

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 Amendments to Regulatory Arrangements (Solicitors Keeping of the Roll) Rules [2014]

A Executive summary

1. This application is made to the Legal Services Board (LSB) for approval of changes to the SRA's regulatory arrangements to stop requiring solicitors on the roll who do not hold a practising certificate to complete an application and pay a fee every year if they wish their name to be retained on the roll.
2. In outline, the changes:
 - Stop the process by which solicitors on the roll that do not hold practising certificates (PCs) are asked each year to confirm whether or not they wish to remain on the roll. The roll is then updated by removing the names of those who fail to respond and/or pay the requisite fee. The proposed changes reserve to the SRA the power to carry out the process at such time as it considers appropriate.
 - Make it clear that when writing to solicitors under the SRA Keeping of the Rolls Regulations 2011 (the Regulations), the SRA may do so by email to the last notified email address.

B Details of the SRA's current regulatory arrangements

3. Since October 2011 the SRA has adopted a proportionate and targeted approach to regulation. This approach allows the SRA to focus on issues that really matter.
4. The SRA is required by the Solicitors Act 1974 to "continue to keep" a list of solicitors called the roll. Provision is made for this by the SRA Solicitors Keeping of the Roll Regulations 2011 (Annex 1).
5. Regulation 5 of SRA Solicitors Keeping of the Roll Regulations 2011 provides that, "When the SRA writes to any person under these regulations it shall write to the *solicitor's* last notified address". This removes any doubt that the SRA may validly send notices to the last notified address, even if the solicitor concerned has moved on since the last notification.
6. Solicitors' names and other pertinent details are entered onto the roll when they are admitted. Their names can be removed from the roll at their own request, if struck off by the Solicitors Disciplinary Tribunal or in the event that the SRA is notified of their death.
7. The other way in which names are currently removed from the roll is through the annual keeping of the roll exercise. This involves the SRA contacting solicitors on the roll and without PCs asking whether they wish to remain on the roll. Solicitors wishing to remain on the roll must complete an application using the online system mySRA and pay a fee (currently £20). Those who fail to respond and/or pay the fee have their names removed from the roll.

C Nature and effect of the proposed amendments to the SRA's regulatory arrangements

6. The SRA Amendment to Regulatory Arrangements (Solicitors Keeping of the Roll) Rules 2014 annexed to this application (Annex 2), were made by the SRA Board on 17 September 2014, subject to approval by the LSB. The amendments have been consulted on and are part of the SRA's programme of regulatory reforms which aims to reduce regulatory burdens.
7. The effect of the amendment rules in relation to each proposal is set out below.

Making it clear that when the SRA writes to solicitors, this can be by email communication

8. The SRA Board has amended Regulation 5.1 to make it clear that when the SRA writes to solicitors under the Regulations it can choose to do so by email instead of letter. The amendment removes the possibility of arguments over the validity of email communications.

Removing the obligation for solicitors to apply every year for their name to stay on the roll

9. The effect of the amendment to Regulation 6.1 is to change the requirement to carry out an annual enquiry of solicitors without practising certificates to carrying out such enquiry only when the SRA considers it appropriate.
10. Solicitors without practising certificates will no longer be required to complete an application and pay a fee every year in order to maintain their names on the roll. They will only need to do this in those years when the SRA notifies them that it has decided that it is appropriate to carry out an enquiry. The SRA will continue to fulfill its legal obligation to keep the roll, by maintaining records, adding the names of newly admitted solicitors and removing names on request or on notification of the death of a solicitor. To determine when a full update of the roll is needed the SRA will use indicators such as an increase in the number of solicitors on the roll without practising certificates which might suggest that some names should be removed. We will issue reminders to update details and monitor the extent of returned communications. We will also monitor the level of any complaints about misdirected communications.

D Rationale for amendment

13. The amendment to make it clear that the SRA may write to solicitors by email serves to clarify and modernise the regulations. It brings the regulations in line with current practice which reduces cost and delay.
14. The main aim of the amendment is to remove the burden of unnecessary regulation on solicitors without practising certificates, the vast majority of whom are retired or otherwise non-practising solicitors. They will no longer need to complete an application and pay a fee every year. They will only need to log in to the SRA's online system, mySRA, if their name or address details change so that they can keep such details current. There is no fee for this.
15. The current regulatory provisions:
 - place unnecessary burdens on solicitors without practising certificates who pose a very low regulatory risk;
 - serve no useful regulatory purpose;

E Statement in respect of the LSA Regulatory Objectives

- involve annual use of regulatory resources which would be better deployed to address issues of greater regulatory risk.

E Statement in respect of the LSA Regulatory Objectives

19. The SRA must, so far as is reasonably practicable, act in a way that is compatible with the regulatory objectives set out in the Legal Services Act 2007, and in a way that it considers to be most appropriate for the purpose of meeting those objectives. The SRA Board is satisfied that the amendments it has made are compatible with the regulatory objectives and represent an appropriate means of meeting them.

Protecting and promoting the public interest

20. The proposed amendments are considered to have a neutral effect on this regulatory objective.

Supporting the constitutional principle of the rule of law

21. The proposed amendments are considered to have a neutral effect on this regulatory objective.

Improving access to justice

22. The proposed amendments are considered to have a neutral effect on this regulatory objective.

Protecting and promoting the interests of consumers

23. The proposed amendments will allow the SRA to continue to keep the roll in a proportionate manner which will still allow the public to allow a reasonably accurate record of solicitors.

Encouraging an independent, strong, diverse and effective legal profession

24. The proposed rule change will allow solicitors without practising certificates to maintain their names on the roll without the burden of reapplying every year and paying a fee. This will allow solicitors (mainly women) who wish to take a career break, for example, in order to raise children, to maintain their names on the roll leaving them free to reapply for a practising certificate, without undergoing the Suitability Test when they are ready to return to practice. A higher proportion of solicitors without practising certificates are over 60 compared to all those on the roll. The amendment reduces the burden of regulation on them.

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

25. The proposed amendments are considered to have a neutral effect on this regulatory objective.

Promoting and maintaining adherence to the professional principles

26. The proposed amendments are considered to have a neutral effect on this regulatory objective.

F Statement in respect of the Better Regulation Principles

27. The SRA considers that the alterations requested fulfill our obligation to have regard to the Better Regulation Principles under section 28 of the Legal Services Act. The amendments are considered to be proportionate and targeted in a way that reduces the burden of regulation whilst continuing to meet the SRA's obligation to keep the roll.
28. The SRA has consulted publicly on the proposed changes and taken account of the views of stakeholders in developing the amendments to the SRA Handbook. It has therefore acted in an accountable way in developing this change to the regulatory arrangements and, subject to approval by the Legal Services Board, will ensure that changes are published and implemented transparently.

G Statement in relation to desired outcomes

29. The SRA desired outcome is to have in place a regulatory framework that is designed to ensure that regulation is properly targeted and proportionate, reduces unnecessary regulatory burdens and costs, removes unnecessary regulatory barriers and restrictions and enables increased competition, innovation and growth.

H Stakeholder engagement

30. The SRA published a formal consultation setting out our proposals on the 31 March 2014. The consultation was designed to give all those we regulate, users of SRA-regulated legal services and others with an interest in legal regulation the opportunity to comment. The amendment to Regulation 5.1 concerning email communication was not consulted upon and was introduced at a later stage.
31. The closing date for responses was on the 26 May. There were 138 respondents to the consultation from a variety of stakeholders including, solicitors in private practice, employed solicitors and the majority from retired or non-practising solicitors. Other respondents included the Law Society, local law societies, representative groups and the Information Commissioner's Office (ICO). A copy of the report on the responses to the formal consultation is included in the SRA Board paper.
32. The Law Society was strongly opposed to the proposal and felt it should be suspended pending discussions with the SRA. This is dealt with further in paragraphs 7 to 11 of Annex 2 to the Board paper. We have held productive discussions with the Law Society to assuage their fear that we will no longer keep the roll in good order. We have also discussed with them how they might develop their own register of members for their commercial and representative purposes and how we might collaborate or support them in that endeavour. The Law Society's response is at Annex 3 of the Board paper.

33. The Information Commissioner's Office (ICO) raised concerns about the ongoing accuracy of data and preventing inappropriate disclosure of private information in the event that correspondence is sent to an out of date address. We have engaged with the ICO to address the concerns and this is dealt with at paragraphs 12 to 20 of Annex 2 of the Board paper.
34. An effective communications plan has been developed which will make those affected aware of the changes. If and when the rule changes are approved we will issue a communication to all solicitors on the roll and without practising certificates informing them of the change in procedure. Further, the SRA can include reminders to keep contact details up to date in standard communications to solicitors to mitigate the risk of deterioration of the information held on the roll. For example, we can target those solicitors who do not renew their practising certificates in the standard communications sent to them when their old practising certificate is revoked. This is one measure that will be taken to ensure that the data on the roll remains accurate.

I Statement in relation to impact on other Approved Regulators

35. We do not consider that there is any impact on any other Approved Regulator under the Legal Services Act 2007 of any of the SRA's proposals.

J Implementation timetable

36.

25 September 2014	Application for approval of the SRA Amendments to Regulatory Arrangements (Keeping of the Roll) Rules [201]4
31 October 2014	Proposed change to be implemented in version 11 of the SRA Handbook

K SRA contact for matters relating to this application

37. If the Board have any queries in relation to this application please contact:

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L Further explanatory information

Annex 1 SRA Amendment to Regulatory Arrangements (Keeping of the Roll) Rules [2014]

Annex 2 SRA Board paper on the Annual Keeping of the Roll Exercise, 17 September 2014 (attached separately)

SRA Amendment to Regulatory Arrangements (Solicitors Keeping of the Roll) Rules 2014

Preamble

Rules dated {date of approval by LSB} made by the Solicitors Regulation Authority Board, under sections 28, 79 and 80 of the Solicitors Act, with the approval of the Legal Services Board under paragraph 19 of Schedule 4 to the Legal Services Act 2007

Rule 1

The SRA Solicitors Keeping of the Roll Regulations 2011 shall be amended as follows:

a) In regulation 5 , after , "it shall write", insert "either by letter or email" and after "last notified address" insert "or to the *solicitor's* last notified email address."

b) In regulation 6 replace "once a year" with "at such times as it decides appropriate".

Rule 2

These Rules shall come into force on 31 October 2014.