

<b>Title:</b> The Legal Services Act 2007 (The Law Society) (Modification of Functions) Order 2015 for Sole Practitioners  <b>IA No:</b> MoJ034/2014  <b>Lead department or agency:</b> Ministry of Justice  <b>Other departments or agencies:</b> Legal Services Board, Solicitors Regulation Authority	<b>Impact Assessment (IA)</b>		
	<b>Date:</b> 03/12/2014		
	<b>Stage:</b> Final		
	<b>Source of intervention:</b> Domestic		
	<b>Type of measure:</b> Secondary Legislation		
<b>Contact for enquiries:</b> Admin.justice@justice.gsi.gov.uk			

<b>Summary: Intervention and Options</b>	<b>RPC Opinion:</b> GREEN
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Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Two-Out?	Measure qualifies as
£0.03m	£0.3m	-£0.03m	Yes	OUT

**What is the problem under consideration? Why is government intervention necessary?**  
 Solicitor sole practices are currently authorised annually by means of a “sole solicitor endorsement” on the solicitor’s practising certificate (PC). By contrast all other firms which the Solicitors Regulation Authority (SRA) regulates are subject to initial authorisation and unlimited “licences”. Failure to harmonise the regulatory regime would result in continued regulatory inefficiencies and increased costs for both sole practitioner firms and the SRA. Government intervention is needed as legislation is required to align the systems of authorisation.

**What are the policy objectives and the intended effects?**  
 The objectives are to align the system of authorisation for sole practitioner firms and other firms, to provide an effective and consistent approach to the regulation of legal services for those regulated by the SRA. The intended effects are to ensure that sole practitioners will be subject to a similar authorisation process to other firms, and the SRA will be able to take similar regulatory steps in relation to the authorisation of the firm rather than only against the PC of the individual sole practitioner.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**  
 The following options have been assessed against the base case of ‘do nothing’:  
  
 Option 0: do nothing. If an order were not made under s69 of the Legal Services Act 2007 to modify its functions, the SRA would have to run two different, parallel systems for “licensing” firms.  
  
 Option 1: Harmonise the regulatory regime for all firms via a section 69 Order.  
  
 Option 1 is the preferred option as it would reduce regulatory inefficiency and deliver benefits to sole practitioners and the SRA.

<b>Will the policy be reviewed?</b> It will not be reviewed.					
Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	<b>Micro</b> Yes	<b>&lt; 20</b> Yes	<b>Small</b> Yes	<b>Medium</b> Yes	<b>Large</b> Yes
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			<b>Traded:</b> NA		<b>Non-traded:</b> NA

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible Minister: \_\_\_\_\_ **Shailesh Vara** \_\_\_\_\_ Date: \_\_\_\_\_ **03/12/2014** \_\_\_\_\_

# Summary: Analysis & Evidence

# Policy Option 1

**Description:** Harmonise the regulatory regime for all firms via a section 69 Order

## FULL ECONOMIC ASSESSMENT

Price Base Year 2013	PV Base Year 2013	Time Period Years 10	Net Benefit (Present Value (PV)) (£)		
			Low:	High:	Best Estimate: £275,000

COSTS (£)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	NQ	NQ	NQ
High	NQ	NQ	NQ
Best Estimate	£0	£0	£0

### Description and scale of key monetised costs by 'main affected groups'

No monetised costs have been identified.

### Other key non-monetised costs by 'main affected groups'

There may be negligible initial one-off familiarisation and awareness costs for solicitor sole practitioners relating to the new arrangements.

There are likely to be negligible one-off adjustment costs on the SRA from removing guidance and adjusting

There will be some changes to IT processes for the harmonised system, however these costs will be amalgamated alongside other SRA IT changes.

BENEFITS (£)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low			
High			
Best Estimate	£0	£32,000	£275,000

### Description and scale of key monetised benefits by 'main affected groups'

Solicitor sole practitioners would generate a saving of around £32,000 by saving around 30 minutes each per annum from no longer having to familiarise themselves with the rules relating to this application.

### Other key non-monetised benefits by 'main affected groups'

Harmonising the regulatory regime would result in operational benefits for the SRA. Combining the forms would reduce the resources required for the editorial and testing teams as their work would not need to be duplicated. These benefits have been assessed by the SRA as being negligible in scale.

### Key assumptions/sensitivities/risks

Discount rate (%)

3.5

It has been assumed there would be no change in the number of solicitor sole practitioner firms or in the work they undertake. It is assumed sole practitioners currently spend 30 minutes a year looking at the SRA handbook and wage rates are in line with National Statistics Annual Survey of Hours and Earnings.

There are possible risks surrounding IT performance during the transition to the new regime.

## BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £:			In scope of OITO?	Measure qualifies as
Costs: £0	Benefits: £25,000	Net: £25,000	Yes	OUT

## 1. Evidence Base (for summary sheets)

### Introduction

- 1.1. The Legal Services Board (LSB) was created by the Legal Services Act 2007 (LSA 2007) and is charged with the responsibility of overseeing the regulators of legal services, and ensuring that its activities reflect the regulatory objectives set out in the LSA (s.1).
- 1.2. The Law Society of England and Wales is an “approved regulator” under the LSA. The Solicitors Regulation Authority (SRA) is the independent regulatory body of the Law Society. The SRA regulates solicitors, solicitors’ firms and those with whom solicitors practise. One such practice is a solicitor’s sole practice.
- 1.3. A solicitor’s sole practice is a firm like any other traditional law firm, except that it has only one principal (who can be either a solicitor or a registered European lawyer (REL)). There are a variety of business models:
  - At one extreme the term “sole practice” can mean an individual practising with little or no other support, undertaking, and personally providing, a limited range of services to a relatively small client base.
  - At the other extreme, however, the sole practitioner may control a substantial enterprise, supervising a large number of fee-earners (some of whom may be solicitors) and other staff who provide a wide range of services to an extensive client base, with a considerable turnover and large client account balances. This model has more features in common with a medium sized partnership or incorporated practice, rather than with the perhaps more general perception of sole practice being a “one man band”.
- 1.4. Prior to the LSA 2007, the Law Society’s powers to regulate sole solicitors’ firms were limited to its general powers to regulate all individual solicitors by means of the issue of practising certificates (PCs) and the requirements concerning professional conduct. The LSA 2007 introduced a further procedure, the endorsement procedure, for the regulation of sole solicitors’ firms. This provides that a solicitor may not practise as a sole solicitor unless the solicitor has in force a “sole solicitor endorsement” on the solicitor’s PC.
- 1.5. This placed sole practitioners in a similar position to other types of solicitor firms ‘Recognised Bodies’ who were required to renew their entitlement to practise as firms annually.
- 1.6. As from March 2012, the SRA has removed the requirement for annual renewal of authorisation from Recognised Bodies. Instead, they are issued with a time unlimited authorisation. This change, along with others, required an s69 Order which was made in 2011 following a consultation by the LSB and a recommendation to the Lord Chancellor.
- 1.7. The SRA’s data shows that in January 2014 there were a total of 2,992 sole practitioner firms.

### Problem under consideration

- 1.8. Sole practices are currently regulated differently from other business structures through which solicitors practise (e.g. partnerships, LLPs, other types of Recognised Bodies and ABS’s). In particular, rather than being authorised and regulated as entities, sole practitioners are authorised through an endorsement on the PC of the sole principal. This authorisation is issued under the Solicitors Act 1974. PCs are issued annually by the SRA and so the endorsement mechanism for authorising sole practice is also an annual occurrence.
- 1.9. By contrast, all other firms which the SRA regulates (e.g. partnerships and other bodies including LLPs, and ABSs) are subject to initial authorisation as entities and, subject to the authorisation process, are then provided with unlimited “licences”. This licence does not have to be renewed annually. Authorisation takes place under the SRA Authorisation Rules for Legal Services Bodies and Licensable Bodies 2011, the Administration of Justice Act 1985 and the Legal Services Act 2007.

- 1.10. This leaves a situation whereby sole practitioners are required to apply annually for a renewal but other types of firms are no longer required to do so. The existence of different statutory regimes also results in two different systems for regulating, one for sole practitioners, and another system for all other firms.
- 1.11. The existence of two different regulatory regimes generates inefficiencies and increases the regulatory burden on sole practitioners. Requiring sole practitioners to annually apply for an endorsement of their practicing certificate creates an administrative burden due to the time they must spend refreshing themselves of the relevant rules in the SRA handbook, which relates to making this application.

### **Policy objectives and policy options**

- 1.12. The SRA proposes to harmonise its authorisation regime and to remove the annual authorisation requirement which currently applies to sole practitioners. This is not considered to provide any regulatory benefits. The objective is to harmonise the system of authorisation for sole practitioners with that used for other types of law firms, and to provide an effective and consistent approach to the regulation of legal services for all those regulated by the SRA.
- 1.13. Harmonising the regulatory regime in this way should generate efficiencies and reduce regulatory burdens for sole practitioners. These reforms should also allow the SRA to provide a more effective and consistent approach to the regulation of legal services for those it regulates. In theory it is possible that running two regulatory regimes for authorising law firms may create increased costs for the SRA, which might then be passed onto firms via the SRA's regulatory fees.
- 1.14. In order to achieve the desired policy outcome, a statutory change is required. Government intervention is necessary by making an Order under section 69 of the LSA to amend the statutory powers so that the desired changes can be introduced.

### **Option 1: Harmonise the regulatory regime for all firms via a section 69 Order**

- 1.15. Under option 1, sole practitioner's practices will be authorised as firms. Although individual solicitors working in the sole practitioner firms (as is the case with other firms) will still need to hold an annually renewed PC, however, there will no longer be a requirement for the sole principal's PC to be endorsed annually to permit sole practice.

### **Economic rationale**

- 1.16. The economic rationale for intervention relates to improved efficiency. There would be efficiency gains if the inconsistencies between the regulation of sole practitioners and other types of business were removed. This inconsistency imposes additional administrative costs on sole practitioners and the SRA.

### **Feedback from stakeholders**

- 1.17. Feedback from stakeholders, in particular from the Sole Practitioners Group and from The Law Society in their responses to the SRA's 2010 consultation on this issue, was supportive of the proposals.
- 1.18. More recently, the Legal Services Board (LSB) issued a further consultation on this issue in 2014. As part of this consultation a cost benefit analysis (CBA) was included, this looked at the potential costs and benefits of reducing the regulatory burden on sole practitioner firms. One response to the consultation was received which was from the Sole Practitioners Group. It was supportive of the proposals and it stated they did not believe the proposals would generate any adverse consequences or costs for sole practitioners or for the public. Additionally, the Sole Practitioners Group recognised that the proposals have the effect of harmonising regulation.
- 1.19. In their response, the Sole Practitioners Group did not disagree with the assumptions made in the CBA, although they considered that there may be more than 2,992 sole practitioners as some sole

practitioners may be trading as LLPs or as limited companies. They considered that if so, this would not alter the overall benefit of the proposals. Following the consultation, the SRA have engaged with the Sole Practitioners Group to confirm that the number of sole practitioner firms is correct at 2,992. Some individual solicitors may practise on their own through other entities such as limited companies but they would already be regulated through the authorisation rules applying to the entity through which they practise, hence they would not need to be authorised in addition via an endorsement on their PC. They would therefore not be classed as sole practitioners in regulatory terms and would be unaffected by the proposals.

## Main affected groups

1.20. The proposals are likely to affect the following groups:

- a) Solicitor sole practitioners
- b) Solicitors Regulation Authority
- c) Consumers of legal services

## 2. Cost and Benefits

2.1. This IA identifies, where possible, the monetised and non-monetised costs and benefits for individuals, groups and businesses in England and Wales with the aim of understanding what the overall impact might be on society from implementing these proposals.

## Assumptions

2.2. The following key assumptions have been used to provide an estimation of the expected impacts of the reforms:

- The number of firms registered as sole practitioners has been assumed to remain the same in future. SRA data shows that there are around 2,992 sole practitioner firms with around 4,735 solicitors working within these firms. There is no evidence to indicate that the baseline volume of sole practitioners will change, nor that the reforms themselves will have any impact on the number of sole practitioners.
- Sole practitioner firms spend approximately half an hour a year reading the relevant guidance relating to their annual authorisation renewal.
- The hourly gross wage for a solicitor was £21.29 in 2012 according to the Office of National Statistics Annual Survey of Hourly Earnings.<sup>1</sup>

## Option 0

2.3. The “do nothing” option results in the SRA running two different, parallel systems for “licensing”(i.e. authorising) firms: one system applying to sole practitioners’ firms, and the other applying to all other firms. Sole practitioners would continue to be required to renew their “licences” as part of the annual renewal of the PC for all solicitors. Other firms are subject to initial authorisation as entities and are granted unlimited “licences”. This licence does not have to be renewed annually.

2.4. Because the "do nothing" option is compared against itself, its costs and benefits are necessarily zero, as is its Net Present Value (NPV).

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<sup>1</sup> <http://www.ons.gov.uk/ons/publications/re-reference-tables.html?edition=tcm%3A77-328218> Table 14- contains estimates of paid hours worked, weekly, hourly and annual earnings for UK employees by gender and full-time/part-time working by 4 digit Standard Occupation Classification 2010.

## Option 1: Harmonise the regulatory regime for all firms via a section 69 Order

### Description

2.5. Under option 1 sole practitioner's practices will be authorised as firms. Although individual solicitors working in the sole practitioner firms (as is the case with other firms) will still need to hold an annually renewed PC, there will no longer be a requirement for the sole principal's PC to be endorsed annually to permit sole practice.

### Costs of Option 1

#### *Costs to solicitor sole practitioners*

2.6. It is not anticipated that there will be any significant transitional costs for sole practitioners. There may be negligible initial one-off familiarisation and awareness costs relating to the new arrangements. The new authorisations will be issued to sole practitioners by the SRA without the need for sole practitioners to submit a separate application.

#### *Costs to the Solicitors Regulation Authority*

2.7. The proposal is likely to impose negligible one-off adjustment costs on the SRA from removing guidance and adjusting IT processes for the harmonised system. There is limited data available as to how much these IT processes would cost as they will be amalgamated alongside other SRA IT changes.

#### *Costs to consumers of legal services*

2.8. No costs are anticipated to consumers of legal services.

### Benefits of Option 1

#### *Benefits to Sole Practitioners*

2.9. Sole practitioners will no longer be required to secure an annual endorsement on their PC. Instead sole practitioners will receive a certificate of authorisation that will not require annual renewal. This will bring the regulation of sole practitioners into line with that of other law firms.

2.10. The process that sole practitioners will follow to renew their PC itself, as opposed to renewing the endorsement on their PC, will be unchanged. The current form which sole practitioner's fill in is an 'RF1RSP' form. Under the new proposals this will be replaced by an 'RF1RB'. These forms are of the same length and content thus meaning there will be no additional requirements for sole practitioners to follow.

2.11. One practical impact for sole practitioners will be that the SRA Handbook will become shorter as the need for separate regulations for sole practitioners will fall away as they will be subject to the same authorisation rules that apply to other types of law firms. It is estimated that this will shrink the SRA Handbook by approximately 14 pages.

2.12. We assume that the 2,992 sole practitioners who no longer have to apply for an annual authorisation may save around 30 minutes each year from no longer having to familiarise themselves with the rules relating to this application. Applying the £21.29 hourly wage rate identified above, this generates a saving of around £32,000.

#### *Benefits to the Solicitors Regulation Authority*

2.13. Harmonising the regulatory regime would result in operational benefits for the SRA if there were no longer a requirement for sole practitioners to complete their renewal on a separate form. The existing process requires an editorial team to draft and audit the proposed questions on both applications, ensuring that there is consistency. Combining the forms would reduce the resources

required for the editorial and testing teams as their work would not need to be duplicated. These benefits have been assessed by the SRA as being negligible in scale, and as not translating into any tangible reduction in SRA operating costs which would feed through to a difference in SRA fees. This impact has therefore not been monetised.

#### *Benefits to consumers of legal services*

2.14. Any benefits here will be negligible in scale.

### **3. Risks**

- 3.1. It is not considered that removing the annual endorsement process poses a regulatory risk – appropriate control lies in the provision of annual information which is already a requirement on all practices (i.e. sole practitioners, Recognised Bodies and ABS's) and which will be unaffected by this change.
- 3.2. There are possible risks surrounding IT performance during the transition to the new regime. The SRA is actively working to mitigate these risks, and they are not expected to have any significant impact on the proposed option.

### **4. Small and Micro-Business Assessment**

- 4.1. The group of sole practitioners contains a disproportionate number of small and micro businesses, but it should be noted that not all sole practitioners are necessarily of this size. In some cases they are enterprises of a considerable size in terms of both numbers of employees and turnover (and their employees do not need to be solicitors who hold a PC, they may also be paralegals and barristers). Overall, sole practitioners will benefit from this proposal and not face any additional costs.

### **5. One-in-two-out Assessment**

- 5.1. The proposal is in scope of the One In Two Out rule as the reforms reduce existing regulation on business. Therefore these reforms have been assessed as an OUT. The gains to business from removing annual reauthorisation requirements are estimated to generate net savings of around £32,000 per annum (based on 2013 constant prices).

### **6. Overall EANCB and OITO**

- 6.1. The aggregate net benefits of the proposal for sole practitioners are expected to be around £32,000 per annum. The policy has an NPV of £275,000 over ten years. The overall EANCB figure (in 2009 prices) is expected to be around -£25,000 (to the nearest £1,000).