



The Law Society

# **SRA consultation: Changes to rules 4 and 22 of the Practice Framework Rules in respect of the link with section 15 of the Legal Services Act for in-house practice**

Law Society response  
23 April 2012



# **SRA Consultation: Changes to rules 4 and 22 of the Practice Framework Rules in respect of the link with section 15 of the Legal Services Act for in-house practice**

## **Law Society response**

The Law Society welcomes the opportunity to comment on the Solicitors Regulation Authority (SRA) consultation on Rules 4 and 22 of the SRA Practice Framework Rules.

We note that the SRA's aim in proposing amendments to Rule 4 of the Practice Framework Rules is to clarify the rule in the light of section 15 of the Legal Services Act 2007 (the 'Act'). Unfortunately, these amendments do not provide sufficient clarity for the profession on this issue, with the result that in-house lawyers/organisations will still face uncertainty about whether or not they require authorisation by the SRA as an Alternative Business Structure (ABS).

We recognise that this is a difficult issue, but the SRA is effectively placing responsibility for interpretation of section 15 of the Act back on to the profession. This is unreasonable and we believe that the SRA should re-visit this issue. We have raised several points in our response for the SRA to consider further. We therefore recommend that no amendments be made to the Practice Framework Rules until sufficient guidance can be provided to the profession on this issue.

Finally, due to the short timeframe of this consultation our response is limited to this specific question, although we are aware of several other issues affecting in-house lawyers. We look forward to the SRA's review of its approach to the regulation of in-house lawyers in 2012 and will be raising these issues in much more detail in this review. Further clarity on the proposed timelines for this review would be helpful.

These points are addressed below in our response to the consultation questions.

### **1. Do you agree with the proposed amendments to rules 4.1, 4.12 and 22.7?**

The proposed amendments state that organisations will need to consider whether or not they will need to become an authorised body (ABS) under section 15 (4) of the Act. An organisation employing individuals to provide reserved legal activities as part of their business 'to the public or section of the public' must be authorised as a licensed body (ABS). If an organisation decides it does not need to become an authorised body, it must assess whether the exceptions in the rest of Rule 4 apply to it (when in-house lawyers, working for an organisation which is not regulated, can act for clients other than their employer).

We agree with the SRA's approach that it is important that there is flexibility for those working in-house, including for organisations which provide reserved legal activities. We welcome the amendment to 4.12 (a) to the effect that there is no longer a regulatory restriction on in-house lawyers who work for associations carrying out reserved legal activities, and it is clear that associations can provide reserved activities as long as they are not in breach of the statutory provisions in section 15 of the Act.

However, the position that the SRA has adopted does not offer clarity to those organisations potentially affected. By adopting this approach, the SRA is effectively placing responsibility for interpreting section 15 of the Act back on to the profession. We do not consider this to be satisfactory. It will inevitably lead to different organisations coming to different conclusions about whether a particular approach is legitimate. As the aim of this consultation and the SRA's proposed amendments is to provide clarity, the SRA should provide clearer guidance to firms on this issue. We have identified several points that it is important for the SRA to consider.

Firstly, the SRA has noted the potential difficulties in determining where services are being provided to the public, thus making it difficult for the SRA to produce a set of rules to enable it to determine in what cases it is possible for organisations to permit their in-house lawyers to provide reserved legal services, without being authorised. We understand that there is no case law in this area. However, there is a provision in the Act for defining what constitutes part of the public. Section 15 (8) allows the Lord Chancellor to determine the circumstances as to when relevant services are provided and section 15 (9) allows the Lord Chancellor to define by order what does or does not constitute section of the public. We also understand that a requirement of section 15 (10) is the Legal Services Board's agreement for such an order. We urge SRA to press the Lord Chancellor to make a section 15 (9) order as this has the potential to make the situation considerably clearer.

Secondly, we note that the Local Weights and Measures Authority may prosecute offences under sections 14 and 16 (for most areas this will be the local authority as prescribed by section 69 of the Weights and Measures Act 1985). It would be useful to know whether the SRA has taken into account guidelines that the Secretary of State might have issued to the Weights and Measure Authorities as to how they are to institute proceedings, and conduct investigations, under sections 14 and 16 of the Act. It could be that such guidelines might provide a useful source of information and, potentially be used as a basis, for the SRA to shape its own regulatory guidance to the profession.

Finally, the SRA would certainly have to take action in respect of any regulatory breaches which may be a consequence of breaking the law. Thus the SRA should to be able to provide, for the benefit of the profession, robust guidance on how it thinks section 15 should be applied. We note that there are two new paragraphs of guidance notes to Rule 4 that draw attention to the section 15 statutory provision. However, this is not sufficient and, in our view, should be considerably expanded.

We are aware that the SRA has been approached by currently non authorised organisations with in-house lawyers who provide reserved legal activities, seeking clarification on these issues. Whilst we understand that it may not be possible for the SRA to state with certainty at this stage which organisations that will need to apply for authorisation, in our view it would be possible for the SRA to provide examples or cases of where it has already agreed that an organisation does not need to be authorised.

For example, the SRA may have decided that an organisation does not need to be authorised as the reserved services it is providing are not to 'members of the public'. Conversely, there may be types of organisations that the SRA know definitely need to apply for authorisation. Alternatively, the SRA could provide some useful FAQs on the sorts of questions that it will undoubtedly have been receiving on this. These are some suggestions of ways that the SRA could assist the profession but whatever

format additional guidance takes, it is important that the SRA addresses the difficult questions arising in this area before continuing with any proposed amendments.

**2. Do you agree that rule 4.13 in relation to insurers should come into force as planned at the end of the transitional period?**

No comments.

**3. Do you agree with this overall approach to rule 4?**

As above.