

Title: Regulation of special bodies/non-commercial providers of reserved legal services IA No: Lead department or agency: Legal Services Board Other departments or agencies: Ministry of Justice	Impact Assessment (IA)		
	Date: 23/04/2012		
	Stage: Development/Options		
	Source of intervention: Domestic		
	Type of measure: Other		
Contact for enquiries: Christopher Baas christopher.baas@legalservicesboard.gov.uk			
Summary: Intervention and Options			RPC Opinion: Awaiting Scrutiny

Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?
£m	£m	£m	Yes/No In/Out/zero net cost

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

The Legal Services Act 2007 (LSA 2007) requires people to be authorised if they conduct certain reserved legal activities introduced a new regime for authorising bodies that are not wholly owned or managed by regulated lawyers: Alternative Business Structures (ABS). One subset of ABS are non-commercial organisations. If these bodies provide reserved legal services they will need to be licensed once transitional protection in the LSA 2007 ends. There is a general expectation that statutory transitional protection cannot continue indefinitely, but we have identified risks to consumers of not ending the protection; this consultation therefore considers when the protection should end, which will need Government intervention.

What are the policy objectives and the intended effects?

The policy objective and intended effects are to ensure that there is proportionate, targeted regulation of non-commercial providers of reserved legal services that provides the necessary consumer protection. The objective is also to give licencing authorities and these bodies sufficient time to prepare to be licensed.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

The requirement for regulation arises from the Legal Services Act 2007. There is a general expectation that transitional protections will not continue indefinitely . But the LSB will not recommend that the transitional period ends unless there is a licencing authority capable of regulating these bodies in a proportionate way. The options considered have been to end the transitional period in 2013, 2014 or at some later date.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: 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.		Micro Yes	< 20 Yes	Small Yes	Medium Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)				Traded: N/A	Non-traded: N/A

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 Chief Executive: Date:

Summary: Analysis & Evidence

Policy Option 1

Description: End the transitional period in April 2013

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	Optional		Optional		Optional
High	Optional		Optional		Optional
Best Estimate					
Description and scale of key monetised costs by 'main affected groups' Special bodies Licensing Authorities Consumers					
Other key non-monetised costs by 'main affected groups' Maximum of 5 lines					
BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Benefit (Present Value)
Low	Optional		Optional		Optional
High	Optional		Optional		Optional
Best Estimate					
Description and scale of key monetised benefits by 'main affected groups' Maximum of 5 lines					
Other key non-monetised benefits by 'main affected groups' Maximum of 5 lines					
Key assumptions/sensitivities/risks Maximum of 5 lines					Discount rate (%)

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs:	Benefits:	Net:	Yes/No	IN/OUT/Zero net cost

Evidence Base (for summary sheets)

1. Introduction

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).

The legal services provided by the non-commercial sector are an important part of the wider market for legal services in England and Wales. Across the whole market some services, the “reserved legal services” are only allowed to be provided by people properly authorised. This is in order to protect the public from low quality services that may have a significantly detrimental impact on their liberty or financial or social position. These reserved legal services and the regulators who are able to authorise the delivery of these services are set out and controlled by the Legal Services Act 2007 (LSA 2007).

The LSA 2007 also introduced a licensing regime that represents a significant liberalisation of the legal services market, allowing non-lawyers to own and manage firms providing legal services. They are commonly referred to as “Alternative Business Structures” or “ABS”.

While for most of the market this represents a deregulatory measure there are several categories of bodies that were historically allowed to carry on reserved activities that, once the current transitional protection is removed, will be required to be licensed under the ABS regime. These include some non-commercial bodies. Using information about where lawyers work in non-commercial bodies suggests that approximately 330 organisations are likely to require a licence. Although the individual lawyers will currently be regulated, the entities will not be.

In order to minimise the impact of the new licensing regime the LSA 2007 introduces two safeguards on the introduction of this requirement:

1. The first is to allow these bodies to continue to provide services without a licence for a transitional period.
2. The second is to allow these bodies to apply to a licensing authority (LA) for a licence with certain modifications compared to the requirements for a commercial organisation.

This consultation document and impact assessment considers when the transitional period should end. The LSB has previously consulted on this issue in May 2009. In November 2009 we explained our provisional view that, subject to further consultation, the transitional period should end in April 2013. The options considered for ending the transitional period are therefore: to end the transitional period in April 2013 as we initially proposed; end the transitional period in April 2014 (the preferred option); or end the transitional period at some later date.

There is a general expectation that transitional periods will not continue indefinitely, but additionally, we have considered whether there is consumer detriment in not ending the transitional protection and whether this is likely to be outweighed by any additional cost of regulation.

Non-commercial bodies are not “risk free” simply because of the not for profit nature of their service. But nor does the possibility that they may decide to offer more commercial services in future necessarily mean that, by doing so, they automatically become higher risk. Rather, it is the nature of the body itself, the services it offers and its client base that determines the risks that regulation should target. The fact that their clients are often among the most vulnerable of consumers underlines the need for proper safeguards to be in place. However the risks are rarely identical to or as great as those presented by large scale commercial firms and it is therefore more than usually important that licensing authorities ensure that any regulation does not impose unnecessary costs, operational inflexibility and complexity. The LSB therefore expects any regulation to be tightly targeted and rigorously proportionate.

Based on the Frontier Economics' research¹ and consultation with key stakeholders, our own assessment of the types of risks that may be posed by non-commercial providers focuses on three main areas:

Governance and funding: unstable or uncertain funding sources, poor financial management and lack of appropriate controls, potential conflicts of interest between funder and provider

Sustainability and lack of alternative providers: potential impact of closure or bankruptcy, lack of arrangements for case transfer, consumers may be disempowered, unable or unwilling to go elsewhere or to complain if something goes wrong

Quality: poor technical or service quality may arise from different training approaches and/or supervision arrangements, lack of expertise in certain areas of law, clients may also be disadvantaged and vulnerable and therefore even less able to judge quality and make informed choices, impact of funding cuts/legal aid changes and significant fluctuations in revenue generally on levels of staff experience (for example the potential for a reduction in number of legally qualified staff because they are no longer required due to the loss of a legal aid contract).

In looking at the case for ending the transitional regulation, we have considered the existing regulation of this sector in the widest sense, including:

- Protections provided by existing membership networks such as the Law Centres Federation and Citizens Advice
- Charity Commission requirements
- Procurement arrangements and the standards imposed by funders such as the Legal Services Commission (LSC) or local authorities

There is no doubt that for many non-commercial advice providers the existing frameworks already provide some form of quasi-regulation. We have taken this into account in developing our proposals. However, we do not consider that the existing frameworks provided by procurement arrangements or membership structures alone provide sufficient consumer protection for the risks posed. For example, although the Law Centres Federation requires there to be a senior solicitor and have a management committee, there is no requirement to have professional indemnity insurance. Citizens Advice imposes requirements for case management and professional indemnity insurance but there is no requirement to have a solicitor. The Charity Commission's requirements focus on the organisation fulfilling its charitable purpose with the emphasis on structure and governance rather than the services provided or redress for the individual consumer. The LSC's requirements are closely linked to the need to obtain value for money from public expenditure but do not deal with what happens when a firm becomes insolvent.

So although there are requirements that may mitigate some of the risks, taken together, they do not provide sufficient assurance that all the risks can be mitigated. This therefore means that the LSB cannot be satisfied that all the regulatory objectives in the LSA 2007 can be met, in particular improving access to justice and promoting and protecting the interests of consumers.

The main affected groups are likely to be: users of legal services provided by non-commercial bodies; non-commercial bodies who provide reserved legal activities; licensing authorities who license these bodies; and the LSB. Indirectly affected groups are likely to be: other providers of reserved legal services; non-commercial bodies who do not provide reserved legal services; organisations who coordinate or also license these bodies for other purposes (e.g. Law Centres Federation, Citizens Advice) and the Ministry of Justice through legal aid provision.

¹ http://www.legalservicesboard.org.uk/news_publications/latest_news/pdf/rep_lsb_special_bodies_final_report_07_07_11_stc.pdf

2. Cost and Benefits

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

Each option will be considered while trying to identify the likely costs and benefits for each of the affected groups. It is difficult to quantify the impacts of the proposals and where possible this impact assessment will try to describe the likely costs and benefits. As this is a consultation stage impact assessment the LSB would be especially interested in the views of any of the affected parties, or anyone else, as to whether the right groups are identified, whether the right impacts are described and any evidence (either quantitative or qualitative) that might help better identify the impact of the proposals.

This analysis is based on the following assumptions:

- There are a number of non-commercial providers providing reserved legal services
- Non-commercial providers can afford a cost reflective charge for a licence application
- The regulation of these non-commercial bodies will be tailored so that it is flexible and targeted
- Consumers who get reserved legal services from non-commercial bodies would be better protected by regulation as an ABS than they currently are
- While the transitional period applies consumers cannot seek recourse to the Legal Ombudsman and this in itself represents a reduction in consumer protection
- There is latent demand among non-commercial bodies to charge for some of their services
- Governance and management of the non-commercial providers would be improved by being regulated in a proportionate and targeted way
- The LSB has identified the correct categories of current consumer detriment
- There are private market providers who provide many of the same services as non-commercial bodies
- There will be at least one LA who would license non-commercial bodies providing reserved legal activities once the transitional period ends
- The consultation and outreach work undertaken by LSB, LAs and non-commercial partners have identified the majority of the non-commercial bodies who provide reserved legal services
- There is a preference for ending the transitional period at the soonest proportionate time
- There are certain requirements that apply to mainstream ABS which would be appropriately modified (in line with section 106 of the LSA 2007)
- There are likely to be some characteristics of the consumers who non-commercial bodies serve that make them particularly more vulnerable than average
- Licence application costs will not be more than those for commercial ABS
- There is a cost to the current regulation of individual lawyers who work in these bodies – that is, the cost of complying with the current regulator's Code/Handbook
- The LSB will issue guidance to LAs about licensing rules

The options below do not include an option not to bring non-commercial bodies into regulation. It is considered that this decision was taken by the LSA 2007 and is supported by the LSB's evidence of current consumer detriment. The options that are canvassed relate to the timing of the introduction of the intervention not the intervention itself.

Base Case / Option 0 for ending the transitional period

The base case for ending the transitional period is for the LSB to make a recommendation for the transitional period to end in April 2013. This position was formed based on previous consultations where the LSB formed an initial view that this was sufficient time. Following further, more detailed discussions with stakeholders, including potential LAs, it was decided that this position needed to be revisited because of the need to work out in more detail an appropriate regulatory framework and allow time for changes to be made.

The benefits of this option are likely to fall to consumers as they will get protection sooner. Licensing Authorities will also benefit as they will be able to charge for the cost of their regulation (although this will be broadly cost reflective so will be offset).

There are likely to be transitional costs for the LAs and the non-commercial bodies. The direct licensing costs of the LA are expected to be offset against the application fees that will be paid by the non-commercial bodies. Therefore the non-commercial bodies will bear the costs of licensing. The SRA's charges for *commercial* ABS are:

- An initial payment of £2,000 to apply for a licence
- A payment of £150 in relation to each candidate who needs to be approved as a manager, owner and/or compliance officer (an authorised role holder)
- If the SRA's costs in considering the application exceed the amounts specified above, any additional costs will be charged at a day rate of £600
- If it is necessary for the SRA to seek external assistance, the full cost of that assistance will be charged to the applicant body
- A periodical fee based on turnover.

The CLC's charges for *commercial* ABS are:

- The standard fee for an application is £1,200.00
- Additional work on complex cases is charged at £80 an hour
- Payment for data verification checks (including Criminal Record Bureau checks) which are charged at £76.18 - £100.48 (including VAT) per relevant person who needs to be checked
- A periodical fee.

We do not have any indication of the costs of applying for a licence as a non-commercial body but have assumed that they will not be more than those for commercial organisations.

There are likely to be costs associated with modifying the rules of the LA (see section below) which may not be offset by the application fees received by the non-commercial bodies. However, these should be largely able to be absorbed by the LA as each LA already has developed a set of rules for mainstream ABS. There are likely to be costs for the non-commercial bodies in preparing an application and they may have to make changes to reach compliance with the regulatory requirements. However, these may not be very great in practice since the individual lawyers providing reserved activities now (and supervising others who work in these bodies) are already regulated and are subject to the requirements of various Codes and Handbooks.

The proposals in this consultation seek to ameliorate the risk of unduly burdensome regulation by extending the period in which LAs can prepare the system of modifications and provide guidance to LAs on what appropriate regulation should be.

Because the do-nothing option is compared against itself its costs and benefits and necessarily zero, as is its Net Present Value (NPV).

Option 1 for ending the transitional period

This option (the LSB's preferred option) is to end the transitional period for non-commercial bodies in April 2014. This would be one year after the base case option.

Costs of Option 1

The costs of Option 1 are likely to be broadly similar to Option 0. This is as both options bring an end to the transitional protection that has been enjoyed by the non-commercial bodies. The costs are likely to be deferred leading to some element of savings. There are likely to be increased cost for consumers as they will not receive the protections of regulation for the services they receive from non-commercial bodies during this period. There are likely to be costs for the non-commercial bodies in preparing an application and they may have to make changes to reach compliance with the regulatory requirements. However, these may not be very great in practice since the individual lawyers providing reserved activities now (and supervising others who work in these bodies) are already regulated and are subject to the requirements of various Codes and Handbooks.

The LA will not benefit from the extra income from the licensing applications and ongoing regulation. However, neither will it incur the costs of regulating these providers. There will also be some cost in complying with LSB guidance on licensing rules.

Benefits of Option 1

The benefits of Option 1 are likely to be broadly similar to the base case, although will accrue a year later. Where there are benefits from Option 1 these will arise from more time being available to for LAs and non-commercial bodies to prepare for the implementation of the licensing regime.

Distributional impacts are likely to arise as the non-commercial sector already provides services to a wide variety of consumers including consumers who may otherwise be excluded from the provision of legal services. By including non-commercial bodies in a targeted licensing regime this should allow for the expansion of the services they provide, including the possibility of increased revenue as they will be able to offer a wider range of services.

Net Impact of Option 1

The overall impact for option 1 would see the bringing in to regulation as ABS of all the non-commercial bodies that provide reserved legal services. This may impact on the non-commercial bodies by introducing some costs over and above those they currently have and for applying for a licence. However, these bodies may benefit in terms of stronger governance requirements. Licensing Authorities will benefit from increased revenue from the non-commercial bodies. However, this is expected to be offset against the actual costs of regulation. There would also be some level of transition cost for the LA associated with the move to regulate this new category of business.

Consumers are likely to be the main beneficiaries of this option: the change to regulating non-commercial bodies will be made a reasonable pace that does not reduce supply but does not overly delay the introduction of the additional protections (such as the right to complaint to the Legal Ombudsman) that will be afforded to consumers through regulation.

Option 2 for ending the transitional period

This option is to end the transitional period for non-commercial bodies some time after April 2014. This is likely to be several years after the base case option. The LSB is currently looking at the scope of regulation in the light of our powers to investigate and make recommendations to add or remove reserved activities. Following consultation on this approach, we have concluded that the priority needs to be given to consideration of whether general legal advice should become a reserved legal activity. The Board will set out its initial thinking on how to approach the investigation in autumn this year. If, in due course following that investigation, we reach the view that general legal advice should be reserved, this is likely to have a significant impact on special bodies/non-commercial advice providers. That is because

all organisations providing services within the definition of general legal advice would then be required to obtain a licence. One option would be to delay removing the transitional period until the issues around the scope of regulation are resolved.

Costs of Option 2

The costs of Option 2 are likely to be broadly similar to Option 0 and Option 1. This is because all options bring an end to the transitional protection for non-commercial bodies. The costs are likely to be deferred leading to some element of savings. There are likely to be increased cost for consumers as they will not receive the full protection of regulation for the services they receive from non-commercial bodies during this period. Both LAs and the non-commercial bodies are still likely to have some element of transitional cost. The LA will still be required to modify its rules and the non-commercial bodies will still be required to pay a licensing fee. There are likely to be costs for the non-commercial bodies in preparing an application and they may have to make changes to reach compliance with the regulatory requirements. However, these may not be very great in practice since the individual lawyers providing reserved activities now (and supervising others who work in these bodies) are already regulated and are subject to the requirements of various Codes and Handbooks.

The LA will not benefit from the extra income from the licensing applications and ongoing regulation. However, it will neither will it incur the costs of regulating these providers.

Benefits of Option 2

The benefits of Option 2 are likely to be broadly similar to the other options, although will accrue sometime later. Where there are benefits from Option 2 these will arise from more time being available to for LAs and non-commercial bodies to prepare for the implementation of the licensing regime.

Net Impact of Option 2

The overall impact of Option 2 will depend on the length of delay before removal of the transitional protections. Consumers will not enjoy the additional benefits for a much longer period. This is likely to increase the risk to the consumers.

This option also increases the uncertainty for non-commercial providers which may limit their ability to make strategic decisions about their future. However, it would mean that any increased cost of regulation would be deferred.

Summary of Options for ending the transitional period

The three options presented relating to the timing of ending the transitional period cover three approaches to bringing those non-commercial bodies that provide reserved legal services into regulation by LAs. With all types of regulation there are costs involved and a balance must be struck between the costs of regulation and the benefits for consumers and the market that arise from it.

Option 1 is the preferred option as it strikes a balance between bringing in these bodies into regulation as designed by the LSA without undertaking the change too quickly for the non-commercial bodies or the LAs to adapt. In April 2014 it will be nearly seven years since the Act brought about the requirement for non-commercial bodies to be regulated when providing reserved legal services and two and a half years after the first ABS licence was issued in October 2011. A further delay as described in option 2 is not considered to be appropriate.

The base case option is not preferred because although consumer protection would increase earlier, it is unlikely to provide enough time for LAs and non-commercial bodies to get ready for regulation. Given that the LSB has not issued its guidance and that the LAs have not yet begun to modify their approach to regulation for non-commercial bodies it is considered that this option has unnecessary risks associated with it.

3. Specific Impact Tests

Competition Assessment

The proposals are likely to increase the number and range of suppliers. There is a possibility that ending the transitional period may have a short term negative impact on the number of suppliers as there is an additional cost (the cost of licensing) that will be required to be borne by the non-commercial bodies that will be required to obtain a licence.

Small Firms Impact Test

The proposals are likely to impact on small non-commercial bodies and also on some LAs which may be categorised as small firms but only if they decide to license these bodies. Some users of services from non-commercial bodies may be small firms. It may be that if non-commercial bodies start to increase the type of services they offer they may be competing with traditional law firms, some of which will be small firms. However, even though those consumers most likely to turn to advice agencies are less likely to use traditional law firms in any event, the increased choice that such expansion would generate may have an overall positive impact by increasing the value of the market as a whole and helping to improve efficiency.

Carbon Assessment

This proposal will not lead to a change in the emission of Greenhouse Gases.

Other Environment

This proposal will not lead to any other environmental impacts.

Health Impact Assessment

This proposal will not lead to any health related impacts.

Human Rights

This policy is compliant with the Human Rights Act.

Justice Impact Test

The LSA 2007 imposes a statutory duty on the LSB and LAs to have regard to eight regulatory objectives including improving access to justice and promoting and protecting the interests of consumers. Having reviewed the existing requirements on non-commercial providers of reserved legal services, our view is that although they may mitigate some of the risks faced by consumers, taken together, they do not provide sufficient assurance that all the risks can be mitigated. This therefore means that the LSB cannot be satisfied that all the regulatory objectives in the LSA can be met, in particular improving access to justice and promoting and protecting the interests of consumers.

In advance of making a decision about when the transitional period should end, we have identified two key areas where regulatory rules currently prevent special bodies/non-commercial organisations from changing the way they operate to enable them to adapt to reductions in funding from, for example, legal aid cuts or a reduction in local authority funding. We consider that the initiatives that special bodies/non-commercial organisations are considering have the potential to improve access to justice and are

beneficial to the interests of consumers. Therefore we do not consider that it is appropriate for the current blanket restrictions to continue and will work to ensure that they are removed.

Rural proofing

This policy is not expected to have a direct or disproportionate impact on rural areas.

Sustainable Development

The Government has committed to five principles of sustainable development:

- Living within environmental limits;
- Ensuring a strong, healthy and just society;
- Achieving a sustainable economy;
- Promoting good governance;
- Using sound science responsibly.

This proposal is expected to have a small impacts relating to ensuring a strong, healthy and just society as it is expected that there will be an increase in the provision of quality legal services. It is also likely to promote good governance as the requirement on non-commercial bodies that provide legal services to have a licence is likely to require further oversight and compliance about the governance systems in place. It is expected that this will include checks that only appropriate people are in positions of authority and proper monitoring and reporting systems are adopted.

Privacy Impact Test (an MoJ Specific Impact Test)

It is not expected that this policy will have any privacy impacts.

Equalities Impact Assessment (EIA)

The initial EIA has been published alongside this document.