

**EXPLANATORY MEMORANDUM TO
THE LEGAL SERVICES ACT 2007 (LEVY)**

(No. 2) RULES 2010

2010 No. 2911

1. This explanatory memorandum has been prepared by the Legal Services Board and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
 - 2.1 The purpose of this instrument is to make rules governing the imposition of a levy by the Legal Services Board (“LSB”) on leviable bodies. When this instrument comes into force, the leviable bodies will be the approved regulators set out in Schedule 4 to the Legal Services Act 2007 (“the 2007 Act”) as amended by the Legal Services Act 2007 (Approved Regulators) Order 2009. The Association of Chartered Certified Accountants and the Institute of Chartered Accountants of Scotland have been added by Order under 173(5)(c). Other bodies may become leviable bodies subsequent to this instrument coming into force. The instrument makes provision with regard to how and when those bodies will become subject to the provisions of the instrument.
 - 2.2 The rules are required by section 173 of the 2007 Act and provide for a levy to meet (a) the ongoing costs incurred by the LSB, the Office for Legal Complaints (“OLC”) and the Lord Chancellor associated with the carrying on of the LSB’s regulatory functions and the OLC’s complaints resolution functions.
 - 2.3. As the levy will meet the ongoing costs of the LSB and the OLC it is important that the rules come into force by 1 January 2011 to enable the LSB to issue invoices and collect payment from the leviable bodies by the end of the current financial year. It is therefore intended that this instrument will come into force on 1 January 2011.
 - 2.4 In summary, this instrument:
 - 2.3.1 provides for the recovery of costs relating to the ongoing operational costs of the LSB and the OLC;
 - 2.3.2 establishes a principle under which the costs are to be apportioned amongst the leviable bodies;
 - 2.3.3 provides further detail as to the payment of the levy, in particular for situations where: a leviable body’s behaviour generates disproportionate work for the LSB and/or the OLC; a leviable body’s designation is cancelled with regard to one or more, or all, of its reserved legal activities; a leviable body becomes bankrupt; and where the Lord Chancellor designates a new body to become an approved regulator.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None
4. **Legislative Context**
 - 4.1 The *Legal Services Act 2007 (Commencement No 1 and Transitory Provisions) Order 2008* commenced provisions in the 2007 Act which established the LSB and the OLC and provided for the appointment of board members and staff. The *Legal Services Act 2007 (Commencement No 3 and Transitory Provisions) Order 2008* commenced further powers

- 4.2 This instrument is made under sections 173(1), 174, 204(2) and 204(3) of the 2007 Act. Section 173(1) requires the LSB, by order, to make rules providing for the imposition of a levy on leviable bodies corresponding to the leviable expenditure of the LSB, OLC and Lord Chancellor. Section 173(3) requires the LSB, before making the levy rules, to be satisfied that the apportionment of the levy as between the leviable bodies will be in accordance with fair principles, and 173(4) ensures that the rules can only be made with the consent of the Lord Chancellor. The LSB adhered to Cabinet Office guidance on consultation in making its rules and a full consultation was carried out for these levy rules.
- 4.3 The Legal Services Act 2007 (Commencement No 6, Transitory, Transitional and Saving Provisions) Order 2009 came into force on 1 January 2010.
- 4.4 The Order commenced many of the remaining powers of the LSB, including designation of new regulators, approval of regulatory arrangements and enforcement powers. As such, the LSB has assumed regulatory functions, including the recovery of the expenditure associated with the carrying on of its regulatory functions and those of the OLC, both in respect of the establishment of those bodies, and in respect of the ongoing operational expenditure of the LSB and the OLC.

5. Territorial Extent and Application

- 5.1 This instrument applies to England and Wales only.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- *What is being done and why*

- 7.1 The 2007 Act reforms the way in which legal services are regulated in England and Wales. The aims of the Act are to simplify the existing regulatory framework by establishing an oversight regulator, the LSB, and to improve consumer confidence and the way in which complaints are dealt with by establishing an independent complaints handling body, the OLC.
- 7.2 The Act also prescribes the principle that the costs of oversight regulation and complaints handling will be met by the profession itself, with the expenditure of the LSB and OLC being met by a levy on the approved regulators. Section 173(1) of the Act therefore requires the LSB to make rules providing for the imposition of a levy on leviable bodies to raise an amount to cover the expenditure of the LSB and the OLC incurred in with the ongoing functions of those bodies under the Act (the costs incurred in relation to the establishment of these bodies being recovered via a transitional levy on the leviable bodies that has been created under the Legal Services Act 2007 (Levy) Rules 2010. The levy will not cover certain amounts set out in section 175 such as application fees and sums received from penalties as these will be collected separately.

- 7.3 Rule 2 provides that a levy is to be imposed in relation to the 12-month period ending with 31st March 2011 and in relation to each successive 12-month period. Each levy is to cover the leviable expenditure of the LSB and the leviable expenditure of the OLC in respect of the period in respect of which the levy is imposed.
- 7.4 Rule 3 determines the amount of levy for each leviable body. Rule 3(2) prescribes that, where a body becomes a leviable body during a 12-month period, it is not required to contribute to the levy during the remainder of that 12-month period. Where a leviable body has had some or all of its designations cancelled, then rule 3(3) prescribes that the levy amount is to be proportionally reduced. Rule 3(4) prescribes that the LSB must notify each leviable body of the amount that it is required to pay and the date by which the payment must be made.
- ***Costs in connection with the ongoing expenditure of the LSB***
- 7.5 Rule 4 prescribes that each leviable body is required to pay a proportion of the LSB's leviable expenditure which is based on the number at the specified date (1 April of that 12-month period) of the persons authorised by it to carry on reserved legal activities. Rule 4(3) prescribes that where the LSB has determined, on reasonable grounds, that actions or non-action of a leviable body, have given rise to additional expenditure by the LSB, then the LSB can impose that additional expenditure on that leviable body's leviable amount.
- ***Costs in connection with the ongoing expenditure of the OLC***
- 7.6 Rule 5 prescribes that each leviable body is required to pay a proportion of the OLC's leviable expenditure which is based on the number of service complaints made to the body in the period starting on 1st January 2007 and ending on 31st December 2009. The instrument effectively excludes the two approved regulators and any body designated as an Approved Regulator after 1st January 2010, which were brought into the regulatory framework of the Act by the Legal Services Act 2007 (Approved Regulators) Order 2009 because those approved regulators had no relevant service complaints during the assessment period upon which to base a calculation for liability to the levy. Rule 5(3) prescribes that where the LSB has determined, on reasonable grounds, that the actions or non-action of a leviable body, which has given rise to additional expenditure by the OLC, then the LSB can impose those additional expenditure on that leviable body's leviable amount.
- 7.7 Rule 6 requires leviable bodies to provide the LSB with the information necessary for it to calculate the proportions described in rules 4 and 5.
- 7.8 Rule 7 requires that, except in certain specified cases, the levy must be paid in full no later than 31st March of the 12-month period to which it relates. Rule 8 prescribes that interest is payable in the event of any late payment. The rule provides that the interest rate should be that specified in section 17(1) of the Judgement Acts 1838. A late payment by a leviable body could impact on the LSB's ability to meet its own liabilities. Any interest charge will be paid into the Consolidated Fund.
- ***Consolidation***
- 7.9 This instrument makes rules as required under the 2007 Act. There are no issues relating to consolidation.

8. Consultation outcome

- 8.1 The LSB has carried out a full consultation on the levy rules. It published a consultation document on 8th July 2010, which ran for 12 weeks and consulted a range of bodies including regulators and other interested parties. During the consultation process, the LSB

met with two of the respondents. This document consulted on the policy surrounding the Rules and the Rules themselves.

- 8.2 Eight responses were received. These included responses from some of the approved regulators and a law firm. The proposals in the consultation document were generally supported by the majority of respondents. The main concerns raised were in relation to the proposal for the LSB and OLC to collect 100 per cent of their leviable expenditure from the leviable bodies in all circumstances and that bodies that are designated as approved regulators will not be required to contribute to the payment of the levy in their first 12 months of operation.
- 8.3 The first concern relates, in particular, to the situation whereby a leviable body has become bankrupt and that share of the levy is redistributed among the remaining leviable bodies. Having considered this concern, the LSB maintains that if the outstanding amount is immaterial it may choose to absorb or write-off the amount.
- 8.4 However, if the amount is material, the LSB will need to seek to recover this amount from the remaining leviable bodies. Should this occur, the LSB is mindful that it may have significant impact on the financial stability of the remaining leviable bodies. Consequently if this situation arose the LSB would consult with each of the remaining leviable bodies on the timing in which that year's levy would need to be paid by. This might, for example, result in agreement being reached to allow the payment of the levy in instalments over a period of time.
- 8.5 The second concern relates to the situation whereby the Lord Chancellor has designated a new body to become an approved regulator. Having considered this concern, the LSB maintains that although a newly designated body is not required to contribute to the levy in its first year, that body will, in fact, have needed to address most of the regulatory issues that it would need to engage with LSB in the first year as part of the application process for which it has paid its designation application fee (£22,000). Consequently it is unlikely to create a material cost of regulation in the balance of its first year that would make it proportionate and administratively cost effective to levy and collect a levy from them. As the Legal Ombudsman's costs are largely comprised of fixed and semi-fixed costs, it is unlikely that the minimal (if any) impact of complaints from a new Approved Regulator would materially increase the Legal Ombudsman's costs in that Approved Regulator's first year.
- 8.6 The third concern related to liability for payments related to the issue of legal proceedings by a leviable body against the LSB or OLC. The 2007 Act and government policy constrain LSB and OLC to recovering their operating costs from the leviable bodies. In a closed system of this kind the LSB and OLC have no option but to seek to recover all costs incurred from the leviable bodies. If litigation against LSB or OLC is effective in establishing a point only in respect of the leviable body giving rise to the action then it is not proportionate to allocate the costs of the action across the other leviable bodies.

9. Guidance

- 9.1 The LSB has not issued any general guidance in connection with the levy rules. However, the LSB will be entering into detailed memoranda of understanding with each of the leviable bodies which will deal with the practical payment mechanics and the procedure for interaction between the LSB and the leviable body.

10. Impact

- 10.1 An impact assessment was prepared in respect of the imposition of a levy, which was included as part of the consultation. A copy of the Impact Assessment is attached to this memorandum.

11. Regulating small business

- 11.1 This instrument prescribes the mechanism under which the levy is to be apportioned among the leviable bodies. Under section 51 of the 2007 Act, a permitted purpose for which a practising fee may be payable by a person includes the payment of a levy imposed on an approved regulator. The effect of this is that the levy imposed under 173 may be met by practising fees charged on individuals and bodies.
- 11.2 However, the principle behind this was established and considered under the 2007 Act, and in developing those wider, the regulation of small businesses was considered in detail. Section 7 of the full RIA sets out the Small Firms Impact Test, in particular relating to the Board and ABS. In developing the Impact Test, the Small Business Service and Federation of Small Businesses were consulted and were content with the approach.

12. Monitoring and review

- 12.1 The levy rules relate to the apportionment of leviable expenditure for the ongoing costs of the LSB and OLC. The levy arrangements will be reviewed in 2013-14 and will take into consideration any lessons learnt to date. In addition, by then the OLC would have fuller data about the nature and origin of its casework and the revenue derived from case fees. Both are likely to assist in calculating and apportioning the leviable costs in the future. The LSB will also be able to reflect the implications of the licensing of Alternative Business Structures and the moves by a number of leviable bodies to levy an element of their charges on an entity basis, as well as on an individual basis, for the future design of the levy.

13. Contact

- 13.1 Edwin Josephs at the Legal Services Board (telephone: 020 7271 0084 or email: edwin.josephs@legalservicesboard.org.uk) can answer any queries regarding this instrument.

Title: Legal Services Act 2007 levy - apportionment of operational costs Lead department or agency: Legal Services Board Other departments or agencies: Office for Legal Complaints ("Legal Ombudsman")	Impact Assessment (IA)
	IA No:
	Date: 06/12/2010
	Stage: Decision
	Source of intervention: Domestic
	Type of measure: Secondary legislation
Contact for enquiries: Edwin Josephs 020 7271 0084 edwin.josephs@legalservicesboard.org.uk	

Summary: Intervention and Options

What is the problem under consideration? Why is government intervention necessary?

Sections 173 and 174 of the Legal Services Act 2007 ("LSA") require the Legal Services Board ("LSB ") to make rules in relation to the apportionment of the levy on Approved Regulators ("ARs") for both the establishment and ongoing costs of the LSB and the Office for Legal Complaints (please note that this Impact Assessment will refer to the Office for Legal Complaints as the "Legal Ombudsman", but the leviable costs will reflect the the leviable costs for the Office as a whole and not just the ombudsman scheme). The levy and the fact that the legal profession will meet the costs of the two organisations is something that Parliament has agreed to, based on the regulatory impact assessment produced at the time the LSA was passed into law.

What are the policy objectives and the intended effects?

The policy objectives and intended effects are to provide for the apportionment, in accordance with "fair principles", of all leviable expenditure for the operational costs of the LSB from 1 April 2010 onwards and for the Legal Ombudsman from when it becomes fully operational in late 2010 onwards.

What policy options have been considered? Please justify preferred option (further details in Evidence Base)

The base case assumes a levy of costs. The options are:

- apportioning the LSB's leviable operational costs by reference to the number of Authorised Persons regulated by each AR; and apportioning the Legal Ombudsman's leviable operational costs by reference to the number of complaints ARs have received against Authorised Persons that they deal with.

And provisions for the following scenarios:

- apportioning any costs incurred by the LSB and/or the Legal Ombudsman in undertaking "business not as usual" activities;
- apportioning costs if an AR's designation is cancelled;
- apportioning costs if an AR becomes bankrupt; and
- apportioning costs where the Lord Chancellor designates a new body to become an AR.

When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?

It will not be reviewed

Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?

Not applicable

Chair sign-off For decision 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 Chair on behalf of the Legal Services Board: David Edmonds..... Date 06/12/2010 ..

Summary: Analysis and Evidence

Policy Option 1

Description:

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

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

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

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

The 10 current ARs will pay the levy. These are the Law Society, the Bar Council, the Chartered Institute of Patent Attorneys, the Council for Licensed Conveyancers, the Institute of Legal Executives, the Institute of Trade Mark Attorneys, the Faculty Office, the Association of Law Costs Draftsmen, the Association of Chartered Certified Accountants, and the Institute of Chartered Accountants of Scotland.

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

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

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

For the LSB, this methodology provides a simple and fair methodology for levy for the operational costs. The methodology is transparent and clear. For the Legal Ombudsman, the methodology involves a minimum amount of data collection and is proportionate. It provides an incentive for ARs to deal with complaints in-house.

Key assumptions/sensitivities/risks

Discount rate (%)

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

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?		01/01/2011			
Which organisation(s) will enforce the policy?		Legal Services Board			
What is the annual change in enforcement cost (£m)?					
Does enforcement comply with Hampton principles?		Yes			
Does implementation go beyond minimum EU requirements?		Yes			
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)		Traded:		Non-traded:	
Does the proposal have an impact on competition?		No			
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?		Costs:		Benefits:	
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro	< 20	Small	Medium	Large
Are any of these organisations exempt?	Yes/No	Yes/No	Yes/No	Yes/No	Yes/No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
Statutory equality duties ¹ Statutory Equality Duties Impact Test guidance	No	
Economic impacts		
Competition Competition Assessment Impact Test guidance	No	
Small firms Small Firms Impact Test guidance	No	
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	
Human rights Human Rights Impact Test guidance	No	
Justice system Justice Impact Test guidance	No	
Rural proofing Rural Proofing Impact Test guidance	No	
Sustainable development Sustainable Development Impact Test guidance	No	

¹ Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Enactment).

No.	Legislation or publication
1	<u>Legal Services Act 2007</u>
2	The Levy – funding legal services oversight regulation, Consultation Paper
3	The Legal Services Act 2007 (Levy) (No. 2) Rules 2010 – draft Statutory Instrument
4	The Levy – funding legal services oversight regulation, Decision Paper

+ Add another row

Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

Annual profile of monetised costs and benefits* - (£m) constant prices

	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)

Introduction and Background

Sections 173 and 174 of the LSA require the LSB to make rules in relation to the levy on ARs for both the establishment and ongoing costs of the LSB and the Legal Ombudsman.

Those directly impacted by the levy will be the current ARs and those in future who choose to be ARs either to solely regulate Authorised Persons or to also be Licensing Authorities for Alternative Business Structures.

Scope of the Impact Assessment

The scope of this Impact Assessment is very narrow. The decision to levy the ARs has already been dealt with in consultation documents, independent reviews, White Papers and parliamentary debates. The LSA requires the LSB to apportion the levy between ARs. This Impact Assessment deals solely with the apportionment mechanic for the leviable operational costs.

Scope of the proposals

Please refer to the Consultation Paper for details of the proposal.

The 10 current ARs will pay the levy. These are the Law Society, the Bar Council, the Chartered Institute of Patent Attorneys, the Council for Licensed Conveyancers, the Institute of Legal Executives, the Institute of Trade Mark Attorneys, the Faculty Office, the Association of Law Costs Draftsmen, the Association of Chartered Certified Accountants, and the Institute of Chartered Accountants of Scotland.

Cost Benefit Analysis

BASE CASE / OPTION 0 (“Do Nothing”)

The options that we have focussed on in the Consultation Paper deal with how the LSB and the Legal Ombudsman will apportion the costs between the different ARs. The LSA requires the LSB and Legal Ombudsman to recover its costs via a levy and apportion the levy between the ARs. Therefore the base is to implement a levy. This impact assessment therefore only looks at the fairness of different methodologies. The base case is the same as the options, so there are no monetisable costs or benefits of different options.

LSB’s options

OPTION 1 – Leviable operational costs for the LSB

This option apportions the costs relating to the LSB in accordance with the regulatory risk posed by each of the ARs of not complying with the Regulatory Objectives as defined in the Act.

Costs

In order to adopt a risk-based approach, the LSB would need to quantify the likely detriment – in terms of both degree of severity and breadth of impact – if things went wrong in the regulation of a specific profession and/or activity. This would involve gaining a detailed understanding of the different types of regulated activities which members of a particular profession participate in and how they are currently regulated. An objective assessment of how well different ARs are performing in carrying out these duties would also be needed.

It would take considerable time and a high degree of work by ARs to identify the data needed to allow apportionment on this basis. This would put a regulatory burden on them and the people they regulate. The cost of the LSB undertaking the research needed to verify the information given by ARs to determine regulatory risk in a way that could be considered objective to all ARs would also be considerable.

Benefits

At first glance, this would seem one of the fairest ways to apportion the levy. However, as noted above, there are a number of disadvantages in terms of creating a methodology to measure regulatory risk. Therefore there is no guarantee that this is the fairest option.

OPTION 2 – Leviable operational costs for the LSB

This option apportions the costs relating to the LSB in accordance with the volume of activity for the LSB generated by each AR.

Costs

The LSB would only be able to do this with any accuracy on a retrospective basis, so that the previous year's work drives the next year's apportionment. This makes it difficult to use for initial implementation and running costs.

Benefits

This method would fit the principle that the "polluter pays". This may be simpler to measure than Option 1 and is 'fair' in the sense that those ARs creating more work for the LSB pay more.

OPTION 3 – Leviable operational costs for the LSB

This option apportions the costs relating to the LSB based on the number of members of a profession who hold practising certificates or who are otherwise registered to carry out reserved legal activities with an AR.

Costs

This method does not reflect the "polluter pays" principle but in the short-term it provides an objective, robust and fair approach.

Benefits

This is a simple approach that requires a minimum amount of data collection for the ARs and verification of the data by the LSB. Using this method the LSB can clearly define the costs for each AR from the outset, which will enable them to adjust practising fees and their internal processes as part of their normal business planning cycles. The levy would not need to be retrospective.

The approach meets the definition of fair principles as it is transparent and clear to all regulators, as we are following a clear methodology which does not place extensive regulatory burdens on the ARs in terms of data collection. In terms of proportionality, it takes account of the relative sizes of the regulators and uses a consistent methodology between them. This approach is also consistent with the approach used to calculate the LSB's operational costs between 1 January 2010 to 31 March 2010.

Legal Ombudsman's options

OPTION 1 – Leviable operational costs for the Legal Ombudsman

This approach apportions the costs relating to the Legal Ombudsman based on the number of members of a profession who hold practising certificates or who are otherwise registered to carry out reserved legal activities with an AR.

Costs

The approach takes no account of the relative number of complaints that are currently generated and the reasons behind the creation of the Legal Ombudsman. This does not reflect a proportionate or targeted response.

Benefits

This is a simple approach that requires a minimum amount of data collection in the first year for both the ARs the LSB and the Legal Ombudsman.

OPTION 2 – Leviable operational costs for the Legal Ombudsman

This approach apportions the costs relating to the Legal Ombudsman based on the number of complaints ARs have received about Authorised Persons for a three-year period (2007 to 2009).

Costs

The number of complaints that will be used to calculate the levy will be fixed for the next two to three years. This is because there may be a lag between consumers lodging complaints against respondents (ARs) and the Legal Ombudsman undertaking these cases. As such, we anticipate that it may take up to two to three years after the Legal Ombudsman becomes operational before it has this data.

Benefits

This is a simple approach that requires a minimum amount of data collection for ARs, since they already hold data on the number of complaints against Authorised Persons that they deal with.

This approach is proportionate and targeted as those responsible for the majority of complaints will be responsible for the costs of the setting-up of the new complaints handling mechanism. It provides an incentive to ARs to encourage firms or Authorised Persons to resolve their complaints in-house and therefore reduce the cost burden associated with the Legal Ombudsman. It is also a consistent mechanism that is proportionate, as it reflects the way complaints are handled at the point of implementation. This approach is consistent with the way in which the implementation costs for the Legal Ombudsman have been apportioned.

Specific scenarios for the LSB and the Legal Ombudsman

In addition to proposing arrangements for the apportionment and collection of the levy during a “business as usual” financial year, the LSB and the Legal Ombudsman are also consulting on a series of proposals for specific scenarios. The scenarios are apportioning and collecting the levy where:

- An AR’s behaviour generates disproportional work to the LSB and/or Legal Ombudsman;
- An AR’s designation is cancelled with regard to one or more, or all, of its reserved legal activities;
- An AR becomes bankrupt; and
- The Lord Chancellor designates a new body to become an AR.

SCENARIO 1 – Disproportional AR-specific costs for the LSB and the Legal Ombudsman

This approach apportions all of the costs to an AR if those costs are in addition to the LSB’s or the Legal Ombudsman’s “business as usual” activities; the costs are attributable to a specific AR; and that the benefits (if any) of the LSB undertaking this activity is would not be enjoyed by the other ARs or consumers.

Costs

There may be a possibility that the specific costs that are levied on an AR, in particular the smaller ARs, may not be proportionate to their size. Therefore, there may be a possibility that the AR may not be able to pay this component of the levy.

Benefits

The approach reflects the “polluter pays” principle. The LSB and/or the Legal Ombudsman will advise ARs in advance to issuing an invoice for any such costs.

SCENARIO 2 - Cancellation of designation as an AR

This option proposes that if the cancellation of designation is in relation to all reserved legal activities, any unpaid levy amounts should be paid in time of the cancellation order is made. However, if the cancellation is in relation to one or more, but not all, of the reserved legal activities, any unpaid levy amount remains payable in accordance with the levy cycle.

Costs

There are no identified costs, as option relates to the timing of the payment, not the calculation of the payment.

Benefits

There are no identified benefits, as option relates to the timing of the payment, not the calculation of the payment.

SCENARIO 3 – bankruptcy of an AR

This option proposes that if an AR becomes bankrupt, the total cost of the levy will be recouped from the other ARs.

Costs

The cost of this proposal is that the other ARs will be required to contribute to the bankrupt AR’s levy. The financial impact on the other ARs is dependent on the levy contribution of the AR that has become bankrupt.

Benefits

The benefit of this proposal is that it ensures that all of the LSB and the Legal Ombudsman’s leviable operation costs will be recouped. As it is very unlikely that the bankrupt AR would be able to pay its levy contribution, this approach shares the burden among the other ARs.

SCENARIO 4 – new ARs

This option proposes that if the Lord Chancellor designates a new body, after 1 April of a given year, to become an AR that that AR will not be required to contribute to the payment of the levy.

Costs

The cost of this proposal is that the other ARs will be required to contribute to the payment of the levy without any contribution from the new AR. The financial impact on the other ARs is dependent on the levy contribution of the new AR if it were to contribute to the payment for that year.

Benefits

The benefit of this approach is that it is unlikely that a new AR would have many, or any, Authorised Persons or complaints made against it at the time it is designated. Therefore, it is proposed that the levy should not be imposed on the new AR in its first year of operation.

SUMMARY OF OPTIONS

The LSB and the Legal Ombudsman prefer:

- Option 3 for apportioning the LSB's operational costs;
- Option 2 for apportioning the Legal Ombudsman's operational costs;
- Scenario 1 for apportioning the LSB's and the Legal Ombudsman's AR specific costs;
- Scenario 2 for apportioning the LSB's and the Legal Ombudsman's costs where there is a cancellation of designation order;
- Scenario 3 for apportioning the unpaid LSB and the Legal Ombudsman's levy of an AR who has become bankrupt; and
- Scenario 4 for apportioning the LSB and the Legal Ombudsman's levy where the Lord Chancellor designates a new body to become an AR.

Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added to provide further information about non-monetary costs and benefits from Specific Impact Tests, if relevant to an overall understanding of policy options.

Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

<p>Basis of the review: [The basis of the review could be statutory (forming part of the legislation), it could be to review existing policy or there could be a political commitment to review];</p>
<p>Review objective: [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?]</p>
<p>Review approach and rationale: [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach]</p>
<p>Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured]</p>
<p>Success criteria: [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]</p>
<p>Monitoring information arrangements: [Provide further details of the planned/existing arrangements in place that will allow a systematic collection systematic collection of monitoring information for future policy review]</p>
<p>Reasons for not planning a PIR: [If there is no plan to do a PIR please provide reasons here]</p> <p>A PIR will not be conducted as the Legal Services Act 2007 requires the LSB to recoup its leviable expenditure via a levy on the legal industry.</p> <p>Instead, the LSB and the Legal Ombudsman intend to internally review their respective final options, including the proposals that affect each organisation equally, annually, and undertake a fundamental review of the options for the LSB and the Legal Ombudsman 2013-14. This fundamental review will allow the LSB and the Legal Ombudsman to take account of any lessons learnt.</p> <p>As part of this, the LSB and the Legal Ombudsman will also review its approach to the levy (using the more sophisticated information that will then be available) and look if there would be other ways of calculating its leviable costs, for instance on an entity basis. In addition, by then the Legal Ombudsman will have data on case fee revenue, which is likely to assist in calculating and apportioning its leviable costs.</p> <p>Furthermore, as it is currently expected that Licensing Authorities will approve the first Alternative Business Structure entities in October 2011, it is therefore likely to be necessary to reassess whether to base the levy on the LSB's leviable expenditure on the number of entities regulated as well as (or even, instead of) the number of authorised persons.</p> <p>Therefore, the review will focus on the methodology of the levy and not the policy of whether there should</p>

be a levy.