

<b>Title:</b> Section 69 order: Modification of the functions of The Law Society and Council of Licensed Conveyancers  <b>Lead department or agency:</b> Ministry of Justice  <b>Other departments or agencies:</b> Legal Services Board (LSB)	<b>Impact Assessment (IA)</b>
	<b>IA No:</b> MoJ 063
	<b>Date:</b> 17 May 2011
	<b>Stage:</b> Final
	<b>Source of intervention:</b> Domestic
	<b>Type of measure:</b> Secondary legislation
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## Summary: Intervention and Options

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

The problem is that in some instances the Legal Services Act 2007 does not provide sufficient powers to the Solicitors Regulation Authority (SRA - the regulatory arm of the Law Society) and the Council of Licensed Conveyancers (CLC) to ensure that the way in which they would (if designated) be able to regulate Alternative Business Structures (ABS) in their function as Licensing Authorities is considered appropriate. Similarly the CLC would need additional powers if it were allowed to regulate its members in relation to additional legal services. There are also inefficiencies in the way existing legal services providers are regulated. A number of changes are proposed to reduce potential regulatory inefficiencies and to ensure adequate consumer protection. Government intervention is necessary as the proposed changes would require legislation.

### What are the policy objectives and the intended effects?

The main policy objective is to ensure that all consumers of legal services benefit from an equal level of protection regardless of who is regulating the provider of those services or on what basis they are doing so. Further objectives include to improve the efficiency of the overall regulatory framework for legal services, and to provide the bodies concerned with a firm statutory footing for the desired powers, which should also provide assurance for those being regulated.

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

The following options have been considered:

**Option 0:** Do nothing.

**Option 1:** Propose a section 69 order which addresses the objectives outlined above

Option 1 is the preferred option.

**Will the policy be reviewed? No** If applicable, set review date: n/a

**What is the basis for this review? n/a** If applicable, set sunset clause date: 12/2012 (SRA compensation fund)

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

**Yes**

**Minister's Sign-off** For implementation stage Impact Assessments:

*I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.*

Signed by the responsible Minister:



Date: 17<sup>th</sup> May 2011

Description: Section 69 order: Modification of the functions of the Law Society and CLC

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

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

**Description and scale of key monetised costs by ‘main affected groups’**

**Other key non-monetised costs by ‘main affected groups’**

The SRA and CLC would face one off adjustment costs as a result of all aspects of the proposal. They would also face ongoing costs related to extending the scope of compensation funds. Non-compliant businesses would have to pay all investigation costs as a result of the proposal. Any increase in regulatory costs will ultimately be passed on to the consumers of legal services in the form of higher prices. The proposal would also enable any costs associated with ABS to be realised in relation to the services regulated by the SRA.

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

**Description and scale of key monetised benefits by ‘main affected groups’**

**Other key non-monetised benefits by ‘main affected groups’**

The SRA and CLC would benefit from increased administrative efficiency as they would no longer need to issue annual licences and would be able to collect annual fees. Regulated businesses would also benefit from associated reductions in their admin burdens. The consumers of legal services would benefit from increased consumer protection as a result of extending the scope of compensation funds. Compliant businesses would no longer need to pay investigation costs. Any reductions in regulatory costs might be passed on to the consumers of legal services through lower prices. Society may benefit if the outcomes as a result of the proposal are seen as fairer. The proposal would also enable any benefits associated with ABS to be realised in relation to the services regulated by the SRA.

**Key assumptions/sensitivities/risks**

**Discount rate**

For proposals related to extending the scope of compensation funds, assumed that the appropriate level of contributions to the fund can be calculated and collected. Assumed the proposal would have no impact on the compliance of regulated businesses, the monitoring and enforcement activities of the SRA and CLC, on the rate of ABS take up, or on the justice system. Assumed that focussing investigation costs on guilty parties would have no impact on the ability of the SRA and CLC to collect income.

<b>Direct impact on business (Equivalent Annual) £m):</b>			<b>In scope of OIOO?</b>	<b>Measure qualifies as</b>
Costs: 0	Benefits: 0	Net: 0	Yes	IN/OUT

## 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?	Different dates for different provisions - see Article 2 of the Order				
Which organisation(s) will enforce the policy?	LSB				
What is the annual change in enforcement cost (£m)?	minimal				
Does enforcement comply with Hampton principles?	Yes				
Does implementation go beyond minimum EU requirements?	Yes				
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)	<b>Traded:</b>		<b>Non-traded:</b>		
Does the proposal have an impact on competition?	Yes				
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?	<b>Costs:</b>		<b>Benefits:</b>		
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	<b>Micro</b>	<b>&lt; 20</b>	<b>Small</b>	<b>Medium</b>	<b>Large</b>
Are any of these organisations exempt?	No	No	No	No	No

## Specific Impact Tests: Checklist

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
<b>Statutory equality duties</b>	No	15
<b>Economic impacts</b>		
Competition	Yes	15
Small firms	No	16
<b>Environmental impacts</b>		
Greenhouse gas assessment	No	16
Wider environmental issues	No	16
<b>Social impacts</b>		
Health and well-being	No	16
Human rights	No	16
Justice system	No	16
Rural proofing	No	16
<b>Sustainable development</b>	No	16

## Evidence Base (for summary sheets) – Notes

### References

No.	Legislation or publication
1	<u>Legal Services Act (2007)</u>
2	<u>LSB Consultation Paper Approaches to Licensing</u>
3	<u>LSB Response to Consultation on Approaches to Licensing</u>
4	<u>LSB Consultation Paper: Section 69 Orders: modification of the functions of the Solicitors Regulation Authority and the Council for Licensed Conveyancers (27 September 2010)</u>
5	<u>LSB Consultation Paper: Draft Order to be made under section 69 Legal Services Act 2007 (21 April 2011)</u>
6	<u>Solicitors Act 1974</u>
7	<u>Administration of Justice Act 1985</u>

# Evidence Base (for summary sheets)

## 1. Introduction

### Background

- 1.1 The Legal Services Board (LSB) was created by the Legal Services Act 2007 (LSA 2007) and is charged with the responsibility of overseeing the regulators of legal services and ensuring that their activities reflect the regulatory objectives set out in the LSA 2007. 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 interest of consumers is central in policy making. The LSA 2007 gives the LSB and approved regulators (ARs) (the regulators of existing legal services providers) the same regulatory objectives. In full these objectives are:
- Protecting and promoting the public interest;
  - Supporting the constitutional principle of the rule of law;
  - Improving the access to justice;
  - Protecting and promoting the interests of consumers;
  - Promoting competition in the provision of legal services;
  - Encouraging an independent, strong, diverse and effective legal services profession;
  - Increasing public understanding of the citizen's legal rights and duties; and
  - Promoting and maintaining adherence to the professional principles.
- 1.2 The LSA 2007 enables the operation of Alternative Business Structures (ABS). ABS permits the ownership of legal firms by non-lawyers. The LSA 2007 also details the process of establishing Licensing Authorities (LAs) and the statutory basis on which they license and regulate ABS businesses.
- 1.3 Current legal services providers are regulated by ARs. In some instances, a regulator will be able to regulate both existing providers and ABS businesses, and will therefore need to be both an AR and LA. In order to regulate ABS, ARs can be designated as LAs.
- 1.4 The Solicitors Regulation Authority (SRA) and the Council for Licensed Conveyancers (CLC) are ARs which have applied to become LAs. This Impact Assessment relates to a number of changes that are required to enable the SRA and CLC to act effectively and efficiently as LAs. Any similar issues relating to other prospective LAs will be dealt with on a case by case basis in future as required. The Impact Assessment also covers proposals relating to the functions of the SRA and CLC as ARs.
- 1.5 The LSB has the power to make recommendations to the Lord Chancellor under section 69 of the LSA 2007. Under that section the Lord Chancellor may by order modify, or make other provision relating to, the functions of an approved regulator.<sup>1</sup> This can include modifying provisions made by or under any enactment, instrument or document.<sup>2</sup>
- 1.6 This type of power enables primary legislation to be amended or repealed by secondary legislation with or without further Parliamentary scrutiny. Any order made by the Lord Chancellor under section 69 of the LSA 2007 must be made by Statutory Instrument under the affirmative procedure, i.e. approved by both the House of Commons and the House of Lords before becoming law. Making the required changes under section 69 is the method discussed in this Impact Assessment.

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<sup>1</sup> LSA 2007 s69(1).

<sup>2</sup> LSA 2007 s69(6).

## **Problem under consideration**

- 1.7 The problem is that in some instances the LSA 2007, and the other legislation under which the SRA and the CLC operate, do not provide sufficient powers to the SRA and the CLC to ensure they would be able to regulate appropriately ABS businesses in their function as LAs. There are also some inefficiencies in the way existing legal services providers are regulated. There are six proposed changes, which are discussed in turn below.

### ***(a) Giving the SRA power to charge periodic fees to recognised bodies***

- 1.8 This provision allows the SRA to make rules requiring firms of solicitors to pay periodic fees. At present section 9 of the Administration of Justice Act 1985, which allows the SRA to regulate entities as well as individuals, only allows the SRA to require fees to be paid where they accompany an application for an annual practising certificate. This provision allows the payment of fees without such an application and will allow the SRA to authorise solicitors' firms on an indefinite basis (as it intends to do for ABS) whilst retaining the ability to charge firms an annual fee. This is intended to make the SRA more efficient and effective allowing it to operate a single system of regulation across both types of bodies.

### ***(b) Enabling the CLC to issue licenses for indefinite periods***

- 1.9 Currently, the CLC can only issue licenses to conveyancers that are time limited. Licenses are typically given for 12 months. Having to issue licenses periodically is considered to be an inefficient use of CLC resources, and imposes unnecessary administrative costs on businesses. This is also inconsistent with the position which will exist if the CLC becomes an LA since ABS can be authorised for an indefinite period.
- 1.10 The proposal is to enable the CLC to issue licenses to licensed conveyancers which are not time limited. This will ensure existing legal services providers and ABS businesses can both be issued with indefinite licenses by the CLC.

### ***(c) Recovery of investigation costs***

- 1.11 Under the current rules as set out in the LSA 2007, the cost of all investigations made by the SRA and CLC in their capacity as LAs would be spread across all regulated ABS businesses whether or not they (or their employees) are ultimately subject to disciplinary action as a result of those investigations. This is considered unfair and may not provide a sufficient deterrent to non-compliance.
- 1.12 The proposal is to allow the SRA and CLC to recover the cost of investigations that lead to disciplinary action against licensed bodies or their managers or employees directly from those licensed bodies. This mirrors the current powers that the SRA has regarding non-ABS firms. It is not expected that this power would be used frequently.

### ***(d) Extending the scope of the SRA compensation fund***

- 1.13 The compensation fund administered by the SRA provides compensation for consumers affected by solicitor fraud. The statutory basis of the current compensation fund for traditional law firms means that it cannot be used to provide protection for consumers who use ABS. Having compensation arrangements for ABS consumers is a legal requirement and is necessary in order to provide sufficient consumer protection throughout the legal services market. Setting up a separate compensation fund for ABS is not considered practical at this time as it would require large start-up costs and would involve additional complexity to manage and administer.
- 1.14 The proposal is therefore to enable the existing compensation fund to cover the consumers of ABS businesses in addition to existing legal services providers. ABS businesses would be required to contribute to the fund in the same way as existing businesses.
- 1.15 The proposal contains a sunset clause ending on 31/12/2012. The SRA is currently conducting a wide-ranging review of its compensation fund arrangements which should mean that by 2013 the

appropriate permanent and effective measures will be in place for both ABS and non-ABS businesses.

*(e) Enabling grants to be made out of CLC compensation fund for other regulated entities*

- 1.16 The proposed change relates to widening the remit of compensation grants to give the CLC the power to make grants out of its compensation fund to all legal services it regulates. Currently licensed conveyancers can only provide conveyancing and probate services. The CLC has applied to be allowed to regulate its members in the conduct of litigation and the exercise of rights of audience. The provisions of the Order are necessary to allow it to protect consumers by making suitable compensation arrangements if its application for wider regulatory powers is successful.

*(f) Constitution of the CLC*

- 1.17 The proposed change makes amendments to the constitution of the CLC. The proposed amendment changes the balance of membership of the CLC so that there will be a lay majority on the CLC. This is consistent with what is considered to be best regulatory practice and is in line with the LSB's internal governance rules for approved regulators. It also makes two important changes to the definitions of who may be appointed in each category.
- 1.18 The amendment changes the definition of 'lay member' so that lawyers who are not licensed conveyancers will no longer be eligible for appointment to the CLC in that category. It also allows any lawyer (previously only licensed conveyancers) who practices in a business regulated by the CLC to be appointed as a lawyer member of the CLC. The amendments also remove the requirement that two people on the CLC Council are appointed specifically to represent the consumer interest. This is to allow the CLC more flexibility in the range of interests which are represented in its lay membership, although consumer interest is included in the CLC Board's rules. These amendments are intended to make the CLC a more effective regulator by allowing it to comply more effectively with best regulatory practice and the regulatory objectives set out in section 1 of the 2007 Act.

**Economic rationale**

- 1.19 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).
- 1.20 There are a number of elements covered by the proposed section 69 order. The intention of the SRA and CLC to issue indefinite licenses and collect periodic fees would be justified on efficiency grounds. The proposals should reduce the resources required to manage license provision and fee collection and should also reduce the administrative burden placed on businesses. However, the threat of license non-renewal may act as a deterrent against non-compliance. The proposals would therefore be justified on the assumption that compliance by businesses does not fall significantly as a result, which could lead to worse consumer outcomes.
- 1.21 The proposal to focus the recovery of investigation costs would be justified on efficiency and equity grounds. The proposal may lead to an increased deterrent effect, which may generate net efficiency benefits. The proposal may also generate equity benefits if investigation costs being focussed on guilty parties is seen as a fairer outcome by society. The justification hinges on the assumption that the monitoring and enforcement activities of the SRA would be unchanged as a result of the proposal.
- 1.22 Extending the SRA compensation fund would be justified on equity and efficiency grounds. Setting up a compensation fund for ABS clients would enable the net benefits of ABS to be realised in relation to the services regulated by the SRA. More generally, setting up the compensation fund would provide additional consumer protection which may be justified on equity grounds. It would also ensure ABS and existing providers would be subject to the same regulatory requirements. The

justification hinges on the assumption that the appropriate level of contributions by ABS businesses can be calculated and collected.

- 1.23 Similarly, by extending the CLC compensation fund the proposal would be justified on equity grounds if there were societal benefits associated with increasing protection for the consumers of legal services, assuming these benefits were greater than any additional regulatory costs resulting from the proposal. The justification hinges on the assumption that the appropriate level of additional contributions can be calculated and collected.

## Policy Objectives

- 1.24 The LSB's approach is that, wherever possible, changes should be made through existing regulatory arrangements or licensing rules. However, for the issues covered in the proposed order, that approach is not considered to provide sufficient certainty to either ABS businesses or LAs. The LSB consultation paper 'Section 69 Orders: modification of the functions of the Solicitors Regulation Authority and the Council for Licensed Conveyancers' (2010) sets out the proposals and issues in more detail.
- 1.25 The main policy objective is to ensure that consumers of all legal service providers benefit from an equal level of protection whoever is providing those services and on whatever basis. Further objectives include that the overall regulatory framework for legal services should be efficient, and that regulatory powers have a firm statutory footing. This should provide assurance for those being regulated.

## Affected stakeholder groups, organisations and sectors

- 1.26 The following individuals/sectors are likely to be affected by the proposal:
- *The LSB:* The LSB would have to devote some resource to making any possible changes under a section 69 order in consultation with the affected ARs and other stakeholders.
  - *The SRA and CLC:* Would be directly affected as the proposed changes relate to their regulatory powers and internal processes. The proposals should enable them to be more efficient in carrying out their regulatory roles.
  - *Potential ABS businesses:* ABS would be affected as the proposals relate to the way in which ABS activities will be regulated, and the interaction between ABS businesses and their regulators.
  - *Existing businesses providing legal services:* Existing businesses would be affected as they are likely to operate in the same markets as ABS businesses, and the proposals seek to ensure that consumer protection is consistent across the entire legal services sector. Some proposals also relate directly to existing legal services providers.
  - *Consumers of legal services:* Consumers would be affected as the proposals relate to the levels of consumer protection provided, and to regulatory costs which may ultimately be passed on to consumers.
  - *Justice system:* There may be justice system impacts if the proposals result in changes to the compliance of legal services providers with the relevant regulations.

## 2. Costs and benefits

- 2.1 This Impact Assessment identifies 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 two options. The costs and benefits of Option 1 is compared to the do nothing option (Option 0). 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.

### Option 0: Base case (do nothing)



- 2.2 Under the do nothing option, the SRA would be unable to collect annual fees from existing legal service providers without also renewing authorisations on an annual basis, and the CLC would only be able to issue licenses that were time limited. In relation to the introduction of ABS investigation costs would be borne by all regulated ABS businesses. A separate SRA compensation fund would have to be set up for customers of ABS businesses as the LSA 2007 specifies that having a compensation fund for ABS consumers is legally required. Under the base case, the CLC compensation fund would not be extended to cover other regulated entities within its remit, potentially causing consumer detriment in the form of limited coverage.
- 2.3 The introduction section above provides further background information on the base case in relation to each of the proposed changes.
- 2.4 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: Section 69 order: Modification of the functions of the SRA and CLC**

- 2.5 This Impact Assessment covers six elements that would be changed within the section 69 order. As each element of the overall package would have a different set of impacts, they are analysed in turn below. However, the overall option relates to implementing the package as a whole. Further, the proposed changes need legislation to be effective. The only mechanism considered feasible is to implement the changes through a section 69 order.
- 2.6 The proposal is within the scope of 'One In One Out' (OIOO). It is unclear whether the net impact of the overall package would be considered an 'in' or 'out', although the overall impact is not expected to be significant.

#### **(a) Giving the SRA power to charge periodic fees to recognised bodies**

##### **Description**

- 2.7 The SRA currently has an annual licence renewal process for recognised bodies (existing legal services providers) in order to collect its fees and information. The proposal would allow the collection of periodic fees without a requirement for an annual renewal process. As a result, licences would no longer be renewed annually. ABS businesses will not be subject to an annual renewal process if they are regulated by the SRA as a licensing authority.

##### **Costs**

###### **SRA**

- 2.8 The SRA would face some one off adjustment costs as a result of the proposal, which would include IT and other costs associated with developing and moving to a new fee collection system. There may also be a set of further transitional costs associated with staff training, and explaining the new process to regulated businesses.

###### **Consumers of legal services**

- 2.9 It is possible that the removal of the annual licensing requirement could weaken consumer protection. This could happen if the threat of non-renewal acted as an additional deterrent against poor standards of behaviour by some legal services providers. The removal of this enforcement tool could weaken the incentives for some providers to maintain acceptable standards of behaviour. However, it is not expected that the proposal would significantly weaken consumer protection.

##### **Benefits**

###### **SRA**

- 2.10 The SRA would benefit from the proposal on an ongoing basis, as they would no longer need to undertake an annual license renewal process to collect fees. This is expected to lower SRA costs, leading to a more efficient SRA fee collection process.
- 2.11 There may also be an administrative efficiency benefit from not having to run different systems for ABS businesses and existing providers.

- 2.12 It is assumed that not having an annual licence renewal would have no impact on the overall compliance of businesses with SRA regulations. Nor would it have any negative impact on the amount of monitoring and compliance activities required by the SRA.

#### *Existing legal services providers*

- 2.13 Existing legal services providers would also benefit as they would no longer be subject to an annual licence renewal process. This would represent a reduction in the administrative burdens placed on existing legal services providers.
- 2.14 Further, in the absence of the proposal, ABS businesses may have a competitive advantage given they would not be subject to annual licence renewal. The proposal should therefore ensure that ABS and existing legal services providers are subject to the same regulatory rules and associated administrative burdens in relation to licence renewal. This should help ensure a level playing field in the wider legal services market, and would represent a benefit for existing legal services providers compared to the base case.

#### *Consumers of legal services*

- 2.15 Any reduction in the administrative burden placed on businesses as a result of the proposal would reduce the cost of providing those services, which may benefit the consumers of legal services if these cost reductions are passed on.

#### *Society*

- 2.16 The proposal may provide benefits for society if it improves the efficiency of the regulatory system, and ensures a level regulatory playing field in the legal services market. This might relate to the use of resources being more in line with society's preferences.

#### **Assumptions**

- 2.17 Assumed that the level of fees collected overall would be unchanged, as would the point in time at which fees are collected.
- 2.18 Assumed there would be no change in compliance of regulated businesses as a result of the proposal. This suggests there should be no change in compliance and enforcement activities (and associated costs) for the SRA, and no impact on the justice system.
- 2.19 Assumed there would be no other change in SRA activity as a result of moving to periodic fees and licences.
- 2.20 Assumed there would be no significant impact on the number of legal services providers regulated by the SRA, on the propensity of existing providers to become ABS businesses, or on the take-up of ABS.

### **(b) Enabling the CLC to issue licenses for indefinite periods**

#### **Description**

- 2.21 Currently, the CLC can only issue licences to existing legal services providers that are time limited. Licences are typically given for 12 months. The proposal is to enable the CLC to issue licences to licensed conveyancers which are not time limited. This will ensure consistency with ABS businesses, which the CLC will be able to issue with indefinite licences.

#### **Costs**

##### *CLC*

- 2.22 The CLC would face the same costs as the SRA as described in Option 1(a) above.

##### *Consumers of legal services*

- 2.23 Consumers would face the same costs as described in Option 1(a) above.

#### **Benefits**

##### *CLC*

- 2.24 The benefits described in Option 1(a) for the SRA would under this option apply to the CLC.

##### *Existing legal services providers*

- 2.25 Existing legal services providers regulated by the CLC would benefit as set out for existing providers regulated by the SRA in Option 1(a).

### *Consumers of legal services*

- 2.26 Consumers would face the same benefits as described in Option 1(a).

### *Society*

- 2.27 Society would benefit as set out in Option 1(a).

### **Assumptions**

- 2.28 Assumed there would be no change in compliance of regulated businesses as a result of the proposal. This suggests there should be no change in compliance and enforcement activities (and associated costs) for the CLC, and no impact on the justice system.
- 2.29 Assumed there would be no other change in CLC activity as a result of moving to indefinite licences.
- 2.30 Assumed there would be no significant impact on the number of legal services providers regulated by the CLC, or on the propensity of existing providers to become ABS businesses, or on the take-up of ABS.

## **(c) Recovery of investigation costs**

### **Description**

- 2.31 The proposal would allow the SRA and CLC to recover the cost of investigations that lead to disciplinary action against ABS businesses or their managers or employees directly from those ABS businesses. This mirrors the current powers that the SRA has regarding non-ABS firms. This would relate to investigations where ABS businesses are found to be non-compliant only; investigations that conclude an ABS business is compliant would be funded by all ABS businesses as part of their annual licence fees.

### **Costs**

#### *ABS businesses*

- 2.32 Compared to the base case, any ABS business found in breach of regulations following an investigation would be worse off, as they would be liable for investigation costs, which could be significant. It is assumed that any additional investigation costs would be added to the relevant punishments, which would remain unchanged as a result of the proposal.
- 2.33 In accordance with established Impact Assessment methodology, this Impact Assessment does not count the costs incurred by non-compliant bodies or persons. Nevertheless these costs are identified here for the sake of completeness.
- 2.34 The frequency with which investigation costs would be charged is unknown, as it depends on the investigation activities of the SRA and CLC and on the compliance of ABS businesses. The amount of investigation activity undertaken is assumed not to be influenced by the source of investigation funding, and hence there is no expected change to overall investigation costs.
- 2.35 ABS businesses would face additional costs associated with investigations if they are found to be non-compliant, which is in practice equivalent to an increased financial penalty being levied for non-compliance. In response to these potential additional costs, all ABS businesses may therefore face additional costs associated with ensuring they have adequate compliance systems in place.

#### *SRA and CLC*

- 2.36 It is assumed that the proposal would have no impact on the ability of the SRA or CLC to collect income to fund investigations. There is a risk that this may be more difficult if collection is focussed on non-compliant ABS businesses. It is also assumed that the amount of investigation work undertaken would remain unchanged.

#### *Consumers of legal services*

- 2.37 Any regulatory costs imposed on businesses would ultimately be passed on to consumers. Any additional costs related to ensuring compliance with the relevant regulations as a result of the proposal may therefore be passed on to the consumers of legal services provided by ABS businesses.

## Benefits

### *ABS businesses*

2.38 The proposal would mean compliant ABS businesses would bear no costs associated with investigations when an ABS business is found to be non-compliant. Currently, all ABS businesses would share investigation costs through the annual licence fee. Based on the assumptions made, the proposal should lead to a reduction in the annual licence fee, which would benefit all ABS businesses.

### *Consumers of legal services*

2.39 The consumers of legal services would benefit from the proposal if it provides an additional deterrent effect and thus improves the compliance of ABS businesses. Consumers would benefit directly in cases where non compliance was deterred, but more generally consumers may benefit from increased confidence in the regulatory system.

2.40 Further, any net reduction in costs for ABS businesses as a result of the proposal may benefit the consumers of legal services if these cost reductions are passed on by ABS businesses. However, the overall impact on ABS businesses, and hence on consumers, is unclear.

### *Existing legal services providers*

2.41 For legal services providers regulated by the SRA, the proposal would benefit existing providers as it would ensure the same regulatory powers were in place in relation to ABS businesses compared to existing providers. This would ensure all providers regulated by the SRA were subject to the same regulatory oversight, which would provide a level regulatory playing field.

### *Society*

2.42 The proposal may provide benefits for society as it would ensure that the cost of investigations is focussed on guilty parties, which may be seen as a fairer outcome from society's perspective. Society may also benefit if the proposal leads to a greater level of compliance by ABS businesses.

## Assumptions

2.43 Assumed that allowing the SRA and CLC to recover the cost of investigations from guilty parties would have no impact on the overall amount of investigation work done per case, and no change on the number of investigations undertaken. This is a strong assumption.

2.44 Assumed that the proposal would have no impact on investigation outcomes, particularly that the probability of being found in breach of the regulations is unchanged. This is a strong assumption.

2.45 Assumed there would be no change in the number of appeals following investigation rulings, and hence no impact on the justice system.

2.46 Assumed that the proposal would have no impact on any punishments given for non-compliance i.e. that punishments would be determined separately to any investigation costs that would also be imposed.

2.47 Assumed that the proposal would have no impact on the ability of the SRA or CLC to collect income to fund investigations. There is a risk that this may be more difficult if collection is focussed on non-compliant ABS businesses.

2.48 Assumed that the proposal would have no impact on the propensity of existing providers to become ABS businesses, or otherwise on the take-up of ABS.

## **(d) Extending the scope of the SRA compensation fund**

### **Description**

2.49 The proposal is to enable the existing SRA compensation fund that covers consumers of existing legal services providers to cover the consumers of ABS businesses. ABS businesses would be required to contribute to the fund in the same way as existing businesses. Having compensation arrangements for ABS is a legal requirement, as set out in the LSA 2007.<sup>3</sup> The base case of 'do nothing' is therefore presented as a hypothetical option only.

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<sup>3</sup> LSA s.83 (5)(e)

- 2.50 The proposal would have a sunset clause ending on 31/12/2012. The SRA is currently conducting a wide-ranging review of its compensation fund arrangements which should mean that by 2013 the appropriate permanent and effective measures will be in place for both ABS and non-ABS businesses.

## **Costs**

### **SRA**

- 2.51 The SRA would face some one off adjustment costs associated with extending the scope of the compensation fund to include ABS businesses. These costs might relate to any necessary IT changes, staff training, and administrative costs associated with extending the scheme. On an ongoing basis, there would be additional costs associated with the compensation fund covering a larger volume of providers and consumers.

### **ABS businesses**

- 2.52 ABS businesses would be required to contribute to the compensation fund. The proposal would therefore involve the financial cost of contributing to the fund, plus any administrative costs associated with making contributions to the fund. It is assumed that an appropriate level of contributions can be calculated and collected, which may be a strong assumption.

### **Consumers of legal services**

- 2.53 Regulatory costs, including contributions to the compensation fund, may ultimately be passed on to consumers in the form of higher prices. ABS contributions to the compensation fund may therefore be paid for by ABS consumers.
- 2.54 The existence of a compensation fund may also provide consumers with less of an incentive to select the most appropriate legal services provider and to manage them effectively. This should be regarded as a potential behavioural impact.

### **LSA 2007 Part 5 costs**

- 2.55 Compared to the base case, the proposal would enable ABS businesses to undertake legal services regulated by the SRA. The proposal would therefore enable the costs of ABS to be realised in relation to the services regulated by the SRA.

## **Benefits**

### **Consumers of legal services**

- 2.56 Consumers of legal services provided by ABS businesses would benefit from the consumer protection offered by the existence of the compensation fund.

### **Society**

- 2.57 The proposal may lead to increased consumer confidence in the legal services market, which may provide economic welfare gains for society. Further, providing consumers of ABS businesses with the protection of the compensation fund may be seen as fairer from society's perspective.

### **LSA 2007 Part 5 benefits**

- 2.58 Compared to the base case, the proposal would enable ABS businesses to undertake legal services regulated by the SRA. The proposal would therefore enable the benefits of ABS to be realised in relation to the services regulated by the SRA.

## **Assumptions**

- 2.59 A key risk is that the level of additional payouts from the compensation fund is unknown, and hence the required level of contributions are unknown. The strong assumption is made that the appropriate level of additional funding will be collected to cover payouts.
- 2.60 Assumed that the SRA will be able to collect sufficient contributions to the fund from ABS businesses and that ABS businesses comply with the requirement to contribute to the fund.
- 2.61 Assumed compensation awards for clients of ABS firms are likely to be similar to awards to clients of comparable non-ABS firms and that non-compliance of ABS businesses will be similar to non-compliance of existing providers.

- 2.62 Assumed that setting up the compensation fund would have no impact on the compliance of ABS businesses or existing legal services providers to wider SRA regulations, on the propensity of existing providers to become ABS businesses, or otherwise on the take-up of ABS.
- 2.63 Assumed that the proposal would have no significant impact on the monitoring and enforcement activities of the SRA, and consequently assumed it would have no impacts on the justice system.

## **(e) Enabling grants to be made out of the CLC compensation fund for other regulated entities**

### **Description**

- 2.64 The proposal would widen the remit of compensation grants to give the CLC the power to make grants out of its compensation fund to all legal services providers it regulates. Currently licensed conveyancers can only provide conveyancing and probate services. The CLC has applied to be allowed to regulate its members in the conduct of litigation and the exercise of rights of audience. The provisions of the Order are necessary to allow it to protect consumers by making suitable compensation arrangements if its application for wider regulatory powers is successful.
- 2.65 If this amendment is not made, the level of protection afforded to clients of licensed conveyancers in respect of the additional services within the regulatory oversight of the CLC would be determined by the particular legal services provided.
- 2.66 This proposal relates to existing legal services providers only. Arrangements for a compensation fund for the clients of ABS businesses regulated by the CLC are outside the scope of this Impact Assessment.

### **Costs**

#### **CLC**

- 2.67 The CLC would face some one off adjustment costs associated with extending the scope of the compensation fund to include the additional regulated services. These costs might relate to any necessary IT changes, staff training, and administrative costs associated with extending the scheme. On an ongoing basis, there would be additional costs associated with the compensation fund covering a larger volume of providers and consumers. These costs are not expected to be significant.

#### **Existing legal services providers**

- 2.68 Providers offering the additional services covered by the compensation fund would be required to contribute to it. The proposal would therefore involve the financial cost of contributing to the fund, plus any administrative costs associated with making contributions to the fund. It is assumed that an appropriate level of contributions can be calculated and collected, which may be a strong assumption.

#### **Consumers of legal services**

- 2.69 All regulatory costs, including contributions to the compensation fund, will ultimately be passed on to consumers in the form of higher prices. Any additional contributions to the compensation fund will therefore be paid for by the consumers of legal services provided.

### **Benefits**

#### **Consumers of legal services**

- 2.70 Consumers of the additional legal services covered by the compensation fund would benefit from an increased level of consumer protection. It is assumed that the level of consumer protection under the proposal would be greater than the level of protection in the base case.

#### **Society**

- 2.71 The proposal may lead to increased consumer confidence in the legal services market, which may provide economic welfare gains for society. Further, providing consumers of the additional services with the protection of the compensation fund may be seen as fairer from society's perspective.

### **Assumptions**

- 2.72 A key risk is that the level of additional payouts from the compensation fund is unknown, and hence the required level of contributions are unknown. The strong assumption is made that the appropriate level of additional funding will be collected to cover payouts.

- 2.73 Assumed that the protection offered under the proposal is greater than the level of protection in the base case. This base case level of protection will depend on the specific services being offered.
- 2.74 Assumed that any monitoring or admin costs for the CLC in enabling grants to be made out of the compensation fund would be low.
- 2.75 Assumed that existing providers would comply with the requirement to contribute to the fund.
- 2.76 Assumed compensation awards for clients of the additional services would be similar to current payouts from the fund, and that non-compliance with regulations relating to the additional activities would be similar to non-compliance of activities already covered by the fund.
- 2.77 Assumed that the proposal would have no significant impact on the monitoring and enforcement activities of the CLC, and consequently assumed it would have no impacts on the justice system.

## **(f) Constitution of the CLC**

### **Description**

- 2.78 The aim of this provision is to make amendments to the constitution of the CLC and to change the balance of membership of the CLC so that there will be a lay majority on the CLC Council. This is consistent with what is considered to be best regulatory practice. Also, this proposal changes the definition of 'lay member' so that lawyers who are not licensed conveyancers will no longer be eligible for appointment to the Council in that category. It also allows any lawyer (previously only licensed conveyancers) who practices in a business regulated by the CLC to be appointed as a lawyer member of the CLC Council. The amendments also remove the requirement that two people on the CLC are appointed specifically to represent consumer interest, although consumer interest is included in the CLC Board's rules. These changes are intended to make the CLC a more effective regulator by allowing it to comply more effectively with best regulatory practice and the regulatory objectives set out in section 1 of the LSA 2007.

### **Costs**

- 2.79 Any one off and ongoing costs under this option are likely to be negligible.

### **Benefits**

- 2.80 The benefits resulting from this change are difficult to quantify. However, the purposes of the changes are to ensure greater flexibility in decision making among the membership of the CLC. It is intended that greater flexibility in decision making should result in the CLC being a more effective and efficient regulator and able to more fully embrace best regulatory practice. In terms of wider benefits, this should instil greater confidence in the regulatory capability of the CLC and its decision making processes, thereby improving the confidence of regulated firms in doing business in the market place.

### **Assumptions**

- 2.81 Assumed that regulated firms are aware of the changes in the composition of the CLC.
- 2.82 Assumed that a lay majority on the CLC will bring a broader set of experiences and skills to bear in decision making which can improve the regulatory capacity of the CLC.

## **3. Enforcement and Implementation**

- 3.1 The commencement provisions in Article 2 of the Order set out the timing for the coming into force of the different provisions. The LSB will enforce the proposals.

## **4. Specific Impact Tests**

### *Equality Impact Assessment*

- 4.1 After carrying out an initial equality impact assessment screening we do not believe that the proposal will affect any sector of society more than another and we do not believe that there are any significant age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation issues involved in these proposals. After

carrying out an initial screening EIA we concluded a full Equalities Impact Assessment was not required.

#### *Competition Assessment*

- 4.2 The proposals are not expected to have a negative effect on competition. Extending the SRA compensation fund to cover ABS will enable ABS businesses to provide services regulated by the SRA, and ensure that ABS and existing providers regulated by the SRA are subject to the same regulatory requirements in relation to consumer compensation.

#### *Small Firms Impact Test*

- 4.3 The proposal is not expected to disproportionately impact small firms.

#### *Environmental Impacts*

- 4.4 The proposal is not expected to have any significant environmental impacts.

#### *Health Impact Assessment*

- 4.5 We do not anticipate any significant impact on human health or the demand for health and social care services in the UK as a consequence of the proposal.

#### *Human Rights*

- 4.6 The proposal in this Impact Assessment have been assessed against a Human Rights screening to ensure it is compliant with the Human Rights Act 1988.

#### *Justice Impact Test*

- 4.7 Justice impacts have been considered and as the proposal is not expected to increase the volume of cases that will go through the court system, it is not expected that the proposal would have a significant justice impact.

#### *Rural Proofing*

- 4.8 Rural proofing impacts have been considered and there is not expected to be a significant rural impact. The proposed regulation will be enforced throughout England and Wales and does not have a geographical bias.

#### *Sustainable Development*

- 4.9 There are no expected sustainable development impacts as a result of the proposal.



## Annex 1: Post Implementation Review (PIR) Plan

<b>Basis of the review:</b> N/A
<b>Review objective:</b> N/A
<b>Review approach and rationale:</b> N/A
<b>Baseline:</b> N/A
<b>Success criteria:</b> N/A
<b>Monitoring information arrangements:</b> N/A
<b>Reasons for not planning a PIR:</b> As the proposed order entails changes to legislation that modify some of the functions of the SRA and CLC as LAs, 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 from ARs, be reviewing regulatory arrangements and functions of the SRA and CLC on an ongoing basis.