

# Setting the maximum financial penalty for ABS licensing

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**Summary of responses to the consultation paper setting out proposals under section 95 of the Legal Services Act,**

**Decisions made in relation to the maximum financial penalty for ABS, and**

**Draft rules to be made by Statutory Instrument under s204(2)**

This consultation closed on **24 January 2011**

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## Introduction

- 1 The Legal Services Board (the “**LSB**”) is one of the organisations created by the Legal Services Act 2007 (the “**LSA**”) and is responsible for overseeing legal regulators, (referred to as the approved regulators (“**ARs**”) in the LSA) in England and Wales. The LSB’s mandate is to ensure that regulation in the legal services sector is carried out in the public interest and that the interests of consumers are placed at the heart of the system. The LSA gives the LSB and the ARs the same regulatory objectives – including an objective to promote competition within the provision of legal services – and a requirement to have regard to the better regulation principles.
- 2 The LSA also makes provision for approved regulators to apply to the LSB to become designated as licensing authorities (“**LAs**”). As a LA they may issue licences to legal services businesses that have some element of non-lawyer ownership commonly referred to as alternative business structures (“**ABS**”) but known in the LSA as licensed bodies.
- 3 The Act requires the LSB<sup>1</sup> to make rules by statutory instrument<sup>2</sup> that prescribe the maximum penalty that may be imposed by a LA on a licensed body or a manager or employee of a licensed body. The Lord Chancellor must have given his consent to the rules before they can be made.<sup>3</sup> Each LA will have their own licensing rules that will set out their approach to financial penalties. These form part of the LA’s regulatory arrangements and have to be approved by the LSB. Each particular penalty has to be of an amount that the LA considers appropriate.
- 4 In November 2009 we consulted on this issue as part of our wider consultation on the rules relating to the regulation of ABS.<sup>4</sup> We proposed at that time that there should be no limit on the penalty that a LA could impose. In March 2010 we confirmed this as our position in our guidance to LAs<sup>5</sup> having received a large number of consultation responses in support.
- 5 However, in October we were told by the Ministry of Justice that it does not consider that the wording of the LSA permits an unlimited penalty and it was therefore unable to recommend to the Lord Chancellor that he consents to the rules. On 22 December 2010 we published a consultation that set out alternative approaches to setting a maximum amount. It proposed that the maximum financial penalty that can be imposed should be set at

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<sup>1</sup> LSA s95(3)

<sup>2</sup> LSA s204(2)

<sup>3</sup> LSA s95(4)

<sup>4</sup> [http://www.legalservicesboard.org.uk/what\\_we\\_do/consultations/2009/pdf/consultation\\_181009.pdf](http://www.legalservicesboard.org.uk/what_we_do/consultations/2009/pdf/consultation_181009.pdf)

<sup>5</sup> [http://www.legalservicesboard.org.uk/what\\_we\\_do/consultations/closed/pdf/abs\\_guidance\\_on\\_licensing\\_rules\\_guidance.pdf](http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/abs_guidance_on_licensing_rules_guidance.pdf)

£150,000,000 for entities and £50,000,000 for individuals. A draft statutory instrument (SI) was attached. The consultation closed on 24 January.

- 6 This was a short consultation period as we have already consulted on the substantive issues around enforcement against ABS and previously consulted on a maximum for penalties that was higher (unlimited) than the one proposed.

### **Responses to consultation**

- 7 We received five responses to the consultation from:

- The Law Society (TLS),
- The Solicitors Regulation Authority (SRA),
- The Institute of Trade Mark Attorneys (ITMA), and
- ILEX Professional Standards (IPS)
- The Master of the Faculties

- 8 The consultation asked three questions:

- a) Do you think that the maximum set by the LSB is sufficiently high to ensure that penalties are able to be proportionately applied by LAs?
- b) What are your views on the fixed amounts proposed for entities and individuals? If you disagree with our proposed approach please give your reasons and, if possible, propose an alternative.
- c) Do you have any comments on the draft statutory instrument?

- 9 In general, the respondents were supportive of the proposals. All responses can be found on our website.

### **General comments**

- 10 TLS noted that it supported the previous position of having unlimited penalties as this was in line with the possible sanctions of the Solicitors Disciplinary Tribunal (SDT). TLS expressed its disappointment that the Ministry of Justice does not consider that the wording in the LSA permits an unlimited penalty.

- 11 TLS expressed surprise that the LSB did not consider using an order under section 69 to amend the LSA to align the powers as it has done with other issues where there has been a difference in powers. It considers that a section 69 order on this matter would be the most effective way of achieving a level playing field between ABS and traditional law firms.

- 12 While TLS prefers the approach where there is a clear separation between investigators and adjudication, as is the case with the current arrangement for traditional law firms, it noted that the structure of the Act makes this difficult to

achieve. Therefore, it does not oppose the proposals but would prefer the maximum to be described as “unlimited”.

13 TLS also noted the short consultation period and asked that we allowed for longer periods for adequate consideration for future consultations.

14 The SRA made few general comments but did note that it “...share[s] the LSB’s desire for an enforcement regime which allows for proportionate and credible deterrence in all circumstances”.

15 The Master of the Faculties notes that it “cannot at present envisage circumstances in which it would seek to be approved as a licensing authority”.

### ***Responses to the specific questions***

***Do you think that the maximum set by the LSB is sufficiently high to ensure that penalties are able to be proportionately applied by LAs?***

16 ITMA stated that the previous proposals would have sufficed but the proposed maximum would be “sufficiently high to allow flexibility and proportionality”.

17 IPS stated that it supports the general approach which the LSB proposes. It considers that the proposed maximum limit for entities appears sufficiently high. However, it states that the limit for penalties on individuals appears to be disproportionately high compared to the limit for entities.

18 TLS thought that the proposed amounts were unlikely to prevent LAs from imposing appropriate penalties and should provide LAs with the power to have a credible deterrent. However, it commented that there is a danger that some may think that penalties should be close to the maximum. It noted that the LSB guidance does expect the LA to set out the criteria that it will consider when setting a penalty and this should help manage the expectations of the public and ABS.

19 SRA considered that the limits would act as a significant deterrent for any regulated person. However, it suggests that further consideration be given to the earnings of the firms involved in the miners’ compensation cases. It quoted from the Law Gazette of 16 December 2010:

*“The five firms that earned the most from the COPD scheme were Doncaster firm Keypoint Law (formerly Beresfords) (£135m); national firm Thompsons (£123m); Cardiff firm Hugh James (£103m); Yorkshire firm Raleys (£83m); and Newcastle firm Mark Gilbert Morse (£59m).”*

20 The SRA cited Professor Macrory<sup>6</sup>'s view that "a sanction should aim to eliminate any financial gain or benefit from non-compliance". It considers that "a cap of £150m could be too low to deal with a scandal equivalent to the miners' compensation, particularly if fewer firms gain contracts to carry out high volume work. £1 billion was paid to 500 law firms in miners' cases." The SRA considers that a higher figure would therefore be appropriate to ensure the deterrence effect regardless of future developments. However, it does consider the £50m maximum for individuals to be sufficient.

21 The Master of the Faculties confirmed that in its previous response to the wider consultation that it was content with an unlimited maximum. It is nonetheless content that a maximum "of the order proposed is sufficiently great".

What are your views on the fixed amounts proposed for entities and individuals? If you disagree with our proposed approach please give your reasons and, if possible, propose an alternative.

22 ITMA had no comments on this question.

23 IPS considered that the amount proposed for individuals appeared excessive and that the miners' compensation cases were isolated and it is "incongruous that the earnings of one partner in those cases should be used to set the maximum for individuals working in ABS". IPS considered that there should be more consideration of the proportionality between the proposed maximum amounts for entities and individuals.

24 TLS believes that the LSB should propose a section 69 order to change the LSA wording to allow an unlimited penalty. In the absence of this it does not object to the high fixed amounts. It noted that the fixed amount does not preclude LAs from using a turnover related approach if they wish to do so.

25 The SRA firmly supports setting a fixed maximum rather than specifying a calculation based on turnover. The SRA notes a number of potential difficulties if a turnover approach was used and refers to its draft Financial Penalty Criteria which includes a requirement that each penalty should be proportionate to the means of the paying party.

26 The Master of the Faculties is content that the proposal was adequate.

Do you have any comments on the draft statutory instrument?

27 Only the SRA had substantive comments on the statutory instrument that:

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<sup>6</sup> In 2006, Richard Macrory, a barrister and professor of environmental law, was asked by the Government to consider what could be done to improve compliance among UK businesses

*We would query whether, for the avoidance of any doubt, it would be helpful to stress in the wording of 2(b) that fines can be levied in respect of former employees and managers as well as those currently holding such posts. This power is put beyond any doubt in section 95 of the Legal Services Act and it would be useful if this were stressed in the statutory instrument also. We appreciate that the intention may be to provide for this once the definitions are added to the instrument.*

## **LSB's response**

- 28 The LSB has considered the comments of the respondents. We do not think that it is appropriate to propose a section 69 order to amend the LSA. In general, we do not consider that it is appropriate to use section 69 orders to align regulatory regimes where there is not a clear case that other powers are insufficient. In the case of a maximum financial penalty, we will use our powers to set a sufficiently high maximum to act as a deterrent in the same way that an unlimited maximum does. However, we will reconsider whether a section 69 order is appropriate if in due course, LAs tell us that the maxima we have set are not high enough for the types of issues for which they wish to impose penalties.
- 29 We agree that the best mechanism is to set fixed maximum amounts for penalties. This approach provides clarity about the maximum that individuals and entities face and means that LAs will not have to spend considerable time and effort determining the level of an entity's turnover. It should also reduce the risk of legal challenge on the underlying law while maintaining the appeal route for those who wish to challenge a LA's decision.
- 30 We were not persuaded by the IPS argument that the proposed amount for individuals was too high. Consistent with the principles of better regulation to which the LSB and ARs must have regard, it gives LAs flexibility to impose a significant penalty and acts as a strong deterrent to non-compliance.
- 31 In deciding an appropriate maximum for entities, we have considered carefully the SRA's example of the firms who profited from the miners' compensation claims. We have taken into account:
- The requirement in the LSA<sup>7</sup> that both the LSB and ARs/LAs must have regard to the principles of better regulation and best regulatory practice. In particular, that the maximum penalty must be a sufficient deterrent to non-compliance and that in setting the level of a penalty a LA must have sufficient flexibility to eliminate financial gain from non-compliance yet impose a proportionate amount;

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<sup>7</sup> LSA sections 3(3) and 28(3)

- That the SRA will have a significant role to play in the regulation of ABS and has experience of regulating in a framework where the SDT has the power to impose an unlimited maximum. The SRA's views therefore carry significant weight;
- The policy desire to have, where possible, a level playing field for ABS and non-ABS firms. Although this is not strictly possible in this case, we consider that a very high maximum is likely to have the same deterrent effect as the threat of an unlimited amount;
- That the Legal Services Act<sup>8</sup> increased the previous maximum of £5,000 to an unlimited amount. We consider that this confirms the importance of very high penalties to ensure appropriate incentives to comply with legal services regulation.

32 Taking all these issues into account, in our judgement we consider that it is reasonable and proportionate in all the circumstances to increase the proposed maximum from £150m to £250m. We have also considered whether the proposed maximum for an individual should be changed but have concluded that £50m is sufficiently high. However, the change to the level of the entity penalty may go some way to address IPS's concerns that the difference between entity and individual maxima is disproportionate. An amended SI is attached at Annex A.

33 We have considered the SRA's suggestion for an amendment to the SI. However, we consider that the proposed change is unnecessary since the LSA already provides<sup>9</sup> that references to a licensed body, manager or employee also includes former licensed bodies, managers or employees and to comply with standard drafting practice we have not amended the SI further than adjusting the maximum figure for an entity penalty.

34 We have corrected a numbering error identified by the Master of the Faculties.

***Details provided under section 205(5) of the Legal Services Act 2007 of a material change to the draft published rules***

35 If the LSB makes rules that are, in its opinion, materially different to the draft that it consulted on, it must publish details of the differences. Rule 2(a) of the draft rules at Annex A has been changed to provide that the maximum sum of a penalty that may be imposed on a licensed body is £250 million.

36 The LSB considers that increasing the maximum amount of penalty that can be imposed on an entity from £150m to £250m is a material change. The

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<sup>8</sup> Schedule 16 paragraph 49(d)

<sup>9</sup> Section 95(6)



reasons for making the change are set out in this document, and the LSB relies on those reasons, and the analysis in the attached impact assessment (Annex B), in making this decision.

2011 No.

LEGAL SERVICES, ENGLAND AND WALES

The Legal Services Act 2007 (Maximum  
Penalty for Licensing Authorities) Rules  
2011

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	***

The Legal Services Board with the consent of the Lord Chancellor makes the following Rules in exercise of the powers conferred by sections 95(3) and 204(2), (3)(e) and (4)(b) of the Legal Services Act 2007<sup>(1)</sup>.

The Legal Services Board has complied with the consultation requirements in section 205 of that Act.

**Citation and commencement**

1.—(1) These Rules may be cited as the Legal Services Act 2007 (Maximum Penalty for Licensing Authorities) Rules 2011.

(2) These Rules come into force on [date].

**Maximum penalty**

2. The maximum amount of any penalty which a licensing authority may impose under section 95 of the Legal Services Act 2007 (financial penalties) is—

- (a) in the case of a penalty imposed on a licensed body, £250 million; and
- (b) in the case of a penalty imposed on a manager or employee of a licensed body, £50 million.

Made by the Legal Services Board at its meeting on [date]

I consent

Signed by authority of the Lord Chancellor

*Name*  
Parliamentary Under Secretary of State

Ministry of Justice

[Date]

<sup>(1)</sup> 2007 c.29.

## **EXPLANATORY NOTE**

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

These Rules specify the maximum penalty that may be imposed under section 95 of the Legal Services Act 2007 (“the 2007 Act”). That section provides for a licensing authority to impose a penalty on a licensed body, or a manager or employee of a licensed body, in accordance with licensing authority’s licensing rules. Section 83 of, and Schedule 11 to, the 2007 Act makes provision as to the criteria and procedure to be applied in determining whether to impose a financial penalty and the amount of the financial penalty. The maximum amount set by the Order is £250 million for a licensed body and £50 million for an employee or manager of a licensed body.

## Annex B – Impact assessment

<b>Title:</b> <b>Setting the maximum financial penalty for ABS licensing</b>  <b>Lead department or agency:</b> Ministry of Justice <b>Other departments or agencies:</b> Legal Services Board	
	<b>IA No:</b>
	<b>Date:</b> 25/01/2011
	<b>Stage:</b>
	<b>Source of intervention:</b> Domestic
	<b>Type of measure:</b> Secondary legislation
	<b>Contact for enquiries:</b> Luke McInerney luke.mcinerney@legalservicesboard.org.uk

### Summary: Intervention and Options

<b>What is the problem under consideration? Why is government intervention necessary?</b> This IA concerns the power under section 95 of the Legal Services Act 2007 (LSA 2007), which sets out the circumstances in which a Licensing Authority (LA) can impose a financial penalty on a licensed body (ABS) or a manager or employee of an ABS. It is a requirement of section 95(3) of the LSA 2007 for the Legal Services Board (LSB) to make rules prescribing the maximum amount of a penalty that can be imposed. The rules can only be made with the consent of the Lord Chancellor (LSA section 95 (4)). Government intervention is needed to prescribe a maximum financial penalty which LAs can impose on ABS entities and individuals working in them	
<b>What are the policy objectives and the intended effects?</b> The policy objective is to ensure the regulation of legal services remains robust by providing a sufficient financial deterrent against non-compliant behaviour by individuals and entities regulated by Licensing Authorities. This will be achieved by setting an appropriate maximum financial penalty that could be imposed to ensure the deterrent effect is sufficient for all ABS firms and individuals, regardless of size. Any penalties actually imposed will be proportionate. The intended effect would ultimately be that consumers remain protected and are confident when using legal services.	
<b>What policy options have been considered? Please justify preferred option (further details in Evidence Base)</b> The following options have been assessed against the base case of 'do nothing': <b>Option 0:</b> Do nothing (base case); <b>Option 1:</b> Set the maximum financial penalty to a high fixed maximum of £250m for ABS and £50m for individuals <b>Option 2:</b> Set the maximum financial penalty based on a ten per cent proportion of turnover/income Option 1 is the Legal Services Board's preferred option as it allows a Licensing Authority the flexibility to exercise its discretion and judgement in setting a penalty in way that enables it to take into account the likely wide variation in the outcomes of investigations that it will encounter.	
<b>When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?</b>	No later than 3 years after implementation; earlier if necessary
<b>Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?</b>	Yes

**Chief Executive's Sign-off** For consultation stage Impact Assessments:

***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 and Evidence Policy Option 1

**Description:** Set the maximum financial penalty to a high fixed maximum of £250m for ABS and £50m for individuals

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

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

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

There will be a cost to ABS of systems to ensure compliance with licensing rules in order to minimise the likelihood that a penalty will be imposed. There would also be a cost to LAs in determining what constitutes a proportionate penalty which takes account of better regulation principles, as well as overall operational costs of an LA in monitoring compliance and taking enforcement action if needed.

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

The primary costs are unquantifiable and relate to the cost of monitoring non-compliance of ABS by LAs. This is non-quantifiable as this is only an element in their overall monitoring activities and cannot be differentiated from it.

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

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

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

A high fixed maximum financial penalty has the advantage of strengthening the enforcement and compliance regime of LAs thereby deterring non-compliant behaviour, risk of 'gaming' by firms, and raising consumer and business confidence. These non-monetised benefits are diffuse and have a positive spill-over effect throughout the regulated legal services market with consumers benefiting from more safeguards and better functioning market as firms have confidence that non-compliant firms will face penalties.

### Key assumptions/sensitivities/risks

Discount rate (%)

It is assumed that the actual penalty imposed would in all cases be proportionate. The risk of disproportionate fines being set in the first place is offset by the publication of LAs' policy approach to non-compliance as part of their initial application in becoming a LA which is scrutinised and assessed by the LSB in terms of its approach and compliance with the better regulation principles of proportionality and reasonableness. Also, firms have the right of appeal to an appellate body on the grounds of reasonableness regarding the size of any penalty, providing a mechanism for the penalty to be challenged.

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

## Summary: Analysis and Evidence Policy Option 2

Description: Penalty based on a ten per cent proportion of turnover/income

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate:
<b>COSTS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant Price)</b>		<b>Total Cost (Present Value)</b>
Low					
High					
Best Estimate					
<b>Description and scale of key monetised costs by 'main affected groups'</b>					
<b>Other key non-monetised costs by 'main affected groups'</b>					
It is not possible to quantify the costs for the option of having a penalty based on a proportion of turnover. However it can be envisaged that there would be some cost of compliance for LAs given that they would have to ascertain the annual turnover/income of ABS/individual in order to impose the correct penalty. A maximum based on turnover may result in costs associated with legal challenge to the basis for the calculation.					
<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					
High					
Best Estimate					
<b>Description and scale of key monetised benefits by 'main affected groups'</b>					
<b>Other key non-monetised benefits by 'main affected groups'</b>					
Other key non-monetised benefits include the indirect benefit of having a penalty based on annual turnover/income which is consistent with other penalty regimes based on turnover. This approach could create some consistency for firms and also, presumably, reduce administrative and resource costs to the LAs' monitoring of compliance behaviour.					
<b>Key assumptions/sensitivities/risks</b>					<b>Discount rate (%)</b>
It is assumed that while there is the possibility of having a penalty based on a multiple of annual income, a penalty based on having a fixed portion of income/turnover has the potential to not be the most robust method of deterrence as firms could manipulate their structure to artificially reduce the maximum. Also, a penalty based on income/turnover would have the effect of removing the discretion of LAs to impose a penalty which they think is commensurate with the level and degree of non-compliant behaviour.					
<b>Impact on admin burden (AB) (£m):</b>			<b>Impact on policy cost savings (£m):</b>		<b>In scope</b>
New AB:	AB savings:	Net:	Policy cost savings:		Yes/No

## Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?	England and Wales				
From what date will the policy be implemented?	06/10/2011				
Which organisation(s) will enforce the policy?	Licensing Authorities				
What is the annual change in enforcement cost (£m)?	Negligible				
Does enforcement comply with Hampton principles?	Yes				
Does implementation go beyond minimum EU requirements?	Yes				
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)	<b>Traded:</b>		<b>Non-traded:</b>		
Does the proposal have an impact on competition?	No				
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?	<b>Costs:</b>		<b>Benefits:</b>		
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	<b>Micro</b>	<b>&lt; 20</b>	<b>Small</b>	<b>Medium</b>	<b>Large</b>
Are any of these organisations exempt?	No	No	No	No	No

## Specific Impact Tests: Checklist

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

## Evidence Base (for summary sheets) – Notes

### References

No.	Legislation or publication
1	<a href="#">Legal Services Act (2007)</a>
2	<a href="#">LSB Consultation Paper Approaches to Licensing</a>
3	<a href="#">LSB Response to Consultation</a>
4	

### Evidence Base

#### Annual profile of monetised costs and benefits\* - (£m) constant prices

	Y <sub>0</sub>	Y <sub>1</sub>	Y <sub>2</sub>	Y <sub>3</sub>	Y <sub>4</sub>	Y <sub>5</sub>	Y <sub>6</sub>	Y <sub>7</sub>	Y <sub>8</sub>	Y <sub>9</sub>
Transition costs										
Annual recurring cost										
Total annual costs										
Transition benefits										
Annual recurring benefits										
Total annual benefits										

\* For non-monetised benefits please see summary pages and main evidence base section



# Evidence Base (for summary sheets)

## 1. Introduction

### Background

1. 1 The Legal Services Board (LSB) was created by the Legal Services Act (LSA 2007). The LSB's mandate is to ensure that regulation in the legal services industry is carried out in manner that is consistent with the public interest and that the interest of consumers is central in policy making. It is charged with the responsibility of overseeing legal regulators and ensuring that its activities reflect the regulatory objectives set out in the LSA 2007.
1. 2 The LSA 2007 will enable the operation of Alternative Business Structures (ABS). This will help open up the legal services market to competition and to new ways to structure legal businesses, forming part of the wider package of deregulation which is the basis of the LSA 2007. It is anticipated that ABS will be allowed from October 2011 and will allow law firms and individuals to explore new ways of organising their businesses to be more cost-effective, permit different kinds of lawyers and non-lawyers to work together, and allow for external investment.
1. 3 ABS will require authorisation and licensing by licensing authorities (LAs). LAs are required to have licensing rules which set out the regulatory arrangements for ABS. These licensing rules require approval from the LSB. An important part of the licensing rules will be the LA's enforcement strategy including penalties for ABS, employees, managers and former employees and managers. The LSA 2007 requires the LSB to make rules prescribing the maximum amount of a financial penalty that can be imposed by a Licensing Authority.
1. 4 Licensing Authorities will need to provide the LSB with their proposed enforcement policy as part of the general application to become Licensing Authorities. The LSB expects that this information would be published, providing clear information to potential ABS as to how a Licensing Authority will approach compliance and enforcement. LAs must have regard to the better regulation principles of proportionality and this will apply to all of their regulatory activities including, but not limited to, imposition of penalties, and modification of licensing conditions.
1. 5 The proposals assessed in this Impact Assessment (IA) relate to policy options concerning the choice of the maximum financial penalty that LAs can impose on an ABS firm or individual manager or employee, in the event of non-compliance with its rules and regulations.

### Prescribing the maximum

1. 6 The proposal for a maximum financial penalty of a high fixed maximum of £250m for entities and £50m for individuals sets a high ceiling below which a LA may impose a financial penalty for non-compliance with licensing rules. This figure is deliberately set as a high maximum in order to deter such behaviour, however it should be emphasised that this figure is an absolute figure only and, depending on the nature of a breach, a LA would impose a penalty proportionate to the seriousness of the non-compliant behaviour and the entity or individual involved – ie. a financial penalty would not necessarily be imposed at the highest fixed maximum, but rather would be proportional.
1. 7 In formulating a maximum financial penalty for ABS and individuals, the LSB has drawn from other similar penalties in the legal services industry. For example the Solicitors Disciplinary Tribunal (SDT) has the power to impose an unlimited penalty for disciplinary breaches that are prosecuted in front of it by the SRA. In terms of maximum financial penalties in other industries, sections 66, 91, 123, and 206 of the Financial Services and Markets Act 2000 gives discretion to impose a penalty of such amount as considered appropriate by the Financial Services Authority. Similarly, the Money Laundering Regulations 2007, the Transfer of Funds (Information on the Payer) Regulations 2007, the Regulated Covered Bonds Regulations 2008, and the Payment Services Regulations 2009, give a similar power to the Financial Services Authority. This power is then limited by the Financial Services Authority's current enforcement policy which, for example, in many circumstances sets 20% of a firm's income as the maximum amount which may be imposed as a penalty. The LSB has also considered the size of the market and the size of profits made from miners' compensation claims which resulted in regulatory action.

### Problem under consideration

1. 8 The creation and regulation of ABS will come into force with the commencement of Part 5 of the LSA, currently anticipated to be October 2011, an appropriate enforcement framework is needed for Licensing Authorities prior to this date. The LSA act requires the LSB (LSA s.95(3)) to make rules by statutory instrument (LSA s.204(2)) that prescribe the maximum penalty that may be imposed by a Licensing Authority on an ABS. This will ensure that ABS and individuals in them will have a strong incentive to comply with the licensing rules and will afford greater protection to consumers. The maximum amount of a penalty is only what Licensing Authorities can impose on ABS's in a worst case scenario for non-compliance. In discharging its functions to Licensing Authorities the LSB has to adhere to the regulatory objectives set down in the LSA 2007 and also the principles of transparency, accountability, proportionality, consistency and a targeted approach to regulation. Subject to commencement of Part 5 of the LSA 2007, ABS will be permitted from October 2011. In view of this it is necessary to have a maximum financial penalty prescribed and the requisite regulatory frameworks and systems in place before this date in order to ensure that Licensing Authorities have certainty regarding their enforcement powers in the event of non-compliance.

### **Economic rationale**

1. 9 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 outdated rules). In either case the proposed intervention should avoid creating a further set of disproportionate costs and distortions. The Government may also intervene for equity (fairness) and distributional reasons (e.g. to reallocate goods and services from one group in society to another). Intervention in this case would be justified primarily on efficiency grounds. The deterrent effect provided by introducing the possibility of a financial penalty for non compliance should increase overall compliance by ABS firms. This would generate a set of efficiency benefits, including that the regulation of the legal services market remains robust and efficient. Consumers of legal services will ultimately benefit from the proposal through a higher quality of service provided by ABS firms, and potentially through increased confidence when accessing the legal services market.
1. 10 The proposal would impose some costs on ABS firms - for example, one response to the threat of a financial penalty may be to devote more resources to ensuring compliance with the relevant regulations. The threat of a financial penalty also increases the level of risk within which firms operate, which is likely to involve a further welfare cost. These costs may be passed on to the consumers of legal services in the form of higher prices. The rationale therefore hinges on the fact that any penalty actually imposed will be proportionate to the type of firm and offense in each specific incident. This should minimise these costs.
1. 11 The proposal may also be justified on equity grounds as the fixed high maximum for ABS is set at a level sufficiently high enough (ie. maximum of £250m) that the sanctions of an unlimited amount currently set for solicitor firms by the SDT so is unlikely to have negative equity effects between the penalty regime of ARs and LAs.

### **Policy Objectives**

1. 12 The principal policy objective is to set a maximum financial penalty at an appropriate level to provide a sufficient deterrent effect so that consumers are ultimately protected through a robust regulatory regime that is enforced by Licensing Authorities. Related to this is the necessity for Licensing Authorities to have the discretion and flexibility to impose a penalty that is not so high to put unreasonable compliance costs on business but which is sufficient to deter non-compliance with the relevant regulations for all firms and all types of non-compliant behaviour. The regulatory objective of 'protecting and promoting the public interest', to which the LSB has regard when discharging its functions, would also be promoted through having robust non-compliance systems and appropriate penalties in place.

### **Affected stakeholder groups, organisations and sectors**

1. 13 The following individuals/sectors are likely to be affected by the proposals:

- *Licensing Authorities*: LAs will enforce licensing rules and monitor compliance against their licensing rules. The Solicitors Regulation Authority and Council for Licensed Conveyancers are expected to be among the first LAs.
  - *Alternative Business Structures*: All ABS will be regulated by LAs and any non-compliant behaviour may incur a financial penalty
  - *Providers of legal services*: current providers of legal services will be affected as robust financial penalties for non-compliance by ABS firms will eliminate any potential competitive advantage that an ABS firm may enjoy if the proposal were not implemented.
  - *Consumers of legal services*: Consumers will have additional protections with the setting of a high fixed maximum penalty. This approach to dealing with non-compliance will reduce the incentive to not comply with the relevant regulations, which are in place to protect consumers.
  - *Legal Services Board*: will ensure that LAs' licensing rules include appropriate compliance and enforcement arrangements to use properly the financial penalty powers.
  - *The appellate body*: As an additional safeguard, the LSA 2007 also sets out the grounds on which ABS entities and individuals are able to appeal to an appellate body against the decision of a Licensing Authority to impose a penalty or its size. The methodology of apportioning these costs is being developed with the LSB, the Tribunal Service and potential LAs.
1. 14 The scope of this IA is limited solely to the amount of the maximum financial penalty that Licensing Authorities can impose on ABS for non-compliant behaviour. This IA is part of the overall implementation plan for ABS; the proposed regulation will be enforced throughout England and Wales.

## 2. Costs and benefits

2. 1 This Impact Assessment identifies impacts on individuals, groups and businesses in the UK, with the aim of understanding what the overall impact to society might be from implementing these 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.

### Assumptions

2. 2 The following assumptions have been used:
- Underlying the analysis regarding different options of imposing a maximum financial penalty for non-compliant ABS is the assumption that the introduction of ABS will be taken-up by a sufficient volume of firms to warrant enforcement and compliance structures;
  - Assumed that Licensing Authorities are competent to regulate ABS as demonstrated through their application process to the LSB;
  - Assumed that the uptake of ABS firms creates a more competitive market in the provision of reserved legal services after ABS firms are permissible (anticipated to be October 2011);<sup>11</sup>
  - Assumed that ABS firms will compete for the provision of legal services with existing legal service providers.
  - Assumed that appropriate criteria would be put in place to so that a **proportionate** financial penalty is always imposed for each case of non-compliance. This would allow both Licensing Authorities and if required the appellate body to take a consistent approach; and
  - Assumed that an appellate body will be in place to ensure that ABS are able to make appeals.
  - Assume that the proposed penalty regime is not set too high that it deters firms from becoming ABS. Countervailing this risk is that strong deterrence should encourage compliant

<sup>11</sup> A full Impact Assessment detailing the possible uptake scenarios for ABS and their expected impact will be produced separately to this Impact Assessment for the commencement of Part 5 of the LSA 2007.

firms to have confidence in entering and operating in the market as any perceived competitive gain from non-compliance would be removed, facilitating a level playing field for firms.

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

- 2.3 Under the do nothing option, there would be no framework in place which would prescribe a maximum financial penalty on non-compliant ABS when they are introduced in October 2011. Section 95 (3) of the LSA 2007 requires the LSB to make rules prescribing the maximum amount. Therefore, the do nothing base case is presented as a hypothetical option only.
- 2.4 Because the do nothing option is compared against itself its costs and benefits equate to zero, as is its Net Present Value (NPV).<sup>12</sup>

### **Option 1: Setting a high fixed maximum of £250m for ABS and £50m for individuals**

#### **Description**

- 2.5 This option sets a high fixed maximum financial penalty that Licensing Authorities can impose on ABS for non-compliant behaviour. It is not envisaged that the maximum financial penalty would always be applied but used as the upper limit against which to assess the appropriateness of a proposed penalty. The requirement for a Licensing Authority is that it must act proportionately according to the particular circumstances of the case. The way in which this would be monitored and enforced will be outlined in the licensing rules of individual Licensing Authorities, having regard to the better regulation principles of proportionality and accountability. The licensing rules set by Licensing Authorities will be scrutinised by the LSB at the time of their application for designation. This ensures that these rules are consistent and reasonable in their approach to levying financial penalties.

#### **Costs of Option 1**

- 2.6 There are likely to be one off adjustment costs faced by all affected parties. However, these costs are not expected to be significant.

#### **Alternative Business Structures**

- 2.7 The proposal is likely to impose costs on ABS firms. First, those firms which are non-compliant would have to bear the costs of the financial penalty. In instances where an ABS has a penalty imposed on them, in addition to the financial costs they would also face reputational damage. This reinforces the financial incentives provided by the penalty itself. Second, the existence of financial sanctions will increase the risk in which ABS firms operate. There may also be uncertainty about the magnitude of what financial penalty would actually be imposed (as the proposal relates to the maximum only). This increased risk represents a cost for ABS firms. Finally, a result of the proposal is likely to be that ABS firms spend extra resources to try to ensure compliance with the relevant regulations (in order to reduce the risk of incurring a financial penalty). These compliance costs borne by ABS as a result of a high maximum penalty could be significant.

#### **Providers of legal services**

- 2.8 The LSA 2007 sets out the ground on which ABS entities and individuals are able to appeal to an appellate body against the decision of a Licensing Authority to impose a penalty or its quantum. By enabling financial penalties to be imposed, the proposal is therefore likely to result in additional costs associated with appeals. The methodology of apportioning these costs is being developed with the LSB, the Tribunal Service and potential LAs. In principle, some of the funding for the appellate body (such as set up costs and fixed running costs) may be paid by the legal services industry as a whole, including existing legal service providers. The proposal may therefore result in some additional costs for existing legal service providers. These costs will

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<sup>12</sup> The Net Present Value (NPV) shows the total net value of a project over a specific time period. The value of the costs and benefits in an NPV are adjusted to account for inflation and the fact that we generally value benefits that are provided now more than we value the same benefits provided in the future.

depend in part on how many appeals are lodged, and in part on the funding arrangements developed.

### *Consumers of legal services*

2. 9 As outlined above, the proposal is likely to result in additional compliance costs for ABS firms. These costs may be passed on to consumers in the form of higher prices. Similarly, any costs associated with appeals to an appellate body, and any costs borne by LAs which are passed on to ABS firms may also be ultimately passed on to the consumers of legal services.

### *Licensing Authorities*

2. 10 Licensing Authorities would incur some ongoing monitoring and enforcement costs, particularly in instances when it would have to impose penalties. These costs are likely to include assessing the extent of non-compliance and calculating the appropriate and proportionate level of financial penalty on a case by case basis.

### *Appellate body and HMCS*

2. 11 As outlined above, there are likely to be costs associated with appeals to an appellate body in relation to any financial penalties imposed by LAs. The methodology of apportioning these costs is being developed with the LSB, the Tribunal Service and potential LAs. HMCS may incur costs in terms of resource if there are any appeals by ABS. The volumes of appeals depend on the level of non-compliance and whether the penalties imposed are perceived to be proportionate. However, any increase in tribunal volumes should in theory have no net financial impact on HMCS given court fees should adjust to cover any costs incurred in each case.

## **Benefits of Option 1**

### *Consumers of legal services*

2. 12 Consumers of legal services would benefit from this option. The ability of Licensing Authorities to impose penalties in line with the circumstances of each case should provide an effective deterrent against non-compliance by ABS with the relevant regulations. The regulatory frameworks which govern the legal services market would remain robust, which would benefit consumers of legal services. Consumers would benefit directly if the quality of legal services increased as a result, and consumers may also benefit if they have increased confidence when accessing the legal services market.

### *Existing providers of legal services*

2. 13 It is assumed that existing providers will compete with ABS firms for the provision of legal services. If this is the case, in the absence of the proposal ABS firms would have a competitive advantage given they would not face the threat of financial penalty for non-compliance. As outlined above, the threat of financial penalties is likely to involve firms incurring additional compliance costs, which are ultimately passed on to consumers in the form of higher prices. Existing providers (ie solicitors) regulated by ARs can face fines for non-compliance by the SDT which can levy an unlimited penalty for providers of legal services.

### *Government Consolidated Fund*

2. 14 Licensing Authorities do not financially benefit from the imposition of a penalty as the proceeds of financial penalties are paid into the Government's Consolidated Fund. This removes any perverse incentives for Licensing Authorities to raise revenue through imposing penalties. The proposal may therefore benefit taxpayers if it provides additional revenue for Government.

## **Net Impact of Option 1**

2. 15 It has not been possible to quantify the impacts outlined above, in part as that these will be heavily dependent on behavioural responses and market conditions. Based on the impacts identified, the proposal is expected to provide a net benefit.

## **Option 2: Set the maximum financial penalty at ten per cent of annual turnover / income**

### **Description**

2. 16 This option discusses whether the maximum penalty that Licensing Authorities can impose on ABS entities and individuals for non-compliant behaviour should be set at ten per cent of their turnover and income respectively. As under Option 1, it is not envisaged that the maximum financial penalty would always be applied but used as the upper limit against which to assess the appropriateness of a proposed penalty.

### **Costs of Option 2**

2. 17 There are likely to be one off adjustment costs faced by all affected parties. However, these costs are not expected to be significant.

#### *Alternative Business Structures*

The costs are likely to be similar to those canvassed under option 1. The proposal is likely to impose costs on ABS firms. First, those firms which are non-compliant would have to bear the costs of the financial penalty which is calculated as a proportion of their turnover. In instances where an ABS has a penalty imposed on them, in addition to the financial costs they would also face reputational damage. This reinforces the financial incentives provided by the penalty itself. The existence of financial sanctions will increase the risk in which ABS firms operate. There may also be uncertainty about the magnitude of what financial penalty would actually be imposed (as the proposal relates to the maximum of ten per cent of annual turnover but could be less). This increased risk represents a cost for ABS firms. There could be costs associated with launching a legal challenge to the legality of the maximum penalty in some cases. A result of the proposal is likely to be that ABS firms spend extra resources to try to ensure compliance with the relevant regulations (in order to reduce the risk of incurring a financial penalty).

#### *Providers of legal services*

2. 18 As for Option 1, providers of legal services may suffer some costs from this proposal. Due to the uncertainty of the level of financial penalty for non-compliance, firms which may have applied to become ABS may not do so. The maximum level of financial penalty may act as a barrier for firms to enter the ABS market, and may result in lower income and profits for these firms. However, this analysis assumes that there is sufficient take up of ABS by firms.
2. 19 In addition, some of the funding for the appellate body (such as set up costs and fixed running costs) will be paid by the industry as a whole, the cost of which would depend in part on how many appeals are lodged, and may be an additional cost to providers of legal services.

#### *Consumers of legal services*

2. 20 Consumers may incur costs with this proposal. As outlined in Option 1, any penalty imposed on ABS may be passed onto consumers.

#### *Appellate body*

2. 21 The costs to the appellate body are likely to be the same as for Option 1.

#### *Licensing Authorities*

2. 22 Licensing Authorities would incur some ongoing monitoring and enforcement costs in instances when it decided to investigate a potential licence breach and impose a penalty. There would also be a cost in obtaining the information necessary to work out the maximum penalty that could be imposed and this would vary from case to case. The potential complexity of defining turnover and income may make decisions more susceptible to challenge which would in turn increase costs. A disadvantage of moving a penalty based on turnover is defining what the appropriate turnover should be. In this case, should a Licensing Authority wish to set a penalty at the top of the range there would be strong incentives for the ABS to argue that the calculation of turnover was incorrect and the penalty was unlawful. Also, if the maximum amount were set as a proportion of total turnover of the entity then this may need to include information on global turnover (for larger firms with offshore subsidiaries, etc) and which may be difficult and costly to obtain. UK based turnover could be easier to assess in this respect, but this could create perverse incentives in terms of business structure.

#### *HMCS*

2. 23 HMCS may incur costs in terms of resource if there are any appeals by ABS. The volumes of appeals depend on the level of non-compliance and whether the penalty is deemed to be proportionate.

### **Benefits of Option 2**

### *Consumers of legal services*

2. 24 Consumers of legal services would benefit from this option. First, the ability of Licensing Authorities to impose penalties up to a maximum of a significant proportion of income/turnover would be a deterrent against non-compliance by ABS. Second if the effectiveness of the regulatory system is improved, more firms may be encouraged to enter the market, again benefitting consumers. In both cases the penalty will reflect the specific circumstances of the case.

### *Alternative Business Structures*

2. 25 ABS would benefit from the transparency with which penalties would be imposed. This would also benefit ABS that are compliant with regulations as they would not be disadvantaged by firms not employing unfair methods of business and also not punished appropriately.

### *Providers of legal services*

2. 26 As outlined in Option 1, providers of legal services would benefit from the positive spill-over effect of appropriate sanctions for noncompliance, which should in theory instil greater confidence in new businesses wanting to enter into the legal services market and / or apply for ABS, and greater consumer confidence in legal services which may result in increased demand.

### *Licensing Authorities*

2. 27 Licensing Authorities may benefit from this proposal. The appeals process by which a third party is able to scrutinise decisions made by Licensing Authorities may again act as a feedback loop in assisting Licensing Authorities with an appropriate penalty to impose.

### *Government Consolidated Fund*

2. 28 Any financial penalty imposed on an ABS by Licensing Authorities is paid into the Consolidated Fund. There is therefore no incentive on the LSB to impose a large penalty other than the penalty should be an incentive to change behaviour.

### **Net impact of Option 2**

2. 29 The result of this proposal is that a maximum of financial penalty expressed as a proportion of income or turnover on ABS entities is likely to be a deterrent to non-compliant behaviour, as the level of penalty would take into account the size of the firm. As with Option 1, it has not been possible to quantify these impacts given that these will be heavily dependent on behavioural responses and market conditions.

### **Summary of Options**

2. 30 Option 1 proposes to set a high fixed maximum as the maximum financial penalty that Licensing Authorities can impose on ABS. The advantages are that all factors of the ABS and nature of non-compliance would be taken into account, resulting in a proportionate level of financial penalty. Having a high maximum also provides a credible threat to ABS that the punishment for non-compliance can be used to reflect the nature of non-compliance.
2. 31 Option 2 is likely to be significantly more complex for LAs and those regulated as definitions of turnover and income are complex to set out and are therefore more likely to be challenged.
2. 32 The LSB's preferred option therefore is Option 1. It appears to be in the best interest of the duties under the regulatory objectives.

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

3. 1 The assumption for the proposal is that it will be implemented prior to the scheduled commencement date for part 5 of the LSA in October 2011. The enforcement frameworks need to be in place before then in order to give clarity to firms wishing to become ABS and also for Approved Regulators to take account of the enforcement framework when making their applications to be designated as Licensing Authorities. As the oversight regulator of the legal services market, the LSB will be monitoring the changes as set out in the Post Implementation Review Plan below.

## 4. Specific Impact Tests

### Statutory Equality Duties

4. 1 The setting of a high fixed maximum financial penalty is not viewed as having a negative impact on disability, gender, gender identity, and race. Setting a high fixed maximum financial penalty will significantly strengthen the compliance and enforcement framework which will contribute to a well functioning market and better outcomes for all consumers of legal services. This situation is likely to lower the barriers to entry into the legal services market, increasing competition and shaping a market that is more consumer focused and price competitive. An outcome of this is better access to legal services by all types of consumers as a more effective market would deliver legal services at a competitive price. Efficiently functioning markets also encourage innovation over time and other dynamic benefits realised for consumers include: allocative efficiency, responsive supply-side matching to new demand, better tailored products (niche markets) and enhanced productivity amongst suppliers. All consumers are likely to benefit from these market-wide benefits which will positively impact on diversity and access to justice and legal services more broadly.

### Competition

4. 2 Setting a high fixed maximum financial penalty places an absolute ceiling on the ability of a LA to levy a financial penalty on a non-compliant ABS firm at £250m while under current arrangements the SDT can impose an unlimited penalty for existing providers (ie solicitors) of legal services regulated by ARs. In this context, an improved regulatory environment with the setting of a high fixed maximum financial penalty with stronger enforcement and compliance monitoring sends signals to market participants and can shape firm-specific behaviour. A market with significantly strengthened compliance and enforcement framework is attractive for both incumbent and new firms and can reduce the transaction cost of new entry, which itself raises productivity as encourages competitive pricing of legal service products.
4. 3 Improved regulation and greater competition are both important elements of delivering better access to justice for consumers through competitively priced legal services, as well as delivering market-wide benefits of encouraging innovation and improving allocative efficiency of the legal services market.

### Small Firms Impact Test

4. 4 The preferred option of introducing a high fixed maximum financial penalty should not adversely affect small firms. In line with the foregoing analysis, the LSB takes the view that an improved regulatory environment which encourages a more competitive and open market is a positive development for small firms. For example, there is a payoff for small firms in terms of a better regulated market as this promotes consumer protection and a level playing field given that any penalty imposed would depend on the nature of the breach. By having robust and meaningful deterrence of non-compliance compels higher rates of small business compliance. This is likely to be, in aggregate terms, beneficial for the market as compliant behaviour creates a level playing field and attracts new entrants which deepens and broadens the scope of services offered. Given that any financial penalty would be imposed with an eye to proportionality – depending on the nature of the breach – a LA has the discretion to impose a fine up to the high fixed maximum financial penalty. To this end, considerations such as the size of the firm and nature and level of the breach gives LAs discretion to impose a fine that is proportional and, in the case of a small firm, a penalty that is reasonable in view of the firm's size, etc.

### Carbon Assessment

4. 5 We do not anticipate any significant carbon impacts as a result of these proposals.

### Other Environment

4. 6 We do not anticipate any other environmental impacts as a result of these proposals.

### Health Impact Assessment

4. 7 We do not anticipate any direct health impact from these proposals.

### Human Rights



4. 8 These proposals are compatible with the Human Rights Act 1998.

#### **Justice Impact Test**

4. 9 The justice impacts of these proposals have been outlined in the main body of this impact assessment. The establishment of an appellate body is the subject of a separate impact assessment and under current proposals by the LSB.

#### **Rural proofing**

4. 10 We do not anticipate and specific or different impact in rural areas as a result of these proposals.

#### **Sustainable Development**

4. 11 These proposals are consistent with the principles of sustainable development.

#### **Privacy Impact Test (an MoJ Specific Impact Test)**

4. 12 These proposals will not have an impact on privacy.

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

<p><b>Basis of the review:</b></p> <p>The basis of the review for imposing a high fixed maximum financial penalty would be part of a broader post implementation review of ABS. Since ABS are not due to be allowed before October 2011, any PIR would take place sometime after that. .</p>
<p><b>Review objective:</b></p> <p>The objective of a review would be to determine whether the regulatory objectives set out in the LSA 2007 have been met in relation to the introduction of ABS. Specifically, the post-implementation review would assess the extent to which LAs have imposed penalties and the frequency of appeal to the appellate body on the basis that such penalties were 'unreasonable'. A review would investigate how the objectives of a high fixed maximum financial penalty such as proportionality would fit the circumstance of when a penalty has been imposed and how well they have been met, etc.</p>
<p><b>Review approach and rationale:</b></p> <p>The review would be part of a wider review of the introduction of ABS and to this end would look across to how the market had changed with the introduction of ABS and provide an in-depth evaluation of the appropriateness of the regulatory structure.</p>
<p><b>Baseline:</b></p> <p>The base line is the current regulatory structure of the market prior to commencement of Part 5 of the Legal Services Act 2007 currently anticipated to be October 2011.</p>
<p><b>Success criteria:</b></p> <p>The achievement of the policy objectives would include the operation of LAs and their ability to impose penalties on non-compliant ABS, and the establishment of an ABS appellate body. Any review of the regulation would take into account the effectiveness of a high fixed maximum financial penalty in terms of deterring non-compliance and, in circumstances when it's imposed, its proportionality and appropriateness. The chief criteria for establishing its success is to ascertain whether a high fixed maximum financial penalty contributes to a strengthened and robust regulatory regime that has the confidence of consumers and legal service provides.</p>
<p><b>Monitoring information arrangements:</b></p> <p>Given that penalties will be imposed by LAs, most monitoring will occur at this level. LAs are required to monitor ABS under their licensing rules and to this end are charged with information collection and monitoring as part of their oversight of ABS as Licensing Authorities. Relevant information for a post-implementation review could also be derived from the appellate body as this body would handle appeals in relation to the reasonableness of a penalty.</p>
<p><b>Reasons for not planning a PIR:</b></p> <p>N/A</p>