

SRA BOARD

11 March 2015

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Draft SRA Amendments to Regulatory Arrangements (Sole Practitioner) Rules [2015]

Purpose

- 1 To update the Board on changes to the regulation of sole practitioners.

Recommendations

- 2 The Board is asked to:
 - a) note the position with regards to the removal of transitional arrangements from the SRA Handbook (Annex 1 and Annex 2); and
 - b) make the draft SRA Amendments to Regulatory Arrangements (Sole Practitioner) Rules [2015].

If you have any questions about this paper please contact Annette Lovell, Director of Regulatory Policy annette.lovell@sra.org.uk or 0121 329 6222

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CLASSIFICATION – PUBLIC**Draft SRA Amendments to Regulatory Arrangements (Sole Practitioner) Rules [2015]****Background**

- 3 A Section 69 Order has been laid before Parliament, and will come into force on 6 April 2015. The implementation date for the substantive parts of the Order is 1 November 2015. Several minor amendments are needed to the Handbook at this stage, including the removal of the transitional provisions at Rule 22.1 of the SRA Practice Framework Rules 2011, and Rule 28.2 of the SRA Authorisation Rules for Legal Services Bodies and Licensable Bodies 2011.
- 4 The Draft SRA Amendments to Regulatory Arrangements (Sole Practitioner) Rules [2015] are set out at Annex 1 and extracts from the rules showing the proposed changes are set out at Annex 2. The matter was considered by the Standards Committee at its February meeting. Since then, further work has identified two additional amendments which are also required. While these have not been seen by the Committee they are consistent with the position reached. These additional amendments are underlined in Annex 1.
- 5 This paper seeks Board approval for the removal of the existing transitional provisions in the SRA Handbook, to ensure that we are able to reflect the implementation date of the operative provisions of the Order. These changes to the Handbook will have no impact on firms, who will not be required to take any action as a result.

Progress to date

- 6 Following public consultation, the SRA decided to harmonise and simplify the regulatory arrangements for sole practitioners, bringing the requirements in line with those for other types of firms. Those changes are set out in more detail in the Background to Changes section below. The proposed change is part of the SRA's regulatory simplification programme.
- 7 At our request, and following the LSB's own consultation during 2014, the LSB made a recommendation to the Lord Chancellor under Section 69 of the Legal Services Act 2007 (LSA). The matter was subsequently listed in the Ministry of Justice's (MoJ) Statement of New Regulation, and a draft Order was laid in Parliament in December 2014 and debated in both Houses in early 2015.
- 8 The change will be given effect by an order which amends the Administration of Justice Act 1985, the Solicitors Act 1974 and the European Communities (Lawyers Practice) Regulations 2000. The Order will come into force on 6 April 2015, however the changes to the legal framework to bring about the new arrangements for sole practitioners will come into force on 1 November 2015.
- 9 The changes harmonise and simplify the arrangements for sole practitioners, moving away from the requirement for an annual endorsement on the solicitor's practising certificate (PC) and replacing it with an authorisation which does not need to be

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renewed annually. This brings sole practitioners in line with other types of firms, and is a modest deregulatory measure.

- 10 The Handbook will require more extensive amendments to give effect to the new arrangements in November 2015, but these will be timetabled to allow for full consideration by the Standards Committee, the Board and the LSB.
- 11 The immediate changes for which approval is being sought are essential, but uncontroversial. The current transitional provisions did not envisage parts of the Order coming into force prior to the implementation of the key changes. As drafted, the transitional provisions have the effect of making changes to the Rules at the earlier date. However, the implementation date for the new arrangements is 1 November 2015. Subject to the Board's approval, we will apply to the LSB for consideration of an exemption of the need to approve these minor technical changes to the Rules, and to the FCA for approval of the changes to the SRA Financial Services (Scope) Rules 2001, and the SRA Financial Services (Conduct of Business) Rules 2001. Given the short timescale for making the changes, we have held informal discussions with both organisations, and are hopeful that exemption and approval will be given.

Background to changes

- 12 A solicitor who practises as a sole practitioner is known under our rules as a recognised sole practitioner. A solicitor's sole practice is a firm like any other traditional law firm, except that it has only one principal. There are a variety of business models. At one extreme, the term "sole practice" can mean an individual practising with little or no other support, undertaking, and personally providing, a limited range of services to a relatively small client base. At the other extreme, however, the sole practitioner may control a substantial enterprise, supervising a large number of fee-earners (some of whom may be solicitors) and other staff who provide a wide range of services to an extensive client base, with a considerable turnover and large client account balances.
- 13 Recognised sole practitioners are governed by the Solicitors Act 1974 (and required to renew an endorsement to their practising certificate on an annual basis). All other firms (under either the AJA or the Legal Services Act 2007) are required only to satisfy a one-off authorisation process on establishment, and are then granted authorisation for an unlimited period (or in the case of ABSs, are granted licences for an unlimited period).
- 14 Following public consultation we decided to harmonise and simplify the arrangements for sole practitioners, moving away from an annual endorsement, and replacing it with an authorisation which does not need to be renewed annually. This is effectively a deregulatory measure, reducing the burden on sole practitioners, who will no longer have to apply each year for an endorsement on their PC. Changing the arrangements is likely to reduce costs for both firms and the SRA. It will also make our regulation more proportionate, and is consistent with our approach to small firms.
- 15 This position has been our policy since 2011, however it has taken some time to plan for implementation, given the different priorities of the SRA, LSB and the MoJ.

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Next steps

- 16 Provided the Board approves the removal of the transitional provisions, and LSB and FCA approval is granted, amendments will be made to the 1 April 2015 version of the Handbook to reflect the agreed changes.
- 17 As noted in Paragraph 9, the Handbook will require further amendment to give effect to the new arrangements from 1 November 2015, but these will be timetabled to allow for full consideration by the Standards Committee, the Board, and the LSB.
- 18 The new arrangements will also have an operational impact. Changes are needed to authorisation processes, and systems changes are required to deliver the new arrangements. It has been agreed that implementation of the new arrangements will be managed by a cross-organisational project team, managed by the Authorisation Team, and reporting to the Policy Programme Board.
- 19 Two main communications issues have been identified. All externally-facing and internally-facing communications, including the website, will need to be reviewed. In addition, there will be a need to communicate the details of the changes to affected stakeholders. We do not anticipate that the impact on existing sole practitioners will be significant as they will be passported into the new arrangements. New sole practitioner firms will go through a full authorisation process.

Recommendations: The Board is asked to:

- (a) **note the position with regards to the removal of transitional arrangements from the SRA Handbook (see Annex 1 and Annex 2); and**
- (b) **make the draft SRA Amendments to Regulatory Arrangements (Sole Practitioner) Rules [2015], subject to the approval of the Legal Services Board (LSB) and the Financial Conduct Authority FCA).**

If you have any questions about this paper please contact:

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Annexes

Annex 1 - Draft SRA Amendments to Regulatory Arrangements (Sole Practitioner) Rules [2015]

Annex 2 - Extracts from the SRA Handbook showing the proposed changes.

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Draft SRA Amendments to Regulatory Arrangements (Sole Practitioner) Rules [2015]

Rules dated [date of LSB approval to be inserted] made by the Solicitors Regulation Authority Board, under sections 28, 31, 79 and 80 of the Solicitors Act 1974 and section 9 of the Administration of Justice Act 1985, with the approval of the Legal Services Board under paragraph 19 of Schedule 4 to the Legal Services Act 2007.

Rule 1

In the SRA Principles 2011, Part 3: Transitional provisions, delete paragraph 7.2

Rule 2

The SRA Practice Framework Rules 2011 shall be amended as follows:

- (a) in the guidance note to Rule 8.7, delete (iv)
- (b) delete the guidance note to Rule 10.2; and
- (c) delete Rule 22.1

Rule 3

The SRA Authorisation Rules for Legal Services Bodies and Licensable Bodies 2011 shall be amended as follows:

- (a) in the title of Rule 28, delete “and sole practitioners”; and
- (b) delete Rule 28.2.

Rule 4

The SRA Practising Regulations 2011 shall be amended as follows;

- (a) delete the guidance note to regulation 11; and
- (b) delete the guidance note to regulation 12.

Rule 5

The Solicitors Keeping of the Roll Regulations 2011 shall be amended as follows:

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- (a) delete the guidance note to regulation 3.1; and
- (b) delete regulation 18.

Rule 6

In the SRA Indemnity Rules 2012, Rule 6.1 (b) delete 'on or before 31 March 2012 or the date on which an order made pursuant to section 69 of the **LSA** relating to the status of sole practitioners comes into force, whichever is the later,'.

Rule 7

In the SRA Cost of Investigations Regulations 2011, delete regulation 8.2.

Rule 8

In the SRA Financial Services (Scope) Rules 2001, delete rule 7.3.

Rule 9

In the SRA Financial Services (Conduct of Business) Rules 2001, delete rule 12.2.

Rule 10

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

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SRA Principles 2011

Part 3: Transitional Provisions

Rule 7: Transitional provisions

7.1 For the avoidance of doubt, where a breach of any provision of the Solicitors' Code of Conduct 2007 comes to the attention of the **SRA** after 6 October 2011, this shall be subject to action by the **SRA** notwithstanding any repeal of the relevant provision.

~~7.2 From 31 March 2012 or the date on which an order made pursuant to section 69 of the **LSA** relating to the status of **sole practitioners** comes into force, whichever is the later, paragraph 3.1 shall have effect subject to the following amendments:~~

~~(a) paragraph 3.1(b) (iii), and~~

~~(b) paragraph 3.1(e)~~

~~shall be omitted.~~

7.3 The **Principles** shall not apply to **licensed bodies** until such time as the **Society** is designated as a **licensing authority** under Part 1 of Schedule 10 to the **LSA** and all definitions shall be construed accordingly.

7.4 References in the preamble to:

(a) the **Principles** being made under section 83 of the Legal Services Act 2007, and

(b) **licensed bodies** and their **managers** and **employees**,

shall have no effect until such time as the **Society** is designated as a **licensing authority** under Part 1 of Schedule 10 to the **LSA**.

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SRA Practice Framework Rules 2011

Part 2: Rights of Practice

Rule 8: Reserved work and immigration work

Guidance notes

- (i) Reserved work is work that is defined in Schedule 2 to the LSA as a "reserved legal activity". Certain categories of reserved work (rights of audience in chambers, reserved instrument activities and probate activities) can be done by an unqualified person under the supervision of a manager or fellow employee qualified to do that work - see Schedule 3 to the LSA.
- (ii) Immigration work (immigration advice and immigration services) is restricted to certain persons under the Immigration and Asylum Act 1999. Immigration services relating to courts or immigration tribunals are reserved work - advocacy, the conduct of cases, and the preparation of papers. The court work is subject to the normal restriction on court work. Immigration Tribunal work can be done by RFLs who are practising as such. Other immigration work is not reserved work, but can only be done by an authorised person such as a solicitor, a barrister, a legal executive, a member of an Establishment Directive profession, or an RFL practising as such, or under the supervision of an authorised person, or under an exemption given by the Office of the Immigration Services Commissioner.
- (iii) The Financial Services and Markets Act 2000 reserves the provision of "regulated activities" to persons authorised by the Financial Conduct Authority (FCA). Certain "regulated activities", ancillary to the provision of a professional service, are exempt from regulation by the FCA when carried out by firms authorised by the SRA - see the SRA Financial Services (Scope) Rules. For the definition of "regulated activity" see the activities specified in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/544).
- (iv) ~~From 31 March 2012 or the date on which an order made pursuant to section 69 of the LSA relating to the status of sole practitioners comes into force, whichever is the later, a sole practitioner's firm will~~

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~~be regulated as a type of authorised body and will be authorised under the SRA Authorisation Rules.~~

Rule 10: Sole practitioners

10.2 For the purpose of 10.1(b) above you are exempt from the obligation to be a *recognised sole practitioner* if:

- (a) your *practice* is conducted entirely from an office or offices outside England and Wales;
- (b) your *practice* consists entirely of work as a temporary or permanent *employee* and any *firm* which employs you takes full responsibility for you as an *employee*; or
- (c) your *practice* consists entirely of:
 - (i) providing professional services without remuneration for friends, relatives, companies wholly owned by you or your family, or registered *charities*; and/or
 - (ii) administering oaths and statutory declarations; and/or
 - (iii) activities which could constitute *practice* but are done in the course of discharging the functions of any of the offices or appointments listed in paragraph (i)(E) of the definition of *private practice*.

Guidance note

~~(i) Until 31 March 2012 or the date on which an order made pursuant to section 69 of the LSA relating to the status of sole practitioners comes into force, whichever is the later, see regulation 4 of the SRA Practising Regulations. After that, see the SRA Authorisation Rules~~

Part 4: Compliance with Practice Requirements

Rule 22: Transitional provisions and grace period

~~22.1 From 31 March 2012 or the date on which an order made pursuant to section 69 of the LSA relating to the status of *sole practitioners* comes into force, whichever is the later, these rules shall have effect subject to the following amendments:~~

- ~~(a) Rules 1.1(a), 2.1(a), 3.1(a), 8.7, 11.1(c)(i) and 12.1(a) shall be omitted;~~

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- (b) ~~In Rules 1.1(b) and 2.1(b) the words, "authorised as a **sole practitioner**" shall be substituted for the words "a **recognised sole practitioner**";~~
- (c) ~~In Rules 1.2(a) and 2.2(a) the words "as a **recognised body**" shall be substituted for the words "a **recognised sole practitioner**";~~
- (d) ~~In Rule 3.2(d) the words "a **recognised sole practitioner**," shall be omitted;~~
- (e) ~~In Rules 5.1(d) and 5.2(c) the words "or by a **recognised sole practitioner**" shall be omitted;~~
- (f) ~~In Rules 6.1 and 7.1 the words "or an **employee** of a **recognised sole practitioner**" shall be omitted;~~
- (g) ~~In Rule 10.1(a) the word "**recognised**" shall be omitted and the words "by endorsing your practising certificate or certificate of registration to that effect" shall be omitted;~~
- (h) ~~In Rules 10.1(b) and 10.2 the words "authorised as a" shall be substituted for the words "a **recognised**";~~
- (i) ~~In Rule 12.1(b), the words "a **lawyer manager**" shall be substituted for the words "one of the **lawyer managers**"; and~~
- (j) ~~Rule 13.1 shall have effect as if the words "**sole practitioner**," were inserted after the words "namely a".~~

SRA Authorisation Rules for Legal Services Bodies and Licensable Bodies 2011

Part 7: Special bodies, transitional provisions and passporting

Rule 28: Transition of recognised bodies and sole practitioners

28.1 From 31 March 2012

- (a) the recognition of a body recognised under section 9 of the **AJA**, shall have effect as if it were **authorisation** granted under these rules; and
- (b) all **managers** and **owners** of bodies falling within sub-rule (a) shall be deemed to have been approved under Part 4 of these rules, as applicable, including those approved under Rule 27.1(b)(ii) above.

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~~28.2 From 31 March 2012 or the date on which an order made pursuant to section 69 of the Legal Services Act relating to the status of **sole practitioners** comes into force, whichever is the later, these rules shall have effect subject to the following amendments:~~

- ~~(a) a sole **solicitor** or **REL** who has been recognised as a **sole practitioner** by way of an endorsement under section 1B of the **SA** shall be deemed to have been recognised as a **legal services body** under section 9 of the **AJA**;~~
- ~~(b) all sole **solicitors** and **RELS** falling within sub-rule (a) shall be deemed to have been approved as **managers** and **owners** under Part 4 of these rules; and~~
- ~~(c) all **COLPs** and **COFAs** approved as such under the **SRA Practising Regulations** shall be deemed to have been approved as such under Part 4 of these rules, as applicable.~~

SRA Practising Regulations 2011

Part 3: The registers, practising certificates and certificates of registration

Regulation 11: The register of holders of practising certificates

Guidance note

- ~~(i) Because sole practitioners are not authorised by means of endorsement on their registration after 31 March 2012 or the date on which an order made pursuant to section 69 of the LSA relating to the status of sole practitioners comes into force, whichever is the later, the register shows only suspensions of authorisation as a recognised sole practitioner occurring up to that date. For information on sole practitioner firms after that please refer to the register of authorised bodies (see Rule 34 of the SRA Authorisation Rules).~~

Regulation 12: The register of European Lawyers

Guidance note

- ~~(i) Because sole practitioners are not authorised by means of endorsement on their registration after 31 March 2012 or the date~~

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~~on which an order made pursuant to section 69 of the LSA relating to the status of sole practitioners comes into force, whichever is the later, the register shows only suspensions of authorisation as a recognised sole practitioner occurring up to that date. For information on sole practitioner firms after that please refer to the register of authorised bodies (see Rule 34 of the SRA Authorisation Rules).~~

Solicitors Keeping of the Roll Regulations 2011

Part 1: The roll and information

Regulation 3: Content of the roll

~~Guidance note~~

- ~~(i) — Because sole practitioners are not authorised by means of endorsement on their practising certificate after 31 March 2012 or the date on which an order made pursuant to section 69 of the Legal Services Act 2007 relating to the status of sole practitioners comes into force, whichever is the later, the roll shows only suspensions of authorisation occurring up to that date. For information on sole practitioner firms after that please refer to the register of authorised bodies (see rule 34 of the SRA Authorisation Rules).~~

Part 4: Interpretation and transitional arrangements

Regulation 18: Transitional Provision

~~18.1 — From 31 March 2012 or the date on which an order made pursuant to section 69 of the LSA relating to the status of **sole practitioners** comes into force, whichever is the later, in regulation 3.1(g) the words "or suspension of the **solicitor** from **practice** as a **sole practitioner**, or suspension of the **solicitor's** authorisation as a **recognised sole practitioner**," shall be omitted.~~

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SRA Indemnity Rules 2012

Part 1: General provisions and interpretation

Rule 6: Application of the Rules

6.1 These Rules shall apply to a *practice* carried on by:

- (a) a sole *solicitor*;
- (b) an *REL* practising ~~on or before 31 March 2012 or the date on which an order made pursuant to section 69 of the LSA relating to the status of sole practitioners comes into force, whichever is the later,~~ as a *sole practitioner*;
- (c) a *recognised body*;
- (d) a *partnership* consisting of one or more *solicitors* and/or *RELS* and/or *recognised bodies* and/or *licensed bodies*;
- (e) a *partnership* consisting of one or more *solicitors* and/or *RELS*, together with one or more *RFLs*;

SRA Cost of Investigations Regulations 2011

Part 3: Repeals and transitional provisions

Regulation 8: Repeals

8.1 These regulations repeal the SRA (Cost of Investigations Regulations) 2009 (the 2009 regulations), save that the 2009 regulations shall continue to apply to any decisions that were made before that date.

~~8.2 From 31 March 2012 or the date on which an order made pursuant to section 69 of the LSA relating to the status of sole practitioners comes into force, whichever is the later, the definition of "recognised body" in regulation 1.1 shall have effect as if the words "sole practitioner or" were inserted after "means".~~

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SRA Financial Services (Scope) Rules 2001

Part 2: Repeal, commencement and transitional provisions

Rule 7: Repeal, commencement and transitional provisions

7.1 These rules repeal the Solicitors' Investment Business Rules 1995.

7.2 These rules come into force on 1 December 2001.

~~7.3 From 31 March 2012 or the date on which an order made pursuant to section 69 of the LSA relating to the status of sole practitioners comes into force, whichever is the later, these rules shall have effect subject to the following amendments:~~

~~(a) in the preamble the words "and **recognised sole practitioners**" shall be omitted.~~

7.4 The rules shall not apply to licensed bodies until such time as the Law Society is designated as a licensing authority under Part 1 of Schedule 10 to the Legal Services Act 2007 and all definitions shall be construed accordingly.

SRA Financial Services (Conduct of Business) Rules 2001

Part 1: RULES

Rule 12: Commencement

12.1 These rules come into force on 1 December 2001.

~~12.2 From 31 March 2012 or the date on which an order made pursuant to section 69 of the **LSA** relating to the status of sole practitioners comes into force, whichever is the later, these rules shall have effect subject to the following amendment:~~

~~(a) in the preamble the words "and **recognised sole practitioners**" shall be omitted.~~

12.3 These rules shall not apply to licensed bodies until such time as the Law Society is designated as a licensing authority under Part 1 of Schedule 10 to the Legal Services Act 2007 and all definitions shall be construed accordingly.

12.4 In these rules references in the preamble to the Rules being made under Section 83 of the Legal Services Act 2007 shall have no effect until the Law Society is

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designated as a licensing authority under Part 1 of Schedule 10 to the Legal Services Act 2007.