



## Summary of Decision

The following table is a high level summary of the decision of the Legal Services Board. It is not a formal part of the decision notice.

<b>Purpose of notice</b>
To grant part of the application from the SRA approving alterations to its regulatory arrangements in respect of the 'reserved activities' part of its Regulatory Reform Programme.
<b>Alterations that are being approved by this decision</b>
<p>Alterations to the SRA Authorisation Rules for Legal Services Bodies and Licensable Bodies 2011 (SRA Authorisation Rules) as follows</p> <ul style="list-style-type: none"><li>• Removal of rule 4.2 from the SRA Authorisation Rules, which will mean that an application by a licensable body for authorisation will no longer need to include a statement of the reserved legal activities for which the body seeks authorisation</li><li>• Simplification of rule 4.3 of the SRA Authorisation Rules, so that it states that the SRA may grant an application (for authorisation) in relation to one or more reserved activities</li><li>• The removal of rule 22.1(a)(iii) from the SRA Authorisation Rules which means the SRA will no longer have the power to revoke or suspend a body's authorisation where it is satisfied that the body has no intention of carrying on the legal activities for which it has been authorised</li></ul> <p>For the purposes of this Decision Notice these alterations are collectively referred to as "reserved activities" changes.</p>
<b>Decision of the LSB</b>
After consideration within the "warning notice" process under paragraph 21 of Schedule 4 to the Legal Services Act 2007 (the Act), the LSB has considered the reserved activities changes in the SRA application against the criteria in paragraph 25(3) of Schedule 4 to the Act and sees no reason to refuse the application.

## Decision notice

### Issued by the Legal Services Board under Part 3 of Schedule 4 to the Legal Services Act 2007

### The Solicitors Regulation Authority's application for approval of alterations to its regulatory arrangements referred to as "reserved activities"

The Legal Services Board (**LSB**) has granted the part of the application from the Solicitors Regulation Authority (**SRA**) to approve alterations to the regulatory arrangements in respect of the reserved activities.

The Law Society is an approved regulator and the SRA is the regulatory arm to which The Law Society has delegated its regulatory functions.

This decision notice sets out the decision taken, including a brief description of the alterations approved. The notes at the end of this notice explain the statutory basis for the decision.

The chronology for the LSB's handling of this application is set out at the end of this decision notice.

### Background, including proposals

1. On 29 October 2015, the LSB approved, in part, an application from the SRA to alter its regulatory arrangements. The application, titled 'Regulatory Reform Programme', covered a range of proposed changes, most of which the LSB approved and which were listed in the LSB's Decision Notice of 29 October<sup>1</sup>. The LSB recorded in the notice that it welcomed the overall intentions of the SRA Regulatory Reform Programme and supported the SRA's drive to remove unnecessary regulatory barriers and restrictions (which can inhibit economic growth in the sector) while at the same time making its regulatory framework targeted and proportionate.
2. We did not, however, approve at that time the part of the application referred to in the application as 'reserved activities changes'. The reserved activities changes part of the application comprised the following alterations:
  - The removal of rule 4.2 from the SRA Authorisation Rules for Legal Services Bodies and Licensable Bodies 2011 (SRA Authorisation Rules) which would mean that an application by a licensable body for authorisation would no longer need to include a statement of the reserved legal activities (RLA) for which the body seeks authorisation.

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<sup>1</sup> Decision Notice of 29 October 2015

[http://www.legalservicesboard.org.uk/Projects/statutory\\_decision\\_making/pdf/2015/20151029\\_Regulatory\\_Reform\\_2015\\_Decision\\_Notice.pdf](http://www.legalservicesboard.org.uk/Projects/statutory_decision_making/pdf/2015/20151029_Regulatory_Reform_2015_Decision_Notice.pdf)

- Simplification of rule 4.3 of the SRA Authorisation Rules so that it states that the SRA may grant an application [for authorisation of a licensable body] in relation to one or more reserved activities.
- The removal of rule 22.1(a)(iii) from the SRA Authorisation Rules which means the SRA will no longer have the power to revoke or suspend a body's authorisation where it is satisfied that the body has no intention of carrying on the legal activities for which it has been authorised.

### **Warning Notice process**

3. On the 28 October 2015, the LSB issued a warning notice pursuant to paragraph 21(1)(b) of Part 3 of Schedule 4 to the Act notifying the SRA and The Law Society that it was considering refusing the reserved activities proposals under the refusal criteria in Schedule 4, Part 3 of the Act. The effect of a warning notice is to extend the decision period in which the LSB can consider the application. Paragraph 26(3) of Schedule 4 to the Act provides that the Board has a period of 12 months from the date of the approved regulator receiving this warning notice to continue considering the proposed rule change.
4. The LSB's focus of further assessment during the warning notice period was in respect of the removal of rules 4.2 and 22.1(a)(iii) from the SRA Authorisation Rules, not the simplification of rule 4.3 of the Authorisation Rules. The SRA expressed the view, however, that the alteration to rule 4.3 should only be made if removal of rule 4.2 is approved. Consequently, alteration of rule 4.3 was also not approved and technically became subject to the warning notice process even though the LSB does not have concerns about that change.

### **Reasons for warning notice**

5. The SRA's current regulatory arrangements list the circumstances where it may revoke or suspend a firm's authorisation, including where it is satisfied that the body has no intention of carrying on the legal services for which it has been authorised. As summarised above, the removal of 4.2 would mean that an application by a licensable body for authorisation will no longer need to include a statement about what reserved legal activities the body seeks authorisation for. The removal of rule 22.1(a)(iii) would remove the SRA's ability to revoke or suspend a body's authorisation where it is satisfied that the body has no intention of carrying on the RLA for which it has been authorised.
6. The combined effect of the removal of these rules is that a licensed or authorised body will no longer face losing its authorisation if it does not carry out reserved legal activities (RLA). One of the consequences of this could be that a firm which does not intend to carry on RLA (so does not need to be regulated) could nevertheless decide to become authorised. This raised concerns for the LSB in the context of the refusal criteria under the Act. Of particular bearing was whether:
  - granting the application would be contrary to any provision made by or by virtue of the Act or other enactment
  - granting the application would be prejudicial to the regulatory objectives, including protecting and promoting the public interest and protecting and promoting the interest of consumers.

- granting the application would be contrary to the public interest.

### **The LSB's assessment against the refusal criteria**

*Would granting the application be contrary to any provision made by or by virtue of the Act or other enactment?*

7. As the rule changes created the possibility of firms that are currently unregulated by the SRA becoming regulated, the LSB wanted to know whether, by approving the rule changes, it was effectively sanctioning the extension of regulation by the SRA and whether the LSB could or should allow this change. The LSB also sought to ascertain whether the effect of the change will be to create a form of quasi-voluntary accreditation scheme. Accreditation schemes are typically operated by representative bodies, and do not form part of a regulatory body's regulatory arrangements.
8. With regard to the matter of whether approving the changes would be an extension of regulation by the SRA, the LSB's legal advice was that under the Act authorisation confers an entitlement, not an obligation to carry out reserved legal activities. Consequently, there is nothing inherent in the concept of authorisation (under the Act) that requires an intention to undertake RLA. The removal of the rules does not of itself, therefore, facilitate the regulation of legal services that do not currently need to be authorised under the Act, nor does it implement a substantive policy that ought instead to be the subject of public debate and primary legislation.
9. With regard to whether the effect of the change will be to create a form of quasi-voluntary accreditation scheme, the LSB concluded on the basis of legal advice that the SRA Authorisation Rules are part of the SRA's regulatory arrangements and include the criteria that candidates must satisfy to become an SRA authorised body. Under the Authorisation Rules, a firm whose principle activities may not include those that need to be authorised therefore has a choice as whether to be authorised or not by the SRA. The removal of the requirement for firms to undertake RLA does not of itself alter the fundamental choice for firms to become authorised. The LSB concludes therefore that the proposed changes do not amount to the effective introduction of a voluntary accreditation scheme by an approved regulator that could be considered unlawful.

*Would granting the application be prejudicial to the regulatory objectives, including, protecting and promoting the public interest, and protecting and promoting the interest of consumers? Would granting the application be contrary to the public interest?*

10. The LSB considered the potential detrimental impact for consumers from the cost to firms of being authorised by the SRA (when there is no statutory obligation for them to be so) and passing these costs on to clients. While this may be a risk for some clients, this effect seems likely to be small or even non-existent as a result of competition from those firms that choose to be unregulated by the SRA.
11. The LSB took into account that one of the reasons for the SRA removing the rules is that the requirements in the rules could, in some circumstances, deter entry, with some

potential applicants being advised that they need to carry on an RLA to gain and maintain authorisation. It was reported by the SRA in the LSB assessment process that firms which may not be able to show they are conducting RLA at a particular point in time (but have every intention of doing so or wish to be in a position to do so should their clients require it) are being deterred from seeking authorisation as an ABS. This could have an impact on consumer choice.

12. In terms of the public interest, the LSB took into account that the SRA is not introducing an 'obligation' on firms to be authorised; firms would be choosing to operate in a regulatory environment. While there may be a risk that some firms could perceive SRA authorisation as simply a "badge of honour" for commercial benefit, the consequence of authorisation, even if firms are not delivering RLAs, is that all activities become subject to SRA regulatory oversight and scrutiny, including the SRA's enforcement processes. Customers of those firms may therefore benefit from the consumer protection that SRA authorisation entails.
13. The LSB also took account of the SRA reporting the difficulties it has in policing what firms "intend" to do. As a consequence the SRA confirmed that it has not made use of the power to revoke or suspend authorisation under rule 22.1(a) relating to authorised bodies. Where regulatory arrangements are not enforced, then consideration must be given to whether their continued existence is in the public interest. The LSB is of the view that rules that an approved regulator does not enforce, for whatever reason, should be reviewed and, where appropriate, should be removed from an approved regulator's regulatory arrangements.
14. While the LSB recognises that the proposed removal of the two rules may mean that some firms not undertaking RLA could choose to become authorised, the LSB does not consider there is sufficient evidence of significant risk that removing the rules in themselves will lead to a gradual expansion of regulation by the SRA. In this regard, we are reassured by the SRA's commitment to review the impact of these changes and, most importantly, not to market the rule change as a quasi-voluntary accreditation scheme.
15. Having completed the further assessment of the reserved activities part of the SRA's Regulatory Reform Programme application, and while acknowledging there are legitimate concerns about removing the rules, the LSB has concluded that granting the application would not be contrary to any provision in the Act or other enactment. Furthermore, on balance, there is insufficient evidence to refuse the changes on the basis that they are of themselves prejudicial to the regulatory objectives or contrary to the public interest.

## **Decision**

16. The LSB has considered the SRA's application with respect to Reserved Activities against the criteria in paragraph 25(3) of Schedule 4 to the Act. It considers that there is no reason to refuse this application; accordingly, this part of the Regulatory Reform Programme application is granted.

17. The Annex to this decision notice contains the specific amendments to the SRA's regulatory arrangements approved by the LSB.

### **Chronology**

- The LSB confirmed receipt of the Regulatory Reform Programme application from the SRA on 16 September 2015.
- The 28 day initial decision period for considering the application ended on 13 October 2015.
- The LSB issued an extension notice on 12 October 2015
- A warning notice was issued on 28 October 2015
- A decision notice part approving the Regulatory Reform Application was issued on 29 October 2015.
- This decision notice approving the Reserved Activities part of the Regulatory Reform Programme application is effective from 27 January 2016.
- The decision notice will be published on our website on 28 January 2016.

**Neil Buckley, Chief Executive**

**Acting under delegated authority granted by the Board of the Legal Services Board  
27 January 2016**

*Notes:*

1. The LSB is required by Part 3 of Schedule 4 to the Act to review and grant or refuse applications by approved regulators to make alterations to their regulatory arrangements.
2. Paragraph 25(3) of Schedule 4 to the Act explains that the LSB may refuse an application setting out a proposed change to the regulatory arrangements only if it is satisfied that
  - (a) granting the application would be prejudicial to the regulatory objectives
  - (b) granting the application would be contrary to any provision made by or by virtue of this Act or any other enactment or would result in any of the designation requirements ceasing to be satisfied in relation to the approved regulator
  - (c) granting the application would be contrary to the public interest
  - (d) the alteration would enable the approved regulator to authorise persons to carry on activities which are reserved legal activities in relation to which it is not a relevant approved regulator
  - (e) the alteration would enable the approved regulator to license persons under Part 5 [of the Act] to carry on activities which are reserved legal activities in relation to which it is not a licensing authority, or
  - (f) the alteration has been or is likely to be made otherwise than in accordance with the procedures (whether statutory or otherwise) which apply in relation to the making of the alteration.
3. The designation requirements referred to in paragraph 2(b) above are set out in paragraph 25(4) of Schedule 4 to the Act and are
  - (a) a requirement that the approved regulator has appropriate internal governance arrangements in place
  - (b) a requirement that the applicant is competent, and has sufficient resources to perform the role of approved regulator in relation to the reserved legal activities in respect of which it is designated, and
  - (c) the requirements set out in paragraphs 13(2)(c) to (e) of Schedule 4, namely that the regulatory arrangements are appropriate, comply with the requirements in respect of resolution of regulatory conflict (imposed by sections 52 and 54 of the Act) and comply with the requirements in relation to the handling of complaints (imposed by sections 112 and 145 of the Act).
4. In accordance with paragraphs 20(1) and 23(3) of Schedule 4 to the Act, the LSB has made rules<sup>2</sup> about the manner and form in which applications to alter regulatory arrangements must be made. Amongst other things, the rules highlight the applicant's obligations under section 28 of the Act to have regard to the Better Regulation Principles. They also require applicants to provide information about each proposed change and details of the consultation undertaken.
5. If the LSB is not satisfied that one or more of the criteria for refusal are met, then it must approve the application in whole, or the parts of it that can be approved.

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<sup>2</sup> Rules for Rule Change Applications – Version 2 (November 2010)

## Annex 1: Tracked Alterations

### SRA Authorisation Rules for Legal Services Bodies and Licensable Bodies (2011)

#### Part 5: Notification, effect and duration of authorisation

#### Rule 22: Revocation and suspension of authorisation

22.1 Subject to Rule 23, the SRA may revoke or suspend a body's authorisation, where:

(a) in the case of an authorised body:

(i) authorisation was granted as a result of error, misleading or inaccurate information, or fraud;

(ii) the body is or becomes ineligible to be authorised in accordance with the criteria set out in Rule 6;

~~(iii) the SRA is satisfied that the body has no intention of carrying on the legal activities for which it has been authorised under these rules;~~

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#### Part 2: Authorisation applications and decision period

#### Rule 4: Applications for authorisation

Rule 4.2:

~~4.2 An application by a licensable body for authorisation must include a statement about what reserved legal activities the body seeks authorisation for.~~

Rule 4.3

~~4.3 Where an application by a licensable body for authorisation relates to more than one reserved legal activity, the~~ The SRA may grant the application in relation to ~~one or more reserved legal activity all or any of them.~~