

SRA consultation on proposed changes to the registered European lawyer regime

Summary

This consultation sets out a new approach which the SRA proposes to take to the authorisation of law firms from European Establishment Directive States. This approach is designed to apply the SRA's entity based regulatory regime to European law firms in a proportionate way, depending on their form of practice in England and Wales. The new approach is also intended to clarify to the users of REL firm services what protections and rights of redress exist. Nothing in this approach is designed to alter the rights of individual RELs as granted by the Establishment Directive (98/5/EC) and the European Communities (Lawyers' Practice) Regulations 2000. We are consulting on whether there is agreement on the objectives underlying our proposed approach and on the mechanisms we have chosen to achieve them.

Purpose of consultation

This consultation is designed to seek views on proposed changes to the application of the SRA Handbook to entities in England and Wales which are controlled by Registered European Lawyers (RELs). The effect of these changes would be to introduce a choice for REL firms wishing to establish in England and Wales of:

- whether they wanted to seek authorisation as an SRA authorised body and become subject to the full rights and obligations of the SRA Handbook; or
- pursue the activities of their law firm practice in England and Wales through an unauthorised entity.

Background

The UK, and England and Wales in particular, has always had an open and liberal regime for foreign lawyers. The Establishment Directive for Lawyers, implemented in England and Wales in 2000, however, imposed new obligations on European lawyers to register and adhere to UK codes of conduct, regardless of the type of law that those lawyers were practising. As a general proposition, these conditions were not considered to be unduly onerous by those European lawyers who were required to register given the countervailing benefits of the Establishment Directive regime, such as the right to appear in official lawyer listings, the right to requalification and the right to representation in one of the UK's professional legal bodies.

As the entity based regulatory regime has unfolded, the regulatory environment has become more complex for European lawyers who have established in England and Wales purely with the intention of practising their home state and European law, outside of areas which would normally require authorisation under English legislation.

In addition, the shift to entity based regulation has also brought the added problem that the home country corporate forms under which some European law firms wish to establish, or the composition of their law firms, do not always meet the SRA's Practice Framework Rule (PFR) requirements. The PFRs can require European law firms to meet the structural conditions of an authorised body, even though they do not wish to practise as an SRA authorised body.

This is an undesirable situation. The Establishment Directive was created to encourage lawyers and law firms to move and establish more freely within the EU and European law firms may be discouraged from establishing in England and Wales to practise their home country law given the regulatory consequences which now follow.

Finally, it is important to note that the Legal Ombudsman has periodically received complaints from English and Welsh consumers who were unclear of their rights of redress or protection in circumstances in which they had used a REL firm's services. There is therefore a need, not only to apply authorisation requirements more proportionately, but to make it clearer to REL firms what authorisation means in practice and to require them in turn to make it clear to their clients what, if any, protections and redress mechanisms apply.

A potential solution

Our proposed solution to these issues is to allow for greater flexibility in the treatment of European law firms established in England and Wales.

We are therefore, proposing the following changes to implement the above approach:

- i) An individual REL's rights and responsibilities will be unaffected. In other words, a REL individually will still be subject to the SRA Practising Regulations 2011 and to the SRA Code of Conduct 2011, in so far as it applies to individuals.
- ii) All RELs, whatever entities they practise in, will be entitled to the privileges of a European lawyer as foreseen in the Establishment Directive and unchanged from current application to individuals, i.e.:
 - The right to register with the SRA;
 - The right to re-qualify as an English solicitor on meeting the requirements set out by the SRA;
 - The right to be listed in the SRA's public register alongside solicitors;
 - The right to be represented in the professional body;
 - The right to appear in an English court alongside a solicitor or barrister.
- iii) European groupings of lawyers (i.e. law firms) will be entitled to establish in England and Wales and may choose on setting up whether to become
 - a) a fully authorised SRA entity, with identical rights and responsibilities to SRA authorised entities comprised of English lawyers; or

- b) an Exempt European Practice which explicitly undertakes not to practise activities reserved to authorised individuals and entities. In this case, the only rules which apply within such a firm are those provisions of the SRA Code of Conduct 2011 which apply to individuals. There would nonetheless need to be a simple process of registration for RELs wishing to practice through such firms, which would allow the SRA to record the practising address and presence of Exempt European Practices in England and Wales and require the submission of declarations by the firm about the form of its practice. This would also provide a basis for the SRA to remain in touch with these firms and provide them with information and a means of engagement.
- iv) In order to ensure that there is clarity for those using the services of an Exempt European Practice about the implications of doing so, RELs practising in such firms will be required to make it clear to those using their services that although they, as individuals, are subject to the SRA Code of Conduct 2011, their firms are not regulated by the SRA and indemnity insurance, compensation fund and accounts rules do not apply. In turn they will be required to make it clear what home country protections would apply, if any. This information would be required to be provided in a permanent medium and in the preferred language of the client, prior to the finalisation of any engagement.

The proposed changes to the SRA Practice Framework Rules 2011 and to the SRA Handbook Glossary 2012, which would introduce the above regime, are set out in the annex to this consultation.

Consultation questions

We are now seeking views on the changes proposed and in particular would welcome views on the following questions:

1. Is the principle of permitting RELs to work in entities which are not required to be authorised acceptable?
2. Is there a better way of achieving the same result, other than creating a new form of entity – the Exempt European Practice?
3. Are there forms of European practice that should be permitted but which are not covered by the proposed definition of an Exempt European Practice? (NB. This is intended to give the flexibility to allow any entity to become an Exempt European Practice, which is a permitted structure for Establishment Directive lawyers in their home Member States).
4. Which elements of the SRA Code of Conduct 2011, if any, can be regarded as applicable only to entities rather than individuals and which elements of it should therefore not apply to RELs in Exempt European Practices?
5. Have we achieved the right balance in terms of the rights and obligations that would apply both to Exempt European Practices and the RELs working in them?
6. Is this new regime sufficiently clear for consumers and if not, what more could we do to ensure that suitable protections exist?

How to respond

This consultation and its annex explain the SRA's proposed new regime for REL managed law firms in England and Wales. We would welcome views both on the general thrust of these proposed changes and in particular on the questions contained in the consultation as well on the specific drafting amendments proposed.

You can respond via an online questionnaire or by email.

Online

Use our [online consultation questionnaire form](#) to compose and submit your response. (You can save a partial response online and complete it later.)

Email

Please send your response to international@sra.org.uk. You can download and attach a [Consultation questionnaire](#).

Please ensure that

- you add the title "SRA Consultation on proposed changes to the registered European lawyer regime" in the subject field,
- you identify yourself and state on whose behalf you are responding (unless you are responding anonymously),
- you attach a completed [About You form](#),
- if you wish us to treat any part or aspect of your response as confidential, you state this clearly.

If it is not possible to email your response, hard-copy responses may be sent instead to

Solicitors Regulation Authority
Registered European Law Firm Consultation
24 Martin Lane
London EC4R 0DR.

Deadline

Please send your response by **Monday, 14 April 2014**.

Confidentiality

A list of respondents and responses may be published by the SRA after the closing date. Please express clearly if you do not wish your name and/or response to be published.

Though we may not publish all individual responses, it is SRA policy to comply with all Freedom of Information requests.

ANNEX 1: Proposed changes in application of the SRA Handbook to registered European lawyers

The following are the proposed changes to the a) SRA Practice Framework Rules 2011 and b) SRA Handbook Glossary 2012. Changes to the current rules are in bold and highlighted in blue. SRA Glossary terms are given in italics. Other consequential changes elsewhere in the SRA Handbook may follow from these key changes.

a) SRA PRACTICE FRAMEWORK RULES

Rule 2: RELs

Practice from an office in England and Wales

2.1 You may *practise* as an *REL* from an office in England and Wales in the following ways only:

- (a) as a *recognised sole practitioner* or the *employee* of a *recognised sole practitioner*;
- (b) as an *REL* exempted under Rule 10.2 from the obligation to be a *recognised sole practitioner*;
- (c) as a *manager, employee, member* or *interest holder* of an *authorised body*, provided that all work you do is:
 - (i) of a sort the body is authorised by the *SRA* to carry out; or
 - (ii) done for the body itself, or falls within Rule 4.1 to 4.11, and where this sub-paragraph applies, references in Rule 4 to "employer" shall be construed as referring to that body, accordingly;
- (d) as a *manager, employee, member* or *interest holder* of an *authorised non-SRA firm*, provided that all work you do is:
 - (i) of a sort the firm is authorised by the firm's *approved regulator* to carry out; or
 - (ii) done for the firm itself, or falls within Rule 4.1 to 4.11, and where this sub-paragraph applies, references in Rule 4 to "employer" shall be construed as referring to that firm, accordingly;
- (e) as the *employee* of another *person, business* or organisation, provided that you undertake work only for your *employer*, or as permitted by Rule 4 (In-house practice).
- (f) **as a *manager, employee, member* or *interest holder* of an *Exempt European Practice*, provided that neither you nor the *Exempt European Practice* conduct supervise or assume responsibility for reserved work which can only be carried out by an *authorised body***

You must meet the following conditions if acting as a REL within an *Exempt European Practice*:

- i) **inform your *client* that the *Exempt European Practice* within which you work is not regulated by the SRA and that the SRA's compulsory insurance scheme, compensation arrangements and the right to complain to the Legal Ombudsman do not apply.**
- ii) **ensure that if you are identified on the notepaper as a Registered European Lawyer that the notepaper also states that your *Exempt European Practice* is not regulated by the SRA.**

Practice from an office in Scotland or Northern Ireland

2.2 You may *practise* as an *REL* from an office in Scotland or Northern Ireland in the following ways only:

- (a) as a *sole practitioner* (including a *recognised sole practitioner*);
- (b) as the *employee* of a sole *principal* who is a *lawyer*;
- (c) as a *manager, employee, member* or *interest holder* of an *authorised body* or of an *authorised non-SRA firm*;
- (d) as an *employee* of a business which is not required to be an *authorised body*, provided that it meets all the following conditions:
 - (i) the business carries on the provision of legal advice or assistance, or representation in connection with the application of the law or resolution of legal disputes;
 - (ii) a controlling majority of the *managers* and the *interest holders* are *lawyers* practising as such and/or *bodies corporate* in which *lawyers* practising as such constitute a controlling majority of the *managers* and *interest holders*; and
 - (iii) if any of the business's *managers* or *interest holders* are non-lawyers, the professional rules governing a solicitor of that jurisdiction would allow such a solicitor to practise through a business of that composition and structure;
- (e) as *manager, member* or *interest holder* of a business which is not required to be an *authorised body*, provided that it has no office in England and Wales **or is registered with the SRA as an *Exempt European Practice***, and that it meets all the conditions set out in sub-paragraph (d)(i) to (iii) above **and the conditions in Rule 2.1 (f) above including for the avoidance of doubt the restrictions on conducting, supervising or assuming responsibility for reserved work**;
- (f) as the *employee* of another *person, business* or organisation, provided that you undertake work only for your *employer*, or as permitted by Rule 4.22 to 4.25 (In-house practice overseas);
- (g) as a *manager, employee, member* or *interest holder* of an *overseas practice*.

b) GLOSSARY

The following amendment to the glossary is proposed

Exempt European Practice

means a body incorporated in an *Establishment Directive state*¹, or a partnership with separate legal identity formed under the law of an *Establishment Directive state*,² which is a structure in which lawyers are permitted to practise in that State and whose ultimate beneficial owners do not include any *lawyers of England and Wales*

¹ NB. This definition includes the UK so it will be possible for a European Corporate Practice to incorporate, as at present, as an English LLP but be regulated in their home state.

² A comma has been inserted to make clear that the regulation as a lawyers' practice is an additive condition and doesn't only apply to partnerships.