

<b>Title:</b> <b>Alternative Business Structures:  Appellate body order for the Solicitors  Regulation Authority</b>  <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> tbc
	<b>Date:</b> tbc
	<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?

Appeals against decisions of the Law Society, acting through the Solicitors Regulation Authority (SRA), as a licensing authority for alternative business structures cannot be heard in the absence of intervention. Government intervention is required as only the Lord Chancellor can make the order necessary under the Legal Services Act 2007 (on the recommendation of LSB) to ensure a body has the power to hear and determine appeals that may be brought under the Act or licensing rules.

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

The policy objective is to put in place an appeal mechanism to hear appeals against decisions made by the SRA (should it be designated as a licensing authority). The costs and processes for the appeal mechanism must be transparent, efficient, fair and public. The body hearing the appeals must have sufficient resources and expertise to deal with complex issues.

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

Option 0: Do nothing (base case).  
Option 1 (preferred option): The Solicitors Disciplinary Tribunal (SDT) (which has the primary function of hearing and determining applications about alleged professional misconduct by solicitors) acts as the appeals body for appeals against decisions of the SRA when acting as a licensing authority.  
Option 2: the First-tier Tribunal (part of the unified tribunals structure established under the Tribunals, Courts and Enforcement Act 2007, and administered by HM Courts and Tribunals Service) acts as the appeals body for appeals against decisions of the SRA when acting as a licensing authority.

Option 1 is preferred by the SRA because it considers this will ensure a consistent approach to the treatment of ABS and 'traditional' law firms, and because the proposed SDT rules will provide a general discretion to award costs (the First-tier Tribunal, by contrast, has a limited discretion to award costs).

<b>When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?</b>	It will not be reviewed separately but as part of a wider PIR of ABS post-2014
<b>Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?</b>	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:.....

# Summary: Analysis and Evidence Policy Option 1 – preferred option

Description: Solicitors Disciplinary Tribunal as the appellate body for appeals against SRA decisions

Price Base Year	PV Base Year	Time Period	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate:
<b>COSTS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant Price)</b>		<b>Total Cost (Present Value)</b>
Low	N/A		N/A		N/A
High	N/A		N/A		N/A
Best Estimate					
<b>Description and scale of key monetised costs by ‘main affected groups’</b>					
N/A					
<b>Other key non-monetised costs by ‘main affected groups’</b>					
<p>The SRA will fund the set-up and operating costs of the appeals mechanism through the initial and periodic fees charged to licensed bodies. The costs of set-up and operation of the appeals mechanism will depend on the number of appeals received. The cost for individual licensed bodies will depend on how many have been licensed on 31 January 2012, but is likely to be low. The SRA will determine how best to apportion the costs (e.g. whether they are apportioned as a flat rate across all licensed bodies or whether the apportionment is dependent on the size of the licensed bodies and/or risk profile). In addition, appellants and the SRA may need to fund their own legal costs, subject to the SDT's discretion (within its proposed new procedural rules) to award costs against a party.</p>					
<b>BENEFITS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant Price)</b>		<b>Total Benefit (Present Value)</b>
Low	N/A		N/A		N/A
High	N/A		N/A		N/A
Best Estimate					
<b>Description and scale of key monetised benefits by ‘main affected groups’</b>					
It is not possible to monetise the benefits of the appeals mechanism.					
<b>Other key non-monetised benefits by ‘main affected groups’</b>					
<p>The main benefit of this option over option 2 is that it is proposed the SDT will have a general (rather than limited) discretion to award costs. This provides a mechanism for the unsuccessful appellant to bear the SRA's legal costs in defending the appeal, rather than SRA recouping them from the regulated community as a whole via licence fees. The appeal mechanism is intended to provide individuals or businesses affected by certain decisions of licensing authorities with the opportunity to challenge that decision in an independent and impartial Tribunal. Providing such a mechanism is in the public interest and supports the rule of law. A credible appeals mechanism is a key part of a strong and effective regulatory framework, which enhances public confidence in the legal system and produces consumer welfare benefits.</p>					
<b>Key assumptions/sensitivities/risks</b>					<b>Discount rate (%)</b>
<p>It is assumed that the SDT has the capacity and capability to hear the appeals. The number of appeals in the first year of operation is unknown, but for planning purposes it is assumed there will be approximately 20. If the number of appeals is higher than anticipated, the costs of the appeal mechanism will increase, although a higher number of appeals is likely to occur in proportion to a higher number of licensed businesses. The average cost of the appeal mechanism as part the licence fee for individual businesses is correlated to the marginal increase in the volume of appeals.</p>					N/A
<b>Impact on admin burden (AB) (£m):</b>			<b>Impact on policy cost savings (£m):</b>		<b>In scope</b>
<b>New AB:</b>	<b>AB savings:</b>	<b>Net:</b>	<b>Policy cost savings:</b>		<b>Yes/No</b>

# Summary: Analysis and Evidence

# Policy Option 2

Description: First-tier Tribunal as the appellate body for appeals against SRA decisions

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

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

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

N/A

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

The SRA would fund the set-up costs (jointly with the Council for Licensed Conveyancers) and additional operating costs incurred by the GRC through the initial and periodic fees charged to licensed bodies. The costs of set-up and operation of the appeals mechanism will depend on the number of appeals received. The cost for individual licensed bodies will depend on how many have been licensed on 31 January 2012, but is likely to be low. The SRA will determine how best to apportion the costs (e.g. whether they are apportioned as a flat rate across all licensed bodies or whether the apportionment is dependent on the size of the licensed bodies and/or risk profile). In addition, appellants and the SRA will need to fund their own legal costs, subject to the First-tier Tribunal's limited discretion within its procedural rules to award costs.

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

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

It is not possible to monetise the benefits of the appeals mechanism.

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

The main benefit of the appeal mechanism is to provide individuals or businesses affected by the certain decisions of licensing authorities with the opportunity to challenge that decision in an independent and impartial Tribunal. The ability to challenge administrative decisions which affect the rights of individuals or businesses to carry on business activities is an important safeguard on the exercise of power by the state. Providing such a mechanism is in the public interest and supports the rule of law. A credible appeals mechanism is also a key part of a strong and effective regulatory framework, which enhances public confidence in the legal system and produces consumer welfare benefits.

**Key assumptions/sensitivities/risks**

Discount rate (%)

N/A

It is assumed that the First-tier Tribunal has the capacity and capability to hear the appeals. The number of appeals in the first year of operation is unknown, but for planning purposes it is assumed there will be approximately 20. If the number of appeals is higher than anticipated, the costs of the appeal mechanism will increase, although a higher number of appeals is likely to occur in proportion to a higher number of licensed businesses. The average cost of the appeal mechanism as part the licence fee for individual businesses is correlated to the marginal increase in the volume of appeals.

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

## Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?	England and Wales				
From what date will the policy be implemented?	Autumn 2011				
Which organisation(s) will enforce the policy?	The Solicitors Disciplinary Tribunal will provide the appeal mechanism				
What is the annual change in enforcement cost (£m)?	N/A				
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)	<b>Traded:</b>		<b>Non-traded:</b>		
Does the proposal have an impact on competition?	Yes/No				
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> £0.001	<b>&lt; 20</b> £0.001	<b>Small</b> £0.001	<b>Medium</b> £0.001	<b>Large</b> £0.001
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<sup>1</sup></b>	No	11
<b>Economic impacts</b>		
Competition	No	11
Small firms	No	11
<b>Environmental impacts</b>		
Greenhouse gas assessment	No	12
Wider environmental issues	No	12
<b>Social impacts</b>		
Health and well-being	No	12
Human rights	No	12
Justice system	Yes	12
Rural proofing	No	12
<b>Sustainable development</b>	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

### References

No.	Legislation or publication
1	Legal Services Act 2007 <a href="http://www.opsi.gov.uk/acts/acts2007/ukpga_20070029_en_1">http://www.opsi.gov.uk/acts/acts2007/ukpga_20070029_en_1</a>
2	
3	
4	

# Evidence Base (for summary sheets)

## 1. Introduction

### Background

- 1.1 The Legal Services Board (LSB) was created by the Legal Services Act 2007 (LSA) and is charged with the responsibility of overseeing the regulators of legal services and ensuring that its activities reflect the regulatory objectives set out in the LSA 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.
- 1.2 The LSA enables the operation of Alternative Business Structures (ABS). ABS permit the management and ownership of legal firms by non-lawyers. The LSA also sets out the framework for designating Licensing Authorities (LAs) and their statutory basis to license Alternative Business Structures (ABS). In order to regulate ABS, Approved Regulators (ARs) can be designated as LAs. The licensing rules of LAs come into force when the LA is designated.
- 1.3 In this case, government intervention is justified. The LSA provides the Lord Chancellor with an order making power (to be exercised only on the recommendation of the LSB) to establish a new body to hear and determine the appeals, or make provision about an existing body for the purpose of enabling it to hear and determine the appeals.
- 1.4 A mechanism is required to hear appeals against certain decisions of the Law Society, acting through its independent regulatory arm the Solicitors Regulation Authority (SRA) (should it be designated as a LA under part 5 of the LSA). In relation to the SRA's existing role as an approved regulator, disciplinary and appeals matters are dealt with by the Solicitors Disciplinary Tribunal (SDT), which is a statutory tribunal established under the Solicitors Act 1974. An order under s.80 of the LSA could amend the functions of the SDT for the purposes of hearing and determining ABS appeals. Alternatively, an order under s.80 could provide for the appeals to be heard by the First-tier Tribunal, which is part of the unified tribunals structure established under the Tribunals, Courts and Enforcement Act 2007 and administered by HM Courts and Tribunals Service. The First-tier Tribunal combines a number of previously separate administrative tribunals into one unified structure, which has its own infrastructure and administrative support function. The First-tier Tribunal is made up of a variety of jurisdictions which are grouped into Chambers, including the General Regulatory Chamber which consists of a number of jurisdictions concerned with hearing appeals against the decisions of regulatory bodies.
- 1.5 There are some explicit appeal rights under the LSA (s.96 and schedule 13), concerning decisions to impose a financial penalty or to impose restrictions on the ownership of a licensed body. Licensing rules made by the SRA will also include rights of appeal. The Board has issued guidance specifying those decisions which, as a minimum, the Board considers ought to be appealable. We expect the following decisions of licensing authorities to be appealable as they could affect a person's civil rights (the relevant sections of the LSA are shown in brackets):
  - Refusal of application for a licence (s.84)
  - Imposition of conditions on a licence (s.85)
  - Modification of licence (s.86)
  - Refusal to designate as Head of Legal Practice, or withdrawal of approval (Schedule 11, paragraph 12)
  - Refusal to designate as Head of Finance and Administration, or withdrawal of approval (Schedule 11, paragraph 14)
  - Disqualification from some or all roles within a licensed body (s.99)
  - Suspension and revocation of licence (s.101)
  - Power to modify application of licensing rules etc to special bodies (ss.106 and 107)
- 1.6 We anticipate that if the Board decides to recommend the designation of the SRA as a LA, it will take effect in autumn 2011.

## Problem under consideration

- 1.7 If no provision is made in an order under section 80 of the LSA for appeals, it will not be possible to designate the SRA as a LA. It will not therefore be possible for ABS firms to be licensed by the SRA, and the benefits associated with removing restrictions on the ownership and management of entities providing legal services (in terms of increased competition and removal of barriers to entry) cannot be fully realised. This would be unfair on potential market entrants.

## Economic rationale

- 1.8 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).
- 1.9 In this case intervention would be justified primarily on the basis of equity. Decisions of a LA affect the civil rights of licensed individuals and applicants for licences, and therefore need to be accompanied by a right of appeal to an independent and impartial Tribunal. A credible appeals mechanism is also a key part of a strong and effective regulatory framework, which enhances public confidence in the legal system and produces consumer welfare benefits.

## Policy objective

- 1.10 The policy objective is to put in place an appeal mechanism to hear appeals against decisions made by SRA (should it be designated as an LA). LAs are expected to make their first licensing decisions in autumn 2011. The SDT will hear all appeals about the SRA's decisions as a LA.
- 1.11 The costs and processes for the appeal mechanism must be transparent, efficient, fair and public. The body hearing the appeals must have sufficient resources and expertise to deal with complex issues.

## Affected stakeholder groups, organisations and sectors

- 1.12 The following individuals/sectors are likely to be affected by the proposal:
- SRA – the body whose decisions will be appealed
  - SDT- the body to which appeals will be made
  - ABS firms (and applicants for an ABS licence) – which will be the subject of the decisions that are appealable
  - Consumers – who will bear the regulatory costs through the prices paid for legal services
  - Other Approved Regulators (and proposed LAs)

## 2. Costs and benefits

- 2.2 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 & 2 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)

- 2.3 This is not an option because without intervention in the form of an order under s.80 of the Legal Services Act 2007, there is no body with the power to hear and determine appeals against SRA decisions under part 5 of the Act. SRA could not therefore be designated as a licensing authority.
- 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 (preferred option): Solicitors Disciplinary Tribunal as the appellate body for appeals against SRA decisions**

### **Description**

2.5 A section 80 order is made modifying the functions of the Solicitors Disciplinary Tribunal to enable it to hear the appeals.

### **Costs**

#### **SRA**

2.6 The SRA would incur costs associated with defending appeals. It is proposed that new rules of procedure will be made by the SDT to govern the exercise of its appellate jurisdiction (including ABS appeals). It is proposed that these rules will provide a general power to award costs against the parties (equivalent to the SDT's power to award costs under its existing rules). We assume that the SDT would exercise this power in SRA's favour on an unsuccessful appeal, although it might not award costs against the SRA when an appeal is successful. (The Tribunal's practice – following the principle established by the Court of Appeal in *Baxendale-Walker v Law Society* [2007] EWCA Civ 233 – is that “costs follow the event” should not be the starting point. The SRA may potentially argue that this principle should also apply to ABS appeals). This provides a mechanism for the unsuccessful appellant to bear the SRA's legal costs in defending the appeal, rather than SRA recouping them from the regulated community as a whole via licence fees. SRA would be more likely to recover its costs in the SDT than it would be under option 2, so overall the legal costs borne by SRA in defending appeals are likely to be lower than for option 2. The costs have not been quantified at this stage. LAs will pass on all their costs to the firms they regulate in the form of higher fees.

2.7 The SRA would also need to fund the set-up and additional SDT operating costs associated with these additional hearing appeals. These would consist primarily of daily fees for panel members, plus administrative support and training costs (which are likely to be relatively small given the expertise of SDT members in dealing with conduct matters under its existing jurisdiction). The administrative support would include dealing with enquires and all administrative tasks associated with the appeals, including scheduling appeal dates.

2.8 The number of appeals that will be made is unknown. As an indicative example, the cost of an additional 40 sitting days (that might be required if an appeal required two days to hear, and there were 20 appeals annually) is estimated at around £90,000 (around £2,300 per sitting day).

2.9 Initially there are not expected to be additional accommodation/estates costs required to take on this work. Any additional IT and telephony costs are expected to be negligible. There would be some initial set up costs to cover activities such as training and communications which we assume would be around £16,000.

#### **ABS**

2.10 ABS would incur costs in preparing for appeals. ABS firms may choose to be legally represented before the SDT, which would result in additional costs.

### **Consumers of legal services**

2.11 All regulatory costs will ultimately be passed on to the consumers of legal services in the form of higher prices. This includes the extra costs associated with any appeals about SDT decisions. These costs are expected to be small.

### **Benefits**

#### **ABS**

2.12 ABS firms would benefit under the proposal as they would be able to appeal against the decisions of the SRA as a LA. The right of appeal will apply in relation to a range of decisions (see para 1.5 above), including the imposition of a financial penalty, the refusal of a licence, or the decision to suspend the right of an individual to work in an ABS.

2.13 ABS are likely to benefit from better decision making in the first place because LAs know they must make appropriate decisions due to the risk of appeal.

## *Consumers of legal services*

2.14 Ultimately, the proposal should lead to a better regulatory system – of which a credible appeal mechanism is an essential part. This is likely to enhance consumer confidence in the legal services market.

## **Option 2: First-tier Tribunal as the appellate body for appeals against SRA decisions**

### **Description**

2.15 An order is made under section 80 making provision for the First-tier Tribunal to hear appeals against decisions of the SRA, with the functions allocated to the General Regulatory Chamber of the Tribunal.

### **Costs**

#### **SRA**

2.16 SRA would incur costs associated with defending appeals. The GRC has a limited power to award costs against the parties, so we assume the SRA would normally be expected to bear its own costs. The costs have not been quantified at this stage, but since under this option the SRA is less likely to be able to recover costs from an unsuccessful appellant, the legal costs borne by SRA in defending appeals are likely to be higher than under option 1. LAs will pass on all their costs to the firms they regulate in the form of higher periodic fees, so the effect is that costs would be recouped from the regulated community as a whole rather than the unsuccessful appellant.

2.17 The SRA would also need to fund the costs associated with hearing appeals by the First-tier Tribunal. These would consist primarily of daily fees for panel members, plus administrative support supplied by the HM Courts and Tribunals Service. The administrative support would include dealing with enquires and all administrative tasks associated with the appeals, including scheduling appeal dates. The First-tier Tribunal has sufficient capacity already available to hear the appeals - no additional accommodation or staff resources will be required.

2.8 The number of appeals that will be made is unknown, but is expected to be small. As an indicative example, the cost of an additional 40 sitting days (that might be required if an appeal required two days to hear, and there were 20 appeals annually) is likely to be approximately £90,000 per annum (consisting of £5,000 annual fixed costs, plus £85,000 variable costs). This is broadly equivalent to the anticipated operating costs of the SDT under option 1.

2.18 There would be no additional staff or estates costs required to do take on this work. Any additional IT and telephony costs are expected to be negligible. In addition there would be some initial set up costs (shared with the Council for Licensed Conveyancers) to cover activities such as training and communications. We assume SRA's share would be no more than £10,000.

#### **ABS**

2.19 ABS would incur costs in preparing for appeals. ABS firms may choose to be legally represented before the GRC, which would result in additional costs.

## *Consumers of legal services*

2.20 All regulatory costs will ultimately be passed on to the consumers of legal services in the form of higher prices. This includes the extra costs associated with any appeals about SRA decisions. These costs are expected to be small.

## Benefits

### ABS

- 2.21 ABS firms would benefit under the proposal as they would be able to appeal against the decisions of the SRA as a LA. The right of appeal will apply in relation to a range of decisions (see para 1.5 above), including the imposition of a financial penalty, the refusal of a licence, or the decision to suspend the right of an individual to work in an ABS.
- 2.22 ABS are likely to benefit from better decision making in the first place because LAs know they must make appropriate decisions due to the risk of appeal.

### *Consumers of legal services*

- 2.23 Ultimately, the proposal should lead to a better regulatory system – of which a credible appeal mechanism is an essential part. This is likely to enhance consumer confidence in the legal services market.

## Risks and assumptions

- 2.24 The following risks and assumptions apply to the analysis of both options considered.
- 2.25 It is assumed that:
- The number of appeals in is unknown but is expected to be low
  - Amount of compliance will determine number of appeals, as will the quality of decision making by LAs.
  - If the number of appeals is higher than anticipated, the costs of the appeal mechanism will increase. However, a higher number of appeals is likely to occur in proportion to a higher number of licensed businesses, so the cost of the appeal mechanism as an element of the licence fee for individual businesses is not likely to increase significantly. The average cost of the appeal mechanism as part the licence fee for individual businesses is correlated to the marginal increase in the volume of appeals.
  - For the purposes of estimating costs, each appeal is assumed to require a two day hearing on average in both the SDT and First-tier Tribunal.
  - There is sufficient existing capacity with the First-tier Tribunal and the SDT in terms of staff, judicial and administrative resources to deal with the anticipated number of appeals.
  - The legal costs for SRA associated with defending appeals will be lower in option 1 than option 2, because it is likely that the SDT will exercise its broad discretion to order costs in the SRA's favour where appeals are unsuccessful.

## 3. Enforcement and Implementation

- 3.1 The assumption for the proposal is that it will be implemented from autumn 2011. The Solicitors Disciplinary Tribunal will operate the appeals mechanism.

## 4. Specific Impact Tests

### *Equality Impact Assessment*

- 4.1 After carrying out an equality impact assessment we do not believe that the proposals will affect any sector of society more than another and we do not believe that there are any significant race, gender or age issues involved in these proposals. The initial screening is attached at Annex 2.

### *Competition Assessment*

- 4.2 We do not consider that these proposals impact on competition, except to the extent that no intervention to put in place an appeals mechanism will prevent the implementation of alternative business structures and the associated competition benefits.

### *Small Firms Impact Test*

- 4.3 These effects will not disproportionately impact small firms.

### *Environmental Impacts*

- 4.4 The proposals are 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 this proposal.

### *Human Rights*

- 4.6 The proposals in this Impact Assessment have been subjected to a Human Rights screening to ensure it is compliant with the Human Rights Act 1988. The appeal mechanism will involve a substantive rehearing of determinations affecting an individual's civil rights. It will therefore protect the right under Article 6 of the European Convention of Human Rights to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

### *Justice Impact Test*

- 4.7 Justice impacts have been considered and it is not expected that the proposal will have a justice impact. The Solicitors Disciplinary Tribunal is an independent statutory tribunal – it is not part of the Unified Tribunals Structure and is not administered by HM Courts and Tribunals Service.

### *Rural Proofing*

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

### *Sustainable Development*

- 4.9 Sustainable development impacts have been considered and there are no expected sustainable development impacts.

## 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> A PIR of ABS generally will be carried out, including appeal arrangements. It is not considered appropriate or proportionate to carry out a formal PIR for the appeal arrangements separately. The arrangements will be monitored by the SDT and the SRA during the first year of operation, and then reviewed at the end of that first year to agree whether any operational adjustments are required based on experience of running the process. The LSB also plans to undertake a separate, broader review of disciplinary and appeal arrangements across approved regulators during 2011/12.

## Annex 2: EIA initial screening

### Equality Impact Assessment Initial Screening - Relevance to Equality Duties

The EIA should be used to identify likely impacts on:

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

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

Alternative Business Structures: Appellate body Order for the Solicitors Regulation Authority

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

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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
To put in place an appeal mechanism to hear appeals against decisions made by Solicitors Regulation Authority (SRA) (should it be designated as a licensing authority for Alternative Business Structures). The costs and processes for the appeal mechanism must be transparent, efficient, fair and public. The body hearing the appeals must have sufficient resources and expertise to deal with complex issues.	Individuals and businesses affected by certain decisions of the SRA will be able to challenge the decision in an independent and impartial Tribunal.

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).*

As part of our work to assess the impact of the introduction of Alternative Business Structures (ABS) as a whole, we have considered potential equality impacts. We have published a discussion paper on the potential equality impacts of ABS, and invited feedback. We have also run a consultation workshop including a specific discussion of equality impacts, which involved a range of stakeholders including

diversity interest groups. In relation to the proposed approach to ABS appeals specifically, we have not identified any likely equality impacts. ABS are commercial entities, licensed to provide legal services. The appeal process will hear appeals from ABS. It will not involve individual members of the public. We do not know what type of firm will become an ABS and therefore cannot identify equality-specific data sources.

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.*

An appellate mechanism only impacts on ABS as a commercial entity. Commercial decisions whether to enter the market and/or whether to appeal against the SRA's decisions cannot be known in advance and so there are no sources of data available, nor is it planned to collect any as this would impose an unreasonable burden on businesses.

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.

Not applicable - ABS are commercial entities. Provision of an appellate body will provide a route of appeal to the entity and individuals but there is no specific equality angle to this proposal.

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.

No. Additional work would impose an unreasonable burden on businesses who would, in any event, be unable to predict whether they would appeal a particular decision as this will depend on the particular circumstances at the time the decision is made.

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.

Not applicable - ABS are commercial entities. Provision of an appellate body will provide a route of appeal to the entity and individuals but there is no specific equality angle to this proposal.

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.

Not applicable - ABS are commercial entities. Provision of an appellate body will provide a route of appeal to the entity and individuals but there is no specific equality angle to this proposal.

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.**

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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.

<p>A post implementation review (PIR) of ABS generally will be carried out post 2014 as part of our ongoing research about the impact of ABS on the legal services market (including uptake and the operation of regulatory arrangements). This will include consideration of how the appeal arrangements are working and whether there are any unexpected impacts. It is not considered appropriate or proportionate to carry out a formal PIR for the appeal arrangements separately. The arrangements will be monitored by the Solicitors Disciplinary Tribunal and the SRA during the first year of operation, and then reviewed at the end of that first year to agree whether any operational adjustments are required based on experience of running the process.</p>
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12. Name of Senior Manager and date approved

<p>You should now complete a brief summary (if possible, in less than 50 words) <b>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.</b> The summary will be published on the external MoJ website.</p> <p>The Legal Services Act 2007 enables the operation of ABS - law firms owned and managed by non-lawyers. ABS will be licensed and regulated by approved regulators designated as licensing authorities. This Order establishes an appellate body to hear appeals from ABS about decisions that affect them. The decision to recommend this order has been the subject of full consultation and no specific equality issues have been identified.</p>
<p>Name (must be grade 5 or above):</p>
<p>Department:</p>