

To:	Legal Services Board
Date of Meeting:	9 July 2014
Item:	Paper (14) 38

Title:	Section 69 recommendation to the Lord Chancellor on modification of SRA regulation of sole practice
Workstream(s):	Statutory Decisions
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Status:	Official

Summary:

This paper seeks the Board's agreement to the making of a recommendation under section 69 of the Legal Services Act 2007 (**the Act**) that the Lord Chancellor makes an order 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".

In accordance with the requirements of section 70 of the Act, we consulted on the proposed recommendation and draft order from 16 April 2014, inviting representations from interested persons by 28 May 2014.

Only one representation was made, by the Sole Practitioners Group (**SPG**), which supported the proposals but queried the assumption of number of sole practitioners in the SRA's Cost Benefit Analysis (**CBA**). However, the SPG did not think this aspect in itself altered the overall benefits calculated by the SRA.

The SPG response has been passed to the SRA and Ministry of Justice economists to consider when preparing a final fast-track impact assessment for the Regulatory Policy Committee. There is no requirement for us to attach the CBA to the recommendation to the Lord Chancellor.

Recommendation(s):

The Board is invited:

- (1) Note the content of the response document and approve its publication.
- (2) Approve the making of the recommendation as set out in Annex A of the response document.
- (3) Note the draft statutory order which accompanies the recommendation.

Risks and mitigations

Financial: None

Legal:	None
Reputational:	None
Resource:	None

Consultation	Yes	No	Who / why?
Board Members:		√	
Consumer Panel:		√	
Others:	<p>The SRA was consulted on the draft recommendation, draft order and the CBA.</p> <p>The Ministry of Justice was also consulted and the draft order and the CBA were cleared by it before the consultation commenced.</p>		

Freedom of Information Act 2000 (Fol)		
Para ref	Fol exemption and summary	Expires
Annexes A and B	Section 22 – information intended for future publication	

LEGAL SERVICES BOARD

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Recommendation to the Lord Chancellor that he makes an order under Section 69 of the Legal Services Act 2007 (“the Act”) in respect of modification of SRA regulation of sole practice

Background / context

1. This is essentially a statutory order to implement a deregulatory measure. Its purpose is to harmonise the authorisation and regulation of sole practitioner solicitors with those of firms, thus reducing administration for both the Solicitors Regulation Authority (“**SRA**”) and its affected regulated community.
2. The SRA consulted on the policy of introducing the concept of ‘recognised sole practitioner practices’ in December 2010. The overall policy aim is to achieve consistency of treatment across different types of practices, so that sole practitioners will be subject to the same authorisation and supervisory processes as recognised bodies and alternative business structures (**ABS**). The change will remove the concept of “sole solicitor” and “sole practitioner” from the current regulatory framework. In practice this will entail removing the annual endorsement process that exists for sole practitioners which will reduce the regulatory burden and costs for the affected regulated community and the administrative functions of the SRA. While there was broad overall support at the time of consultation, other priorities, such as the introduction of ABS and sorting out the associated authorisation processes, prevented the SRA from making the sole practitioner changes earlier.
3. The SRA published a policy statement in March 2014¹ which set out the SRA policy position. In summary, it highlighted that that by bringing sole practitioners into the same authorisation based approach as other firms, the SRA will be able to target regulation more effectively between the individual solicitor and firm. The SRA considers, and the LSB agrees, that this is a more proportionate way to regulate across the different types of business.
4. The Board will also wish to note that 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

¹ <http://www.sra.org.uk/sppolicy/>

the government with external, independent scrutiny of new regulatory and deregulatory proposals.

5. 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. Therefore, the LSB consultation paper included the SRA's Cost Benefit Analysis (CBA), prepared in cooperation with Ministry of Justice economists, to test the cost benefit assumptions.

Consultation

6. The Act requires that before making a recommendation to the Lord Chancellor, the LSB publishes the proposed draft order and draft recommendation and invites representations on the proposals. The consultation was not on the policy itself but whether the order delivers the policy intentions.
7. The consultation exercise took place between 16 April and 28 May 2014. In accordance with the requirements of section 70 of the Act, the consultation paper invited representations on the draft recommendation and the draft statutory order. Representations were also invited on the SRA's CBA.
8. The draft of the proposed order and the CBA had been agreed with the Ministry of Justice before consultation commenced.

Representations received

9. Only one response received was from the SPG which said it broadly welcomed the proposals, provided that any changes did not result in adverse consequences for sole practitioners or the public, which it did not believe it did. The SPG also agreed that the proposal had the effect of harmonising regulation with those of larger firms and of ABS.
10. With regard to the CBA, the SPG queried the assumption that there are less than 3000 sole practitioners. The SPG said it did not consider that the figure takes into account those sole practitioners who practise in the form of a limited company or an LLP. If it did the SPG believed the figure of sole practitioners currently is well in excess of 4000. The SRA do not concur with the SPG's estimate but the SPG conceded that the differential does not alter the overall benefits to sole practitioners set out in the CBA. As referred to in the Next Steps section of the draft response document, the LSB has referred the SPG views to the SRA and MoJ economists for them to consider when preparing the fast-track Impact Assessment that the Ministry of Justice must send to the Regulatory

Policy Committee for validation. The SPG response has been published on the LSB website.

Conclusion and recommendation to the Board

11. Taking into account that the one representation made from the SPG was broadly in favour of the proposal, our view is that we should proceed with the recommendation to the Lord Chancellor in the form consulted on.
12. The draft recommendation and statutory order are in the draft response document (Annex A of this paper). The CBA is attached at Annex B to this paper.
13. In order to make the recommendation we need the consent of the SRA. We can confirm that the SRA has provided written consent.
14. The Board is invited to:
 - note the content of the response document and approve its publication;
 - approve the making of the recommendation set out in Annex A of the response document; and
 - note the draft statutory order which accompanies the recommendation.

Next steps

15. The LSB will write to the Lord Chancellor making a recommendation that he make an order under section 69 of the Act.
16. The MoJ economists will prepare a 'fast track' impact assessment validation note for the Regulatory Policy Committee addressing their advice that the cost and benefits should be tested in consultation.
17. Subject to the Lord Chancellor accepting the recommendation, the measure will be listed in the December Statement of New Regulation.
18. Under the current timetable the order will be laid in Parliament by the end of December 2014, with the aim of the order coming into force before the end of this term of Parliament (i.e. before the May 2015 General Election).

9 July 2014