



Solicitors  
Regulation  
Authority

## **Red Tape Initiative - Phase 2**

Removing unnecessary regulations and simplifying  
processes

April 2013

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## Red Tape Initiative—Phase 2: Removing unnecessary regulations and simplifying processes

### Introduction

This consultation forms part of our continuing Red Tape Initiative to remove, curtail or simplify regulations and processes which are not demonstrably in the public interest, impeding both those we regulate and our ability to focus on the issues that really matter.

The ten proposals discussed in Phase 1 of the Red Tape Initiative (<http://www.sra.org.uk/sra/consultations/red-tape-initiative.page>) have been approved by the Legal Services Board and are included in version 7 of the SRA Handbook which was released on 1 April 2013. As part of the first phase, we sought your views on other areas where regulations and processes were considered to be unduly burdensome and served no purpose in protecting the public interest. A number of suggestions were made and two regulatory areas have been considered which form the subject of this consultation. We hope to have these amendments approved for inclusion in version 8 of the Handbook which is due for release on 1 October 2013.

### Purpose of the consultation

This consultation seeks your views on proposals to remove unnecessary regulation in respect of:

1. the reporting obligations of the COLP (Compliance Officer for Legal Practice) and the COFA (Compliance Officer for Finance and Administration); and
2. the practising certificate renewal process following certain events.

### Proposal 1 – Reduce the reporting obligations of the compliance officers

**To amend the SRA Authorisation Rules for Legal Services Bodies and Licensable Bodies 2011 and SRA Practising Regulations 2011 in order to remove the obligation of the compliance officers of recognised bodies and recognised sole practitioners to report non-material breaches as part of the annual submission of information to the SRA.**

### What was the original purpose of this regulation?

Section 91 of the Legal Services Act 2007 (LSA) requires the Head of Legal Practice of a licensed body (ABS) to report to the licensing authority, as soon as reasonably practicable, any failure to comply with the terms of its licence or the regulatory arrangements (other than accounts rules obligations).

Section 92 of the LSA requires the Head of Finance and Administration of a licensed body to report any breaches of licensing rules in relation to the handling of client money to the licensing authority as soon as reasonably practicable.

These statutory requirements to report all breaches apply to licensed bodies only but were applied by the SRA to all regulated firms and sole practitioners, adopting the terms COLP and COFA, in order to maintain consistency of regulation between traditional firms and ABSs.

Rule 8.5 of the Authorisation Rules (recognised/licensed bodies) and rule 4.8 of the Practising Regulations (recognised sole practitioners) require the COLP or COFA as appropriate to:

- (a) report material breaches to the SRA as soon as reasonably practicable;
- (b) report non-material breaches as part of the annual information report submitted to the SRA;
- (c) record all breaches and make those records available to the SRA on request.

**Why are we recommending amending this regulation?**

Removing the obligation on recognised bodies and sole practitioners to report non-material breaches will strengthen our risk-based, outcomes-focused approach to regulation and allow us to focus time and resource on material breaches which have to be reported.

The effect of the proposed amendment will also give firms responsibility for identifying patterns of non-material breaches, that together may amount to material breaches because of systemic issues or failures which may then collectively need to be reported to the SRA immediately.

This continued recording by all firms of non-material breaches is essential to allow firms to identify risks and take steps to manage those risks effectively. The compliance officers in recognised bodies and sole practitioners' firms will, however, be free to record these issues in a way which suits the individual firm, rather than in any standard format imposed by the SRA for reporting purposes.

Consistent regulation of all types of firm is very important and we will continue to explore this with the Ministry of Justice. We take the view, however, that requiring the delivery of information on all breaches from over 10,000 firms, primarily because the LSA imposes that requirement on a much lower number of ABSs, is unsustainable and cannot be justified in the context of proportionate, risk-based and cost-effective regulation.

Although we cannot remove the obligation of ABS firms to report non-material breaches because of the full reporting obligations imposed on them by the LSA, the position is mitigated through the existing rules which allow non-material breaches to be included in the annual information report. All firms will remain subject to the requirement to record all breaches for production to us on request.

**Consultation questions**

Do you agree with the proposal?

Are there any consequences, risks and/or benefits which have not been outlined?

Are there any costs that have not been anticipated?

## **Proposal 2 – Simplify the practising certificate renewal process following certain events**

To amend the SRA Practising Regulations 2011 in order to:

- (a) confirm that a solicitor or European lawyer will not be subject to Regulation 3 of the SRA Practising Regulations 2011 if they ceased to be a manager of an authorised body or an authorised non-SRA firm or director of a company or a member of an LLP 36 months prior to an insolvency event;
- (b) remove the six week notice period required when an applicant for a practising certificate, or registration as a European lawyer, is subject to Regulation 3; and
- (c) clarify that applicants need not declare an historic event again, once an application for a practising certificate or registration as a European lawyer has been granted free from any conditions in respect of that event.

### **What was the original purpose of this regulation?**

Regulation 3 of the SRA Practising Regulations 2011 applies to an initial application for a practising certificate, an application for replacement of a practising certificate, an initial application for registration in the register of European lawyers and an application for renewal of registration in the register of European lawyers, following circumstances set out in Regulation 3.1 of the Regulations.

The SRA has the power to impose conditions or refuse an application in the public interest when considering an application. Conditions empower us to control the way in which individuals work, with whom they work, in what capacity, and more.

Regulation 3 does not apply indefinitely to an historic event where it was considered unnecessary to impose any conditions (this is covered by the first exception set out at Regulation 3.3). For example, an applicant who has been currently charged with an indictable offence must notify the SRA of the event under Regulation 3, but will not need to do so again in subsequent applications if the practising certificate or registration in the register of European Lawyers is granted free from conditions. If conditions are imposed on a first notification, Regulation 3 continues to apply only until such time as the conditions are lifted in respect of the event in question.

Regulation 3.1(k)(iii) and (iv) sets out that Regulation 3 applies where an applicant has been a manager of an authorised body, director of a company or member of an LLP which has become insolvent.

The effect of Regulation 3 is that a solicitor/European lawyer must apply early for their practising certificate/registration and allows the SRA to consider whether a condition should be applied to the practising certificate or registration. Regulation 3.2 states that the application must be commenced at least six weeks before the date for replacement of the practising certificate/renewal of the European lawyer registration. The six week notification requirement emanates from the original provisions

contained within section 12 of the Solicitors Act 1974 which were repealed but replicated in Regulation 3 of the SRA Practising Regulations 2009 and 2011.

### **Why are we recommending amending this regulation?**

Regulation 3.1 (k)(iii) and (iv) does not stipulate that the solicitor/European Lawyer must have been a manager of an authorised body or authorised non-SRA firm, director or member of the company or LLP at the time of the insolvency event for Regulation 3 to apply. Neither is it stipulated that the individual applying for a practising certificate or registration in the register of European Lawyers must have been a manager, director or member within a certain period prior to the insolvency event for Regulation 3 to apply.

The effect of the current provision is that an individual who, for example, was involved in setting up a company as a director 10 years ago and ceased to be involved shortly after, will be subject to Regulation 3 if that company, at a future date, becomes insolvent.

Having reviewed the provisions set out in Regulation 3.1(k)(iii) and (iv) and the regulatory decisions we have made, the effect of the provision is disproportionate and potentially risks large numbers of solicitors/European Lawyers becoming subject to Regulation 3 unnecessarily which adds an administrative burden for individual applicants and the SRA.

The Insolvency Service have provided Official Receivers, Insolvency Practitioners and other appointed representatives with guidance which explains that they must send to the Secretary of State a report on the conduct of all directors who were in office in the last 3 years of the company's trading. The Secretary of State has to decide whether it is in the public interest to seek a disqualification order in respect of those directors. With this time frame in mind, we consider that the same time frame should apply with regards to the provisions contained in Regulation 3.1(k)(iii) and (iv).

With the introduction and availability of 'mySRA', practitioners are able to notify the SRA of events as and when they happen. This means that we no longer need six weeks' notification of the intention to make an application in Regulation 3 circumstances as information will already be available to the SRA.

Removing the redundant six week notification requirement will reduce the time and expense incurred by both applicants and the SRA.

A number of initially reportable circumstances under Regulation 3 continue to be declared on subsequent applications for renewal of a practising certificate/European lawyer registration. This results in additional time and expense being incurred unnecessarily on the part of applicants and the SRA.

It is important to ensure, as part of proportionate, risk-based regulation, that regulations are applied only when necessary. We are proposing, therefore, to make the position on historic events clearer in Regulation 3 itself and in the accompanying notes to the application form.

### **Consultation questions**

Do you agree with the proposal?

Is the 36 month time limit included in Regulation 3.1(k)(iii) and (iv) appropriate?

Are there any consequences, risks and/or benefits which have not been outlined?

Are there any costs that have not been anticipated?

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## Appendix 1: Proposed amendments to regulations

### Proposal 1 – Reduce the reporting obligations of the compliance officers

#### SRA Authorisation Rules for Legal Services Bodies and Licensable Bodies 2011 [extracts]

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#### 8.5 Compliance officers

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- (c) The *COLP* of an *authorised body* must:
- (i) take all reasonable steps to:
    - (A) ensure compliance with the terms and conditions of the *authorised body's authorisation* except any obligations imposed under the *SRA Accounts Rules*;
    - (B) ensure compliance with any statutory obligations of the body, its *managers, employees* or *interest holders* in relation to the body's carrying on of *authorised activities*; and
    - (C) record any failure so to comply and make such records available to the *SRA* on request; and
  - (ii) ~~as soon as reasonably practicable, report to the *SRA* any failure so to comply, provided that:~~
    - (A) ~~in the case of non-material failures, these shall be taken to have been reported as soon as reasonably practicable if they are reported to the *SRA* together with such other information as the *SRA* may require in accordance with Rule 8.7(a); and~~
    - (B) ~~a failure may be material either taken on its own or as part of a pattern of failures so to comply.~~
  - (ii) in the case of a *licensed body*, as soon as reasonably practicable, report to the *SRA* any failure so to comply, provided that:
    - (A) in the case of non-material failures, these shall be taken to have been reported as soon as reasonably practicable if they are reported to the *SRA* together with such other information as the *SRA* may require in accordance with Rule 8.7(a); and

(B) a failure may be material either taken on its own or as part of a pattern of failure so to comply;

**(iii)** in the case of a recognised body, as soon as reasonably practicable, report to the SRA any material failure so to comply (a failure may be material either taken on its own or as part of a pattern of failure so to comply).

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(e) The COFA of an *authorised body* must:

(i) take all reasonable steps to:

(A) ensure that the body and its *employees* and *managers* comply with any obligations imposed upon them under the *SRA Accounts Rules*;

(B) record any failure so to comply and make such records available to the *SRA* on request; and

~~(ii) as soon as reasonably practicable, report to the *SRA* any failure so to comply, provided that:~~

~~(A) in the case of non-material failures, these shall be taken to have been reported as soon as reasonably practicable if they are reported to the *SRA* together with such other information as the *SRA* may require in accordance with Rule 8.7(a); and~~

~~(B) a failure may be material either taken on its own or as part of a pattern of failures so to comply.~~

**(ii)** in the case of a licensed body, as soon as reasonably practicable, report to the *SRA* any failure so to comply, provided that:

(A) in the case of non-material failures, these shall be taken to have been reported as soon as reasonably practicable if they are reported to the *SRA* together with such other information as the *SRA* may require in accordance with Rule 8.7(a); and

(B) a failure may be material either taken on its own or as part of a pattern of failure so to comply;

**(iii)** in the case of a recognised body, as soon as reasonably practicable, report to the *SRA* any material failure so to comply (a failure may be material either taken on its own or as part of a pattern of failure so to comply).

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## Guidance notes

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- (viii) Those designated as COLP will need to be in a position to be able to discharge the role. They will need to consider whether they are in a position to, for example:

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(b) ~~as soon as reasonably practicable, report to the SRA any failure to comply. Where such failure is material, either on its own or because it forms part of a pattern, the immediacy of the report will depend on the circumstances and seriousness of the breach. The report need not be made until the annual information report under Rule 8.7 where such failure is neither material of itself nor because it forms part of a pattern of non-compliance.~~

(b) in the case of a licensed body, as soon as reasonably practicable, report to the SRA any failure to comply. Where such failure is material, either on its own or because it forms part of a pattern, the immediacy of the report will depend on the circumstances and seriousness of the breach. The report need not be made until the annual information report under Rule 8.7 where such failure is neither material of itself nor because it forms part of a pattern of non-compliance;

(c) in the case of a recognised body, as soon as reasonably practicable, report to the SRA any material failure to comply, whether such failure is material on its own or because it forms part of a pattern of non-compliance. The immediacy of the report will depend on the circumstances and seriousness of the breach.

- (ix) Those designated as COFA will need to be in a position to be able to discharge the role. They will need to consider whether they are in a position to, for example:

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(g) ~~as soon as reasonably practicable report to the SRA any failure to comply with the SRA Accounts Rules. Where such failure is material, either on its own or because it forms part of a pattern, the immediacy of the report will depend on the circumstances and seriousness of the breach. The report need not be made until the annual information report under Rule 8.7 where such failure is neither material of itself nor because it forms part of a pattern of non-compliance.~~

(g) in the case of a licensed body, as soon as reasonably practicable, report to the SRA any failure to comply with the SRA Accounts Rules. Where such failure is material, either on its own or because it forms part of a pattern, the immediacy of the report will depend on the circumstances and seriousness of the breach. The report need not be made until the annual information report under Rule 8.7 where such failure is neither material of itself nor because it forms part of a pattern of non-compliance;

- (h) in the case of a recognised body, as soon as reasonably practicable, report to the SRA any material failure to comply, whether such failure is material on its own or because it forms part of a pattern of non-compliance. The immediacy of the report will depend on the circumstances and seriousness of the breach.

#### SRA Practising Regulations 2011 [extracts]

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#### 4.8 Compliance officers

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(c) The COLP must:

- (i) take all reasonable steps to:
- (A) ensure compliance with the *SRA's regulatory arrangements* except any obligation imposed under the *SRA Accounts Rules*;
  - (B) ensure compliance with any statutory obligations of the *recognised sole practitioner* and any *employees* of the *firm*; and
  - (C) record any failure so to comply and make such records available to the *SRA* on request; and
- (ii) ~~as soon as reasonably practicable, report to the SRA any failure so to comply, provided that:~~
- ~~(A) in the case of non-material failures, these shall be taken to have been reported as soon as reasonably practicable if they are reported to the SRA together with such other information as the SRA may require in accordance with regulation 4.13(a); and~~
  - ~~(B) a failure may be material either taken on its own or as part of a pattern of failures so to comply.~~
- (ii) as soon as reasonably practicable, report to the SRA any material failure so to comply (a failure may be material either taken on its own or as part of a pattern of failure so to comply).

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(e) The COFA must:

- (i) take all reasonable steps to:
- (A) ensure compliance with any obligations imposed upon the *recognised sole practitioner* or any *employees* of the *firm* under the *SRA Accounts Rules*; and

**(B)** record any failure so to comply and make such records available to the *SRA* on request; and

~~(ii) as soon as reasonably practicable, report to the *SRA* any failure so to comply, provided that:~~

~~(A) in the case of non-material failures, these shall be taken to have been reported as soon as reasonably practicable if they are reported to the *SRA* together with such other information as the *SRA* may require in accordance with regulation 4.13(a); and~~

~~(B) a failure may be material either taken on its own or as part of a pattern of failures so to comply.~~

**(ii)** as soon as reasonably practicable, report to the *SRA* any material failure so to comply (a failure may be material either taken on its own or as part of a pattern of failure so to comply).

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#### Guidance notes

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(vi) Those designated as COLP will need to be in a position to be able to discharge the role. They will need to consider whether they are in a position to, for example:

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~~(b) as soon as reasonably practicable, report to the *SRA* any failure to comply. Where such failure is material, either on its own or because it forms part of a pattern, the immediacy of the report will depend on the circumstances and seriousness of the breach. The report need not be made until the annual information report under regulation 4.13 where such failure is not material of itself or because it forms part of a pattern of non-compliance.~~

**(b)** as soon as reasonably practicable, report to the *SRA* any material failure to comply, whether such failure is material either on its own or because it forms part of a pattern of non-compliance. The immediacy of the report will depend on the circumstances and seriousness of the breach.

(vii) Those designated as COFA will need to be in a position to be able to discharge the role. They will need to consider whether they are in a position to, for example:

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~~(g) as soon as reasonably practicable report to the *SRA* any failure to comply with the *SRA* Accounts Rules. Where such failure is material, either on its own or because it forms part of a pattern, the immediacy of the report will depend on the circumstances and seriousness of the~~

~~breach. The report need not be made until the annual information report under regulation 4.13 where such failure is neither material of itself nor because it forms part of a pattern of non-compliance.~~

- (g)** as soon as reasonably practicable, report to the SRA any material failure to comply with the SRA Accounts Rules, whether such failure is material either on its own or because it forms part of a pattern of non-compliance. The immediacy of the report will depend on the circumstances and seriousness of the breach.

## Proposal 2 – Simplify the practising certificate renewal process in relation to declarable events

### SRA Practising Regulations 2011 [extracts]

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#### Regulation 3: Application following certain events

- 3.1** Regulation 3 applies ~~(subject to 3.3 below)~~ to an initial application for a practising certificate, an application for replacement of a practising certificate, an initial application for registration in the *register of European lawyers* and an application for renewal of registration in the *register of European lawyers*, in any of the following circumstances, subject to the exceptions set out in 3.3 below, relating for example to a previously declared event.

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- (k)** The applicant:
- (i)** has been adjudged bankrupt and discharged;
  - (ii)** has entered into an individual voluntary arrangement or a partnership voluntary arrangement under the Insolvency Act 1986;
  - (iii)** ~~has been a *manager of a recognised body, a licensed body or an authorised non-SRA firm* which has entered into a voluntary arrangement under the Insolvency Act 1986;~~
  - (iv)** ~~has been a *director of a company or a member of an LLP* which has been the subject of a winding up order, an administration order or administrative receivership; or has entered into a voluntary arrangement under the Insolvency Act 1986; or has been voluntarily wound up in circumstances of insolvency.~~
  - (iii)** has at any time during the last 36 months of trading of a *recognised body, a licensed body or an authorised non-SRA firm* which has entered into a voluntary arrangement under the Insolvency Act

1986, been a manager of that recognised body, licensed body or authorised non-SRA firm;

- (iv)** has at any time during the last 36 months of trading of a company or of an LLP which has been the subject of a winding up order, an administration order or administrative receivership; or has entered into a voluntary arrangement under the Insolvency Act 1986; or has been voluntarily wound up in circumstances of insolvency, been a director of that company or a member of that LLP.

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**3.2** If regulation 3 applies:-

- (a)** ~~an application for replacement of a practising certificate or for renewal of registration in the register of European lawyers must be commenced at least six weeks before the replacement or renewal date by submitting a completed application form, together with the prescribed fee and any Compensation Fund contribution required; and~~
- (b)** the SRA:
- (ia)** has no discretion under regulation 3 to grant the application if the applicant does not meet the conditions in regulation 2.2(a) to (c) or 2.3(a)(i) to (vi);
- (iib)** has discretion to impose a condition or conditions in accordance with regulation 7; and
- (iiic)** has discretion to refuse the application.

**3.3** The provisions of 3.1 and 3.2 above are subject to the following exceptions.

- (a)** Regulation 3 does not apply by virtue of 3.1(a), (b), (c), (d)(i), (e), (j), (k), (m)(i), (n), (o), (p), (q), (r) or (s) if the applicant has previously applied for and obtained a practising certificate or registration, provided that:
- (i)** the applicant's practising certificate or registration is not subject to a condition relating to any of those provisions;
- (ii)** the SRA (or previously the Society) was aware, when granting that application, of all the relevant facts; and
- (iii)** no new circumstances have arisen which would bring the application within any of those provisions.

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Guidance notes

- (i)** "In writing" includes any form of written electronic communication normally used for business purposes, such as emails.
- (ii)** Exceptions to the application of Regulation 3 are set out at 3.3. An applicant is not, for example, subject to Regulation 3 in respect of a

previously declared event where the SRA was aware of all the relevant facts and issued a practising certificate or registered the applicant as a European lawyer free from conditions, and where no new circumstances have arisen to bring the application within Regulation 3.

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## Appendix 2: Glossary

### Acronyms used in this paper

**ABS** – alternative business structure

**COLP** – Compliance Officer for Legal Practice

**COFA** – Compliance Officer for Finance and Administration

**LSA** - Legal Services Act

**SRA** – Solicitors Regulation Authority

### How to respond

We welcome views on any aspect of this consultation and you can respond in a variety of ways.

#### Send us an e-mail

Send your e-mail to [redtapeinitiative@sra.org.uk](mailto:redtapeinitiative@sra.org.uk)

Please ensure that you

- identify yourself and state on whose behalf you are responding (unless you are responding anonymously)
- if you wish us to treat any part or aspect of your response as confidential, please state this clearly

#### Download and complete an electronic form

1. Download a [Consultation questionnaire form](#) and an [About you](#) form.
2. Save the files locally – before and after completing them.
3. Return your completed forms as e-mail attachments to [redtapeinitiative@sra.org.uk](mailto:redtapeinitiative@sra.org.uk)

#### Download and submit a printed form

If you wish to submit your response by post, please follow steps 1 and 2 above.

Then, print your completed forms and send them to:

Red Tape Initiative  
c/o Yvette Wigg  
Solicitors Regulation Authority

The Cube  
199 Wharfside Street  
Birmingham  
B1 1RN

**Deadline for this consultation**

Please send your response by **28 June 2013**.

A list of respondents and their responses may be published by the SRA after the closing date. Please express clearly if you do not wish your name and/or response to be published. Though we may not publish all individual responses, it is SRA policy to comply with all Freedom of Information requests.

The Solicitors Regulation Authority (SRA) is the independent regulatory body of the Law Society of England and Wales. We protect the public by regulating law firms and individuals who provide legal services.