

ANNEX 2

Title: Section 69 Order: The Legal Services Act 2007 (Functions of an Approved Regulator) Order 2011 Lead department or agency: Ministry of Justice Other departments or agencies: Legal Services Board, Solicitors Regulation Authority	Impact Assessment (IA)
	IA No: MOJ 055
	Date: 14 December 2010
	Stage: Consultation
	Source of intervention: Domestic
	Type of measure: Secondary legislation

Summary: Intervention and Options

What is the problem under consideration? Why is government intervention necessary?
 Sole practice is currently authorised annually by means of a “sole solicitor endorsement” on the solicitor’s practising certificate (PC). By contrast all other firms which the SRA regulates are subject to initial authorisation and unlimited licences. There are also undesirable differences in the way the SRA can take regulatory action where difficulty arises with a sole practitioner firm as compared with other firms. Failure to harmonise the regulatory regime would result in regulatory inefficiencies, increased costs for both firms and the SRA and possible risks to consumers of legal services. Government intervention is needed as legislation is required.

What are the policy objectives and the intended effects?
 The main objectives are to harmonise 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 and for consumers, and to create an easier transition for firms from one business type to another. The intended effects are to ensure that sole practitioners will be subject to the same authorisation process as other firms and the SRA will be able to take the same regulatory steps in relation to the authorisation of the firm rather than against the PC of the individual sole practitioner. The SRA will be able to provide a more effective and consistent approach to the regulation of legal services for those it regulates and for consumers of legal services.

What policy options have been considered? 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 the s69 Order were not made, the SRA would have to run two different, parallel systems for “licensing” firms.
 Option 1: propose a s69 Order so that the regulatory regimes for all firms are harmonised. This option is preferred as it would reduce regulatory inefficiency and deliver benefits to sole practitioners and the SRA.

When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?	n/a
Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?	no

Ministerial Sign-off For consultation stage Impact Assessments:

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:..... Date:.....

Summary: Analysis and Evidence

Policy Option 1

Description:

Section 69 Order: The Legal Services Act 2007 (Functions of an Approved Regulator) Order 2011

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate:

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

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

None identified.

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

It is possible that the removal of the annual licensing requirement could weaken consumer protection, if the threat of non-renewal acted as a deterrent against poor standards of behaviour. However, the SRA do not consider that the proposal would lead to a significant reduction in service standards, given there are a number of other regulatory controls which are currently, and would remain, in place. Under the proposed scheme authorisation can be withdrawn or modified at any time, if appropriate.

BENEFITS (£m)	Total	Transition	Average	Annual	Total	Benefit
	(Constant Price)	Years	(excl. Transition)	(Constant Price)	(Present Value)	
Low						
High						
Best Estimate						

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

None identified.

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

Sole practitioners/firms are expected to benefit from the removal of the requirement for annual renewal, from easier transition when changing composition of firm and from easier transition from one business type to another. The SRA is expected to benefit from efficiencies in operations, regulatory activity and the ability to take regulatory steps concerning firms in a consistent manner.

Key assumptions/sensitivities/risks

Discount rate (%)

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.

It has been assumed the proposal would lead to no significant reduction in service standards.

Impact on admin burden (AB) (£m):			Impact on policy cost savings (£m):		In scope
New AB:	AB savings:	Net:	Policy cost savings:		Yes/No

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?	England and Wales				
From what date will the policy be implemented?	31/03/2012				
Which organisation(s) will enforce the policy?	SRA				
What is the total annual cost (£m) of enforcement for these organisations?	Not quantified				
Does enforcement comply with Hampton principles?	Yes				
Does implementation go beyond minimum EU requirements?	N/A				
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)	Traded:		Non-traded: Minimal		
Does the proposal have an impact on competition?	No				
Annual cost (£m) per organisation (excl. Transition) (Constant Price) N/A	Micro	< 20	Small	Medium	Large
Are any of these organisations exempt? N/A	Yes/No	Yes/No	Yes/No	Yes/No	Yes/No

Specific Impact Tests: Checklist

	Impact	Page ref within IA
Statutory equality duties	No	9
Economic impacts		
Competition	No	9
Small firms	No	10
Environmental impacts		
Carbon emissions	No	10
Wider environmental issues	No	10
Social impacts		
Health and well-being	No	10
Human rights	No	10
Justice	No	10
Rural proofing	No	11
Sustainability	No	11

Evidence Base (for summary sheets) – Notes

No.	Legislation or publication
1	Legal Services Act 2007 http://www.legislation.gov.uk/ukpga/2007/29/contents
2	Solicitors Act 1974 http://www.legislation.gov.uk/ukpga/1974/47
3	Administration of Justice Act 1985 http://www.legislation.gov.uk/ukpga/1985/61
4	SRA Consultation Paper “The Architecture of Change: the new SRA Handbook” (Part 2) http://www.sra.org.uk/sra/consultations/OFR-handbook-May.page?ref=search
5	SRA Cost benefit analysis for outcomes-focused regulation http://www.sra.org.uk/sra/consultations/OFR-consultation.page?ref=search#executive-summary
6	SRA Equality Impact Assessments for introduction of the new Handbook (Annex to October Consultation) http://www.sra.org.uk/sra/consultations/ofr/annex-k-eia.page?ref=search

References

Evidence Base

Annual profile of monetised costs and benefits* - (£m) constant prices – N/A

	Y ₀	Y ₁	Y ₂	Y ₃	Y ₄	Y ₅	Y ₆	Y ₇	Y ₈	Y ₉
Transition costs										
Annual recurring cost										
Total annual costs										
Transition benefits										
Annual recurring benefits										
Total annual benefits										

* For non-monetised benefits please see summary pages and main evidence base section

Evidence Base (for summary sheets)

1. Introduction

- 1.1. The Legal Services Board (LSB) was created by the Legal Services Act 2007 (LSA) 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. The LSB's mandate is to ensure that regulation in the legal services industry is carried out in a manner that is consistent with the public interest and that the interests of consumers is central in policy making. The regulatory burden on firms should be proportionate to the risks that they pose and firms should not be subject to unnecessary regulatory requirements.
- 1.2. The Solicitors Regulation Authority (SRA) is the independent regulatory body of The Law Society of England and Wales (TLS). TLS is an "approved regulator" within the meaning of the LSA. The SRA regulates solicitors, solicitors' firms and those with whom solicitors practise.
- 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 either be 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 latter 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".

Problem under consideration

- 1.4. Sole practice is currently regulated differently from other vehicles through which solicitors practise (e.g. partnerships and LLPs). In particular the mechanism for authorisation is different, as is the mechanism for taking certain regulatory action.
- 1.5. Prior to the LSA, TLS'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 and the requirements concerning professional conduct. The LSA 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 practising certificate (PC). PCs are issued annually by the SRA and so the endorsement mechanism for authorising sole practice is also an annual occurrence.
- 1.6. By contrast, all other firms which the SRA regulates (e.g. partnerships and other bodies including LLPs, and, in future ABSs) will be subject to initial authorisation and unlimited licences. (Note that the LSB is currently consulting on a range of proposals, including unlimited licences for firms.)
- 1.7. The existence of different statutory regimes results in two different systems for regulating, on the one hand, sole practitioners and RELs who are sole practitioners, and on the other hand all other firms (e.g. partnerships and LLPs and, in future, ABSs).
- 1.8. It is considered that it is in the interests of the public and of consumers that all firms, regardless of practice model or size, should be subject to appropriate assessment at the point of authorisation, and subject to a similar range of regulatory "tools" which are proportionately deployed by the SRA. The proposed new authorisation regime for sole practice will be more transparent, appropriate and proportionate in that, where difficulty arises with a sole practitioner firm, the SRA will be empowered to take action on the authorisation relating to that firm rather than merely against the practising certificate of its principal.
- 1.9. The proposed changes would bring about efficiency savings for the SRA since it would be able to streamline its administrative processes.

- 1.10. In order to achieve the desired policy outcome 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.

Economic rationale

- 1.11. The conventional economic approach to government intervention to resolve a problem is based on efficiency or equity arguments. The government may consider intervening if there are strong enough failures in the way markets operate (e.g. monopolies overcharging consumers) or if there are strong enough failures in existing government interventions (e.g. waste generated by misdirected rules). In both cases the proposed new intervention itself should avoid creating a further set of disproportionate costs and distortions. The government may also intervene for equity (fairness) and redistributive reasons (e.g. to reallocate goods and services to the more needy groups in society).
- 1.12. Intervention in this case would be justified primarily on efficiency grounds. Currently, the SRA regulate sole practitioners differently to other firms. This inconsistency imposes additional administrative costs on the SRA, and additional regulatory burdens on sole practitioners compared to other firms. Removing these inconsistencies should therefore generate efficiency benefits for the SRA and for sole practitioners. There may be further efficiency benefits as removing the inconsistency should allow firms to choose the most efficient business structure in the absence of any regulatory cost considerations. It is assumed that the removal of annual licence renewal does not reduce efficiency by weakening consumer protection.
- 1.13. Reducing regulatory costs in this way should ultimately benefit society and the consumers of legal services, assuming there would be no significant reduction in service standards following implementation of the proposal.

Policy objectives

- 1.14. The SRA is in the process of implementing a modern, outcomes-focused, risk-based approach to regulation. Where differences exist, the justification for them will be based on proportionality of regulatory burden and the degree of risk posed by different types of firm to consumers and to the public interest.
- 1.15. The main aims and objectives of the proposal under consideration are:
- to harmonise the system of authorisation for sole practitioners, recognised bodies and licensed bodies (ABSs);
 - to provide an effective and consistent approach to the regulation of legal services for those regulated by the SRA and for consumers;
 - to create an easier transition for firms from one business type to another since some firms may, during their lifetime, switch status, possibly a number of times;
 - to be in accordance with the better regulation principles which state that all regulation should be proportionate and targeted, i.e. it should impose the minimum burden necessary to achieve its objective, minimising undesirable side-effects.

Affected stakeholder groups, organisations and sectors

- 1.16. The following individuals/sectors are likely to be affected by the proposals:
- consumers of legal services and the wider public;
 - all individuals and bodies regulated by the SRA and all individuals and bodies which may wish to seek recognition or authorisation from the SRA;

- TLS, LSB, the Ministry of Justice, the Solicitors Disciplinary Tribunal, the Legal Ombudsman, the LSA appellate body and other legal bodies/training providers.

2. Cost and Benefits

- 2.1. This Impact Assessment identifies both monetised and non-monetised impacts on individuals, groups and businesses in the UK, with the aim of understanding what the overall impact to society might be from implementing these options. The costs and benefits of each option are compared to the do nothing option. Impact Assessments place a strong emphasis on valuing the costs and benefits in monetary terms (including estimating the value of goods and services that are not traded). However there are important aspects that cannot sensibly be monetised. These might include how the proposal impacts differently on particular groups of society or changes in equity and fairness, either positive or negative.
- 2.2. The costs and benefits are very difficult to quantify fully. Considering the absence of reliable and sufficient data to quantify the impact of the proposed change on the SRA and on the legal services market, this impact assessment primarily analyses the qualitative effects.
- 2.3. Limited data is currently held by the SRA concerning sole practitioner firms. The data shows that (as at 22 November 2010) there is a total of 3,779 sole practitioner firms who will be impacted by the proposals. These are broken down in terms of number of PC holders at the firm as follows:

PC holders	Total
1	2666
2	683
3-5	379
6-10	44
11+	7
Grand Total	3779

- 2.4. There are a total of 5,776 PC holders at sole practitioner firms at present. There is currently no data available concerning numbers of non-solicitor staff working in sole practices or concerning turnover, however the SRA is collecting relevant data.

Base Case / Option 0

- 2.5. If the Order were not made, the “do nothing” option would be for the SRA to run two different, parallel systems for “licensing” of firms: one system applying to sole practitioners’ firms, and the other applying to all other firms. Moreover, sole practitioners would be required to renew annually their licences as part of the annual renewal of the PC for all solicitors (since the authorisation of the sole practitioner firm is achieved through an endorsement on the PC). Other firms (i.e. those which are not sole practices) would not be required to renew annually their licence, since they will be granted licences of unlimited duration. The SRA would not be able to take regulatory action in respect of the sole practitioner’s firm’s authorisation – it could only take action in respect of the individual’s PC.
- 2.6. Because the do nothing option is compared against itself its costs and benefits are necessarily zero, as is its Net Present Value (NPV).

Option 1

Description

- 2.7. The proposed section 69 Order will harmonise the system of regulation by the SRA for sole solicitors with

- (a) the system of regulation for solicitors' partnerships and other bodies recognised by the SRA under section 9 of the Administration of Justice Act 1985 (AJA) ("recognised bodies"); and
- (b) the licensing of ABSs under Part 5 of the LSA.

2.8 The main change that will be introduced as a result of the proposed Order is the removal of the sole practitioner endorsement procedure and a change in the law so that sole practitioners will fall under the definition of a "recognised body". This, in effect, will mean that:

- sole practitioners will be subject to the same authorisation process as other recognised and licensed bodies; and
- the SRA will be able to take the same regulatory steps in relation to the authorisation of the firm rather than against the PC of the individual sole practitioner.

2.9 The new authorisation regime for sole solicitors will also apply to RELs who are sole practitioners, just as the current regime for sole solicitors applies to REL sole practitioners. The proposed Order makes the necessary technical amendments to the European Communities (Lawyer's Practice) Regulations 2000 to achieve this.

Costs of Option 1

2.10 The proposal is likely to impose some one off adjustment costs on all affected parties. However, these costs are not expected to be significant.

Consumers of legal services

2.11 It is possible that the removal of the annual licensing requirement could weaken consumer protection. This would happen if the threat of non-renewal acted as an additional deterrent against poor standards of behaviour by sole practitioners. The removal of this enforcement tool would then weaken the incentives for sole practitioners to maintain acceptable standards of behaviour.

2.12 The SRA consider that the removal of the annual licensing/authorisation requirement would be unlikely to weaken consumer protection. There is no evidence that the threat of non-renewal of an annual licence/authorisation currently acts as a deterrent against poor standards of behaviour for sole practitioners (or indeed for firms). Under the new scheme authorisation/licence can be withdrawn or modified at any time (in appropriate circumstances), not simply on an annual basis. The incentives for sole practitioners (and firms) to maintain acceptable standards of behaviour will be very similar under either option.

Benefits of Option 1

Sole practitioners

2.13 The benefits to sole practitioner firms are that:

- they will not be subject to annual renewal of their authorisation. It is difficult to quantify the possible saving but it is considered that there would be a positive net benefit for sole practitioners;
- treating sole practitioner firms as a form of recognised body (i.e. in the same way as any other firm of solicitors) will enable the firm to change its composition and adapt without having to undergo a new authorisation process as a recognised body;
- a common authorisation process for all types of firm – including ABSs – will facilitate transition between one status (recognised body) and another (ABS), thus enabling firms to adapt in a changing market.

SRA

2.14 The benefits for the SRA are:

- the SRA will be able to operate more efficiently through having a common set of processes for all firms – i.e. it will not have to continue to operate two parallel systems: one for the endorsement procedure, and the other for the authorisation procedure. This will not mean that all firms will be subject to the same regulatory burden (e.g., in terms of the level of information required when a firm applies for authorisation), since this will be dependent on the risks posed by the firm, but rather that cost efficiencies can be achieved through harmonised processes;
- the SRA will be able to take regulatory action against all firms in a common manner which has the benefit of achieving consistency.

Consumers of legal services

- 2.15 As outlined above, any reduction in the administrative burden placed on businesses as a result of the proposal would reduce the cost of providing those services. Further, the current inconsistency in regulation may be distorting the choice of business structure, which may be inefficient. Removing the inconsistency would also help to reduce costs. Any reduction in costs would benefit providers, but would also benefit the consumers of legal services if these cost reductions were passed on in the form of lower prices.

Net Impact of Option 1

- 2.16 Although it has not been possible to quantify the costs and benefits, it is anticipated that the overall impact of Option 1 is likely to be positive. For firms, the main benefit is the removal of the annual renewal process and the ability to switch status, e.g. from sole practitioner to partnership, without having to re-apply for authorisation.

3. Enforcement and Implementation

- 3.1. Assuming the section 69 Order is made, the SRA would amend its operating procedures to reflect the changes in the statutory provisions.
- 3.2. It is intended that the new powers come into force on 31 March 2012. However, it is also intended that individuals who, at that date, have a valid sole solicitor endorsement on their PC will be “passported” into the new authorisation regime. The authorisation will not be limited in time, but the SRA will have the power to impose such conditions as it considers appropriate.

4. Specific Impact Tests

Equality Impact Test

- 4.1 The SRA has undertaken an Equality Impact Assessment (EIA) of the proposed Order which is annexed. It concludes that the changes brought about by the proposed Order will not, in themselves, have any adverse equality impact. An initial screening is attached at Annex 2.

Competition Assessment

- 4.2. As mentioned above, limited data is currently held by the SRA concerning sole practitioner firms. The data shows that (as at 22 November 2010) there is a total of 3,779 sole practitioner firms. These are broken down in terms of number of PC holders at the firm as follows:

PC holders	Total
1	2666
2	683
3-5	379
6-10	44
11+	7
Grand Total	3779

- 4.3. The SRA has undertaken a competition analysis of the proposals. This concludes that the Order will not have an adverse impact on competition. It is unlikely to limit the number or range of providers of legal services, including sole practitioners, or to limit or reduce their incentive to compete with each other. If anything, the Order will improve the regulatory framework from a competition perspective.
- 4.4. Whilst sole practices may be unlikely to compete directly with large legal practices providing legal services in respect of the same area of law, market definition is likely to depend less on the structure or form of the entity conducting the work, and more on the type of work undertaken. From a legal services product perspective, the relevant market is likely to depend on the level of complexity of the work to be undertaken as well as the needs of the consumer. Therefore, sole practitioners are unlikely themselves to constitute a separate relevant market for the purposes of competition assessment. They will form part of a larger market in legal services that is defined by reference to the type and complexity of work undertaken.
- 4.5. The competitive impact of the proposed Order is assessed by addressing the four questions set out below.

Does the Order directly limit the number or range of suppliers (or providers)?

- 4.6. It is unlikely that the Order will directly limit the number or range of providers of legal services of any type. The Order will harmonise the system of regulation by the SRA for sole practitioners, recognised bodies and ABSs. It does not prescribe a maximum number or proportion of sole practitioners for the legal market. It also provides for sole practitioners to be “passport” from the old into the new regulatory regime.

Does the Order indirectly limit the number or range of suppliers?

- 4.7. The Order will not significantly raise costs for new suppliers of legal services relative to existing suppliers. The costs of authorisation for potential new sole practitioner providers of legal services will depend upon the authorisation rules and the way in which regulation is carried out, Harmonising the regulation of sole practitioners so that it is in line with other legal service providers will not itself indirectly limit the number or range of suppliers.

Does the proposal limit the ability of suppliers to compete?

- 4.8. The proposed Order will not limit the ability of any providers of legal services, including sole practitioners, to compete. The proposed Order will result in sole practitioners being subject to the same regulatory framework as other legal service providers and existing sole practitioners will be automatically “passport” into the new regime.
- 4.9. The unified regulatory framework could deliver operational and cost efficiencies for the SRA’s authorisation, investigative and decision making processes. This in turn may provide greater access to the market for all legal service providers if SRA processes become more streamlined.

Will the proposal reduce suppliers’ incentives to compete vigorously?

- 4.10. The proposed Order will not have any impact upon the incentives to compete amongst providers of legal services system for sole practitioners. To the extent that a separate system imposed different regulatory burdens (whether lesser or greater) solely as a consequence of the structure or form of the provider of those services, rather than the degree of risk posed, that could have the effect of limiting competition.

Small Firms Impact Test

- 4.11. The effect of the proposed Order is expected to be cost-neutral for small firms. It should be noted that sole practitioner firms are not necessarily small firms. They can be enterprises of a considerable size in terms of both employees and turnover.

Carbon Assessment

4.12. It is not anticipated that there will be any significant carbon impacts as a result of these proposals.

Other Environment

4.13. It is not anticipated that there will be any significant environmental impacts as a result of these proposals.

Health Impact Assessment

4.14. It is not anticipated that there will be any significant health and well-being impacts as a result of these proposals.

Human Rights

4.15. The SRA has undertaken a human rights assessment and it is not anticipated that there will be any significant human rights impacts as a result of these proposals.

Justice Impact Test

4.16. Justice impacts have been considered and it is not anticipated that there will be any significant impacts as a result of these proposals.

Rural proofing

4.17. Rural proofing impacts have been considered and it is not anticipated that there will be any significant impacts as a result of these proposals.

Sustainable Development

4.18. Sustainable development impacts have been considered and none have been identified.

Privacy Impact Test (an MoJ Specific Impact Test)

4.19. No privacy impacts have been identified

Annex 1: Post Implementation Review (PIR) Plan

<p>Basis of the review:</p> <p>N/A</p>
<p>Review objective:</p> <p>N/A</p>
<p>Review approach and rationale:</p> <p>N/A</p>
<p>Baseline:</p> <p>N/A</p>
<p>Success criteria:</p> <p>N/A</p>
<p>Monitoring information arrangements:</p> <p>N/A</p>
<p>Reasons for not planning a PIR:</p> <p>As the proposals entail changes to legislation that modify some of the functions of the SRA as an authorised regulator (AR), it is not envisaged that a post-implementation review of the changes will take place. However the LSB, as the oversight regulator of the legal services industry will, through its information collection form ARs, be reviewing regulatory arrangements on an ongoing basis.</p> <p>The SRA will be reviewing its approach to outcomes-focused and risk-based regulation.</p>

Annex 2: Equality Impact Assessment

Authorisation of Sole Practitioners

Equality Impact Assessment of the draft Legal Services Act 2007 (Functions of an Approved Regulator) Order 2011

November 2010

Introduction

1. The Legal Services Act 2007 set out a new regulatory framework for regulators and the ownership of legal services providers. The SRA has since signalled a move toward risk-based and outcomes-focused regulation (OFR) to ensure that public protection and improving standards are at the heart of our regulatory approach.
2. The SRA's first major step towards the implementation of OFR was through the development of the Handbook of Regulation. This included our new Authorisation and Practising Requirements and was published for consultation in May 2010 in the paper, '[The Architecture of Change: the SRA's new Handbook](#).' A further [consultation paper](#), which included the feedback from the first consultation paper, was published in October 2010.
3. The draft Legal Services Act 2007 (Functions of an Approved Regulator) Order 2011 is set against this background and proposes a change to the way sole practitioners are authorised to ensure that they are subject to the same authorisation process as recognised bodies and alternative business structures. It is intended that the new authorisation regime should come into effect on 31 March 2012.

Background

4. A sole practitioner is a solicitor or registered European lawyer who acts as the sole principal in a firm. Currently, sole practitioners are subject to separate regulation by means of an annually-renewed endorsement on their practising certificates (PCs). The main change that will be introduced as a result of the draft order is the removal of the sole practitioner endorsement procedure and a change in the law so that sole practitioners will fall under the definition of a recognised body. This, in effect, will mean that sole practitioners will be subject to the same authorisation process as other recognised and licensed bodies. The SRA will, therefore, be able to take the same regulatory steps in relation to the authorisation of the firm rather than against the PC of the individual sole practitioner.
5. This authorisation process will see firms (whether run by a sole practitioner, a partnership or another recognised body) being granted an authorisation which is unlimited in time and subject to the personal requirement to hold a valid practising certificate, which will continue to be renewable annually. The lifetime authorisation will involve an initial application for recognition (based on an assessment of information about the firm) and a fee. The new procedures will require firms to provide more information than is currently required, both during the authorisation process and thereafter on an annual basis. There will also be an ongoing obligation on firms to notify the SRA if there are changes to the information supplied.
6. Firms will also be required to appoint a Compliance Officer for Legal Practice (COLP) and a Compliance Officer for Finance and Administration (COFA) as well as satisfy the 'fit and proper' test that will apply to all individuals seeking to qualify or gain authorisation to practice in England and Wales.

Aims and objectives

7. The main aims and objectives of the draft Order are:

- to harmonise the system of authorisation for sole practitioners, recognised bodies and licensed bodies;
- to provide an effective and consistent approach to the regulation of legal services for those regulated by the SRA and for consumers; and
- to create an easier transition for firms from one business type to another as we anticipate that some firms may, during their lifetime, switch status.

Stakeholders

8. Our stakeholders are:

- consumers of legal services and the wider public;
- all individuals and bodies regulated by the SRA and all individuals and bodies which may wish to seek recognition or authorisation from the SRA; and
- The Law Society of England and Wales, the Legal Services Board, the Ministry of Justice, the Solicitors Disciplinary Tribunal, the Legal Ombudsman, the LSA appellate body and other legal bodies/training providers.

Initial conclusions about the equality and human rights impact

9. The purpose of the Legal Services Act 2007 (Functions of an Approved Regulator) Order 2011 is to have a fair and consistent approach to authorisation for all providers of legal services that is risk-based and only allows principled and competent firms and individuals to deliver legal services.
10. As the regulatory landscape is changing, it is essential that we have this fairness and consistency to ensure that consumers of legal services receive an equivalent level of protection regardless of where these services have come from. The changes proposed in this draft Order will ensure that sole practitioners are subjected to the same authorisation requirements as other recognised bodies and alternative business structures, by removing the current endorsement mechanism and bringing sole practitioners within the definition of a 'recognised body.' We do not consider that these changes, in themselves, will have any adverse equality impact.
11. We are, however, aware that there are concerns with regard to what the authorisation requirements will be. A separate [equality impact assessment](#) on the new draft Authorisation and Practising Requirements section of the Handbook was published for consultation with the second draft of the Handbook in October 2010.
12. Within this equality impact assessment, concerns were noted that the proposed changes may be more burdensome for sole practitioner firms who may have fewer resources to meet the new information requirements for authorisation. If proven, this would most likely have an indirect adverse affect on BME and female solicitors as they are over-represented in these areas.
13. According to our data, BME solicitors make up 12% of the overall profession but 16% of sole practitioner firms. White firms are under-represented in this area, making up 76% of the overall firm population but only 71% of all sole practitioner firms. Similarly, female solicitors make up 24% of the overall profession, but represent 29% of sole practitioner firms.
14. A cost benefit analysis has therefore been commissioned to better understand the potential burden of the new draft authorisation requirements for all firms, including sole practitioner firms. This work is being conducted on a phased basis and is ongoing. The report on the first phase will be published separately in November 2010.
15. We have agreed to look further into the equality impact of the draft Authorisation and Practising requirements once the cost benefit analysis findings have been published, and in light of the responses that we receive to the second Handbook consultation.
16. The changes proposed as part of this draft Order will have no bearing on the actual requirements that sole practitioners, other recognised bodies and alternative business structures are subjected to. They will simply ensure that sole practitioners, other recognised bodies and alternative

business structures are all subject to the same authorisation requirements, whatever these may be. Our initial view is that the changes proposed as part of this draft Order will not have any adverse equality impact in themselves, and are justified in the interests of fairness and consistency.

17. We have undertaken a human rights assessment of the effects of the draft Order and we do not anticipate any significant impacts. We will review the equality impact further in light of the responses that we receive to our consultation.