

**SRA BOARD**  
17 September 2014



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**[Draft] SRA Amendment to Regulatory Arrangements (Overseas Rules) Rules [2014]**

**Purpose**

1. This paper invites the Board to make the **[Draft] SRA Amendment to Regulatory Arrangements (Overseas Rules) Rules [2014]**, subject to the approval of the LSB. These amendment rules clarify the application of the SRA Overseas Rules 2013 in circumstances in which a solicitor practising overseas is conducting reserved work under the Solicitors Act 1974. These Rules are intended for inclusion in version 11 of the SRA Handbook, which should be published on 31 October 2014.

**Recommendations**

2. It is recommended:
  - (a) that the Board makes the [Draft] SRA Amendment to Regulatory Arrangements (Overseas Rules) [2014], subject to the approval of the Legal Services Board; and
  - (b) that the Chair of the SRA Board certifies under Regulation 32(4) of The Law Society's General Regulations that the proposed changes are urgent.

**If you have any questions about this paper please contact: Alison Hook, International Adviser, [alison.hook@sra.org.uk](mailto:alison.hook@sra.org.uk), 0207 621 3976.**

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**Draft] SRA Amendment to Regulatory Arrangements (Overseas Rules)  
Rules [2014]**

**Purpose**

3. The purpose of these proposed amendments to the Overseas Rules is to clarify their application in circumstances in which a solicitor practising overseas is seeking to conduct reserved work under the Solicitors Act 1974.
4. The Overseas Rules apply a less prescriptive regime to SRA regulated entities and individuals practising overseas, in recognition of the fact that the legal services involved are largely provided outside of England and Wales and are subject to some degree of local law and regulation in the host jurisdiction. However, the Overseas Rules also enabled the SRA to apply the full requirements of the SRA Handbook to an entity overseas if it was “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 outside England and Wales.
5. However, individual solicitors are still permitted by the Solicitors Act 1974 to undertake reserved work and can, in theory, do so abroad without needing to practise from an authorised body given the geographical limitations of the Legal Services Act 2007.
6. The interplay between these two 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. These exceptional circumstances are as follows:
  - a. 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.

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- b. Conduct of reserved activities for clients based overseas. This allows clients in overseas jurisdictions to 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. The question of how to interpret the word ‘predominantly’ has also inevitably been raised in relation to the current requirement in the Overseas Rules for the full SRA Handbook to be applied overseas where practice “predominantly comprises the provision of legal services in England and Wales”. This question has been raised in relation to practice overseas by firms on behalf of the branches of companies where the parent organisations are domiciled in England and Wales. It was not the SRA’s intention to apply the full domestic provisions of the SRA Handbook in circumstances such as these, so we are therefore proposing an improved formulation which makes it clear that the ‘predominance’ test applies where the clients or assets are located in England and Wales.
8. Our proposed changes to the Overseas Rules are minor and could have been achieved purely by issuing guidance. We felt, however, that it would be better practice and more transparent to clarify their application in the rules themselves.
9. Further details can be found in the draft submission to the Legal Services Board at **Annex 3**.

**Statutory approval process**

10. The amendments to the rules must be approved by the Legal Services Board.

**Consideration by other committees**

11. The new rules and the amendments proposed to the SRA Handbook have been considered by the Standards Committee.

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## **Supporting information**

### **Links to the Strategic Plan and / or Business Plan**

12. This proposal links to the SRA's Strategic Objective to deliver risk based outcomes-focused regulation in order to achieve positive outcomes for consumers in the public interest and to do so in a way that is justifiable to all stakeholders. Clarification of the circumstances in which reserved work may be undertaken overseas and the conditions that apply to it, will make it easier for SRA regulated individuals and entities who are established overseas to meet their clients' needs.

### **How the issues support the principles of better regulation**

13. The proposed amendments to the overseas rules fulfil our obligation under section 28 of the Legal Services Act to have regard to the Better Regulation Principles. They 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.
14. 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. They will also provide greater transparency in our requirements, than the alternative which is to effect these changes through guidance.

### **The engagement and communication approaches used to inform these proposals**

15. These amendments have been developed in close co-ordination with the City of London Law Society, whose members are most affected by the Overseas Rules. However, in formulating our proposed approach we have also drawn on the experience of the Ethics Guidance team and the queries on various practice scenarios they have received.

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**Impact on equality and diversity**

16. The proposed rule changes do not have any significant impact on equality and diversity. However, there are some small law firms with overseas offices which will in particular welcome these clarifications as it will make it easier to accept new instructions. Small firms are statistically more likely to have minority ownership than larger firms.

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**Annexes**

- Annex 1** [Draft] SRA Amendment to Regulatory Arrangements (Overseas Rules) Rules [2014]  
**Annex 2** Scope document for [Draft] SRA Amendment to Regulatory Arrangements (Overseas Rules) Rules [2014]  
**Annex 3** Draft Submission to the Legal Services Board  
**Annex 4** SRA Board Risk Assessment

**Author** Alison Hook  
**Executive Director** Richard Collins  
**Date** 04 September 2014

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**[Draft] 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*.

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- (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].

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**Annex 2: Scope document for [Draft] SRA Amendment to Regulatory Arrangements (Overseas Rules) Rules [2014]**

**SRA Code of Conduct 2011**

<b>Rule</b>	<b>Issue</b>	<b>Solution</b>	<b>Implementation date</b>	<b>Minor change or significant policy change requiring consultation</b>
Paragraph 13A.	This is an improved drafting formulation designed to remove an apparent circularity of application.	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”.	31 October 2014	Minor change
Paragraph 13A.2	Consequential change following from clarification of Rule 2(e) of the SRA Overseas Rules 2013	"(d) a <i>regulated individual practising overseas</i> who is providing <i>reserved legal activities</i> to clients in England and Wales on an occasional basis, in accordance with rule 2(e)(i) of the <i>SRA Overseas Rules</i> ."	31 October 2014	Minor change



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**SRA Overseas Rules 2013**

Rule	Issue	Solution	Implementation date	Minor change or significant policy change requiring consultation
Rule 2.1 (a)	This deletion is a more accurate formulation since the SRA Handbook cannot technically apply in full given that certain provisions are geographically limited to England and Wales (e.g. the Solicitors Indemnity Insurance Rules)	In rule 2.1 (a) delete the words “in full” after “they apply”;	31 October 2014	Minor change
Rule 2.1 (e)	This is a clearer statement of the exceptional circumstances in which a solicitor may conduct reserved acts overseas. This formulation maintains the objective of ensuring that the Overseas Rules are not used to avoid requirements which should properly apply to entities practising in England and Wales whilst allowing individual solicitors to serve their clients from overseas practices.	Delete rule 2.1 (e) and replace with the following:  “ <i>Reserved legal activities</i> may only be conducted overseas for clients in England and Wales from an authorised body, except in the following circumstances:  (i) <i>regulated individuals</i> may conduct <i>reserved legal activities</i> for clients in England and Wales on an occasional basis from an <i>Overseas Practice</i> provided that they comply with the	31 October 2014	Minor change

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		<p><i>SRA Principles</i> and Chapter 13A of the <i>SRA Code of Conduct</i>,</p> <p>(ii) <i>regulated individuals</i> may conduct <i>reserved legal activities</i> in England and Wales from an <i>Overseas Practice</i> under the Overseas Principles provided that this work is undertaken for clients based outside England and Wales.”</p>		
Rule 2.1 (f)	<p>The changes in this rule clarify the circumstances in which practice in England and Wales can be undertaken from overseas without triggering full application of the applicable domestic rules.</p> <p>The amendments also correct the inadvertent omission of RELs from rule 2.1(f) (old 2.1(e)).</p>	<p>In rule 2.1(f) insert “Subject to (e) above,” at the beginning of the paragraph and insert “or a <i>REL</i>” after “if you are a solicitor”.</p> <p>Insert “and consistently” after “predominantly” and “to clients, or in relation to assets located” after “provision of legal services”.</p> <p>Delete “the SRA will apply the full <i>SRA Handbook</i>” and insert “the <i>SRA Principles</i> and Chapter 13A of the <i>SRA Code of Conduct</i> will apply” after “regardless of where you are established”.</p>	31 October 2014	Minor changes

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**SRA Handbook Glossary 2012**

Definition	Issue	Solution	Implementation date	Minor change or significant policy change requiring consultation
Overseas practice	Clarification of rules on conduct of occasional <i>reserved legal activities</i> from an <i>Overseas Practice</i> . Circumstances in which this is permitted are now covered in more detail in Rule 2.1 of the SRA Overseas Rules.	Delete the following words in paragraph (i) of definition of <i>Overseas Practice</i> "but which does not carry out reserved <i>legal activities</i> and whose <i>practice</i> does not predominantly comprise the provision of legal services to clients, or in relation to assets, located in England and Wales"	31 October 2014	Minor change
Established	Changes to definition in order to cover all types of managers in an overseas practice, not only partners.  Removal of word "normally" also eliminates uncertainty about the treatment of secondments and transfers.	In paragraph (ii)  Replace the word "partners" with " <i>managers</i> " in front of "the overseas practice".  Delete the word "normally" before "be treated as practising overseas".	31 October 2014	Minor change
Regulated individual	Need to italicise "overseas practice" in definition to designate a defined glossary term.	In paragraph (iii) of definition, italicise " <i>overseas practice</i> ".	31 October 2014	Minor change

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**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.

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### **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]**, 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.

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**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.

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**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

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### Board Risk Assessment

<b>Summary of issues for consideration</b>		
This paper invites the Board to make the [Draft] SRA Amendment to the Overseas Rules Rules [2014], subject to the approval of the LSB. These are minor changes to the Overseas Rules which were introduced in 2013. They do not represent any change in policy but are technical changes designed to clarify the application of the existing rules.		
<b>Report is for</b>		
<input type="checkbox"/> Noting/information	<input checked="" type="checkbox"/> Decision	<input type="checkbox"/> Approval
<b>Business/operational risk</b>		
The proposed changes do not present any business or operational risk.		
<b>Finance</b>		
There are no financial implications arising from these proposals		
<b>Communications</b>		
These changes will be accompanied by further guidance to be published on the SRA's website on the rules governing overseas practice.		
<b>Author</b>	Alison Hook	
<b>Date of report/paper being drafted</b>	4 September 2014	