

**SRA BOARD**  
17 September 2014



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**Draft Amendments to Regulatory Arrangements (Changes to regulation of entities owned or managed by Registered European Lawyers) Rules [2014]**

**Purpose**

1. This paper invites the Board to make the [Draft] SRA Amendment to Regulatory Arrangements (Changes to regulation of entities owned or managed by Registered European Lawyers) Rules [2014], subject to the approval of the LSB. These rules implement the SRA's proposed new regime for entities that are owned or managed by Registered European Lawyers (RELs) and which are not practising reserved legal activities. They are intended for inclusion in version 11 of the SRA Handbook, which should be published on 31 October 2014.

**Recommendations**

2. The Board is asked to:
  - (a) agree to make the Draft Amendments to Regulatory Arrangements(Changes to regulation of entities owned or managed by Registered European Lawyers) Rules [2014], subject to the approval of the Legal Services Board; and
  - (b) agree that that the Chair of the SRA Board certifies under Regulation 32(4) of The Law Society's General Regulations that the proposed changes are urgent.

**If you have any questions about this paper please contact: Alison Hook, International Adviser, [alison.hook@sra.org.uk](mailto:alison.hook@sra.org.uk), 0207 621 3976.**

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**Draft Amendments to Regulatory Arrangements (Changes to regulation of entities owned or managed by Registered European Lawyers) Rules [2014]**

**Purpose**

3. This paper invites the Board to make new rules to govern the practise of entities owned or managed by Registered European Lawyers, where such entities have undertaken that they are not practising Reserved Legal Activities.
4. European lawyers who practise in England and Wales must register with the SRA as a consequence of the European Union Lawyers' Establishment Directive (98/5/EC) and regardless of the nature of their practice<sup>1</sup>. RELs are permitted to engage in reserved activities<sup>2</sup> but, whether they choose to do so or not, the entity through which such services are provided to the public must be authorised. This can have disproportionately restrictive effects where the law firms concerned are not practising reserved legal activities, or indeed any English law at all. In a number of cases, European law firms wishing to establish in England and Wales have found that their home country practice vehicles are not compliant with the SRA's Practice Framework Rules and they have been required to restructure or establish a separate English practice. This has also occasionally discouraged such businesses from establishing in England and Wales and acts against the wider UK interest of establishing itself as a centre for legal business.
5. We are therefore proposing changes to the SRA Handbook which would allow European law firms establishing in England and Wales the choice of whether to do so as an authorised body with the full rights and responsibilities of an SRA regulated entity, or whether to establish as an 'Exempt European Practice' which would have the same practice rights as a foreign law firm establishing in England and Wales outside of the regulated arena.
6. It is necessary for us to create this new entity and a set of practice rules governing individual RELs working in these types of exempt practices because individual European lawyers must continue to register with the SRA in accordance with the Lawyers' Establishment Directive and the Lawyers Establishment Regulations 2000. These legislative provisions also require RELs to be subject to the SRA Code of Conduct, relevant indemnity insurance requirements and to have the right to requalification as an English

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<sup>1</sup> RELs may instead register with the BSB if they are self-employed and their practise is similar to that of a barrister.

<sup>2</sup> European Lawyers are permitted to practise any service that a lawyer in England and Wales may provide, although RELs from jurisdictions in which probate and conveyancing are reserved to notaries are excluded from providing these services.

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solicitor after three years of “effective and continuous practise” of English law in England and Wales.

7. The new regime we are proposing for exempt entities owned or managed by RELs and for the individual RELs working in them has been the subject of two consultations. Our final proposed new rules can be summarised as follows:
  - a. The creation of a new type of entity, an Exempt European Practice (EEP). This will allow lawyers from other European Union Member States to exercise their rights as owners and managers of law firms under the Lawyers’ Establishment Directive (98/5/EC) without necessarily needing to do so through an authorised body;
  - b. Changes to the Practice Framework Rules 2011 which provide that RELs practising in EEPs will be governed largely by the regime that applies to in-house solicitors. This creates analogous treatment to that enjoyed by solicitors working as employed lawyers in foreign law firms;
  - c. Consequential amendments to the SRA Handbook which apply the in-house application of the Code of Conduct to RELs practising through EEPs and which also ensure appropriate levels of client protection for client money, as well as the possibility of access to the Compensation Fund (set out in **Annex 2** and explained in more detail in **Annex 3**).
  
8. The collective benefit of these new rules is as follows:
  - a. They will allow European law firms whose structures do not fit easily with the SRA’s Practising Framework Rules to establish in England and Wales;
  - b. They will apply a more proportionate regime to European law firms that are not practising reserved legal activities, which is in line with the treatment of foreign law firms.
  - c. Individual RELs working in EEPs will retain the rights conferred on them by the Establishment Directive, with the exception of the right to practise in those areas of work reserved to solicitors, which must be conducted from an authorised body.
  - d. The proposed rules also offer proportionate protections by requiring EEPs to protect client money, hold indemnity insurance, and they make it possible for individuals to obtain a grant from the Compensation Fund.
  
9. Further details can be found in the draft submission to the Legal Services Board at **Annex 3**.

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**Statutory approval process**

10. The changes to the Handbook required to implement this regime must be approved by the Legal Services Board.

**Consideration by other committees**

11. The proposed amendments to the SRA Handbook have been considered and approved by the Standards Committee.

**Recommendations**

12. It is recommended:
  - (c) that the Board makes the Draft Amendments to Regulatory Arrangements (Changes to regulation of entities owned or managed by Registered European Lawyers) Rules [2014], subject to the approval of the Legal Services Board; and
  - (d) that the Chair of the SRA Board certifies under Regulation 32(4) of The Law Society's General Regulations that the proposed changes are urgent.

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## **Supporting information**

### **Links to the Strategic Plan**

13. This proposal is in line with the SRA's Strategic Objective Two : Deliver risk-based outcomes-focused regulation so as to achieve positive outcomes for consumers in the public interest and do so in a way that is justifiable to all our stakeholders. The proposal represents more proportionate regulation for a defined group of the SRA's regulated community, in ways that do not pose a risk to consumers.

### **How the issues support the principles of better regulation**

14. These proposals support the principles of better regulation because they are both proportionate and targeted.
15. They are proportionate because they apply rules to certain entities owned or managed by Registered European Lawyers that are in line with the risks that such practices pose both to the SRA's regulatory objectives and to consumers. There are around 20-30 European law firms practising in England and Wales which might choose to become Exempt European Practices because of the nature of the business that they conduct. Virtually all of these firms operate purely as representative offices or as international 'City' law firms offering their own home country legal advice to home country clients (e.g. foreign banks) who have set up in England and Wales. It is therefore disproportionate to require such firms to follow the full authorised body regime, since if they were non-European foreign law firms they would not be required to become authorised.
16. The proposals are targeted and create a new type of vehicle (an 'exempt European practice') in which registered European lawyers can practise and which is analogous to a foreign law firm in which solicitors are employed. The fact that the scope of practice of such entities is already permitted to foreign law firms who cause no regulatory concerns, suggests that the full application of the SRA Handbook to all REL firms in all circumstances is unwarranted.

### **How the action will be evaluated**

17. The possible impact of this proposal has been evaluated by analysing the population of firms owned or managed by Registered European Lawyers. The affected population is very small, given that most of the 409 RELs currently practising in England and Wales are either doing so in English law firms or in-house. However, the 20-30 purely European firms that are likely to be affected are nonetheless high profile European law firms who have become increasingly unhappy with, what they regard, as a disproportionate regime which can often prevent them from setting up under their home country structures. The impact of this proposal in terms of the numbers using the new regime will therefore be less important than its influence on perceptions of the

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regulatory environment in England and Wales. Following the introduction of these proposals, we will be able to communicate more widely about the new regime, emphasising its deregulatory nature and reinforcing that England and Wales is one of the most open Member States of the European Union for legal business.

**Engagement and communication on the proposals**

18. We have engaged actively with the section of the regulated community which is most affected by these amendments. We held two informal roundtable discussions with European law firms with offices in London in developing these proposals. We also undertook two consultations on the proposed regime and refined our drafting in the light of comments received. We have received active input, in particular from the Spanish Bars (*El Consejo General de la Abogacía Española*) but we have also engaged with the European Commission's Professional Mobility Unit in DG Internal Market, in order to ensure that our proposals are fully in line with the European Commission's interpretation of the Lawyers' Establishment Directive.
19. We are nonetheless proposing to update our website guidance for RELs as it will be important, in particular, for European firms setting up for the first time in England and Wales, to understand their establishment choices and the implications of making them.

**What equality and diversity considerations relate to this issue**

20. The proposed changes will potentially increase the diversity of legal practice by permitting European law firms to set up in England and Wales that might otherwise have chosen not to because of the requirements of the Practice Framework Rules. European migrants resident in the UK may therefore benefit from better access to legal advice on their home country's law.

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**Annexes**

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|----------------|--|
| <b>Annex 1</b> | [Draft] SRA Amendment to Regulatory Arrangements (Changes to regulation of entities owned or managed by Registered European Lawyers) Rules [2014]                    |
| <b>Annex 2</b> | Scope document for [Draft] SRA Amendment to Regulatory Arrangements (Changes to regulation of entities owned or managed by Registered European Lawyers) Rules [2014] |
| <b>Annex 3</b> | Draft Submission to the Legal Services Board   |
| <b>Annex 4</b> | SRA Board Risk Assessment  |

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<b>Executive Director</b>	Richard Collins
<b>Date</b>	04 September 2014

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**[Draft] SRA Amendment to Regulatory Arrangements (Changes to regulation of entities owned or managed by Registered European Lawyers) Rules [2014]**

Rules dated [date of LSB approval to be inserted] made by the Solicitors Regulation Authority Board.

Made under Part I, Part II, sections 79 and 80 of the Solicitors Act 1974 and sections 9 and 9A of the Administration of Justice Act 1985, section 89 of and Part 1 of Schedule 14 to the Courts and Legal Services Act 1990, with the approval of the Legal Services Board under paragraph 19 of Schedule 4 to the Legal Services Act 2007.

**Rule 1**

The SRA Principles 2011 shall be amended as follows:

- (a) insert paragraph 3.3 as follows:

"3.3 The *Principles* apply to you if you are an *REL practising as a manager, employee, member or interest holder, of an Exempt European Practice.*"

**Rule 2**

The SRA Code of Conduct 2011 shall be amended as follows:

- (a) in paragraph 13.1(a) insert "(subject to paragraph 13.11)" after "*REL*";
- (b) insert paragraph 13.11 as follows:

" 13.11 This Code applies to an *REL practising as a manager, employee, member or interest holder, of an Exempt European Practice* to the same extent that it applies to *In-house practice.*"

**Rule 3**

The SRA Accounts Rules 2011 shall be amended as follows:

- (a) in rule 3.1 insert " and the practice of an *REL* from an office in England and Wales of an *Exempt European Practice*" after "Wales";
- (b) in the heading of Part 7 insert " **and from an office in England and Wales of an Exempt European Practice**" after "outside England and Wales".
- (c) in rule 47.1 insert ":" after "provisions" and number the remaining part of the rule "(a)";

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(d) insert rule 47.1(b) as follows:

"(b) to the practice of an *REL* from an office in England and Wales of an *Exempt European Practice* is to ensure similar protection for *client monies* but by way of rules which are more adaptable to such practices."

(e) insert rule 48.3 as follows:

" 48.3 Part 7 of these rules applies to the practice of an *REL* from an office in England and Wales of an *Exempt European Practice* but for this purpose only all references in these rules to *client monies (overseas)* shall be substituted with *client monies*."

(f) in rule 48.3 insert guidance note as follows:

"Guidance note

(i) If you are an *REL* practising from an office in England and Wales of an *Exempt European Practice* and you hold or receive client money you must comply with rules 49.2 and 49.3, 50.3 to 50.6 and 51."

**Rule 4**

The SRA Practice Framework Rules 2011 shall be amended as follows:

(a) in Rule 2.1(e) replace "." with ";" and insert the following Rule 2.1(f) as follows:

"(f) as a *manager, employee, member or interest holder* of an *Exempt European Practice*, provided that you meet the conditions set out under Rule 4.20 (a), (b) and (c)."

(b) in Rule 2.2(e) insert "or is an *Exempt European Practice*" after "Wales", and insert ", and that, if you *practise* from an office of an *Exempt European Practice*, you meet the conditions set out under Rule 4.20 (a), (b) and (c)" after "above".

(c) In Rule 4.19 insert " Unless your employer is an *Exempt European Practice*" at the beginning and replace "Y" with "y".

**Rule 5**

The SRA Practising Regulations 2011 shall be amended as follows:

(a) in regulation 12.2(l) delete "and".

(b) in regulation 12.2(m) replace "." with "; and".

(c) insert regulation 12.2(n) as follows:

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"(n) whether the *lawyer* is practising through an *Exempt European Practice* and if so the name and address of the *Exempt European Practice*."

#### **Rule 6**

The SRA Compensation Fund Rules 2011 shall be amended as follows:

- (a) in rule 8.1(g)(i) delete "or" and after rule 8.1(g)(ii) replace "." with "; or".
- (b) insert rule 8.1(g)(iii) as follows:

"(iii) the loss was incurred in relation to the *practice* of an *REL* in an office in England and Wales of an *Exempt European Practice*";

#### **Rule 7**

The SRA Handbook Glossary 2012 shall be amended as follows:

- (a) in the definition of "**client account (overseas)**", insert "or for an *REL* practising from an office in England and Wales through an *Exempt European Practice*, an account at a bank or building society in England and Wales which is used only for the purpose of holding *client money*," after "*trust money*,";
- (b) after the definition of "**execution-only**", insert:

#### **"Exempt European Practice**

means:

- (i) a *lawyer's practice* formed in an *Establishment Directive state* which is regulated as such in that State and which is a structure in which *lawyers* are permitted to practise in that State; and
  - (ii) whose ultimate beneficial owners do not include any *practising lawyers of England and Wales*; and
  - (iii) whose main place of business is situated and carried on in an *Establishment Directive State* other than the United Kingdom; and
  - (iv) which does not carry on any *reserved legal activity*."
- (c) in the definition of "**firm**", insert " or an *Exempt European Practice*" in paragraph (C) after "*non-SRA firm*"; and
  - (d) in the definition of "**private practice**", insert "or by an *REL* through an *Exempt European Practice*" in paragraph (D) after "*non-SRA firm*".

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**Rule 8**

These amendment rules shall come into force on 31 October 2014.

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**Annex 3: Scope document for [Draft] Amendment to Regulatory Arrangements (Changes to regulation of entities owned or managed by Registered European Lawyers) Rules [2014]**

**SRA Principles 2011**

Rule	Issue	Solution	Implementation date	Minor change or significant policy change requiring consultation
Paragraph 3	Reflects the continued application of the SRA Principles to RELs in Exempt European Practices, in line with application to other RELs and as anticipated by the Lawyers Establishment Directive (98/5/EC) which makes European lawyers established in other jurisdictions subject to locally applicable codes of conduct.	Insert new paragraph 3.3 as follows:  "3.3 The <i>Principles</i> apply to you if you are an <i>REL practising as a manager, employee, member or interest holder, of an Exempt European Practice.</i> "	31 October 2014	Minor consequential change

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**SRA Code of Conduct 2011**

Rule	Issue	Solution	Implementation date	Minor change or significant policy change requiring consultation
Paragraph 13.1	This explains how the SRA Code of Conduct applies in England and Wales and is necessary to cover the relevant application to RELs in EEPs	In paragraph 13.1(a), insert after " <i>REL</i> ":  "(subject to paragraph 13.11)"	31 October 2014	Minor consequential change
Paragraph 13.11	This change explains how the code of conduct will apply to individual RELs working in Exempt European Practices. The intention is to treat them in the same way as solicitors and RELs working in-house with some minor modifications.	Insert new paragraph 13.11 as follows:  "13.11 This Code applies to an <i>REL</i> practising as a <i>manager, employee, member</i> or <i>interest holder</i> , of an <i>Exempt European Practice</i> to the same extent that it applies to <i>In-house practice</i> ."	31 October 2014	Change consulted on.

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**SRA Accounts Rules 2011**

Rule	Issue	Solution	Implementation date	Minor change or significant policy change requiring consultation
Rule 3.1	This covers the geographical scope of the application of the overseas accounts rules and extends them to practise by a REL in an EEP in England and Wales	In rule 3.1, insert after " outside England and Wales"  "and the practice of an <i>REL</i> from an office in England and Wales of an <i>Exempt European Practice</i> "	31 October 2014	Change consequential from the approach to regulating RELs in EEPs consulted on
Heading of Part 7	Extends the application of the Overseas Accounts Rules to RELs in EEPs	In the heading of Part 7 insert after "Wales":  <b>"and from an office in England and Wales of an Exempt European Practice"</b>	31 October 2014	Change consequential from the approach to regulating RELs in EEPs consulted on
Rule 47	Extends the application of the Overseas Accounts Rules to RELs in EEPs	In rule 47.1 insert after "provisions" ":"  and number the remaining part of the rule "(a)";  Insert after rule 47.1(a) the following:  "(b) to the practice of an <i>REL</i> from an	31 October 2014	Change consequential from the approach to regulating RELs in EEPs consulted on

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		office in England and Wales of an <i>Exempt European Practice</i> is to ensure similar protection for <i>client monies</i> but by way of rules which are more adaptable to such practices."		
Rule 48	Sets out how the overseas accounts rules apply to RELs in EEPs in order to ensure adequate and proportionate protection for clients of RELS practising in these vehicles in England and Wales.	<p>Insert new Rule 48.3 as follows:</p> <p>"48.3 Part 7 of these rules applies to the practice of an <i>REL</i> from an office in England and Wales of an <i>Exempt European Practice</i> but for this purpose only all references in these rules to <i>client monies (overseas)</i> shall be substituted with <i>client monies</i>."</p> <p>And after rule 48.3 insert</p> <p>"Guidance note (i) If you are an REL practising from an office in England and Wales of an Exempt European Practice and you hold or receive client money you must comply with rules 49.2 and 49.3, 50.3 to 50.6 and 51."</p>	31 October 2014	Change consequential from the approach to regulating RELs in EEPs consulted on

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**SRA Practice Framework Rules 2011**

Rule	Issue	Solution	Implementation date	Minor change or significant policy change requiring consultation
Rule 2.1	Extends the definition of the vehicles in which RELs may practise in England and Wales to include Exempt European Practices and sets down the terms under which such practice can be conducted – in line with in-house practice.	In Rule 2.1(e) replace "." with ";"  Insert the following new Rule 2.1(f) as follows:  "(f) as a <i>manager, employee, member or interest holder</i> of an <i>Exempt European Practice</i> , provided that you meet the conditions set out under Rule 4.20(a),(b) and (c)."	31 October 2014	Rule change consulted on
Rule 2.2	Provides conditions for REL practice from an EEP in Scotland and Northern Ireland	in Rule 2.2(e) insert after "Wales":  "or is an <i>Exempt European Practice</i> " and insert ", and that, if you <i>practise</i> from an office of an <i>Exempt European Practice</i> , you meet the conditions set out under Rule 4.20 (a), (b) and (c)" after "above".	31 October 2014	Rule change consulted on
Rule 4.19	This change maintains the distinction between RELs working in-house and RELs working in EEPs	In Rule 4.19 insert "Unless your employer is an <i>Exempt European Practice</i> " at the beginning and replace "Y" with "y".	31 October 2014	Rule change consulted on

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**SRA Practising Regulations 2011**

Rule	Issue	Solution	Implementation date	Minor change or significant policy change requiring consultation
Rule 12.2	This change ensures that the required information about RELs working in EEPs is added to the list of information to be held by the SRA in relation to the register of RELs	<p>in regulation 12.2(l) delete "and".</p> <p>in regulation 12.2(m) replace "." with "; and".</p> <p>insert regulation 12.2(n) as follows:</p> <p>"(n) whether the <i>lawyer</i> is practising through an <i>Exempt European Practice</i> and if so the name and address of the <i>Exempt European Practice</i>."</p>	31 October 2014	Consequential changes arising from approach consulted on.

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**SRA Compensation Fund Rules 2011**

Rule	Issue	Solution	Implementation date	Minor change or significant policy change requiring consultation
Rule 8.1(g)	This change allows a grant to be made from the compensation fund in relation to the practice of a REL in an Exempt European Practice in England and Wales.	<p>In rule 8.1(g)(i) delete "or" and after rule 8.1(g)(ii) replace "." with "; or".</p> <p>insert rule 8.1(g)(iii) as follows:</p> <p>"(iii) the loss was incurred in relation to the <i>practice</i> of an <i>REL</i> in an office in England and Wales of an <i>Exempt European Practice</i>";</p>	31 October 2014	Issue consulted on

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**Glossary 2012**

Rule	Issue	Solution	Implementation date	Minor change or significant policy change requiring consultation
Client Account (overseas)	This change allows for the application of the overseas accounts rules to RELs in EEPs by ensuring that client money held by such practices is covered under the relevant definition.	After “ <i>trust money</i> ” insert  “or for an <i>REL</i> practising from an office in England and Wales through an <i>Exempt European Practice</i> , an account at a bank or building society in England and Wales which is used only for the purpose of holding <i>client money</i> ”.	31 October 2014	Minor consequential change arising from creation of category of <i>firm</i> known as <i>Exempt European Practices</i> .
Exempt European Practice	Need for a definition of an <i>Exempt European Practice</i> to take account of the specific set of circumstances governing European law firms established in England and Wales as non-authorised bodies.	After the definition of “ <i>execution-only</i> ” insert  “ <i>Exempt European Practice</i> means:  (i) a <i>lawyer’s</i> practice formed in an <i>Establishment Directive state</i> which is regulated as such in that State and which is a structure in which <i>lawyers</i> are permitted to practise in that State; and  (ii) whose ultimate beneficial owners do not include any	31 October 2014	Definition consulted on

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		<p><i>practising lawyers of England and Wales; and</i></p> <p>(iii) whose main place of business is situated and carried on in an Establishment Directive State other than the United Kingdom; and</p> <p>(iv) which does not carry on any <i>reserved legal activity</i>."</p>		
Firm	<p>Changes to definition in order to ensure that <i>Exempt European Practices</i> are covered under the definition of 'firm' and all relevant aspects of the Practice Framework Rules and other Handbook provisions apply. This change will also ensure that the Indemnity Insurance Rules do not apply to RELs in EEPs. These individuals will instead be bound by the condition on equivalent insurance in Rule 4.20(b) of the Practice Framework Rules.</p>	<p>After "<i>non-SRA firm</i>" in paragraph (C) insert</p> <p>"or an <i>Exempt European Practice</i>"</p>	31 October 2014	<p>Minor consequential change arising from creation of category of <i>firm</i> known as <i>Exempt European Practices</i>.</p>

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<p>Private Practice</p>	<p>Addition to definition of <i>private practice</i> to ensure proper application of rules to <i>RELs</i> working in <i>Exempt European Practices</i>. This change will also ensure that the Indemnity Insurance Rules do not apply to <i>RELs</i> in <i>EEPs</i>. These individuals will instead be bound by the condition on equivalent insurance in Rule 4.20(b) of the Practice Framework Rules.</p>	<p>After “<i>non-SRA firm</i>” in paragraph (D) insert  “or by an <i>REL</i> through an <i>Exempt European Practice</i>”</p>	<p>31 October 2014</p>	<p>Minor consequential change arising from creation of category of <i>firm</i> known as <i>Exempt European Practices</i>.</p>
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**Application made by the Solicitors Regulation Authority Board to the Legal Services Board under Part 3 of Schedule 4 to the Legal Services Act 2007, for the approval of the SRA Amendment to Regulatory Arrangements (Changes to regulation of entities owned or managed by Registered European Lawyers) Rules [2014]**

**A. Summary**

1. This application is made to the Legal Services Board for approval of changes to the SRA's regulatory arrangements in relation to the regulation of entities owned or managed by Registered European Lawyers (RELs). The detail of the proposed new arrangements is set out in section C below, but in summary these changes will allow a European law firm to choose whether to establish as an authorised body or as the equivalent of a foreign firm, with the rights of practice that follow. The changes will also allow RELs to work in European firms that are established under the "foreign" regime and will apply the same conduct regime to those individuals as is applied to solicitors who are employed in foreign law firms.

**B. Details of the SRA's current regulatory arrangements**

2. The current regime which is applied to Registered European Lawyers is derived from the Establishment Directive (98/5/EC) and its UK implementing legislation, the European Communities (Lawyer's Practice) Regulations 2000 (the 'Establishment Regulations').
3. Under the Establishment Regulations, those lawyers who wish to practise on a permanent basis under their home country title in England and Wales or Northern Ireland may do so provided they are registered as a European lawyer with the relevant regulatory body. Most European lawyers establishing in England and Wales choose to register with the SRA. Once registered, a REL is permitted to undertake under their home professional title any work that may lawfully be carried out by a lawyer in England and Wales. There are, however, exclusions from this general rule: Court advocacy must be conducted in conjunction with host state lawyers and, in the UK, given that solicitors have a wider scope of practise than lawyers in many other European countries, the conduct of probate and conveyancing work is excluded for most RELs. In practice, around one third of all 409 RELs currently registered with the SRA are working in English law firms, mainly large international firms but occasionally smaller firms offering clients specific services such as family law in both English and another European law, around one third are working in-house in corporate law departments and the remainder are working in branches of European law firms.

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4. The Establishment Directive also provides some guidance on how host Member States should treat law firms from other EU countries:

“Extract from Article 11

- (1) One or more lawyers who belong to the same grouping in their home Member State and who practise under their home-country professional title in a host Member State may pursue their professional activities in a branch or agency of their grouping in the host Member State. However, where the fundamental rules governing that grouping in the home Member State are incompatible with the fundamental rules laid down by law, regulation or administrative action in the host Member State, the latter rules shall prevail insofar as compliance therewith is justified by the public interest in protecting clients and third parties.
  - (2) Each Member State shall afford two or more lawyers from the same grouping or the same home Member State who practise in its territory under their home country professional titles access to a form of joint practice. If the host Member State gives its lawyers a choice between several forms of joint practice, those same forms shall also be made available to the aforementioned lawyers. The manner in which such lawyers practise jointly in the host Member State shall be governed by the laws, regulations and administrative provisions of that State.”
5. This article has been used to guide the approach historically taken by the SRA which has been to treat European law firms as if they were purely solicitor owned and managed recognised bodies and to apply exactly the same regulatory regime to both types of firm.

### **C. Rationale for amendment**

6. Although, in general, the equal treatment of European law firms and recognised bodies worked reasonably well in the past, the introduction of entity based regulation has had some undesirable side effects. For example, under the SRA Practice Framework Rules 2011, authorised bodies must meet certain structural requirements and these can sometimes be difficult to marry with the domestic regulations that apply in some other European Union Member States. This can result in situations, for example, in which lawfully constituted law firm practices in EU jurisdictions are only permitted in England and Wales if a legally recognised ‘manager’, as defined in the SRA Glossary, is running the English branch. Where this is not the case, e.g. because the partner in charge of the English office is not on the firm’s management board, EU firms may either be asked to restructure or register all of their management board as Registered Foreign Lawyers. Both of these responses, required by the current rules, seem disproportionate in cases where European law firms wish to practise purely as ‘foreign’ law firms, often supporting their home country clients who are active in the London financial markets.

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7. There have also been cases arising more recently where European law firms with non-lawyer partners practising in their home member states have wished to establish in England and Wales to practise purely home country law through lawyers whose titles are recognised in the Establishment Directive. This poses a problem since, under the SRA Practice Framework Rules, such law firms are not eligible either to be authorised bodies, because of the non-lawyer ownership back home, or to be alternative business structures, because they do not have an authorised person in the practice who could qualify to be a COLP nor do they wish to practise any reserved areas of English law.
8. It is also the case that the legitimate requirements that the SRA may impose on authorised bodies may appear disproportionate when applied to a European law firm that is not practising English law and may have no lawyers other than RELs practising in it. This is particularly true in cases where the REL home country's rules prohibit the holding of client money. Requirements to put in place COLPs, COFAs, provide equality and diversity benchmarking data, pay turnover based fees, are all less relevant to what are effectively, foreign law firms who are required to register in England and Wales purely to obtain access under the Establishment Directive that they would have largely been granted in any case.
9. In short, the impact of the Establishment Directive has brought benefits to individual European lawyers but the interplay of the Directive and the SRA Practice Framework Rules can cause problems for European law firms. Given that law firms from jurisdictions outside the European Union may establish freely in England and Wales to practise outside of reserved areas of work, and have done so over many decades without causing problems, the SRA is proposing Handbook amendments which will offer law firms owned or managed by RELs, the option a choice of establishing under a similar regime.

**D. Nature and effect of the proposed alterations to the SRA's regulatory arrangements**

10. The (draft) SRA Amendment to Regulatory Arrangements (Changes to regulation of entities owned or managed by Registered European Lawyers) Rules [2014], which are set out at annexes 1 and 2, were made by the SRA Board on 17 September 2014, subject to approval by the Legal Services Board (LSB). These changes are intended to address the issues with the current application of the SRA Handbook to law firms owned or managed by RELs, as identified above. The amendments do the following:

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- i) European groupings of lawyers (i.e. law firms) may choose on setting up in England and Wales whether to become
  - a) a fully authorised SRA entity, with identical rights and responsibilities to SRA authorised entities comprised of English lawyers; or
  - b) an “Exempt European Practice” (EEP) which explicitly undertakes not to practise activities reserved to authorised individuals and entities. Although EEPs would not be regulated by the SRA, individual RELs within them would need to be registered with the SRA, given the Establishment Directive. An EEP would be allowed to take any form that was permitted to a law firm in the firm’s home jurisdiction. The SRA would only require details of the firm’s practising address and an initial declaration about the form of its practice, which would provide acknowledgement that the firm understood its rights and responsibilities under the exempt regime.
- ii) An individual REL would still need to register with the SRA and would still be subject to the SRA Practising Regulations 2011, to the SRA Principles and to the SRA Code of Conduct 2011. The way in which the Code of Conduct will apply will depend on the vehicle through which the REL is practising – RELs practising in exempt European law firms will have the code applied to them in the same way as in-house lawyers. This is analogous to the treatment of employed solicitors working in foreign law firms. This application would also involve a proportionate application of the accounts rules for those who handle client money in England and Wales and would provide access to the compensation fund for acts undertaken in England and Wales by RELs working in exempt practices.
- iii) All RELs, whatever entities they practise in, will be entitled to the privileges of a European lawyer as foreseen in the Establishment Directive and unchanged from current application to individuals, i.e.:
  - The right to register with the SRA;
  - The right to requalify as an English solicitor on meeting the requirements set out by the SRA;
  - The right to be listed in the SRA’s public register alongside solicitors;
  - The right to be represented in the Law Society;
  - The right to appear in an English court alongside a solicitor or barrister

11. The SRA Board is satisfied that its proposals will assist the SRA’s regulatory arrangements in the following way:

**(a) Authorisation**

12. The adoption of a greater degree of flexibility for European law firms choosing to set up in England and Wales will bring their treatment into line with that of purely foreign

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firms. It will therefore greatly simplify the task that the authorisation team faces when new European law firms apply for recognition.

***(b) Legal and Enforcement***

13. There have historically been very few disciplinary cases involving RELs but the SRA believes that the design of a tailor made European law firm regime which requires a newly establishing European law firm to declare clearly that it understands its rights and responsibilities in England and Wales, as well as those of its employees, will be helpful.

**E. Statement in respect of the Regulatory Objectives**

14. The SRA Board is satisfied that its proposed new rules on entities owned or managed by Registered European Lawyers will support the regulatory objectives contained in the Legal Services Act 2007

***Protect and promote the public interest***

15. The proposed amendments will help to support the growth of European legal advisory capacity in England and Wales which will, in turn, support the continued development of the financial and professional services sector. The approach we are proposing is also a proactive contribution to the debate taking place at a European level about how EU jurisdictions can accommodate the different vehicles for legal practice that exist in different Member States without undermining public policy goals.

***Protect and promote the interests of consumers***

16. Our proposed amendments maintain existing protections for consumers. Individual RELs will still be subject to the Code of Conduct and will need to observe key aspects of the Solicitors Accounts Rules in circumstances in which they hold client money in England and Wales. Consumers will also have continue to have recourse to the compensation fund when dealing with RELs who are working in Exempt European Practices.

***Promote adherence to the professional principles***

17. The SRA Principles, which embody the Professional Principles set out in the Legal Services Act 2007, apply to all of those who are registered with the SRA and will therefore also apply to RELs practising in Exempt European Practices.

**F. Statement in respect of the Better Regulation Principles**

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18. The SRA considers that the proposed amendments to the Handbook fulfil our obligation under section 28 of the Legal Services Act to have regard to the Better Regulation Principles.
19. The proposals are proportionate in that they apply rules to the entities owned or managed by Registered European Lawyers that are in line with the risks that such practices pose both to the SRA's regulatory objectives and to consumers. There are around 20-30 European law firms practising in England and Wales which might choose to become Exempt European Practices because of the nature of the business that they conduct. Virtually all of these firms operate purely as 'City' law firms offering home country legal advice to home country clients who have set up in England and Wales.
20. The proposals are targeted and avoid the application of unnecessarily onerous rules in situations where the application of these rules is not warranted. The fact that the scope of practice that would be undertaken by Exempt European Practices is already permitted to foreign law firms who cause no regulatory concerns, suggests that the full application of the SRA Handbook to all REL firms in all circumstances is unwarranted.
21. We have been transparent in developing our proposed amendment to the rules governing RELs since we have undertaken two consultations on the proposed regime and engaged in direct discussion both with European law firms and interested European bar associations.

**G. Statement in relation to desired outcomes**

22. The SRA's desired outcome is to offer a proportionate risk based regime for European law firms wishing to establish in England and Wales whilst maintaining the rights of practise conferred on individual European lawyers by the European Establishment Regime and ensuring adequate protection for consumers in England and Wales.

**H. Statement in relation to stakeholder engagement**

23. The SRA has published two consultations on this issue, the last of which contained the specific wording that we are now proposing. We have also engaged directly with those European law firms most likely to be affected by our proposals and a number of these responded to our consultation.

**I. Statement in relation to impact on other Approved Regulators**

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24. All of the other approved regulators were invited to comment on our various consultations. They have chosen not to do so, no doubt because their regulatory arrangements and the position of the individuals whom they regulate is unaffected by the changes we propose.

**J. Implementation timetable**

25. We are proposing to introduce the amending rules as outlined in annex 1 on publication of version 11 of the SRA Handbook on 31 October 2014.

**K. SRA Contact**

Richard Collins, Executive Director, SRA

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**Board Risk Assessment**

<b>Summary of issues for consideration</b>		
<p>This paper invites the Board to make the <b>[Draft] Amendment to Regulatory Arrangements (Changes to regulation of entities owned or managed by Registered European Lawyers) Rules [2014]</b>, subject to the approval of the LSB. This introduces a new regime for . The policy changes proposed have been considered on a number of occasions by the Standards Committee and have been the subject of two public consultations.</p>		
<b>Report is for</b>		
<input type="checkbox"/> Noting/information	<input checked="" type="checkbox"/> Decision	<input type="checkbox"/> Approval
<b>Business/operational risk</b>		
<p>The proposed changes propose a more proportionate regime for European law firms practising in England and Wales .</p> <p>The total number of Registered European Lawyers practising in England and Wales currently stands at 409.</p>		
<b>Finance</b>		
<p>There will be some reduction in the collection of turnover based fees from European law firms that convert to become EEPs, however the number of firms likely to choose this route is estimated to be between 20-30 and the financial impact will be further limited because most of the firms concerned are currently representative offices. Set against this, there will be some potential time savings to be gained in the SRA's authorisation function which, under the current rules, is often engaged in lengthy and highly technical negotiations with potential European entrants to the market in England and Wales about the structure of their practice.</p>		
<b>Communications</b>		
<p>As this change affects a very small group of law firms and individuals, the SRA intends to communicate these changes directly to those individuals and firms most affected. We also intend to update the guidance on the SRA website for incoming European lawyers wishing to establish in England and Wales.</p>		
<b>Equality and diversity implications</b>		

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<b>Date of report/paper being drafted</b>	