

# Consultation on Section 80 order

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A consultation on a proposed order and recommendation to the Lord Chancellor to be made under Section 80 of the Legal Services Act 2007 for licensing authority appeal arrangements for the Bar Standards Board on behalf of the General Council of the Bar

This consultation will close on **Wednesday 16 March 2016 at 5pm**

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

Approved regulators

Providers of legal services

Legal representative bodies

Legal advisory organisations

Other third sector organisations

Non-departmental public bodies

Consumer groups

Members of the legal profession

Accountancy bodies

Potential new entrants to the legal services market

Government departments

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# Introduction

## Consultation by the Legal Services Board

1. The Legal Services Act 2007 (**the Act**) gives the Legal Services Board (**LSB**) a power to recommend to the Lord Chancellor the designation of approved regulators as licensing authorities to license and regulate alternative business structures (**ABS**).
2. In order to be designated as a licensing authority, there must be in place an appellate body to hear and determine appeals from the decisions of the licensing authority. Section 80 of the Act is the mechanism by which the Lord Chancellor may by order establish a body to hear and determine such appeals. Such an order can only be made on the recommendation of the LSB.<sup>1</sup> Section 81 of the Act sets out the procedural requirements for such orders and includes the requirement for the LSB to consult on both the proposed recommendation and the proposed order. Any order made by the Lord Chancellor under section 80 of the Act must be made by statutory instrument through the affirmative procedure, i.e. approved by both the House of Commons and the House of Lords, to become law.
3. This consultation, which will last for eight weeks (closing date 16 March 2016), invites representations on a draft statutory instrument and a supporting recommendation proposed under section 80 of the Act. The order relates to the Bar Standards Board's (**BSB**) application (on behalf of the Bar Council) to become a licensing authority for the existing reserved legal activities undertaken by barristers.<sup>2</sup> The LSB is giving separate consideration to that application. The Bar Council is an approved regulator under the Act, and has historically regulated the conduct of individual barristers. In view of the Act's requirement for separation of representative and regulatory functions, the Bar Council established and delegated its regulatory functions to the BSB. References in this paper to the Bar Council should therefore be read in the context of the BSB exercising those functions.
4. Having consulted on the matter (see paragraphs 12 and 13 below), the BSB is proposing in its licensing authority application that appeals relating to licensing decisions should be heard by the General Regulatory Chamber of the First-tier Tribunal (**FTT**).<sup>3</sup> The proposed draft recommendation and draft order on which we

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<sup>1</sup> A recommendation can only be made by the LSB under section 80 of the Act with the consent of that approved regulator.

<sup>2</sup> The BSB is an approved regulator for the following reserved legal activities: the exercise of right of audience, the conduct of litigation, reserved instrument activities, probate activities, the administration of oaths.

<sup>3</sup> Licensing decisions encompass those decisions made by the BSB as a licensing authority that are appealable under its regulatory arrangements.

are now inviting representations would establish the FTT as the appellate body to hear and determine such appeals.

5. The draft order and recommendation can be found at **Annex A**. Representations are welcomed from respondents about the proposals in the draft order and recommendation; specific questions are set out below at paragraph 24.
6. As required in support of policy proposals, the BSB has prepared a draft regulatory triage assessment to accompany the draft order, which summarises the rationale for the order.<sup>4</sup> This can be found at **Annex B**. Respondents are also invited to comment on the regulatory triage assessment.
7. Any representations about the proposals should be made by 5pm on 16 March 2016. Further details on how to make representations can be found on page 11.

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<sup>4</sup> A regulatory triage assessment is a mini version of a full Impact Assessment. It is used to assess policy measures on business or charity cost impact. Costs must be under £1m gross in order to use a regulatory triage assessment.

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

8. The LSB first consulted on the proposal for a single appellate body to hear all appeals on licensing authority decisions by ABS in the *Approaches to Licensing* consultation in November 2009.<sup>5</sup> The LSB proposed that appeals should be heard by the FTT with the paper setting out the rationale for this approach, and an analysis of the options.
9. In August 2010, the LSB published a further consultation document *Alternative business structures: appeal arrangements*.<sup>6</sup> This set out our detailed proposals for providing a single mechanism for hearing appeals against decisions made by licensing authorities. The proposal that appeals should be heard by the FTT received broad support from consultees, as reflected in our response to the consultation.<sup>7</sup>
10. Five approved regulators have so far been designated as licensing authorities. The Council for Licensed Conveyancers, the Institute of Chartered Accountants in England and Wales, and the Chartered Institute of Patent Attorneys (**CIPA**) and the Institute of Trade Mark Attorneys (**ITMA**) (CIPA and ITMA's regulatory functions are delegated to the Intellectual property Regulation Board), all elected to use the FTT as their appellate body. The Law Society (whose regulatory functions are delegated to the Solicitors Regulation Authority) was designated as a licensing authority and elected to use its existing disciplinary body, the Solicitors Disciplinary Tribunal, as its appellate body.
11. Notwithstanding this different approach we remain of the view that in order to mitigate the risk of inconsistent decisions and penalties being made in respect of, and imposed on ABS, all appeals against decisions made by licensing authorities should be heard and determined by a single body. We support the approach taken by the BSB in selecting the FTT as its appellate body for appeals against licensing decisions.
12. This consultation is not concerned with our overall policy. The BSB, as part of the development of its application for designation as a licensing authority, consulted on the proposal to use the FTT as its appellate body for appeals against licensing

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<sup>5</sup>See: Alternative business structures: approaches to licensing - draft guidance consultation paper [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>6</sup>See: Alternative business structures: appeal arrangements – consultation paper [http://www.legalservicesboard.org.uk/news\\_publications/latest\\_news/pdf/abs\\_appeals\\_sdt\\_consultation.pdf](http://www.legalservicesboard.org.uk/news_publications/latest_news/pdf/abs_appeals_sdt_consultation.pdf)

<sup>7</sup>See: Alternative business structures: appeal arrangements [http://www.legalservicesboard.org.uk/news\\_publications/latest\\_news/pdf/20110509\\_absappeals\\_decison\\_doc.pdf](http://www.legalservicesboard.org.uk/news_publications/latest_news/pdf/20110509_absappeals_decison_doc.pdf)

decisions.<sup>8</sup> The appeal route for disciplinary matters in relation to licensed bodies will follow the same route as disciplinary appeals for individual barristers, going to the High Court. The FTT will be the appellate body for all regulatory matters.<sup>9</sup>

13. Following the conclusion of its consultation, the BSB considered the position in relation to appeals and confirmed that it would propose that appeals in respect of licensing decisions, will initially be heard by its Qualifications Committee and then by the FTT.<sup>10</sup> This consultation now seeks representations about the proposals in the draft statutory instrument and the related recommendation which will give effect to the proposal.

## Background to the BSB designation application

14. The Bar Council is an approved regulator under the Act. In order to meet the requirements for separation of regulatory and representative functions,<sup>11</sup> the Bar Council has established a regulation board, the BSB. While the proposed order makes modifications to the functions of the Bar Council, in the remainder of this paper reference to the BSB is made when describing the exercise of its regulatory functions.

15. Historically the Bar Council regulated the conduct of individual barristers. Under the Act, the BSB now authorises individual barristers to carry on reserved legal activities. In September 2013, the Bar Council amended its constitution (which determines and constrains the powers and functions that can be delegated to the BSB) to allow the BSB to make regulatory arrangements for the authorisation and regulation of non-barristers, including entities.

16. In April 2015, the BSB made an application to the LSB seeking designation as a licensing authority under Part 1 of Schedule 10 to the Act in respect of those reserved activities for which it is an approved regulator.<sup>12</sup> The BSB's full designation application, as well as a summary prepared by the LSB has been

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<sup>8</sup> Licensing decisions encompass those decisions made by the BSB as a licensing authority that are appealable under its regulatory arrangements.

<sup>9</sup> See paper BSB 079 (12) in the minutes of the BSB meeting on 18 October 2012  
[https://www.barstandardsboard.org.uk/media/1433602/bsb\\_part\\_1\\_agenda\\_121018.pdf](https://www.barstandardsboard.org.uk/media/1433602/bsb_part_1_agenda_121018.pdf)

<sup>10</sup> See paper BSB 079 (12) in the minutes of the BSB meeting on 18 October 2012  
[https://www.barstandardsboard.org.uk/media/1433602/bsb\\_part\\_1\\_agenda\\_121018.pdf](https://www.barstandardsboard.org.uk/media/1433602/bsb_part_1_agenda_121018.pdf)

<sup>11</sup> Internal governance rules:  
[http://www.legalservicesboard.org.uk/what\\_we\\_do/regulation/pdf/Internal\\_Governance\\_Rules\\_Version%203\\_Final.pdf](http://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/Internal_Governance_Rules_Version%203_Final.pdf)

<sup>12</sup> The exercise of a right of audience, the conduct of litigation, reserved instrument activities, probate activities, and the administration of oaths

published on the LSB website.<sup>13</sup> The application is currently being considered by the LSB.

## **BSB Section 80 order**

17. In its licensing authority application, the BSB has proposed that appeals against licensing decisions, as described at paragraphs 12 and 13 above, will initially be heard by the Qualifications Committee and then externally by the FTT. The proposal has been subject to the consultation by the BSB referred to at paragraphs 12 and 13 above and HM Courts & Tribunals Service has also agreed to the arrangement.
18. A section 80 order is required to establish the FTT as the appellate body to hear and determine appeals against licensing authority decisions by the BSB. A separate order under section 69 of the Act would, if made, also enable the same arrangements to be put in place for non-ABS entities regulated by the BSB.<sup>14</sup>

### *What the order seeks to do*

19. The order under section 80 of the Act would establish the FTT as the relevant appellate body.<sup>15</sup> Article 3 gives the BSB the power (but would not require it) to create a right of appeal to the FTT against decisions that it makes as a licensing authority. It also gives the FTT the power to suspend BSB decisions pending an appeal, as well as the power to uphold, overturn or alter decisions once the appeal has been heard.

### *Rationale*

20. The proposal facilitates the BSB's intent, as set out in its application for designation as a licensing authority, and its subsequent consultation on amendment to its powers that the FTT hears appeals against its decisions related to licensing.
21. To be designated as a licensing authority there needs to be an appellate body in place. The LSB has previously expressed the view that the FTT appears to be the most appropriate body to hear appeals against decisions by licensing authorities.<sup>16</sup> The BSB has indicated that while for entity decisions, it will retain a discretion for

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<sup>13</sup> See: Current designation applications – reference number 2015/BSB  
[http://www.legalservicesboard.org.uk/Projects/statutory\\_decision\\_making/current\\_designation\\_applications.htm](http://www.legalservicesboard.org.uk/Projects/statutory_decision_making/current_designation_applications.htm)

<sup>14</sup> The LSB will consult on that order separately.

<sup>15</sup> Appeals in the first instance are proposed to be heard by the BSB Qualifications Committee, as is the case for entities.

<sup>16</sup> See: Alternative business structures: appeal arrangements  
[http://www.legalservicesboard.org.uk/news\\_publications/latest\\_news/pdf/20110509\\_absappeals\\_decision\\_doc.pdf](http://www.legalservicesboard.org.uk/news_publications/latest_news/pdf/20110509_absappeals_decision_doc.pdf)

appeals to go to the FTT or High Court.<sup>17</sup> It is its intention that the appeals discussed above will go to the FTT.

22. Any change to the approach proposed by the BSB would involve a change to its regulatory arrangements requiring consultation by the BSB and approval by the LSB as per the procedure set out in the Act<sup>18</sup> and associated rules made by the LSB.<sup>19</sup> This would include consideration of whether the BSB's proposal was consistent with the terms of the order.

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<sup>17</sup> Given by section 24 of the Crime and Courts Act 2013

<sup>18</sup> See Part 3 of Schedule 4 to the Act

<sup>19</sup> See: Rules for rule change

applications [http://www.legalservicesboard.org.uk/what\\_we\\_do/regulation/pdf/rules\\_for\\_rule\\_change\\_applications\\_v2\\_November2010.pdf](http://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/rules_for_rule_change_applications_v2_November2010.pdf)

## The draft recommendation and order

24. **Annex A** contains the draft recommendation and the draft order.

**Question 1:** *Do you have any representations on either the draft recommendation or the draft order?*

**Question 2:** *Do the draft recommendation and draft order deliver the BSB policy intention of allowing the FTT to be established to hear and determine appeals from decisions made by the BSB in its capacity as a licensing authority?*

## Regulatory triage assessment

25. A draft regulatory triage assessment has been prepared by the BSB to accompany the order. **Annex B** contains the draft regulatory triage assessment on which views from respondents would also be welcome.

**Question 3:** *Do you have any comments on the draft regulatory triage assessment, in particular, the costs/benefits estimates and whether any additional costs/benefits should also be identified?*

## How to make representations

26. We would prefer to receive responses electronically (in Microsoft word or PDF format), but hard copy responses by post or fax are also welcome. Responses should be sent to:

**Post:** Consultation Co-ordinator  
Legal Services Board  
One Kemble Street  
London  
WC2B 4AN

**Fax number:** 020 7271 0051

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

27. The consultation period will end at **5pm on 16 March 2016** eight weeks after publication. In accordance with section 81(3) of the 2007 Act, you are given notice that any representation about the proposed section 80 order must be made to the LSB by the end of this period.

28. The LSB is happy to meet respondents to discuss views on the consultation if you would find that helpful. Please send requests to:  
[consultations@legalservicesboard.org.uk](mailto:consultations@legalservicesboard.org.uk)

29. We consider that this consultation satisfies the requirements of section 81 of the 2007 Act to publish a proposed draft order and proposed draft recommendation before making a recommendation to the Lord Chancellor under section 80.

30. The LSB plans to publish all responses received during the consultation period on its website. While the LSB is happy to discuss varying this general policy in individual cases, there is a strong presumption in favour of transparency. It will therefore note publicly that a submission has been received from an identified body which had withheld its consent for publication in the summary of the consultation.

## Complaints

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

Consultation Co-ordinator  
Legal Services Board  
One Kemble Street  
London WC2B 4AN

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

## Annex A – Draft recommendation to the Lord Chancellor and draft section 80 order which will be annexed to the recommendation

### Draft recommendation by the LSB to the Lord Chancellor under section 80 or the Legal Services Act 2007

#### Proposed recommendation for the Bar Council

1. At its meeting on [date] the Legal Services Board decided to make a recommendation to the Lord Chancellor that he make an order under section 80 of the Legal Services Act 2007 (**the Act**) that the First-tier Tribunal may hear and determine appeals against the decisions made by the Bar Standards Board (**BSB**) acting in its capacity as a licensing authority (should it be designated as such). A draft of the order is attached to this recommendation at **Annex XX**.
2. In accordance with the requirements of section 81(2) of the Act, the Board published a draft of the proposed recommendation and draft order on [DATE] and invited representations about the proposals to be made to the Board by [DATE].  
**DELETE ONE: [The Board has had regard to the representations duly made] or [no representations were received].**
3. **[DELETE paragraph if no changes to the recommendation to the order in light of the consultation representations]**. In accordance with the requirements of section 81(5) of the Act, the draft order annexed to the recommendation differs from the draft published under subsection 2(b) in a way in which in the option of the Board, is material. The Board has therefore, before making the recommendation published on its website, published the draft order along with a statement detailing the changes made and the reasons for those changes.
4. In accordance with section 81(1) of the Act, the recommendation is made with the consent of the BSB.

Chair, Legal Services Board

[DATE]

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DRAFT STATUTORY INSTRUMENTS

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**2016 No.**

**LEGAL SERVICES, ENGLAND AND WALES**

**The Legal Services Act 2007 (Appeals from Licensing Authority Decisions) (General Council of the Bar) Order 2016**

*Made* - - - -

*Coming into force in accordance with article 1*

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

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

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

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

**Citation and commencement**

**1.**—(1) This Order may be cited as the Legal Services Act 2007 (Appeals from Licensing Authority Decisions) (General Council of the Bar) Order 2016.

(2) Except as provided in paragraph (3), this Order comes into force on the day after the day on which it is made.

(3) Articles 3 and 4 of this Order—

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

**Interpretation and application**

**2.**—(1) In this Order, “the 2007 Act” means the Legal Services Act 2007.

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(a) 2007 c. 29.

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

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

**3.**—(1) The First-tier Tribunal may hear and determine appeals from decisions made by the General Council of the Bar which are appealable under any provision of—

- (a) Part 5 of the 2007 Act, or
- (b) the General Council of the Bar’s licensing rules(a).

(2) The First-tier Tribunal may suspend the effect of a decision of the General Council of the Bar (whether or not the decision has already taken effect) while an appeal against that decision has been brought and has not yet been finally determined or withdrawn.

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

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

### **Modifications of the 2007 Act**

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

Date

*Name*  
Parliamentary Under Secretary of State  
Ministry of Justice

## **SCHEDULE**

Article 4

### **Modifications to section 96 of the 2007 Act**

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

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

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

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

## **Modifications to Schedule 13 to the 2007 Act**

2.—(1) Schedule 13 to the 2007 Act (ownership of licensed bodies) has effect in relation to decisions of the General Council of the Bar with the following modifications.

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

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

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

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

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

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

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

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

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

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

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

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

(8) Paragraph 47(4) (notifying the Board of the outcome of an appeal against an objection to holding a restricted interest or the imposition of conditions) has effect as if, for “to the High Court” there were substituted “under Part 1 of the Tribunals, Courts and Enforcement Act 2007”.

(9) Paragraph 48(3) (notifying the Board of the outcome of an appeal against the imposition of conditions) has effect as if, for “to the High Court” there were substituted “under Part 1 of the Tribunals, Courts and Enforcement Act 2007”.

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

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

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

### **EXPLANATORY NOTE**

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

This Order makes provision under section 80 of the Legal Services Act 2007 (c. 29) (“the 2007 Act”) for the First-tier Tribunal to hear and determine appeals from decisions made by the General Council of the Bar, in its capacity as a licensing authority. Licensing authorities regulate licensed bodies under the provisions of Part 5 of the 2007 Act (alternative business structures). The decisions are those which are appealable under Part 5 of the 2007 Act or the General Council of the Bar’s own licensing rules. Section 83 of the 2007 Act defines licensing rules as rules about the licensing and regulation of licensed bodies. It is envisaged that a separate Order will designate the General Council of the Bar as a licensing authority.

Article 3 provides for such appeals to be heard and determined by the First-tier Tribunal and sets out the powers of the First-tier Tribunal in relation to an appeal under the licensing rules. The 2007 Act provides for the grounds of appeal and the First-tier Tribunal’s powers in relation to an appeal under Part 5.

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

A Regulatory Triage Assessment has been prepared for this instrument and can be found at [www.legislation.gov.uk](http://www.legislation.gov.uk) or obtained from the Head of Legal Services Policy, Law and Access to Justice Group, Ministry of Justice, 102 Petty France, London SW1H 9AJ.

## **Annex B: Draft regulatory triage assessment**

**Bar Standard Board (BSB) analysis of impacts in respect of an order to be made under Section 80 of the Legal Services Act 2007 (so that the First-tier Tribunal may hear and determine appeals against the decisions made by the Bar Standards Board (BSB) acting in its capacity as a licensing authority (should it be designated as such))**

## Regulatory Triage Assessment

<b>Title of regulatory proposal</b>	Bar Standards Board (BSB Section 80 Order) Appeals from the General Council of the Bar as a Licensing Authority
<b>Unique identifying number</b>	MoJ012/2015/RTA
<b>Lead Department/Agency</b>	Ministry of Justice
<b>Expected date of implementation</b>	10 September 2016
<b>Origin</b>	Domestic
<b>Date</b>	16/12/2015
<b>Lead Departmental Contact</b>	Mel Panteli
<b>Departmental Triage Assessment</b>	Non qualifying regulatory provision (Fast track)

### **Rationale for intervention and intended effects**

The General Council of the Bar (Bar Council) is an approved regulator under the Legal Services Act 2007 (LSA). It has applied to be a Licensing Authority for alternative business structures (ABS). The LSA requires a Licensing Authority to make provision for appeals in relation to decisions that it makes. Government intervention is required because, if these appeals go to the General Regulatory Chamber of the First Tier Tribunal, the power to do this can only be established by an order under s80 of the LSA.

### **Viable policy options (including alternatives to regulation)**

There is no alternative to regulation as it is a requirement of the LSA that an appeals mechanism is in place in order for the Bar Council to be designated as a Licensing Authority. Two options have been considered:

- Using an existing power under the Crime and Courts Act to establish rules to enable all appeals from the Licensing Authority to be heard by the High Court; or
- Use a s80 Order to establish a jurisdiction for such appeals to be heard by the First Tier Tribunal. This is the preferred option for certain appeals, as it is a more appropriate and lower cost than hearing the same decisions in the High Court.

### **Initial assessment of business impact**

Total impact on business is estimated to be £2,650 per year. This will be recovered from ABS entities authorised by the BSB, which is an equivalent of £132.50 per individual entity. However, as fees for entity authorisation are scaled according to size of entity, the precise contribution made by an individual entity will vary depending on size. The BSB has consulted separately on ABS authorisation fees. Set up fees to be paid by the BSB will be around £3,600.

### **One-in, Three-out status**

The measure is a non-qualifying regulatory provision as it makes or amends provision imposing a fee as defined under the Small Business, Enterprise and Employment Act 2015. It will not therefore be in scope for One-in, Three-out or the Business Impact Target.

**Rationale for Triage rating**

This is a non-qualifying regulatory provision (a fee) which meets the requirements for the low cost fast track process.

## Triage approval

	<b>NAME</b>	<b>DATE</b>
<b>Departmental signoff (SCS):</b>	Elizabeth Gibby	15/01/16
<b>Lead Economist signoff:</b>	 Ewen Macleod Bar Standards Board	14/01/16
<b>Better Regulation Unit signoff:</b>	Sheila Morson	15/01/16

<b>The Deputy Chief Economist confirms this for the Fast Track as a deregulatory/low cost regulatory measure:</b>	Andrews Meads	15/01/16
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## Supporting evidence

### **1. The policy issue and rationale for Government intervention**

The LSA requires that an appeals mechanism must be in place for any decisions made by a Licensing Authority. Depending on the destination of these appeals, Government intervention is needed so that an appellate body can be established under s80 of the LSA.

If no provision is made for appeals, it will not be possible for the Bar Council to become a Licensing Authority. If the Bar Council is not a Licensing Authority this will reduce the opportunity for barristers and other advocacy-focused lawyers to form new business structures with lay owners and managers – the effect of this would be to reduce innovation and choice in the market for legal services. Such entities would have to seek authorisation from another Licensing Authority without the same specialist focus as the Bar Council.

### **2. Policy objectives and intended effects**

The policy objective is to put in place an appeal mechanism to hear appeals against decisions made by the Bar Standards Board (BSB) under delegation from the Bar Council as a Licensing Authority. The costs and processes for the appeal mechanism are intended to be transparent, efficient, fair and public. The body hearing the appeals should have sufficient expertise to deal with the issues that may arise in ABS appeals – the First Tier Tribunal is already an appellate body for other Licensing Authorities so it is considered to be the appropriate body for certain appeals from BSB decisions.

### **3. Policy options considered, including alternatives to regulation**

No alternative to regulation is available.

Option 1: High Court to act as an appellate body.

In the absence of a s80 order, the Bar Council could make rules under s24 of the Crime and Courts Act 2013 to enable such appeals to be heard by the High Court. This is the intended route for appeals against disciplinary decisions, in order to ensure consistency with wider disciplinary arrangements for the barrister and solicitor professions. The High Court currently acts as the appellate body for non-disciplinary decisions for non-ABS entities authorised by the BSB, but this was intended to be on a temporary basis and separate legislation will give the BSB the ability to transfer this jurisdiction to the FTT. As the BSB has set out its intention to do this, it would not be appropriate to take the route of the High Court for equivalent ABS decisions.

Option 2 (preferred option): FTT to act as appellate body

The preferred option is for non-disciplinary appeals to be heard by the FTT. This is more appropriate and more efficient than hearing the same decisions in the High Court.

### **4. Expected level of business impact**

#### Costs

##### *Costs to HMCTS*

HMCTS will recover its costs per hearing from the BSB – this will be an average of £2,650 per appeal (assuming that 90% of appeals will be decided on the papers and 10% will require a hearing). In addition, applicants will pay fee of £100 per appeal direct to HMCTS (plus an additional £500 where an oral Hearing is required). Set-up costs apportioned to this order will be an additional £3,600 (the same amount being apportioned to another order under s69 or the Act, which will create a similar jurisdiction for non-ABS entities).

##### *Costs to individuals or entities seeking to appeal*

The BSB will not seek to recover the costs of appeals directly from those who are appealing. HMCTS will charge an administrative fee to applicants – this

will be lower than the fee that is currently charged to bring an appeal to the High Court. There will therefore be no additional cost to appellants. The BSB will, however, seek to recover these costs from the ABS regulated community as a whole and will take these into account in setting fees for ABS authorisation and annual renewal. The BSB expects to authorise around 20 ABS entities per year and expects one in 20 such authorisations to result in an appeal. The average ongoing cost will therefore be £2,650 per year. This will be recovered via from ABS fees, which would equate to an increase in authorisation fees of £132.50 per entity (the precise contribution will depend on the size of the proposed entity, as the fees will be determined by the size of the entity so larger entities will contribute proportionately more).

### Benefits

#### Benefits to HMCTS

The current appeal route to the High Court (for authorisation decisions related to non-ABS entities) was agreed by HMCTS as a temporary measure, on the understanding that the role was intended to move to the FTT in due course. This proposal ensures that HMCTS can recover relevant costs for administrative appeals associated with ABS from the BSB. It also ensures that capacity in the High Court is not taken up by those appeals.

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