
Changes to the separate business rule and to activities within recognised bodies and recognised sole practices

Q&A

Q: What is a separate business?

A separate business is a separate legal entity that is not authorised by the SRA or any other approved regulator under the Legal Services Act but which has certain defined links to those that the SRA regulates. These links are that the SRA regulated business (or individual) owns, is owned by, is connected to, or actively participates in the separate business.

Q: Does the SRA regulate separate businesses?

No. A separate business is not regulated by the SRA. Instead the SRA regulates the links that the SRA regulated body or individual has with that business. Under the current separate business rule in Chapter 12 of the SRA Code of Conduct, SRA regulated bodies or individuals are forbidden from having the defined links to certain separate businesses. Broadly, these separate businesses are those that specialise in providing non -reserved legal services –such as drawing up wills, carrying out estate administration or providing general legal advice. Since a separate business is not authorised by an approved regulator, it is prohibited from providing reserved legal services such as conveyancing, probate or litigation.

Q: What changes has the SRA agreed to the separate business rule (subject to LSB approval) and why?

The changes will remove the prohibition on solicitors and SRA regulated firms participating in what is already a large and growing market for legal and other professional services, through owning or managing separate businesses. This will provide them with opportunities to invest, to attract investment and to work with different business models and will, we believe, bring benefits in terms of increased access to justice and consumer choice.

Q: How will the new separate business rule protect consumers?

The Outcomes in the new Chapter 12 of the SRA Code of Conduct 2011 require firms to ensure that clients are clear about the differences in regulation between an SRA authorised firm or individual and a separate business. Firms must also ensure that the client has given informed consent in all circumstances where they propose to refer, divide (or allow to be divided) a client's matter with the separate business. Informed consent should include the client being made aware of the differences in safeguards available (and the consequences of those differences), including legal professional privilege, and rights of redress including access to the compensation fund and recourse to the Legal Ombudsman. Clients should also be informed of the nature of the firm's connection with the separate business.

We will publish guidance to provide clarity around what is required –a draft version is contained within the published Board papers (Annex 5) and we will be discussing this with key stakeholders.

The primary responsibility to ensure that consumers are provided with the information to make an informed choice rests with SRA regulated firms and individuals under the new Outcomes. However we recognise the importance of increasing consumer awareness more generally about the distinctions between the Legal Services Act regulated sector and the alternative legal sector and the regulatory safeguards available. Therefore, we propose to work with others, such as Legal Choices, to increase transparency in this area. We will work with consumers via focus groups to test and develop information tools which will help consumers to make informed choices. We will disseminate these tools not only online but also via our existing network of contacts with groups representing vulnerable consumers that may not access information via the internet.

Q. Does this mean that the SRA is moving to regulate only reserved legal services?

No. These changes do not affect the regulation of non-reserved legal services provided by the bodies and individuals that the SRA authorises. However, it will provide greater opportunities for non-reserved legal services to be carried out in a separate business that is not subject to SRA authorisation. Equally, the arrangements may attract currently unregulated businesses to set up or invest in SRA regulated firms to provide some of their legal services.

Q: Can a solicitor practice in a separate business?

A solicitor cannot practice by providing legal services to the public or a section of the public from a business, such as a separate business, which is not itself authorised. A solicitor can only practice as an 'in house' solicitor, providing services to the separate business itself. We intend to launch a further consultation on this issue in the autumn.

However, under the changes agreed by the SRA Board (subject to LSB approval) solicitors will now be able to own and manage previously prohibited separate businesses.

Q. Do the changes to the SRA Practice Framework Rules 2011 to the activities that can be carried out by recognised bodies or recognised sole practices (RSPs) relate to the separate business rule?

No. These changes are not about services provided by a separate legal entity, but about the services that a traditional solicitor's firm can provide to the public itself. Unlike services provided by an ABS, these services are restricted by legislation, but this provides us with a power to create exceptions. We intend to use that power to allow solicitors to provide accounting and a broad range of business support services from within a recognised body or RSP. Under our changes, these services will continue to be regulated by the SRA, pending a further consultation on that issue.

When will the changes be implemented?

Subject to LSB approval of the rules, the changes will come into effect on 1 November 2015.