

Enabling innovation: Consultation on a new approach to waivers and developing the SRA Innovation Space

December 2016

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1. We are the regulator of solicitors and law firms in England and Wales, protecting consumers and supporting the rule of law and the administration of justice. We do this by:
 - overseeing all education and training requirements necessary to practise as a solicitor
 - licensing individuals and firms to practise
 - setting the standards of the profession
 - regulating and enforcing compliance against these standards.
2. We are consulting on proposed changes to applications for waivers and the introduction of criteria and guidance to develop further our Innovation Space. This is an evolving initiative that aims to support firms of all types to deliver products and services in new ways, creating a legal services market more responsive to customer needs. These changes will remove barriers that could be preventing solicitors and firms innovate, while making sure the public and business users of legal services remain protected.

Why are we proposing these changes?

3. We are committed to regulation that upholds standards while providing flexibility, allowing businesses to deliver services in a way that works for them, their clients and prospective clients. Supporting innovation is essential to a competitive legal services market that delivers good quality, accessible and affordable services.
4. We are already able to waive certain requirements in the Handbook in accordance with our current waiver policies. We receive between 100 and 150 such applications each year. Overall, there is an increasing trend for approving new arrangements. Last year, we granted six out of every ten applications received.
5. We also launched SRA Innovate earlier this year.¹ SRA Innovate provides resources for existing firms and new entrants, alternative business structures and traditional law firms which want to explore new thinking and new ways of providing services.
6. We want to do more to allow greater flexibility for solicitors and freedom for firms to innovate, compete and grow. In this consultation we are:
 - proposing new criteria for allowing waivers of our regulatory requirements, which would give us greater flexibility to grant waivers where it is appropriate to do so
 - proposing to formalise and publish criteria and guidance for firms that want to provide services in our Innovation Space. This is a safe space for existing firms, as well as new entrants to the legal market, to pilot new ideas that are likely to benefit members of the public and business users of legal services in a controlled way.

¹ <https://www.sra.org.uk/solicitors/innovate/sra-innovate.page>

The current waivers approach

7. Currently, our Handbook sets out which rules or regulations can be waived. Some, like the Practising Regulations, make no provision for a waiver. Others, such as the Authorisation Rules, allow us to waive any rule (subject to legislative requirements). In some rules we can allow waivers, but only to specific rules. An illustration of this is the Accounts Rules which have two express waiver provisions relating to accountants' reports and practice as a Registered European Lawyer from an Exempt European Practice. This means we do not have power to waive any of the rules that deal with the substantive requirements around holding client money. The rules and regulations that allow waivers do not use consistent language or criteria.
8. The circumstances where we are permitted to waive rules are governed by our current waiver policies. There are currently two waiver policies: one general and one relating specifically to waivers in the SRA Indemnity Insurance Rules 2013. The former includes an "exceptional circumstances" test and the latter has even stricter requirements.
9. This inconsistency makes the process hard to navigate and is a burden for those considering applying for a waiver. This position is further compounded by having a separate policy with a higher threshold for indemnity insurance waivers.

A proposed new waivers policy

10. We propose to introduce a new, single set of simplified criteria for granting waivers, which will mean that a waiver may be granted if:
 - in an applicant's specific circumstances a waiver is compatible with the regulatory objectives in section 1 of the Legal Services Act.
 - in the event of a competing objective, that a waiver best serves our public interest purpose: namely providing consumers with appropriate protection and supporting the rule of law and administration of justice.
11. The proposed policy reflects our reform aims, which are to move away from prescriptive regulation that could act as a barrier to innovation and growth in the legal services market. It gives us greater flexibility to grant waivers where it is appropriate to do so. Our aim is also that the policy is more transparent and makes it more straightforward for firms to apply for waivers.
12. A copy of the draft proposed policy is attached as annex A.
13. As part of our proposed reforms to the Handbook we want to be able to waive any requirements that are not a legislative requirement. In the interim, we propose to apply the new criteria to applications for waivers if this is consistent with the wording of the current rule..
14. Our expectation is that, in the longer term, if a new, streamlined, flexible and future-proofed Handbook is approved and introduced, the need for waivers will be limited. However, ahead of this (particularly once the profile of the Innovation Space is raised), it is possible that applications might increase.

15. We intend to publish waivers on our website to ensure fairness and transparency. This may be because, for example, the waiver permits an innovative approach to doing business which others could benefit from. We think we should publish all decisions on waivers both when we grant or refuse them. We may however anonymise some of these for example if the information would allow an individual to be identified.

SRA Innovate: Innovation Space

16. We have already used waivers and other regulatory tools to permit innovation in the legal services market. They have helped us bring in multi-disciplinary partnerships (MDPs). More recently, we have applied conditions on licences to permit the use, in appropriate cases, of third-party managed accounts. Other waivers have been granted that reduce an unnecessary regulatory burden on firms.

17. We want to do more to encourage new services and service delivery approaches that will benefit the public. We are proposing to publish criteria and guidance for firms that want to provide services in our Innovation Space.

18. This is a safe space for existing firms, as well as new entrants to the legal services market, to pilot, in a controlled way, new ideas that are likely to benefit the public. It will also create an environment where we can work collaboratively with innovators to make sure appropriate consumer protection safeguards are built into new products and services. We think this will permit greater innovation.

How we will make our decision

19. The criteria we propose are designed to differentiate the truly innovative from applications which could be handled under the existing waiver and authorisation application processes.

20. These are:

- Is the application in scope?
We would expect any application to be consistent with the aims of our policy reforms, our regulatory objectives and in the interest of the public and consumers². It will be necessary to make sure the innovation does not breach legislative requirements.
- Is it sufficiently different?
Does the proposal result in a significantly different way of delivering legal services?
- Is there a need for access to the Innovation Space?
Does the applicant have a genuine need to access the Innovation Space? Has the applicant identified and established the need, including which regulatory tool or tools will be required?
- Are consumers adequately protected?
Are there sufficient safeguards to protect consumers, including where access to appropriate redress is required? These would be developed on a case-by-case basis to make sure that protections are sufficient, but at the same time not unnecessarily burdensome on the business.

² <https://www.sra.org.uk/solicitors/innovate/sra-innovate.page>

- Is the proposal developed enough to start?
Is the applicant ready to start providing the innovative service? Has the application clearly identified measurable success criteria? Does the application show that research has been carried out on the benefits of the innovation, including how risks will be addressed?

Proposed 'no enforcement tool'

21. Some innovations may meet the criteria but bring the firm into technical breach of our current rules in circumstances where there are currently no waiver provisions. We expect this to happen on a rare few occasions in relatively limited situations. However, where this occurs, to guarantee to the firm that we will take no enforcement action, we propose using a 'no enforcement action' tool.
22. This approach is already an option within the Financial Conduct Authority's Regulatory Sandbox. Similarly, the Civil Aviation Authority has allowed Amazon to test using drones for parcel delivery, despite this breaching its current rules. We would only use this tool for cases where we believed it was justified in light of the particular circumstances and characteristics of the innovation, but where we were not able to issue waivers. It would only apply to our regulatory action, and is not intended to limit any other liabilities, including to consumers.

Process for firms wishing to make use of Innovation Space

23. We will provide support for firms wishing to explore use of Innovation Space, such as publication of case studies and guidance on our Innovate web pages. This will help firms understand the research and information we need to decide whether or not to permit the innovation.
24. This support will also coordinate with our response to applicants where the decision needed to permit the innovation was required from different teams in the SRA. We will also advise on the conditions and monitoring arrangements that we may require as part of a decision to permit the proposals, and which will operate during the period the services are provided in the Innovation Space. We will also need the application to have a clear exit strategy, which protects the public if the outcome of the monitoring suggests the provision of services within the Innovation Space should be stopped.

Evaluation of the impact of the Innovation Space and of waiver decisions

25. A quarterly review of all applications for use of the Innovation Space and application for waivers, both successful and unsuccessful, will be conducted by our General Counsel. This is to make sure the process is conducted in a fair way and that the application of the criteria is applied correctly and consistently.
26. We will also publish an annual review. This will include detail of waivers we have granted for firms in the Innovation Space and any that we think are not appropriate. It will

highlight themes and trends, including where our current rules appear to be inhibiting innovation.

What are the likely impacts of the proposed changes?

27. We aim to strike the right balance between reducing regulatory burdens and making sure the public are protected. Overall, we expect our proposals to contribute towards a more competitive market, which is better placed to innovate and respond to the needs of different groups of users – including vulnerable consumers.
28. The new waiver policy and criteria for the Innovation Space will allow us to treat businesses more fairly and consistently when they develop new ways of delivering legal services. The criteria should improve the process and reduce the time taken for new initiatives to reach the market.
29. We have not identified any adverse Equality, Diversity and Inclusion (EDI) impacts resulting from our proposals. We have, though, included a consultation question asking for views on any positive or negative EDI impacts.
30. The increased flexibility to waive regulatory arrangements may lead to a reduction in unnecessary barriers, which may benefit small firms. Small firms can suffer a disproportionate impact from the cost of complying with prescriptive rules, which may be subject to regular revision. Because they are overrepresented in small firms and sole practices, the proposals could reduce a regulatory burden on some Black, Asian and Minority Ethnic (BAME), as well as older solicitors.

Consultation questions

1. Is the proposed set of criteria appropriate for granting a waiver? Yes/No Please explain your answer.
2. Will a single set of criteria make it more straightforward to make an application for a waiver? Yes/No Please explain your answer.
3. Do you agree that we should publish all waiver decisions, anonymising where appropriate, both when we grant or refuse them? Yes/No Please explain your answer
4. Are the proposed criteria to be permitted into the Innovation Space appropriate? Yes/No Please explain your answer.
5. Do you think that limited use of the proposed no enforcement action tool for firms in the Innovation Space is appropriate? Yes/No Please explain your answer.
6. Do you think the proposals to formalise the use of our Innovation Space will create greater opportunities for innovation? Yes/No Please provide examples if possible.
7. Are there any benefits or disadvantages for consumers from these proposals? Yes/No Please explain your answer.
8. Do you think there are sufficient safeguards to make sure they are adequately protected when firms are providing services in our Innovation Space? Yes/No Please explain your answer with examples if possible.
9. We propose to publish waiver decisions and an annual evaluation of the impact of the Innovation Space. Is there any other information that we can publish to encourage greater innovation? Yes/No Please explain your answer.
10. Are there any positive or negative impacts, including EDI impacts, on the firms and users of legal services that are likely to arise from the proposed changes? Yes/No Please explain your answer.
11. Are there any other matters relating to the issues covered in this consultation that you would like to raise? Yes/No Please explain your answer.

How to respond to this consultation

How to respond

This consultation is open from 14 December 2016 until 8 March 2017.

We will publish and attribute your response unless you request otherwise.

We encourage you to use our online consultation questionnaire to compose and submit your response.

Online questionnaire

Our online consultation questionnaire is a convenient, flexible way to respond.

You can save a partial response online and complete it later.

To respond visit <https://forms.sra.org.uk/s3/enabling-innovation>

Alternative ways to respond

You can respond by email or post.

If you choose to respond by email or letter, please include the title of the consultation and tell us who you are and on whose behalf you are responding.

Please email consultations@sra.org.uk

Post responses to:

Solicitors Regulation Authority
Regulation and Education – Waivers and Innovation
The Cube
199 Wharfside Street,
Birmingham,
B1 1RN