

Section 69 Order: modification of The Solicitors Regulation Authority regulation of sole practice

Decision document relating to consultation, under section 70 of the Legal Services Act 2007, to modify the Solicitors Act 1974 and the Administration of Justice Act 1985 for the purposes of introducing the concept of “recognised sole solicitors’ practices”

10 July 2014

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Introduction

1. Section 69 of the Legal Services Act 2007 (“**the Act**”) allows the Lord Chancellor to make orders which modify the functions of approved regulators. Such orders can, among other things, only be made following a recommendation from the Legal Services Board (LSB); a draft of the proposed order must be annexed to the recommendation.
2. Section 70 of the Act sets out the procedural requirements relating to a recommendation under section 69. Section 70(2) requires that before making a recommendation to the Lord Chancellor, the LSB publishes a draft of the proposed recommendation and the proposed draft order and invites representations on the proposals. The LSB must state the period in which recommendations must be made. Section 70(1) of the Act requires that the recommendation may only be made under section 69 with the consent of the approved regulator to which the recommendation relates.
3. The Law Society is an approved regulator and licensing authority under the Act, exercising its regulatory functions through the Solicitors Regulation Authority (“**the SRA**”). It has powers under the Solicitors Act 1974 (“**SA**”) and the Administration of Justice Act 1985 (“**AJA**”) to regulate solicitors and solicitors’ firms (recognised bodies). This includes regulating individual solicitors who are established as sole practitioners. The SRA is also a licensing authority which regulates alternative business structures (“**ABS**”).
4. Therefore the SRA currently regulates three different types of practices: sole practice; recognised bodies; and ABS. The latter two types are subject to the same authorisation process, which is one off authorisation followed by ongoing supervision. In contrast, sole practitioners require annual endorsement of their practising certificates.
5. A sole practitioner firm is like any other traditional law firm, except that it only has one principal. The practice of sole solicitors is currently governed by the SA and recognition as a sole practitioner is obtained by way of an endorsement on an individual’s practising certificate. The endorsement framework was inserted into the SA by the Act¹.

Purpose of the order

6. The objective of the statutory instrument is to create the concept of ‘recognised sole solicitors’ practices’ which would be subject to the same type of authorisation and ongoing supervision process as recognised bodies and ABS. The aim is to achieve consistency of treatment across different types of practice. Removing the annual endorsement process will also help to reduce the regulatory burden and costs for affected firms and for the administrative functions of the SRA.

¹ Legal Services Act 2007 Schedule 16 Paragraph 15

7. The order itself, in summary, amends primary legislation and secondary legislation, specifically the SA and the AJA. With respect to the SA, it repeals the provisions relating to the sole solicitor endorsements on solicitors' practising certificates. The AJA is similarly amended, the effect being to introduce the concept of recognised sole solicitors' practices. It also includes some secondary legislation amendments to include registered European lawyers in the changes.
8. It should also be noted that the proposed draft order makes a transitional provision. The effect of the provision is that current sole practitioners will be "passported" in to the new arrangements. It will help ensure that current sole practitioners do not incur additional costs or suffer administrative burdens.
9. The LSB concurs with the changes proposed by the SRA.

Cost Benefit Analysis

10. The Ministry of Justice advised the LSB that a full impact assessment was not required for this order. It advised that as this is a deregulatory measure, it would be appropriate to undertake a fast track Regulatory Triage Assessment ("**the assessment**") which must be confirmed by the Regulatory Policy Committee ("**the Committee**"). The Committee provides the government with external, independent scrutiny of new regulatory and deregulatory proposals².
11. The Committee confirmed on 25 March 2014 that on the basis of the information provided in the assessment, the proposal was suitable for fast track as a deregulatory proposal. The Committee recommended in its confirmation that both the Ministry of Justice and the SRA test, in consultation, the assumption, contained in the assessment, that the costs and benefits of the proposal are negligible.

Outcome of consultation

12. Respondents were invited to make representations on two matters:
 - Whether the draft order and draft recommendation deliver the policy intention of harmonising the regulatory framework, thereby removing the need for a distinct sole practice endorsement process; and
 - the cost benefit analysis and the assumptions used for estimating negligible costs and benefits of the proposals.
13. The consultation period was for six weeks and closed on 28 May 2014.
14. This paper summarises the LSB's decision and the next steps.

² <https://www.gov.uk/government/organisations/regulatory-policy-committee>

15. The only representation was received from the Sole Practitioners Group which said it welcomed any effort to reduce the current burden of regulation of sole practitioners, provided that any changes did not result in adverse consequences to sole practitioners or indeed the public. The Sole Practitioners Group said the proposal did not appear to have either of these consequences so it supported the proposal. The Sole Practitioners Group also agreed that the proposal had the effect of harmonising regulation with those of larger firms and of ABS.
16. With regard to the Cost Benefit Analysis, the Sole Practitioners Group queried the assumption that there are less than 3000 sole practitioners. It said it did not consider that the figure takes into account those sole practitioners who practise in the form of a limited company or a Limited Liability Partnership, in which case the figure would be in excess of 4000. However, the Group also conceded that this revised figure does not alter the overall benefits to sole practitioners set out in the Cost Benefit Analysis.
17. The Sole Practitioners Group response has been published on the LSB website³.

Next Steps

18. As the only representation made welcomed the proposal and made no comment on the draft order itself, the LSB has concluded it should proceed with the recommendation and the order in the form consulted on and which is reproduced in Annex A.
19. With respect to the Cost Benefit Analysis, the LSB notes that the Sole Practitioners Group disputes the figure given for the number of sole practitioners, but also notes that the Group does not believe this alters the overall SRA analysis of benefits. The LSB has passed the Sole Practitioners Group views to the SRA and Ministry of Justice so they may consider this when preparing the fast-track Impact Assessment that the Ministry of Justice must send to the Regulatory Policy Committee for validation.

Annexes

Annex A: Recommendation to the Lord Chancellor and order.

³ Available from the LSB website at:
http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/Response_From_The_Sole_Practitioners_Group.pdf

Annex A: Recommendation by the LSB to the Lord Chancellor and draft section 69 order which is annexed to the recommendation

Proposed recommendation for modification of The Law Society's functions in relation to the regulation of sole practice

At its meeting on 9 July 2014 the Legal Services Board (the Board) decided to make a recommendation to the Lord Chancellor that he makes an order under section 69 of the Legal Services Act 2007 ("the Act") to modify the Solicitors Act 1974 and the Administration of Justice Act 1985 for the purposes of introducing the concept of "recognised sole solicitors' practices". A draft of the order is attached to this recommendation.

In accordance with the requirements of section 70(2) of the Act, the Board published a draft of the proposed recommendation and draft order on 16 April 2014 and invited representations about the proposals to be made to the Board by 28 May 2014. The Board has considered the one representation duly made by the Sole Practitioners Group, who raised no objection to the order or the overall cost and benefits assessment of the Solicitors Regulation Authority (the body to whom The Law Society has delegated its regulatory functions).

In accordance with section 70(1) of the Act, the recommendation is made with the consent of The Law Society.

Chief Executive [under delegated authority], Legal Services Board

[Date]

DRAFT STATUTORY INSTRUMENTS

[2015] No.

LEGAL SERVICES, ENGLAND AND WALES

The Legal Services Act 2007 (The Law Society) (Modification of Functions) Order [2015]

Made - - - - - *******

Coming into force in accordance with article 1

The Lord Chancellor makes the following Order in exercise of the powers conferred by sections 69 and 204(3) and (4) of the Legal Services Act 2007⁽⁴⁾.

In accordance with section 69(2) of that Act, the Order is made following a recommendation made by the Legal Services Board to which was annexed a draft Order in a form not materially different from this Order.

The Legal Services Board has made the recommendation with the consent required by section 70(1) of that Act and after complying with the requirements in section 70(2) to (4) of that Act.

In accordance with section 206(4) and (5) of that Act, a draft of this Order has been approved by a resolution of each House of Parliament.

Citation and commencement

1.—a) This Order may be cited as the Legal Services Act 2007 (The Law Society) (Modification of Functions) Order 2015.

(1) Article 3 of this Order comes into force on whichever is the later of [date] or the 36th day after the day on which it is made.

(2) Save as provided by paragraph (2) this Order comes into force on the day after the day on which it is made.

Interpretation

2. In this Order —

⁽⁴⁾ 2007 c. 29.

“the 1974 Act” means the Solicitors Act 1974⁽⁵⁾;

“the 1985 Act” means the Administration of Justice Act 1985⁽⁶⁾;

“the 2000 Regulations” means the European Communities (Lawyer’s Practice) Regulations 2000⁽⁷⁾;

“sole solicitor” means a solicitor who is the sole principal in a practice; and

“sole solicitor endorsement” means an endorsement of the practising certificate of a solicitor by the Law Society authorising the solicitor to practise as a sole solicitor, made under section 1B⁽⁸⁾ of the 1974 Act.

Amendments

3.—(b) The amendments to the 1974 Act and the 1985 Act set out in Schedule 1 shall have effect.

(1) The amendments to the 2000 Regulations set out in Schedule 2 shall have effect.

(2) In consequence of the amendments set out in Schedule 1, paragraphs 3, 15, 17(a), (b) and (d)(ii), 22, 30(2)(d), 49(a), (c) and (e), 75(b) and 81(2)(c) of Schedule 16 to the Legal Services Act 2007 are repealed.

Transitional provisions: solicitors

4.—(c) In any case where immediately before the coming into force of article 3 there is in force in relation to a sole solicitor a sole solicitor endorsement, then upon the coming into force of that article —

(a) the sole solicitor endorsement shall cease to have effect, and

(b) the sole solicitor’s practise shall be treated as recognised by the Law Society under section 9 of the 1985 Act⁽⁹⁾ as being suitable to undertake the provision of solicitor services and other relevant legal services (within the meaning of that section).

(2) The Law Society may direct in any case that recognition by virtue of paragraph (1)(b) is to have effect subject to one or more conditions if —

(a) the case is of a kind prescribed for the purposes of section 9(2F) of the 1985 Act (as amended by this Order) by rules made by the Law Society; and

(b) the Law Society considers that it is in the public interest to do so.

(3) A direction by the Law Society in accordance with paragraph (2) only has effect if written notice of it is sent, with reasons, to the sole solicitor concerned —

(a) at least 28 days before the date on which article 3 comes into force; or

(b) if the Law Society is satisfied on reasonable grounds that it is in the public interest to do so, such shorter period before that date as it may determine.

(4) A condition under paragraph (2) shall be treated as having been imposed under section 9(2F) of the 1985 Act (as amended by this Order).

(5) In any case where —

(a) before the date on which article 3 comes into force, the Law Society had received an application for a sole solicitor endorsement, and

(b) immediately before that date, the Law Society had not yet granted (or refused) that application,

then, with effect from that date, that application shall be treated by the Law Society as an application for recognition of the sole solicitor’s practice under section 9 of the 1985 Act (as amended by this Order).

⁽⁵⁾ 1974 c. 47.

⁽⁶⁾ 1985 c. 61.

⁽⁷⁾ S.I. 2000/1119.

⁽⁸⁾ Section 1B was inserted by Paragraphs 1 and 3 of Schedule 16 to the Legal Services Act 2007.

⁽⁹⁾ Section 9 was amended by paragraph 54 of Schedule 18, and Schedule 20, to the Courts and Legal Services Act 1990, Part 2 of Schedule 15 to the Access to Justice Act 1999, paragraphs 80 and 81 of Schedule 16 to the Legal Services Act 2007 and S.I. 2000/1119, 2001/1090 and 2011/1716.

Transitional provisions: registered European lawyers

5.—d) Article 4 applies in relation to registered European lawyers as it applies in relation to a solicitor, subject to the following modifications:

- (a) a reference to a sole solicitor is to be read as a reference to a sole practitioner; and
- (b) a reference to a sole solicitor endorsement is to be read as a reference to a sole practitioner endorsement.

(2) In this article “registered European lawyer” has the meaning given by regulation 2 of the 2000 Regulations.

Signed by authority of the Lord Chancellor

Name
Parliamentary Under Secretary of State
Ministry of Justice

Date

SCHEDULE 1 Article 3(1)

AMENDMENTS TO PRIMARY LEGISLATION

PART 1

The 1974 Act is amended in accordance with this Part.

6. Omit section 1B (restriction on practice as sole solicitor).
7. In section 9 (applications for practising certificates)⁽¹⁰⁾, omit subsection (2).
8. In section 10 (the issue of practising certificates)⁽¹¹⁾, in subsection (4)(a) omit the words from “(including” to the end.
9. In section 10A (register of holders of practising certificates)⁽¹²⁾, omit subsection (2)(b) (but not the “and” after it).
10. In section 13 (appeals etc in connection with the issue of practising certificates)⁽¹³⁾ —
 - (a) omit subsection (1)(b) (but not the “or” after it); and
 - (b) in subsection (4) —
 - (i) omit paragraph (b); and
 - (ii) omit paragraph (f) (but not the “or” after it).
11. Omit sections 13ZA (application to practise as sole practitioner while practising certificate in force) and 13ZB (fee payable on making of sole solicitor endorsement)⁽¹⁴⁾.
12. In section 13A (imposition of conditions while practising certificates are in force)⁽¹⁵⁾, omit subsection (2)(a) (and the “or” after it).
13. In section 13B (suspension of practising certificates where solicitors convicted of fraud or serious crime)⁽¹⁶⁾ —

⁽¹⁰⁾ Section 9 was substituted by paragraphs 1 and 9 of Schedule 16 to the Legal Services Act 2007.

⁽¹¹⁾ Section 10 was substituted by paragraphs 1 and 9 of Schedule 16 above.

⁽¹²⁾ Section 10A was substituted by paragraphs 1 and 10 of Schedule 16 above.

⁽¹³⁾ Section 13 was substituted by paragraphs 1 and 14 of Schedule 16 above.

⁽¹⁴⁾ Sections 13ZA and 13ZB were substituted paragraphs 1 and 15 of Schedule 16 above.

⁽¹⁵⁾ Section 13A was inserted by section 5 of the Administration of Justice Act 1985 and amended by paragraphs 1 and 16 of Schedule 16 to the Legal Services Act 2007.

- (a) in subsection (1) omit “or sole solicitor endorsement”;
- (b) in subsection (6) omit “or from practice as a sole solicitor”; and
- (c) in subsection (8)(b) for “or sole solicitor endorsement shall not be suspended, but that the appellant’s certificate” substitute “shall not be suspended but”.

14. Omit sections 17A (suspension of sole solicitor endorsement) and 17B (duration and publicity of suspension of sole solicitor endorsement)⁽¹⁷⁾.

15. In section 28 (regulations)⁽¹⁸⁾ —

- (a) omit subsection (1)(ca); and
- (b) in subsection (3B) —
 - (i) omit “or sole solicitor endorsements” (in each place); and
 - (ii) omit paragraph (f).

16. In section 31 (rules as to professional practice), after subsection (1A)⁽¹⁹⁾ insert —

“(1B) Rules under this section must provide that a solicitor may not practise as a sole solicitor unless there is in force in relation to that solicitor’s practice a recognition under section 9 of the Administration of Justice Act 1985.

(1C) Rules under this section may provide that, for the purposes of the rules, this Act and the Administration of Justice Act 1985, a solicitor is not to be regarded as practising as a sole solicitor in such circumstances as may be prescribed by the rules.”

17. In section 47 (jurisdiction and powers of tribunal)⁽²⁰⁾ omit —

- (a) subsection (1)(ea); and
- (b) subsection (2)(ba), (bb) and (ea).

18. In section 87 (interpretation)⁽²¹⁾ —

- (a) at the end of the definition of “sole solicitor” insert “(other than an incorporated practice)”; and
- (b) omit the definition of “sole solicitor endorsement”.

19. In Schedule 1 (intervention in solicitor’s practice) omit paragraph 1(1)(i)⁽²²⁾.

PART 2

20. The 1985 Act is amended in accordance with this Part.

21. For the cross-heading before section 9 (“Incorporated practices”) substitute “Legal services bodies and sole solicitors’ practices”.

22.—e) Section 9 (incorporated practices) is amended as follows.

⁽¹⁶⁾ Section 13B was inserted by section 94(3) of the Courts and Legal Services Act 1990 (c. 41) and amended by paragraph 42(1) and (3) of Schedule 7 to the Serious Organised Crime and Police Act 2005 (c. 15) and paragraphs 1 and 17 of Schedule 16 above.

⁽¹⁷⁾ Sections 17A and 17B were inserted by paragraphs 1 and 22 of Schedule 16 above.

⁽¹⁸⁾ Section 28 was amended, in so far as relevant, by paragraphs 1 and 30 of Schedule above.

⁽¹⁹⁾ Section 31(1A) was inserted by paragraphs 1 and 31(1) and (3) of Schedule 16 above.

⁽²⁰⁾ Subsections (1) and (2) of section 47 were substituted by section 92(2) of the Courts and Legal Services Act 1990 and amended, in so far as relevant, by paragraphs 1 and 49(a) to (c) and (e) of Schedule 16 above.

⁽²¹⁾ Section 87 was amended, in so far as relevant, by paragraphs 1 and 75(b) of Schedule 16 above.

⁽²²⁾ Paragraph 1(1)(i) of Schedule 1 was inserted by section 91(1) of the Courts and Legal Services Act 1990 and amended by paragraphs 1 and 77(1) and (2)(f)(i) of Schedule 16 above.

- (1) For the heading (“Incorporated practices”) substitute “Recognition of legal services bodies and of sole solicitors’ practices”.
- (2) In subsection (1) —
- (a) for paragraph (b) substitute —
- “(b) prescribing the circumstances in which —
- (i) legal services bodies may be recognised by the Society as being suitable bodies to undertake the provision of any solicitor services or other relevant legal services;
- (ii) sole solicitors’ practices may be recognised by the Society as being suitable to undertake the provision of any such services;”;
- (b) in paragraph (c), after “bodies” insert “and sole solicitors’ practices”; and
- (c) in paragraph (d), after “bodies” insert “and sole solicitors’ practices”.
- (3) In subsection (1A), after “recognised bodies” insert “and recognised sole solicitors’ practices”.
- (4) In subsection (1B)(b), after “a recognised body,” insert “or are employees in a recognised sole solicitor’s practice,”.
- (5) In subsection (2) —
- (a) in paragraph (ab), for “or descriptions of recognised body” substitute “recognised sole solicitors’ practices, or descriptions of such bodies or practices”;
- (b) in paragraph (b), after “recognised bodies” insert “or recognised sole solicitors’ practices”;
- (c) in paragraph (e), after “another body” insert “, or a sole solicitor’s practice,”;
- (d) before paragraph (ea), insert —
- “(eza) about the effect on the recognition of a sole solicitor’s practice where the sole solicitor ceases to practise as a sole principal and —
- (i) another sole solicitor succeeds that sole solicitor as sole principal in the practice; or
- (ii) a body or another sole solicitor succeeds to the whole or substantially the whole of the practice’s business;”;
- (e) in paragraph (ea) —
- (i) after “bodies” insert “and sole solicitors’ practices”; and
- (ii) for “those bodies” substitute “them”;
- (f) in paragraph (f), after “recognised bodies” insert “or recognised sole solicitors’ practices”;
- (g) in paragraphs (fa) and (fb), after “recognised bodies” (in each place) insert “or employees in recognised sole solicitors’ practices”;
- (h) after paragraph (fc), insert —
- “(fd) requiring the sole solicitor in a recognised sole solicitor’s practice to appoint a person or persons to monitor compliance, by the sole solicitor and the employees in the practice, with requirements imposed on them by or by virtue of this Act, the 1974 Act or any rules applicable to them by virtue of this section or the 1974 Act;”;
- (i) in paragraph (h) —
- (i) after “recognised bodies” insert “, or on sole solicitors in relation to recognised sole solicitors’ practices,”; and
- (ii) omit “on such bodies”.
- (6) After subsection (2), insert—
- “(2ZA) Rules under subsection (2)(fd) may provide that the person appointed under that paragraph may be the sole solicitor.”.
- (7) In subsection (2B)(a), after “body” insert “or sole solicitor’s practice”.
- (8) In subsection (2F), after “a body” insert “or a sole solicitor’s practice”.
- (9) In subsection (2G) —

- (a) after “a body” insert “or a sole solicitor’s practice”; and
 - (b) in paragraphs (a) and (b), omit “body’s” (in each place).
- (10) In subsection (2H) —
- (a) in paragraph (a) —
 - (i) after “conditions requiring the body” insert “, or the sole solicitor,”; and
 - (ii) omit “by the body”; and
 - (b) in paragraph (b), after “the body” insert “, or the sole solicitor,”.
- (11) In subsection (5) —
- (a) after “any body” insert “or sole solicitor’s practice”; and
 - (b) for “a recognised body” substitute “recognised under this section”.
- (12) In subsection (6) —
- (a) for “recognised bodies and” substitute “recognised bodies,”; and
 - (b) after “such bodies” insert “, and with respect to matters relating to recognised sole solicitors’ practices”.
- (13) In subsection (8) —
- (a) after the definition of “authorised person” insert—
 - “references to employment in a recognised sole solicitor’s practice are references to employment by a sole solicitor for the purposes of a practice recognised under this section;”
 - (b) after the definition of “recognised body” insert —
 - ““recognised sole solicitor’s practice” means a sole solicitor’s practice for the time being recognised under this section;”; and
 - (c) after the definition of “registered European lawyer” insert —
 - ““sole solicitor” has the meaning given by section 87(1) of the 1974 Act;”.
- 23.** After section 10 (penalty for pretending to be a body recognised under section 9)⁽²³⁾, insert—

“Penalty for sole solicitor pretending that practice is recognised

10A.—(1) A sole solicitor shall not describe or hold out the sole solicitor’s practice as a practice for the time being recognised under section 9 unless it is so recognised.

(2) Any person who contravenes subsection (1) is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(3) In this section “sole solicitor” has the same meaning as in section 9.”.

24.—f) Schedule 2 (legal services practices: supplementary provisions) is amended as follows.

- (1) In paragraph 1⁽²⁴⁾ —
- (a) in sub-paragraphs (1) and (2) —
 - (i) after “recognised body” (in each place) insert “or a recognised sole solicitor’s practice”; and
 - (ii) after “to a body” (in each place) insert “or sole solicitor’s practice”;
 - (b) in sub-paragraph (2A), after “recognised body,” insert “or to an employee in a recognised sole solicitor’s practice,”;
 - (c) after sub-paragraph (2A), insert —

⁽²³⁾ Section 10 was amended by the Statute Law (Repeals) Act 1993 (c. 61) and by paragraphs 80 and 83 of Schedule 16 to the Legal Services Act 2007.

⁽²⁴⁾ Paragraph 1 was amended, in so far as relevant, by paragraphs 80 and 86(a), (b), (c) and (e) of Schedule 16 above.

“(2B) In this Schedule references to employment in a recognised sole solicitor’s practice have the same meaning as in section 9.”; and

- (d) In sub-paragraph (4) —
 - (i) after “shall apply” insert “for the purposes of this Schedule; and”;
 - (ii) in paragraph (a), for “this Schedule” substitute “any provision of this Schedule in so far as it has effect in relation to a recognised body”;
 - (iii) before “as if” insert “they shall apply”.

(2) In paragraph 2⁽²⁵⁾ —

- (a) after sub-paragraph (1), insert —

“(1A) A sole solicitor may appeal to the High Court against —

 - (a) a decision to refuse an application for recognition of the solicitor’s practice under section 9;
 - (b) a decision to impose a condition under subsection (2F) of that section on the recognition of the solicitor’s practice under that section;
 - (c) a decision to impose a condition under subsection (2G) of that section on the recognition of the solicitor’s practice under that section.”;
- (b) after sub-paragraph (2), insert —

“(2A) Where the recognition of a recognised sole solicitor’s practice is subject to a condition within section 9(2H)(b), the sole solicitor may appeal to the High Court against any decision by the Society to refuse to approve the taking of any step for the purposes of that condition.”;
- (c) in sub-paragraph (4) —
 - (i) after “(1)(a) or (b)” insert “or (1A)(a) or (b)”;
 - (ii) after “the body” (in each place) insert “or sole solicitor’s practice”;
- (d) in sub-paragraph (5) —
 - (i) after “sub-paragraph (1)(c)” insert “or (1A)(c)”;
 - (ii) omit “body’s”;
- (e) in sub-paragraph (6), after “sub-paragraph (2)” insert “or (2A)”.

(3) After paragraph 14⁽²⁶⁾, insert —

“**14ZA.**—(1) The Society may give a notice under this paragraph if it is satisfied that it is necessary to do so for the purpose of investigating whether a recognised sole solicitor’s practice continues to be suitable to be recognised under section 9.

- (2) A notice under this paragraph is a notice which requires a person within sub-paragraph (3) —
 - (a) to provide information, or information of a description, specified in the notice, or
 - (b) to produce documents, or documents of a description, specified in the notice.
- (3) The persons are —
 - (a) the sole solicitor;
 - (b) an employee in the recognised sole solicitor’s practice.
- (4) For the purposes of this paragraph, section 44B(4) to (7) of the 1974 Act applies —
 - (a) in relation to a notice under this paragraph as if it were a notice under section 44B of that Act, and
 - (b) in relation to a person given a notice under this paragraph as if that person were a person given a notice under that section,

⁽²⁵⁾ Paragraph 2 was substituted by paragraphs 80 and 87 of Schedule 16 to the Legal Services Act 2007.

⁽²⁶⁾ Paragraph 14 was substituted by paragraphs 80 and 101 of Schedule 16 above.

and references in subsections (6) and (7) of that section to powers conferred by that section are to be read as references to powers conferred by this paragraph.

(5) Where powers conferred by Part 2 of Schedule 1 to the 1974 Act are exercisable in relation to a person within paragraph (a) or (b) of sub-paragraph (3), they continue to be so exercisable after the person has ceased to be a person within the paragraph in question.

(6) Section 44BA of the 1974 Act (power to require explanation of document or information) applies in relation to a notice under this paragraph and the person to whom such a notice is given as it applies in relation to a notice under section 44B of the 1974 Act and the person to whom such a notice is given.

(7) Subsection (1) of section 44BC of that Act (falsification of documents etc) applies in relation to an investigation of the kind mentioned in sub-paragraph (1) as it applies in relation to the investigations mentioned in that subsection, and subsections (2), (4) and (5) of that section apply accordingly.

(8) Subsection (3) of that section (provision of false information etc) applies in relation to a requirement imposed under this paragraph as it applies in relation to a requirement imposed by section 44B of that Act, and subsections (4) and (5) of that section apply accordingly.”.

(4) In paragraph 14A⁽²⁷⁾ —

(a) in sub-paragraph (1) after “discipline investigation” insert “or by the sole solicitor in a recognised sole solicitor’s practice which is subject to a discipline investigation”;

(b) in sub-paragraph (2) —

(i) after “recognised body” insert “, or by a sole solicitor, or any employee, in a recognised sole solicitor’s practice,”; and

(ii) for “any rules applicable to it” substitute “any rules applicable to them”; and

(c) in sub-paragraph (4) —

(i) after “which a recognised body” insert “or a sole solicitor”; and

(ii) after “from the recognised body” insert “or from that sole solicitor”.

(5) For paragraph 14B(1)⁽²⁸⁾, substitute —

“(1) This paragraph applies where the Society is satisfied that —

(a) a recognised body, or a manager or employee of a recognised body, or

(b) a sole solicitor, or any employee, in a recognised sole solicitor’s practice,

has failed to comply with a requirement imposed by or by virtue of this Act or any rules applicable to that person by virtue of section 9 of this Act.”.

(6) In paragraph 14C(4)(e)⁽²⁹⁾, after “recognised body,” insert “or in the case of a sole solicitor, or an employee, in a recognised sole solicitor’s practice,”.

(7) In the heading before paragraph 16, at the end insert “and recognised sole solicitors’ practices”.

(8) In paragraph 16⁽³⁰⁾, after sub-paragraph (1A) insert —

“(1B) The Tribunal has jurisdiction to hear and determine any of the following complaints made to it under this paragraph with respect to the sole solicitor, or an employee, in a recognised sole solicitor’s practice (“the relevant person”) —

(a) a complaint that the relevant person has been convicted by any court of a criminal offence which renders that person unsuitable to be the sole solicitor, or an employee, in a recognised sole solicitor’s practice (or both);

⁽²⁷⁾ Paragraph 14A was substituted by paragraphs 80 and 102 of Schedule 16 to the Legal Services Act 2007.

⁽²⁸⁾ Paragraph 14B was inserted by paragraphs 80 and 103 of Schedule 16 above.

⁽²⁹⁾ Paragraph 14C was inserted by paragraphs 80 and 103 of Schedule 16 above.

⁽³⁰⁾ Paragraph 16(1A) was inserted by paragraphs 80 and 104(d) of Schedule 16 above.

- (b) a complaint that the relevant person has failed to comply with any requirement imposed by or by virtue of this Act or any rules applicable to the relevant person by virtue of section 9 of this Act.”.
- (9) In paragraph 17⁽³¹⁾ —
- (a) in paragraph (a), for “or (1A)” substitute “, (1A) or (1B)”;
- (b) in paragraph (c) —
- (i) after “16(1A)” insert “or (1B)”;
- (ii) after “such a body” insert “or (as the case may be) to an employee in a recognised sole solicitor’s practice”.
- (10) In paragraph 18A⁽³²⁾ —
- (a) in sub-paragraph (1) —
- (i) after “under paragraph 16(1A)” insert “or (1B)”;
- (ii) after “the Tribunal is satisfied that a manager or employee of a recognised body” insert “, or the sole solicitor, or an employee, in a recognised sole solicitor’s practice”;
- (iii) in paragraph (a), after “as mentioned in paragraph (a) of paragraph 16(1A)” insert “or (as the case may be) paragraph (a) of paragraph 16(1B)”;
- (iv) in paragraph (c), at the beginning insert “(in the case of a manager or employee of a recognised body)”;
- (b) in sub-paragraph (2), before paragraph (a) insert —
- “(za) in the case of a complaint relating to a sole solicitor, or an employee, in a recognised sole solicitor’s practice, an order revoking the recognition under section 9 of this Act of the sole solicitor’s practice;”.
- (11) After paragraph 20(1)⁽³³⁾, insert —
- “(1A) Where the Tribunal makes any such order as is referred to in section 47(2A) of the 1974 Act in the case of a solicitor who is an employee in a recognised sole solicitor’s practice, the Tribunal may, if it thinks fit, order that any solicitor who is for the time being the sole solicitor in that practice shall be excluded (either permanently or for a specified period) from criminal legal aid work (as defined in that section).”.
- (12) In paragraph 21⁽³⁴⁾ —
- (a) in sub-paragraph (1) —
- (i) in paragraph (a), after “recognised body” insert “or of the sole solicitor in a recognised sole solicitor’s practice”;
- (ii) in paragraph (b) —
- (aa) after “recognised body” insert “, or of the sole solicitor in a recognised sole solicitor’s practice;”;
- (bb) after “that such a manager” insert “or sole solicitor”;
- (iii) at the end of paragraph (c), insert —
- “or
- (d) any such order as is mentioned in paragraph (a) or (b) is made in the case of a person employed in a recognised sole solicitor’s practice and the act or omission constituting the ground on which the order was made was instigated or connived at by the sole solicitor, or,

⁽³¹⁾ Paragraph 17 was amended by paragraphs 80 and 105 of Schedule 16 to the Legal Services Act 2007.

⁽³²⁾ Paragraph 18A was inserted by paragraphs 80 and 107 of Schedule 16 above.

⁽³³⁾ Paragraph 20 was amended by paragraphs 80 and 108 of Schedule 16 above and by paragraphs 27 and 32 of Schedule 5 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

⁽³⁴⁾ Paragraph 21 was amended by paragraphs 80 and 109 of Schedule 16 above.

- if the act or omission was a continuing act or omission, the sole solicitor had or reasonably ought to have had knowledge of its continuance,”; and
- (iv) after “an application made with respect to the recognised body” insert “or the recognised sole solicitor’s practice”;
- (b) in sub-paragraph (3) —
- (i) after “recognised body” insert “, or to a sole solicitor in a recognised sole solicitor’s practice,”; and
- (ii) after “of the body” insert “, or the sole solicitor in the practice,”; and
- (c) in sub-paragraph (4), after “recognised body” insert “, or in a sole solicitor’s practice.”.
- (13) In paragraph 32(1)⁽³⁵⁾ —
- (a) after paragraph (d), insert —
- “(da) the Society considers that there has been undue delay on the part of the personal representatives of a deceased solicitor who immediately before death was practising as the sole principal of a recognised body in connection with the recognised body’s business or in connection with any trust; or
- (db) the Society is satisfied that a solicitor practising as the sole principal of a recognised body is incapacitated by illness, injury or accident to such an extent as to be unable to attend to the solicitor’s practice or to the recognised body’s business; or”.
- (14) After paragraph 32, insert —
- “**32A.** On the death of a solicitor practising as the sole principal of a recognised body, paragraphs 6 to 8 of Schedule 1 to the 1974 Act shall apply to the client accounts of the recognised body.”.
- (15) In paragraph 35⁽³⁶⁾ —
- (a) in paragraph (a), after “paragraph 32,” insert “32A,”; and
- (b) after paragraph (b), insert —
- “(ba) any reference to paragraph 2 of that Schedule shall be construed as including a reference to paragraph 32A of this Schedule;”.

SCHEDULE 2

Article 3(2)

AMENDMENTS TO SECONDARY LEGISLATION

The 2000 Regulations are amended in accordance with this Schedule.

- 25.** In regulation 2(1) (interpretation)⁽³⁷⁾, before the definition of “solicitor” insert —
- ““sole practitioner” means a registered European lawyer who is the sole principal in a practice (other than an incorporated practice);”.
- 26.** In Schedule 4⁽³⁸⁾ —
- (a) in paragraph 1, after sub-paragraph (3) insert—
- “(4) For the purpose of making rules under section 31 of the Solicitors Act 1974 and section 9 of the Administration of Justice Act 1985 by virtue of sub-paragraph (3)—
- (a) a reference to a sole solicitor is to be read as a reference to a sole practitioner; and

⁽³⁵⁾ Paragraph 32 was amended by paragraphs 80 and 119 of Schedule 16 to the Legal Services Act 2007 and by S.I. 2003/2096.

⁽³⁶⁾ Paragraph 35 was amended by paragraphs 80 and 122 of Schedule 16 above.

⁽³⁷⁾ There are amendments to regulation 2(1) which are not relevant to this Order.

⁽³⁸⁾ Schedule 4 is amended, in so far as relevant, by S.I. 2009/1587.

- (b) a reference to a recognised sole solicitor’s practice is to be read as a reference to a recognised sole practitioner’s practice (that is, to a sole practitioner’s practice for the time being recognised under section 9).”;
- (b) in paragraph 7 —
 - (i) in sub-paragraph (1), omit —
 - (aa) “1B,”;
 - (bb) “13ZA, 13ZB,”, and
 - (cc) “17A, 17B,”; and
 - (ii) omit sub-paragraph (1A)(b);
- (c) in paragraph 24 —
 - (i) in sub-paragraph (1) —
 - (aa) after “The provisions of sections” insert “9(2F) to (2H) and (5), 10A,”; and
 - (bb) for the words from “and for this purpose the reference to a person’s solicitor” to the end substitute—
 - “and for this purpose—
 - (a) reference to a sole solicitor in sections 9 and 10A is to be read as a reference to a sole practitioner; and
 - (b) the reference to a person’s solicitor in section 40(1) is to be read as a reference to a registered European lawyer acting for a person.”; and
 - (ii) for sub-paragraph (2), substitute —
 - “(2) The provisions of Schedule 2 to that Act apply to registered European lawyers as they apply to solicitors, and for that purpose —
 - (a) reference to a sole solicitor is to be read as a reference to a sole practitioner;
 - (b) reference to a recognised sole solicitor’s practice is to be read as a reference to a recognised sole practitioner’s practice (that is, to a sole practitioner’s practice for the time being recognised under section 9 of the 1985 Act);
 - (c) reference to the roll is to be read as a reference to the register of European lawyers, and accordingly —
 - (i) reference to a solicitor being suspended from practice is to be read as a reference to a European lawyer’s registration being suspended; and
 - (ii) reference to a solicitor being struck off the roll is to be read as a reference to a European lawyer being struck off the register of European lawyers; and
 - (d) reference to a person who is not a solicitor is to be read as a reference to a person who is neither a solicitor nor a registered European lawyer.”; and
- (d) in the Table —
 - (i) omit the whole of the entries for section 1B; section 9(2); section 10(4)(a); section 10A(2)(b); section 13(1)(b), (4)(b) and (f); section 13ZA(1); section 13ZA(1), (2), (5) and (8)(b); section 13ZA(3); section 13ZA(2), (5), (6)(b) and (8)(c); section 13ZB and section 13A(2)(a);
 - (ii) in the entry for section 13B(1) and (8)(b), in the right hand column, omit the second sentence (which makes provision about sole solicitor endorsement);
 - (iii) in the entry for section 13B(6), in the right hand column, omit —
 - (aa) “or from practice as a sole solicitor”; and
 - (bb) “or suspension of a sole solicitor endorsement”;
 - (iv) omit the whole of the entries for section 17A and section 17B;
 - (v) in the entry for section 28(1)(c) to (d), in the right hand column, omit the second sentence (which makes provision about sole solicitor endorsement);

- (vi) in the entry for section 28(3B) to (3G), in the right hand column, omit the second and fourth sentences (which both make provision about sole solicitor endorsement); and
- (vii) in the entry for section 47, in the right hand column, omit the third sentence (which makes provision about suspension from practice as a sole solicitor) and the fourth sentence (which makes provision about sole solicitor endorsement).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Administration of Justice Act 1985 (c.61) (“the 1985 Act”) in order to make provision as to the regulation of sole solicitors’ practices. It also amends the provisions of the Solicitors Act 1974 (c.47) (“the 1974 Act”) relating to sole solicitors, and the provisions of the European Communities (Lawyer’s Practice) Regulations 2000 (S.I. 2000 No.1119) (“the 2000 Regulations”). Article 3, which implements those changes, comes into force on [date] 2016 (Article 2(1)). Other provisions of the Order come into force on the day after the day on which it is made.

Article 3(1) and Part 2 of Schedule 1 to the Order amend section 9 of the 1985 Act (incorporated practices) to provide for the Law Society to make rules prescribing the circumstances in which a sole solicitor’s practice may be recognised as being suitable to undertake the provision of solicitor services or other relevant legal services, and makes further related amendments to the 1985 Act.

Article 3(1) of, and Part 1 of Schedule 1 to, the Order amend section 31 of the 1974 Act (rules as to professional practice, conduct and discipline) to require rules under that section to provide that a solicitor may not practise as a sole solicitor unless there is in force in relation to the sole solicitor’s practice a recognition under section 9 of the 1985 Act. It also repeals the provisions of the 1974 Act relating to sole solicitor endorsements on solicitors’ practising certificates and makes minor and consequential amendments to that Act. In addition paragraph 20(14) to (16) brings the arrangements for intervention in recognised bodies in which the sole solicitor manager dies or become incapacitated into line with the arrangements which will apply in comparable circumstances to recognised sole solicitors’ practices.

Article 3(2) of, and Schedule 2 to, the Order make consequential amendments to the 2000 Regulations (which regulate the practice of registered European lawyers).

The Order makes transitional provision in relation to sole solicitor endorsements (and, for registered European lawyers, sole practitioner endorsements) which are in force upon the coming into force of the Order. It provides for the practices of solicitors and registered European lawyers whose practising certificates are subject to such endorsements to be recognised under section 9 of the 1985 Act from the coming into force of article 3. It also provides for the Law Society to direct that recognition has effect subject to one or more conditions. By virtue of the Order such a condition is to be treated as having been imposed under section 9(2F) of the 1985 Act and so takes effect in accordance with Rules made by the Society under section 9(2I) of that Act. It also makes provision in relation to applications for such endorsements which have not been determined by the Law Society immediately before the date on which article 3 comes into force (articles 4 and 5).

An impact assessment is annexed to the Explanatory Memorandum accompanying this instrument and is available alongside this instrument on www.legislation.gov.uk.