

Legal Services Act: New forms of practice and regulation

Consultation paper 9 - Draft SRA Practising Regulations [2009]

Legal Services Commission response

Questions

1. Do you think regulation 3 adequately replaces the current statutory provisions (section 12 of the Solicitors Act) under which the SRA can refuse applications for practising certificates and for REL registration, or impose a condition when granting an application, in specified situations? If not, please give details. (See paragraph 4 and regulation 3.)

Regulation 3 (e) only appears to relate to situations where the individual has been suspended in England and Wales. It is unclear what the position would be if the individual has been suspended from practice in another jurisdiction and whether Regulation 3 (h) would cover such situations. It would appear anomalous if there was no provision to refuse an application if the individual had already been suspended from practice in another jurisdiction.

2. Do you agree with the criteria for authorisation as a recognised sole practitioner as drafted? If not, please give details. (See paragraph 5 and regulation 4.)

Agree: whilst criteria must not be a barrier to entry to setting up as a sole practitioner it is in the interests of clients that sole practitioners be subject to similar controls as recognised bodies and ensure appropriate regulation of the entire market.

It is unclear why there is no authorisation requirement in relation to practicing from offices outside England and Wales. It would seem anomalous if it were the physical location of the practice that dictates authorisation requirements. There may be situations where the solicitor will be practicing law in England or Wales but without a physical office here. In such situations we would consider it necessary to require authorisation to practice in England and Wales.

3. Do you think we have adequately covered the circumstances in which we may impose a condition on a practising certificate? If not, please give details. (See paragraphs 7.1 and 7.2. and regulation 6.)

We agree that the circumstances are adequately covered. The provision of conditions is especially important if the individual concerned is deemed to be putting or likely to put a client at risk (6.1b). These conditions must be effective in order to protect the client etc.

However, regulation 6.2(b) refers to regulation 6.1 (a) to (e), we believe this should read 6.1 (a) to (f) and that the typo in regulation 6.1 itself be corrected accordingly.

4. Can you think of any situations in which a practising certificate, registration or authorisation ought to expire automatically but which we have not included in regulation 9? (See paragraph 9.2. and regulation 9.)

No, we believe this covers relevant situations.

5. Can you think of any other situations in which the power to revoke a practising certificate, registration or authorisation ought to arise but which we have not included in regulation 9? (See paragraph 9.3 and regulation 9.)

It is not clear what action SRA would take on individuals who break their conditions or if an individual repeatedly incur conditions (albeit ones for different reasons)?

6. Do you agree that in addition to information currently available to the public, the following should be public information:

- other legal professions of which an individual is a member and entitled to practise?

Agree: should help to prevent conflict of interest and help the public to make informed choices.

- an individual's date of admission or first registration?

Disagree: SRA must carefully consider whether this is necessary as long as the solicitor is deemed fit to practice. It is not clear what use this information would be to the public and it could lead to age discrimination.

- any conditions to which the practising certificate or registration is subject? If not, please give details. (See paragraphs 10.2 and regulations 10, 11 and 12.)

Agree: We agree that this information should be made available to the public, however with the caveat that it should be clear to members of the public what conditions mean in lay terms and how severe they are, and whether they are likely to affect a solicitor's conduct of their case.

7. Do you agree that an individual's date of birth should not be public information? If not, please give details. (See paragraphs 10.2 and regulations 10, 11 and 12.)

We agree that date of birth should not be public information, as this should have no bearing on an individual's ability to practice - and could lead to age discrimination. However the SRA will need to consider how, in the absence of this information, clients will be able to ensure they have correctly identified the individual solicitor to which the published information relates. If clients are not able to correctly identify the relevant individual then this could put them at risk: it is very important that clients know this.

Even if this information is not available to the public we would want provision for this to be available on request to other organisations such as the Legal Services Commission e.g. for the purposes of assisting with an investigation, and to enable decisions to be made regarding contractual arrangements with providers.

8. Do you think we have struck the right balance between transparency and the protection of individuals in reserving a discretion, in exceptional circumstances, to allow a practising address to be kept private? If not, please give details. (See paragraph 10.6 and regulations 10, 11 and 12.)

We agree provided that this exception is used only in rare circumstances. We believe that it is in the clients' interests to have the information published and that the presumption should be that it would be published save for exceptional circumstances only. This is reasonable as the practising address will already be in the public domain. LSC providers are required to provide their contact details and are listed on the Community Legal Advice telephone and internet directory.

Even if this information is not available to the public we would want provision for this to be available on request to other organisations such as the Commission e.g. for the purposes of assisting with an investigation, and to enable decisions to be made regarding contractual arrangements with providers.

9. Do you think we have struck the right balance between transparency and the protection of individuals in reserving a discretion to issue a practising certificate which does not recite the full details, or does not refer to, an imposed condition? If not, please give details. (See paragraph 10.6 and regulations 10, 11 and 12.)

We agree provided that this exception is used only in rare circumstances. We believe that it is in the clients' interests to have the information published and that the presumption should be that it would be published save for exceptional circumstances only.

Even if this information is not available to the public we would want provision for this to be available on request to other organisations such as the Commission e.g. for the purposes of assisting with an investigation, and to enable decisions to be made regarding contractual arrangements with providers.

10. Do you think it would be appropriate to include in the regulations provision for the SRA to review its own decisions? If not, please give details. (See paragraph 12.)

We agree that it is appropriate to have provisions for the reconsideration of decisions. Any such provision should follow an agreed published process to ensure consistency of decision-making and fairness.

Any process should be fair, open and transparent.

It appears sensible for the process to be drafted alongside other reconsideration provisions.

11. If the SRA is to have the right to review its decisions, how long should the SRA have after the original decision before the review procedure must be started? (See paragraph 12.)

We consider the correct approach is for the time limit for commencement to be set by reference to the date when the SRA are notified of the error or mistake. Given the serious implications for providers and clients of such mistakes we consider that a review should be commenced within 5 days of receipt of notification of such error.

The time period between decision and review should not be overly protracted and must strike a balance in the interests of fairness to the individual solicitor and the protection of the public

12. Do you think it is appropriate to include the requirements for solicitors, RELs and RFLs together in the same set of regulations? If not, please give details.

Yes we agree.

13. Do you believe any aspect of the draft SRA Practising Regulations will have a particular impact (adverse or otherwise) on any group or category of persons? If so please give details.

A full Impact Assessment should be undertaken.

14. Have you any other comments on the draft SRA Practising Regulations?

The Legal Services Commission fully supports making information public and would welcome greater links between SRA and LSC.