
DRAFT STATUTORY INSTRUMENTS

2011 No.

LEGAL SERVICES, ENGLAND AND WALES

The Legal Services Act 2007 (Functions of an Approved Regulator) Order 2011

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(1) and (6), and 204(3) and (4)(a), of the Legal Services Act 2007(a).

The Legal Services Board has made a recommendation under section 69(2)(a) of the Legal Services Act 2007 to which, in accordance with section 69(2)(b) and (c), was annexed a draft order which was in a form not materially different from this Order.

That recommendation was, in accordance with section 69(3)(b) and (c) of that Act, made with a view to an order being made which enables the body to which this Order relates, the Law Society, (i) to authorise sole solicitors to carry on reserved legal activities in relation to which the Law Society is designated as an approved regulator; (ii) to make regulatory arrangements in relation to sole solicitors; and (iii) to carry out its role as an approved regulator more effectively and efficiently.

In accordance with section 70(1) of the Legal Services Act 2007, the recommendation by the Legal Services Board was made with the consent of the Law Society and, before making the recommendation, the Legal Services Board complied with the requirements (as to publication in draft, and as to representations) of section 70(2) to (5) of that Act.

A draft of this instrument has been approved by a resolution of each House of Parliament pursuant to section 206(5) of the Legal Services Act 2007.

Accordingly, the Lord Chancellor makes the following Order.

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Legal Services Act 2007 (Functions of an Approved Regulator) Order 2011.

(2) This Order comes into force on 31st March 2012.

(3) In this Order—

‘the 1974 Act’ means the Solicitors Act 1974(a);

(a) 2007 c.29.

‘the 1985 Act’ means the Administration of Justice Act 1985**(b)**;

‘the 2000 Regulations’ means the European Communities (Lawyer’s Practice) Regulations 2000**(c)**; and

‘sole solicitor’ means a solicitor who is the sole principal in a practice.

Transitional provisions

2.—(1) In any case where, upon the coming into force of this Order, there is in force a sole solicitor endorsement (within the meaning of s.1B of the 1974 Act) in relation to a sole solicitor, then, upon the coming into force of this Order—

- (a) the sole solicitor endorsement shall cease to have effect, and
- (b) the sole solicitor shall be recognised by the Law Society (pursuant to section 9(1)(b) of the 1985 Act) as being a suitable person to undertake the provision of solicitor services and other relevant legal services (within the meaning of section 9 of that Act).

(2) The recognition referred to in paragraph (1)(b) may be conferred by the Law Society subject to such conditions as it considers appropriate.

3.—(1) Article 2 shall have effect in relation to registered European lawyers as it applies to solicitors, subject to the following modifications:

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

(2) In this Article, ‘registered European lawyer’ has the meaning given by regulation 2 of the 2000 Regulations.

Amendments to the 1985 Act and the 1974 Act

4. The amendments to the 1985 Act and the 1974 Act set out in Schedule 1 to this Order shall have effect.

Amendments to the 2000 Regulations

5. The amendments to the 2000 Regulations set out in Schedule 2 to this Order shall have effect.

Signed by authority of the Lord Chancellor

Name
Parliamentary Under Secretary of State
Ministry of Justice

Date

SCHEDULE 1

AMENDMENTS TO PRIMARY LEGISLATION

Article 4

1. In Part I of the 1985 Act—

- (a) before section 9, for the cross-heading “Incorporated practices” substitute “Recognised bodies”;
- (b) for the heading to section 9 (“Incorporated practices”), substitute “Recognised bodies”.

2. In section 9 of the 1985 Act, add the following at the end:

(a) 1974 c.47.
(b) 1985 c.61.
(c) S.I. 2000 No. 1119.

“(9) References in this section, section 10 and Schedule 2 to a “body” are references to a legal services body.”

3. For section 9A(1) of the 1985 Act, substitute the following:

- “(1) For the purposes of section 9, a ‘legal services body’ means—
- (a) a body (corporate or unincorporate) in respect of which—
 - (i) the management and control condition, and
 - (ii) the relevant lawyer condition,are satisfied, or
 - (b) a sole solicitor.”

4. In section 9A(8) of the 1985 Act, insert the following before the definition of ‘specified’:

“‘sole solicitor’ means a solicitor who is the sole principal in a practice (but the Society may by rules under section 9 make provision for circumstances in which a solicitor is not to be regarded as practising as a sole solicitor for the purposes of this Act);”.

5. In paragraph 32(1) of Schedule 2 to the 1985 Act, omit the words “Subject to sub-paragraph (2),”.

6. Insert the following after paragraph 32 of Schedule 2 to the 1985 Act:

“32A

Without prejudice to the generality of the powers of intervention set out in paragraph 32, the powers conferred by Part II of Schedule 1 to the 1974 Act shall also be exercisable in relation to a recognised body which is a sole solicitor where—

- (a) the sole solicitor has died, and the Society considers that there has been undue delay on the part of his personal representatives in connection with his practice or in connection with any trust;
- (b) the Society is satisfied that the sole solicitor is incapacitated by illness, injury or accident to such an extent as to be unable to attend to his practice;
- (c) any power conferred by Schedule 1 to the 1974 Act has been exercised in relation to the sole solicitor by virtue of sub-paragraph (1)(a) of that Schedule, and he has acted as a sole solicitor within the period of eighteen months beginning with the date on which it was so exercised.

32B

In the case of a recognised body which is a sole solicitor, on the death of the sole solicitor, paragraphs 6 to 8 of Schedule 1 to the 1974 Act shall apply to the client accounts of the sole solicitor’s practice.”.

7. Omit section 1B (restriction on practice as sole solicitor) of the 1974 Act.

8. Omit the following provisions of the 1974 Act:

- (a) section 9(2);
- (b) in section 10(4)(a), the words in parentheses;
- (c) section 10A(2)(b);
- (d) in section 13—
 - (i) subsection (1)(b); and
 - (ii) paragraphs (b) and (f) of subsection 4;
- (e) sections 13ZA and 13ZB;

- (f) in section 13A(2), paragraph (a) (and the word ‘or’);
- (g) in section 13B—
 - (i) in subsection (1) and in subsection (8)(b), the words ‘or sole solicitor endorsement’;
 - (ii) in subsection (6), the words ‘or from practice as a sole solicitor’;
- (h) sections 17A and 17B;
- (i) in section 28—
 - (i) subsection (1)(ca);
 - (ii) in subsection (3B)—
 - (A) in paragraphs (a) and (i), the words ‘or sole solicitor endorsements’; and
 - (B) paragraph (f);
- (j) sections 34A and 34B (and the cross-heading ‘Sole solicitors’ preceding them);
- (k) in section 47—
 - (i) subsection (1)(ea);
 - (ii) paragraphs (ba), (bb) and (ea) of subsection 2;
- (l) in section 87(1), the definitions of ‘sole solicitor’ and of ‘sole solicitor endorsement’;
- (m) in paragraph 1 of Schedule 1, subparagraphs (b), (ee), (i) and (j);
- (n) paragraph 2 of Schedule 1.

SCHEDULE 2
AMENDMENTS TO THE 2000 REGULATIONS

Article 5

1.In Schedule 4, insert the following after paragraph 1:

“1A. Section 9A(1) of the Administration of Justice Act 1985 shall apply to registered European lawyers as it applies to solicitors, save that the reference to a sole solicitor is to be read as a reference to a sole practitioner.”

2.In paragraph 7 of Schedule 4—

- (a) in subparagraph (1), omit the references to sections 1B, 17A and 17B of the 1974 Act;
- (b) in subparagraph (2), omit the references to sections 34A and 34B of that Act.

3.In paragraph 9 of Schedule 4, omit subparagraph (c).

4.In the Table to Schedule 4—

- (a) omit the whole of the entries for sections 1B, 1B(1)(a), 1B(1)(b), 9(2), 10(4)(a), 10A(2)(b), 13(1)(b) and 4(b) and (f), 13ZA(1), (2), (5) and (8)(b), 13ZA(3), 13ZA(2), (5), (6)(b) and (8)(c), 13ZB, 13A(2)(a), 17A and 17B;
- (b) in the entry for section 13B(1) and 8(b), omit the second sentence in the right hand column (sole solicitor endorsement);

- (c) in the entry for section 13B(6), in the right hand column, omit the words ‘or from practice as a sole solicitor’ and the words ‘or suspension of a sole practitioner endorsement’;
- (d) in the entry for section 28(1)(c) to (d), omit the second sentence in the right hand column (sole solicitor endorsement);
- (e) in the entry for section 28(3B) to (3G), omit the second and fourth sentences (sole solicitor endorsement) in the right hand column;
- (f) in the entry for section 47, omit the third sentence (sole solicitor) and fourth sentence (sole solicitor endorsement) in the right hand column.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the provisions of the Solicitors Act 1974 (c.47) (“the 1974 Act”) relating to sole solicitors. It also makes amendments to the Administration of Justice Act 1985 (c.61) (“the 1985 Act”) and the European Communities (Lawyer’s Practice) Regulations 2000 (S.I. 2000 No.1119) (“the 2000 Regulations”). It comes into force on 31st March 2012 (Article 1(2)).

The Order repeals section 1B of the 1974 Act (restriction on practice as sole solicitor), which makes provision for endorsement by the Law Society of a sole solicitor’s practising certificate (“sole solicitor endorsement”) (Article 4; Schedule 1, paragraph 7) and makes other amendments to the 1974 Act consequential upon that repeal (Article 4; Schedule 1, paragraph 8).

The Order extends the definition of a ‘legal services body’ in section 9A(1) of the 1985 Act so as to include a sole solicitor (Article 4; Schedule 1, paragraph 3) and makes other amendments to the 1985 Act consequential upon that amendment and upon the amendments to the 1974 Act made by the Order (Article 4; Schedule 1, paragraphs 1-2, 4-6).

The Order makes amendments to the 2000 Regulations (which regulate the practice of registered European lawyers) which are consequential upon the amendments made by the Order to the 1974 and 1985 Acts (Article 5; Schedule 2).

The Order also 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 (Articles 2 and 3).

[An impact assessment is annexed to the Explanatory Memorandum accompanying this instrument and is available alongside this instrument on the OPSI website.]