



Ministry
of Justice

Legal Services: removing barriers to competition

Consultation on proposals to make amendments to the
Legal Services Act 2007

July 2016



Legal Services: removing barriers to competition

Consultation on proposals to make amendments to the
Legal Services Act 2007

Presented to Parliament
by the Lord Chancellor and Secretary of State for Justice
by Command of Her Majesty

July 2016



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About this consultation

- To:** Legal services Approved Regulators, front-line regulators and providers and all other interested parties working in the legal services sector
- Duration:** From 7 July 2016 to 3 August 2016
- Enquiries (including requests for the paper in an alternative format) to:** Ms Hazra Khanom
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- Response paper:** A response to this consultation exercise is due to be published by 26 August at: <http://www.gov.uk/justice>

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Consultation Overview

1. This consultation sets out the government's proposals to amend the regulatory framework for legal services to reduce barriers to the licensing of, and regulatory burdens on, legal service businesses that are licensed as Alternative Business Structures, bringing the legislative framework for these businesses more in line with that for other legal service businesses.
2. The proposed changes are broadly deregulatory and aim to support effective regulation that will promote innovation and competition in the legal services market.
3. The government is seeking views on these proposals. We would welcome responses by the closing date of 3 August 2016.
4. A Welsh language summary of this consultation paper is available on request.
5. Copies of the consultation paper are being sent to:
 - The Legal Services Board
 - The Lord Chief Justice
 - The Legal Services Consumer Panel
 - The Competition and Markets Authority, and
 - All legal services Approved Regulators and their regulatory arms or bodies (front-line regulators).
6. This list is not meant to be exhaustive or exclusive and responses are welcomed from anyone with an interest in or views on the subject covered by this paper.
7. The government has undertaken a cost/benefit analysis of the proposals in the consultation and has considered any potential equality impacts. A summary of the government's initial assessment can be found at the end of this consultation paper. We would welcome additional data or evidence in relation to the costs and benefits of these proposals, and/or any impact on equality. Please see consultation questions 13 and 14. A finalised cost/benefit analysis will be published with the government's response to this consultation.

Introduction

8. On 30 November last year, the government published, '*A Better Deal: boosting competition to bring down bills for families and firms*,'¹ which set out the government's approach to encouraging open and competitive markets, for the benefit of the UK economy and UK consumers.
9. In '*A Better Deal*' the government explains the importance of well-functioning markets to the UK's long-term economic success, promoting growth, innovation and efficiency and the importance of competition to foster consumer choice, resulting in better products and services at lower prices. In this context, the government pledged that it would consult on removing barriers to entry for alternative business models in legal services.
10. The provision of legal services is not only a key contributor to the UK economy, contributing £22.6 billion to the UK economy in 2013 (1.6 per cent of total GDP²), but also forms a cornerstone of our democracy, upholding the rule of law and ensuring citizens can exercise their rights.
11. A well-functioning legal services market is a key contributor to access to justice. A strong, competitive legal services market can lead to a reduction in price for services, ensuring greater access to justice for all, including those who are the least well-off.
12. The government's vision is for a strong, competitive legal services market in which innovative businesses can flourish to ensure good quality, affordable legal services are accessible to consumers, while ensuring consumers and the public interest are protected by effective regulation.

¹ <https://www.gov.uk/government/publications/a-better-deal-boosting-competition-to-bring-down-bills-for-families-and-firms>

² TheCityUK report 2015, <https://www.thecityuk.com/assets/2015/Reports-PDF/UK-Legal-Services-2015.pdf>

Legislative Context: Legal Services Act 2007

13. The legislative framework for the regulation of legal services in England and Wales is set out in the Legal Services Act 2007 (the 2007 Act).
14. The 2007 Act was enacted following a review by Sir David Clementi; '*Review of the Regulatory Framework for Legal Services in England and Wales*' (December 2004). The Clementi Review found that existing regulatory arrangements were inconsistent, complex, lacking objectives and underpinning principles and had insufficient regard for the interests of consumers. As a result, the 2007 Act had three main aims:
 - A more effective and simplified regulatory framework with a dedicated oversight regulator (the Legal Services Board – LSB) responsible for overseeing Approved Regulators;
 - A more effective, independent complaints mechanism through the Office for Legal Complaints (which administers the Legal Ombudsman scheme);
 - A more effective and competitive market through Alternative Business Structures.
15. Under the 2007 Act only individuals and businesses authorised by an 'Approved Regulator', or those exempt from the requirement to be authorised, are entitled to provide reserved legal activities. The six reserved legal activities are: the exercise of a right of audience, the conduct of litigation, reserved instrument activities, probate activities, notarial activities and the administration of oaths.
16. The 2007 Act aimed to increase competition in the market by allowing new business models, known as "Alternative Business Structures" (ABS), to enter the market. Prior to the 2007 Act, there were, generally, restrictions on non-lawyers owning or investing in businesses providing regulated legal services. The 2007 Act sets down the regulatory framework for ABS. ABS enable non-lawyers and lawyers to form companies, invest or be involved in the management of companies, providing reserved legal services. ABS encompass a range of different types of business model, including 'multi-disciplinary firms' in which lawyers and non-lawyers work together to provide a range of legal and non-legal services.
17. This consultation proposes that the regulatory framework be simplified in order to reduce regulatory burdens on ABS firms.

Reducing regulatory burdens on Alternative Business Structures

18. Alternative Business Structures (ABS) are firms which are partly or wholly owned or controlled by non-lawyers to provide legal services, or a mixture of legal and non-legal services. This means that ABS firms can benefit from external funding and outside business expertise and management. The 2007 Act sets out the statutory framework for the regulation of ABS.
19. Under the 2007 Act, ABS are approved and regulated by Licensing Authorities. Approved Regulators can apply to the LSB to become a Licensing Authority. There are currently five Licensing Authorities: the Law Society (through the Solicitors Regulation Authority (SRA)), the Council for Licensed Conveyancers, the Institute of Chartered Accountants in England and Wales, the Chartered Institute of Patent Attorneys (through the Intellectual Property Regulation Board) and the Institute of Trade Mark Attorneys (through the Intellectual Property Regulation Board).
20. Since 2010, when ABS were first licensed, over 600 ABS firms have entered the market. The introduction of ABS businesses, particularly those that have access to external investment and business and commercial expertise, has benefited the market more widely. Recent research has indicated that ABS firms are more likely to be innovative than other regulated legal services firms.³ These new, innovative providers have increased competition in the market, which we believe encourages the market to provide a wider variety of legal services that are more accessible and affordable to consumers.
21. During the passage of the 2007 Act, concerns were raised about the potential risks these new and unknown business models might pose to consumers and the wider legal system. This resulted in the 2007 Act establishing a more prescriptive regulatory framework for all ABS than the framework that existed for traditional firms.
22. In practice, while individual ABS businesses may fail or have other regulatory issues, this is also the case for traditional law firms. Complaints about ABS businesses to regulators and the Legal Ombudsman have been running at a similar rate to those for traditional firms, and there has been no contrary evidence to suggest that ABS inherently pose greater risks to consumers or the public interest than traditional law firms. The LSB and front-line regulators consider that this demonstrates that the more restrictive regulatory requirements imposed on ABS are not necessary, as ABS are not inherently more risky than other types of regulated legal firms.
23. The government has received joint proposals from the LSB and front-line regulators, suggesting that minor amendments should be made to the regulatory framework for ABS to reduce unnecessary regulatory burdens. The proposals relating to ABS in this consultation have been informed by their work.
24. The LSB and front-line regulators consider that the ABS provisions in the 2007 Act are unnecessarily detailed and onerous, preventing the regulators from exercising any real discretion in how they assess whether a firm should be licensed and

³ <https://research.legalservicesboard.org.uk/wp-content/media/Innovation-Report.pdf>

subsequently how they regulate them. The regulators are therefore being prevented from taking a risk-based approach to licensing and subsequently regulating ABS, as they do with other regulated firms. They suggest that if they were able to take a risk-based approach, this would reduce burdens on many businesses seeking to become ABS, including traditional firms, and then reduce burdens on those businesses once licensed.

25. As such, the LSB and front-line regulators suggest that the current statutory requirements act as a deterrent and a barrier to firms wanting to change their current business model to a more innovative one, as well as to new businesses considering entering the market. They also argue that the complex statutory regulatory framework, and the way it is applied, means that the process of becoming an ABS can be both expensive and time consuming.
26. Having considered the LSB and front-line regulators' arguments, the government proposes to make a number of amendments to the 2007 Act to simplify the regulatory framework for ABS, in order to reduce the cost and time taken for ABS to enter the market and to reduce regulatory burdens on ABS once licensed. These proposals are set out below.

A. Proposal to amend Schedule 11 to the 2007 Act

27. Schedule 11, paragraph 15(1) and (2) states that licensing rules must require a licensed body, or ABS (that is not an LLP or a limited company with a registered office in England and Wales) to have a "practising address" in England and Wales at all times. Under the 2007 Act, a "practising address" means an address from which the ABS business provides services which "consist of or include the carrying on of reserved legal activities."
28. This means that if a business wants to be licensed as an ABS, it must have both an address in England and Wales and provide reserved legal activities from that address. In contrast, the requirement on a traditional entity to have a practising address from which it provides reserved legal activities is covered by regulatory rules as opposed to statute. For example, under the SRA's Practice Framework Rules, there is a requirement that traditional entities must have at least one practising address in England and Wales. However, the SRA has the discretion to issue a waiver where the business model does not require a practising address. The same waiver cannot be issued by the SRA to ABS firms, so all ABS must have an address in England and Wales from which they offer reserved legal activities.
29. This practising address requirement, therefore, leads to regulatory restrictions on ABS businesses that are not applied to other types of regulated legal services provider. This acts as a barrier to entry in two ways: ABS must have an address from which they deliver reserved legal activities, which could prevent online businesses being licensed as ABS; and ABS businesses must offer reserved activities, whereas other authorised businesses, such as solicitors firms, do not have to, which may prevent those ABS wanting to offer only legal advice, for example, being licensed.
30. The government does not consider that the additional restrictions resulting from the definition of "practising address" are necessary or proportionate. We therefore propose to remove the requirement that ABS must carry out a reserved legal activity from a practising address. We also propose to replace paragraph 15 of Schedule 11 with a power enabling Licensing Authorities to make their own rules around ABS

having a practising address in England and Wales, including rules allowing the Licensing Authority to waive the requirement. An alternative, however, might be to retain paragraph 15 but to add a provision allowing Licensing Authorities to waive the requirement for a practising address. Either proposal would allow the Licensing Authorities to use their discretion, where they think the business model does not require the ABS to have a practising address, as they currently do when authorising traditional entities, thereby establishing a more level playing field between ABS firms and traditional entities.

31. An alternative option considered was to repeal Schedule 11 and give Licensing Authorities a general power to make licensing rules for ABS without setting out the details of what these rules must or may include. Following discussion with Licensing Authorities, it does not appear that removing the details from the Act would necessarily result in significant changes to the licensing rules, while at the same time it could potentially cause uncertainty as to what the rules should cover. Therefore, our preferred proposal is to make an amendment to the schedule.

Question 1: Do you agree with the proposal that there should not be a requirement to provide services consisting of or including reserved legal activities from a practising address as currently required by paragraph 15 of Schedule 11?

Question 2: Do you agree with the proposal that:

- a) **the requirement for an ABS to have a practising address in England and Wales is retained in paragraph 15 of Schedule 11 but Licensing Authorities may waive this requirement or may make licensing rules enabling them to waive this requirement; or**
- b) **alternatively, paragraph 15 is replaced with a power enabling Licensing Authorities to make licensing rules about addresses?**

B. Proposal to amend Schedule 13 to the 2007 Act

32. Schedule 13 to the 2007 Act deals with the ownership of ABS businesses. It imposes restrictions on the holding of certain types of interests in an ABS ('restricted interests') by non-authorised persons (i.e. anyone who is not regulated by one of the Approved Regulators). Any non-authorised persons holding, or seeking to hold, "restricted interests", must be approved by the Licensing Authority before the body can be licensed. Once the body is licensed, any further acquisition or holding of restricted interests by non-authorised persons must also be approved.
33. There are two types of restricted interests: a "material interest" and a "controlled interest". Schedule 13 defines the first of these two types of restricted interest in detail, and provides for Licensing Authorities to make licensing rules for the second.
34. A person is defined as having a material interest (Schedule 13, paragraph 3), in eight specified circumstances, including where they:
- a. have an interest in at least 10 per cent or more of the shares in the ABS or in its parent company;
 - b. can exercise or control the exercise of 10 per cent of the voting rights in (or, in some cases, have power to direct the policy of) the ABS or its parent company; or

- c. can exercise significant influence over the management of the ABS or its parent company by virtue of their shareholding or voting power in it.
35. A person is defined as having a controlled interest where they have a shareholding in the ABS, or a parent company undertaking, of a percentage specified in licensing rules, or an entitlement to exercise or control the exercise of voting power in an ABS or parent company undertaking of a percentage specified in licensing rules. Licensing rules may only specify a percentage which exceeds the percentage which constitutes a material interest.
36. In deciding whether a person has a restricted interest in an ABS, a Licensing Authority may take into account any interests held by an “associate” of the person (defined under Schedule 13, paragraph 5, to the 2007 Act). If the Licensing Authority decides that a person holds a restricted interest then the Licensing Authority must decide whether or not to approve the person, and if necessary any of their associates. The approval requirements are also set out (paragraph 6 of Schedule 13 to the 2007 Act), including the requirement to decide whether the person holding the restricted interest (and any associates) is a fit and proper person.
37. Schedule 13 is lengthy and prescriptive, requiring Licensing Authorities to take an inflexible approach, including requiring them to make what they consider to be unnecessary checks on non-lawyer owners and managers who have no real control or influence over an ABS, simply because they fall within the criteria for checks. Licensing Authorities have also told us that the converse situation could apply, where they are not able to make checks they might consider appropriate, because a person falls outside the definitions set out in the 2007 Act. For example, in one case, a Licensing Authority had to do checks on more than 40 individuals in relation to a single ABS application as they were caught by the definitions set out in the 2007 Act, and had the Licensing Authority had more discretion in considering the potential risk profile of the ABS business, they would not have run checks on the majority of those individuals. These requirements can therefore lead to the licensing process being more lengthy, expensive and onerous than Licensing Authorities think necessary to protect the public and consumer interest.
38. We therefore propose to amend Schedule 13 and allow the Licensing Authorities to make their own rules around ownership of an ABS, subject to LSB approval. We also propose to impose a statutory requirement on the LSB to provide guidance regarding ownership. This would allow Licensing Authorities to regulate in a more proportionate way, assessing the risk and the checks needed for different types of ABS in varying circumstances. This proposed change would enable regulators to more closely align the way they authorise or license businesses as Approved Regulators and as Licensing Authorities, without over-regulating either, to ensure parity. In doing so, they would create a more level-playing field by reducing barriers to entry to the market for ABS businesses.
39. In making this proposal, we considered how else we might address the current inflexibility in the material interest test requirements set out in Schedule 13. We considered amending the material interest test and introducing a disapplication test, which would have specified the circumstances in which regulators could use their discretion to not carry out checks on individuals. We felt that this would further complicate the legislation, rather than simplifying it. Having detailed statutory criteria would limit the extent to which Licensing Authorities could adopt a risk based approach when dealing with applications, as it would be difficult to capture all the

circumstances in which any disapplication test should be applied, given the complexity of the many different business models to which it would be applied. We therefore considered that this option would not deliver the flexibility needed.

Question 3: Do you agree with the proposals to amend Schedule 13 to the 2007 Act and allow Licensing Authorities to make their own rules around ownership of an ABS, and to impose a statutory obligation on the LSB to provide guidance regarding ownership?

Question 4: Do you think amending Schedule 13 and giving Licensing Authorities greater discretion in deciding on the necessary checks for licensing, would encourage more applications from businesses to become ABS?

Question 5: Do you think giving Licensing Authorities greater discretion would reduce the timescales and cost of the licensing process, and if so, by how much?

C. Proposal to repeal section 83(5)(b) of the 2007 Act

40. Section 83(5)(b) of the 2007 Act requires a Licensing Authority's ABS licensing rules to include a provision that sets out how it will consider whether each application for an ABS licence is explicitly meeting the regulatory objective of improving access to justice. Licensing Authorities have met this requirement through rules that require individual applications for an ABS licence to set out how their business will improve access to justice. There is no equivalent requirement on non-ABS firms or individuals.
41. All Approved Regulators and Licensing Authorities are required to promote the regulatory objectives of the 2007 Act, as set out in sections 3(2) and 28(2) of the 2007 Act. These are: protecting and promoting the public interest; supporting the rule of law; improving access to justice; protecting and promoting consumer interests; promoting competition in the provision of reserved legal activities; encouraging an independent, strong, diverse and effective legal profession; increasing public understanding of the citizen's legal rights and duties, and promoting and maintaining adherence to the professional principles.
42. Given the overarching requirements, the government believes that there is no additional benefit in having the separate requirement for Licensing Authorities to set out how they will improve access to justice in relation to individual applications for ABS licences, and that this provision is therefore unnecessary.
43. The government therefore proposes to repeal section 83(5)(b). We consider that this would save cost and time for applicants who wish to become an ABS as well as for regulators. Applicants would not have to provide such information and regulators would not have to consider such information provided beyond that necessary to meet the overarching requirements.

Question 6: Do you agree with the proposal to repeal section 83(5)(b) of the 2007 Act?

Question 7: Do you agree that Licensing Authorities and ABS applicants would make savings in terms of costs, time and resources, if we were to repeal section 83(5)(b)?

D. Proposal to amend sections 91(1)(b) and 92(2) of the 2007 Act so that the Head of Legal Practice and Head of Finance and Administration of an ABS are only required to report a “material” failure to comply with licensing rules

44. The 2007 Act requires both the Head of Legal Practice (HOLP) and the Head of Finance and Administration (HOFA) of an ABS to report “any” failure to comply with, or breach of, licensing rules. Equivalent post holders in a non-ABS firm are only required to report “material” failures to comply with, or breach of, licensing rules. The requirement on ABS therefore imposes additional obligations on HOLPs and HOFAs and therefore additional burdens and costs on ABS businesses than other types of firms.
45. Regulators have indicated that they do not consider the more stringent obligations to be necessary. In light of the lesser obligations on those in the same role in non-ABS firms, the government considers that the requirement on HOLPs and HOFAs imposes unduly onerous obligations on these post holders and additional cost and time for an ABS to provide this information and for the regulators to review. The government therefore proposes to amend these provisions to require reporting of only material failures to comply with, or breach of, licensing rules, and not all failures.
46. Amending these sections would reduce disproportionate burdens on existing and new ABS bodies. It would also align reporting requirements of the HOLP and HOFA of ABS with those for non-ABS providers. Furthermore, Licensing Authorities would no longer have to spend time in reviewing non-material failures to assess compliance with, or breach of, licensing rules.
47. To ensure a shared understanding of when a failure is “material”, we propose to require regulators to provide guidance to businesses on what they consider to be “material.” For instance, the SRA currently provides guidance to traditional firms on what it considers to be a “material” breach.

Question 8: Do you agree with the proposal to amend sections 91(1)(b) and 92(2) of the 2007 Act?

Question 9: Do you agree with the proposal that regulators should provide guidance to businesses on how they define a “material” failure to comply with licensing rules?

Question 10: Do you agree that regulators and ABS businesses would make savings in terms of costs, time and resources if we were to amend sections 91(1)(b) and 92(2) as proposed, and if so by how much?

E. Further potential areas for simplification and reducing unnecessary regulatory burdens.

48. The government will continue to look at how we might further simplify or reduce unnecessary regulatory burdens on regulated legal service providers, within the framework of the 2007 Act. In doing so, we would welcome views on any further amendments that could be considered.

Question 11: Do you agree that the proposed changes to ABS regulation are sufficient to ensure a level playing field for entry to the market and regulation in the market for ABS and other firms? If not, what further changes do you think would be needed?

Question 12: Are there any further amendments that might be made to a specific provision of, or schedule to, the 2007 Act which deals with the regulation of ABS? If so, please explain why and where possible provide evidence to support your argument.

Questionnaire

We would welcome responses to the following questions:

Reducing regulatory burdens on ABS

Question 1: Do you agree with the proposal that there should not be a requirement to provide services consisting of or including reserved legal activities from a practising address as currently required by paragraph 15 of Schedule 11?

Question 2: Do you agree with the proposal that:

- a) the requirement for an ABS to have a practising address in England and Wales is retained in paragraph 15 of Schedule 11 but Licensing Authorities may waive this requirement or may make licensing rules enabling them to waive this requirement; or
- b) alternatively, paragraph 15 is replaced with a power enabling Licensing Authorities to make licensing rules about addresses?

Question 3: Do you agree with the proposals to amend Schedule 13 to the 2007 Act and allow Licensing Authorities to make their own rules around ownership of an ABS, and to impose a statutory obligation on the LSB to provide guidance regarding ownership?

Question 4: Do you think amending Schedule 13 and giving Licensing Authorities greater discretion in deciding on the necessary checks for licensing, would encourage more applications from businesses to become ABS?

Question 5: Do you think giving Licensing Authorities greater discretion would reduce the timescales and cost of the licensing process, and if so, by how much?

Question 6: Do you agree with the proposal to repeal section 83(5)(b) of the 2007 Act?

Question 7: Do you agree that Licensing Authorities and ABS applicants would make savings in terms of costs, time and resources, if we were to repeal section 83(5)(b)?

Question 8: Do you agree with the proposal to amend sections 91(1)(b) and 92(2) of the 2007 Act?

Question 9: Do you agree with the proposal that regulators should provide guidance to businesses on how they define “material” failure to comply with licensing rules?

Question 10: Do you agree that regulators and ABS businesses would make savings in terms of costs, time and resources if we were to amend sections 91(1)(b) and 92(2) as proposed, and if so by how much?

Question 11: Do you agree that the proposed changes to ABS regulation are sufficient to ensure a level playing field for entry to the market and regulation in the market for ABS and other firms? If not, what further changes do you think would be needed?

Question 12: Are there any further amendments that might be made to a specific provision of, or schedule to, the 2007 Act which deals with the regulation of ABS? If so, please explain why and where possible provide evidence to support your argument.

Cost / Benefit Analysis

Question 13: We would welcome additional data or evidence in relation to these proposals, in the light of which the cost assessment will be revised and published with the government's response to this consultation.

Equality Impacts

Question 14. We welcome your views in terms of any potential equality impacts of the proposals. Are there other ways in which these proposals are likely to impact on race, sex, disability, sexual orientation, religion and belief, age, marriage and civil partnership, gender reassignment or pregnancy and maternity that you are aware of? If so, please tell us how, together with any supporting extra sources of evidence.

Thank you for participating in this consultation exercise.

About you

Please use this section to tell us about yourself

Full name	
Job title or capacity in which you are responding to this consultation exercise (e.g. member of the public etc.)	
Date	
Company name/organisation (if applicable):	
Address	
Postcode	
If you would like us to acknowledge receipt of your response, please tick this box	<input type="checkbox"/> (please tick box)
Address to which the acknowledgement should be sent, if different from above	

If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

Contact details/How to respond

Please send your response by 3 August 2016 to:

**Ms Hazra Khanom
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Complaints or comments

If you have any complaints or comments about the consultation process you should contact the Ministry of Justice at the above address.

Extra copies

Further paper copies of this consultation can be obtained from this address and it is also available on-line at <http://www.justice.gov.uk/index.htm>.

Alternative format versions of this publication can be requested from:

Email: ABSconsultation@justice.gsi.gov.uk

Tel: 0203 334 0817.

Publication of response

A paper summarising the responses to this consultation will be published by 26 August 2016. The response paper will be available on-line at <http://www.justice.gov.uk/index.htm>.

Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information

you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Ministry.

The Ministry will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

Cost/benefit analysis

Cost/benefit analysis

1. The government has carried out a cost/benefit analysis which indicates that the measures the government are proposing are deregulatory as they would have the effect of reducing regulatory burdens.
2. The proposals to simplify the regulatory framework for ABS would result in a reduction of regulatory burdens for existing ABS, Licensing Authorities and new entrants to the market. The proposals are also aimed at enabling greater competition in the legal services market. Greater competition in the market would benefit consumers in providing greater choice and, potentially, more affordable legal services.
3. The proposals would not impose any additional burdens on existing or new businesses.

Question 13: We would welcome additional data or evidence in relation to these proposals, in the light of which the cost assessment will be revised and published with the government's response to this consultation.

Equalities Impacts

4. Initial consideration has been given to the impact of the proposals in accordance with the statutory obligations under the Equalities Act 2010 (EA)⁴ during the policy development process. We will update our equality considerations in light of the consultation responses.

Direct discrimination

5. Our assessment is that our proposals to remove barriers to market entry for, and regulatory burdens on, ABS firms are not directly discriminatory within the meaning of the EA. We do not consider that the proposals would result in people being treated less favourably because of their protected characteristic.

Indirect discrimination

6. The SRA's diversity data on the type of firms it regulates⁵ suggests disproportionately more people from black and minority ethnic (BME) backgrounds work as sole practitioners and in small firms of between 2-4 staff. Therefore, an indirect effect of making changes to the regulatory framework for ABS may be that, if smaller high street firms and sole practitioners lose business to ABS entrants, solicitors from a BME background may be particularly disadvantaged. According to the SRA data, sole practitioners tend to be older than the general population, and therefore a possible indirect effect of making changes to the ABS framework may be that if smaller high street firms and sole practitioners lose business to ABS entrants, then older solicitors may be particularly disadvantaged. The SRA data also indicates that more people with disability work in small solicitors' firms and as sole practitioners.
7. Despite the possible risk of particular disadvantage, we are satisfied that the impact is justified as a proportionate means of achieving a legitimate aim by the policy goal of opening the legal services market to more competition, innovation and improving access to justice. Furthermore, the possible risks identified would be reduced if not all ABS firms were in direct competition with sole practitioners and smaller firms, as they may be providing different services to different types of consumers. Dependent on the type of business, the services provided and the type of consumers engaged, ABS firms may have different impacts on different parts of the market. In addition, these proposals are aimed at reducing barriers to ABS market entry and, as such, could advance equality of opportunity for small firms wishing to become an ABS.

⁴ Section 149 of the Equality Act 2010 ("the EA Act") requires Ministers and the Department, when exercising their functions, to have 'due regard' to the need to:

- Eliminate discrimination, harassment, victimisation and any other conduct prohibited by the EA Act;
- Advance equality of opportunity between different groups (those who share a relevant protected characteristic and those who do not); and
- Foster good relations between different groups (those who share a relevant protected characteristic and those who do not).

Paying 'due regard' needs to be considered against the nine "protected characteristics" under the EA Act – namely race, sex, disability, sexual orientation, religion and belief, age, marriage and civil partnership, gender reassignment, pregnancy and maternity.

⁵ <http://www.sra.org.uk/sra/equality-diversity/diversity-monitoring/diversity-monitoring-2013.page>

8. The proposed changes are compatible with the need to promote equality of opportunity. The proposals aim to enable regulators to drive competition and innovation in the legal services market. Competition and innovation have a key part to play in ensuring greater access to justice for all, including those who are least well off, thereby advancing the equality of opportunity between different groups.

Question 14: We welcome your views in terms of any potential equality impacts of the proposals. Are there other ways in which these proposals are likely to impact on race, sex, disability, sexual orientation, religion and belief, age, marriage and civil partnership, gender reassignment or pregnancy and maternity that you are aware of? If so, please tell us how, together with any supporting extra sources of evidence.

Consultation principles

The principles that government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the consultation principles.

<https://www.gov.uk/government/publications/consultation-principles-guidance>

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