

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 Training Regulations Part 2 (Training Provider Regulations) Amendment Rule [2012]

Proposed Alteration

1. The SRA Board propose to amend Regulation 6(g)(i) of the SRA Training Regulations Part 2 (Training Provider Regulations) to allow employers to pay trainee solicitors any rate of pay at or above the Single Hourly Rate of the national minimum wage, with effect from 1 August 2014.
2. The SRA Training Regulations Part 2 (Training Provider Regulations) Amendment Rule [2012] is annexed to this Application (Annex A).
3. The SRA carried out an extensive Economic and Equality Impact Assessment (EEIA) annexed to this Application as Annex B. The SRA's Response to its consultation on this matter, summarising the responses and views of stakeholders, is also annexed to this Application as Annex C.

Context

4. All solicitors qualifying through the domestic qualification route, with only a very small number of exceptions (suitably qualified and experienced Fellows of the Chartered Institute of Legal Executives and Justices' Clerks' Assistants) must serve a 2-year training contract with an employer before qualification. Entry to the solicitors' profession is therefore dependent on the number of training contract places that employers can offer.
5. Through the training contract, the SRA places learning and development requirements on the employer and the trainee in order to quality assure the competence of new entrants to the profession.

Nature and effect of the existing Regulation 6(g)(i) of the SRA Training Regulations 2011

6. The existing Regulation 6(g)(i) of the SRA Training Provider Regulations requires employers to pay trainee solicitors at least a minimum salary set by the SRA Board each year. This type of requirement was brought in by the Law Society and

has been in place since 1982. Its original aims were to prevent the exploitation of trainees and to attract high-calibre entrants to the profession.

7. Traditionally the salary rate is reviewed and may be amended in line with inflation by the SRA Board each year, and is currently £18,590 for trainees working in central London and £16,650 for trainees working in the rest of England and Wales.

Nature and effect of the amendments to Regulation 6(g)(i) of the SRA Training Regulations 2011

8. The proposed amendment will require employers to pay only at or above the Single Hourly Rate of the national minimum wage set under the National Minimum Wage Act 1998.

Rationale for amending Regulation 6(g)(i) of the SRA Training Regulations 2011

9. The reasons for the SRA Board's proposal are as follows.
 - *Public interest* - the SRA sets requirements and standards in the public interest in accordance with the Regulatory Objectives set out in s.1(1) of the Legal Services Act 2007 (LSA). As a proportionate and targeted regulator, the SRA should not set requirements which do not contribute to delivering the Regulatory Objectives. A detailed and wide-ranging consideration of the issues has revealed no evidence that the current minimum salary requirement furthers the Regulatory Objectives, or the quality assurance of the competence of new entrants to the profession as described in paragraph 5, or the public interest in any other way.
 - *Freedom and access to qualification* - the SRA's EEIA (Annex B), revealed evidence that the current minimum salary requirement may be an artificial barrier to entry to the profession, by placing financial constraints on employers as to how many training contract places they are able to offer.
 - *Necessity* - The historical reasons for the minimum salary requirement, which was first brought in in 1982, have disappeared. These reasons were, firstly, to prevent exploitation of trainees - but since 1998, trainees have been protected along with all other employees by the national minimum wage requirements. Secondly, the Law Society sought, through the minimum salary requirement, to attract high-calibre entrants to the profession. However, the standards that the SRA has set for the solicitor qualification pathway ensure an appropriate quality of entrant to the profession; demand to qualify as a solicitor currently far outstrips the supply of opportunities, especially at the training contract stage; and the EEIA shows that the current minimum salary is not a major factor in attracting high-calibre individuals to the solicitors' profession.
 - *Consistency* - No other regulator of professions subject to the national minimum wage legislation sets a minimum salary above the Single Hourly Rate of the national minimum wage, and no justification has been shown for the unique status of trainee solicitors. Under the LSA the SRA regulates legal services providers which may employ individuals in a great variety of roles: therefore, the setting of a minimum salary for one particular role is anomalous.

Statement in respect of the LSA Regulatory Objectives

Protecting and promoting the public interest

10. The proposed change will promote the public interest in three ways.

- *Proportionate and targeted regulation* - the SRA's setting of requirements and standards for the profession should be proportionate and targeted, focusing on the public interest and the LSA Regulatory Objectives. The current minimum salary requirement does not further these objectives, and therefore its removal assists the SRA's focus on matters which do promote the public interest.
- *Removal of an artificial barrier to employment and qualification* - by removing a potential artificial barrier to qualification as a solicitor, aspiring entrants to the profession will be benefited. The EEIA shows that it is likely that new training contracts created because of the change will be among smaller employers. These smaller employers are more likely to provide legal services to individual citizens and provide publicly funded work. The potential growth in numbers of both trainees and, in time, newly qualified solicitors in this sector may therefore positively impact on citizens' access to legal services.
- *Removal of unnecessary regulation* - the Government's Red Tape Challenge aims to "free up business and society from the burden of excessive regulation."
(<http://www.redtapechallenge.cabinetoffice.gov.uk/home/index/>). The proposed change will further this aim by removing unnecessary restrictions on employers and would-be trainees.

11. The proposed change will therefore promote the public interest.

Supporting the constitutional principle of the rule of law

12. We do not consider that the proposed change will impact on the constitutional principle of the rule of law.

Improving access to justice

13. We do not consider that the proposed change will impact on access to justice.

Protecting and promoting the interests of consumers

14. The proposed change will give greater freedom to employers, allowing them in some cases the scope to offer legal services which may better meet the needs of consumers.

Promoting competition in the provision of services

15. The proposed change will give greater freedom to employers, allowing them in some cases the scope to offer legal services in different and more competitive ways. For instance, of employers that responded to the SRA online survey and do not currently offer training contracts, 70% stated that they would consider doing so if the SRA carried out the proposed change (see EEIA p.21). Potential additional trainees could be used to provide additional and / or more competitive services to consumers. Because smaller employers already typically pay nearer

the minimum salary than large firms (see EEIA pp.24 and 25) any increase is likely to be higher among smaller employers and this may promote greater competitiveness of legal services to individual citizens and in respect of publicly funded work, thereby furthering the public interest.

Encouraging an independent, strong, diverse and effective legal profession

16. The key question faced by the SRA in this respect was: does the current minimum salary, by guaranteeing a level of income to candidates who may have limited finances and/or debt, encourage a diversity of entrants to the profession which contributes to its strength and effectiveness? Or, does the current minimum salary restrict the freedom of employers to offer a variety and number of training places, particularly for smaller employers who, typically, train aspiring solicitors from a greater diversity of backgrounds?

17. The annexed EEIA should be read in full in relation to this key question. It revealed a complex and nuanced picture with an overall balance towards the potential benefits of the proposed change. The key findings can be summarised as follows

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- trainees with certain characteristics are more likely to be paid at, or close to, the minimum training salary. This includes women, BME groups, people working outside of central London and former pupils of state schools
- there are distinct markets for training contracts: a prime market offering training salaries around £38,000 and a lower tier market employing around 42% of trainees offering salaries at the minimum or slightly above which is more likely to be influenced by the removal of the minimum salary
- any impact to increase the supply of training contracts is likely to be modest as most firms take into account many more factors than just the minimum salary when making decisions about how many trainees to take on and what to pay them. However, there is evidence that firms which currently see training as prohibitively expensive might take on trainees if this regulation was removed.
- many representatives of firms where no training was currently offered stated that they would “seriously consider” providing training contracts if no SRA-imposed minimum salary was in place
- one third of firm respondents that did already offer training (who tended to be from smaller practices) said they would “seriously consider” offering more training contracts if the minimum salary was removed. Responses from the remaining two thirds indicated that a change in regulation would have no impact on the number of contracts they provide. This suggests that even amongst firms that tend to pay lower salaries to trainees, removing the minimum level would only have a modest impact on the supply of training contracts
- the survey indicated the removal of the minimum training salary would not lead to a significant reduction in salary levels across all training contracts. The prime market which pays higher salary levels to trainees, appears unlikely to change its approach. The lower paying market also revealed a reluctance to reduce salary levels for trainees, even if the minimum requirement was removed, although a small proportion of firms did say that they would not offer more training contracts but would take the

- opportunity to pay less. Where new training contracts are offered, the majority of these are likely to be paid below the current minimum level
- the solicitors' profession is currently a lot more diverse than many other professions, with proportionate representation of both women and black and ethnic minority (BME) trainees. However, this should not disguise the persisting problem of accessibility of higher paid training contracts and segments of the legal services market. This problem is highlighted by the higher proportion of these groups paid at the lower end of the spectrum of trainee salaries
 - as more women and BME groups are paid at, or close to, the minimum training salary, these groups are more likely to suffer a disproportionate impact from any reduction in salary levels resulting from removing regulation in this area. However, women and BME groups are also likely to benefit most from any additional availability of training contracts at the lower end of the market if that were the result of removing the minimum salary requirements.”

(SRA Board paper on the proposed change to the minimum salary requirement, May 2012, Item 7

<http://governance.lawsociety.org.uk/committees/view=viewmeeting.law?MEETINGID=4262&COMMITTEEID=10754>)

18. Overall, therefore, although the picture is complex and in some respects hard to predict, the SRA Board does expect the proposed change to have, on balance, a positive impact in terms of this objective.

Increasing public understanding of the citizen's legal rights and duties

19. We do not consider that the proposed change will impact on the public understanding of the citizen's legal rights and duties.

Promoting and maintaining adherence to the professional principles

20. We do not consider that the proposed change will impact on the promotion and maintenance of adherence to the professional principles.

Statement in respect of the Better Regulation Principles

Proportionality

21. The SRA sets requirements and standards in the public interest in accordance with the Regulatory Objectives of the LSA. As explained in paragraphs 8-18 above, the current minimum salary requirement does not contribute to delivery of the Regulatory Objectives. As explained in paragraph 7 above, the historical reasons for the existing minimum salary requirement have disappeared.
22. The proposed change is therefore proportionate to the public interest needs of the current situation. The proposed requirement will allow employers to pay trainee solicitors any rate of pay at or above the main rate of the national minimum wage.
23. The proposed change would take effect from 1 August 2014. This date has been set so that trainees within existing training contracts, with rates agreed above the rate of the national minimum wage, will not be adversely affected.

Accountability – stakeholder engagement

24. The proposed change meets the requirement of accountability both to the Legal Services Board and to all stakeholders. In addition to stakeholder meetings, focus groups (9 groups in 4 cities, with approximately 60 attendees) and an online survey (1,309 responses), full formal consultation was undertaken prior to the SRA Board's decision. The SRA's Response to the consultation, summarising the responses, is annexed to this Application (Annex C).
25. It should be noted that a large number of stakeholders opposed the change: however, this was on the basis that they feared impacts on diversity which have not been borne out by the SRA's EEIA. Stakeholders did not marshal convincing evidence in support of these fears. In contrast, the response from the online survey and focus groups is detailed and nuanced and is set out within the EEIA.
26. The SRA Board gave full consideration to the stakeholder views and discussed at length, the SRA's obligation to encourage a diverse legal profession. The SRA Board's conclusions in respect of these stakeholder views were informed by
- the evidence presented in the EEIA to suggest that some individuals or specific groups might be negatively impacted but also evidence for increased training contract opportunities that would be likely to benefit those same individuals or groups.
 - the evidence in the EEIA suggesting that the most diverse professions tend to be those with a diversity of pathways to qualification. The Board took into account that the SRA has already begun to explore different pathways to qualification through our work based learning pilot (<http://www.sra.org.uk/students/work-based-learning.page>) and that we will be considering the question of diversified pathways further through the Legal Education and Training Review.
 - the SRA's current and future role as a regulator not only of solicitors and trainees but, since the introduction of entity based regulation in 2009, all other individuals in a firm, encompassing the broader legal workforce (e.g. paralegals - including students who have completed the LPC and are unable to obtain a training contract) and possibly, in the near future, a newly created authorised person category of will writer. The Board discussed the fact that, if the SRA continues to set salaries for trainee solicitors, the rationale for this decision could imply a need, for reasons of consistency and fairness, to consider whether we should set salaries for others within the organisations we regulate.
 - as a corollary, whether the SRA should, and could, set minimum salaries for all future pathways to qualification. The nature of the potential pathways (i.e. individual led, flexible, possibly through a variety of employers) and the desire to minimise regulatory restrictions on employers that might discourage them from supporting their workforce to progress towards professional qualification could make the setting of a minimum salary for all pathways practically difficult as well as anomalous within our broader regulatory approach.
27. The Board concluded that, despite the views of stakeholders, the aim under the Legal Services Act of encouraging an independent, strong, diverse and effective legal profession is not effectively addressed through the setting of a minimum salary. The Board also concluded that the setting of salary levels for one type of individual regulated by the SRA has become increasingly anomalous in a modern

regulatory environment where there are different types of professionals regulated by the SRA and where we expect more diverse pathways to qualification in the future.

Accountability – legality and consonance with the Legal Services Act

28. The SRA carefully checked the legal position regarding the proposed change, confirming that there are no legal barriers to the change. Advice received by the SRA in relation to this issue confirmed the following key points.
29. There are no human rights, equality law or competition law obstacles to our proposed new policy, and the proposals are not contrary to any provision made by virtue of other legislation, in line with the requirements of the LSA Schedule 4, Part 3, paragraph 3(b).
30. The SRA has the *de jure* power to set a minimum salary under the Solicitors Act 1974, and the existence of an SRA policy and attendant Regulation which sets salary levels for trainees falls within the objectives of the LSA – to "encourage an independent, strong, diverse and effective legal profession".
31. The SRA Board had considered the option, and canvassed it with stakeholders, of removing all requirements in respect of trainee salaries. Legal advice received by the SRA had shown that there was a significant risk of trainees being considered "apprentices" as opposed to "employees" under the common law, because the primary purpose of the training contract is the trainee's development of competence rather than delivery of work product. This would mean that, unlike other employees, trainees would not be protected by the Single Hourly Rate of the national minimum wage under the National Minimum Wage Act 1998. A much lower "apprentice rate" would apply to them. The SRA Board took the view, as did most of the stakeholders who responded on this issue, that the potential for employers to pay trainees a rate much lower than that applicable to other employees such as paralegals and clerical staff would be an invidious and probably unintended consequence of the application of common law principles to the Minimum Wage legislation.
32. The legal advice received by the SRA confirmed that it is within the SRA's powers, and consonant with the objectives of the LSA, to set a minimum salary for trainee solicitors which may be above the rate they are entitled to under the common law or legislation – that is, as "apprentices" under the application of common law principles to the national minimum wage legislation.
33. Therefore, setting a minimum rate at the national rather than the apprentice rate is not contrary to any provision made by virtue of other legislation as per the LSA Schedule 4, Part 3, paragraph 3(b).
34. The justification for this is the LSA objective of "encouraging a...diverse and effective legal profession". The SRA's setting of a minimum salary rate at the Single Hourly Rate of the national minimum wage, as opposed to an apprentice rate, helps ensure that suitable candidates without their own financial support can enter the profession. The SRA also had detailed discussions with the Law Society of Scotland who have recently introduced a requirement on employers to pay trainee Scottish solicitors at the Single Hourly Rate of the national minimum wage (this is the same in Scotland as in England and Wales).

35. The LSB may also wish to note that the Bar Standards Board currently requires pupil barristers (who are not employees, and therefore not protected by the national minimum wage legislation) to receive £12,000 per year from their chambers during their pupillage, a sum equivalent to the Single Hourly Rate of the national minimum wage. The SRA had detailed discussions with the Bar Standards Board on the relative legal positions of trainee solicitors and pupil barristers.
36. Although the legal advice received by the SRA confirmed that it was within the SRA's powers to set a minimum salary rate for trainees, the SRA Board's views, in line with public statements made by the Chair of the LSB, are that regulatory requirements on the training contract should be kept to the minimum required to maintain professional standards and fulfil the objectives of the LSA. The EEIA confirms that there is no clear public interest benefit of the current minimum salary requirement, and therefore no justification for setting a trainee minimum salary above the national minimum wage - and our proposed reform carries this into effect.
37. Legal advice received by the SRA also confirmed the correct wording to ensure that the SRA requirement will continue to provide the same level of protection under the National Minimum Wage Act 1998 and the National Minimum Wage Regulations 1999 which provide for the changing of the Single Hourly Rate to allow for inflation. The enabling section of the National Minimum Wage Act 1998 states

“s.1(3) The national minimum wage shall be such single hourly rate as the Secretary of State may from time to time prescribe.”

The wording of the proposed change is

“6.1 If you are a training establishment you must...(g) pay (i) the trainee a salary equivalent to or exceeding the national minimum wage prescribed by s.1(3) of the National Minimum Wage Act 1998 as amended from time to time.”

38. Therefore, the rate of pay required of training establishments under the SRA's proposed Regulation 6.1(g)(i) is as “future proof” as can be achieved: it will both
- change as the Single Hourly Rate is revised to allow for inflation, and
 - continue to provide equivalent protection if s.1(3) is amended to provide for some other mechanism of regulating or revising the Single Hourly Rate.

Accountability – future monitoring of impact

39. The proposals agreed by the SRA Board included a commitment to monitor the impact of deregulation in terms of
- numbers of training contracts available at different types of firm and in respect of different levels of training contract salary
 - individuals who obtain, and individuals who do not obtain training contracts
 - length of time individuals spend seeking a training contract, and
 - the rates of pay within training contracts.
40. The EEIA identified the following as potential areas of impact of the change, all of which will be monitored in respect of the factors set out in paragraph 39.

- Impact in respect of all the protected characteristics set out in s.4 of the Equality Act 2010; that is, age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- Impact in respect of individual's socio-economic background – for its online survey, the EEIA used two indicators of this, which the SRA considered most relevant and on which we could obtain information at the time – whether the individual had privately funded school education, and whether the individual was the first person in his or her family to attend university. However, these indicators will be reviewed when monitoring of the impacts commences.

Consistency

41. The proposed change is consistent with the SRA's approach of only regulating where necessary to further the Regulatory Objectives of the LSA.
42. There is no inconsistency with any other aspect of the regulation of training contracts in the SRA's Qualification Regulations or Training Provider Regulations, and no inconsistency with the SRA Principles.
43. The SRA does not set salary levels above the minimum salary for any other group which it regulates, or for any role within the legal services providers it regulates. The proposed change will therefore increase the consistency of the SRA's regulatory approach.
44. There is also consistency with other UK legal sector regulators – as explained in paragraphs 34 and 35 above, the Law Society of Scotland requires trainee Scottish solicitors to be paid at least the Single Hourly Rate of the national minimum wage, and the Bar Standards Board requires pupil barristers to receive at least an equivalent sum from their chambers.

Transparency

45. The proposed change is clear and understandable.

Targeted

46. The proposed change is targeted in two senses:
 - it removes regulation which has specifically been recognised as unnecessary, and
 - it aims to further the LSA Regulatory Objective of a strong, diverse and effective profession by ensuring greater freedom for employers and aspiring entrants to the profession.

Statement in relation to desired outcomes

47. The SRA seeks the following desired outcomes.
 - As a proportionate and targeted regulator, the SRA seeks to discontinue unnecessary regulatory requirements which do not further these objectives.
 - We seek to further the LSA Regulatory Objective of a strong, diverse and effective profession by ensuring greater freedom for employers and aspiring entrants to the profession.

48. These outcomes will be achieved once the proposed change is implemented.

Statement in relation to impact on other Approved Regulators

49. We do not consider that the proposed change will impact on any of the other Approved Regulators under the Legal Services Act 2007.

Implementation timetable

November 2012	Application for approval of the SRA Training Regulations Part 2 (Training Provider Regulations) Amendment Rule [2012] submitted to LSB
January 2013	Proposed change implemented in Edition 6 of the SRA Handbook

Further explanatory information

Annex A SRA Training Regulations Part 2 (Training Provider Regulations) Amendment Rule [2012]
Annex B SRA Economic and Equality Impact Assessment
Annex C SRA Response to consultation

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