



Application made by the Solicitors Regulation Authority Board to the Legal Services Board under Part 3 of Schedule 4 of the Legal Services Act for the approval of amendments to the SRA Practice Framework Rules 2011

Proposed Alterations to the SRA Practice Framework Rules 2011

1. It is proposed to amend the SRA Practice Framework Rules 2011 ("PFR") in two regards:
 - augmentation of Rule 4.1;
 - the removal of Rule 4.12(a) and in conjunction with this, the deletion of the related transitional provision in Rule 22.7(a).

Nature and effect of existing provisions in the PFR on in-house practice

2. The PFR set the framework for firms and individuals regulated by the SRA. Rule 4 of the PFR contains the regulatory provisions relating to solicitors, and other individuals regulated by the SRA, working in an in-house capacity. The central pivot of the rule is to restrict the provision of in-house services primarily to the employer. This is established in Rule 4.1, which has general application to all those working in-house - it sits within the context of the legal requirements in section 15 of the Legal Services Act ("LSA") although does not currently reference these.
3. There are certain important exceptions to the general position, also contained in Rule 4, to facilitate the provision of specified services to certain linked clients where this is in the public interest and there is no perceived risk to clients' interests. Rule 4.12 sets out the exceptions for those working in-house for associations and at Rule 4.12(a) includes a restriction on providing any reserved legal activities to members of the employer association.
4. There are currently limited transitional provisions in Rule 22 of the PFR, which will all cease to apply on 21 June 2012. Rule 22.7(a), which is the subject of this application, applies this transitional period to Rule 4.12(a), which in the meantime has no effect.

Nature and effect of the amendments to the PFR

5. The proposed amendments to Rule 4.1 are the inclusion of some additional wording to clarify who is affected by the in-house provisions, and to highlight the exceptions referred to in paragraph 3 above.
6. Further change to Rule 4.1 is to divide it into sub-paragraphs, and add clarificatory wording as sub-paragraph 4.1(b) which underlines the need for those working as in-house lawyers not to act in reserved matters for the public unless the employer has authorisation itself under the LSA. The effect is to clarify the purpose and limitations of the rule in relation to the statutory position under section 15 of the LSA and therefore to minimise the risk of uncertainty by highlighting the inability of the rules to permit what the law does not.
7. The other amendments relate to associations. These are the removal of Rule 4.12(a) to delete the automatic regulatory restriction preventing those working for associations carrying out reserved work. In conjunction with this, the related transitional provision in Rule 22.7(a) will be deleted. This change works in conjunction with the proposed requirement in Rule 4.1 to be satisfied that the employer is authorised if necessary.

Rationale for amending the PFR

8. The main rationale for the proposed amendments to the PFR is to clarify the link between the rules and the LSA and, therefore, how the regulatory arrangements effected in the SRA Handbook accord with the statutory framework. All of the amendments are intended to better set the rules in the context of the LSA and form a parcel of proposals which fit together. The timing of the changes to Rule 4.1 is deliberate as these changes are integral to the amendments proposed to coincide with the ending of the transitional period in Rule 22.7 of the PFR which was always intended as an interim solution until 21 June 2012.
9. The proposed amendments seek to clarify how the SRA's policy in relation to in-house applies within the statutory framework. This includes the need to adequately reflect the statutory position in the SRA's regulatory arrangements and to deal with practical issues for those affected by the ending of the transitional provisions. The removal of the prohibition on carrying out reserved legal activities will allow those working in-house for associations to make case by case decisions.

Statement in respect of the Regulatory Objectives

Protecting and promoting the public interest

10. The amendments link together the statutory and regulatory provisions for those working in-house to ensure that, where reserved legal activities are provided to the public, the appropriate protections for clients are in place. This supports the underlying public interest purpose in requiring that such services are carried out within the regulated sector.
11. The amendments will therefore promote this regulatory objective.

Supporting the constitutional principle of the rule of law

12. The changes highlight the statutory context of the LSA in which the PFR sit and reinforce the legal requirements of section 15 of the LSA to ensure that services are provided to the public only as permissible within the statutory parameters.
13. The amendments will therefore support this regulatory objective.

Improving access to justice

14. The amendments will extend the ability of in-house practitioners working in associations to provide legal services to members of the association, within the ambit of the LSA, and this will therefore widen the choice for members.
15. The amendments will therefore support this regulatory objective.

Protecting and promoting the interests of consumers

16. The changes highlight and link the PFR to the statutory context of the LSA to ensure that where those in-house provide services more widely to the public, this is done within the regulated sector in which consumers benefit from the appropriate public protections.
17. Therefore the amendments will protect and promote the interests of consumers.

Promoting competition in the provision of services

18. The rule changes support the statutory framework in ensuring that services to the public are provided as part of a regulated business, where required under the LSA. It follows that the provision of services to the public will be in a regulated context which requires adherence to the same standards as traditional firms, providing the same protections for clients. This ensures that businesses, because of their nature, do not benefit from an unfair advantage.
19. The amendments will therefore support this regulatory objective.

Encouraging an independent, strong, diverse and effective legal profession

20. The amendments are neutral in relation to this objective.

Increasing public understanding of the citizen's legal rights and duties

21. The amendments are neutral in relation to this objective.

Promoting and maintaining adherence to the professional principles

22. The changes support the need for organisations (as well as individual lawyers) to be regulated, encompassing compliance with the regulatory objectives and the professional principles, and therefore support this regulatory objective.

Statement in respect of the Better Regulation Principles

Proportionality

23. The changes are to better reflect the underlying legislation taking a non-prescriptive and outcomes-focused approach, and allowing case by case analysis of the need for authorisation.

Accountability

24. The amendments satisfy the accountability principle because there is a necessity to better reflect the LSA as it impacts on in-house practice. The impact of the outcomes-focused approach will be used to support and inform further developments in this area.

Consistency

25. The proposed amendments are consistent with the LSA and the approach to authorisation. The proposed change to Rule 4.1 applies across the in-house sector.

Transparency

26. The proposed amendments were subject to consultation. This was published on the SRA website and sent to a targeted audience. There was a good level of response to the consultation.
27. The amendments will be published on the SRA website as part of the SRA Handbook and will be the subject of general and targeted publicity.

Targeted

28. The amendments are focused on the need to provide a link between the SRA's regulatory requirements and the statutory position on in-house practice. The change for those working in-house at associations is targeted as it works in conjunction with the parameters of Rule 4.1 and section 15 of the LSA.

Statement in relation to desired outcomes

29. The proposed changes are intended to provide:
- clarification of the purpose and limitation of Rule 4 in relation to the statutory position under section 15 of the LSA; and
 - a solution to the issues arising from the approaching end to the transitional arrangements relating to in-house lawyers working for associations, to allow those lawyers to undertake reserved legal activities as permitted by section 15 and Rule 4.1.
30. The amendments are proposed in order to achieve these outcomes.

Statement in relation to impact on other Approved Regulators

31. The amendments have no discernable impact on any of the other Approved Regulators.

Implementation timetable

May 2012	Application for approval of amendments submitted to LSB
21 June 2012	Policy implemented in the SRA Handbook

Stakeholder engagement

32. The SRA continues to engage with in-house stakeholders following the consultation on these specific changes. A wider review of the regulatory provisions affecting this area of practice is planned for later this year.

Annexes:

- (1) Draft SRA Practice Framework (Amendment) Rules [2012]
- (2) Consultation (note: annexes to the consultation can be supplied on request)
- (3) Report on responses

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[Draft] SRA Practice Framework (Amendment) Rules [2012]

Rules dated [*date to be inserted 2012*]

made by the Solicitors Regulation Authority Board under sections 31, 79 and 80 of the Solicitors Act 1974 and sections 9 and 9A of the Administration of Justice Act 1985 and section 83 and Schedule 11 to the Legal Services Act 2007,

with the approval of the Legal Services Board under paragraph 19 of Schedule 4 to the Legal Services Act 2007.

- Rule 1 The SRA Practice Framework Rules 2011 shall be amended in accordance with the Schedule.
- Rule 2 These amendment rules shall come into force on [21 June 2012 or the date of approval by the Legal Services Board, whichever is the later].

Schedule

SRA Practice Framework Rules 2011

Rule 4: In-house practice

- 4.1 If you are a solicitor, REL or RFL conducting employed in-house practice:
- (a) you must not act for **clients** other than your **employer** except in the following circumstances in 4.4 to 4.26 (all of which are subject to 4.1(b) and 4.2) and where you are able to act without compromising the **Principles** or your obligations under the **SRA Code of Conduct**;
- (b) nothing in this rule permits any **person** to conduct **reserved legal activities** in circumstances where to do so would require authorisation under the **LSA** and you must satisfy yourself that any such authorisation is in place before conducting any such activity.

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4.12 If you are employed by an association you may act for a member of that association provided:

- ~~(a)~~ you do not undertake any **reserved legal activities**;
- ~~(b)~~(a) the membership of the association is limited to **persons** engaged or concerned in a particular trade, occupation or specialist activity or otherwise having a community of interest, such interest being a specialist interest;
- ~~(e)~~(b) the association is one formed bona fide for the benefit of its members and not formed directly or indirectly for your benefit or primarily for securing assistance in legal proceedings;
- ~~(d)~~(c) there is no charge to the member in non-contentious matters, and in contentious matters the association indemnifies the member in relation to your costs and disbursements insofar as they are not recoverable from any other source; and
- ~~(e)~~(d) you act only in matters that relate to or arise out of the particular trade, occupation or specialist activity of the association or otherwise relate to the specialist community of interest, for which the association is formed.

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Rule 22: Transitional provisions and grace period

22.7 Until the 180th day after the date on which the **Society** is designated as a **licensing authority** under Part 1 of Schedule 10 to the **LSA**:

- (a) ~~Rule 4.12(a) shall have no effect~~[Deleted];
- (b) Rule 4.13 (insurers) shall have no effect;
- (c) Rule 13.06 (insurers) of the Solicitors' Code of Conduct 2007 shall continue to have effect; and
- (d) references to Rule 4.13 shall be treated as references to Rule 13.06 of the Solicitors' Code of Conduct 2007.

Consultation on changes to Rules 4 and 22 of the SRA Practice Framework Rules in respect of the link with section 15 Legal Services Act for in-house practice

Background

1. Rule 4 of the SRA Practice Framework Rules ("PFR") contains the SRA's regulatory provisions relating to solicitors and others working in an in-house capacity. The Rule sets out the basic principle that solicitors (and certain other lawyers) can only act for their employer and, in limited circumstances set out in the Rule, for other clients (see paragraph 5 below).
2. Rule 4 must be read in the context of section 15 of the Legal Services Act 2007 ("LSA"). Prior to the Handbook coming into force, the SRA undertook an initial review of Rule 4, in particular in relation to the need to avoid inconsistency with section 15. As a result and as an interim measure, shortly before the PFR came into force (6 October 2011) limited transitional provisions were included in the PFR in respect of some aspects of Rule 4.
3. The purpose of this consultation is to seek views on proposed amendments to Rule 4 to help clarify the purpose and limitations of the rule in relation to the statutory position under section 15. The proposed changes are planned to coincide with the end of the transitional provisions mentioned above and the proposed changes relate to these provisions. The consultation is not intended as a wider review of the area of in-house practice which we anticipate undertaking later this year.

In-house requirements

4. Section 15(4) of the LSA states that:

“(4) P [an employer of a person] does not carry on an activity (“the relevant activity”) which is a reserved legal activity by virtue of E [the employee] carrying it on in E’s capacity as an employee of P, unless the provision of relevant services to the public or a section of the public (with or without a view to profit) is part of P’s business.”

In essence, because of section 15, a body:

- employing individuals to provide reserved legal activities;
- as part of its business;
- to the public or a section of the public;

cannot do so without the necessary authorisation as a licensed body (ABS)¹.

5. Rule 4 establishes that lawyers regulated as individuals by the SRA (i.e. solicitors, registered European lawyers and registered foreign lawyers) who work in-house for an organisation that is not a regulated legal business can provide certain legal services to persons other than the employer itself when the employer is not authorised. These include working for:

¹ Subject to certain exceptions.

- work colleagues;
 - related bodies (e.g. group or associated companies);
 - members of an association, where the association is the employer;
 - policyholders where the employer is an insurer.
6. During the development of the Handbook, concerns were expressed as to whether Rule 4 properly reflected the statutory position. Pending the outcome of this consultation a further guidance note has been added at (i) and guidance note (ii) has been augmented in the draft amendments put forward for Edition 3 of the Handbook (expected to be published in Spring 2012). For details of the changes, see **Annex 1**.
 7. We are now proposing to make changes to Rule 4. Because of the potential difficulties in determining where services are provided to the public, the SRA's rules cannot establish a clear line to delineate all circumstances in which organisations are able to permit their in-house lawyers to provide reserved legal services without the body itself obtaining LSA authorisation. Therefore we propose to amend Rule 4.1 to provide clarification on the link between the Rule and section 15 of the LSA, whilst continuing to permit flexibility to those working in-house, including for organisations which provide reserved legal services. The amendments highlight the need to consider the possibility of the employer requiring authorisation under the LSA, before assessing whether the exceptions in the rest of Rule 4 may apply. The changes are set out in **Annex 1**.
 8. The proposed amendments also address the transitional provisions which appear in Rule 22.7. These reflect the deferral of some aspects of Rule 4 when the Handbook came into effect in October 2011.
 9. The particular provisions which were deferred are:
 - (a) Rule 4.12(a) - the restriction on in-house solicitors/RELs working for associations carrying out any reserved legal activities. Because of the redrawing of Rule 4.1 in respect of ensuring authorisation is in place where necessary, we propose the permanent removal of this provision so that 4.12(a) would not come into effect at the end of the transitional period;
 - (b) Rule 4.13 - this provision concerns solicitors/RELs working for insurers and was delayed during the transitional period and Rule 13.06 of the SRA Code of Conduct 2007 remained in force so that the in-house exception relating to solicitors/RELs working for legal expenses insurers remained in place. When Rule 4.13 comes into force on 21 June 2012 there will be no such exception. We do not propose to delay the implementation of Rule 4.13 beyond the end of the transitional period and are not proposing any further amendment to Rule 4.13.
 10. **Annex 1** shows the proposed amendments to Rule 4 which deal with the removal of Rule 4.12(a), and insertion of Rule 4.1(b) to clarify the position and to ensure that those working in-house are aware of the possibility of the employer needing to be authorised under the LSA. It also sets out the proposed change to Rule 22.7.
 11. The amendments in **Annex 1** are shown as changes to Edition 2 of the Handbook since Edition 3 has not yet been approved by the Legal Services

Board (note: amendments are also shown to Rules 4.3 and 4.19 but these relate to the proposed changes for Edition 3 and are not the subject of this consultation).

Equality impact

12. The proposed changes reflect existing SRA policy in respect of which equality impact assessments were carried out and published in relation to the impact of the Handbook project.

Questions

- A. Do you agree with the proposed amendments to Rules 4.1, 4.12 and 22.7?
- B. Do you agree that Rule 4.13 in relation to insurers should come into force as planned at the end of the transitional period?
- C. Do you agree with this overall approach to Rule 4?

How to respond

Please respond to this consultation by [date]

By email

[Details for email response]

By post

Alternatively, print the questionnaire and "About you" forms, and send them to

[Details for postal response]

Annex 1 Rules 4 and 22.7 of the Practice Framework Rules showing proposed amendments (including amendments proposed for Edition 3 which have been made by the SRA Board, subject to the approval of the Legal Services Board).

Consultation on changes to Rules 4 and 22 of the SRA Practice Framework Rules in respect of the link with section 15 of the Legal Services Act for in-house practice

Report on responses to the SRA's March 2012 consultation

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Introduction

1. This report follows our recent "Consultation on changes to Rules 4 and 22 of the SRA Practice Framework Rules in respect of the link with section 15 of the Legal Services Act for in-house practice" ("the consultation"). The report sets out our response to the matters raised by respondents.
2. The consultation proposed changes to Rules 4 and 22 of the SRA Practice Framework Rules ("PFR") and related to the link, for those in in-house practice, between the requirements in Rule 4 and the position under section 15 of the Legal Services Act ("LSA"). The consultation was published on 26 March 2012 and the period for consultation closed on 23 April 2012.
3. By way of background, we explained in the consultation that Rule 4 of the PFR contains the regulatory provisions relating to solicitors, and other individuals regulated by us, working in an in-house capacity. The central pivot of the rule is to restrict the provision of in-house services primarily to the employer. However, there are certain important exceptions, also contained in Rule 4, to facilitate those working in-house to provide specified services to certain linked clients where this is in the public interest and there is no perceived risk to clients' interests.
4. The consultation centred on the need to adequately reflect the statutory position in our regulatory arrangements and to deal with practical issues for those affected by the ending of the transitional provisions.

5. We sought views on limited proposed amendments to Rule 4.1 of the PFR which are intended to help clarify the purpose and limitations of the rule in relation to the statutory position under section 15 of the LSA. Section 15 sets out the circumstances when an organisation must itself be authorised because of the reserved legal activities undertaken by its lawyer employees. The proposed amendments to Rule 4.1 are intended to help avoid the risk of uncertainty by highlighting the inability of our rules to permit what the law does not. The changes also underline the need for those working as in-house lawyers not to act in reserved matters unless the employer has authorisation itself under the LSA.
6. The changes we proposed in the consultation are to coincide with the end of limited transitional provisions in Rule 22 of the PFR (which will cease to apply on 21 June 2012). These were included, as a temporary solution, shortly before the PFR came into force (6 October 2011) and affect those working in-house for associations and legal expenses insurers. The changes proposed in the consultation will affect them in the following ways:
 - The removal of 4.12(a) will delete the automatic regulatory restriction preventing those working for associations carrying out reserved work - this works in conjunction with the proposed requirement in Rule 4.1 to be satisfied that the employer is authorised if necessary.
 - There will no longer be any transitional cover for lawyers working for legal expenses insurers and they will need to satisfy the requirements of Rule 4.1 and section 15 of the LSA.
7. The draft amendments to both Rules 4 and 22 were annexed to the consultation.

Responses received

8. We publicised the consultation via our website and in the legal press. We also contacted in-house lawyers direct to raise awareness of the consultation. We are pleased to have received 48 responses to the consultation. There were a number of written responses from a range of organisations with an interest including those employing solicitors in in-house legal departments, bodies representing such lawyers, and the Law Society.
9. Generally we received positive feedback from respondents on our proposals. However, a number of respondents took the opportunity to voice concerns about issues relating to the wider field of in-house practice which were not the primary subject of this consultation. These centred on respondents' concerns that aspects of Rule 4 no longer appear to accord with wider issues in a number of in-house sectors for example:
 - pro bono
 - local government
 - trade unions
 - the police.
10. Many of the responses received dealt with specific issues relating to the respondents' particular areas, reflecting the disparate nature of in-house

practice and the varying impacts of the changing legal regulatory field on those areas.

11. Many felt that a great deal more work would be needed to achieve in-house provisions which both reflected the LSA and, at the same time, the significant developments in particular markets for in-house legal services. We are grateful to all respondents for letting us know their views at this stage and these will be extremely helpful in the wider review of in-house practice.

Rule amendments

Question A asked:

- **Do you agree with the proposed amendments to Rules 4.1, 4.12 and 22.7?**

12. Overall we received 48 responses to this question, and 34 of these confirmed their agreement to the proposed amendments, although some added caveats or comments on wider issues. Four had no comment and eight did not agree with the proposals. The remaining two respondents approached the draft amendments separately.
13. Several respondents who disagreed felt that the amendments to Rule 4.1 put overly onerous obligations on lawyers and did not assist in clarifying how the LSA will apply to in-house practitioners. Concerns were also expressed about the fact that the approach taken in the amendments to Rule 4.1 may inhibit the provision of services by in-house lawyers.
14. One suggestion, for example, was that the SRA should limit the application of Rule 4.1 to certain areas of exemption within Rule 4 and thereby determine that some areas, such as providing services to work colleagues, are outside of the parameters of section 15(4).

" ... ultimately it will prove impossible to define every single possible variable and this may only add to the confusion"

"The new Rule 4.1(b) puts the onus on the lawyer to comply with Section 15 but offers no clarity as to what that means in any particular case."

Kent County Council

" The way Rule 4 of the Practice Framework Rules is currently drafted, makes it clear that if you are a solicitor acting as an in-house lawyer, you must not act for other clients other than your employer except as provided within the scope of Rule 4. This essentially means that unless you are working for a special type of body (such as an association, insurer, commercial legal service provider, local government or a law

centre) you can only advise your employer, members of its group or work colleagues. In other words, if you are acting within the scope of Rules 4.1 to 4.9 you are not able to advise members of the public. Although the LSA does not provide a definition of "public" or "section of the public", under a plain English construction, it is difficult to see how working for a defined set of persons (your employer, a related body or work colleagues) could be classified as "the public".

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15. The respondents who approached the draft amendments separately both agreed with the approach we propose taking on Rules 4.12 and 22.7 i.e. the removal of the limitation on associations providing reserved legal activities at the end of the transitional period. However, they had concerns in relation to Rule 4.1 as amended, as to whether it really did clarify the purpose and limitations of the rule in light of section 15 of the LSA.

"Rule 4.1(b) (and guidance note (ii)): while we understand that these do no more than remind practitioners of the overriding obligations under the LSA, in the absence of an Order pursuant to Section 15(9) it will be helpful to have an indication (if not a clear statement) of the SRA's current view of whether and in what circumstances members of associations which fall within Rule 4.12 might (or should not) constitute a "section of the public" "

MDU Services Ltd

"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. "

"... it is important that the SRA addresses the difficult questions arising in this area before continuing with any proposed amendments."

The Law Society of England and Wales

16. The Law Society disagrees with the timing of the amendments to Rule 4.1. It suggests that we should not be tackling this area piecemeal, but only as part of a wider review, and in the context of more clarity as to the meaning of "the public or a section of the public" - this should be achieved through the mechanism of a section 15(9) order. The Law Society believes that more detailed guidance than that in the Handbook is needed to assist the profession.
17. Similar views on the timing of the changes planned to Rule 4.1 were expressed by a number of other respondents, who favoured dealing with changes in this area as part of our general review of in-house practice.
18. Most respondents gave an unequivocal agreement to the rule changes we propose. Where they did express reservations, these were often outside the

scope of this particular consultation although very relevant to the field of in-house practice and are helpful.

19. The Association of Police Lawyers and the Directorate of Legal Services of the Metropolitan Police expressed concerns that Rule 4 does not specifically cater for legislative changes effected by the implementation of the Police Reform and Social Responsibility Act 2011, which could impact on the exemptions available to police lawyers.
20. A number of responses highlighted that local government lawyers have particular issues in dealing with the application of section 15 to their sector, particularly in view of the developing legislation specifically affecting local government responsibilities.

"In our view, therefore, Rule 4.12(a) as currently drafted does not reflect the intention of Parliament. We strongly support its removal, or alternatively, its amendment along the lines set out above." [i.e. include wording from section 15(4)].

Medical and Dental Defence Union of Scotland

Our response

21. We welcome the wide range of views and comments we received.
22. The proposals have been challenged as limiting the ability of those in-house to provide their services. The proposed deletion of Rule 4.12(a) is intended to have a deregulatory effect for lawyers working for associations. We remain of the view that, alongside this, Rule 4.1 is a useful reminder to these and other practitioners and does not add to the underlying statutory restrictions.
23. The need to apply section 15 is an ongoing and developing area, and is one that will be case-specific for organisations. As an outcomes-focused regulator we believe it is helpful to highlight matters such as the link between our rules and the LSA which will have a bearing on those working in-house, who are best placed to address their own circumstances.
24. Following the current consultation, our view remains that we need to develop the rules at this time and in this way to coincide with the ending of the transitional period and so that the rules mirror section 15 so far as possible. We believe that Rule 4.1 has relevance across the board for in-house practice although for many the need for the employer to obtain authorisation may never arise.
25. We have received with interest the details and views of those working in areas of the in-house sector where particular concerns are specific to their field. These form part of a bigger picture and will be considered in our wider review which will provide a fuller platform for such issues.

Insurers

Question B asked:

- **Do you agree that Rule 4.13 in relation to insurers should come into force as planned at the end of the transitional period?**
26. There were 35 responses to this question. Of these, 20 agreed, 2 disagreed and 13 indicated they had no comment to make.
27. We received only one substantive response to this question. The respondent felt that the rules applying to a lawyer working for a legal expenses insurer should be in line with those for a lawyer working for a motor insurer acting on a subrogated basis. The respondent disagrees with the end of the transitional provision relating to legal expenses insurers, and believes that further direct regulation of organisations in the sector is unnecessary as they are already well-regulated and well-respected. In addition, more time is needed for such employers to regularise the position once the decision about the future of the transitional provisions is made.

"We do not consider that the existing regime is inadequately or inappropriately regulated. As a legal expenses insurer not only are the individual solicitors regulated by the SRA and subject to the scrutiny of the Legal Services Ombudsman but the firm in general is regulated by the Financial Services Authority and subject to scrutiny by the Financial Ombudsman Service. The firm is also authorised and regulated by the Ministry of Justice and licensed under the Data Protection regime."

Our response

28. Although organisations in this sector will need to review their position, we remain of the view that the transitional provision which relates to legal expenses insurers must come to an end as planned to reflect the position under section 15 of the LSA. Lawyers working in the legal expenses insurance field are in a different position to those employed by insurers who act in subrogated cases for the employer, and bringing Rule 4.13 into effect reflects this.
29. In light of the provisions of section 15 of the LSA, we believe that providing for a 180 day transitional period in the PFR when the Handbook was introduced, allowed adequate time for those affected to regularise their position and our view on this has not altered.
30. We intend to continue as planned so that Rule 4.13 will come into force under the PFR at the end of the transitional period.

General approach

Question C asked:

- **Do you agree with this overall approach to Rule 4?**

31. There were 43 responses to this question. Of these, 28 were in overall agreement with our approach, 14 respondents disagreed and one had no comment.
32. Some respondents strongly disagreed with the overall approach for the following reasons:
- the amendments are unnecessary in so far as they merely reflect the provisions of the LSA;
 - if the SRA considers it appropriate to add provisions reflecting the LSA it should expand this so as to provide more detailed help on how those provisions apply in practice;
 - timing - this is premature and would be better dealt with as part of the fuller review to be undertaken later.

"Overall, we consider the amendments to Rule 4 to be (as regards local government) premature, inappropriate and indefensible."

"It is illogical to consider the proposed amendments in isolation from the wider picture. These amendments themselves will no doubt be considered as part of the forthcoming wider review, giving them a short, and potentially disruptive shelf-life, for no good purpose."

Kent County Council

33. Respondents who supported the overall approach in this consultation, made very few additional comments on the question itself. Several respondents, whilst agreeing with the approach in principle, thought that the opportunity should be taken to make other amendments to Rule 4.

"... we expect that the PFR will continue to mirror the provisions of the LSA. We anticipate that further work will be undertaken on this in the proposed wider review of in-house practice later this year."

"We agree that it is essential that the rules are clarified for the future."

Our response

34. We proposed this general approach in the consultation to amending Rule 4 in this way because we think the amendments fit together as a single solution to address the issue of whether Rule 4 properly reflects the statutory position under section 15 of the LSA.
35. Whilst we recognise the wider concerns that there is a general need to review Rule 4, for example the valid concerns from Kent County Council and the Association of Police Lawyers and Metropolitan Police of the need to take

account of wider legislation and government policy, we are working to a set timetable for the ending of the transitional provisions in Rule 22 of the PFR. The transitional provisions were included because of concerns expressed about the link between the rules and section 15. Although we acknowledge the comments that Rule 4 needs to be considered in greater detail, we are of the view that the approach proposed is appropriate at this time as this is an integral part of the current solution. Removing Rule 4.12(a) gives greater regulatory flexibility for associations but this is most effective with the inclusion of the changes to Rule 4.1. Additionally, this overall approach achieves the important objective of setting the remainder of Rule 4 into the context of section 15 of the LSA.

36. We are grateful for the quality of the responses we have received in this short consultation, and the number of different issues which have been highlighted for us to build on in the in-house review. As we have already indicated, there is need for a wider review for a number of reasons. The in-house review is itself a significant piece of work which will take time and will entail lengthier consideration and engagement.

Timetable and next steps

37. We welcome the wide range of comments that have been made. In deciding our policy approach and next steps, we have taken these into account along with the transitional timetable and the need to reflect the LSA at the same time as permitting regulatory flexibility as far as possible.
38. In light of the overall support for the proposals, we will put the amendments forward for Legal Services Board approval. Our aim is to complete the process and for the rule changes to be in effect before the end of the transitional period on 20 June 2012.
39. All responses to the consultation are being fed into our wider review of in-house practice provisions, which is being developed along with our thinking on the future regime for special bodies. We hope to be able to consult on one or both of these in the autumn and, as part of this work, we look forward to developing our productive dialogue with stakeholders in this area.

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

List of respondents

Association of Council Secretaries and Solicitors

Association of Police Lawyers

Barclays Bank PLC

Directorate of Legal Services of the Metropolitan Police

Fish Legal

GC100

Kent County Council

The Law Society

London Borough of Sutton

MDU Services Ltd

Medical and Dental Defence Union of Scotland

National Union of Teachers

Patrick Power

Mohammed Sajjad

The TUC

University and College Union

Viridian Housing

Note: The remaining respondents asked not to be named or did not supply details.