SRA Financial Services (Conduct of Business) Rules 2001 | | |
| Extension of regulatory reach to ABS | Application provisions and Rule 2 | The provisions will mean that ABS, which are licensed by the SRA and are able to benefit from the Part XX exemption, will be subject to the same behavioural requirements as traditional law firms. Desired outcome is that a competitive legal services market is maintained by enabling ABS to conduct exempt financial services. |
| SRA European Cross-Border Practice Rules 2011 | | |
| Applying European cross-border practice provisions to ABS | Rule 2.2 | The desired outcome is that persons regulated by the SRA satisfy the requirements of the CCBE Code when conducting European cross-border practice and contribute to a system of mutual understanding in which a proper standard of service is provided to clients in cross-border work. |

NB: This table does not include the SRA Higher Rights of Audience Rules 2011 as no substantive changes have been made to these rules.