

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 (Overseas Rules) Rules [2014]

A. Summary

1. This application is made to the Legal Services Board for approval of minor technical and drafting changes to the SRA's Overseas Rules 2013 and related provisions. These proposed amendments do not represent a shift in policy but are a clearer statement of the how the existing rules apply. The changes proposed could have been introduced in the form of guidance but we felt that incorporating the changes into the rules themselves was a more transparent way to proceed.
2. The clarifications proposed concern the application of the Overseas Rules and in particular the circumstances in which an individual solicitor practising overseas can conduct reserved legal activities without requiring the Overseas Practice, in which he or she works, to be part of an authorised body and subject to a fuller application of the SRA Handbook.

B. Details of the SRA's current regulatory arrangements

3. The current regulatory arrangements applying to regulated entities and individuals practising overseas are set out in the SRA Overseas Rules 2013. These rules apply a proportionate regime to SRA regulated entities and individuals practising overseas, in recognition of the fact that they will also be subject to local law and regulation. The Overseas Rules also permit the SRA to require an overseas office to apply the full SRA Handbook if that office is "predominantly" providing services in England and Wales or conducting reserved work. The intention was to prevent any attempt by regulated individuals or entities to avoid provisions in the SRA Handbook that would properly apply to domestic practice by setting up offshoring operations overseas.
4. Individual solicitors are, however, still permitted by the Solicitors Act 1974 to undertake reserved work and, given the geographical limitations of the Legal Services Act 2007, could do so abroad without needing to practise from an authorised body.

C. Rationale for amendment

5. The interplay between the Overseas Rules and the Solicitors Act provisions has raised a number of queries about whether the conduct of reserved activities by an individual solicitor working within an Overseas Practice would then trigger the application of the full SRA Handbook to an Overseas Practice, which is otherwise

only providing services abroad. In the light of experience, we are therefore proposing to modify the formulation in the Overseas Rules in order to clarify the exceptional circumstances in which a solicitor may conduct reserved activities from an overseas practice without requiring full compliance of that office with the SRA Handbook.

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

6. The SRA Amendment to Regulatory Arrangements (Overseas Rules) Rules [2014] (Annex 1), 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 overseas practise as identified above. They clarify the exceptional circumstances in which reserved work may be conducted overseas. These circumstances are as follows:
 - i) The occasional conduct of reserved legal activities for clients in England and Wales (e.g. the involvement of a solicitor established in an overseas office in a litigation for clients in England and Wales). In these circumstances, the individual solicitor would need to comply with the SRA Principles and Code of Conduct as modified for temporary practice overseas. This latter formulation applies all of the essential client protections but takes cognisance of the fact that another jurisdiction's rules may also be relevant to the conduct of the matter.
 - ii) The conduct of reserved activities for clients based overseas. This means that clients in overseas jurisdictions may approach solicitors based locally in order to obtain service on reserved matters without that advice then requiring the full application of the SRA Handbook to the rest of the office in which that solicitor is practising.
7. A number of other small technical amendments are outlined in the attached annexes to this submission.
8. The SRA Board is satisfied that its proposals will improve the SRA's regulatory arrangements since they will reduce the number of queries from compliance officers in international firms about the scope of practice permitted to solicitors based in their overseas offices.

E. Statement in respect of the Regulatory Objectives

9. The SRA Board is satisfied that its proposed amendments to the Overseas Rules (2013) will support the regulatory objectives contained in the Legal Services Act 2007 in the following way:

Protect and promote the interests of consumers

10. Most of the impact of these proposed changes will be on commercial practice where solicitors based overseas are acting for clients on matters which have a requirement for some reserved work to be conducted in England and Wales. However, there may be circumstances in which consumers in England and Wales will find it useful to use a solicitor based in an Overseas Practice on matters which involve reserved legal

activities. This might be the case for example where an English citizen is living or working abroad temporarily and chooses to use a locally based solicitor on a cross border matter. The proposed changes will maintain the same level of protection for the consumer as they would have had by using a solicitor in England and Wales.

F. Statement in respect of the Better Regulation Principles

11. The SRA considers that the proposed alterations fulfil our obligation under section 28 of the Legal Services Act to have regard to the Better Regulation Principles.
12. The proposed amendments are proportionate in that they allow solicitors to conduct reserved activities from an overseas office in defined circumstances and under specific conditions, without imposing full and detailed compliance with the SRA's domestic requirements on the office in which that solicitor is working.
13. The proposed amendments are better targeted on the SRA's regulatory concern to ensure that entities do not use the Overseas Rules regime to avoid the application of the SRA Handbook in circumstances where they are simply carrying out practise in England and Wales from an offshore location.
14. The proposed amendments will provide greater transparency in our requirements, than the alternative which is to effect these changes through guidance.

G. Statement in relation to desired outcomes

15. The SRA's desired outcome is that there is clarity for those whom it regulates about the rules that apply to them in different circumstances and that the rules are applied in a proportionate way.

H. Statement in relation to stakeholder engagement

16. The SRA is proposing these amendments in response to questions put to the SRA Ethics Guidance team and following a request for guidance on a number of specific practice scenarios from the City of London Law Society. We consider that these queries can best be dealt with through the proposed rule clarifications.

I. Statement in relation to impact on other Approved Regulators

17. These proposed amendments will have no impact on other approved regulators.

J. Implementation timetable

18. We are proposing to introduce these changes in the version of the SRA Handbook due to be published on 31 October 2014.

K. SRA Contact

Alison Hook, International Adviser, SRA

SRA Amendment to Regulatory Arrangements (Overseas Rules) 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 Code of Conduct 2011 shall be amended as follows:

- (a) in paragraph 13A.2, replace “Subject to rule 13.A.1 above” with “However, if the following circumstances apply then you must comply with the provisions”. Delete “is” after “the Code” and insert “that are”. Delete the words “if you are” after “below”.

- (b) Add a new 13A.2 (d) as follows

"(d) a *regulated individual practising overseas* who is providing *reserved legal activities* to clients in England and Wales on an occasional basis, in accordance with rule 2(e)(i) of the *SRA Overseas Rules*."

Rule 2

The SRA Overseas Rules 2013 shall be amended as follows:

- (a) in rule 2.1(a) delete the words “in full” after “they apply”;
- (b) delete 2.1(e) and replace with the following:

“Reserved legal activities may only be conducted overseas from an authorised body. However, regulated individuals may conduct reserved legal activities overseas in the following circumstances:

- (i) on an occasional basis from an *Overseas Practice* for clients in England and Wales provided that they comply with the *SRA Principles* and the provisions in Chapter 13A.3 to 13A.6 of the *SRA Code of Conduct* when conducting those *reserved legal activities*.
- (ii) from an *Overseas Practice* under the Overseas Principles provided that this work is undertaken for clients based outside England and Wales.”

- (c) In rule 2.1(f) insert “Notwithstanding (e) above,” at the beginning of the paragraph and insert “or a *REL*” after “if you are a solicitor”. Insert “and consistently” after “predominantly” and “to clients, or in relation to assets located” after “provision of legal services”. Delete “the SRA will apply the full *SRA Handbook*” and insert “the *SRA Principles* and Chapter 13A of the *SRA Code of Conduct* will apply” after “regardless of where you are established”.

Rule 3

The SRA Handbook Glossary 2012 shall be amended as follows:

- (a) in the definition of "**established**", in paragraph (ii), delete “partners” and insert “*managers*” after “transfer or assignment, by”. Delete the word “normally” before “be treated as *practising overseas*”
- (b) in the definition of “**overseas practice**”, paragraph (i), delete the sentence “but which does not carry out *reserved legal activities* and whose *practice* does not predominantly comprise the provision of legal services to clients, or in relation to assets, located in England and Wales”.
- (c) in the definition of "**regulated individual**” put the words “overseas practice” into italics.

Rule 4

These amendment rules shall come into force on [the date of approval of the Legal Services Board].