

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 Overseas Rules [2013] and SRA Amendment to Regulatory Arrangements (Overseas Rules) Rules 2013

A. Summary

1. This application is made to the Legal Services Board for approval of changes to the SRA's regulatory arrangements in relation to the provision of legal services by authorised bodies and regulated individuals in jurisdictions outside England and Wales. These new arrangements are designed to modernise the regime governing practice in other jurisdictions. The detail of the proposed new arrangements is set out in section C below, but in summary these proposals do the following:
 - Create separate regimes governing the different circumstances in which an SRA regulated individual or authorised body is practising temporarily in another jurisdiction, as opposed to when they are permanently established and practising overseas.
 - Replace the SRA Principles and detailed outcomes in the SRA Code of Conduct with a set of Overseas Principles which adapt the SRA Principles in an appropriate and proportionate manner for regulated individuals and bodies who are practising overseas.
 - Introduce the concept of 'an overseas practice' which simplifies both the process of initial authorisation for new offices overseas and the application of SRA regulatory requirements across the different structures that a single authorised body might establish in different jurisdictions.
 - Introduce the concept of 'a responsible authorised body' which allows the SRA to hold an authorised body to account in England and Wales for the conduct of overseas practices under its control in other jurisdictions
 - Introduce the concept of 'a connected practice' which is a risk management tool designed to require authorised bodies to manage their wider international relationships with foreign law firms.
2. The proposals do not remove or modify the requirements for individuals and bodies to obtain authorisation in order to provide reserved legal activities, regardless of where they are practising.
3. As a whole, the proposed rules are intended to apply a more proportionate regulatory regime to overseas practice, taking into account the risks posed to the SRA's regulatory objectives, the need to ensure that consumers in

England and Wales are protected, the requirements of local regulatory regimes in other jurisdictions and the importance of the globalisation of legal services to the UK economy.

B. Details of the SRA's current regulatory arrangements

4. Since October 2011 the SRA has adopted an outcomes focused approach to regulation. This is a regulatory regime that focuses on the high level principles and outcomes that should drive the provision of services to clients. The SRA Code of Conduct replaces detailed rules with a Code which sets out the mandatory outcomes we expect the firms and individuals we regulate to achieve in particular contexts whilst allowing flexibility in how those outcomes are achieved.
5. The current regulatory arrangements apply the SRA Principles and Code of Conduct to regulated individuals and authorised bodies practising in other jurisdictions. The application of the outcomes in the Code of Conduct is modified to some extent and in certain chapters of the code separate overseas outcomes are imposed. These conduct rules are accompanied by provisions in the Practice Framework Rules and Authorisation Rules, which set out the form in which an authorised body may practise overseas as well as the rules governing solicitors, Registered European Lawyers, Registered Foreign Lawyers and solicitors working in-house when practising in other jurisdictions. There are also separate overseas provisions in the Solicitors Accounts Rules.

C. Rationale for amendment

6. The SRA gave an undertaking to stakeholders when the new Handbook came into force in October 2011 that the arrangements relating to overseas practice would be reviewed.
7. In November 2011 we published a Green Paper setting out the rationale for amending the existing approach. This rested largely on two pillars: firstly, it had become clear that even the modified mandatory outcomes in the SRA Code of Conduct were more prescriptive than necessary for overseas practice; and secondly, the Practice Framework Rules in the Handbook were not flexible enough to take into account the structures through which firms were often practising overseas, leading to unnecessary complexity.
8. The Code of Conduct in its current form has two main shortcomings. First it limits its overseas application to regulated individuals 'practising from an office in another jurisdiction'. This leaves some uncertainty about the situation of regulated individuals who might be flying out of England and Wales to practise temporarily in another jurisdiction. Secondly, even though modified, the mandatory outcomes in the Code of Conduct are still disproportionate to

the risks posed by overseas practice, given that they often sit alongside additional requirements in the host jurisdiction. The move to entity based regulation has also resulted in the imposition of disproportionately detailed SRA requirements on lawyers who may be working in their home jurisdictions under their home title.

9. The Practice Framework Rules, which were designed to maintain the integrity of the authorisation system for reserved legal activities, do not sit easily with the requirement in many jurisdictions for firms to set up new local entities rather than branch offices of an authorised body. Where firms are required to set up subsidiary offices in order to establish in another jurisdiction, this results in the imposition of different SRA regulatory requirements on the solicitors and others working within these subsidiaries or 'foreign law practices' compared to their counterparts in one of the authorised body's overseas branch offices. The creation of subsidiaries also brings with it various requirements such as the need to create overarching governance arrangements. All of this has not only made life complex for the firms themselves but has also reduced the SRA's ability to get to grips with the structure of large international firms and therefore fully to understand the risks that they pose to the SRA's regulatory objectives. The current rules are somewhat unclear on what authorisation means in an overseas context with the result that there is little consistency in how this is handled. Lastly the current system also creates the potential for the creation of a misleading impression of the true extent of the SRA's reach or ability to enforce overseas.

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

10. The (draft) SRA Overseas Rules [2013] and the SRA Amendment to Regulatory Arrangements (Overseas Rules) Rules 2013, which are set out at annexes 1 and 2, were made by the SRA Board on 24 July 2013, 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 do the following:
 - They create new Overseas Rules. These will sit as a separate section in the Handbook and are designed to apply to solicitors and regulated SRA individuals and entities established and practising overseas. The current modified version of the Code of Conduct applying to Overseas Practice will now be applied only to temporary practice in other jurisdictions and to the limited circumstances in which an authorised body must have an overseas office that is authorised for reserved legal activities.
 - The Overseas Rules comprise a set of principles-based conduct rules, application provisions and reporting requirements. The proposed conduct requirements are based on the SRA Principles alone, both in order to

reinforce their role as the core of the SRA's regulatory regime and because imposing conduct requirements at a high level is proportionate to our regulatory objectives overseas. The Overseas Rules will, however, slightly modify the SRA Principles in order either to clarify obligations on firms overseas or to make their requirements manageable in regulatory terms. Overseas Principle 6 has also been redrafted to make it relevant to overseas practice and now requires that those to whom the rules apply 'must not do anything which will, or will be likely, to bring into disrepute the overseas practice, yourself as a regulated individual or responsible authorised body or, by association the legal profession in and of England and Wales'. This is our fundamental requirement for overseas practice. It is worth noting that we have also included some guidance to indicate how the SRA Principles apply overseas. In the absence of such guidance, they can only be interpreted with reference to the Code of Conduct and the detailed outcomes it requires.

- These conduct rules apply both to regulated individuals practising overseas and to a new concept we are proposing to introduce known as a 'responsible authorised body'. A responsible authorised body is a body which has offices under its control in other jurisdictions and it is required by the proposed rules to ensure that its overseas offices (or 'overseas practices') comply with the Overseas Principles, notification and reporting requirements. A counterpart obligation is proposed for Chapter 7 of the Code of Conduct on 'Managing your business'.
- Authorised bodies will be expected to manage any risk of their other formal international relationships, which would be known as 'connected practices'. This is also covered by a new domestic outcome in the Code of Conduct.

11. The SRA Board is satisfied that its proposals will assist the SRA's regulatory arrangements in the following way:

(a) Authorisation

12. The combined impact of the proposed Overseas Rules and the consequential changes that are proposed to the rest of the Handbook will make it easier both for firms and for the SRA to determine what needs to happen when an authorised body opens an office in another jurisdiction. If a body in another jurisdiction is, de facto or de jure, under the control of the authorised body in England and Wales, it will become 'an overseas practice' and the Overseas Rules will apply to it. It will only be in exceptional cases, where firms are conducting reserved activities directly from offices in other jurisdictions that such offices will need to be full branches of the England and Wales authorised body. As a rule, therefore, firms will not need to think about the regulatory consequences of the corporate form in which they open overseas offices. This clearer process will also save time within the SRA's authorisation function since there will only rarely be a need for a firm to enter into

discussions about the need for an overseas office to be 'authorised' through its establishment as a branch office.

(b) Risk

13. The introduction of the Overseas Rules and in particular the concepts of 'an overseas practice', a 'responsible authorised body' and a 'connected practice' will give the SRA a better overview of the risk profile of international firms. The introduction of 'overseas practices' in place of branches, subsidiaries and other offices, will make the structure of large firms more transparent to the SRA. The concept of a 'responsible authorised body' will make it clear that the authorised body in England and Wales is responsible for ensuring that its overseas practices are run on sound governance, financial and risk management principles. This represents a formal extension of risk management across the firm as a whole and strengthens the position of those responsible within the firm for compliance. The introduction of the concept of a 'connected practice', through an additional outcome in the SRA code of conduct, is designed to require firms to focus more attentively on the risks of their relationships with other bodies to whom their businesses are connected, whether formally or informally.

14. The reporting and notification requirements contained in the Overseas Rules will also assist the SRA's assessment of risk in relation to individual firms or to practice in particular jurisdictions. These requirements go beyond the collection of information on criminal and disciplinary matters relating only to regulated individuals and require reporting from overseas practices when there are any issues raised about the suitability of any partner, member, manager or professionally qualified employee. This is risk management information (in particular where it concerns an individual outside the SRA's regulated community) that will allow both the SRA and the responsible authorised body in England and Wales to pick up issues of concern at an early stage.

(c) Supervision

15. The vast majority of authorised bodies that will be covered by the Overseas Rules come under the SRA's regulatory management regime (i.e. they will have a designated SRA regulatory manager). The supervision function will therefore play an important part in rolling out this regime and assisting firms with its implementation. In order to ensure that the transition to the new arrangements is as smooth as possible, we intend to stagger the introduction of the conduct aspects of the Overseas Rules and the introduction of the concept of an overseas practice. We are proposing that the new rules will apply, on their entry into force, to the existing overseas branch offices of an authorised body. Subsidiary and other offices will only be included in the regime on entry into force of the 'overseas practice' vehicle which will be timed to coincide with the practising certificate renewal exercise in 2014. This will both give the responsible authorised bodies the time in which to communicate to their overseas offices, which are currently outside any SRA oversight, what this will mean for them in practice, and it will allow the SRA to

build the specific data requirements for overseas practices into its IT system for the renewals exercise in 2014.

16. Once the proposed new rules are fully in force, the supervision function will be responsible for the ongoing discussion with responsible authorised bodies about their application. To a large extent, this new regime will be a formalisation of the dialogue which already takes place between international firms and their SRA regulatory managers. The new regime will however clarify the SRA's expectations and regulatory objectives in relation to overseas practice.

(d) Enforcement

17. There are limits on the SRA's enforcement ability in other jurisdictions and this new regime is not intended to create any requirement for the SRA to engage in such activity in other jurisdictions. By creating the concept of the 'responsible authorised body', we are making it possible, if required, for the SRA to undertake enforcement action in England and Wales against an authorised body as a result of any actions or failures of its overseas practices. The duty on a responsible authorised body to ensure that its overseas practices assist with compliance is made explicit in Overseas Principle 7.

E. Statement in respect of the Regulatory Objectives

18. The SRA Board is satisfied that its proposed new Overseas Rules will support the regulatory objectives contained in the Legal Services Act 2007

Protect and promote the public interest

19. The Overseas Rules will protect and promote the public interest in a number of ways. First and foremost, they are designed to ensure that the rule of law in England and Wales is not undermined by the activity of regulated individuals or related bodies in other jurisdictions. We have deliberately chosen not to attempt to extend the obligation on regulated individuals to include upholding the rule of law in other jurisdictions. This is not to suggest that our regulated community should not be upholding the rule of law wherever they are; it is rather because of the difficulty of defining and requiring compliance with this concept in all jurisdictions. We believe the obligation becomes stronger by focusing it clearly on England and Wales. The requirement on our regulated community to follow local law and regulation is made clear elsewhere in these rules, together with our intent to cooperate with our fellow regulators in other jurisdictions.
20. Secondly, the public interest is protected by these proposed new rules through the emphasis which they place on the reputation of 'the legal profession in and of England and Wales'. This is designed to support and enhance the standing of English legal services and English law around the world.

Protect and promote the interests of consumers

21. Consumers are increasingly seeking legal advice in other jurisdictions. Our new rules clarify the obligations on our regulated community, whether they are advising clients in relation to other jurisdictions from an office in England and Wales, or from an overseas office. A regulated individual or overseas practice advising a consumer from England and Wales will be under an obligation to provide information to their client about the regulation of legal services in the jurisdiction where they are based and what protections are available to them.

Promote adherence to the professional principles

22. The requirements on authorised persons in relation to the professional principles, as set out in the Legal Services Act 2007, are clear and unambiguous in their application in England and Wales. Outside of this jurisdiction, however, concepts such as ‘duty to the court’ and ‘clients’ best interests’ may have a different interpretation. We have tried through the Overseas Principles and the guidance connected to them, to ensure that the underlying meaning of the professional principles is reflected in the requirements on those practising overseas.

F. Statement in respect of the Better Regulation Principles

23. 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.
24. The proposals are proportionate in that they do not require detailed compliance with the Code of Conduct by firms and individuals who are based in overseas offices and subject to local law and regulatory requirements.
25. The proposals are targeted on the SRA’s main regulatory concerns in relation to overseas practice: to ensure that overseas practices are well run and do not add to the risk of authorised bodies in England and Wales in an unmanaged way; to promote confidence in legal services from England and Wales and of SRA regulation; and to ensure that any information relevant to the character and suitability of regulated individuals is picked up, regardless of where it arises.
26. We have been transparent in developing our proposed new Overseas Rules and we have sought out and taken account of the views of stakeholders from a variety of quarters in this final proposal.

G. Statement in relation to desired outcomes

27. The SRA’s desired outcome is that the individuals and firms that it regulates maintain high standards and reinforce confidence in legal services from England and Wales when practising in other jurisdictions.

H. Statement in relation to stakeholder engagement

28. The SRA published a discussion document on international practice in November 2011. Since then, we have issued two consultations containing specific proposals and have held extensive discussions with different segments of the profession, with consumer and client representatives and with legal regulators from other jurisdictions.

I. Statement in relation to impact on other Approved Regulators

29. All of the other approved regulators were invited to comment on our various consultations on the draft overseas rules. They have chosen not to do so, no doubt because their regulatory arrangements and the position of the individuals whom they regulate is unaffected by the changes we propose.

J. Implementation timetable

30. We are proposing to stagger the introduction of the Overseas Rules as outlined in paragraph 15. The code of conduct element of these proposals, if agreed, will enter into force on 1 October 2013. Overseas practices, together with the notification and reporting requirements which apply to them will be introduced on the commencement of the practising certificate renewal period in 2014.

K. SRA Contact

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