

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 changes to regulatory arrangements in respect of immigration services – the SRA Authorisation of Individuals (Immigration work) (Amendment) Regulations 2020.

A. Summary

1. This change to our regulatory arrangements implements effective long term provisions to replace our current transitional regulatory position in relation to immigration advice services.

B. Background

2. Under our Standards and Regulations, solicitors, registered European lawyers (RELS) and registered foreign lawyers (RFLs) that we authorise to work in England and Wales may provide unreserved legal services to the public from organisations that we do not regulate.
3. Part V of the Immigration & Asylum Act 1999 (IAA) sets the requirements for the provision of immigration advice and immigration services. Section 84 of the IAA provides that only a qualified person may provide these services, and then sets out when a person is a qualified person. Under the IAA, the Office of the Immigration Services Commissioner (OISC) regulates the provision of immigration advice and services.
4. The Law Society for England and Wales is a designated qualifying regulator under section 86A of the IAA. This means that when we authorise a person to provide immigration advice and services under the IAA we, rather than the OISC, regulate those services. 5,364 (3.5% of the total persons we regulate) record on their 'MySRA' profile that they do some immigration work. 1,960 (19%) of the 10,263 firms that we regulate confirm that they do some immigration work.

C. Details of the SRA's current regulatory arrangements

5. Our Standards and Regulations came into force on 25 November 2019. Prior to that, solicitors, RELs and RFLs could provide immigration advice and services to members of the public from SRA-regulated law firms, authorised non-SRA firms (that is, firms that are authorised by another approved regulator under the Legal Services Act 2007) and law centres and other non-commercial organisations authorised by the OISC. They can also provide immigration advice to their employers when working in-house for other organisations not falling into these categories.
6. Regulation 9.5 of the SRA's Authorisation of Individuals Regulations (AIRs) is not yet fully in force. As made, it would permit any solicitors, RELs and RFLs to do immigration work provided that the work is undertaken either through an SRA- authorised body, or an authorised non-SRA firm that is a qualified person under the IAA (such as an OISC regulated firm). This would extend the categories of organisation listed in paragraph 5 to include fee-charging OISC-regulated organisations.

7. This approach was designed to complement the existing regulatory and legislative frameworks for immigration work carried out in England and Wales, by maintaining existing restrictions that mean solicitors are only authorised to provide immigration advice or services to the public from organisations regulated in accordance with the IAA's requirements.
8. We consulted on this approach as part of our 'Looking to the future' proposals in 2016 and 2017, and it did not receive significant comment. But, following discussions during 2019 with the OISC, we decided to introduce transitional provisions that placed the new provisions on hold. The transitional provisions were made so that solicitors, RELs or RFLs continue to be authorised to undertake immigration work under the same arrangements as were in place before 25 November 2019.
9. We are now seeking a permanent amendment to our AIRs to clarify our arrangements for authorising solicitors, RELs and RFLs to provide immigration advice and services.

D. Nature and effect of the proposed alterations to the SRA's regulatory arrangements

10. This change to our regulatory arrangements will amend our Standards and Regulations as follows.
 - It will permit solicitors, RELs and RFLs to undertake immigration work at fee charging OISC regulated organisations only if they are otherwise a qualified person under section 84 of the IAA. This will usually require them to register with the OISC, ensuring that the OISC retains full control of who they authorise to provide immigration advice and services to the public.
 - It will formalise arrangements to ensure that individuals supervised by solicitors, RELs and RFLs in non-commercial organisations registered with the OISC are authorised directly by the OISC, a designated qualifying regulator, or a designated professional body.
11. The change will amend the provisions in regulations 9.5 to 9.7 of the AIRs to ensure that the OISC has full control of who they authorise to provide immigration advice and services to the public. The Authorisation of Individuals (Immigration work) (Amendment) Regulations 2020 are attached at annex 1. They require solicitors, RELs and RFLs authorised by us to become a qualified person under the IAA (usually by registering with OISC), should they wish to provide immigration advice and services to the public from fee-charging OISC regulated organisations.
12. The effect of our amendments is that, where solicitors, RELs and RFLs are registered with the OISC to act as registered immigration advisers in OISC regulated organisations, they:
 - will not be able to supervise individuals in OISC regulated organisations to make them a qualified person under the IAA.

- must adhere to the OISC's Code of Standards and regulatory requirements when they are providing immigration advice and services to the public from OISC regulated organisations.
13. Our amendments will continue to allow solicitors, RELs and RFLs to provide immigration advice and services to members of the public from SRA authorised firms, authorised non-SRA firms, and law centres and other non-commercial organisations authorised by the OISC. Solicitors, RELs and RFLs who are employed in-house will also continue to be able to provide immigration advice and services to their employers.
 14. This change will require solicitors, RELs and RFLs who wish to provide immigration advice and services to the public from fee charging OISC regulated organisations, to become otherwise qualified under the IAA, as will any individuals that they supervise. If they opt to do this through OISC registration, and if approved by the OISC, they will then be acting as an OISC registered adviser when undertaking immigration work from within those organisations.
 15. In those situations, solicitors will need to explain clearly to clients that they are acting in their capacity as an OISC registered adviser. However, this will not prevent solicitors from maintaining their practising certificates, or RELs and RFLs from being registered with the SRA.
 16. Our Code of Conduct for Solicitors, RELs and RFLs still applies to solicitors, RELs and RFLs wherever they work. However, there are some differences in approach between our regulatory framework and the OISC's Code of Standards. This change to our regulatory arrangements provides that, in situations where solicitors, RELs and RFLs act as an OISC registered adviser and are providing services from a commercial OISC regulated organisation, the OISC's Code of Standards prevails in any instances of conflict between the two codes. This reflects the principle of section 54 of the Legal Services Act 2007 that in instances of conflict, entity regulation overrides individual regulation.
 17. The OISC's complaints scheme will be applied to situations where a complaint is made about solicitors, RELs and RFLs while they were acting as an OISC registered adviser and providing services from an OISC regulated organisation. We will continue to work closely with the OISC regarding complaints or concerns about the conduct of individuals that we regulate.

E. Rationale for amendments

18. Our regulatory arrangements need to work effectively alongside the OISC's scheme of regulation. We are putting in place long term regulatory arrangements for solicitors, RELs and RFLs to be authorised by us to undertake immigration advice and services in a way which both we and the OISC agree provides appropriate protection and clarity for the public, and that overcomes potential conflicts between our respective regulatory frameworks. Our amendments are also required so that the OISC can continue to fulfil their statutory duties to ensure that organisations which they regulate to provide immigration advice and services are fit and competent to do so. We are committed to making sure that we continue to support the OISC to fulfil those duties.

19. Consumers will continue to be able to access immigration advice and services from OISC registered advisers, OISC-regulated organisations (including fee-charging firms and not for profit organisations), and from solicitors and other regulated lawyers working in regulated firms.
20. There may be a positive impact on the overall provision of immigration services to consumers across England and Wales if solicitors, RELs and RFLs who currently only work at regulated law firms choose to also register with the OISC, and begin to provide immigration services from fee-charging OISC organisations.

F. Statement in respect of the Regulatory Objectives

21. Our change to our regulatory arrangements will have the following impacts on the regulatory objectives in s.1(1) of the Legal Services Act 2007.

Regulatory Objective	Impact
Protecting and promoting the public interest	This change to our regulatory arrangements will ensure that both we and the OISC have an effective regulatory approach, that protects the interests of consumers of immigration services.
Supporting the constitutional principle of the rule of law	There is no evidence to suggest that this change to our regulatory arrangements will negatively impact this objective.
Improving access to justice	In ensuring effective regulation of immigration services, this will support access to justice for consumers of immigration services.
Protecting and promoting the interests of consumers	This change to our regulatory arrangements is designed to make sure that solicitors, RELs and RFLs providing immigration services meet the standards we and the public expect.
Promoting competition in the provision of services	There is no evidence that this change to our regulatory arrangements will negatively impact this objective.
Encouraging an independent, strong, diverse and effective legal profession	There is no evidence to suggest that this change to our regulatory arrangements will negatively impact this objective.
Increasing public understanding of the citizen's legal rights and duties	There is no evidence to suggest that this change to our regulatory arrangements will negatively impact this objective.

G. Statement in respect of the Better Regulation Principles

22. In making this change to our regulatory arrangements, we have fulfilled our obligation under section 28 of the Legal Services Act 2007 to have regard to the Better Regulation Principles, as follows.

Proportionate	This change to our regulatory arrangements is a proportionate and effective regulatory response. It also allows us and the OISC to operate our respective regulatory regimes within their proper remit, and to meet the objectives of the IIA.
Accountable	We have consulted in detail with stakeholders (see section I below), and the OISC supports our approach.
Consistent	This change to our regulatory arrangements is consistent with our wider approach to regulation, and with the regulatory approach of the OISC and the objectives of the IAA.
Transparent	This change to our regulatory arrangements will give greater clarity to consumers of immigration services and to the people and organisations that provide those services.
Targeted only at cases in which action is needed	This change to our regulatory arrangements is directed only at the provision of immigration services.

H. Statement in relation to desired outcomes

23. This change to our regulatory arrangements will allow both the SRA and the OISC to operate our respective regulatory regimes within our proper remit, and in ways that meet the objectives of the IIA.

I. Stakeholder engagement

24. We have worked closely with the OISC throughout the consultation process, including during our initial proposal development work and during the consultation process.
25. The [consultation](#) ran from 11 March 2020 to 22 April 2020. There were ten respondents including the Legal Services Consumer Panel, the Legal Ombudsman, the Law Society of England and Wales, the Immigration Law Practitioners' Association, JUSTICE, Refugee Action, firms and individual solicitors. Respondents were generally positive about our proposals.
26. We also held a consultation roundtable meeting on 30 March 2020 with stakeholders from the immigration services sector to discuss the proposals in greater detail and explore some initial views. We are continuing to update this group regarding the outcomes of the consultation process and our next steps.

J. Statement in relation to impact on other Approved Regulators

27. We have not identified any impacts on other Approved Regulators.

K. Implementation

28. This is our timetable for implementation.

Action	Date
Submission to LSB	23 July 2020
LSB approval	20 August 2020
Implementation	1 September 2020

29. In addition, during summer 2020 we are beginning a longer-term programme of activities focused on the immigration advice and services sector. This will help us to understand how our regulatory arrangements might need to evolve further so that they are capable of quickly responding to risks within the immigration advice sector as they emerge.

L. SRA Contact

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Annexes

Annex 1 - SRA Authorisation of Individuals Regulations (Immigration work) (Amendment) Regulations 2020

Annex 1

SRA Authorisation of Individuals (Immigration work) (Amendment) Regulations [2020]

Regulations made by the SRA Board on 22 June 2020

Made under sections 2, 13, 28 and 31 of the Solicitors Act 1974 and section 89 of, and paragraphs 2 and 3 of Schedule 14 to, the Courts and Legal Services Act 1990.

Regulation 1

Delete regulations 9.5 to 9.7 of the SRA Authorisation of Individuals Regulations and replace with:

- “9.5 If you are a *solicitor*, an *REL* or *RFL* you may undertake *immigration work*, provided that such work is undertaken:
- (a) through an *authorised body*;
 - (b) through an *authorised non-SRA firm* that is a qualified person under the Immigration and Asylum Act 1999;
 - (c) as an employee, for your employer or work colleagues; or
 - (d) through a non-commercial advice service which is registered with the Office of the Immigration Services Commissioner or otherwise qualified under the Immigration and Asylum Act 1999
- 9.6 Where you undertake work under regulation 9.5(c) or (d) above, this must be undertaken by you personally and not by another person on your or your employer’s behalf unless such person is a qualified person under the Immigration and Asylum Act 1999 other than under section 84(2)(e) of that Act.
- 9.7 If you undertake *immigration work* through a body which is registered with the Office of the Immigration Services Commissioner or otherwise qualified under the Immigration and Asylum Act 1999 other than as permitted under regulation 9.5(d), you must be registered as an individual with the Office of the Immigration Services Commissioner or otherwise qualified to do so under the Immigration and Asylum Act 1999 and will undertake such work in that capacity.
- 9.7A Where you are undertaking work under 9.7 above, in the event of any conflict between the *SRA’s regulatory arrangements* and any requirements placed on you by the Office of the Immigration Services Commissioner, the latter shall prevail.
- 9.7B Nothing in regulations 9.5 to 9.7A restrict you from undertaking *immigration work* if you fall within section 84(6) of the Immigration and Asylum Act 1999.”

Regulation 2

These regulations come into force on 1 September 2020, or the date on which they are approved by the Legal Services Board, whichever is the later.