



Decision notice

Issued by the Legal Services Board under Part 3 of Schedule 4 to the Legal Services Act 2007

The Solicitors Regulation Authority's application for approval of changes to its regulatory arrangements relating to the regulation of insolvency practice

The Legal Services Board (**LSB**) has granted an application from the Solicitors Regulation Authority (**SRA**) approving alterations to the regulatory arrangements in respect of its regulation of insolvency practice. The Law Society is an approved regulator and the SRA is the regulatory arm to which The Law Society has delegated its regulatory functions.

This decision notice sets out the decision taken, including a brief description of the changes. The notes at the end of this notice explain the statutory basis for the decision. The chronology for the LSB's handling of this application is set out at the end of this decision notice.

Purpose of notice
To grant an application from the SRA approving alterations to its regulatory arrangements revoking the SRA Insolvency Practice Rules 2012 to give effect to its decision to cease regulating solicitor insolvency practitioners from 1 November 2015
Main changes being made by SRA
Removal of the SRA Insolvency Practice Rules from the SRA Handbook
Why the LSB is granting the application in full
Having fully assessed the application against the refusal criteria in the Legal Services Act 2007, the LSB sees no reason to refuse this application.

Proposed changes

1. The proposed changes revoke the SRA Insolvency Practice Rules 2012 from the 1 November 2015. The effect will be that from that date the SRA will cease regulating solicitor insolvency practitioners (IPs). While it is proposed that the changes to the regulatory arrangements will come into effect on 1 November 2015, the SRA has made the application now in order to give solicitor IPs notice of its decision. The SRA consider that early notification will allow sufficient time for solicitor IPs to transfer to another insolvency regulator.

Background

2. Insolvency practice is not a legal service and is therefore not subject to a legal services regulatory framework. However, the SRA is a Recognised Professional Body (RPB)¹ for the purposes of authorising solicitors to act as appointment holders in insolvency matters. According to the SRA's application, 129 individual solicitors are authorised by it to conduct insolvency practice, and of these 22 have taken up appointments as IPs.

SRA reasons for revoking the Insolvency Practice Rules

3. In its [application](#), the SRA provided the following reasons for ceasing to authorise solicitor IPs:
 - Acting as an IP is not integral to the legal services provided by the SRA's regulated community; it is not considered to be a legal service and is not subject to a legal services regulatory framework. The SRA do not therefore consider it to be in the public interest to devote its regulatory resources and capacity to the authorisation of IPs. In its view, the public interest would be best served if solicitor IPs were regulated by RPBs with specialist expertise in insolvency practice
 - In no longer being an RPB, this would reduce the numbers of RPBs regulating IPs. This in turn could help promote consistency and efficiency in regulation of the insolvency market and the overall cost of regulation. The SRA points to the Insolvency Service noting that recent reviews have indicated that a reduction in the number of insolvency regulators would be a positive move which could improve consistency and efficiency of insolvency regulation
 - There is a low risk to the insolvency practice market from the change as although it may have a significant impact on the small number of solicitor IPs affected, they have the option of being regulated by another regulatory body
 - The change is consistent with the approach the SRA has taken to multi-disciplinary practices where suitable external regulation to the SRA is accepted in areas outside mainstream solicitor services.

How the SRA says it will address concerns raised in its consultation

4. The SRA (in an [annex](#) to the application), set out how it will address key concerns raised by respondents to the consultation and in its stakeholder engagement. There were 17 formal responses to the consultation, 12 of which were from solicitor IPs. The concerns and the SRA's response can be summarised as follows:

¹ <http://www.sra.org.uk/solicitors/accreditation/licensed-insolvency-practitioners.page>

Public interest

Concern: Change is not in the public interest.

SRA response: As set out above the SRA said it did not believe it was in the public interest to devote its regulatory resources and capacity to the authorisation of IPs, and that the public interest would be best served if solicitor IPs were regulated by RPBs with specialist expertise in insolvency practice. Furthermore, the regulatory and authorisation framework for insolvency is designed specifically for the insolvency market. The SRA considers that regulating specifically for insolvency practice is out of step with the way it regulates the legal market, and requires it to have expertise and bespoke systems for a small number of solicitor IPs.

Regulation by another RPB

Concern: It might be difficult for solicitor IPs to get authorisation from another RPB who could be worried about competition from solicitors or might have a different ethos.

Response: The SRA has engaged with other key RPBs as part of its stakeholder engagement and all had expressed a willingness to authorise solicitor IPs (indeed some already do so) and provided information to the SRA about costs and processes involved with transferring authorisation, which the SRA has passed on to solicitor IPs.

Dual regulation and 'double jeopardy'

Concern: Dual regulation of solicitor IPs could result in conflict between the regulatory requirements of the other RPBs and the SRA Principles and there could be a risk of double jeopardy where they are subject to two separate disciplinary investigations.

SRA response: It is correct that the change will result in dual regulation, as solicitor IPs will need to be authorised by a separate regulator to specifically undertake insolvency activities. However, the SRA does not accept that this will result in double jeopardy in the case of an investigation because it will put in place appropriate systems for the sharing of information with other regulators to avoid any unnecessary duplication in investigations while at the same time ensuring protections are in place for consumers.

Loss of influence in insolvency practice and regulation

Concern: Solicitor IPs would lose the ability to influence insolvency practice and regulation (including the Law Society/SRA representation in groups such as the Joint Insolvency Committee and Joint Insolvency Examination Board).

SRA response: While the Law Society and SRA will not be represented in stakeholder groups, the small number of IPs it regulates compared to the overall market has meant that in practice that its influence is limited in any case. Its role as a regulator also means that it considers it is not appropriate for it to carry out a function that would be better carried out by a representative body.

Cost implications

Concern: Potential of increased cost to solicitor IPs if regulated by another RPB.

SRA response: In order to help mitigate the financial impact of the proposals and facilitate the processes of transition the SRA Board has agreed that a reduced fee of £460 (rather than £520) would be charged to solicitor IPs for 2015. While some solicitor IPs said they would be prepared to pay more to the SRA to remain regulated by it for insolvency; the SRA believes it is not an efficient use of its resources to continue to be a RPB.

The SRA's power to cease authorising solicitor IPs

Concern: Whether the SRA had the power to make the decision to cease authorising solicitor IPs.

SRA response: Under the Legal Services Act 2007 the regulatory functions of the Law Society were delegated to the SRA. It has the power to alter its regulatory arrangements, subject to approval by the LSB. The Secretary of State for Business Innovation and Skills will also need to make an order to remove the SRA RPB status.

Authorisation as a 'kite mark'

Concern: Not a concern, but it was suggested in the stakeholder engagement that the SRA should continue to regulate those solicitor IPs who do not take insolvency appointments but who provide legal advice on insolvency matters on the basis that the insolvency licence provides those solicitors with a 'badge of quality' which differentiates them from other solicitors advising in an area where they do not hold a licence.

SRA response: Continuing to regulate solicitor IPs who do not take insolvency appointments in order to provide them with a 'badge of quality' would be akin to the SRA running a voluntary accreditation scheme (similar to the Law Society's voluntary accreditation schemes), this would not be a targeted or proportionate approach to regulation and would not be consistent with its broader regulatory obligations or wider strategy.

Solicitor IPs as role holders in solicitor firms

Concern: Some respondents mentioned that when a solicitors' firm is in financial difficulty and needs to appoint an IP, the SRA recommends in most cases that the IP is a solicitor. It was suggested that this could be a problem if the number of solicitor appointment takers declines as a result of the proposals.

SRA response: The SRA is currently reviewing its guidance to firms recommending the appointment of a solicitor IP in the role of administrator or liquidator in the light of its proposal to cease regulating solicitor IPs.

Indemnity insurance and compensation fund

Concern: Impact of the proposals on solicitor IPs in licensed bodies and impact on insurance premiums of solicitor IPs being regulated by another RPB.

SRA response: The dual bond system, insures the estate (that is the subject of insolvency) against losses from fraud or dishonesty. In addition, a solicitor IP acting on an insolvency appointment would continue to be covered by professional indemnity insurance (PII), as the activity would still fall within the definition of "private legal practice" for that purpose. The

SRA has taken advice from its PII advisers and they do not believe a change of regulator for solicitor IPs would result in any increased PII cost.

Nothing would exclude insolvency work from the SRA Compensation Fund in the case of recognised bodies. In the case of licensed bodies (there are only seven solicitor IP licensed bodies and only one of these takes appointments), pure insolvency work will not be covered by the Compensation Fund or the minimum terms and conditions of PII, as this activity would not fall within the definition of 'regulated activity' unless specifically stated in the terms of the licence. The SRA's proposals do not change the current position.

Decision

4. The LSB has considered the SRA's application against the criteria in paragraph 25(3) of Schedule 4 to the Legal Services Act 2007 (the Act). It considers that there is no reason to refuse this application; accordingly, the application is granted.
5. Annex A this decision notice contains the specific amendments to the SRA's regulatory arrangements approved by the LSB.

Chronology

- The LSB confirmed receipt of an application from the SRA on 27 March 2014.
- The 28 day initial decision period for considering the application ends on 23 April 2015.
- This decision notice is effective from 23 April 2015.
- The decision notice will be published on our website on 23 April 2015.

Richard Moriarty, Chief Executive

**Acting under delegated authority granted by the Board of the Legal Services Board
23 April 2015**

Notes:

1. The LSB is required by Part 3 of Schedule 4 to the Act to review and grant or refuse applications by approved regulators to make alterations to their regulatory arrangements.
2. Paragraph 25(3) of Schedule 4 to the Act explains that the LSB may refuse an application setting out a proposed change to the regulatory arrangements 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 this 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 [of the Act] 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. The designation requirements referred to in paragraph 2(b) above are set out in paragraph 25(4) of Schedule 4 to the Act and are
 - (a) a requirement that the approved regulator has appropriate internal governance arrangements in place
 - (b) a requirement that the applicant is competent, and has sufficient resources to perform the role of approved regulator in relation to the reserved legal activities in respect of which it is designated, and
 - (c) the requirements set out in paragraphs 13(2)(c) to (e) of Schedule 4, namely that the regulatory arrangements are appropriate, comply with the requirements in respect of resolution of regulatory conflict (imposed by sections 52 and 54 of the Act) and comply with the requirements in relation to the handling of complaints (imposed by sections 112 and 145 of the Act).
4. In accordance with paragraphs 20(1) and 23(3) of Schedule 4 to the Act, the LSB has made rules² about the manner and form in which applications to alter regulatory arrangements must be made. Amongst other things, the rules highlight the applicant's obligations under section 28 of the Act to have regard to the Better Regulation Principles. They also require applicants to provide information about each proposed change and details of the consultation undertaken.
5. 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 the parts of it that can be approved.

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

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.