

Legal Services Act: New forms of practice and regulation

Consultation paper 8

Changes in regulatory processes for firms and individuals

3 March 2008

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Introduction

1. This paper contains proposals and options for changes in the regulatory processes for firms and individual solicitors. It should be of particular interest to those who carry out regulatory compliance and administrative activities within firms, but it also raises questions for all individual solicitors. Broadly speaking, it looks at how the current practising certificate exercise and the recognised body renewal process must change to accommodate the new forms of practice and regulation enabled or required by the Legal Services Act 2007 (“the Act”). This paper does not deal with the information requirements that will be part of the new process. There is a separate [consultation on information requirements](#).
2. The Act, in permitting the SRA (as the independent regulatory organisation of the Law Society) to regulate new forms of practice (legal disciplinary practices, or LDPs, owned and managed by different kinds of lawyers, with up to 25 per cent non-lawyer managers), changes the SRA’s statutory powers so that both firms and individuals will be regulated.
3. The SRA believes that firm-based regulation is a more effective and efficient method of regulation, and is necessary in the context of mixed practices involving, as owners and managers, individuals who are regulated by other professional bodies and those who are not otherwise regulated at all. Note, however, that the same regulatory regime must apply to all firms, whether or not firms have taken other kinds of lawyer or non-lawyers as managers.
4. As explained in our [strategic paper published in November 2007](#), the Act enables new forms of practice by amending the statutory powers in the Administration of Justice Act 1985 (AJA) relating to recognised bodies:
 - by expanding those powers to include unincorporated partnerships, and
 - by extending the powers to allow for recognised bodies to be owned and managed by other lawyers as well as solicitors, and/or to have up to 25 per cent non-lawyers as managers.
5. The relevant amendments will be to section 9 of the AJA, and are set out in the form that they will be amended in [Annex A](#) of a previously published overview paper.
6. In addition, the Act changes the regulatory position of sole practitioners, who in future will need to seek and renew a “sole solicitor endorsement” in relation to each practising certificate. The relevant amendments to the Solicitors Act relating to sole practitioner endorsements are also set out in [Annex A](#). We will refer to such sole practitioners as “recognised sole practitioners”. Therefore, it is necessary to review both the firm-based and individual authorisation processes together. Such processes underpin the necessary consumer and public protections, but they must be efficient and proportionate and not create unnecessary regulatory burdens.
7. Currently, the SRA conducts regulatory checks and fee collection mainly through the annual practising certificate exercise. The current, additional,

recognised body process applies only to incorporated practices, and is “light touch”, in that the information requirements are minimal and are checked only every three years. The fact that current processes relating to the renewal of individual practising certificates are processed through firms (the bulk renewal process) does not mean that we currently have firm-based regulation. They simply give us information about the individual solicitors working within firms and, through that, a limited amount of information about the firm itself. In comparison with other regulators, we know little about the firms we regulate.

Online regulatory procedures

8. The SRA must improve and develop new online capability in order to improve efficiency and keep costs down. The impact of the legislation and new forms of practice increases both the number of regulatory processes and their complexity. Unless savings can be made through the efficiencies that can be gained from improved information technology and online processes, the cost of regulation will increase. Although much of this paper talks about the key annual renewal processes, the proposals should be seen in the context that both individuals and firms will have the responsibility and ability to update their own details online, at any time throughout the year. This should mean that much of the annual renewal process involves confirming that the information we hold is accurate. The online system will need to provide for secure access. While in some cases certain checks may be made by SRA staff before the final change can be made to the regulatory database, an online process should require much less manual handling than current processes.

9. In order to gain as much efficiency and cost saving from online processes as possible, it is necessary to enforce or encourage the use of online systems. We are considering whether we should enforce the use of online processes from 2010, by adding an additional charge to those who request a paper process.

Overview of what will or might change

Currently	In future
Individual solicitors require an annual practising certificate in order to practice as a solicitor.	No change: Solicitors who join legal practices regulated by other approved regulators (such as the Council for Licensed Conveyancers) either as an employee or as an owner/manager, will still need a current practising certificate in order to remain an “authorised person” under the Act.
Only incorporated practices (companies and LLPs) need to be a recognised body.	Unincorporated partnerships as well as companies and LLPs will need to be recognised bodies, or be regulated by another approved regulator.

A sole practitioner simply needs to have a practising certificate in order to set up and run a sole practice.	Sole practitioners, having satisfied the SRA that they are suitable, will need to have an endorsement on their practising certificates in order to set up and run a sole practice.
Existing recognised bodies renew their recognition every three years.	We propose in this consultation that there will be an annual process for renewal of recognition.

Note on fee structures

10. We ask you to consider the proposals in this paper independently of issues about fees. Shortly, there will be a separate consultation on fees and compensation fund contributions. This follows up suggestions in the [strategic paper published in November 2007](#) that it will be necessary to develop a new system for allocating the cost of regulation among firms and individuals. Broadly, that paper suggested that little change will be needed in 2009, but more significant change is likely in 2010.

Advantages of an annual renewal process relating to both firms and individuals

11. The LSA does not require that practising certificates or recognition should be processed annually. However, the changes to the Solicitors Act and AJA appear to assume that there will be an annual process, although in future there may be some flexibility as the new systems develop.
12. Most modern regulators have an annual authorisation or licensing process for the firms they regulate. In a few cases, the process may be used simply to ensure the collection of fees to fund the cost of regulation. But we see a number of ways in which a system of annual renewal for firms can help us to regulate in the public interest:
- Whether or not firms have indemnity insurance in place is an important aspect of consumer protection. That is a key item of information checked in the current annual practising certificate exercise for solicitors. Currently, that information must be collected through a practising certificate process aimed at individuals. However, indemnity insurance is largely firm based, and in future it would be more appropriate to collect that information from recognised bodies and recognised sole practitioners.
 - Most statutory regulators are required to publish a register of those who are authorised or licensed to practice, and that register usually includes information for consumers. It is important to ensure that information on a register is up to date and accurate, which requires an annual exercise to confirm the data and to ensure that regulatory action is risk based, proportionate and targeted.

- A regular check also enables a regulator to ask whether anything has occurred in the time since the last renewal that might affect either a person's fitness to practice or a firm's fitness to operate. This, too, is an important consumer protection; so, an annual check is required.
- Sometimes, the assessment of the fees, other levies or contributions will depend on up-to-date information being collected about the firm's turnover, type of service provision, etc.

Should an annual renewal exercise take place at the same time every year for all firms?

13. It is currently proposed that the new renewal of recognition and authorisation processes will take place at the same time of year for all firms. Under the new legislation, it would be possible to adopt a rolling programme, as we have for recognised bodies now, resulting in renewal for different firms at different times during the year, or a rolling programme for renewal of individual practising certificates.
14. We have concluded that a single date has clear benefits for both the SRA and firms. While it has been argued that operationally there is sense in having a rolling system, as it avoids peaks and troughs in resource needs throughout the year, in fact we have calculated that it would cost both the SRA and firms significantly more if we were to move to a rolling programme for the renewal of practising certificates.
15. It is in the interests of consumer protection to check a firm's indemnity insurance soon after the beginning of the indemnity year. This also has a significant advantage for firms if similar information is required by both the insurance provider and the regulator.
16. It also assists in the proper analysis of data (important for risk-based regulation) to have a single point in time based on the same data parameters. A rolling renewal would weaken such analyses.

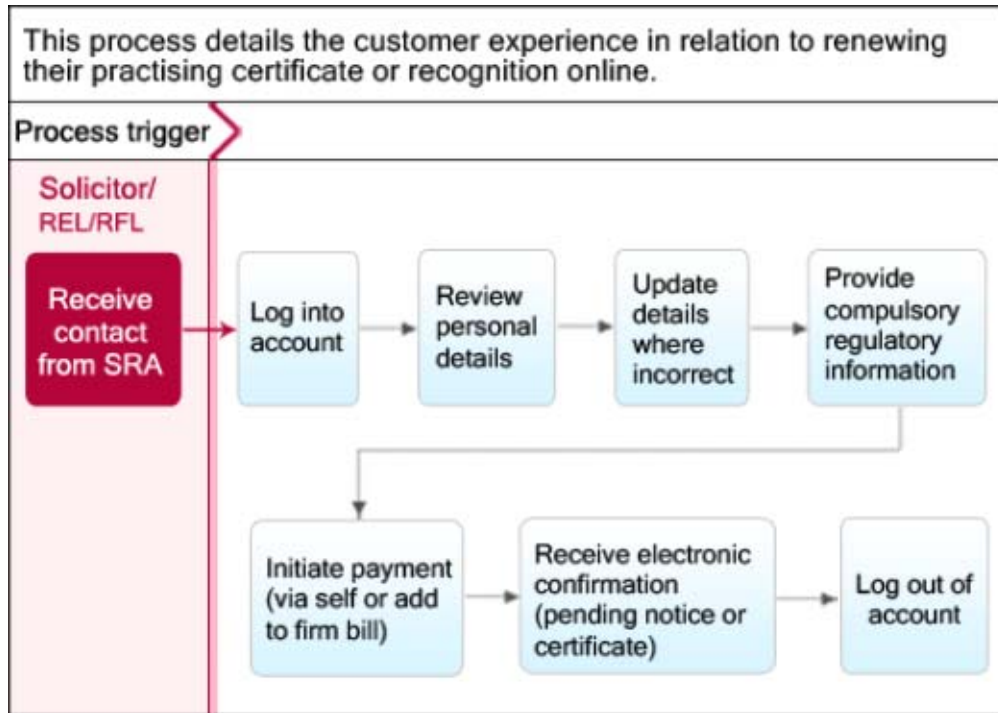
Future practising certificate exercise

17. As indicated above, the move to firm-based regulation will make the annual recognised body renewal process (and recognised sole practitioner renewal process) more effective in terms of regulatory checks and fee collection. The practising certificate exercise for individual solicitors (except sole practitioners) will need only to be focused on matters that relate to that individual and not also used as an indirect method to collect information about the firms in which they work.
18. These considerations led to the initial proposal, mentioned in the November 2007 strategic paper, that the SRA may move away from the bulk practising certificate renewal process, which is adopted by most firms and many in-house teams. A new process may require individual solicitors to apply to renew their own practising certificates—online and through a slimmed down and simple application process. At the moment, it is not clear whether we will be able to make the information technology changes to bring in such a

system by 2009. So, this proposal, if taken forward, might also be introduced over a longer time period.

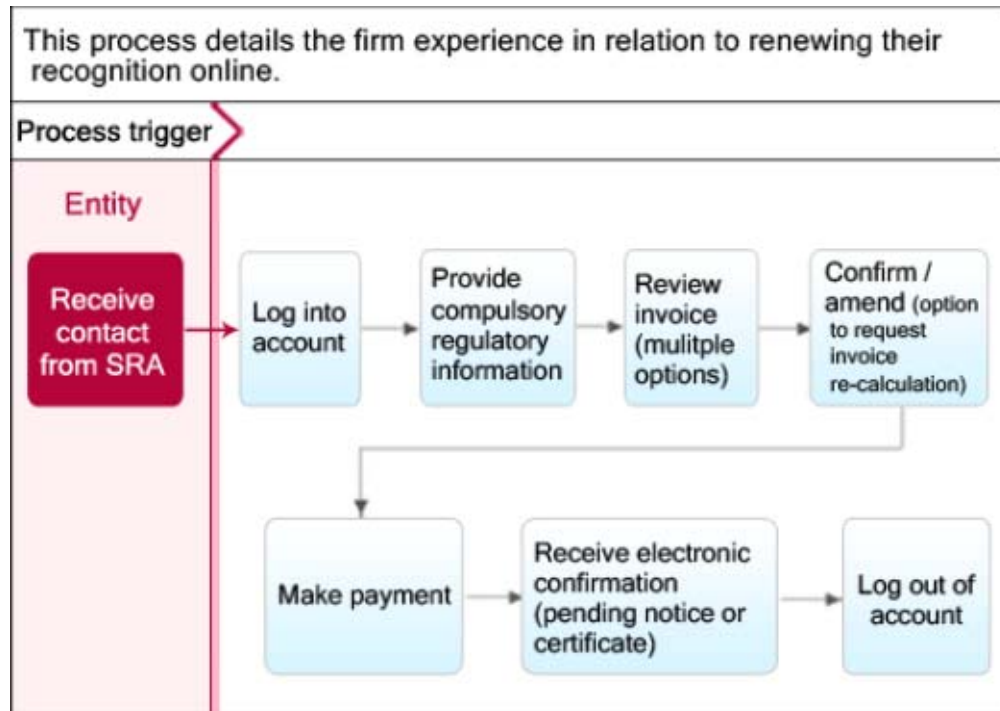
19. While a detailed proposal is still being worked up, the key information that will be sought from individuals on renewal would be the personal confirmation of information about that individual, confirming
 - their practising address and status,
 - that nothing had happened in the past 12 months that might require the SRA to consider issuing a practising certificate subject to conditions (e.g. criminal conviction or a personal IVA), and
 - that the individual has complied personally with requirements for continuing professional development.
20. It is arguable that requiring firms, through the bulk process, to confirm such personal information about their solicitor employees might be an unfair burden on the firm and also possibly unfair to the individual solicitor, who may well have little idea what has been confirmed in his or her name through the bulk practising certificate process.
21. The suggestion about individual renewal of PCs online made in the November paper did cause concern for the majority of the small number of private practice firms who responded, including the City of London Law Society. Their concern was that firms would then lose control over a process that is of great significance to the firm—that is, the fact that all employed solicitors are properly authorised to practice. We also recognise that the bulk renewal process, particularly in large firms, is currently dealt with efficiently by staff who are not also fee earners. There is understandable concern that moving to individual applications will create some inefficiencies as both firms and the SRA may have to use resources to chase up individuals who have not completed the online application. It is also fair to say that an advantage of the current system for the SRA is the efficient bulk collection of practising certificate fees from employers, and we will want that to continue in future.
22. These are all valid concerns, although perhaps some are made on the assumption that the details required in the practising certificate renewal application process would be as they are now. We recognise the concern that confusion and difficulties may occur if assistant solicitors in large firms had to face, for the first time, questions relating to the holding of client money or indemnity insurance.
23. We are still of the opinion that there is some significant advantage in each individual solicitor being more aware of what information is of importance to their regulator. We consider that such a process of individual accountability may help to encourage a culture of professional responsibility and ensure a greater understanding of required conduct. However, the SRA also accepts that it must be done in a way that meets valid concerns raised by firms.
24. The proposed future process for combined individual and firm processes, with online updating, might be something like the process outlined below.

Individual process – initiated before the firm process



- SRA sends email alert to all solicitors holding a practising certificate to ask them to complete practising certificate declaration.
- Individual solicitor accesses online personal SRA account.
- Online form asks solicitor to review and update personal data and make declaration confirming personal information.
- System asks if solicitor wishes to pay for own practising certificate or whether employer will pay.
- If individual solicitor wishes to pay, once payment made, practising certificate is issued.
- If firm is to pay, system automatically associates individuals with firm for fee calculation purposes.

Firm process – initiated after the individual process



- SRA asks firm to complete declaration and information requirement relating to firm—including draft invoice for renewal fee, compensation fund contributions for firm and individual solicitors in firm.
- SRA sends email alert to firm informing it that a list of solicitor employees is available to view online indicating those who have said that the firm is to pay and those who are believed to be employed by firm but have not responded.
- If necessary, process is repeated when any outstanding responses have been received from solicitor employees.
- Firm makes declarations and confirms solicitor employees for whom it is responsible for practising certificate and/compensation fund contribution payments.
- SRA recalculates invoice on basis of information provided by firm (if necessary).
- Firm makes payment of firm renewal fee, practising certificate fees and compensation fund contributions it is responsible for.
- SRA issues firm renewal electronically.
- SRA sends relevant practising certificates electronically to individual solicitors.

Sole practitioners

25. The amendments to the Solicitors Act which require sole practitioners to be regulated in broadly the same way as recognised bodies are linked to the practising certificate exercise. Those sole practitioners who are already “recognised sole practitioners” will therefore need to renew that recognition with each practising certificate application. The provisions of the Act would not currently appear to allow, say, a two-yearly application process for solicitors who are not sole practitioners and an annual process for those who are.
26. Our intention would be to align the endorsement process for recognised sole practitioners as much as possible with the recognition renewal for firms. In principle, there is no reason to have a different regulatory process for a sole practitioner from that applicable to a two-partner firm or indeed a 200-partner firm. Therefore, the suggested processes outlined above would also apply to sole practitioners.

Questions

1. We believe that two annual renewal processes should be required—one process for individual practising certificates and one process for firm recognition. Do you agree? Please explain your answer.
2. We believe it makes sense for the two renewal processes—the process for individual practising certificates and the process for firm recognition—to take place at the same time each year ([paragraphs 13–16](#)). We believe it makes sense for individuals, for firms and for the SRA. Do you agree? Please explain your answer.
3. We propose to introduce a simple online process that will allow each solicitor to renew his or her practising certificate ([paragraphs 18–19, 24](#)). The system will associate solicitors with the firms that employ them. Employers will be able to make a single payment for all practising certificates, as they do currently, and they will be able to confirm that the solicitors they employ have renewed.

In this context, and **considering the question from the firm’s viewpoint**, do you agree that each solicitor should be responsible for renewing his or her practising certificate? Please explain your answer.

In the same context, but **considering the question from the individual solicitor’s viewpoint**, do you agree that each solicitor should be responsible for renewing his or her practising certificate? Please explain your answer.

4. We are keenly interested in anything you can tell us about the practicality of the operating processes we propose ([paragraph 24](#)). We will take your comments into account in our process design work.
5. It is clear that we need to have online capability to deliver an efficient service. We believe we should make online applications/renewals the norm by charging an additional amount to those who request a paper process ([paragraph 9](#)). Do you agree? Please explain your answer.

How to respond

You can respond to the consultation in a variety of ways.

Complete an online form

The quickest way to submit your response is to use our online form. You'll need to complete the form in a single session. We recommend this option if you are an individual respondent with well-formed views and can express your views concisely.

1. Go to consultations.sra.org.uk.
2. Select **Changes in regulatory processes for firms and individuals**.
3. Click **Ways to respond**, then click **Go to the online questionnaire form**.

Download and complete an electronic form

Download a consultation questionnaire form, which can be completed offline, at your convenience, using MS Word. We recommend this option to anyone who plans to deliberate over their response at length or needs to discuss their views with colleagues.

1. Go to consultations.sra.org.uk.
2. Select **Changes in regulatory processes for firms and individuals..**
3. Click **Ways to respond**, then click **Download a consultation questionnaire form now**.
4. Save the file locally—before and after completing it.
5. Return your completed form as an email attachment to LSA@sra.org.uk.

Download and submit a printed form

If you wish to submit your response by post, please follow steps 1 to 4 described immediately above. Then, print your completed form and send it to

Margaret Hope
Solicitors Regulation Authority
Berrington Close
Ipsley Court
Redditch
Worcs B98 0TD

or

Margaret Hope
Solicitors Regulation Authority
DX 19114 Redditch

Send us an email or letter

If you prefer not to use one of our forms, simply detail your comments or concerns in an email or letter. Send your email to LSA@sra.org.uk, or post your letter to the address provided above.

Please ensure that, in your email or letter, you

- identify yourself,
- state on whose behalf you are responding,
- identify the consultation you are responding to, and
- if you wish us to treat any part or aspect of your response as confidential, state this clearly.

Deadline for receipt of responses

The deadline for receipt of responses is **30 April 2008**.

Confidentiality

We may publish a list of respondents with a report on responses. Partial attributed responses may be published.

If you prefer any part or aspect of your response to be treated as confidential, please ensure that you advise us accordingly. Our downloadable and online forms include a question that asks you to state your preference.