



Legal Services Board decision notice issued under Part 3 of Schedule 4 to the Legal Services Act 2007

The Solicitors Regulation Authority (SRA) application for approval of amendments to the Solicitors Keeping of the Roll Regulations 2011 and SRA Suitability Test 2011

The Legal Services Board (LSB) has approved the SRA's amendments to the Solicitors Keeping of the Roll Regulations 2011 and SRA Suitability Test 2011. This will enable the SRA to raise character and suitability issues on applications from former solicitors to have their names restored to the roll and to apply the SRA Suitability Test when considering such applications.

This application was one of five applications submitted to the Board by the SRA on 14 and 15 March 2012. The five applications are subject to five separate decisions.

This decision notice sets out the basis for the LSB approval and the decision taken, including a brief description of the changes.

Introduction

1. The LSB is required by Part 3 of Schedule 4 to the Legal Services Act 2007 (the Act) to review and approve or reject alterations to the regulatory arrangements of the approved regulators. The SRA is an approved regulator.
2. Paragraph 25 of Schedule 4 to the Act explains that the LSB may only refuse an application setting out a proposed change to the regulatory arrangements if it is satisfied that by granting the application one or more of the criteria specified in sub paragraph 25(3) (and listed in the footnote below¹) will be met. Most notably, the LSB's granting of the application to alter the regulatory arrangements must not be prejudicial to the regulatory objectives overall. Accordingly, if the LSB is not satisfied that one or more of the criteria for refusal are met, then it must approve the application in whole, or at least the parts of it that can be approved when only part of the application meets the criteria.

¹ The Board may refuse the application only if it is satisfied that—(a) granting the application would be prejudicial to the regulatory objectives, (b) granting the application would be contrary to any provision made by or by virtue of the Act or any other enactment or would result in any of the designation requirements ceasing to be satisfied in relation to the approved regulator, (c) granting the application would be contrary to the public interest, (d) the alteration would enable the approved regulator to authorise persons to carry on activities which are reserved legal activities in relation to which it is not a relevant approved regulator, (e) the alteration would enable the approved regulator to license persons under Part 5 to carry on activities which are reserved legal activities in relation to which it is not a licensing authority, or (f) the alteration has been or is likely to be made otherwise than in accordance with the procedures (whether statutory or otherwise) which apply in relation to the making of the alteration.

3. As provided for by paragraphs 20(1) and 23(3) of Schedule 4 to the Act, the LSB has made rules² about how the application to alter the regulatory arrangements must be made including the contents of that application. The rules highlight the applicant's obligations under section 28 of the Act to have regard to the Better Regulation Principles. The rules also require that the applicant provides information about the nature and effect of each proposed change and of appropriate consultation undertaken. Sub paragraph 25(3)(f) of Schedule 4 to the Act requires that each proposed alteration has been made or is likely to be made in accordance with the procedures (whether statutory or otherwise) which apply in relation to the making of the alteration. This therefore includes the LSB's rules.
4. The chronology for the LSB's handling of this application can be found towards the end of this decision notice.

Decision

5. The SRA has proposed a change to the Solicitors Keeping of the Roll Regulations 2011 which will enable it to undertake a character and suitability assessment of individuals making applications for restoration to the roll. The SRA has been informally raising such matters and now seeks to formalise the arrangements through changes to the Regulations.
6. The SRA will apply the SRA Suitability Test 2011 to those seeking restoration to the roll. During the assessment of the application, we raised with the SRA the matter of how Section 8 of the Suitability Test (Rehabilitation) would be applied in such cases.
7. Solicitor is one of the professions listed in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 and consequently those seeking admission as a solicitor are required to declare all previous convictions, even if they are deemed to be spent under the Rehabilitation of Offenders Act 1974. However, the Exceptions Order only applies to those seeking admission as a solicitor; it does not apply to those seeking restoration to the roll. The SRA has confirmed that it will not require disclosure of spent convictions in applications for restoration to the roll.
8. Therefore, having considered the SRA's application against the criteria in paragraph 25(3) of Schedule 4 to the Act, the LSB considers that there is no reason to refuse this application; accordingly, the LSB grants this application.
9. The Annex to this decision notice contains the changes to the Solicitors Keeping of the Roll Regulations 2011 and the SRA Suitability Test 2011.

Chronology

- The LSB confirmed receipt of this application on 14 March 2012.
- The 28 day initial decision period for considering the application ended on 10 April 2012.

² Rules for Rule Change Applications – Version 2 (November 2010)

- On 5 April 2012, the LSB issued an extension notice to the SRA extending the period in which the LSB would consider the five applications submitted by the SRA on 14 and 15 March 2012, of which this was one.
- This decision notice is being published on the LSB's website on 18 April 2012.

Chris Kenny, Chief Executive

Acting under delegated authority granted by the Board of the Legal Services Board

Annex

Proposed amendments to the Solicitors Keeping of the Roll Regulations 2011 and the SRA Suitability Test 2011

Solicitors Keeping of the Roll Regulations 2011

Regulation 8: Application for restoration to the roll

In regulation 8, insert a new regulation 8.3:

"The *SRA* shall not restore a person's name to the roll unless satisfied as to that person's character and suitability to be a *solicitor*.

Add a guidance note (i) to regulation 8:

"(i) The *SRA* will satisfy itself as to a person's character and suitability in a number of ways. These may include, but are not limited to, CRB disclosures and Police National Computer checks, as well as self-disclosure, in accordance with the *SRA Suitability Test*. This will be in addition to taking into account the factors set out in regulations 10 and 11."

SRA Suitability Test 2011

Preamble: Applicability

In the third sub-paragraph, after "SRA Authorisation Rules" add ", and Regulation 4.8 of the SRA Practising Regulations".

Add a further sub-paragraph: "Those seeking restoration to the roll of solicitors under regulation 8 of the Solicitors Keeping of the Roll Regulations 2011".

Overview

In the second paragraph of the Overview section, after "all those seeking admission", insert "or restoration to the roll".

In the fourth paragraph of the Overview section, after "right of admission", insert ", restoration".

Outcomes

In the final paragraph of the Outcomes section, after "period of authorisation", insert ", and for former solicitors seeking restoration to the roll".

Part 1: Basic requirements

In the first paragraph of Part 1 delete "or" and replace with ", and after "admission" insert "or restoration to the roll".