



Legal Services Board – Decision Notice issued under Part 3 of Schedule 4 to the Legal Services Act 2007

Solicitors Regulation Authority’s application for approval of changes to Regulatory Arrangements relating to the fee structure and for the approval of consequential amendments to the SRA Practising Regulations and SRA Recognised Bodies Regulations

Introduction

1. The Legal Services Board (“LSB”) is required by Part 3 of Schedule 4 of the Legal Services Act 2007 (“the Act”) to review and approve or reject alterations to the Regulatory Arrangements of the Approved Regulators. The Law Society is an Approved Regulator and whose regulatory functions are carried out through its regulatory arm, the Solicitors Regulation Authority (“SRA”).
2. Paragraph 25 of Schedule 4 explains that the LSB must approve a proposed change to the Regulatory Arrangements unless we are “...satisfied that...” the approval would fall within one or more of the criteria specified in sub paragraph 25(3) (and listed in the footnote below¹). If the LSB is not satisfied that one or more of the criteria are met, then it must approve the application in whole, or at least the parts of it that can be approved when only part of the application meets the criteria.
3. As provided for by paragraphs 20(1) and 23(3) of Schedule 4 to the Act, the LSB has made rules about how the application to alter the Regulatory Arrangements must be made including the contents of that application. The rules highlight the applicant’s obligations under section 28 of the Act to have regard to the Better Regulation Principles. The rules also require that the applicant provides information about the nature and effect of each proposed change and of appropriate consultation undertaken. Sub paragraph 25(3)(f) requires that each proposed alteration has been made or is likely to be made in accordance with the procedures which apply in relation to making of the alteration. This includes the LSB’s rules.

¹ The Board may refuse the application 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 the 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 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.

4. The LSB will approve Regulatory Arrangements in so far that they appear to achieve their intended outcome and satisfy the sub paragraph 25(3) criteria. Most notably there must be no adverse impact on the Regulatory Objectives overall and the alterations and the process by which they have been produced must be consistent with Better Regulation Principles.
5. We confirmed receipt of the SRA's application for approval of changes to regulatory arrangements relating to the fee structure and for approval of consequential amendments to the SRA Practising Regulations and SRA Recognised Bodies Regulations on 24 June 2010. This is the Decision Notice in relation to that application. The chronology for handling of this application can be found towards the end of this Decision Notice.

Decision

6. The SRA's application is for approval of alterations to the Regulatory Arrangements to introduce the new fee structure. It is proposed that the way in which the cost of regulation is allocated among those mandated to pay practising fees is changed significantly. The SRA considers that the changes to the fee structure will better reflect the proportion of regulatory effort which is targeted towards individuals and towards firms. The SRA intends to implement the new structure for the annual renewal exercises that are initiated from September 2010.
7. Until now, most of the cost of regulation has been met through practising certificate fees imposed on individual practising solicitors (and the equivalent fee for Registered European Lawyers and Registered Foreign Lawyers). Under the new structure, approximately 40% of the cost will be met through individual practising certificate fees and the balance will be met through a new firm based fee charged to recognised bodies and recognised sole practitioners.
8. The new fee structure also sets out changes in relation to compensation fund contributions. The SRA has proposed that from 2010, 50% of the total requirement for the compensation fund should be collected from individuals and 50% from firms. In addition, the SRA has taken the policy decision to use compensation fund contributions to fund only the cost of claims, reserves and the direct costs of the compensation fund as opposed to, as now, also funding some general regulatory costs.
9. The policy decisions on the new fee structure put forward in the application are implemented by applying the policy to the way the fees are set in the various fee determination documents. The new structure has also required some additional regulations to be added to the SRA Practising Regulations and SRA Recognised Bodies Regulations. Both sets of Regulations can be found at the back of this Decision Notice as the Regulatory Arrangements that we have been asked to approve.

10. Overall, we are content with the SRA's assessment that the proposed arrangements will facilitate and promote the Regulatory Objectives of the Act and the Better Regulation Principles. In particular we note the transparent process by which the final position has been reached and are content that the SRA application is in accordance with our process. The nature and effect of the proposed alterations has been set out and the SRA has demonstrated it has undertaken appropriate research, consulted widely on the proposed changes and made decisions with due consideration of the evidence collected. We consider the position reached is rational and appropriate, particularly given the move towards entity based and outcomes focused regulation.
11. Therefore, we are satisfied that, having considered the application in the context of Schedule 4 sub paragraph 25(3) criteria, we have no grounds for refusing the application made in whole or in part and are therefore granting the application.
12. In addition to approving the application, there are certain areas upon which we wish to comment in this Decision Notice.

Monitoring and review

13. The application and supporting information has demonstrated thorough assessment of the impact of the new structure on different sections of the profession. The SRA considers that the effect of the changes will be a fairer and more logical fee structure reflecting modern practice.
14. It is proposed in the application that the impact of the changes will be to ensure that those who provide a greater level of activity pay more. The changes are also considered to take into account the fact that in-house solicitors (i.e. those working in not for profit organisations, commerce and industry and local government) require less regulatory resource than private practice solicitors. It is estimated that the new structure will transfer approximately 15% of the cost of regulation from the in-house sector to the private practice sector. The impact on private practice firms will however be varied.
15. We notice that the Equality Impact Assessment highlights the overall positive impact of the changes on women and BME solicitors, due mainly to the higher proportion working in house or in employed sectors other than private practice.
16. Although the SRA has considered a wide range of evidence, it is not possible to judge definitively at this stage what the impact of the changes will be on all sections of the profession. However we note the commitment of the SRA Board set out in the application to review the new fee structure, particularly with regard to the preparation for regulating Alternative Business Structures. In order to assess whether some of the concerns that have been raised as potential dangers during consultation actually arise in reality, the SRA has stated that a review will take place. The Equality Impact Assessment commits to further reviews in light of improved data quality as the changes are implemented. This will include further consideration of discounts on the individual fee levels. We agree with the SRA's assessment of the importance of

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ongoing review and in reaching our decision on this application have requested clarification from the SRA on the planned timetable for this work. Information can be found in the action section set out below.

Further Alterations to Regulatory Arrangements: Compensation Fund Determination

17. The application sets out, at Annex 8, the SRA's Draft Determination of Compensation Fund contributions [2010]. The final figures will be set at the SRA Board meeting on 16 July 2010, along with the final figures for the Practising Certificate Fee Determination [2010], Determination of Sole Practitioner Fees [2010] and Draft Recognised Body Fee Determination [2010].
18. The final Practising Fee levels set out in the Determinations are subject to LSB approval as required by s.51 of the Act. This will be managed through the Practising Fee approval process and is outside the scope of this Decision Notice.
19. The Compensation Fund contributions do not constitute Practising Fees subject to LSB approval under s.51 of the Act and will therefore require approval by the LSB as an alteration to the Regulatory Arrangements under Part 3 of Schedule 4 of the Act.
20. In the application, the SRA has proposed that the final figures in the Compensation Fund determination be exempted from the full approval process provided that they do not alter by more than 20% (i.e. the value of £24 for the firm fee and £2 for the individual fee) from the figure in the draft determination. In considering this application we have been assured that there is a robust and transparent process by which the figures have been arrived at and therefore accept that an exemption on this basis is appropriate. This Exemption Direction will be issued separately to this Decision Notice following the SRA Board meeting on 16 July.

Chronology

- The LSB confirmed receipt of an application from the SRA for approval of changes to Regulatory Arrangements relating to the fee structure and for the approval of consequential amendments to the SRA Practising Regulations and SRA Recognised Bodies Regulations on 24 June 2010
- The 28 day initial decision period for considering the application is due to end on 21 July 2010
- This Decision Notice is being published on our website on Wednesday 14 July 2010.

Actions

- The SRA Board has made a commitment to review the new fee structure in January 2011. This will consider the impact and effectiveness of the new fees policy and identify any changes that may be needed.

Chris Kenny, Chief Executive
Acting under delegated authority granted by the Board of the Legal Services Board
Wednesday 14 July 2010

SRA Recognised Bodies (Determination of Fees) Amendment Regulations [2010]

Rules dated [the date of the approval by the Legal Services Board] commencing [the date of the approval by the Legal Services Board] made by the Solicitors Regulation Authority Board under sections 79 and 80 of the Solicitors Act 1974 and sections 9 and 9A of the Administration of Justice Act 1985, with the approval of the Legal Services Board under paragraph 19 of Schedule 4 to the Legal Service Act 2007.

1. The SRA Recognised Bodies Regulations 2009 shall be amended as follows:

(a) After regulation 1.3 add:

“1.4 The SRA shall determine the amount of any fees required under these regulations and the SRA’s decision shall be final.

1.5 The SRA may prescribe from time to time a fee moderation process under which a recognised body may make an application for the fee for renewal of recognition to be varied. A decision under this process shall be final.”

(b) After regulation 2.7 add:

“Regulation 2A – Fee determinations for acquisitions, mergers and splits

The turnover of a recognised body for the purpose of determining the fee for renewal of recognition is based on a historic turnover figure submitted to the SRA. Where in the 12 months following the submission of that figure a recognised body merges or splits, a notice of succession identifying all recognised bodies and recognised sole practitioners affected by the merger or split and any resulting apportionment of the historic turnover figures for those firms will enable the SRA to ensure that the turnover figure on which the fee is based reflects the impact of the merger or split.

2A.1 A recognised body which has succeeded to the whole or a part of one or more recognised bodies or recognised sole practitioners must within 28 days of the change taking place deliver to the SRA a notice of succession in the prescribed form.

2A.2 For the purposes of regulation 2A.1, “succeeded” includes any taking over of the whole or any part of a recognised body or recognised sole practitioner, for value or otherwise.

2A.3 A recognised body which:

- (a) has split or ceded part of the practice to a recognised body or recognised sole practitioner; and
- (b) wishes this change to be considered by the SRA when determining the recognised body’s next fee for renewal of recognition

must within 28 days of the change taking place deliver to the SRA a notice of

succession in the prescribed form.

- 2A.4 A notice of succession delivered under these regulations must;
- (a) identify all recognised bodies and recognised sole practitioners affected by the succession; and
 - (b) provide details of any resulting apportionment of the turnover figures for those recognised bodies and recognised sole practitioners.
- 2A.5 A recognised body delivering a notice of succession under these regulations must seek the agreement of all affected recognised bodies or recognised sole practitioners to the contents of the notice of succession.
- 2A.6 Where a notice of succession is delivered to the SRA which has not been agreed by all affected recognised bodies or recognised sole practitioners, the recognised body delivering the notice of succession shall be treated as having made an application for the SRA to apportion the turnover figures of the affected recognised bodies or recognised sole practitioners for the purposes of determining the fee for renewal of recognition.
- 2A.7 Before apportioning the turnover figures under regulation 2A.6, the SRA will contact any affected recognised body or recognised sole practitioner identified in the notice of succession who has not agreed with the notice of succession and may require the production of additional information.”
- (c) In regulation 14:
- (i) omit “and” in regulation 14(f)
 - (ii) after regulation 14(f) add:
“(ff) “turnover figure” means as prescribed from time to time by the SRA; and”
2. These amendment regulations shall come into force on [the date of the approval by the Legal Services Board]

SRA Practising (Determination of Fees) Amendment Regulations [2010]

Rules dated [the date of the approval by the Legal Services Board] commencing [the date of the approval by the Legal Services Board] made by the Solicitors Regulation Authority Board under sections 13, 13ZA, 28, 31, 79 and 80 of the Solicitors Act 1974 and paragraphs 2 and 3 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.

1. The SRA Practising Regulations 2009 shall be amended as follows:

(a) After regulation 1.4 add:

“1.5 The SRA shall determine the amount of any fees required under these regulations and the SRA’s decision shall be final.

1.6 The SRA may prescribe from time to time a fee moderation process under which a recognised sole practitioner may make an application for the fee for renewal of authorisation as a recognised sole practitioner to be varied. A decision under this process shall be final.”

(b) After regulation 4.6 add:

“Regulation 4A – Fee determinations for acquisitions, mergers and splits

The turnover of a recognised sole practitioner for the purpose of determining the fee for renewal of authorisation as a recognised sole practitioner is based on a historic turnover figure submitted to the SRA. Where in the 12 months following the submission of that figure a recognised sole practitioner merges or splits, a notice of succession identifying all recognised bodies and recognised sole practitioners affected by the merger or split and any resulting apportionment of historic turnover figures for those firms will enable the SRA to ensure that the turnover figure on which the fee is based reflects the impact of the merger or split.

4A.1 A recognised sole practitioner who has succeeded to the whole or a part of one or more recognised bodies or recognised sole practitioners must within 28 days of the change taking place deliver to the SRA a notice of succession in the prescribed form.

4A.2 For the purposes of regulation 4A.1, “succeeded” includes any taking over of the whole or any part of a recognised body or recognised sole practitioner, for value or otherwise.

4A.3 A recognised sole practitioner who:

- (a) has split or ceded part of the practice to a recognised body or recognised sole practitioner; and
- (b) wishes this change to be considered by the SRA when determining the recognised sole practitioner’s next fee for renewal of authorisation as a recognised sole practitioner

must within 28 days of the change taking place deliver to the SRA a notice of succession in the prescribed form.

- 4A.4 A notice of succession delivered under these regulations must;
- (a) identify all recognised bodies and recognised sole practitioners affected by the succession; and
 - (b) provide details of any resulting apportionment of the turnover figures for those recognised bodies and recognised sole practitioners.
- 4A.5 A recognised sole practitioner delivering a notice of succession under these regulations must seek the agreement of all affected recognised bodies or recognised sole practitioners to the contents of the notice of succession.
- 4A.6 Where a notice of succession is delivered to the SRA which has not been agreed by all affected recognised bodies or recognised sole practitioners, the recognised sole practitioner delivering the notice of succession shall be treated as having made an application for the SRA to apportion the turnover figures of the affected recognised bodies or recognised sole practitioners for the purposes of determining the fee for renewal of recognition.
- 4A.7 Before apportioning the turnover figures under regulation 4A.6, the SRA will contact any affected recognised body or recognised sole practitioner identified in the notice of succession who has not agreed with the notice of succession and may require the production of additional information.“
- (c) In regulation 17.4:
- (i) omit “and” in regulation 17.4(e);
 - (ii) omit “.” in regulation 17.4(f) and substitute “; and”
 - (iii) after regulation 17.4(f) add:

“(g) “turnover figure” means as prescribed from time to time by the SRA”
2. These amendment regulations shall come into force on [the date of the approval by the Legal Services Board].