

**Report on the Red Tape Initiative – Phase 2: Removing unnecessary regulations and simplifying processes**  
**Qualitative analysis of responses and SRA response**  
**25 July 2013**

**Introduction**

1. This report follows the SRA's consultation on the second phase of its Red Tape Initiative to remove unnecessary regulations and simplify processes, as part of our commitment to ensure that our regulatory approach is risk-based, proportionate and effective.
2. The consultation opened on 29 April 2013 with a closing date of 28 June 2013 [SRA website - consultations](#). It sought views on proposals to remove unnecessary regulation in respect of:
  - (a) the reporting obligations of the COLP (compliance officer for legal practice) and the COFA (compliance officer for finance and administration); and
  - (b) the practising certificate renewal process following certain events.
3. On each of the proposals, we asked whether:
  - (a) you agreed with the proposal;
  - (b) there were any consequences, risks and/or benefits which had not been outlined;
  - (c) there were any costs that had not been anticipated.

**Responses received**

4. We have received 19 responses from a variety of stakeholders, including firms of varying sizes; the Junior Lawyers Division; local Law Societies and the Law Society.
5. The vast majority of respondents favour the proposed changes, seeing them as an appropriate way of reducing the administrative burden of regulation without compromising the SRA's ability to regulate in the public interest.

**The proposals**

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

6. This proposal involves removing the obligation of the compliance officers of recognised bodies/recognised sole practitioners to report non-material breaches as part of the annual submission of information to the SRA. They will, however, continue to record all breaches for production to the SRA on request and to report material breaches to the SRA as soon as reasonably practicable.
7. Alternative business structures will have to continue to report non-material breaches because of the full reporting obligations imposed on them by the Legal Services Act 2007. This requirement will, however, continue to be mitigated through the existing rules which allow non-material breaches to be included in the annual information report to the SRA.
8. Respondents to the consultation are overwhelmingly in favour of the proposal to reduce the reporting obligations of the compliance officers in a recognised body/recognised sole practitioner. The Junior Lawyers Division (JLD) did not comment

on the basis that its members are not directly affected but all other respondents specifically supported this proposal.

9. Comments made refer to the benefits of:
  - time saved for firms in completing annual returns to the SRA (recording information only once);
  - firms having greater control over looking for patterns/trends and rectifying matters before they become material;
  - the SRA being freed up to concentrate on firms that report material breaches;
  - consistency with outcomes-focused regulation where the onus is on firms to develop appropriate and effective systems to achieve compliance;
  - the change being conducive to a culture of best practice and compliance as members of a firm are likely to feel more comfortable in reporting issues to the compliance officers, knowing that the less serious can be dealt with internally and not reported on to the SRA.
10. Two respondents, whilst in favour of the proposal, think that it is unlikely to reduce costs or the work involved for most firms, as appropriate staff will still be needed to monitor, report and act if necessary to ensure compliance. This is echoed by the City of London Law Society (CLLS) which notes that the administration of recording any type of breach will not be reduced, although the recording of all breaches has the benefit of enabling a firm's compliance officers to identify any significant pattern of non-material breaches.
11. The CLLS is of the view that it makes "eminent good sense" to reduce the volume of reporting to the SRA, so that the SRA can focus more effectively on material issues and reduce costs without reducing the ability to supervise regulated firms. Birmingham Law Society also thinks that it is reasonable to anticipate a cost saving or, at the very least, a better use of SRA resources.
12. The City of Westminster and Holborn Law Society states that it has no reservations about the proposal and is pleased to support it. Although sounding a note of caution in relation to the danger of removing regulation and guidance that is still of value, it urges the SRA to continue the work of removing unnecessary and burdensome regulation.
13. Tunbridge Wells, Tonbridge & District Law Society welcomes the fact that the compliance officers of well-managed firms will be able to assess materiality and establish if there is any likelihood of the firm's systems failing to guard against minor breaches.
14. Birmingham Law Society points out that adopting the proposal will not be risk free as, inevitably where a judgement has to be made, different compliance officers may take different views on the significance of an identified breach. It suggests that guidance from the SRA could help to reduce that risk.
15. One response suggests that the SRA should consider retaining the power to require a firm to report non-material breaches in certain situations, for example, as a means of monitoring improvement actions after the reporting of material breaches in an area identified as weak.
16. Another respondent points out that it is unclear how long records of non-material breaches must be retained, and in what format.

17. A further response expresses the hope that the reduction in the reporting requirements will be immediate, so that resources do not have to be wasted on reporting non-material breaches later this year.

### **SRA response – reporting by compliance officers**

18. We are pleased to have received such a positive response to the proposal to reduce the reporting requirements for the compliance officers of recognised bodies/recognised sole practitioners.
19. Although recognised bodies/recognised sole practitioners will no longer report non-material breaches to the SRA, we will continue to be able to require a firm to produce its records of all breaches to us. This gives us adequate means to monitor a firm more closely if necessary, as part of a Supervision compliance plan that would be put in place as part of any enforcement action.
20. We expect that most firms will wish to retain their records of breaches for a significant period, both from a regulatory perspective and perhaps also for due diligence purposes in the event of a merger or sale of the practice. Our view is that it should be left to individual firms to determine the format in which they record breaches and the length of time for which such records are retained, in keeping with outcomes-focused regulation and the needs of individual firms.
21. Subject to the approval of the Legal Services Board, it is our intention that the changes will take effect from 1 October 2013 with the introduction of version 8 of the SRA Handbook. The necessary amendment rules are being drafted accordingly.

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

22. This proposal has three strands to simplify the process for renewal of a practising certificate or registration as a European lawyer, in relation to the declaration of certain events, such as the imposition of disciplinary sanctions:
  - (a) removing the obligation of an applicant to declare that he or she was a manager/director/member of a firm which has become insolvent, provided the applicant had ceased to be a manager/director/member at least 36 months before the insolvency event;
  - (b) removing the redundant (due to ability within the 'MySRA' system for in-year notifications of any changes) six week notification requirement when an applicant for a practising certificate, or registration as a European lawyer, is subject to Regulation 3;
  - (c) clarifying 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.
23. Most respondents to the consultation stated that they are in favour of the proposals to simplify the practising certificate renewal process and remove unnecessary administrative burdens. One firm, whilst supporting the proposal, thinks that the general practising certificate renewal process needs to be consistently delivered to acceptable service levels before being convinced that the process will work for applications needing closer scrutiny.
24. Two respondents did not answer this part of the consultation. The Leicestershire Law Society does not support it "because checks should be maintained particularly in

relation to prior insolvency or charges of an indictable offence by the applicant”, although it thinks that the proposed 36 month time limit for certain insolvency events is appropriate.

25. Several respondents have specifically commented that the three year cut-off period in relation to an insolvency event appears to be reasonable, either in itself and/or because it is in line with the approach of the Insolvency Service (which limits information it requires about directors to those who were in office in the last three years of a company’s trading). The JLD makes the point that there should be no disproportionate restrictions to act as a potential barrier to entry to the profession and/or to the retention of skilled individuals within the profession.
26. The CLLS supports the three year time limit as “fair, just and practical” and expresses the view that it should have no impact on the SRA’s ability to protect the public from the granting of practising certificates to persons who may be unfit to hold them. It suggests, in addition, that there is no need for first-time applicants who apply for a practising certificate two or more years after a relevant insolvency event to make a declaration, even if they were involved with the insolvent entity in its last three years of trading. This is on the basis that any disqualification from acting as a director would be declared under Regulation 3.1(q), and that the Secretary of State will be out of time to impose a disqualification if he or she has not done so within two years of the insolvency event.
27. The Law Society has also suggested a further simplification of the practising certificate renewal process by removing the automatic application of Regulation 3 in certain cases, for example, in relation to a refusal of an application to become a compliance officer when the refusal has no bearing on a regulatory issue but rather say to the individual’s relevant experience or position in the firm, or when a decision has been made in a regulatory matter to allow a person to continue to practise with no restrictions. The point is made that allowing a level of discretion for the SRA may prevent Regulation 3 from being applied unnecessarily and thus decrease the burden of the process for both the SRA and the profession.
28. The JLD calls for clear guidance in the accompanying notes to the renewal application form on what is required and what does not need to be disclosed. It makes the point that practitioners are understandably wary of omitting relevant information and that this is particularly true of junior lawyers, unfamiliar with the procedure, when making their first application to the SRA. It also suggests that there is a need to quantify the costs of delivering training and ongoing support to practitioners in relation to the changes.
29. The CLLS also suggests that it may be simpler to clarify that a relevant event need only ever be declared to the SRA on one occasion, rather than clarifying that applicants need not declare an historic event again.

#### **SRA response – practising certificate renewal process**

30. We are again pleased to have received such a positive response to the proposals to simplify the process for renewing a practising certificate or registering as a European lawyer.
31. In addition to removing the six week notification requirement, our intention is to proceed with the current proposal to limit the declaration of certain insolvency events by reference to a 36 month cut-off period. In the light of the Law Society’s and CLLS’s additional suggestions to simplify the process further, we will also consider whether

any further relaxations to Regulation 3 could be made in the future without prejudicing our ability to regulate in the public interest.

32. We will attempt to make the position in relation to historic events as clear as possible in the accompanying notes to the application form, as well as amending Regulation 3 itself to draw greater attention to the existing exceptions which set out when an historic event need not be declared again. The CLLS's suggested form of wording will be considered, although the notes will need to make it clear that a subsequent declaration of the same event will be required if the SRA imposed conditions in relation to that event or was not aware of all the relevant facts when granting the original application.
33. Our view is that the proposed amendments should have a positive impact on the cost to, and burden of regulation on, both regulated firms/individuals and the SRA, which will more than offset any initial costs of implementing the changes.

#### **Other proposals to reduce red tape**

34. Additional suggestions to remove unnecessary regulation have been made by the Law Society, the CLLS and Tunbridge Wells, Tonbridge & District Law Society. These suggestions are outside the scope of this consultation but will be considered by the SRA, together with the other proposals already submitted in response to the first phase of the Red Tape Initiative, as part of our continuing commitment to reduce red tape.

#### **List of respondents**

Harris & Harris  
Morrisons Solicitors LLP  
Quality Solicitors Palmers  
Tinklin Springall  
Steeles Law LLP  
Salutaris Legal Services Limited  
Slaughter and May  
Addleshaw Goddard LLP  
Tim Prior, non-practising solicitor; lecturer on risk and compliance issues  
Junior Lawyers Division  
City of Westminster and Holborn Law Society  
The City of London Law Society  
Leicestershire Law Society  
Birmingham Law Society  
Tunbridge Wells, Tonbridge & District Law Society  
The Law Society

Three respondents requested that they remain anonymous.