



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 changes to regulatory arrangements relating to the regulation of insolvency practice

A. Summary

1. This application is made by the Solicitors Regulation Authority (SRA) to the Legal Services Board (LSB) for approval of changes to the SRA's regulatory arrangements (revocation of the SRA Insolvency Practice Rules 2012), to give effect to the decision to cease regulating solicitor insolvency practitioners (IPs) from 1 November 2015.
2. Though it is proposed that changes to our regulatory arrangements will come into effect on 1 November 2015, this application is being made now so that we can give solicitor IPs notice of our decision. Early notification will allow solicitor IPs wanting to transfer to another Recognised Professional Body (RPB) sufficient time to consider their position and make an informed decision.

B. Details of the SRA's current regulatory arrangements

3. The SRA has adopted a proportionate and targeted approach to regulation. This approach focuses on the high-level principles and outcomes that should drive the provision of services to consumers. It allows the SRA to focus on issues that really matter, whilst giving authorised firms and practitioners the freedom and flexibility to decide how best to deliver services in the context of managing their own risks.

Insolvency practice

4. The SRA is a RPB for the purposes of authorising solicitors to act as appointment holders in insolvency matters. This recognition is granted under the Insolvency Act 1986 (IA 1986) to the Law Society which has delegated its regulatory functions to the SRA.
5. The SRA is one of seven RPBs recognised under the IA 1986. Insolvency practice in the UK is governed by statute and supported by Statements of Insolvency Practice and the Code of Ethics (maintained by the Insolvency Service) with which all IPs must comply.
6. The SRA's standards for solicitor IPs are set out in the SRA Insolvency Practice Rules 2012. These rules remind IPs to comply with the Insolvency Code of Ethics. Regulation of insolvency practice is overseen by the Insolvency Service through a Memorandum of Understanding (MoU) with the RPBs. The purpose of the MoU is to set out principles for authorisation,

ensuring common professional standards, handling complaints, disclosure and exchange of information, retention of records and reporting.

7. We currently authorise 129 solicitor IPs out of a total of 1677 across the seven professional bodies. The authorisation and reauthorisation criteria for IPs do not form part of the SRA's Handbook. The process for applying and the criteria that is applied in considering an application is housed on the [SRA website](#) as part of information on accreditation schemes which the SRA manages.
8. Solicitor IPs form a small part of the insolvency market and only 22 of the 129 individuals regulated individuals take insolvency appointments. Some of the solicitor IPs that we regulate use the authorisation as confirmation of their competence to advise and assist insolvency office holders on legal issues arising from their appointments even though there is no legal requirement for them to be authorised for this purpose.
9. As solicitor IPs form a very small number of the whole regulated community and because of the fact that insolvency regulation is not a core function of our regulation of the legal services market, we have contracted out key monitoring and compliance activities. This has resulted in the need to rely heavily on the expertise of other RPBs.

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

10. The SRA Amendments to Regulatory Arrangements (Insolvency) Rules [2015], which are set out in Annex 1, were made by the SRA Board on 13 March 2015, subject to approval by the LSB. The changes (revocation of the SRA Insolvency Practice Rules 2012) are intended to facilitate the SRA ceasing to authorise and regulate IPs from 1 November 2015.
11. The effect of the change to the SRA's regulatory arrangements will be that SRA will cease to authorise solicitor IPs and the SRA Insolvency Practice Rules 2012 will cease to exist. If a solicitor wants to continue as an IP they will have to be authorised by another RPB.
12. Subject to the decision of the LSB, we propose to write to all solicitor IPs giving notice that we will be revoking authorisation from 1 November 2015. Solicitor IPs will need to ensure that they are authorised by another RPB should they wish to continue as an insolvency practitioner. We have engaged and continue to engage with other RPBs to discuss options that will be made available for solicitors transferring as an IP to help make the transfer as smooth as possible.

D. Rationale for amendment

13. The rationale for change is that:
 - acting as an insolvency practitioner is a regulated activity that is separate and distinct from the provision of legal services and is subject to a separate authorisation regime under the Insolvency Act 1986. Only 129 solicitors are authorised by us for this purpose and, of those, only 22 actually take up appointments as insolvency practitioners. The remainder hold the authorisation in order to market

themselves as solicitors with some expertise in insolvency, although there is no requirement to be authorised separately in order to provide legal advice on insolvency matters. Therefore, as acting as an insolvency practitioner is not integral, or necessarily linked, to the legal services provided by those we regulate, we do not think it is in the public interest to devote regulatory resource and capacity to authorisation of insolvency practitioners;

- the public interest will be better served if solicitor IPs are regulated by Recognised Professional Bodies (RPBs) with specialist expertise in this area;
- a reduction in the number of RPBs regulating in this area is consistent with recent reviews of the insolvency market. It would promote consistency and efficiency and could reduce the overall cost of regulation which would ultimately benefit creditors;
- this is a low risk decision because, although it will have a significant impact on the small number of IPs that we regulate, they have the option to be regulated effectively elsewhere; and
- the decision fits with the approach that we have already taken in relation to Multi Disciplinary Practices (MDPs) where suitable external regulation is accepted in areas outside mainstream solicitor services¹.

14. The Insolvency Service has itself noted that recent reviews of the insolvency market have concluded that a reduction in the number of insolvency regulators would be a positive move which would improve both consistency and efficiency of regulation. We have been in regular contact with the Insolvency Service both before and throughout the consultation and we will work with them during the transition period to ensure that there is no risk to consumers from the transfer of authorisations.

E. Statement in respect of the Regulatory Objectives

15. 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. Our position with regards to the regulation of insolvency services has been led by the changes being brought through by legislation and the focus on the SRA to only regulate core activities of a SRA- authorised firm.
16. The SRA Board is satisfied that its decision to cease regulating insolvency practitioners is compatible with the regulatory objectives and represents the most appropriate means of meeting these objectives.
17. The SRA Board has not identified an adverse effect on any of the regulatory objectives as a result of the proposed amendments.

Protecting and promoting the interests of consumers

¹<http://www.sra.org.uk/sra/policy/policies/multi-disciplinary-practices-sept-2014.page>

18. The decision to cease regulating solicitor IPs does not mean that solicitors cannot continue as IPs, only that they must be regulated by another RPB. We currently authorise only 129 IPs out of a total 1,677 IPs and only 22 of these actually take insolvency appointments. Solicitor IPs regulated by us do not make up a large share of the market, therefore. We are not aware of any problems with the supply of IPs and do not envisage any detrimental impact on the market if a small number of IPs choose not to seek authorisation with another RPB.
19. In terms of consumer protection, clients of a solicitor IP will still have access to a complaints handling process managed by the authorising RPB and in addition to the dual bond system which insures an estate against losses arising out of fraud or dishonesty, a solicitor IP acting on an insolvency appointment would continue to be covered by professional indemnity insurance as the activity would still fall within the definition of "private legal practice" for that purpose. There is nothing that would exclude this work from the SRA Compensation Fund in the case of SRA recognised bodies.
20. Of the 129 solicitor IPs, only 7 are in SRA licensed bodies and only 1 of these takes appointments. Pure insolvency work, for example, disposal of assets or agreeing creditors' claims will not be covered by the SRA's Compensation Fund or the minimum terms and conditions (MTC) of professional indemnity insurance as this activity would not fall within the definition of 'regulated activity' in the SRA's Handbook unless specifically stated in the terms of the licence. This is the case whether or not the solicitor IP is regulated by us or by another RPB and is consistent with other non legal activity undertaken by a licensed body e.g. estate agency. Our proposal does not change the current position, therefore.
21. Any decision about whether or not to continue to regulate solicitor IPs should be taken from a public interest perspective. We do not believe that it is in the interests of the public to divert regulatory resource to an area that is not integral or necessarily linked to the services provided by those we regulate and where solicitor IPs can be regulated elsewhere by other RPBs with specialist expertise.

Improving access to justice

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

Promoting competition in the provision of services

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

Encouraging an independent, strong, diverse and effective legal profession

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

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

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

objective.

Promoting and maintaining adherence to the professional principles

26. The amendments are considered to be proportionate and to have no foreseeable negative effects on this regulatory objective.

F. Statement in respect of the Better Regulation Principles

27. The proposal will ensure that the SRA is not involved in unnecessary regulatory activity and does not spend regulatory time and resource on activity that is not integral to the provision of legal services and is better delivered by others. It will deliver public value and benefit by ensuring that solicitors working in the insolvency market are regulated effectively. The proposal is consistent with our position on MDPs.

G. Stakeholder engagement

28. The key stakeholder group affected by our proposal consists of the 129 solicitor IPs that we authorise, including the 22 who actually take insolvency appointments. It also includes the Insolvency Service, the Law Society and the other RPBs that regulate insolvency practitioners.
29. We contacted all solicitor IPs individually to tell them about the consultation and to invite them to a meeting to discuss the proposals with senior SRA staff. 19 solicitor IPs attended the meeting and the feedback from the meeting has been included in this summary of consultation responses.
30. Both before and during the [formal consultation](#), we engaged with other RPBs to understand the potential impact on solicitor IPs and to understand the regulatory alternatives available to them. We obtained information about the potential cost and process involved for solicitor IPs in transferring their authorisation to another RPB should our proposals be implemented and this information was shared directly with all solicitor IPs. To manage the impact on solicitor IPs, some RPBs have made commitments regarding the future cost of authorisation to assist solicitor IPs with the transition. Some RPBs have offered reduced rates for non appointment takers and have established bespoke procedures for authorisation that will make it as simple as possible for solicitor IPs to transfer if they wish to.
31. We have engaged with the Law Society informally throughout the process and they attended the stakeholder meeting.
32. In response to the consultation we received 17 formal responses. Three of the formal respondents agreed with the proposals. The remainder did not agree and expressed concerns about our proposals and reasoning. We have given full consideration to the range of views expressed. Whilst we acknowledge these concerns, we remain of the view that the public interest can best be served if solicitor IPs are regulated by other RPBs and the reasoning for our decision is as set out in Section D above. A copy of our response to the consultation responses is included as part of the SRA Board paper which is attached at **Annex 2**.
33. In order to help mitigate the financial impact of the proposals and facilitate the transitional process, the SRA Board have agreed that a reduced fee of £460

(rather than £520) be charged to solicitor IPs for 2015. This fee will cover payment of the statutory levies due to the Insolvency Service and Department for Enterprise, Trade and Investment (DETI) in Northern Ireland for 2015 plus our fixed costs (for monitoring and complaints handling) up to 1 November 2015. No fees will be charged for SRA staff and administration costs for the period up to 1 November 2015.

34. We will continue our engagement through the transitional period with all solicitor IPs and with the other RPBs to agree issues with regards to the sharing of information, the Law Society and the Insolvency Service. We will be contacting solicitor IPs directly to inform them of the Legal Services Board's decision and to provide further information about transitional arrangements.
35. With effect from 1 November 2015, information and processes housed on the SRA website relating to the authorisation of solicitor IPs will be archived so as not to cause confusion. SRA functions will be advised to direct solicitors seeking to be authorised as an IP or queries relating to insolvency to the other RPBs.
36. After 1 November 2015, we will continue our engagement with the other RPBs to provide for the sharing of information and also to monitor the impact of this change. As the other RPBs already authorise a number of solicitor IPs it is envisaged that the impact on solicitors transferring will be minimal.

H. Statement in relation to impact on other Approved Regulators

37. We do not believe our proposals give rise to any conflict between any of the approved regulators.

I. Implementation timetable

38.

27 March 2015	Application to the LSB for approval of the SRA Amendments to Regulatory Arrangements (Insolvency) Rules [2015]
1 November 2015	Proposed change implemented in Version 15 of the SRA Handbook

39. After changes to the SRA's regulatory arrangements on 1 November 2015, we will work closely with the Law Society and the Insolvency Service to facilitate an order being laid before the Secretary of State for the Law Society's Recognised Professional Body status to be removed. This process can take place after our own regulatory change has taken effect and after we have ceased regulation of solicitor IPs.

J. SRA contact for matters relating to this application

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

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Annex 1 SRA Amendment to Regulatory Arrangements (Insolvency) Rules [2015]

Annex 2 SRA Board paper on the regulation of Insolvency Practice, 11 March 2015 ([link attached](#))

SRA Amendments to Regulatory Arrangements (Insolvency) Rules [2015]

Rules dated [date of approval by the LSB] made by the Solicitors Regulation Authority Board.

Made under sections 31, 79 and 80 of the Solicitors Act 1974, with the approval of the Legal Services Board under paragraph 19 of Schedule 4 to the Legal Services Act 2007.

Rule 1

The SRA Insolvency Practice Rules 2012 shall be revoked.

Rule 2

These rules come into force on 1 November 2015 or the date of approval of the Legal Services Board, whichever is the later.