

## Summary note for Part 5 – ABS commencement Impact Assessment

### Description Policy

At present there are restrictions placed on who can own and run law firms and the types of services they provide. The policy aims to open up the legal services market to allow non-lawyers to part take in ownership of law firms, and be able to provide a range of legal and non legal services. These will be known as ABS (Alternative Business Structure) firms.

### Economic Rationale

The rationale for government intervention relates to both the efficiency and equity arguments. De-restricting ownership of legal firms allows more firms to enter the market, whilst allowing the incumbent firms to find external sources of investment. The induced effect should allow more competition between firms, leading them to be more efficient and potentially offering lower prices for legal services. Lower prices will benefit consumers directly by improving access to legal services. Furthermore, increased competition is likely to lead to new and innovative methods of delivering legal services, further benefiting consumers, and improving access to legal services. De-restricting the range of products and services that legal entities can provide may further benefit society, allowing new and innovative products to enter the market, such as legal services on finance.

### Options

**Option 0** – the do nothing option, where commencement Part 5 of the Act does not take place and ABS do not operate.

**Option 1** – Enacting Part 5 of the Act, allowing ABS to operate in the market, the fundamentals of this option include, de-restricting who can own legal firms, and the type of services they can provide. This is the preferred option.

### Costs and Benefits

#### Option 1

Aggregate Costs and Benefits are likely to be determined the level of ABS take up and the range of business models utilised by the firms as a result of ABS. This is unknown; therefore the costs and benefits have not been monetised.

The identified costs are as follows:

- The regulator may experience an increase in costs through more regulatory requirements for more complex ABS firms. Regulated firms ultimately cover the costs of operating the regulatory framework.
- A cost will be imposed on ABS firms from complying with regulator requirements.
- Existing uncompetitive law firms may lose out from increased competition. This may include reduced profit margins, merging with other firms to compete or ceased trading in the long-run.

The identified benefits are as follows:

- Increased competition which may lead to lower priced legal services for the consumer, to increased innovation in product and service design and delivery, and to increased productive efficiency.
- Improved access to legal services through alternative delivery methods, such as telephone and internet.
- Existing firms may benefit through external investment.

<b>Title:</b> <b>Impact assessment: commencement of Part 5 of the Legal Services Act 2007</b>  <b>Lead department or agency:</b> Ministry of Justice (MoJ) <b>Other departments or agencies:</b> Legal Services Board (LSB)	<b>Impact Assessment (IA)</b>
	<b>IA No:</b> MOJ 106
	<b>Date:</b> 15/07/2011
	<b>Stage:</b> Final implementation
	<b>Source of intervention:</b> Domestic
	<b>Type of measure:</b> Primary legislation
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## Summary: Intervention and Options

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

The problem that currently exists in many parts of the legal services market is that the restrictions placed by law on who can own and run law firms and the types of services that law firms can provide to consumers limits competition and choice compared to a more liberalised market. Government intervention is necessary to commence those parts of the Legal Services Act 2007 (the Act) which will enable greater consumer choice, through allowing more flexibility in the provision of legal services by removing disproportionate restrictions on business structures, allowing lawyers and non-lawyers to run businesses together for the first time, and enabling services to develop in new, consumer-friendly ways.

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

The policy objective is to liberalise the legal services market by removing regulatory restrictions and allowing Alternative Business Structures (ABS) from October 2011. ABS will be licensed by Approved Regulators (such as the Law Society/Solicitors Regulation Authority (SRA) and the Council for Licensed Conveyancers (CLC)) designated as Licensing Authorities. The intended effects on legal services are that they are better targeted to meet consumer needs, more affordable for more consumers, and provided in more innovative and efficient ways. The intended effects on consumers are that they are more confident in accessing legal services and can make better informed decisions. Another intended effect is that fair and efficient market structures are promoted through appropriate regulation.

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

Option 0: Do nothing

Option 1: Commence Part 5 of the Act in October 2011

Option 1 is the preferred option. Commencing Part 5 of the Act will lift restrictions on lawyers and non-lawyers working together and allow more flexibility in the way in which legal and non legal services are provided. This should encourage more choice for consumers and greater competition within the legal services sector.

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

It will be reviewed  
3 years after  
commencement

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

Yes

**Ministerial Sign-off** For final 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: Jonathon Djanogly ..... Date: 05/09/2011 .....

# Summary: Analysis and Evidence

# Policy Option 1

Description: Commencement of Part 5 of the Legal Services Act 2007

Price Base Year 2010	PV Base Year	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:

COSTS (£m)	Total (Constant Price)	Transition Years	Average (excl. Transition) (Constant Price)	Annual (Constant Price)	Total (Present Value)	Cost
Low	N/A	1	N/A			Optional
High						Optional
Best Estimate						

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

It is not possible to monetise any of the additional (marginal) costs associated with ABS regulation. This is because we do not know the numbers of future ABS that will be regulated. The cost of regulating ABS is likely to be slightly higher than the cost of regulating non-ABS firms, however costs incurred by regulators are likely to be recoverable through the licensing fee.

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

- Regulators may experience an increase in costs through more regulatory requirements for more complex ABS firms. Regulated firms ultimately cover the costs of operating the regulatory framework.
- ABS firms will incur costs of complying with regulator requirements.
- Existing uncompetitive law firms may lose out from increased competition. This may include reduced profit margins, merging with other firms to compete or ceased trading in the long-run.

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

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

The impact assessment does not monetise the benefits but provides qualitative description. This is because we do not know the numbers of future ABS firms. Benefits generally will accrue due to the positive effects of increased market competition which may lead to greater productive efficiencies and lower priced legal products. The impact on consumer welfare is anticipated to be positive, mainly arising due to greater competition and more targeted and affordable legal services.

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

Areas in which we would expect to see benefits are:

- Increased competition which may lead to lower priced legal services for the consumer, to increased innovation in product and service design and delivery, and to increased productive efficiency.
- Improved access to legal services through alternative delivery methods, such as telephone and internet.
- Existing firms may benefit through external investment.

### Key assumptions/sensitivities/risks

Discount rate (%)

- Projections of where costs may be incurred, whether they represent additional costs, and whether these are attributable solely to the introduction of ABS (as opposed to OFR) are indicative only.
- All firms are assumed to have knowledge of ABS and the changing regulatory environment. This includes smaller firms who may not have the capacity to convert to ABS status.
- No account is taken of future exogenous shocks which may affect take up of ABS.
- The costs and benefits are dependent upon the take-up of ABS which is currently unknown.

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

## Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?	Options				
From what date will the policy be implemented?	06/10/2011				
Which organisation(s) will enforce the policy?	LSB				
What is the annual change in enforcement cost (£m)?	No change in budget				
Does enforcement comply with Hampton principles?	Yes				
Does implementation go beyond minimum EU requirements?	N/A				
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)	Traded:		Non-traded:		
Does the proposal have an impact on competition?	Yes positive impact				
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
<b>Statutory equality duties</b> <sup>1</sup> <a href="#">Statutory Equality Duties Impact Test guidance</a>	Yes	10 and Annex 2
<b>Economic impacts</b>		
Competition <a href="#">Competition Assessment Impact Test guidance</a>	Yes	11
Small firms <a href="#">Small Firms Impact Test guidance</a>	Yes	12
<b>Environmental impacts</b>		
Greenhouse gas assessment <a href="#">Greenhouse Gas Assessment Impact Test guidance</a>	No	12
Wider environmental issues <a href="#">Wider Environmental Issues Impact Test guidance</a>	No	12
<b>Social impacts</b>		
Health and well-being <a href="#">Health and Well-being Impact Test guidance</a>	No	12
Human rights <a href="#">Human Rights Impact Test guidance</a>	No	12
Justice system <a href="#">Justice Impact Test guidance</a>	No	12
Rural proofing <a href="#">Rural Proofing Impact Test guidance</a>	No	12
<b>Sustainable development</b> <a href="#">Sustainable Development Impact Test guidance</a>	No	12

<sup>1</sup> 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> <a href="http://www.justice.gov.uk/publications/bills-and-acts/acts/legal-services-act-2007.htm">http://www.justice.gov.uk/publications/bills-and-acts/acts/legal-services-act-2007.htm</a>
2	
3	
4	

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# Evidence Base

## Introduction

### Background

1. The Legal Services Act 2007 (“the Act”) establishes a new regulatory framework for legal services. Key drivers for the reform of the regulatory framework in existence before 2007 include the need for:
  - a more effective and simplified regulatory network;
  - a more effective and independent complaints handling service;
  - more effective competition within the legal service market.
2. Since the Act received Royal Assent in October 2007, a rolling programme of commencement has been in operation to deliver the reforms. These have been carried out in stages to allow those affected to put in place the necessary arrangements to comply with the Act.
3. Stage 1 saw the establishment of a new oversight regulator for legal services, the **Legal Services Board (LSB)**. The Legal Services Board oversees the regulatory activities of the approved regulators (ARs), of which there are ten, ensuring that they comply with the regulatory objectives set out in the Act. The ARs are responsible for the day to day regulation, conduct and education of their members.
4. Stage 2 saw the establishment of the new independent complaints handling body, the **Office for Legal Complaints**, which is the first point of contact for consumers wishing to complain about authorised legal professionals.
5. Stage 3 is the full commencement of the **Alternative Business Structure (ABS)** regime in Part 5 of the Act and the subject of this updated impact assessment. Part 5 of the Act sets out the framework for permitting these structures to operate.
6. In order to become an ABS, entities will require a licence to operate. The licence is obtained from a Licensing Authority (LA) and will set out what services will be provided by the entity. In order to regulate ABS, ARs like the Law Society (through its independent regulatory body, the Solicitors Regulations Authority (SRA)) and the Council for Licensed Conveyancers (CLC) can be designated as LAs by Order by the Lord Chancellor, on the recommendation of the LSB.

### Current Situation

7. Some provisions were commenced in March 2010 to allow the LSB and ARs to consult on and put in place processes and procedures in advance of the new ABS regime. In March 2009, in preparation for the new ABS regime, provisions were commenced to allow an interim form of ABS known as Legal Disciplinary Practices (LDPs). These allow non-lawyers to own up to 25% of the entity. At the moment only the Law Society and the CLC regulate these types of entities. In August 2010, there were around 302 LDPs in operation.
8. The take up of LDPs may have been relatively low since the entities can only provide legal services rather than the wider services that will be allowed under ABS. In many cases the non-lawyers who became owners already worked within the entity for example Directors of Finance or Human Resources. Those entities which converted to LDPs have commented that it has allowed them to bring a wider range of skills into the market place and made them more dynamic entities.
9. The LSB is planning to undertake and then publish a survey showing what the current legal services market looks like. This baseline survey can then be used to assess what changes take place as a result of “deregulating” the legal services market.



## Problem under consideration

10. Without the implementation of Part 5 of the Act, there will continue to be restrictions placed on who can own and run law firms and the types of services that law firms can provide to consumers. The inflexibility of the arrangements stifles competition in the market to the detriment of legal services providers and consumers.

## Policy Objectives

11. The policy objectives are to encourage wider competition within the legal services market and provide greater and more informed choice for consumers. The Government hopes that ABS firms that contain a mixture of lawyers and non-lawyers could lead to the sharing of good management practice, innovation and efficiencies across the market enhancing competition among firms and potentially reducing the price of legal services.

## Economic Rationale

12. 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).
13. The rationale for enabling the implementation of ABS is based primarily on efficiency considerations. Allowing ABS should open the legal services market to greater competition and as a result should lead to firms to be more efficient with greater innovation, which in turn benefits society. The consumers of legal services may benefit directly in terms of lower prices and greater choice. This choice may be in the form of a greater range of services being provided, or in a way in which services are delivered e.g. an increased number of services being delivered over the phone or via the internet.
14. Linked to the efficiency argument is an equity argument for government intervention. The implementation of ABS may lead to an improvement in access to justice. In the presence of ABS, lower priced legal services may be provided allowing those groups that previously could not readily access legal aid, and did not have sufficient disposable income to spend on legal services, to gain better access to more affordable services. Furthermore, innovations in technology and service delivery can increase access to legal services by those who have previously found it difficult.

## Affected stakeholder groups, organisations and sectors

15. The following groups/sectors are likely to be affected by the proposals:
  - a. Current and new legal service providers, including ABS and current providers
  - b. The regulators and LAs such as the SRA and the CLC, LSB, and any appellate bodies.
  - c. Consumers of legal services and those involved in litigation

## Costs and benefits

16. This Impact Assessment identifies both monetised and non-monetised impacts on individuals, groups and businesses in the UK, with the aim of understanding what the overall impact to society might be from implementing these options. The costs and benefits of each option are compared to the do nothing option. Impact Assessments place a strong emphasis on valuing the costs and benefits in monetary terms (including estimating the value of goods and services that are not traded). However there are important aspects that cannot sensibly be monetised. These might include how the proposal impacts differently on particular groups of society or changes in equity and fairness, either positive or negative.
17. The costs and benefits are likely to be heavily influenced by two factors:

- a. The number of firms that enter the legal services market as ABS firms.
  - b. The different types of business models utilised by firms as a result of the new regime; where legal entities can have any mixture of lawyer and non-lawyer ownership, providing a range of legal and non-legal services.
18. Both of the above are uncertain therefore the costs and benefits cannot be fully quantified. Considering the absence of reliable and sufficient data to quantify the impact of the commencement of Part 5 of the Act on the legal services market, this impact assessment primarily analyses the qualitative effects.

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

19. Under this option, lawyers would continue to operate in traditional structures with ownership limited to legal professionals i.e. as sole practitioners; in partnership with other lawyers providing solely legal services; or in LDPs, but would not be able to provide a mixture of legal and non-legal services and/or seek external investment.
20. 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: Commence Part 5 of the Act in October 2011**

#### **Description**

21. This option initiates Part 5 of the Act, and thus the commencement of ABS operations within the legal service market, It is anticipated that commencement would take place on 6 October 2011 and that those ARs which have already applied (ie the Law Society and the CLC) would, assuming approval, be designated as LAs as soon as possible thereafter.

#### **Costs**

##### *Impact on the regulators*

22. ABS firms will be subject to a standard of regulation equivalent to that of traditional law firms to ensure that consumers are protected, however regulatory requirements will be proportionally more rigorous, depending on the complexity of ABS structures. This will lead to additional costs for the regulators. The additional costs for the SRA and CLC of regulating an ABS entity (as opposed to a traditional law firm) will include:
- a. Authorisation (fit and proper test). The Act requires that non-lawyer managers and owners of ABS should be subject to a “fit and proper test’ by regulators to ensure an appropriate level of consumer protection. This will include checks against criminal records, disciplinary action or any professional disqualification. Both the SRA and the CLC have estimated that similar checks for a non-lawyer LDP manager currently cost £250, although the cost of checking owners/managers of ABS firms is likely to be higher. Aggregate cost will be determined by take up rates for external ABS ownership, which is currently unquantifiable.
  - b. Corporate supervisory/corporate ownership. The Act requires each ABS to appoint both a lawyer Head of Legal Practice (HOLP) and a (possibly non-lawyer) Head of Finance and Administration (HOFA) to ensure compliance with the ABS’s licence and accounting rules, respectively, and to report any breach. The SRA and CLC face costs in relation to monitoring, information gathering and screening of all firms’ compliance with the Head of Legal Practice (HOLP) and Head of Finance and Administration (HOFA) requirements.
  - c. Complexity of the ABS and level of supervision. The complexity of ownership structures and the nature of activities carried out by an individual ABS could impact on the LA’s costs where there is a need for increased supervision or risk assessment. However, Outcomes Focused Regulation (OFR) is likely to enhance the capacity of both the SRA and CLC to deliver risk based regulation, allowing more effectively targeted spend for the



regulation of high risk firms. This may offset some of the additional cost regulating complex ABS firms.

23. At this stage it is not possible fully to quantify any additional costs. In any event, the LA's ABS regulatory costs would be recoverable from ABSs through the licensing fee.

24. In principle, the costs outlined above would also apply to other possible future LAs (in addition to the SRA and CLC). However, as the size of the possible regulated communities differs significantly, the proportion of resources which each LA may devote to ABS supervision may differ accordingly, as will the cost of appeals (depending on the number of appeals against each LA per annum).

### Providers

25. In general providers will incur costs of funding the regulatory system and costs of complying with regulatory requirements. The regulatory system costs would relate to licensing and policing the regulatory perimeter, monitoring, investigating and taking enforcement action.

26. There will be a cost to all ABS firms arising from the provision of information to the LA for risk assessment and monitoring purposes because of additional complexities. Whilst the total cost is unquantifiable due to the unknown number of ABS firms in the future, the SRA's estimate below – although preliminary – suggests that the average cost of compliance for an ABS firm might be below £2000 annually. It suggests that regulatory costs impact differently depending on the size of firm. It also takes into account that the compliance cost to ABS firms may be higher than for non-ABS firms because of their more complex ownership arrangements.

	Full sample	Small firms	Medium/large firms	Large firms
<b>Adjusted average<sup>2</sup></b>	<b>£1669</b>	£1368	£2077	£1350

27. SRA interviews with potential ABS firms suggest that an additional cost (not incurred by non-ABS firms) might arise from the production of a business plan to enter the ABS market and compliance with additional supervisory arrangements and information requests by the SRA. However, neither was perceived as a burden because business plans would be required for commercial reasons in any event, and there was a general acceptance that well prepared compliance plans would serve as an indication of professional competence.

28. The statutory requirement for each ABS to appoint both a HOLP and a HOFA will pose extra responsibility for these appointees, creating an extra cost burden. The SRA has, however, decided to extend the requirement for appointment of a HOLP/HOFA equivalent to all regulated entities, whether or not they are ABSs. Thus costs arising from these compliance functions will be placed on all firms. This is not the case for the CLC which proposes only to require ABS entities to appoint a HOLP/HOFA.

29. ABS firms will fund the set-up and operating costs to the relevant LA of the ABS appeals mechanism through the licence fee charged to the ABS firms. The two prospective LAs have decided to use different appeals mechanisms:

- The CLC will use the First-tier Tribunal to hear appeals arising from its decisions as an LA. The cost to the CLC of set-up and first-year operation is estimated by the Tribunals Service to be around £24,000 (assuming 5 appeals each year and involving two day hearings per appeal).
- The SRA is proposing to use the Solicitors Disciplinary Tribunal (SDT) which hears disciplinary cases against solicitors. The cost of establishing and operating the appeals mechanism in the SDT (for example training costs and members' sitting fees) is estimated to be £102,000 in the first year for 20 appeals each lasting two days; this includes set up costs. Thereafter, the annual operating costs are estimated to be around £86,000.

<sup>2</sup> SRA: *CBA: Outcomes Focused Regulation* (Nov. 2010).

30. Traditional firms are likely to face an increased level of competition as the result of the introduction of ABS firms. In order to stay competitive they may need to restructure their businesses, invest in more innovative products and services to keep market share. Furthermore there may be a reduction in the level of profitability for traditional firms if there is a reduction in the price, which may lead firms to reduce their margins in order to compete.
31. There is a possibility that some existing traditional firms may not be able to compete in the market with more diverse participants, and thus wind down businesses or merge with other firms in the medium to long term. The likelihood of this is dependent on the influx of new firms as a result of commencement of Part 5 of the Act.

### *Consumers*

32. There are no anticipated major increased costs for consumers in aggregate. This is because we assume that regulators will maintain standards for consumers and ensure that they are upheld in the face of market developments and increased competition.

### **Benefits**

#### *ABS firms*

33. Removal of ownership restrictions would act to lower barriers to entry in the market reducing transaction costs of entering the market for new firms. Lifting restrictive barriers that negatively impact on competition within the market and which confer advantages on incumbent firms, dampen efficient pricing signals and also weaken incentives to innovate are likely to have a positive impact on the market as whole.
34. Traditional law firms would also be able to become an ABS firm, allowing them to attract external investment which may lead to more innovation and market competition.
35. There may be an increase in total suppliers in the market place due to external entry, leading to a reduction in the potential for exercise of market power amongst relatively homogenous providers.
36. Overall over time there might be increased volume of business as a result of the removal of restrictive barriers, and possibly increased profitability. The LSB's forthcoming survey and baselining exercise should help gain a better understanding of these possible impacts.

#### *Consumers*

37. The introduction of ABS is likely to increase the level of competition, which may reduce the price of legal services; this may improve the overall access to justice for those who had previously not been eligible for legal aid and unable to afford legal services.
38. Consumers are also likely to benefit from an increased choice of products, which may be packaged with insurance and finance products, or other non-legal products.
39. More generally, the increased adoption of technologies which facilitate alternative ways to deliver legal services, such as phone and internet services, might be preferable for some consumers. It may also lower the cost of accessing legal services, especially for consumers located in remote areas, thus improving consumer welfare.

#### *Wider economic benefits*

40. The reduction of barriers and increase in competition should lead to the more efficient use of resources in future, generating wider economic benefits.

## One In One Out implications

41. The One In One Out implications of this proposal are considered to be broadly neutral or to generate an overall Out, due to the de-regulatory nature of this proposal. This is because of the reduced restrictions and barriers on who can own legal firms and the types of services that can be provided. As a result this allows a wider range of entities to participate in the legal services market and a wider variety of services to be offered to consumers. Over time it is possible that the volume of business may increase, as might business profitability.
42. There may be additional regulatory cost burdens, both in terms of the costs of operating the regulatory system and the costs to business of complying. However these are anticipated to be relatively small scale and to be outweighed by the benefits. It is not compulsory to form an ABS and it has been assumed that a firm would only become an ABS if this was in its commercial interests, i.e. if the business benefits of doing so outweighed any regulatory burdens. The regulation itself is designed to be proportionate, risk based and low burden, is designed to ensure that the market operates effectively and that consumers are safeguarded. It is also designed to ensure that consumer confidence is maintained in a market where information asymmetries and principal/agent relationships exist.

## Risks and assumptions

43. As explained, it is difficult to estimate what the take up of ABS will be in the future, and to what extent consolidation and new entry into the market will impact on overall market structure. It is also difficult to monetise in any meaningful way the way in which the provisions will impact differently on particular groups of society or changes in equity and fairness, either positive or negative.
44. The IA recognises that the Outcomes Focused Regulation (OFR), although closely associated with the implementation of ABS, is independent of it and will be introduced by the major approved regulators in any event. OFR will apply to all regulated entities, whether ABS or not. It has been assumed that OFR will increase the efficiency of regulation, therefore it is difficult to disaggregate the impact of OFR and therefore to apportion costs arising solely from the introduction of ABS.
45. This updated assessment undertakes a projected analysis of the additional costs associated with ABS regulation which accrue to both Licensing Authorities and individual ABS firms. However, any description of these costs will be indicative only and likely to change in the light of future reporting.
46. The qualitative analysis is based on the following assumptions:
  - Projections of where costs may be incurred, whether they represent additional costs, and whether these are attributable solely to the introduction of ABS (as opposed to OFR) are indicative only.
  - That all firms have knowledge of ABS and the changing regulatory environment. This includes smaller firms who may not have the capacity to convert to ABS status.
  - No account is taken of future exogenous shocks which may affect take up of ABS.

## Specific Impact Tests

### Equality impact assessment

47. The published accompanying Equality Impact Assessment (EIA) details the equality impacts.
48. Opening up the market to greater competition and lifting of barriers to external ownership may hasten existing trends toward consolidation, or loss, of small legal service providers. Although there are no direct impacts as a result of these changes, market consolidation may, in the short to medium term, negatively impact on diversity in terms of the supply of legal services. This is a function of concentration of BME practitioners in small firms which will potentially be more significantly affected by ABS commencement. However, the consolidation and exit of small providers does not necessarily reduce the career path of BME practitioners. New entrants and a range of partnership and business models may see increased numbers of BME lawyers pursuing different career paths

outside traditional areas of work in smaller firms. The introduction of ABS and other initiatives may assist in improving representation of a wider range of diversity groups in other types of providers.

49. Access to justice by marginalised groups and those who have not previously been reached by traditional service delivery is likely to improve in a more open and competitive market that permits differing business models, ownership arrangements, and more competitive pricing. In particular, those groups that cannot readily access legal aid but do not have sufficient disposable income to spend on legal services should benefit from more affordable services.
50. A more competitive market also will also have significant positive effects for large scale procurers of legal services (eg central government through the awarding of legal aid contracts) which will, in turn, improve access to justice for consumers who are among the most vulnerable and marginalised groups in society.
51. Similarly, a more competitive and contestable market will also have a positive impact on third sector organisations which procure services on the open market and will be able to maximise value for money and directly fund an increased volume of legal services for their activities.
52. Concern has been raised that the introduction of ABS will cause detriment to consumers who live a long way from existing legal services. The concern is premised on an assumption that the introduction of ABS will result in the closure of small rural/regional legal firms. However, it is not clear that under a medium or high take up of ABS there would be a substantial reduction in overall numbers of rural/regional firms, given the advantages these firms have in terms of the niche markets and competitive strategies which small firms can adopt. Also, lower barriers to entry into the legal services market may result in an aggregate expansion of legal firms which would act to mollify any localised negative effects of small firms exiting the market.
53. While there is a risk of market consolidation with the introduction of ABS, the consequential exit of under-performing firms is unlikely to continue over a prolonged period of time. It should also be noted that pressures toward greater innovation and lowering unit cost of routine legal work already exists in the legal services market and pre-dates the introduction of ABS. The reduction in numbers of high-cost, inefficient firms is therefore part of a longer term trend in the market.
54. The LSB has made clear that it expects ARs/LAs to monitor the various factors that influence access to justice across all regulated entities (ABS and non-ABS) and to work with the LSB to understand the dynamics and interaction of these factors. The LSB must include in its annual report how, in its opinion, the activities of LAs and ABSs have affected the regulatory objectives, including that of improving access to justice.

## Competition

55. The promotion of competition is generally perceived as the principal benefit of ABS introduction. Quantifying this benefit and determining where it accrues is difficult. However, it is possible to identify several key stakeholder groups for whom benefits would be realised. These include:
  - Private consumers of legal services;
  - Large procurers of legal services such as central government, local authorities and third sector organisations;
  - Providers of back office support and infrastructure for legal service providers;
  - New entrants seeking to offer legal services;
  - Equity investors;
  - Consumer websites and third party information providers;
  - Incumbent providers of legal services who embrace technology and new types of business structure.
56. The lifting of barriers to external ownership and investment will intensify competition as it opens the market up and creates the opportunity for more suppliers to move into the market and provide different types of legal services to consumers. This may enhance the incentive for vigorous competition. This, in turn, may lead to more capital and expertise in the market place, which may facilitate a more efficient allocation of resources (both capital and labour) and an expanded range in type and delivery of services. On the other hand, increased competition might drive some firms out

of the market and/or cause some firms to merge which could potentially lead to less competition between firms.

### **Small Firm Impact Test**

57. The impact on small firms will depend on the take up ABS as a whole, which at present is unknown. If ABS take up is high this may result in a noticeable change to the operation and structure of the legal services market, with resultant impacts likely to be felt more acutely by smaller firms. This is because take up on this scale is likely to be proportionally higher amongst larger regional firms, as well as in several large retail firms (supermarkets and banks) which have country-wide distribution networks and a strong high-street presence and are therefore able to offer a wide range of commoditised and standardised fixed-price legal services across a range of retail outlets. However, if take-up is low then there is likely to be little impact on smaller firms.
58. Some smaller providers, who are already at a cost disadvantage in offering routine services (wills, probate, etc), and have experienced a downturn in core business services such as conveyancing, may therefore exit the market or merge with other firms. However, these market pressures already exist, regardless of ABS introduction.
59. Increased cost pressures will compel small firms to focus on quality and to take advantage of economies of scale and scope through networking with other small firms and joining franchise arrangements which would enable back office functions and function such as marketing and reputation/brand management to be shared, thereby reducing the unit cost of legal service products.

### **Carbon Assessment**

60. We do not consider that there will be any significant change in Greenhouse Gas emissions as a consequence of this proposal.

### **Other Environment**

61. We do not anticipate any significant impact on the environment as a consequence of this proposal.

### **Health Impact Assessment**

62. 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 this proposal.

### **Human Rights**

63. The proposals in this IA have been subjected to a Human Rights screening to ensure it is compliant with the Human Rights Act 1988.

### **Justice Impact Assessment**

64. The overall impact on the justice system is detailed in this Impact Assessment.

### **Rural Proofing**

65. No major adverse impacts on rural proofing are anticipated.

### **Sustainable Development**

66. We do not anticipate any significant impact on the principles of sustainable development as a consequence of this proposal.



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## Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added where the Specific Impact Tests yield information 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.

**Basis of the review:**

To assess the impact of liberalisation of the legal services market through ABS.

**Review objective:**

To assess whether the intended policy objectives have been met (see success criteria below).

**Review approach and rationale:**

Commissioned research which will include specific monitoring of impacts of ABS on the market; and in-depth analysis of regulatory and market information from LAs.

**Baseline:**

The basis of the review will be the LSB's baseline assessment of the legal services sector (attached) which reflects the current market.

**Success criteria:**

Assessment against the intended policy objectives which are that legal services should be better targeted to meet consumer needs, more affordable for more consumers, and provided in more innovative and efficient ways. The intended effects on consumers are that they are more confident in accessing legal services and can make better informed decisions. Another intended effect is that fair and efficient market structures are promoted through appropriate regulation.

**Monitoring information arrangements:**

The LSB will build on the work carried out on the impact assessment for the commencement of the ABS regime. Building on the evidence and thinking already made public through that study – as well as our perspective on market development through our regulatory oversight role – we will develop measures to ensure that this work stream delivers against the Regulatory Objectives.

At the start of the year the LSB published its assessment framework that it will use to benchmark the provision of legal services and evaluate the impact of ABS on the market. Alongside this it will publish a pilot study applying the framework to a particular segment of the market. Later in the year it intends to apply the framework to other segments of the market giving us a complete picture of the provision of legal services before the introduction of ABS. It is likely to supplement this with further consumer research in the late 2012 to explore changing consumer experiences of legal services as well as drawing in evidence from the Legal Ombudsman and our complaints research.

The LSB's future research agenda, which will include specific monitoring of impacts on ABS, falls within several categories:



- **Demand side research and monitoring** – ascertain whether the way in which demand is met has changed following the introduction of ABS through consumer research.
- **Supply-side research and monitoring** – developing a greater understanding about the changes in the provision of legal services (quality and cost of services, mode of delivery and adoption of business models).
- **Diversity research** – surveys and monitoring impact of ABS on BME as well as on different sizes of firms.
- **Complaints** – monitor a range of complaints to better grasp the quality of legal services.

It is envisaged that an initial benchmarking surveys of the market will commence in mid 2011. Data from the Licensing Authorities after October 2011 will give us a preliminary estimate of take up of ABS and alongside our supply side research, help us identify any emerging trends. This will form the basis of a more comprehensive post-implementation review to be carried out post-2014 and which will draw from all of the research planned by the LSB, including our monitoring and collection of regulatory and market information from LAs. The LSB research work stream encompasses our commissioned research focusing on impacts and changing market structures of the legal services industry as well as research across our thematic areas: ABS, diversity and access to justice.

**Reasons for not planning a PIR:**

N/A



***Before you complete an Equality Impact Assessment you must read the guidance notes and unless you have a comprehensive knowledge of the equality legislation and duties, it is strongly recommended that you attend an EIA training course.***

The EIA should be used to identify likely impacts on:

- disability
- race
- sex
- gender reassignment
- age
- religion or belief
- sexual orientation
- pregnancy and maternity
- marriage and civil partnership
- caring responsibilities (usually only for HR policies and change management processes such as back offices)

1. Name of the proposed new or changed legislation, policy, strategy, project or service being assessed.

Commencement of Part 5 of the Legal Services Act 2007 (the 2007 Act) to permit non-lawyer ownership and management of law firms (Alternative Business Structures )

2. Individual Officer(s) & unit responsible for completing the Equality Impact Assessment.

Luke McInerney and Chris Baas, Legal Services Board

3. What is the main aim or purpose of the proposed new or changed legislation, policy, strategy, project or service and what are the intended outcomes?

Aims/objectives	Outcomes
<p>The policy objective is that the legal services market is liberalised by removing regulatory restrictions and allowing Alternative Business Structures (ABS) from October 2011. ABS will be licensed by Approved Regulators (such as the Law Society/Solicitors Regulation Authority (SRA) and the Council for Licensed Conveyancers (CLC)) designated as Licensing Authorities.</p>	<p>The intended outcomes are that: legal services are better targeted to meet consumer needs, are more affordable for more consumers, and are provided in more innovative and effective ways; consumers are more confident in accessing legal services and can make better informed decisions; and the regulatory objectives of the Act are supported through appropriate regulation which protects consumers while promoting fair and efficient market structures.</p>

4. What existing sources of information will you use to help you identify the likely equality impacts on different groups of people?

*(For example statistics, survey results, complaints analysis, consultation documents, customer feedback, existing briefings, submissions or business reports, comparative policies from external sources and other Government Departments).*

The LSB has looked extensively at all the available information about the current market and run workshops with key stakeholders on the matters covered in this assessment to help us identify the likely impacts. The overall consensus at the workshop was that the introduction of ABS will have a neutral impact on diversity, given that many ABS are likely to be existing law firms. Fuller details of issues discussed at the workshops can be found at section 8.

The main source of information about consumers that use or need legal services is the Legal Services Research Centre Report of the 2006-9 English and Welsh Civil and Social Justice Survey (the Civil Justice Report).<sup>3</sup> This looked at the experiences of civil justice of over 10,000 people and was conducted between 2006 and 2009.

The LSB consulted on a wide range of issues in its consultation 'Approaches to Licensing' in autumn 2009 which sought views on the potential impact of ABS including the impact on diversity in the legal profession. The majority of respondents agreed with the LSB's position that there was a range of potential benefits to the introduction of ABS that would in turn have a positive effect on the diversity of the profession. The LSB has also discussed the potential diversity impacts of ABS through the LSB's Diversity Forum of Professional Regulators, which highlighted the need to monitor the impacts closely and take action to mitigate these impacts where possible.

Approved regulators already collect some diversity data about individual practitioners – either through the practising certificate issue/renewal process or through surveys. The data is published at aggregate level, rather than at the level of individual firms or chambers.

For solicitors, the Law Society's REGIS database includes information about the age, gender and ethnicity of practising certificate holders. Ethnicity data is known for approximately 88% of practising certificate holders and can be broken down by size of firm and level of seniority. An annual statistical report is produced analysing trends in the profession. The Solicitors' Regulation Authority carried out a diversity census in 2009 which was sent to all practising certificate holders. This covered a broader range of diversity strands and included an updated categorisation in relation to ethnicity data. The results are currently being analysed.

In relation to barristers, the Bar Council also collects data on age, gender and ethnicity of practising certificate holders. In 2008, ethnicity data collected through this mechanism was known for 88% of self-employed barristers and 78% of employed barristers. The Bar Council carried out a demographic survey of all barristers in 2007, covering a broader range of diversity strands (including disability, sexual orientation, gender reassignment, caring responsibilities and schooling). The response rate was 35% and an analysis of the results has been published.

To help build an understanding of equality issues, the LSB has produced and published a review of existing academic literature about diversity in the legal workforce entitled 'Barriers to the Legal Profession'. This looks at the barriers to entry and progression that occur over the lifetime of individuals seeking a legal career: initial education; university; work experience; post-graduate education; training contract or pupillage; and in career progression.

The LSB has also commissioned original qualitative research by a team of leading academics entitled "Diversity in the Legal Profession in England and Wales: a qualitative study of barriers and individual choices". This explores the career patterns of female and black and minority ethnic (BME) professionals, at a variety of career stages including pre-entry, in a range of specialisms and sectors, and in several locations, to investigate the extent to which their career trajectories were the product of individual choice or the culture, structure and institutions of the solicitors' profession and the Bar, or a

<sup>3</sup> <http://lsrc.org.uk/publications/2010CSJSAnnualReport.pdf>

mixture of the two.

The introduction of ABS may have an adverse impact on some not for profit organisations who are already facing challenges from other justice reforms including legal aid funding. However, it is unclear what the nature or extent of this might be. The EIA for the Legal Aid, Sentencing and Punishment of Offenders Bill provides detailed baseline data against which any such impacts can be monitored.

5. Are there gaps in information that make it difficult or impossible to form an opinion on how your proposals might affect different groups of people. If so what are the gaps in the information and how and when do you plan to collect additional information?

*Note this information will help you to identify potential equality stakeholders and specific issues that affect them - essential information if you are planning to consult as you can raise specific issues with particular groups as part of the consultation process. EIAs often pause at this stage while additional information is obtained.*

Information about the current market is not complete and comprehensive. It consists primarily of surveys. Although there is some information about solicitors and barristers (see above), the LSB is currently consulting on an approach to the collection of information about the diversity of providers of legal services. There are no studies that predict how diversity (of consumers or providers) will be affected by the introduction of ABS but there is a general consensus about the need to monitor the impact on both consumers and providers.

6. Having analysed the initial and additional sources of information including feedback from consultation, is there any evidence that the proposed changes will have a **positive impact** on any of these different groups of people and/or promote equality of opportunity?

Please provide details of who benefits from the positive impacts and the evidence and analysis used to identify them.

People who need/use legal services

If the introduction of ABS leads to more consumer focussed, and lower cost legal advice then this will directly benefit those with civil justice problems. The Civil Justice Report found that people more vulnerable to social exclusion tended to have more problems than others. In addition, the proportion of those in vulnerable groups increased as the number of problems reported increased. In particular, Black and 'Other' (non-White, non-Black and non-Asian) respondents, along with those in high density housing, lone parents, co-habitees with children, those on benefits, those between the ages of 25 and 34 and victims of crime tended to report suffering from multiple problems.

Access to legal services for marginalised groups is likely to improve in a more open and competitive market. Increased supply of legal services provided by removing restrictions on ownership and a more competitive and responsive market should act to lower prices for consumers. Lower prices and greater choice of legal services enables more people to use legal services, especially for those who do not qualify for legal aid but for whom legal services are currently too expensive. Falling unit prices for standard legal products such as wills places them in reach of these consumers, increasing their overall economic welfare.

A more competitive and contestable legal services market could also have significant positive effects for large scale procurers for legal services. For example, central government, as a large scale procurer of legal services through the awarding of legal aid contracts, has a very significant impact on access to justice. If there is an increase in the supply of firms that provide legal services, that would mean greater choice in awarding legal aid contracts with the possibility of lower prices and hence better value for money. More efficient and cost effective procurement of legal aid would improve access to justice in purchasing a greater volume of services for legal aid consumers who are among the most vulnerable and marginalised groups in society.

Similarly, a more competitive and contestable market may also have a positive impact on third sector organisations who procure services on the open market. Lower costs and greater choice would enable

third sector organisations to maximise value for money and directly fund an increased volume of legal services for their activities.

#### Providers of legal services

The existing culture and business structures prevalent in the legal sector do not promote the retention and progression of a diverse workforce – as evidenced by the persistent inequalities at the senior levels of the profession despite the increased proportion of women and BME practitioners entering the profession over a number of years. Research included in “*Barriers to the legal profession*” literature review highlighted the barriers to entry and progression experienced by BME and female practitioners – which are both cultural and structural. Academic literature also highlights that the tendency of women and BME practitioners to work disproportionately in particular areas of law (e.g. family law or immigration), and small firms, is not necessarily the result of a choice. Rather, some practitioners feel that they have been subject to differential treatment and have been pushed into particular areas because their ‘face does not fit’ in areas of law which are traditionally the preserve of the white male lawyer (for example commercial law or shipping law). If opening up the market creates an environment where new entrants to the market can innovate, this may help to break down the prevailing culture and provide more opportunities for women and BME practitioners to progress. Changes to business structures for legal services providers which result in different models – not just a partnership – may also act as a catalyst for breaking down outdated cultural norms. Changes to the legal market and new, innovative business models could help introduce greater flexibility (for example through virtual law firms) and new career paths, including in management roles.

There is also evidence that in-house, employed lawyers are more diverse than solicitors in private practice (see SRA Impact assessment on their fairer fee policy paragraph 37). This may be down to more formal and objective processes for promotion, more opportunities for flexible working and a culture which is more accepting of diversity (for example in the public sector or large corporations). Again, this suggests that a move away from partnership or chambers models towards corporate business structures could lead to greater opportunities for women and BME practitioners to compete on an equal footing with their white male colleagues.

For small firms (both law firms and other firms) there may also be advantages in working with other professionals in a geographic area to reduce the overhead costs in ways that will be allowed under ABS but which are prohibited under the current regulations e.g. a lawyer in partnership with an accountant.

7. Is there any feedback or evidence that additional work could be done to promote equality of opportunity?

If the answer is yes, please provide details of whether or not you plan to undertake this work. If not, please say why.

Yes – in terms of legal services generally (ie not specific to ABS), the LSB's research and diversity workstream focus is on monitoring impacts and issues in diversity and access justice. This research will focus on diversity issues across the entire market, as well as any specific impacts relating to ABS. Part of our approach to understanding issues surrounding diversity and equality of opportunity in the legal services industry is to publish our research make it available publically in order to enable a repository of information that will be available to everyone. The LSB also plans various data gathering exercises which will enhance our research base on diversity and which are detailed in section 11 of this document.

In January 2011 the LSA launched the consultation on proposals to increase diversity and social mobility in the legal workforce. This considers requirements relating to diversity reporting and monitoring which would contribute to further work in understanding diversity trends. This would enable both a “baseline” to be set and monitoring emerging trends including the introduction of ABS.

The LSB has proposed that approved regulators should require firms/chambers to gather and publish data about the diversity of their workforce as a regulatory obligation. There should be a mechanism for reporting this data to approved regulators to improve their evidence base about those they regulate,



and a mechanism for them to pass this information to the Board to enable a picture to be built up of diversity across the sector.

In the consultation, the LSB Board set out the following immediate priorities which it expects approved regulators to address during 2011 in order to meet the regulatory objective about encouraging diversity:

- gathering an evidence base about the composition of the workforce to inform targeted policy responses
- evaluating the effectiveness and impact of existing diversity initiatives
- promoting transparency about workforce diversity at entity level as an incentive on owners/managers to take action (both in terms of 'peer pressure' and better information for corporate and individual consumers and potential employees, which they can use to inform their choice of law firm).

Responses to the consultation are currently being analysed.

In addition, the LSB is also involved in collaborative work with other professions to implement the recommendations of the Panel of Fair Access to the Professions' 2009 report Unleashing Aspiration.

8. Is there any evidence that proposed changes will have **an adverse equality impact** on any of these different groups of people?

Please provide details of who the proposals affect, what the adverse impacts are and the evidence and analysis used to identify them.

One of the main concerns expressed about the diversity impact of ABS is the potential impact on small firms. Empirical and anecdotal evidence has shown that smaller firms are more likely to be owned, managed and staffed by solicitors from a BME background (for instance for publically funded work see: LSC - "Research on Ethnic Diversity amongst suppliers of Legal Aid services"). However, the underrepresentation of solicitors from a BME background in other types of legal service providers raises questions about equality of opportunity in the current market.

Increased competition is likely to lead to the exit of firms that are unable to compete. If these are small firms then this may have a negative impact on BME practitioners. However, it is important to note that consolidation within the market is already taking place as a result of a range of factors (for example the economic climate, legal aid reforms and changing consumer demands) – and even without ABS it is likely that some small firms would merge or close. Ultimately, the question of whether small firms survive will be determined by their ability to compete in an increasingly competitive market. It is possible that ABS may accelerate this process of consolidation and change in market structure which may have an initial adverse impact on total numbers of BME practitioners. However, countervailing effects such as increased employment larger legal entities which are expected to expand their presence in the market or newly entered the market could absorb those staff previously employed in small firms.

In the workshops some stakeholders suggested that ABS may have a negative impact in terms of gender equality. Their view is that because ABS will be commercial entities driven by economic incentives they might not provide flexible working arrangements or employee benefits (e.g. maternity leave) beyond the minimum statutory requirements. However, large firms may be more likely to have internal resources available to support human resource policies that support flexible working arrangements through greater reliance on technology to enable offsite working, as well as defined policies around maternity and other forms of leave, than a smaller partner managed firm operating on lower margins. Alternative forms of remuneration such as share options may provide alternatives to the "partnership track" which may enable more flexible working.

Concern has been raised that the introduction of ABS may cause detriment to consumers who live a long way from legal services. The concern is premised on an assumption that the introduction of ABS will result in small rural/regional legal firms closing thereby reducing access to legal services. However, it is not clear that there would be a substantial reduction in overall numbers of rural/regional firms. These firms may be able to serve their communities more effectively.



9. Is there any evidence that the proposed changes have **no equality impacts**?

Please provide details of the evidence and analysis used to reach the conclusion that the proposed changes have no impact on any of these different groups of people.

The overall consensus at the workshop we held with stakeholders is that the introduction of ABS will have a neutral impact on diversity, given that many ABS are likely to be existing law firms. The main concerns about diversity in the provision of legal services exist now and various initiatives are underway to tackle them. However, in the interest of indentifying where impacts may fall we decided to undertake a full equality impact assessment.

10. Is a full Equality Impact Assessment Required?      Yes       No

If you answered 'No', please explain below why not?

NOTE - You will need to complete a full EIA if:

- the proposals are likely to have equality impacts and you will need to provide details about how the impacts will be mitigated or justified
- there are likely to be equality impacts plus negative public opinion or media coverage about the proposed changes
- you have missed an opportunity to promote equality of opportunity and need to provide further details of action that can be taken to remedy this

**If your proposed new or changed legislation, policy, strategy, project or service involves an Information and Communication Technology (ICT) system and you have identified equality impacts of that system, a focused full EIA for ICT specific impacts should be completed. The ICT Specific Impacts template is available from MoJ ICT or can be downloaded from the Intranet at: <http://intranet.justice.gsi.gov.uk/justice/equdiv/equal-impact.htm>, and should be referenced here.**

N/A

11. Even if a full EIA is not required, you are legally required to monitor and review the proposed changes after implementation to check they work as planned and to screen for unexpected equality impacts. Please provide details of how you will monitor evaluate or review your proposals and when the review will take place.

The LSB is committed to monitor and review impacts concerning diversity and access to justice in the legal services market. This tranche of work focuses on the collection of new data to assist with understanding emerging trends across the entire market and will enable the LSB to evaluate the impact of ABS over time.

In terms of our approach to monitoring diversity more broadly the LSB wrote the approved regulators and asked them to provide the Board with:

- an assessment of their current evidence base about the diversity of those they regulate across all eight diversity strands plus socio-economic background (covering what they hold and an analysis of strengths, weaknesses and gaps);
- an outline of how they propose to promote transparency at entity level, and justify areas this departs from the approach set out in the Board's proposals;
- an explanation of the steps taken to ensure that diversity initiatives are targeted based on the evidence and evaluated for their impact.

The Board will consider the responses of the approved regulators to their letter before deciding what further steps should be taken, including whether guidance on appropriate interventions should be issued to the approved regulators.

The LSB's starting expectation in the letter is that approved regulators should require firms/chambers to gather and publish data about the diversity of their workforce as a regulatory obligation. There should be a mechanism for reporting this data to approved regulators to improve their evidence base about those they regulate, and a mechanism for them to pass this information to the Board to enable a picture to be built up of diversity across the sector.

Implementing data collection arrangements and requirements in relation to transparency at entity level is a matter for approved regulators. We acknowledge that there is not necessarily a one-size-fits-all approach, and approved regulators will need some flexibility in implementing data collection and transparency requirements as part of their broader regulatory framework.

As part of the impact assessment of Part 5 of the LSA, the LSB intends to build on the baseline survey work carried out to accompany the impact assessment for the commencement of the ABS regime. Building on the evidence and thinking already made public through that study – as well as our perspective on market development through our regulatory oversight role – we will develop measures to ensure that this work stream delivers against the Regulatory Objectives.

The LSB is developing a measurement framework that will be used to benchmark the provision of legal services and evaluate the impact of ABS on the market. Alongside this, it will publish a pilot study applying the framework to a particular segment of the market. Later in 2011, it intends to apply the framework to other segments of the market giving us a complete picture of the provision of legal services before the introduction of ABS. It is likely to supplement this with further consumer research in the late 2012 to explore changing consumer experiences of legal services as well as drawing in evidence from the Legal Ombudsman and our complaints research. MOJ will discuss with the LSB how the impact of ABS introduction on equality and diversity can best be reflected in the 2011 measurement framework exercise and 2012 consumer research

The LSB's future research agenda, which will include specific monitoring of impacts on ABS, falls within several categories:

- Diversity research - surveys and monitoring impact of ABS on diversity groups as well as on different sizes of firms.
- Demand side research and monitoring – ascertain whether the way in which demand is met has changed following the introduction of ABS through consumer research.
- Supply-side research and monitoring – developing a greater understanding about the changes in the provision of legal services (quality and cost of services, mode of delivery and adoption of business models).
- Complaints – monitor a range of complaints to better grasp the quality of legal services.

It is envisaged that an initial benchmarking survey of the market will commence in mid 2011. Data from the Licensing Authorities after October 2011 will give us information on take up of ABS that can be used as part of our supply side research, help us identify any emerging trends. This will form the basis of a more comprehensive post-implementation review to be carried out after 2014 and which will draw from all of the research planned by the LSB, including our monitoring and collection of regulatory and market information from LAs such as diversity and access to justice trends.

## 12. Name of Senior Manager and date approved

You should now complete a brief summary (if possible, in less than 50 words) **setting out which policy, legislation or service the EIA relates to, how you assessed it, a summary of the results of consultation, a summary of the impacts (positive and negative) and, any decisions made, actions taken or improvements implemented as a result of the EIA.** The summary will be published

on the external MoJ website.

This EIA considers the potential impacts of the commencement of the Alternative Business Structures Regime on the legal services market. However, until the regime is commenced, it is difficult to assess this fully. The LSB has undertaken an analysis of the current market and will build on this work, particularly in terms of monitoring diversity. The LSB's stakeholder workshops concluded that ABS will have a neutral impact on diversity.

Name (must be grade 5 or above): Abigail Plenty

Department: Ministry of Justice

Date: 1 September 2011

Note: The EIA should be sent **by email to [anthony.shepherd@justice.gsi.gov.uk](mailto:anthony.shepherd@justice.gsi.gov.uk) of the Corporate Equality Division (CED), for publication.**

## Full Equality Impact Assessment

13. Which group(s) of people have been identified as being disadvantaged by your proposals. What are the equality impacts?

The overall consensus of the LSB's workshops with stakeholders is that the introduction of ABS will have a neutral impact on diversity.

However, for those who currently provide legal services, opening up the market to greater competition and lifting of barriers to external ownership may hasten existing trends toward consolidation of small legal service providers. Evidence shows that BME lawyers, women and people from less well-off backgrounds are disproportionately concentrated in small High Street practices, with 50% of BME solicitors working in firms with four or fewer partners. Only 28% of white solicitors work in firms of this size. Market consolidation may, in the short to medium term, negatively impact on diversity in terms of the supply of legal services as smaller legal firms are consolidated or exit the market. This is a function of concentration of BME practitioners in small firms and small firms potentially being impacted more significantly.

Greater consolidation and the possible exit of high street firms that cannot compete in a liberalising market might also have a possible negative effect on the supply of legal services in areas under-represented in terms of legal service provision. It is possible that in rural areas under-represented in terms of legal service provision that consolidation will impact on the diversity of suppliers of such services. However, positive countervailing trends such as increased innovation and technological (and lower cost) delivery of legal products may mitigate against these negative effects.

14. What changes are you planning to make to your original proposals to minimise or eliminate the adverse equality impacts? Please provide details of the proposed actions, timetable for making the changes and the person(s) responsible for making the changes.

We do not consider that it is appropriate to make any changes but we are keen to find out more on how the proposals will affect clients and providers. The Legal Services Act 2007 sets the framework for the liberalisation of legal services. Licensing Authorities will take into account the impact on access to justice when they consider licence applications and may impose conditions on licensees if appropriate. We are looking at the most effective ways of understanding more about both the quantitative and qualitative equality impacts of clients and providers as outlined in section 18.

15. Please provide details of whether or not you will consult on the proposed changes, particularly with disabled people and if you do not plan to consult, please provide the rationale behind that decision.

The LSB is not required to consult formally on the commencement of Part 5 of the LSA. However the LSB, in the interests of compiling a robust impact assessment and identifying possible impacts, has opted to undertake a series of workshops with stakeholders. These workshops are designed to gather views of stakeholders and evidence concerning impacts of commencement of Part 5 of the LSA. The workshops included representation from academia, approved regulators, central government, practitioners representing diversity groups and professional bodies.

The commencement of the legislation around ABS should be considered in the wider context of the Legal Services Act which included an impact assessment of the policy. In addition the LSB has consulted widely about both detailed and broad aspects of the ABS regime including a discussion paper in May 2009, a consultation paper in November 2009. There has also been significant activity both by the LSB and other stakeholders to raise issues and awareness across the legal sector.

16. Can the adverse impacts you identified during the initial screening be justified and the original proposals implemented without making any adjustments to them? Please set out the basis on which you justify implementing the proposals without adjustments.

On balance we consider that the potential adverse impacts can be justified. Overall, the lifting of restrictive ownership barriers and facilitation of greater competition in the supply of legal services should deliver significant benefits to consumers of legal services in terms of strengthening incentives for

firms to innovate and provide improved services at lower cost.

Possible adverse impacts on the diversity of suppliers of legal services may also be partially mitigated through the increase in opportunities in larger non-traditional law firms whose numbers are expected to increase following the introduction of ABS. These corporate structures may offer more flexible work environments suitable for a more diverse workforce than traditional partnership models. We will be looking to test these impact assumptions through our future work.

17. Do your proposals miss an opportunity to promote equality of opportunity? If so, do you plan to take action to remedy this and if so, when? Please provide details.

The regulatory objectives of the LSA require the LSB to focus on diversity and access to justice and this approach underpins the collection and monitoring of equality impacts and trends in diversity in the legal services sector. Through this approach we will be able to promote equality of opportunity in the legal services and take remedial action if and when appropriate. The LSB is currently consulting on our approach to 'Increasing diversity and social mobility in the legal workforce' and identifies specific strategies to promote better reporting and monitoring of diversity and equality issues by approved regulators. This initiative looks across the whole provision of legal services and is therefore wider than the issue of ABS.

18. You are legally required to monitor and review the proposed changes after implementation to check they work as planned and to screen for unexpected equality impacts.

Please provide details of how you will monitor/evaluate or review your proposals and when the review will take place.

The LSB is committed to monitor and review impacts concerning diversity and access to justice in the legal services market. This tranche of work focuses on the collection of new data to assist with understanding emerging trends across the entire market and will enable the LSB to evaluate the impact of ABS over time.

In terms of our approach to monitoring diversity more broadly the LSB wrote to the approved regulators and asked them to provide the Board with:

- an assessment of their current evidence base about the diversity of those they regulate across all eight diversity strands plus socio-economic background (covering what they hold and an analysis of strengths, weaknesses and gaps);
- an outline of how they propose to promote transparency at entity level, and justify areas this departs from the approach set out in the Board's proposals;
- an explanation of the steps taken to ensure that diversity initiatives are targeted based on the evidence and evaluated for their impact.

The Board will consider the responses of the approved regulators to their letter before deciding what further steps should be taken, including whether guidance on appropriate interventions should be issued to the approved regulators.

Our starting expectation in the letter is that approved regulators should require firms/chambers to gather and publish data about the diversity of their workforce as a regulatory obligation. There should be a mechanism for reporting this data to approved regulators to improve their evidence base about those they regulate, and a mechanism for them to pass this information to the Board to enable a picture to be built up of diversity across the sector.

Implementing data collection arrangements and requirements in relation to transparency at entity level is a matter for approved regulators. We acknowledge that there is not necessarily a one-size-fits-all approach, and approved regulators will need some flexibility in implementing data collection and transparency requirements as part of their broader regulatory framework.

As part of the impact assessment of Part 5 of the LSA, the LSB intends to build on the baseline survey work carried out to accompany the impact assessment for the commencement of the ABS regime. Building on the evidence and thinking already made public through that study – as well as our perspective on market development through our regulatory oversight role – we will develop measures to ensure that this work stream delivers against the Regulatory Objectives.

In the first quarter of 2011 we are developing our measurement framework that we will use to benchmark the provision of legal services and evaluate the impact of ABS on the market. Alongside this we will publish a pilot study applying the framework to a particular segment of the market. Later in 2011 we intend to apply the framework to other segments of the market giving us a complete picture of the provision of legal services before the introduction of ABS. We are likely to supplement this with further consumer research in the late 2012 to explore changing consumer experiences of legal services as well as drawing in evidence from the Legal Ombudsman and our complaints research. MOJ will discuss with the LSB how the impact of ABS introduction on equality and diversity can best be reflected in the 2011 measurement framework exercise and 2012 consumer research.

The LSB's future research agenda, which will include specific monitoring of impacts on ABS, falls within several categories:

- Diversity research - surveys and monitoring impact of ABS on diversity groups as well as on different sizes of firms.
- Demand side research and monitoring – ascertain whether the way in which demand is met has changed following the introduction of ABS through consumer research.
- Supply-side research and monitoring – developing a greater understanding about the changes in the provision of legal services (quality and cost of services, mode of delivery and adoption of business models).
- Complaints – monitor a range of complaints to better grasp the quality of legal services.

It is envisaged that an initial benchmarking surveys of the market will commence in mid 2011. Data from the Licensing Authorities after October 2011 will give us information on take up of ABS that can be used as part of our supply side research, help us identify any emerging trends. This will form the basis of a more comprehensive post-implementation review to be carried out after 2014 and which will draw from all of the research planned by the LSB, including our monitoring and collection of regulatory and market information from LAs such as diversity and access to justice trends.

19. Summary details, sign off by Senior Manager and date approved.

You should now complete a brief summary (if possible, in less than 50 words) **setting out which policy, legislation or service the EIA relates to, how you assessed it, a summary of the results of consultation, a summary of the impacts (positive and negative) and, any decisions made, actions taken or improvements implemented as a result of the EIA.** The summary will be published on the external MoJ website.

This EIA considers the potential impacts of the commencement of the Alternative Business Structures Regime on the legal services market. However, until the regime is commenced, it is difficult to assess this fully. The LSB has undertaken an analysis of the current market and will build on this work, particularly in terms of monitoring diversity. The LSB's stakeholder workshops concluded that ABS will have a neutral impact on diversity.

Name (must be grade 5 or above): Abigail Plenty

Department: Ministry of Justice

Date: 1 September 2011

Note: The completed EIA should be sent **by email to [sarah.osborne@justice.gsi.gov.uk](mailto:sarah.osborne@justice.gsi.gov.uk)** of the Equality Analyst Team in Analytical Services Directorate.