

Regulations Review: Removing unnecessary regulations and simplifying processes

Introduction

1. This report follows our recent consultation, launched in December 2013, on our proposed changes to the education and training regulations. This consultation, consistent with our wider Red Tape Initiative and as a first stage in our Training for Tomorrow work, sets out seven proposals to make changes to our current training regulations which will remove layers of regulation and simplify processes. The proposals do not change any of the required outcomes of the current qualification pathway but they confirm our commitment to keep our regulatory processes under review to ensure that they are risk-based, proportionate and effective.
2. The consultation paper included seven proposals for changes to the Training Regulations 2011.
3. On each of the proposals, we asked stakeholders to comment on whether:
 - They agreed with the proposal;
 - There were any consequences, risk and/or benefits that had not been outlined;
 - There were any costs that had not been anticipated.

Responses received

4. We received 41 responses from a wide variety of stakeholders including higher education providers, individual solicitors and firms, local government departments, local Law Societies, member groups and the Law Society. A list of respondents is attached at the end of the paper.
5. The range of responses varied from substantive comments on each of the proposals to single yes/no responses. These comments are summarised below.

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Overview of responses

6. Overall the proposed changes to the regulations were welcomed. In some cases general support was on the basis that the SRA would provide clear and accessible guidance and that the changes would not reduce the protection afforded to students and trainees or lower standards.

Comments included:

“We support the SRA’s initiative to streamline qualification process by removing those requirements which add cost, while neither assuring quality nor reducing risk.” – The Law Society

“We approve of the SRA’s commitment to remove unnecessary regulatory burdens and improve processes whilst maintaining efficient regulation.” – Chartered Institute of Legal Executives

“In general terms, we support the SRA’s aim to strip away some of the technical regulations which require their unnecessary involvement.” – The Sole Practitioners Group

The proposals

Proposal 1 - to remove complex and inflexible exemption arrangements

7. 94% of the respondents expressed overall agreement with this proposal. Some support was qualified by the comment that we will need to ensure that we provide “*clear, explicit and well publicised information on what will qualify as ‘equivalent means’*”.
8. The Law Society in response said “*We strongly agree that there should be greater flexibility in routes to qualification in the interests of equality and diversity and social mobility.*”

SRA response

9. We are pleased with the support for this proposal. This proposal is not intended to change any of the outcomes for the current pathway to qualification. Applicants will need to demonstrate how their qualifications map onto existing outcomes. We will publish guidance with the new regulations setting out the detailed requirements for mapping against the current outcomes and standards and the evidence which will need to be provided to us to enable us to assess whether equivalence has been demonstrated.

Proposal 2 – to remove the requirement for a certificate of completion of the academic stage to be issued by the SRA

10. 89% of respondents supported the proposal. The Association of Law Teachers agreed that “*it seems unnecessary to duplicate the transcript, as long as it is clear to providers what transcripts are acceptable*”. This

comment captures the concerns of some of the Legal Practice Course (LPC) providers who responded. Kent Law School objected to the proposal unless there is “*a mechanism in place to ensure that students have met the requirements of the QLD, before proceeding with the LPC*”. The Law Society supports the proposal on the condition that we provide guidance to LPC providers in less clear cases of eligibility.

11. Concerns were also expressed as to the additional administrative resource that LPC providers would need to employ to assess a student’s eligibility to commence the LPC.

SRA response

12. We will provide guidance to providers as to what constitutes completion of a qualifying law degree or the Common Professional Examination. In many cases this will be clear from the student’s transcript or diploma supplement: a provider is best placed to ask to see this evidence. This would be the usual practice for any education provider seeking to establish whether or not a student has the requisite qualification for admission to a programme of study. The circumstances in which a student is unable to produce satisfactory evidence are likely to be rare. In the absence of a transcript or diploma supplement the student can be required to obtain confirmation from the awarding body of the qualification awarded. In the cases where some aspect of the qualification pathway has been achieved by equivalent means assessed by us, we will provide verification of this.

Proposal 3 – remove duplicated arrangements for CPE and LPC

13. 91% of the respondents expressed support for this proposal. Some support was qualified and questioned the risk of an inconsistent approach to awarding credit for prior learning. The Law Society did not agree with the proposal and considered there to be “a danger that standards will fall” and questioned whether the quality assurance requirements of the QAA are insufficient to ensure an appropriate standard is applied.
14. The City of London Law Society said that “we support this change provided the combination of the SRA’s authorisation and validation processes with the work and requirements of the QAA will ensure maintenance of those standards.” Birmingham Law Society agreed that “duplication is unnecessary.”

SRA response

15. The SRA places an obligation on CPE and LPC providers to submit annual course monitoring reports. We will ask LPC and CPE providers to report on all decisions made for accreditation of prior learning, including the evidence which they relied on to assess the application. This will enable us to assess whether an appropriate standard is being consistently applied across the provision.

Proposal 4 – to remove the requirement for training to take place under the terms of a contract specified by the SRA

16. We received 36 responses to this proposal of which 26 (72%) expressed support for the removal of the requirement for training to take place under the terms of an SRA specified training contract, 5 (14%) were against the proposal and a further 5 (14%) supported the proposal only on the condition that we required the training regulations to be incorporated into the contracts between the trainee and the training provider. Of the 26 responses in support of the removal of the SRA specified training contract, 10 also said that they would prefer to see a regulation requiring incorporation of the training regulations into contracts between training providers and trainees.
17. The Junior Lawyers Division (JLD) said that it is *“in agreement that there should be a recognised period of training with the requirements relating to the content and duration of training remaining as stated and acknowledged in the proposal.”* The Law Society said: *“In principle we have no problem with the removal of the specified SRA contract requirement. Our chief concern is that the protections, remedies, and rights available to trainees are not reduced, and that the trainee’s status as an apprentice is not called in to question.”* The City of London Law Society said that *“we feel that withdrawing from this area is consistent with modern regulatory practice.”*
18. The Junior Lawyers Division of South Wales and Cardiff said that we should retain our *“role in prescribing training under the Training Contract.”* In its response the Sole Practitioners Group said that *“provided that the regulatory focus on the standard and quality of training is stringent and that training organisations remain under scrutiny, AND ONLY THEN, we approve the proposal to remove the need for training to take place in accordance with the terms of a contract specified by the SRA, so that the employment rights and obligations subsisting between trainee and training provider are no longer prescriptive.”* The Lawyers with Disabilities Division said that it did not agree with *“full abdication of SRA responsibility for specifying the terms of the training contract”* and the Young Legal Aid Lawyers were concerned that *“the SRA ensures adequate safeguards for the quality and conditions of the training contract experience.”*

SRA response

19. When we consulted on this proposal we were aware of concerns that removing the SRA training contract would affect a trainee’s contractual remedies against his or her employer. It had also been argued that trainees might need some additional form of protection than that already provided for in employment law. To address these concerns we asked whether there were any particular arguments which would justify us requiring training providers to expressly incorporate the training regulations into contracts with their trainees. The respondents to this question said that we should include a regulation requiring express incorporation of the training regulations because they did not want to see trainee rights reduced or their status as an apprentice called into question because of the changes.
20. Since we first published the consultation we have done some more work to understand further the impacts that the proposal to remove the specified SRA training contract would have on trainees. This work and the consultation

responses have identified no specific justification for requiring incorporation of the training regulations: trainee rights are neither enhanced by their inclusion nor diminished by their removal. The contract between trainee and training provider is a contract of apprenticeship and is therefore subject to an implied term that the training provider will educate and train the apprentice in the practical and other skills needed to practise the trade or profession for which he or she is being trained. What constitutes satisfactory training will fall to be decided by reference to the SRA's Training Regulations. We consider this to provide trainees with adequate protection by normal operation of employment law and this is not affected by our proposals: an express provision is unnecessary. We also consider this approach to be consistent with a key objective behind this proposal - to withdraw from involvement in the employment relationship between trainee and training establishment and refocus our regulatory interest in the quality and standards of training.

Proposal 5 – Remove the restrictions on the number of trainees a firm may train and the number of practising certificates a training principal must have in order to hold that role

21. 78% of respondents supported this proposal but some of that support was qualified again by the need to ensure that this would not lead to a lowering of the standards and quality of training. The Law Society in its response said *"We agree with this proposal subject to the maintenance of quality and standards..."* and did not *"foresee any direct risk or consequence with removing the current arbitrary limits."*
22. The JLD agreed *"in principle"* with both elements of the proposal but would like to be assured that the SRA is able to satisfy itself that the quality of supervision is not compromised by removing this requirement. The JLD agreed that the ability of an individual to supervise training to the appropriate level *"does not need to be measured in years."*
23. The City of London Law Society said that it agreed with the proposal *"on the basis that a properly run law firm will recruit only the number of trainees the business can support"* and that *"there may be a risk of abuse but this should be minimised, if not avoided altogether, through the process of authorising training establishments..."* The Society did not agree with the proposal to remove the requirements for a training principal to have held five practising certificates. It also requested some further detail in the regulation as to the competency requirements of a training principal. The Lawyers with Disabilities Division also requested some clarification around the role of the training principal.

SRA response

24. We are pleased with the support for this proposal. We will be issuing additional guidance on the role of the training principal. Our authorisation requirements and processes will allow us to assess the overall provision for training in a training provider as meeting our requirements to provide training to the appropriate standard, and take more targeted action where there is evidence that it is at risk. Our regulations permit us to limit the number of trainees that a training provider may train and remove authorisations where

there is evidence that the quality and standards of the training is at risk. We consider this to be a more risk-based approach.

Proposal 6 – Rephrase the requirements for trainees to experience a breadth of legal practice by removing the reference to contentious and non-contentious experience and amending the wording of the three areas of law requirement to “at least 3 distinct areas of English law and practice”

25. 80% of respondents expressed support for this proposal. Most of the comments related to the removal of the reference to “contentious” and “non-contentious” work. The Sole Practitioners Group agreed that in removing this reference “*the breadth of a trainee’s experience will not be altered*” but it queried the level of awareness of some training providers and trainees with the Practice Skills Standards. This concern was shared by the JLD.
26. The Law Society did not support the proposal and disagreed with the SRA’s view that by removing the reference to contentious and non-contentious in the regulations does not substantively change the breadth of experience required in training. The Law Society commented that “*the requirement for both contentious and non-contentious experience in training underpins practice in all areas of law ...and reflects the contentious and non-contentious scope of the reserved activities*”.
27. One respondent, a solicitor and training contract monitor, commented that the problem arises not in the use of the terms “contentious” and “non-contentious” but the lack of a clear and consistent definition of the terms and a statement of what is required for compliance. Concern was expressed that the Practice Skills Standards “*do not set out a requirement for exclusively non-contentious skills.*”

SRA response

28. We are pleased with the support for this proposal and the recognition that in removing the reference to “contentious” and “non-contentious” from the regulations we have not altered the breadth of experience required during training. We are writing new information packs for students, trainees and training providers which will make clear that we have not altered the breadth of training required and which we hope will also raise awareness of the Practice Skills Standards.

Proposal 7 – to remove the requirement for student enrolment

29. 68% of respondents supported this proposal. Nine respondents expressed concern that requirements for character and suitability would not be sufficiently well understood by a student before they embarked on costly education towards qualification. The City of London Law Society questioned whether the SRA’s guidance on “suitability” was clear enough and urged the SRA to ensure that that “*information is publicised in ways which, as far as possible, guarantee that the overwhelming majority of applicants (if reaching them all is impractical) are aware of the potential problems they could face given their particular circumstances*” There was support for the requirement

to disclose character and suitability before commencing training (it will also still be required before admission as a solicitor) and the availability of an early check for students with potential issues which may impact on their suitability to qualify.

30. The Law Society said that “*with some hesitation*” it supported the proposal recognising student enrolment as a “*relatively costly and bureaucratic process*” but thought it “*not realistic to expect a student to understand the complex technicalities for reaching the SRA’s suitability standards*”. It also commented on the loss of the information about the student market and diversity that the SRA receives through the process of student enrolment.

SRA response

31. We are pleased with the level of support for this and agree that we must ensure that information about the requirements for character and suitability is accessible and understood. We will provide a statement for all education providers to include in their course information and prospectuses and encourage them to use their best endeavours to bring it to the attention of their students. Our annual course monitoring of the CPE and LPC and our authorisation processes for registering period of recognised training enables us to collect data about student profile that we may have also collected through the student enrolment process.

Training for Tomorrow- looking ahead

32. Two broad themes emerged in the responses to this consultation:
- assuring standards on qualification
 - the requirement to have a breadth of training which includes contentious and non-contentious work (as required by the Practice Skills Standards).
33. These themes are relevant to our Training for Tomorrow work to develop a Competence Statement for solicitors and a new approach to continuing competence and will be considered there.

List of respondents

Association of Law Teachers

Birmingham Law Society

Cambridge University - Faculty of Law

Cartwright King

Chartered Institute of Arbitrators

CILEx

City of London Law Society

Clifford Chance

Co-op Legal Services
De Montfort Law School
Junior Law Society - Divisions of South Wales and Cardiff
Junior Lawyers Division
Kent Law School
Lawyers with Disabilities Division
Liverpool John Moores University
Liverpool Law Society
Manchester Metropolitan University Law School
Oxford University Law Faculty
Paulo Karat (solicitor)
Peter Jordan (Training Contract Monitor)
Society of Legal Scholars
Sole Practitioners Group
Staffordshire University Law School
Surrey Law Society
Susan Cooper (solicitor)
The Law Society
Tunbridge Wells, Tonbridge and District Law Society
University of Law
University of Manchester Law School
Young Legal Aid Lawyers
11 respondents requested that they remain anonymous.