

# Consultation on Section 80 orders

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A consultation on proposed orders and recommendation to the Lord Chancellor to be made under Section 80 of the Legal Services Act 2007 for licensing authority appeal arrangements for the:

- Institute of Chartered Accountants in England and Wales, and
- Intellectual Property Regulation Board on behalf of the Chartered Institute of Patent Attorneys and the Institute of Trade Mark Attorneys.

This consultation will close on **5pm, Thursday 17 April 2014**.

**This Consultation Paper will be of interest to:**

Approved regulators

Providers of legal services

Legal representative bodies

Legal advisory organisations

Other third sector organisations

Non-departmental Public Bodies

Consumer groups

Members of the legal profession

Accountancy bodies

Potential new entrants to the legal services market

Government departments

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## Introduction

### Consultation by the Legal Services Board (LSB)

1. The Legal Services Act 2007 (the Act) gives the LSB a power to recommend to the Lord Chancellor the designation of approved regulators as licensing authorities to license and regulate alternative business structures (ABS). In order to be designated as a licensing authority, there must be in place an appellate body to hear and determine appeals from the decisions of the licensing authority. Section 80 of the Act is the mechanism by which the Lord Chancellor may by order establish a body to hear and determine such appeals. Such an order can only be made on the recommendation of the LSB. Section 81 sets out the procedural requirements for such orders and includes the requirement for the LSB to consult on both the proposed recommendation and the proposed order.
2. This consultation, which will last for four weeks, invites comments on two draft statutory instruments and supporting recommendations proposed under section 80 of the Act. The orders relate to
  - the Institute of Chartered Accountants in England and Wales (ICAEW) becoming a licensing authority for probate activities;
  - the Chartered Institute of Patent Attorneys (CIPA) and the Institute of Trade Mark Attorneys (ITMA) becoming licensing authorities for the existing reserved legal activities undertaken by trade mark and patent attorneys.<sup>1</sup>

The regulatory functions of CIPA and ITMA are delegated to the Patent Regulation Board and the Trade Mark Regulation Board respectively. These work together as the Intellectual Property Regulation Board (IPReg). All references to “IPReg” and actions thereof in this consultation paper mean IPReg acting under the authority delegated to it by CIPA and ITMA.

We expect that the orders will have completed the relevant Ministry of Justice and parliamentary processes by November 2014. In the meantime ICAEW, if designated as a licensing authority, will use its existing independent Appeals Committee as its appellate body. IPReg currently has no independent appellate body and will therefore be unable to be designated as a licensing authority until a section 80 order is in place.

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<sup>1</sup> Under the Act, Patent Attorneys and Trade Mark Attorneys are authorised to undertake the following reserved legal activities: the exercise of right of audience, the conduct of litigation, reserved instrument activities, the administration of oaths.

## Policy rationale for a single appellate body to hear and determine appeals

3. The LSB first consulted on the proposal for a single appellate body to hear all appeals on licensing authority decisions by alternative business structures (ABS) in the *Approaches to Licensing* in November 2009.<sup>2</sup> The LSB proposed that the appeals should be heard by the General Regulatory Chamber (GRC) of the First Tier Tribunal (FTT) with the paper setting out the rationale for this approach, and an analysis of the options. The proposal received broad support from consultees, as reflected in our response to the consultation published in March 2010.<sup>3</sup>
4. In August 2010, the LSB published a further consultation document *Alternative business structures: appeal arrangements*.<sup>4</sup> This set out our detailed proposals for providing a single mechanism for hearing appeals against decisions made by licensing authorities.
5. Two licensing authorities have been so far been designated. The Council for Licensed Conveyancers, which was designated May 2011, elected to use the FTT as its appellate body. The Law Society (whose regulatory functions are delegated to the Solicitors Regulation Authority) elected to use its existing disciplinary body, the Solicitors Disciplinary Tribunal. Notwithstanding this different approach, we remain of the view that in order to mitigate the risk of inconsistent decisions and penalties being made in respect of, and imposed on, against ABS, all appeals against from decisions made by licensing authorities should be heard and determined by a single body and we support the approach taken by ICAEW and IPReg in selecting the FTT as its appellate body.
6. This consultation is not concerned with our overall policy. Both ICAEW<sup>5</sup> and IPReg<sup>6</sup>, as part of the development of their applications seeking designation as a licensing authority, consulted on the proposal to use the FTT as their appellate body. This consultation is on the narrow issue of the drafting of the statutory instruments and the related recommendations which will give effect to that decision.

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<sup>2</sup> Available at <http://www.legalservicesboard.org.uk> > What we do > Closed consultations

<sup>3</sup> Available at <http://www.legalservicesboard.org.uk> > What we do > Closed consultations

<sup>4</sup> See: [http://www.legalservicesboard.org.uk/news\\_publications/latest\\_news/pdf/abs\\_appeals\\_sdt\\_consultation.pdf](http://www.legalservicesboard.org.uk/news_publications/latest_news/pdf/abs_appeals_sdt_consultation.pdf)

<sup>5</sup> See Annex 22C of the ICAEW's applications to the LSB:

[http://www.legalservicesboard.org.uk/Projects/pdf/20121214\\_icaew's\\_probate\\_application\\_anx\\_9-23.pdf](http://www.legalservicesboard.org.uk/Projects/pdf/20121214_icaew's_probate_application_anx_9-23.pdf)

<sup>6</sup> See Annex 2 of IPReg's application to the LSB:

[http://www.legalservicesboard.org.uk/Projects/statutory\\_decision\\_making/pdf/annex\\_2\\_summary\\_absconsultationresponses\(lsb\).pdf](http://www.legalservicesboard.org.uk/Projects/statutory_decision_making/pdf/annex_2_summary_absconsultationresponses(lsb).pdf)

## ICAEW Proposal

### Background to ICAEW's designation applications

7. ICAEW is a regulator of, and professional membership body for the accountancy profession in England and Wales. In December 2012, it made two applications to the LSB. The first application (under Part 2 of Schedule 4 to the Act) sought a recommendation for designation as an approved regulator for probate activities; the second (under Part 1 of Schedule 10 to the Act) sought a recommendation for designation as a licensing authority for the same activities. ICAEW's full designation applications have been published on the LSB website.<sup>7</sup>
8. The ICAEW has created a Probate Committee which will have full delegated responsibility for dealing with all matters concerning probate practitioners. LSB is satisfied that the arrangements for the Probate Committee will allow it to exercise the regulatory functions in a way that is not prejudiced by the ICAEW representative functions.
9. LSB considered the applications from ICAEW in accordance with its rules<sup>8</sup> and the requirements of the Act and, in December 2013, recommended to the Lord Chancellor that he made two orders designating ICAEW as an approved regulator and a licensing authority for probate. The decision notice in respect of the designations can be found on our website.<sup>9</sup>
10. On 6 March 2014 the Lord Chancellor approved these recommendations.
11. The ICAEW has an existing independent Appeals Committee that is capable of hearing and determining appeals against licensing authority decisions and the ICAEW proposed that this Appeals Committee could act as the appellate body for all probate decisions until such time as the FTT is established as the appeals body. LSB has accepted this as an interim arrangement which will allow designation to take place at an earlier date; our assessment is that there will be few, if any, cases for the ICAEW Appeal Committee to consider in the interim period.

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<sup>7</sup> ICAEW applications: [http://www.legalservicesboard.org.uk/Projects/statutory\\_decision\\_making/icaew.htm](http://www.legalservicesboard.org.uk/Projects/statutory_decision_making/icaew.htm)

<sup>8</sup> The LSB's *Rules for Licensing Authority Designation Applications* are available at [www.legalservicesboard.org.uk](http://www.legalservicesboard.org.uk). The LSB's *Rules for Applications for Approved Regulator and Qualifying Regulator Designation* and the LSB's *Rules for Licensing Authority Designation Applications* are available at [www.legalservicesboard.org.uk](http://www.legalservicesboard.org.uk).

<sup>9</sup> See: [http://www.legalservicesboard.org.uk/Projects/statutory\\_decision\\_making/closed\\_designation\\_applications.htm](http://www.legalservicesboard.org.uk/Projects/statutory_decision_making/closed_designation_applications.htm)

## ICAEW Section 80 order

12. The ICAEW applications proposed, in line with LSB policy, that the FTT be established as its appellate body. The draft order on which we are now consulting will give effect to that proposal for ICAEW as a licensing authority; no order under the Act is required for the FTT to be able to hear appeals made by ICAEW as an approved regulator. The proposal has been subject to consultation by ICAEW and HM Courts & Tribunals Service (HMCTS) has agreed to the arrangement.

13. Attached at **Annex A** are the following

- a draft recommendation from the LSB to the Lord Chancellor that he make the order
- a draft statutory instrument establishing the FTT as the appellate body to hear and determine appeals against decisions made by the ICAEW in its capacity as a licensing authority

**Question 1:** *Do you have any comments on either the draft order or the draft recommendation? Do they deliver the policy intention of allowing the FTT to be established to hear and determine appeals from decisions made by ICAEW in its capacity as a licensing authority?*

14. An impact assessment has been prepared to accompany the order, a copy of which is included in **Annex B**. Given the available evidence, our view is that this represents a reasonable assessment of the likely costs, benefits and impact of the leading options.

**Question 2:** *Do you have any comments on the impact assessment?*

## IPReg Proposal

### Background to IPReg designation application

15. The Chartered Institute of Patent Attorneys (CIPA) and the Institute of Trade Mark Attorneys (ITMA) are existing approved regulators who authorise patent and trade mark attorneys to deliver reserved legal services. The regulatory functions of these approved regulators are delegated to the Patent Regulation Board and the Trade Mark Regulation Board, working together as IPReg.
16. In May 2013, IPReg made an application to the LSB under Schedule 10 to the Act for CIPA and ITMA to be designated licensing authorities for ABS. The scope of the application is restricted to IPReg's current reserved legal activities and it intends only to license ABS that conduct intellectual property work.
17. IPReg's full designation application, as well as a summary prepared by the LSB and the decision notice in respect of the designation has been published on the LSB website.<sup>10</sup>
18. LSB considered the application in accordance with its rules<sup>11</sup> and the requirements of the Act and in December 2013 recommended to the Lord Chancellor that he make an order designating CIPA and ITMA as licensing authorities for the existing reserved legal activities undertaken by trade mark and patent and trade mark attorneys respectively. The LSB decision on the application can be found on our website.<sup>12</sup>
19. On 6 March 2014 the Lord Chancellor approved the LSB's recommendation.

### CIPA and ITMA Section 80 order

20. In its application, IPReg proposed that appeals in respect of all ABS licensed by IPReg (on behalf of CIPA and ITMA) would be heard by the GRC of the FTT. The proposal has been subject to consultation by IPReg and HM Courts & Tribunals Service (HMCTS) has agreed to the arrangement.<sup>13</sup>

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<sup>10</sup> See:

[http://www.legalservicesboard.org.uk/Projects/statutory\\_decision\\_making/closed\\_designation\\_applications.htm](http://www.legalservicesboard.org.uk/Projects/statutory_decision_making/closed_designation_applications.htm)

<sup>11</sup> The LSB's *Rules for Licensing Authority Designation Applications* are available at [www.legalservicesboard.org.uk](http://www.legalservicesboard.org.uk). The LSB's *Rules for Applications for Approved Regulator and Qualifying Regulator Designation* and the LSB's *Rules for Licensing Authority Designation Applications* are available at [www.legalservicesboard.org.uk](http://www.legalservicesboard.org.uk).

<sup>12</sup> See:

[http://www.legalservicesboard.org.uk/Projects/statutory\\_decision\\_making/closed\\_designation\\_applications.htm](http://www.legalservicesboard.org.uk/Projects/statutory_decision_making/closed_designation_applications.htm)

<sup>13</sup> IPReg is also seeking to establish the GRC of the FTT as the appellate body for its decisions (on behalf of CIPA and ITMA) as an approved regulator, but this would be made by a separate order, on which will be consulted on at a later date.



21. A section 80 order is required to establish the FTT as the appellate body to hear and determine appeals against licensing authority decisions by IPReg.

22. Attached at **Annex C** are the following:

- a draft recommendation from the LSB to the Lord Chancellor that he make the order
- a draft statutory instrument establishing the FTT as the appellate body to hear and determine appeals against decisions made by CIPA and ITMA in their capacity as licensing authorities

**Question 3:** *Do you have any comments on either the draft order or the draft recommendation? Do they deliver the policy intention of allowing the FTT to be established to hear and determine appeals from decisions made by CIPA/ITMA in their capacity as licensing authorities?*

23. An impact assessment has been prepared to accompany the order, a copy of which is included in **Annex D**. Given the available evidence, our view is that this represents a reasonable view of the likely costs, benefits and impact of the leading options.

**Question 4:** *Do you have any comments on the impact assessment?*

## How to respond

24. We would prefer to receive responses and representations electronically (in Microsoft Word or pdf format), but hard copy responses by post, courier or fax are also welcome by 5pm, Thursday 17 April 2014.

25. Responses should be sent to:

**Email:** [consultations@legalservicesboard.org.uk](mailto:consultations@legalservicesboard.org.uk)

**Post:**

Michael Mackay  
Legal Services Board  
One Kemble Street  
London  
WC2B 4AN

**Fax:** 020 7271 0051

26. We intend to publish all responses to this consultation on our website unless a respondent explicitly requests that a specific part of the response, or its entirety, should be kept confidential. We will record the identity of the respondent and the fact that they have submitted a confidential response in our summary of responses.

27. If you want to discuss any aspect of this consultation, or need advice on how to respond, please contact the LSB by telephone (020 7271 0050) or by one of the methods described above.

## Complaints

28. Complaints or queries about the LSB's consultation process should be directed to Michelle Jacobs, Consultation Co-ordinator, at the following address:

Michelle Jacobs  
Legal Services Board  
One Kemble Street  
London  
WC2B 4AN

Or by e-mail to: [michelle.jacobs@legalservicesboard.org.uk](mailto:michelle.jacobs@legalservicesboard.org.uk)

## Glossary of Terms

<b>ABS</b>	Alternative Business Structures. From October 2011 non-legal firms are able to offer legal services to their customers in a way that is integrated with their existing services. Or law firms will be able to develop their portfolios to compete across wider areas compared with their existing experience.
<b>AR or approved regulator</b>	A body which is designated as an approved regulator by Parts 1 or 2 of schedule 4, and whose regulatory arrangements are approved for the purposes of the LSA and which may authorise persons to carry on any activity which is a reserved legal activity in respect of which it is a relevant AR.
<b>Authorised Person</b>	A person authorised to carry out a reserved legal activity.
<b>CLC</b>	Council for Licensed Conveyancers – the regulator of Licensed Conveyancers.
<b>Consultation</b>	The process of collecting feedback and opinion on a policy proposal.
<b>FTT</b>	The General Regulatory Chamber of the First Tier Tribunal currently hears appeals about decisions made by the Council for Licensed Conveyancers, which was designated as a licensing authority for alternative business structures in 2011.
<b>ICAEW</b>	Institute of Chartered Accountants of England and Wales – the representative body for Chartered Accountants in England and Wales.
<b>Impact Assessment</b>	An assessment of the likely impact of a policy on cost, benefits, risks and the likely or actual effect on people in respect to diversity.
<b>LA or Licensing Authority</b>	An AR which is designated as a licensing authority to license firms as ABS.
<b>LSB or the Board</b>	Legal Services Board – the independent body responsible for overseeing the regulation of lawyers in England and Wales.
<b>LSA or the Act</b>	Legal Services Act 2007.
<b>Regulatory Rules</b>	Set out the regulatory arrangements that approved regulators must comply with in order to be designated as approved regulators for a specific reserved activity or activities.
<b>Reserved Legal Activity</b>	Legal services within the scope of regulation by the approved regulators.
<b>SDT</b>	Solicitors Disciplinary Tribunal. Adjudicates upon alleged breaches of the SRA Handbook. The SDT currently hears appeals about decisions made by the Law Society (Solicitors Regulation Authority), which was designated as a licensing authority for alternative business structures in 2011.

<b>SRA</b>	Solicitors Regulation Authority - Independent regulatory body of the Law Society.
<b>Statutory Instrument</b>	A form of legislation which allow the provisions of an Act of Parliament to be brought into force or altered without Parliament having to pass a new Act.

## **Annex A: Draft recommendation by the LSB to the Lord Chancellor under Section 80 of the Legal Services Act 2007 and draft statutory instrument for ICAEW**

### **Proposed recommendation for ICAEW**

1. At its meeting on the [date] the Legal Services Board (the Board) decided to make a recommendation to the Lord Chancellor that he makes an order under section 80 of the Act that the First-tier Tribunal may hear and determine appeals against the decisions made by the Institute of Chartered Accountants in England and Wales (ICAEW) acting in its capacity as a licensing authority (should it be designated as such). A draft of the order is attached to this recommendation at **Annex XX**.
2. In accordance with the requirements of section 81(2) of the Act, the Board published a draft of the proposed recommendation and draft order on [date] and invited representations about the proposals to be made to the Board by [date]. [The Board has had regard to the representations duly made] or [no representations were received].
3. In accordance with section 81(1) of the Act, the recommendation is made with the consent of the ICAEW and HM Courts & Tribunals Service (HMCTS).

Chair, Legal Services Board

[Date]

## Proposed section 80 order for ICAEW

*Draft Order laid before Parliament under section 206(4) and (5) of the Legal Services Act 2007 for approval by resolution of each House of Parliament.*

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### DRAFT STATUTORY INSTRUMENTS

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**2014 No. XXX**

## **LEGAL SERVICES, ENGLAND AND WALES**

### The Legal Services Act 2007 (Appeals from Licensing Authority Decisions) (Institute of Chartered Accountants in England and Wales) Order 2014

*Made* - - - - - *\*\*\**

*Coming into force in accordance with article 2*

The Lord Chancellor makes the following Order in exercise of the powers conferred by sections 80(1)(b) and (4) and 204(3) and (4) of the Legal Services Act 2007<sup>(14)</sup>.

In accordance with section 80(3) of that Act, the Order is made following a recommendation made by the Legal Services Board to which was annexed a draft order which was in a form not materially different from this Order.

The Legal Services Board made its recommendation under section 80 of that Act with the consents required by section 81(1) of that Act and having complied with the requirements of section 81(2) to (5) of that Act.

A draft of this Order has been approved by a resolution of each House of Parliament pursuant to section 206(4) and (5) of the Legal Services Act 2007.

#### **Citation**

1. This Order may be cited as the Legal Services Act 2007 (Appeals from Licensing Authority Decisions) (Institute of Chartered Accountants in England and Wales) Order 2014.

#### **Commencement**

2. This Order comes into force on the day after the day on which it is made.

#### **Interpretation and application**

3.—(1) In this Order—

“the 2007 Act” means the Legal Services Act 2007;

“the Institute” means the Institute of Chartered Accountants in England and Wales.

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<sup>(14)</sup> 2007 c. 29.

(2) This Order applies to appeals from decisions made by the Institute in its capacity as a licensing authority.

### Appeals to be made to the First-tier Tribunal

4.—(1) The First-tier Tribunal may hear and determine appeals from decisions made by the Institute which are appealable under any provision of—

- (a) Part 5 of the 2007 Act; or
- (b) the Institute’s licensing rules<sup>(15)</sup>.

(2) The First-tier Tribunal may, in relation to appeals from decisions which are appealable under the Institute’s licensing rules—

- (a) affirm the Institute’s decision in whole or in part;
- (b) quash the Institute’s decision in whole or in part;
- (c) substitute for all or part of the Institute’s decision another decision of a kind that the Institute could have taken; or
- (d) remit a matter to the Institute (generally, or for determination in accordance with a finding made or direction given by the First-tier Tribunal).

### Modifications of the 2007 Act

5. The Schedule to this Order (which modifies provisions of the 2007 Act) has effect.

Signed by authority of the Lord Chancellor

*Name*  
Parliamentary Under Secretary of State  
Ministry of Justice

Date

## SCHEDULE

Article 5

### Modifications to the 2007 Act

1. Section 96 of the 2007 Act (appeals against financial penalties) has effect in relation to a penalty imposed by the Institute as if—

- (a) in subsection (1), “, before the end of such period as may be prescribed by rules made by the Board,” were omitted;
- (b) subsections (6) and (7) were omitted; and
- (c) for subsection (8) there were substituted—

“(8) Except as provided by this section or Part 1 of the Tribunals, Courts and Enforcement Act 2007<sup>(16)</sup>, the validity of a penalty is not to be questioned by any legal proceedings whatever.”

2.—(1) Schedule 13 (ownership of licensed bodies) has effect in relation to decisions of the Institute with the following modifications.

(2) Paragraph 18 (appeal from decision to approve notified interest subject to conditions) has effect as if—

- (a) in sub-paragraph (1), “before the end of the prescribed period” were omitted;
- (b) sub-paragraphs (3) and (4) were omitted; and

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<sup>(15)</sup> Section 83 of the 2007 Act defines and makes other provision relating to licensing rules. By reason of article 4 the First-tier Tribunal is the “relevant appellate body” as defined in section 111 of the 2007 Act.

<sup>(16)</sup> 2007 c.15.



- (c) in sub-paragraph (5), after “an appeal under this paragraph” there were inserted “or Part 1 of the Tribunals, Courts and Enforcement Act 2007”.
- (3) Paragraph 20 (appeal from decision to object to a notified interest) has effect as if—
  - (a) in sub-paragraph (1), “before the end of the prescribed period” were omitted;
  - (b) sub-paragraphs (3) and (4) were omitted; and
  - (c) in sub-paragraph (5), after “an appeal under this paragraph” there were inserted “or Part 1 of the Tribunals, Courts and Enforcement Act 2007”.
- (4) Paragraph 29 (appeal from decision to approve a notifiable interest subject to conditions) has effect as if—
  - (a) in sub-paragraph (1), “before the end of the prescribed period” were omitted;
  - (b) sub-paragraphs (3) and (4) were omitted; and
  - (c) in sub-paragraph (5), after “an appeal under this paragraph” there were inserted “or Part 1 of the Tribunals, Courts and Enforcement Act 2007”.
- (5) Paragraph 32 (appeal from decision to object to acquisition of a notifiable interest) has effect as if—
  - (a) in sub-paragraph (1), “before the end of the prescribed period” were omitted;
  - (b) sub-paragraphs (3) and (4) were omitted; and
  - (c) in sub-paragraph (5), after “an appeal under this paragraph” there were inserted “or Part 1 of the Tribunals, Courts and Enforcement Act 2007”.
- (6) Paragraph 34 (appeal from decision to impose conditions (or further conditions) on existing restricted interest) has effect as if—
  - (a) in sub-paragraph (1), “before the end of the prescribed period” were omitted;
  - (b) sub-paragraphs (3) and (4) were omitted; and
  - (c) in sub-paragraph (5), after “an appeal under this paragraph” there were inserted “or Part 1 of the Tribunals, Courts and Enforcement Act 2007”.
- (7) Paragraph 37 (appeal from decision to object to existing restricted interest) has effect as if—
  - (a) in sub-paragraph (1), “before the end of the prescribed period” were omitted;
  - (b) sub-paragraphs (4) and (5) were omitted; and
  - (c) in sub-paragraph (6), after “an appeal under this paragraph” there were inserted “or Part 1 of the Tribunals, Courts and Enforcement Act 2007”.
- (8) Paragraph 47 (notifying the Board of objection or condition as to a person’s holding of a restricted interest) has effect as if, in sub-paragraph (4), for “to the High Court” there were substituted “under Part 1 of the Tribunals, Courts and Enforcement Act 2007”.
- (9) Paragraph 48 (notifying the Board of approval of the holding of a restricted interest by a person included in the Board’s list of persons subject to objections and conditions) has effect as if, in sub-paragraph (3), for “to the High Court” there were substituted “under Part 1 of the Tribunals, Courts and Enforcement Act 2007”.
- (10) Paragraph 50 (appeal from decision to notify the Board where share limit or voting limit breached) has effect as if—
  - (a) in sub-paragraph (1), “before the end of the prescribed period” were omitted;
  - (b) sub-paragraphs (3) and (4) were omitted; and
  - (c) in sub-paragraph (5), after “any appeal under this paragraph” there were inserted “or Part 1 of the Tribunals, Courts and Enforcement Act 2007”.

**EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order makes provision under section 80 of the Legal Services Act 2007 (c. 29) (“the 2007 Act”) for the First-tier Tribunal to hear and determine appeals from decisions made by the Institute of Chartered

Accountants in England and Wales (“the Institute”), in its capacity as a licensing authority. Licensing authorities regulate licensed bodies under the provisions of Part 5 of the Act (alternative business structures). The decisions are those which are appealable under Part 5 of the 2007 Act or the Institute’s own licensing rules. Section 83 of the 2007 Act defines licensing rules as rules about the licensing and regulation of licensed bodies. A separate Order has designated the Institute as a licensing authority.

Article 4 provides for such appeals to be heard and determined by the First-tier Tribunal and sets out the powers of the First-tier Tribunal in relation to an appeal under the licensing rules. The 2007 Act provides for the grounds of appeal and the First-tier Tribunal’s powers in relation to an appeal under Part 5.

Certain provisions of the 2007 Act are modified by article 5 of, and the Schedule to, this Order. The modifications take account of the provision in Part 1 of the Tribunals, Courts and Enforcement Act 2007 (c. 15) for appeals from the First-tier Tribunal to go to the Upper Tribunal.

An impact assessment has been prepared for this instrument and can be found at [tbc].

## Annex B: Impact Assessment on the Section 80 Order for ICAEW

<b>Title:</b> Section 80 order: Modification of the Institute of Chartered Accountants in England and Wales (ICAEW) in respect of Appeals from Licensing Authority Decisions		<b>Impact Assessment (IA)</b>		
<b>IA No:</b> <b>Lead department or agency:</b> Ministry of Justice <b>Other departments or agencies:</b> Legal Services Board		<b>Date:</b> 00/00/2014 <b>Stage:</b> Development/Options <b>Source of intervention:</b> Domestic <b>Type of measure:</b> Secondary legislation <b>Contact for enquiries:</b> Paul Greening paul.greening@legalservicesboard.org.uk		
<b>Summary: Intervention and Options</b>		<b>RPC Opinion: GREEN</b>		
Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (£ million per annum)	In scope of One-In, One-Out?	Measure qualifies as
N/A	N/A	N/A	No	Zero Net Cost
<b>What is the problem under consideration? Why is government intervention necessary?</b> The Institute of Chartered Accountants in England and Wales (ICAEW) has applied to be designated as a licensing authority for alternative business structures (ABS). The Legal Services Act 2007 (LSA 2007) states that a licensing authority must make provision in its licensing rules for appeals in relation to decisions it makes as a licensing authority with respect to ABS. LSB intervention is required as a permanent appeals arrangement for ICAEW licensing decisions can only be established by an order under section 80 of the LSA 2007.				
<b>What are the policy objectives and the intended effects?</b> A section 80 order is needed so that ICAEW can make the necessary rules to allow the General Regulatory Chamber (GRC) of the First-tier Tribunal (FTT) to hear appeals against decisions made by ICAEW. The policy objective of the LSB is also to put in place an appeal mechanism through the use of the GRC of the FTT to hear appeals against decisions made by all licensing authorities, including those made by ICAEW.				
<b>What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)</b> Option 0: Do nothing.  Option 1: Propose a section 80 order which addresses the objectives outlined above in respect of hearing appeals against decisions made by ICAEW as an LA.  Option 1 is the preferred option, as the expertise of the FTT is considered appropriate for the issues that ABS licensing appeals may involve. The FTT already acts as the appeals body for ABS licensing appeals for decisions of the Council for Licensed Conveyancers. It is also consistent with the LSB's overall policy aim that the FTT's jurisdiction be expanded in the longer term to create a single appeals mechanism for all approved regulators in respect of ABS and non-ABS decisions.				
<b>Will the policy be reviewed? It will not be reviewed. If applicable, set review date: Month/Year</b>				
Does implementation go beyond minimum EU requirements?			N/A	

Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	<b>Micro</b> Yes	<b>&lt; 20</b> Yes	<b>Small</b> Yes	<b>Mediu</b> mYes	<b>Large</b> Yes
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			<b>Traded:</b>	<b>Non-traded:</b>	

***I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.***

Signed by the responsible  
SELECT SIGNATORY:

Date

.....: 18 February 2014

## Summary: Analysis & Evidence

## Policy Option 1

**Description:** First tier Tribunal as the appellate body for appeals against ICAEW decisions as a licensing authority

### FULL ECONOMIC ASSESSMENT

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

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

The key monetised costs by main affected groups is likely to mostly impact on ICAEW who will bear the costs of the FTT in hearing appeals. Estimate of total costs in first year of £38,000 with unit running costs per case of £3,500. Might be some monetised costs to individual ABS who appeal (e.g. legal and representative costs) but this is not possible to quantify.

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

Some non-monetised costs to FTT in terms of using internal resources (e.g. legal, judges, staffing, training etc). However, FTT already has allocated resources for its tribunal functions and will invoice ICAEW for actual monetised costs. ICAEW could incur non-monetised human and IT resource costs for representing itself in appeals cases. There may be small regulatory costs to consumers as the ICAEW passes on hearing costs to ABS businesses in the form of higher fees.

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'

Difficult to quantify specific monetised benefits for main affected groups. FTT will invoice ICAEW for costs in dealing with appeals but this will not be to achieve a profit, so the monetised benefit to FTT will be neutral. An effective and fair appeals mechanism may increase confidence in the in the probate ABS market which could in turn reap unquantifiable monetised benefits for ABS firms regulated by ICAEW.

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

The main non-monetised benefit will be that ABS and ABS applicants will have access to a stable long term, independent and transparent tribunal process. This will support the perception of fairness and therefore confidence in regulatory decisions made by ICAEW, encouraging entry into the market. Consumers of legal services may also benefit from increased consumer protection as a result of consistent arrangements for dealing with appeals in relation to licensing authority decisions.

Key assumptions/sensitivities/risks	Discount rate (%)	N/A
Key assumption is that the number of appeals will be in the 0-10 spectrum of cases the HM Courts and Tribunals Service (HMCTS) has costed for. The assumption of low number of cases is based on the estimate of firms that ICAEW considers are thought to be licensable (around 100) and that historically there has been a very low number of higher appeals against ICAEW's regulatory decisions. There is an extremely low risk that the number of cases will exceed the 0-10 range per annum costed.		

### BUSINESS ASSESSMENT (Option 1)

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

## Evidence Base (for summary sheets)

### References

No.	
1	Legal Services Act (2007)
2	LSB Consultation Paper Approaches to Licensing
3	LSB Response to Consultation on Approaches to Licensing
4	ICAEW application documents for designation as an approved regulator and licensing authority
4	Draft section 80 order

# Evidence Base (for summary sheets)

## 1. Introduction

### Background

1.1 The Legal Services Board (LSB) was created by the Legal Services Act 2007 (LSA 2007) and is charged with the responsibility of overseeing the regulators of legal services and ensuring that their activities reflect the regulatory objectives set out in the LSA 2007. The LSB's mandate is to ensure that regulation in the legal services industry is carried out in a manner that is consistent with the public interest and that the interest of consumers is central in policy making. The LSA 2007 gives the LSB and approved regulators (the regulators of traditional legal services providers) the same regulatory objectives. In full these objectives are:

- Protecting and promoting the public interest;
- Supporting the constitutional principle of the rule of law;
- Improving the access to justice;
- Protecting and promoting the interests of consumers;
- Promoting competition in the provision of legal services;
- Encouraging an independent, strong, diverse and effective legal services profession;
- Increasing public understanding of the citizen's legal rights and duties; and
- Promoting and maintaining adherence to the professional principles.

1.2 The LSA 2007 enables the operation of Alternative Business Structures (ABS) by permitting the ownership of legal firms by non-lawyers. The LSA 2007 also details the process of establishing licensing authorities and the statutory basis on which they license and regulate Alternative Business Structures (ABS).

1.3 The LSA 2007 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 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 by ABS businesses against decisions of ICAEW should it be designated as a licensing authority under Part 5 of the LSA 2007. An order under section 80 is required for appeals to be heard by the First-tier Tribunal (FTT) which is part of the unified tribunal's structure established under the Tribunals, Courts and Enforcement Act 2007 and administered by HM Courts and Tribunal Service.

- 1.5 The FTT combines a number of previously separate administrative tribunals into one unified structure, which has its own infrastructure and administrative support function. The FTT is made up of a variety of jurisdictions which are grouped into Chambers, including the General Regulatory Chamber (GRC) which consists of a number of jurisdictions concerned with hearing appeals against the decisions of regulatory bodies.
- 1.6 It should be noted that it is the intention the GRC will also hear appeals against ICAEW decisions in relation to the non-ABS probate individuals and firms the ICAEW regulates as an approved regulator. However, this is not the subject of this impact assessment.
- 1.7 There are some explicit appeal rights under the LSA 2007 (schedule 96 and schedule13), concerning decisions to impose a financial penalty or to impose restrictions on the ownership of a licensed body. Licensing rules made by ICAEW. The LSB has issued [guidance in December 2010](#) specifying those decisions which, as a minimum, the LSB considers ought to be appealable. We expect the following decisions of licensing authorities to be appealable, with the relevant sections or schedules of the LSA 2007 shown in brackets:
- Refusal of application for a licence (s.84)
  - Imposition of conditions on a licence (s.85)
  - Modification of a licence (s.86)
  - Refusal to designate as Head of a 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 s.106 and s.107.
- 1.8 The ICAEW is a regulator and professional membership body for the accountancy profession in England and Wales. In December 2012 it made two applications to the LSB. The first application was for designation as an approved regulator for probate activities. The second



was for designation as a licensing authority for probate activities. It is the latter which is the subject of this impact assessment in respect of an appeals mechanism for the decisions ICAEW will make as a licensing authority.

- 1.9 We anticipate that, subject to Parliamentary approval, the order can take effect from the end of 2014.

#### **Problem under consideration**

- 1.10 The ICAEW set out in its application for designation that it had elected to use the GRC as a single appellate body for all regulatory decisions relating to probate, as both an approved regulator and licensing authority. A section 80 order is needed so that ICAEW can make the relevant rules to allow the GRC to consider the ICAEW decisions it makes as a licensing authority. While an interim measure established the existing ICAEW Appeals Committee as a single appellate body for all probate decisions (including those relating to ICAEW licensing decisions), without a section 80 order it will not be possible to establish the GRC as the independent appellate body for the licensing decisions of the ICAEW in respect of probate ABS firms.

#### **Economic rationale**

- 1.11 In terms of the wider context, 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 re-distributional reasons (e.g. to reallocate goods and services to the more needy groups in society).
- 1.12 In this case, the intervention is required on both efficiency and equity grounds, as setting up a long term independent appeals body process through the FTT would enable the net benefits of ABS to be realised in relation to the services provided by firms regulated by the ICAEW. More generally, setting up an appropriate appeals mechanism through the FTT would benefit ABS businesses directly, and may result in increased consumer confidence in the overall regulatory framework for legal services. Providing probate ABS firms regulated by the ICAEW with a right of appeal may also be seen as fairer from society's perspective as

it signals an important fair market entry process for ICAEW probate firms who want to become ABS. The proposal for the FTT to be the independent appeals body may therefore generate further economic gains for society, through providing greater confidence to consumers and providers in the independence and efficacy of the appeal arrangements.

### Policy objective

1.13 The policy objective is to put in place an appeal mechanism to hear appeals against decisions made by ICAEW should it be designated as a licensing authority. The costs and processes for the appeal mechanism are intended to be transparent, efficient, fair and public. The body hearing the appeals should have sufficient resources and expertise to deal with the potentially complex issues that ABS appeals may relate to. The FTT is considered to be the appropriate independent appeal route to fulfil that role. It is already the appeal body for Council for Licensed Conveyancers (CLC) licensing authority decisions. Moreover, there has been a trend following the Review of Tribunals by Sir Andrew Leggatt to consolidate tribunal jurisdictions. The FTT now operates the unified tribunal service organised into Chambers, including the GRC. It is the stated policy position of the LSB that the FTT should hear appeals against decisions by all approved regulators and licensing authorities of legal services regardless of the type of legal service being provided or whether it is ABS or non-ABS. This will lead to greater consistency in decision making, enable a body of expertise to develop, and enable economies of scale to be achieved in relation to administrative and appellate functions.

### Affected stakeholders

1.14 The following individuals, organisations and sectors are affected:

- ICAEW– the body whose decisions will be appealed.
- HM Courts and Tribunal Service – which contains the First-tier Tribunal to which appeals will be made.
- ICAEW ABS firms providing probate services (and applicants to the ICAEW for an ABS licence) – who will be the subject of the decisions that are appealable.
- Consumers – who may ultimately bear the regulatory costs through the process paid for legal services.

- Appeals related service providers such as suppliers of legal advice and representation services.

## 2. Costs and Benefits

2.1 This Impact Assessment identifies impacts on individuals, groups and businesses in the UK, with the aim of understanding what the overall impact to society might be from implementing the two options. The costs and benefits of Option 1 is compared to the do nothing option (Option 0). Impact Assessments place a strong emphasis on valuing the costs and benefits in monetary terms (including estimating the value of goods and services that are not traded). However, there are important aspects of the proposal that cannot sensibly be monetised. These might include how the proposal impacts differently on particular groups of society or changes in equity and fairness, either positive or negative.

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

2.2 Doing nothing is not considered a feasible option, as without intervention in the form of an order under section 80 of the LSA 2007, the ICAEW cannot make the relevant rules to allow the GRC to consider the ICAEW decisions it makes as a licensing authority. The do nothing option is presented as a hypothetical base case only.

2.3 Because the do nothing option is compared against itself, its costs and benefits are necessarily zero, as is its Net Present Value (NPV being the difference between the money inflows and outflows from an option).

### Option 1: The First-tier Tribunal acts as the appeals body for appeals against decisions of ICAEW

#### Description

2.4 Under this option, an order would be made under section 80 of the LSA 2007 making provision for the FTT to hear appeals against the decisions of ICAEW in its function as a licensing authority, with the functions allocated to the GRC of the FTT.

#### Costs

##### *HM Courts and Tribunals Service*

2.5 HM Courts and Tribunals Service (HMCTS) would face additional costs associated with a potential increase in cases heard at the Tribunal. However, set up and operating costs (e.g. tribunal member sitting fees) will be recovered from the ICAEW by HMCTS, meaning there should be no net financial impact on HMCTS as a result of the proposal.

##### *ICAEW*

2.6 HMCTS has provided costs (which, as mentioned in 2.5, will be recovered from the ICAEW) for considering and hearing appeals as follows:

- Start up costs - £3,000
- First year's running costs - £35,000
- The unit running cost - £3,500

2.7 Start up costs cover update of the website, guidance, forms, staff and judicial training, senior judicial input into implementation, implementation time and expenses incurred by HMCTS. The running cost covers judicial cost for salaried and fee paid judges, administration for those appeals and use of HMCTS estate for both hearing and administration. If panel members were used they would be factored in to the cost per case.

2.8. The running costs aim to capture as much of the expenditure of bringing in a new appeal right as possible, even if that appeal right is expected to have no appeals in practice. However, it cannot be fully cost reflective - particularly on smaller appeals - as a lot of the preparatory work will be in-house and involvement by divisions within HMCTS. Legal, policy, judicial, communications and IT colleagues will be required and travel expenses, for instance, might be incurred. The same amount of work would need to be carried out if HMCTS were to receive 0 or 10 appeals. To that end, HMCTS policy is to charge for a minimum of ten appeals in the first year. This would be invoiced as soon as the main work to implement starts. Any appeals over that number, and in subsequent years, will be charged, on a quarterly invoice basis to ICAEW, based on cost per case heard by the tribunals system. Therefore if ICAEW did not have any appeals, it would not be required to make any payment after the initial payment - even if new judges require training in the future.

2.9 The number of cases referred to FTT in respect of ICAEW licensing decisions is likely to be well within the 0-10 spectrum. There is no precise equivalent proxy for ABS licensing appeals at the ICAEW, however, the assumption of 0-10 cases is partly based on appeals from the ICAEW's Review Committee, a professional conduct committee of the ICAEW which reviews appeals against regulatory decisions of the ICAEW. The number of appeals from the

Review Committee has been very small, one or two per annum. This is from some 2,500 firms ICAEW currently licences as a Designated Professional Body. An ICAEW survey conducted in 2011 indicated that around 100 firms currently licensed by ICAEW may seek to become probate ABS. The potential therefore for appeals against licensing decisions is from an even smaller pool of firms than is currently licensed by ICAEW. It is worth noting for comparison that to date no appeals to the FTT have been made from the pool of over 30 ABS firms licensed by the CLC. All this indicates that the estimate of 0-10 ABS appeal cases per annum is wholly realistic.

2.10 The table below summarises the range of potential minimum and maximum range of HMCTS costs which are projected to be incurred by ICAEW (based on cost estimates provided by HMCTS).

<b>Number of cases</b>	<b>Potential range of case HMCTS costs for IPReg based on HMCTS estimate of £3,500 per case unit and after payment of start-up and first year running costs.</b>
0-3 (Most likely)	£0-£10,500
4-6 (Less likely)	£14,000-£21,000
7-10 (Least likely)	£24,300-£35,000

2.11 ICAEW would face costs associated with appeals being heard by the FTT. These would consist primarily of daily fees for panel members, plus administrative support supplied by the HMCTS. The administrative support would include dealing with enquiries and all administrative tasks associated with the appeals, including scheduling appeal dates. It is assumed that the FTT has sufficient capacity available to hear appeals and that no additional accommodation or staff resources would be required as a result of the proposal given the likely negligible number of cases going to appeal as a result of ICAEW decisions.

2.12 Any additional IT and telephony costs for ICAEW are expected to be negligible.

2.13 ICAEW would incur costs associated with defending appeals, which may include the cost of legal advice and representation. The GRC has limited power to award costs against parties, so it is assumed that ICAEW would normally be expected to bear its own legal costs. These costs have not been quantified, however it is unlikely that costs would be significant in the context of ICAEW's overall budget as it is not expected that there will be a large number of appeals in relation to ICAEW decisions as a licensing authority.

#### *ABS businesses*

2.14 Any ICAEW cost in its function as a licensing authority would be passed on to ABS businesses in the form of higher license fees. As mentioned above it is not anticipated that costs will be significant in the context of ICAEW's overall budget and the likely low number of appeals.

2.15 For the purposes of this Impact Assessment it is assumed that both ICAEW and the ABS concerned would be legally represented at an appeal. Individual ABS businesses appealing decisions would incur costs associated with preparing for appeals. ABS firms may also choose to be legally represented before the GRC, which would result in additional costs for the firm concerned.

#### *Consumers of legal businesses*

2.16 All regulatory costs may ultimately be passed on to consumers of legal services in the form of higher prices. This includes any additional costs associated with any appeals in relation to ICAEW decisions. However, as referred to above, these costs are unlikely to be significant.

#### *Providers of legal advice and representation services*

2.17 It is assumed that both ICAEW and ABS businesses would be legally represented in an appeal. Any additional appeals that take place as a result of the proposal would therefore represent an increase in the demand for legal advice and representation services. This would represent a benefit for providers of such services.

### **Benefits**

#### *ABS*

2.18 ICAEW regulated ABS probate firms would benefit under the proposal as they would have the right to appeal to an independent body against the decisions of ICAEW as a licensing authority. The right of appeal would apply in relation to the range of decisions listed in paragraph 1.6 of this Impact Assessment. Compared to the base case ABS firms would benefit directly from the ability to appeal a decision. The recourse to an independent appeals mechanism will support the perception of fairness in the process and therefore

greater confidence in the regulatory decisions of ICAEW acting as a licensing authority. This in turn signals fair entry to the market and an encouragement for new business models and entrants to ABS, which should enhance competition and consequently help to improve the efficiency of ABS and their provision of probate services in the market.

#### *HM Courts and Tribunals Service*

2.19 HMCTS would benefit from additional income if cases were referred to it. However, this income would be intended to cover set up and operating costs (e.g. tribunal member sitting fees), meaning there should be no net financial impact on HMCTS as a result of this option.

#### *Society*

2.20 The proposal may lead to increased consumer confidence in the probate legal services regulated by ICAEW, which may provide economic welfare gains for society. Furthermore, providing ABS firms the right to appeal decisions may be seen as fairer from society's perspective.

### **3. Enforcement and Implementation**

3.1 The assumption for the proposal is that ICAEW will enforce licensing compliance and that the FTT will implement and operate the appeals system. It is anticipated that subject to the statutory order timetable, it will be implemented from summer 2014.

### **4. Specific Impact Tests**

#### *Equality Impact Assessment*

4.1 After carrying out an initial impact assessment screening, we do not believe that the proposals will affect any sector of society more than another and we do not believe there are any significant age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation issues involved in this proposal. Therefore, after carrying out an initial screening we concluded that a full Equality Impact Assessment was not needed.

#### *Competition Assessment*

4.2 The Office of Fair Trading Report in January 2013 identified that ABS had removed a key barrier to market entry to the legal services market in general. Therefore, putting in place an independent trusted appeals mechanism would allow the implementation of ABS, and hence enable the associated competition benefits in relation to probate services regulated

by ICAEW. This in turn will help with the government's overall objective of increasing competition and growth in the economy.

#### *Small firms impact assessment*

- 4.3 An independent appeals mechanism provided by the FTT should help encourage general confidence among small business ABS firms licensed by ICAEW.

#### *Environmental Impacts*

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

#### *Health Impact Assessment*

- 4.5 No significant impacts on human health or the demand for health and social care services in the UK are anticipated as a result of the proposed option.

#### *Human Rights*

- 4.6 Article 6(1) of the European Convention on Human Rights, states that: *"...in the determination of civil rights and obligations..., everyone is entitled to a fair hearing within a reasonable time by an independent and impartial tribunal established by law"*. Therefore human rights are likely to be enhanced by the right of an ABS to appeal a decision to a recognised independent tribunal such as the FTT.

#### *Justice Impact test*

- 4.7 As the proposed option is not expected to significantly increase the volume of cases that will go through the justice system, it is not anticipated that the proposal will have a significant justice impact.

#### *Rural proofing*

- 4.8 No rural impacts have been identified.

#### *Sustainable Development*

- 4.9 No sustainable development impacts have been identified.



## **Annex C: Draft recommendation by the LSB to the Lord Chancellor under Section 80 order of the Legal Services Act 2007 (the Act) and draft statutory instrument for CIPA and ITMA**

### **Proposed recommendation for CIPA and ITMA**

1. At its meeting on the [date] the Legal Services Board (the Board) decided to make a recommendation to the Lord Chancellor that he makes an order under section 80 of the Act that the First-tier Tribunal may hear and determine appeals against the decisions made by the Chartered Institute of Patent Attorneys (CIPA) and Institute of Trade Mark Attorneys (ITMA) acting in their capacity as licensing authorities (should CIPA and ITMA be designated as such). A draft of the order is attached to this recommendation at **Annex XX**.
2. In accordance with the requirements of section 81(2) of the Act, the Board published a draft of the proposed recommendation and draft order on [date] and invited representations about the proposals to be made to the Board by [date]. [The Board has had regard to the representations duly made] or [no representations were received].
3. In accordance with section 81(1) of the Act, the recommendation is made with the consent of CIPA and ITMA and HM Courts & Tribunals Service (HMCTS).

Chair, Legal Services Board

[Date]

## Proposed section 80 order for CIPA and ITMA

*Draft Order laid before Parliament under section 206(4) and (5) of the Legal Services Act 2007 for approval by resolution of each House of Parliament.*

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### DRAFT STATUTORY INSTRUMENTS

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**2014 No. XXX**

## LEGAL SERVICES, ENGLAND AND WALES

### The Legal Services Act 2007 (Appeals from Licensing Authority Decisions) (Chartered Institute of Patent Attorneys and Institute of Trade Mark Attorneys) Order 2014

*Made* - - - - - *\*\*\**

*Coming into force in accordance with article 2*

The Lord Chancellor makes the following Order in exercise of the powers conferred by sections 80(1)(b), (4) and (5) and 204(3) and (4) of the Legal Services Act 2007<sup>(17)</sup>.

In accordance with section 80(3) of that Act, the Order is made following a recommendation made by the Legal Services Board to which was annexed a draft order which was in a form not materially different from this Order.

The Legal Services Board made its recommendation under section 80 of that Act with the consents required by section 81(1) of that Act and having complied with the requirements of section 81(2) to (5) of that Act.

A draft of this Order has been approved by a resolution of each House of Parliament pursuant to section 206(4) and (5) of the Legal Services Act 2007.

#### **Citation**

**3.** This Order may be cited as the Legal Services Act 2007 (Appeals from Licensing Authority Decisions) (Chartered Institute of Patent Attorneys and Institute of Trade Mark Attorneys) Order 2014.

#### **Commencement**

**4.**—(1) Except as provided in paragraph (2), this Order comes into force on the day after the day on which it is made.

(2) Articles 6 and 7 of this Order—

- (a) do not have effect unless an order is made designating both CIPA and ITMA as licensing authorities under Part 1 of Schedule 10 to the 2007 Act in relation to one or more reserved legal activities; and
- (b) where such an order is made, come into force at the same time as that order.

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<sup>(17)</sup> 2007 c. 29.

## Interpretation and application

5.—(1) In this Order—

“the 2007 Act” means the Legal Services Act 2007;

“CIPA” means the Chartered Institute of Patent Attorneys;

“ITMA” means the Institute of Trade Mark Attorneys;

“relevant body” means CIPA or ITMA (or both CIPA and ITMA where they act jointly).

(2) This Order applies to appeals from decisions made by the relevant body in its capacity as a licensing authority.

## Appeals to be made to the First-tier Tribunal

6.—(1) The First-tier Tribunal may hear and determine appeals from decisions made by the relevant body which are appealable under any provision of—

(a) Part 5 of the 2007 Act; or

(b) the relevant body’s licensing rules<sup>(18)</sup>.

(2) The First-tier Tribunal may, in relation to appeals from decisions which are appealable under the licensing rules—

(a) affirm the relevant body’s decision in whole or in part;

(b) quash the relevant body’s decision in whole or in part;

(c) substitute for all or part of the relevant body’s decision another decision of a kind that the relevant body could have taken; or

(d) remit a matter to the relevant body (generally, or for determination in accordance with a finding made or direction given by the First-tier Tribunal).

## Modifications of the 2007 Act

7. The Schedule to this Order (which modifies provisions of the 2007 Act) has effect.

Signed by authority of the Lord Chancellor

Date

*Name*  
Parliamentary Under Secretary of State  
Ministry of Justice

## SCHEDULE

Article 5

### Modifications to the 2007 Act

1. Section 96 of the 2007 Act (appeals against financial penalties) has effect in relation to a penalty imposed by the relevant body as if—

(a) in subsection (1), “, before the end of such period as may be prescribed by rules made by the Board,” were omitted;

(b) subsections (6) and (7) were omitted; and

(c) for subsection (8) there were substituted—

“(8) Except as provided by this section or Part 1 of the Tribunals, Courts and Enforcement Act 2007<sup>(19)</sup>, the validity of a penalty is not to be questioned by any legal proceedings whatever.”.

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<sup>(18)</sup> Section 83 of the 2007 Act defines and makes other provision relating to licensing rules. By reason of article 4 the First-tier Tribunal is the “relevant appellate body” as defined in section 111 of the 2007 Act.

<sup>(19)</sup> 2007 c. 15.

2.—(1) Schedule 13 (ownership of licensed bodies) has effect in relation to decisions of the relevant body with the following modifications.

(2) Paragraph 18 (appeal from decision to approve notified interest subject to conditions) has effect as if—

- (a) in sub-paragraph (1), “before the end of the prescribed period” were omitted;
- (b) sub-paragraphs (3) and (4) were omitted; and
- (c) in sub-paragraph (5), after “an appeal under this paragraph” there were inserted “or Part 1 of the Tribunals, Courts and Enforcement Act 2007”.

(3) Paragraph 20 (appeal from decision to object to a notified interest) has effect as if—

- (a) in sub-paragraph (1), “before the end of the prescribed period” were omitted;
- (b) sub-paragraphs (3) and (4) were omitted; and
- (c) in sub-paragraph (5), after “an appeal under this paragraph” there were inserted “or Part 1 of the Tribunals, Courts and Enforcement Act 2007”.

(4) Paragraph 29 (appeal from decision to approve a notifiable interest subject to conditions) has effect as if—

- (a) in sub-paragraph (1), “before the end of the prescribed period” were omitted;
- (b) sub-paragraphs (3) and (4) were omitted; and
- (c) in sub-paragraph (5), after “an appeal under this paragraph” there were inserted “or Part 1 of the Tribunals, Courts and Enforcement Act 2007”.

(5) Paragraph 32 (appeal from decision to object to acquisition of a notifiable interest) has effect as if—

- (a) in sub-paragraph (1), “before the end of the prescribed period” were omitted;
- (b) sub-paragraphs (3) and (4) were omitted; and
- (c) in sub-paragraph (5), after “an appeal under this paragraph” there were inserted “or Part 1 of the Tribunals, Courts and Enforcement Act 2007”.

(6) Paragraph 34 (appeal from decision to impose conditions (or further conditions) on existing restricted interest) has effect as if—

- (a) in sub-paragraph (1), “before the end of the prescribed period” were omitted;
- (b) sub-paragraphs (3) and (4) were omitted; and
- (c) in sub-paragraph (5), after “an appeal under this paragraph” there were inserted “or Part 1 of the Tribunals, Courts and Enforcement Act 2007”.

(7) Paragraph 37 (appeal from decision to object to existing restricted interest) has effect as if—

- (a) in sub-paragraph (1), “before the end of the prescribed period” were omitted;
- (b) sub-paragraphs (4) and (5) were omitted; and
- (c) in sub-paragraph (6), after “an appeal under this paragraph” there were inserted “or Part 1 of the Tribunals, Courts and Enforcement Act 2007”.

(8) Paragraph 47 (notifying the Board of objection or condition as to a person’s holding of a restricted interest) has effect as if, in sub-paragraph (4), for “to the High Court” there were substituted “under Part 1 of the Tribunals, Courts and Enforcement Act 2007”.

(9) Paragraph 48 (notifying the Board of approval of the holding of a restricted interest by a person included in the Board’s list of persons subject to objections and conditions) has effect as if, in sub-paragraph (3), for “to the High Court” there were substituted “under Part 1 of the Tribunals, Courts and Enforcement Act 2007”.

(10) Paragraph 50 (appeal from decision to notify the Board where share limit or voting limit breached) has effect as if—

- (a) in sub-paragraph (1), “before the end of the prescribed period” were omitted;
- (b) sub-paragraphs (3) and (4) were omitted; and

- (c) in sub-paragraph (5), after “any appeal under this paragraph” there were inserted “or Part 1 of the Tribunals, Courts and Enforcement Act 2007”.

### **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order makes provision under section 80 of the Legal Services Act 2007 (c. 29) (“the 2007 Act”) for the First-tier Tribunal to hear and determine appeals from decisions made by the Chartered Institute of Patent Attorneys (CIPA) and the Institute of Trade Mark Agents (ITMA), acting jointly or separately, in their capacity as licensing authorities. Licensing authorities regulate licensed bodies under the provisions of Part 5 of the Act (alternative business structures). The decisions are those which are appealable under Part 5 of the 2007 Act or under these bodies’ licensing rules. Section 83 of the 2007 Act defines licensing rules as rules about the licensing and regulation of licensed bodies. A separate Order will designate CIPA and ITMA as licensing authorities.

Article 6 provides for such appeals to be heard and determined by the First-tier Tribunal and sets out the powers of the First-tier Tribunal in relation to an appeal under the licensing rules. The 2007 Act provides for the grounds of appeal and the First-tier Tribunal’s powers in relation to an appeal under Part 5.

Certain provisions of the 2007 Act are modified by article 5 of, and the Schedule to, this Order in relation to appeals against decisions of CIPA and ITMA. The modifications take account of the provision in Part 1 of the Tribunals, Courts and Enforcement Act 2007 (c. 15) for appeals from the First-tier Tribunal to go to the Upper Tribunal.

An impact assessment has been prepared for this instrument and can be found at [tbc].

## Annex D: Impact Assessment on the Section 80 Order for IPReg acting under the authority delegated to it by CIPA and ITMA

<b>Title:</b> Section 80 order: Modification of the Chartered Institute of Patent Attorneys (CIPA) and the Institute of Trade Mark Attorneys (ITMA) Appeals from Licensing Authority Decisions  IA No: <b>MoJ010/14</b>  <b>Lead department or agency:</b> Ministry of Justice  <b>Other departments or agencies:</b> Legal Services Board		<b>Impact Assessment (IA)</b>		
		<b>Date:</b> 00/00/2014		
		<b>Stage:</b> Development/Options		
		<b>Source of intervention:</b> Domestic		
		<b>Type of measure:</b> Secondary legislation		
		<b>Contact for enquiries:</b> Dawn Reid dawn.reid@legalservicesboard.org.uk		
<b>Summary: Intervention and</b>		<b>RPC Opinion:</b> GREEN		
<b>Cost of Preferred (or more likely) Option</b>				
<b>Total Net Present Value</b>	<b>Business Net Present Value</b>	<b>Net cost to business per year (€M/GBP/£M)</b>	<b>In scope of One-In, One-Out?</b>	<b>Measure qualifies as</b>
N/A	N/A	N/A	No	Zero Net Cost
<b>What is the problem under consideration? Why is government intervention necessary?</b> CIPA and ITMA are approved regulators under the Legal Services Act 2007 (LSA) and their regulatory functions are delegated to the Intellectual Property Regulation Board (IPReg). CIPA and ITMA have applied to be designated as licensing authorities for alternative business structures (ABS). The Legal Services Act 2007 (LSA 2007) states that a licensing authority must make provision in its licensing rules for appeals in relation to decisions it makes as a licensing authority with respect to ABS. LSB intervention is required as an appeals process for IPReg licensing decisions can only be established by an order under section 80 of the LSA 2007.				
<b>What are the policy objectives and the intended effects?</b>  It is a necessary prerequisite for CIPA/ITMA to be designated as LAs that they have in place an appeals mechanism for the decisions that they make as licensing authorities through IPReg. The policy objective of the LSB is to put in place an appeal mechanism through the use of the General Regulatory Chamber (GRC) of the First-tier Tribunal (FTT) to hear appeals against decisions made by licensing authorities, including those made by IPReg under delegation from CIPA and ITMA.				
<b>What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)</b> Option 0: Do nothing.  Option 1: Propose a section 80 order which addresses the objectives outlined above in respect of hearing appeals against decisions made by IPReg (under delegation) as a licensing authority.  Option 1 is the preferred option, as the expertise of the FTT is considered appropriate for the issues that ABS licensing appeals may involve. The FTT already acts as the appeals body for ABS licensing appeals of the Council for Licensed Conveyancers. It is also consistent with the LSB's overall policy aim that the FTT's jurisdiction be expanded in the longer term to create a single appeals mechanism for all approved regulators and licensing authorities in respect of non-ABS and ABS.				
<b>Will the policy be reviewed?</b> It will not be reviewed. <b>If applicable, set review date:</b> Month/Year				
Does implementation go beyond minimum EU requirements?			N/A	

Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	<b>Micro</b> Yes	<b>&lt; 20</b> Yes	<b>Small</b> Yes	<b>Mediu</b> mYes	<b>Large</b> Yes
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			<b>Traded:</b>	<b>Non-traded:</b>	

***I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.***

Signed by the responsible  
SELECT SIGNATORY:

Date

.....: .....

DRAFT

# Summary: Analysis & Evidence

# Policy Option 2

**Description:** First tier Tribunal as the appellate body for appeals against IPReg decisions as a licensing authority

## FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	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>					
<p>The key monetised costs by main affected groups is likely to mostly impact on IPReg who will bear the costs of the FTT in hearing appeals. Estimate of total costs in first year of £38,000 with unit running costs per case of £3,500. Appeals are likely to be in range of 0-10 per year, with the range of 0-3 appeals per year most likely, so the overall monetised cost to IPReg is not likely to be significant. There might be some monetised costs to individual ABS who appeal (e.g. legal and representative costs) but this is difficult to quantify.</p>					
<b>Other key non-monetised costs by 'main affected groups'</b>					
<p>There are some non-monetised costs to FTT in terms of using internal resources (e.g. legal, judges, staffing, training etc). However, FTT has already allocated resources for its tribunal functions and will invoice IPReg for actual monetised costs. IPReg could incur non-monetised human and IT resource costs for dealing with appeals cases. But this is not likely to be significant given the low number of appeals expected. There may be small regulatory costs to consumers as the IPReg passes on hearing costs to ABS businesses in the form of higher fees which may ultimately be passed onto consumers.</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		SN/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>					
<p>Difficult to quantify specific monetised benefits for main affected groups. FTT will invoice IPReg for costs in dealing with appeals but this will not be to achieve a profit, so the monetised benefit to FTT will be neutral. An effective and fair appeals mechanism may increase confidence in the intellectual property ABS market which could in turn reap unquantifiable monetised benefits for ABS firms regulated by IPReg.</p>					
<b>Other key non-monetised benefits by 'main affected groups'</b>					
<p>The main non-monetised benefit will be that ABS and ABS applicants will have access to an independent and transparent tribunal process. This strengthens the perception of fairness and therefore confidence in regulatory decisions made by IPReg, encouraging entry into the market. Consumers of legal services may also benefit from increased consumer protection as a result of consistent arrangements for dealing with appeals in relation to licensing authority decisions.</p>					
Key assumptions/sensitivities/risks				<b>Discount rate (%)</b>	N/A
<p>Key assumption is that the number of appeals will be in the lower quartile of the 0-10 spectrum of cases for which the HMCTS has costed. The assumption of a low number of cases is also based on the estimate of around 40 firms that IPReg regulates that are thought to be licensable and the fact that there have been no appeals to IPReg's existing independent adjudicator since IPReg was established. Consequently there is an extremely low risk of cases exceeding the assumption of 0-10.</p>					

## BUSINESS ASSESSMENT (Option 2)

<b>Direct impact on business (Equivalent Annual) £m:</b>			<b>In scope of OIOO?</b>	<b>Measure qualifies as</b>
<b>Costs:</b> Low risk	<b>Benefits:</b>	<b>Net:</b>	No	IN



## Evidence Base (for summary sheets)

### References

No.	Legislation or publication
1	Legal Services Act (2007)
2	LSB Consultation Paper Approaches to Licensing
3	LSB Response to Consultation on Approaches to Licensing
4	IPReg Consultation on Licensing Authority Application June 2012
5	Draft section 80 order

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# Evidence Base (for summary sheets)

## 1. Introduction

### Background

1.1 The Legal Services Board (LSB) was created by the Legal Services Act 2007 (LSA 2007) and is charged with the responsibility of overseeing the regulators of legal services and ensuring that their activities reflect the regulatory objectives set out in the LSA 2007. The LSB's mandate is to ensure that regulation in the legal services industry is carried out in a manner that is consistent with the public interest and that the interest of consumers is central in policy making. The LSA 2007 gives the LSB and approved regulators (the regulators of traditional legal services providers) the same regulatory objectives. In full these objectives are:

- Protecting and promoting the public interest;
- Supporting the constitutional principle of the rule of law;
- Improving the access to justice;
- Protecting and promoting the interests of consumers;
- Promoting competition in the provision of legal services;
- Encouraging an independent, strong, diverse and effective legal services profession;
- Increasing public understanding of the citizen's legal rights and duties; and
- Promoting and maintaining adherence to the professional principles.

1.2 The LSA 2007 enables the operation of Alternative Business Structures (ABS) by permitting the ownership of legal firms by non-lawyers. The LSA 2007 also details the process of establishing a licensing authority and the statutory basis upon which the licensing authority licenses and regulates ABS.

1.3 Section 80 (1)(a) and 3 of LSA 2007 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 appeals, or make provision about an existing body for the purpose of enabling it to hear and determine the appeals.

1.4 Patent and trade mark attorneys provide intellectual property legal services. The Chartered Institute of Patent Attorneys (CIPA) and the Institute of Trade Mark Attorneys (ITMA) are approved regulators of patent and trade mark attorneys respectively. CIPA and ITMA have, since January 2010, delegated their regulatory functions to the Intellectual Property Regulation Board (IPReg). All references to "IPReg" and actions thereof in this Impact

Assessment mean IPReg acting under the authority delegated to it by CIPA and ITMA. By an agreement dated 23 May 2012, CIPA, ITMA and IPReg agreed that IPReg would jointly make an application for CIPA and ITMA to become licensing authorities for ABS intending to practise in the intellectual property field.

- 1.4 A mechanism is required to hear appeals by ABS businesses against decisions of IPReg, should it be designated as a licensing authority under Part 5 of the LSA 2007. An order under section 80 is required for appeals to be heard by the First-tier Tribunal (FTT) which is part of the unified tribunal structure established under the Tribunals, Courts and Enforcement Act 2007 and administered by HM Courts and Tribunal Service (HMCTS).
- 1.5 The FTT combines a number of previously separate administrative tribunals into one unified structure, which has its own infrastructure and administrative support function. The FTT is made up of a variety of jurisdictions which are grouped into Chambers, including the General Regulatory Chamber (GRC) which consists of a number of jurisdictions concerned with hearing appeals against the decisions of regulatory bodies.
- 1.6 There are some explicit appeal rights under the LSA 2007 (section 96 and Schedule13), concerning decisions to impose a financial penalty or to impose restrictions on the ownership of a licensed body. Licensing rules made by IPReg will also set out the rights of appeal. The LSB issued [guidance in December 2010](#) specifying those decisions which, as a minimum, the LSB considers ought to be appealable. We expect the following decisions of licensing authorities to be appealable (with the relevant sections or schedules of the LSA 2007 shown in brackets):
- Refusal of application for a licence (s.84)
  - Imposition of conditions on a licence (s.85)
  - Modification of a licence (s.86)
  - 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 (s.106 and s.107)

- Refusal to designate as Head of a 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).

1.7 We anticipate that, subject to Parliamentary approval, the order can take effect from the end of 2014.

#### **Problem under consideration**

1.8 If no provision is made in an order under section 80 of the LSA 2007 for appeals, it will not be possible for CIPA and ITMA (IPReg) to become a licensing authority. If they are not licensing authorities it will not be possible for trade mark and patent attorney ABS firms to be licensed by IPReg. As a consequence, the net benefits associated with the introduction of ABS for services provided by those firms regulated by IPReg will not be realised, unless they seek a licence from another licensing authority. It is necessary, under the LSA 2007, that in order for a body to act as a licensing authority it must have in place an appeals mechanism for the decisions it makes as a licensing authority. Government intervention is required as an appellate body needs to be established in respect of decisions made by a particular licensing authority by an order under section 80 of the LSA 2007. In addition, if the s.80 Order is not made, and therefore IPReg cannot license ABS, the ABS like entities already regulated by IPReg under the transitional arrangements would have to bear the costs and inconvenience of seeking authorisation by another approved regulator once the transitional provisions cease to have effect.

#### **Economic rationale**

1.9 In terms of wider context, 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).

1.10 In this case, the intervention is required on legislative, efficiency and equity grounds. As referred to, under the LSA 2007, a body acting as a licensing authority for ABS, must have an appellate body to hear appeals from the decisions it makes as a licensing authority. More generally, setting up an appropriate appeals mechanism through the FTT would benefit ABS businesses directly, as it may result in increased consumer confidence in the overall regulatory framework for intellectual property legal services. Providing trade mark and patent attorney ABS firms with a right of appeal may also be seen as fairer from society's perspective as it signals an important fair market entry process for firms who want to become ABS. The proposal may therefore generate further economic gains for society, through providing greater confidence to consumers and market providers.

### Policy objective

1.11 The policy objective is to put in place an appeal mechanism to hear appeals against decisions made by IPReg acting under delegation as a licensing authority for CIPA and ITMA. The costs and processes for the appeal mechanism are intended to be transparent, efficient, fair and public. The body hearing the appeals should have sufficient resources and expertise to deal with the potentially complex issues that ABS appeals may relate to and the FTT is considered to be the appropriate independent appellate body to fulfil that role. It is already the appellate body for the Council for Licensed Conveyancers (CLC) licensing authority decisions. Moreover, there has been a trend following the Review of Tribunals by Sir Andrew Leggatt to consolidate tribunal jurisdictions. The FTT now operates the unified tribunal service organised into Chambers, including the GRC. It is the stated policy position of the LSB that the FTT should hear appeals against decisions by all approved regulators and licensing authorities of legal services regardless of the type of legal service being provided and whether it is ABS or non-ABS. This will lead to greater consistency in decision making, enable a body of expertise to develop, and enable economies of scale to be achieved in relation to administrative and appellate functions.

### Affected stakeholders

1.12 The following individuals, organisations and sectors are affected:

- IPReg – the body whose decisions will be appealed.

- CIPA and ITMA, if designated as licensing authorities, who have delegated their authorisation and regulatory functions to IPReg. Consequently CIPA and ITMA have a central interest in the appeals arrangements for the licensing decisions IPReg makes.
- HM Courts and Tribunal Service which contains the First-tier Tribunal as the body to which appeals will be made.
- Patent and trade mark attorney ABS firms (and applicants for an ABS licence) – who will be the subject of the decisions that are appealable.
- Consumers – who may ultimately benefit and bear the costs of the appeals arrangements.
- Legal Services Providers - suppliers of legal advice and representation services.

## 2. Costs and Benefits

2.1 This Impact Assessment identifies impacts on individuals, groups and businesses in the UK, with the aim of understanding what the overall impact to society might be from implementing the two options. The costs and benefits of Option 1 are 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 of the proposal that cannot sensibly be monetised. These might include how the proposal impacts differently on particular groups of society or changes in equity and fairness, either positive or negative.

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

2.2 Doing nothing is not considered a feasible option, as without intervention in the form of an order under section 80 of the LSA 2007, there is no body with the power to hear and determine appeals against the decisions of IPReg when acting as a licensing authority. CIPA and ITMA could not therefore be designated as licensing authorities. The do nothing option is presented as a hypothetical base case only.

2.3 Because the do nothing option is compared against itself, its costs and benefits are necessarily zero, as is its Net Present Value (NPV being the difference between the money inflows and outflows from an option).

### Option 1: The First-tier Tribunal acts as the appeals body for appeals against decisions of IPReg

#### Description

2.4 Under this option, an order would be made under section 80 of the LSA 2007 making provision for the FTT, through the GRC, to hear appeals against the decisions of IPReg when acting as a licensing authority.

## Costs

### *HM Courts and Tribunals Service*

2.5 HM Courts and Tribunals Service (HMCTS) would face additional costs associated with a potential increase in the volume of cases heard at the Tribunal. However, set up and operating costs (e.g. tribunal member sitting fees) will be recovered from IPReg by HMCTS, meaning there should be no net financial impact on HMCTS as a result of the proposal (see costs to IPReg/CIPA/ITMA outlined below).

### *IPReg/CIPA and ITMA*

2.6 HMCTS has provided costs (which, as mentioned in 2.5, will be recovered from IPReg) for considering and hearing appeals as follows:

- Start up costs - £3,000
- First year's running costs - £35,000
- The unit running cost - £3,500

2.7 Start up costs cover update of the website, guidance, forms, staff and judicial training, senior judicial input into implementation, implementation time and expenses incurred by HMCTS. The running cost covers judicial cost for salaried and fee paid judges, administration for those appeals and use of HMCTS estate for both hearing and administration. If panel members were used they would be factored in to the cost per case.

2.8. The running costs aim to capture as much of the expenditure of bringing in a new appeal right as possible, even if that appeal right is expected to have no appeals in practice. However, it cannot be fully cost reflective - particularly on smaller appeals - as a lot of the preparatory work will be in-house and involvement by divisions within HMCTS. Legal, policy, judicial, communications and IT colleagues will be required and travel expenses, for instance, might be incurred. The same amount of work would need to be carried out if HMCTS were to receive 0 or 10 appeals. To that end, HMCTS policy is to charge for a minimum of ten appeals in the first year. This would be invoiced as soon as the main work to implement starts. Any appeals over that number, and in subsequent years, will be charged, on a quarterly invoice basis to IPReg, based on cost per case heard by the tribunals system. Therefore if IPReg did not have any appeals, it would not be required to

make any payment after the initial payment - even if new judges require training in the future.

2.9 The number of cases referred to FTT in respect of IPReg licensing decisions is likely to be within the lower range of the 0-10 spectrum. Of the current firms IPReg regulates, approximately 40 firms are licensable, of which 9 are large or medium-sized, which provides some indication of the number of ABS in the first year, if IPReg (CIPA and ITMA) is designated as a licensing authority. Therefore, the potential for appeals is from a very limited number of firms. It is also worth noting for comparison that to date no appeals to the FTT have been made from the pool of over 30 ABS firms licensed by the CLC. Moreover, since ITMA and CIPA delegated their regulatory functions to IPReg in January 2010, there have been no appeals to IPReg's Independent Adjudicator for decisions and sanctions of IPReg's Disciplinary Board. While these do not signal that no appeals will be made to the FTT from IPReg's licensing decisions, they do give some indication that the assumption of 0-10 cases per year is realistic. The table below illustrates the range of potential costs minimum and maximum range.

Number of cases	Potential range of case HMCTS costs for IPReg based on HMCTS estimate of £3,500 per case unit and after payment of start-up and first year running costs.
0-3 (Most likely)	£0-£10,500
4-6 (Less likely)	£14,000-£21,000
7-10 (Least likely)	£24,300-£35,000

2.11 Any additional IT and telephony costs for IPReg are expected to be negligible.

2.12 IPReg could incur costs associated with defending appeals, which may include the cost of legal advice and representation. The GRC has limited power to award costs against parties, so it is assumed that IPReg would normally be expected to bear its own legal costs. Given the probable low number of cases it is unlikely that costs will be significant in the context of IPReg's overall budget (£592,000 for 2014).



### *ABS businesses*

- 2.13 It is assumed that the ABS subject to the decision concerned would be legally represented at an appeal. The expense of legal representation would be an additional cost to ABS businesses. Due to the low number of appeals, a very small number of individual ABS businesses would incur costs associated with preparing for appeals.
- 2.14 Any IPReg costs in relation to the appeal arrangements are likely to be negligible. Therefore costs passed on to trade mark and patent attorney ABS, through annual license fees, are also likely to be negligible.

### *Consumers of intellectual properties legal services*

- 2.15 All regulatory costs may ultimately be passed on to consumers of legal services in the form of higher prices. This includes any additional costs associated with appeals in relation to IPReg decisions. However, as set out above, it is envisaged that these costs will be negligible.

### **Benefits**

#### *HM Courts and Tribunals Service*

- 2.18 HMCTS would benefit from additional income if cases were referred to it. However, this income would be intended to cover set up and operating costs (e.g. tribunal member sitting fees), meaning there should be a neutral financial impact on HMCTS as a result of this option.

#### *ABS*

- 2.17 ABS patent and trade mark attorney firms would benefit under the proposal as they would have the right to appeal against the decisions of IPReg acting as a licensing authority. The right of appeal would apply in relation to the range of decisions listed in paragraph 1.6 of this Impact Assessment. Compared to the base case, ABS firms/those holding, or seeking to hold, roles within ABS would benefit directly from the ability to appeal a decision.

#### *Society*

- 2.19 The proposal may lead to increased consumer confidence in the intellectual property legal services regulated by IPReg because there will be an experienced and competent body in the form of the FTT to hear and make appeal decisions, which may provide economic welfare gains

for society. Furthermore, giving ABS firms/those holding, or seeking to hold, specific roles within ABS the right to appeal decisions may be seen as fairer from society's perspective.

2.20 The recourse to an independent appeals mechanism will support the perception of fairness in the process and therefore encourage greater confidence in the regulatory decisions of IPReg as a licensing authority. This in turn signals fair entry to the market and an encouragement for new business models and entrants to ABS, which should enhance competition and consequently help to improve the efficiency of ABS and their provision of intellectual property services in the market.

#### *Legal services providers*

2.16 It is assumed that both IPReg and ABS businesses would be legally represented in an appeal. Any additional appeals that take place as a result of the proposal would therefore represent an increase in the demand for legal advice and representation services. Legal service providers would benefit from undertaking additional work.

### **3. Enforcement and Implementation**

3.1 The assumption for the proposal is that IPReg will enforce licensing compliance and that the FTT will implement and operate the appeals system. It is anticipated that, subject to the statutory order timetable, it will be implemented from early 2015.

### **4. Specific Impact Tests**

#### *Equality Impact Assessment*

4.1 After carrying out an initial impact assessment screening, we do not believe that the proposals will affect any sector of society more than another and we do not believe there are any significant age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation issues involved in this proposal. Therefore, after carrying out an initial screening we concluded that a full Equality Impact Assessment was not needed.

#### *Competition Assessment*

4.2 The Office of Fair Trading Report in January 2013 identified that ABS had removed a key barrier to market entry to the legal services market in general. Therefore, putting in place an appeals mechanism would allow the implementation of ABS, and hence enable the associated competition benefits in relation to services regulated by IPReg. This in turn will

help with the government's overall objective of increasing competition and growth in the economy.

#### *Small firms impact assessment*

4.3 No monetised impact, but in research commissioned by the LSB into small business legal needs published in April 2013, help from legal services was highly associated with problems concerning intellectual property (27% compared to 11% for other categories of problems). The market for services provided by intellectual property legal firms is therefore an important one for small business. An independent appeals mechanism provided by the FTT should help encourage general confidence among small businesses, in the way which intellectual property legal services are provided.

#### *Environmental Impacts*

4.4 The proposal is not expected to have any environmental impacts of note.

#### *Health Impact Assessment*

4.5 No significant impacts on human health or the demand for health and social care services in the UK are anticipated as a result of the proposed option.

#### *Human Rights*

4.6 Article 6(1) of the European Convention on Human Rights, states that: *"...in the determination of civil rights and obligations..., everyone is entitled to a fair hearing within a reasonable time by an independent and impartial tribunal established by law"*. Therefore human rights are likely to be enhanced by the right of an ABS to appeal a decision to a recognised independent tribunal such as the FTT.

#### *Justice Impact test*

4.7 As the proposed option is not expected to increase significantly the volume of cases that will go through the tribunal system, it is not expected that the proposal will have a significant justice impact. Nonetheless, there may be limited justice impacts.

#### *Rural proofing*

4.8 No rural impacts have been identified.

#### *Sustainable Development*

4.9 No sustainable development impacts have been identified.