

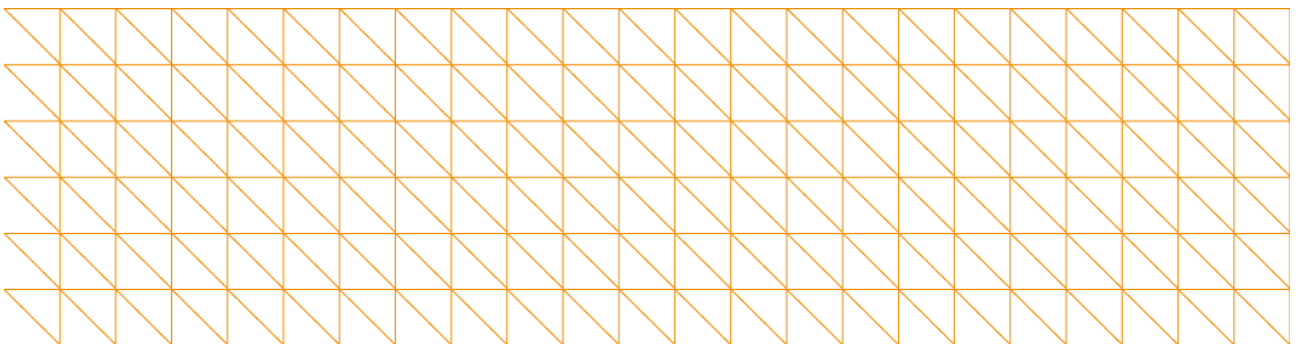


Ministry
of Justice

CALL FOR EVIDENCE ON THE LEGAL SERVICES REGULATORY FRAMEWORK

Summary of responses to the Government's call for evidence on concerns with, and ideas for reducing, regulatory burdens and simplifying the legal services regulatory framework.

This summary of responses is published on 1 May 2014





Ministry
of Justice

CALL FOR EVIDENCE ON THE LEGAL SERVICES REGULATORY FRAMEWORK

Summary of responses to the Government's call for evidence on concerns with, and ideas for reducing, regulatory burdens and simplifying the legal services regulatory framework.

Response to call for evidence carried out by the Ministry of Justice.

A consultation produced by the Ministry of Justice. It is also available at <https://consult.justice.gov.uk/>

Contents

Introduction and contact details	3
Ministerial foreword	4
Response to the Call for Evidence – what we are doing	6
Overview of responses to the Call for Evidence	7
Key conclusions	9
Background	11
Consultation principles	14
Annex A – Responses to the Call for Evidence	15
Annex B – List of respondents	21

Introduction and contact details

This is the Government's response to a call for evidence which was launched on 5 June 2013 and ran for 12 weeks until 2 September 2013. The purpose of the call for evidence was to seek evidence and comments from stakeholders across the legal services sector and legal services practitioners in respect of simplifying the legal services regulatory framework and ideas for reducing unnecessary regulatory burdens on the legal services sector.

It will cover:

- the Government's decisions following this call for evidence
- key conclusions from the analysis of the call for evidence
- the background to the report
- a summary of the responses to the call for evidence

Further copies of this report can be obtained by contacting **Nalini Deen** at the address below:

**Legal Services Policy
Ministry of Justice
102 Petty France
London SW1H 9AJ**

Telephone: 020 3334 4220

Email: nalini.deen@justice.gsi.gov.uk

This report is also available at <https://consult.justice.gov.uk/>

Alternative format versions of this publication can be requested from nalini.deen@justice.gsi.gov.uk.

Complaints or comments

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

Ministerial foreword



This government is keen to reduce burdens on legal service practitioners, and to ensure the growth of a liberalised and competitive legal services market. Competition and innovation in the sector is to the benefit of consumers and is in line with our wider Agenda for Growth. At the same time we must ensure that regulation is appropriate, proportionate, and thereby protecting consumers and the wider public interest.

Following concerns raised by stakeholders, complaining of the complexity of the current legal services regulatory framework, and the burdens it imposed on practitioners, my

Department decided to review the overarching statutory framework with a view to streamlining regulation across the legal services regulatory landscape and reducing regulatory burdens on legal practitioners. As the first step in this review, we issued a Call for Evidence in the summer last year, inviting stakeholders across the legal services sector as well as legal practitioners to submit their views on regulation. In particular, we asked about the regulatory burdens on practitioners and how these could be reduced while ensuring appropriate protection for consumers.

We were encouraged by the number and variety of responses to the Call for Evidence in considering how the framework could be simplified and actual burdens on practitioners could be reduced.

However, it was clear from the wide-ranging responses to the Call for Evidence that there is no consensus on the longer term vision for regulation. In the absence of consensus, more work is therefore needed before bringing forward any major reforms. In addition, it did not draw out any simple changes that could be made by Government within the existing statutory framework that would actually reduce unnecessary burdens on practitioners.

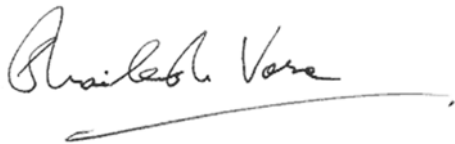
As might be expected, we found that the majority of responses focused primarily on the structure of the regulatory landscape – that is, whether there should be an independent regulator or self-regulation – rather than on the detail of particular burdens that could be removed or reduced. While Government will continue to consider the question of whether the existing statutory framework is the right one, our key concern at this time is to find ways to reduce unnecessary burdens on practitioners, rather than on re-balancing powers or roles between the regulators and professional bodies, through which the potential for reducing burdens on practitioners is less clear.

Given the lack of simple change options brought forward through the Call for Evidence without unpicking the existing statutory framework, Government is not minded to take forward any significant proposals for reform at this time.

However, we remain committed to reducing regulatory burdens on practitioners in the legal sector, and promoting innovation and growth in the legal services market. I intend to impress upon the regulators the need to continue, and accelerate, their efforts to reduce unnecessary burdens on providers, including unnecessary barriers to entry, as rapidly as possible, and to make clear progress in this over the coming months. I will therefore write to the Legal Services Board, the Approved Regulators and regulators, expressing this strong desire to quickly take forward work to reduce regulatory burdens for legal service practitioners.

In addition, while noting a number of responses highlighted the inconsistency between reserved activities and other legal services which are not regulated, Government does not propose to extend the scope of regulation to new areas at this time.

Finally, having considered the varied views expressed in the Call for Evidence, and noting the wide spectrum of regulatory models proposed for legal services in the future, Government will investigate further moving towards a simplified regulatory structure, including considering moving from a two-tier regulatory framework towards a single tier. Any major changes to the architecture will require primary legislation, preceded by further significant consideration, and consultation, before there is a definite move away from the current structure in any direction, and we therefore do not propose to bring forward any new proposals before the next Parliament.

A handwritten signature in black ink, reading "Shailesh Vara", with a horizontal line underneath it.

Shailesh Vara MP

Parliamentary Under Secretary of State, Minister for Legal Services

Response to the Call for Evidence – what we are doing

- 1.1 The Government is committed to better regulation, which means regulating only when it is appropriate to do so, for example, to ensure appropriate regulatory protection for consumers, or for the wider public interest. During 2013 the Ministry of Justice published a Call for Evidence in which we sought ideas on ways to simplify the legal services regulatory framework and reduce unnecessary regulatory burdens on the legal services sector. The Call for Evidence was launched on 5 June 2013 and closed formally on 2 September 2013.
- 1.2 Having considered the range of evidence collected through the Call for Evidence, we concluded that there was no consensus on the longer term vision for regulation. We found that the majority of responses focused on the structure of the regulatory landscape, rather than on the detail of particular burdens that could be removed. Due to the detailed legislative framework and independence of legal regulation from government, the Call for Evidence revealed no non-primary legislative options for government to reduce regulatory burdens on legal service practitioners or to simplify the regulatory framework. In addition, we concluded that the Call for Evidence had not drawn out any quick wins for simple changes that could be made within the existing framework.
- 1.3 Government has therefore decided not to take forward any changes to the statutory framework at this time given the lack of simple change options brought forward through the call for evidence. We recognise that there is significant work ongoing by the regulators to reduce burdens. While the Government supports the ongoing work of the Legal Services Board, Approved Regulators and regulators, in their efforts to take forward work to reduce regulatory costs for legal service practitioners, and to reduce barriers to entry to the legal services market, Government feels that more can be done and will seek to encourage them to take this work forward as rapidly as possible over the coming months.
- 1.4 Ministers will therefore be writing to the Legal Services Board, Approved Regulators and regulators, expressing strong encouragement and support for their existing work to simplify and reduce regulatory burdens on legal service providers while continuing to protect consumer and wider public interests.
- 1.5 In addition, the Government will continue to investigate whether changes to the statutory framework are required to simplify the landscape, including considering moving from a two-tier regulatory framework towards a single tier, in the context of the progress made by the regulators in reducing burdens on practitioners. We do envisage this further investigation leading to proposals before the next Parliament. We will also need to consider whether changes are needed in response to the anticipated independent report by Sir Bill Jeffrey on the provision of independent criminal advocacy services.

Overview of responses to the Call for Evidence

- 2.1 A total of 71 responses to the call for evidence were received mainly from the Approved Regulators as professional bodies, the regulatory arms of the Approved Regulators, consumer bodies, practitioners, legal academics and the judiciary.
- 2.2 The majority of responses focused on the structure of the **regulatory landscape**, rather than on the detail of particular burdens on practitioners that could be reduced or removed. Where particular burdens were highlighted, these were not within the gift of the Government to change within the current statutory framework. Furthermore, in relation to the regulatory landscape, there was no clear consensus on how it should be structured, or on how changes to the landscape would necessarily reduce burdens on practitioners.
- 2.3 In addition to the wide range of views expressed about the organisational structure of the regulatory landscape, a number of respondents proposed that the Government should consider reviewing the objectives and scope of regulation. While there appeared to be a near consensus on the need to consider these areas, there was no consensus on the way forward.
- 2.4 A significant number of respondents argued that the **regulatory objectives** should be reviewed, with a view to simplifying and reducing the number, and / or making their order of priority clear. Arguments to review the regulatory objectives were motivated either by a desire to reduce the emphasis on consumer interests, in favour of increasing the emphasis on the wider public interest or the interest of the profession, or conversely by a desire to entrench the consumer focus more securely.
- 2.5 Similarly, a number of respondents argued that the categorisation of '**reserved legal activities**' should be reviewed, both in terms of the activities included, as against those not covered, and also in terms of the high regulatory burden on individuals and entities when undertaking reserved legal activities (or by virtue of having been authorised to undertake reserved legal activities), as against the lack of any regulation of other legal services or those undertaking such activities. It was argued that this created an unlevel playing field in the market, with some providers being more expensive, but with the competitive advantage of being able to demonstrate they were regulated and therefore had consumer protections in place, while others were able to provide possibly cheaper services but with less protection for consumers. This disparity in the market is complicated by a lack of consumer understanding of which providers are regulated for which services, and which are not.
- 2.6 Finally, one area where government could act to simplify the framework, reducing burdens on particular providers would be to remove the separate requirements for **Alternative Business Structure** (ABS) licensing. Removing these separate requirements would remove the need for approved regulators to be designated as licensing authorities, and more directly, would remove the significant regulatory requirements on ABS business and governance structures. For example, removing

the statutory requirement to appoint Compliance Officers for Legal Practice (COLP) and for Finance and Administration (COFA), as champions for risk management and compliance in each ABS would reduce burdens. However, a number of respondents were clear that they would not welcome such a change. Furthermore, it would not reduce burdens on the vast majority of providers in the market (as there are currently circa 310 ABS, compared to over 10,000 solicitors firms, in addition to a significant number of other regulated individuals and entities).

Key conclusions

- 3.1 Having carefully considered the evidence submitted through the call for evidence, we found that there was no consensus on the longer term vision for regulation of the legal services sector. Due to the detailed legislative framework and independence of legal regulation from government, the call for evidence did not reveal any non-primary legislative options for the Government to take forward that would directly reduce regulatory burdens on legal service practitioners or simplify the regulatory framework. In addition, we found that the call for evidence did not reveal any quick wins for simple changes that could be made within the existing statutory framework.
- 3.2 The 71 submissions made, and related discussions, provided a lot of different and opposing views and opinions on the existing framework, and regulatory bodies, as well as ideas for changing the landscape. There was no consensus on the way forward; and no detailed evidence of simple, non-controversial, changes that could be made that would actually reduce unnecessary burdens on practitioners.
- 3.3 There was demand for simplification via primary legislation, though not necessarily linked to reducing specific burdens on practitioners. Some suggestions would reduce the level of detail within the existing legislation, for example for ABS, or to the regulatory objectives. Others would entail altering the substantive architecture, including complete de-regulation; industry self-regulation; making stronger ties between regulator and representative bodies; making weaker ties between regulator and representative bodies; having independent regulation retaining sector specific regulators; having an independent single regulator.
- 3.4 A number of high profile submissions were about who has authority to set standards and regulate, not the burdens of regulation. It was not clear what impact these suggested changes to who regulates would have on the burdens of regulation on practitioners, or how it might impact on competition and innovation in the market and therefore on growth in the legal sector. As well as reducing burdens on practitioners, we were concerned that any changes should ensure the right environment to increase competition and drive innovation and growth in the market, improving accessibility of legal services for consumers.
- 3.5 We therefore concluded that there was a clear lack of consensus on what the substantive regulatory architecture should be, with strongly held opposing views, as well as a lack of evidence as to the benefits, in terms of reducing burdens, on practitioners, or in increasing competition and driving innovation, improving consumer choice and growth in the market.
- 3.6 The only significant changes that could be achieved would be through amending primary legislation. For example, simplifying the framework such as creating a single regulator, or promoting growth and encouraging the opening the market by reducing regulation over the licensing of ABS could only be achieved through making significant amendments to primary legislation.

- 3.7 We explored the potential for quick wins that would reduce burdens on practitioners, and were within the levers available to government. None were identified in the Call for Evidence.
- 3.8 We also considered the scope for using Legislative Reform Orders (LROs) to remove some of the requirements of the Legal Services Act. The suggestions made in the Call for Evidence focused on processes for the regulators, not burdens on practitioners imposed by the Act. We considered changing the requirements in relation to ABS in particular, as this was raised in a number of submissions. This would entail removing the need for a separate structure of licensing ABS, and separate requirements on ABS. There were no changes that could be made by LRO that would have the support of all, or the majority of, stakeholders.
- 3.9 In addition, while noting a number of responses highlighted the inconsistency between reserved legal activities and other legal services which are not regulated, we were not persuaded that it was necessary to extend the scope of regulation to new areas.
- 3.10 This led to the Government's decision not to propose making significant changes to the statutory framework at this time.
- 3.11 At the same time, a number of responses referred to changes that might be made by the regulators, to simplify their regulatory requirements. While the regulators are independent of the Government, we are aware that a number of regulators are already undertaking work to review their regulations and reduce regulatory burdens on practitioners, and the Government strongly supports their efforts.

Background

Call for Evidence

- 4.1 The Call for Evidence on the 'Review of the legal services regulatory framework' was published in June 2013. We sought the views of a range of stakeholders across the legal services sector including: Approved Regulators/licensing authorities, and the regulatory bodies of Approved Regulators; bodies applying to be Approved Regulators/licensing authorities; the Legal Services Board; the Office for Legal Complaints; the Legal Services Consumer Panel; the Office of Fair Trading; consumer bodies; legal academics; and the judiciary. We also sought views from persons providing legal services, through the Ministry of Justice and Red Tape Challenge websites, in addition to the contributions from professional bodies.

The Ministry of Justice approach

- 4.2 We asked stakeholders and legal practitioners to set out their concerns with, and ideas for reducing, regulatory burdens and simplifying the legal services regulatory framework, including ideas covering the overall legislative framework, and any specific provisions or aspects within it, whilst retaining appropriate regulatory oversight. The Call for Evidence encompassed the full breadth of the legislative framework, covering at least 10 pieces of primary legislation and over 30 statutory instruments. We also asked for comments on the interaction between the legislative framework and the detailed rules and regulations of the approved regulators, licensing authorities and of the Legal Services Board and Office for Legal Complaints, although these are not owned by Government. We did not consult on specific proposals, or ask particular questions, but left it open to stakeholders to contribute as they felt able, on the basis of a widely defined invitation. We did, however, offer to engage with stakeholders if they would like to do so. As part of this process we met with the following stakeholders:
- Legal Services Board (LSB)
 - Office for Legal Complaints (OLC), responsible for the Legal Ombudsman scheme
 - The Law Society
 - Solicitors Regulation Authority (SRA)
 - The Bar Standards Board (BSB)
 - The Bar Council
 - Legal Services Consumer Panel (LSCP)
 - The Council for Licensed Conveyancers (CLC)
 - The Chartered Institute of Legal Executives (CILEx) and ILEX Professional Standards (IPS).
 - The Institute of Trade Mark Attorneys (ITMA)
 - Sir John Thomas (then President of the Queen's Bench Division and incoming Lord Chief Justice)

- The Institute of Chartered Accountants in England and Wales (ICAEW)
- ICAEW Professional Standards
- Slater and Gordon Lawyers (an international ABS law firm)
- The Notaries Society
- The City of London Law Society (CLLS)
- Professor Stephen Mayson (academic)
- Professor John Flood (academic)

Current Regulatory Framework

4.3 The current regulatory framework has been operational since January 2010 and comprises:

- 9 pieces of primary legislation, including the Legal Services Act 2007;
- Over 30 Statutory Instruments;
- The rules and regulations of 10 approved regulators; and
- The rules of the Legal Services Board and the Office for Legal Complaints

4.4 The current regulatory architecture was designed to ensure regulation of legal services providers was independent of influence by the government and the profession, without overly disturbing the tradition of regulation by professional title, reflecting the diverse range of legal service providers, as well as the existing requirements for government approval and primary or secondary legislation to amend the regulatory framework under the Legal Services Act which provides for a two-tier regulatory framework, with the Legal Services Board (LSB) as oversight regulator, and Approved Regulators which, where they have other functions (such as professional representation), are required to have operationally independent regulatory arms (the regulators). The LSB and Approved Regulators share the same regulatory objectives, and are expected to follow better regulation principles.

Scope For Change

4.5 The Legal Services Act established a framework whereby regulation is independent of Government. Because of this, routes available for Government to reduce burdens are limited. Changes can be made through primary legislation, amending the framework, or by secondary legislation where a specific power exists. Alternatively, government can seek to use what levers exist with the regulators to encourage them to make changes.

4.6 The Call for Evidence closed on 2 September 2013. We carefully considered all the contributions received in response to the call for evidence. A number reflected individual's personal experience of the legal services regulatory system. Many set out what the respondent individual or organisation considered to be the ideal architecture for the regulatory framework, and/or on changes that could be made to the legislation to reduce the procedural burden on the regulators. A number also proposed potential changes that might be made by specific regulators to reduce burdens on practitioners.

4.7 This report summarises the responses and sets out the key findings from the Department's evidence gathering, and the Government's response.

A summary of responses to the consultation is at Annex A.

A list of respondents is at Annex B.

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>

Annex A – Responses to the Call for Evidence

Retaining the current system

1. Some respondents considered that it is too soon to propose major changes to the statutory framework, following the implementation of the Legal Services Act, which has allowed for greater competition within the legal services market.
2. One respondent suggested that the LSB and regulatory system should be allowed to ‘bed-in’ before any further changes are made. At the same time, they felt the current system was not perfect and could be improved. In particular, they suggested that the role of the LSB should be better defined, to ensure it remains a flexible, light-touch oversight regulator.
3. A further respondent was keen to emphasise that parts of the legal framework set out in the Act have only been in operation for little more than a year, and the push for consultation on these aspects may be premature as solutions to some of the teething problems are still being tested and may be effective without the need for a major overhaul.
4. A further respondent considered that there might be a case in the future for a single regulator of all legal services. However, they emphasised that there is currently a continuing and important role for a range of regulators developing diverse approaches to regulation to help foster change and innovation in the sector, subject to appropriate oversight by the Legal Services Board.

Changes to the basis for regulation: “reserved legal activities” versus “legal services”

5. Seventeen respondents to the call for evidence put forward suggestions that the way in which the sector is regulated could be changed, widening the range of services regulated. Currently, individuals and entities are authorised, and regulated, by an Approved Regulator to undertake specific ‘reserved legal activities’.¹ Furthermore, authorised persons are generally expected to meet the professional standards determined by their regulator in all their legal professional activities. At the same time, any legal services not falling within these defined reserved legal activities can be provided by anyone without being regulated. This means that solicitors are regulated in everything they do, whereas paralegals, will-writers and others currently undertake a wide range of legal services which are not regulated at all, leading to a significant imbalance in the protection available to consumers depending both on the legal service provided, and also who is providing that service. A number of respondents suggest that this imbalance should be addressed through extending regulation to the more widely defined ‘legal services’, requiring anyone undertaking any legal service to be regulated, to the extent necessary to protect consumers.

¹ Section 12(1) of the Legal Services Act 2007: “reserved legal activity” means (a) the exercise of a right of audience; (b) the conduct of litigation; (c) reserved instrument activities; (d) probate activities; (e) notarial activities; (f) the administration of oaths.

6. One respondent considered that reservation of more services was not a simple way to address this imbalance. Instead, they considered that there should be a wider range of regulatory tools available to the Legal Services Board, such as those used by oversight bodies and regulators in other sectors. They considered that such tools, including voluntary codes, recognition of equivalence and tiered risks of legal service, should enable a proportionate model of regulation. The respondent further argued that unregulated practitioners can currently provide non-reserved services free of the cost of regulation and its consequential obligations such as compensation and Professional Indemnity cover, whilst those who are providing a safer and more robust service to the consumer have these obligations which translate into a higher fee for the consumer. They consider that this is in conflict with the proportionality of the legislation, and leads to an imbalance and inconsistency in the remedies ultimately available to the consumer for any legal service generally.
7. Some respondents considered that any future legislation around legal services needs to define it more tightly and align such definitions and their regulatory obligations with the proportionate risk to the consumer and the general public. Similarly, another respondent considered that the current framework does not reflect the varied risks that consumers face, leading to over-regulation in some areas and under-regulation in others.
8. Numerous respondents considered that the division between reserved legal activities which are heavily regulated, and all other legal activities which attract no regulation at all, should be revisited, with a view to extending regulation where needed to a wider range of activities on the basis of risk relating to the activity and provider, without reducing competition in the legal service market.
9. One respondent considered that the scope of regulation should be extended to cover all legal services, including will-writing and employment advice. Another respondent considered that the Legal Services Act provided the correct over-arching framework for regulatory oversight, but also considered that the regime also had weaknesses especially around the boundaries between reserved and un-reserved activities and their associated risks, the statutory requirements for extending the reserved legal activities, and the complex regulatory landscape for different professionals within the legal sector.
10. One respondent urged the Government not to take action to reduce or to abolish the reserved legal activities. They considered that Government should look at what steps could be taken towards improving protection for the public in respect of the provision of legal services by the unregulated community, such as improving public education and in terms of levelling the playing field so that there is fair competition, so that it is clear who is regulated and who is not, and what 'being regulated' actually means. Another respondent considered that there may be justification for different intensities of regulation which may be determined by the activity.
11. A number of respondents argued that consumers are confused about which legal services and legal service providers are regulated and which are not. They suggested that regulated providers are therefore disadvantaged in competing for unregulated services with unregulated providers.

12. Some respondents suggested that the Legal Ombudsman's remit should be extended to include all legal services, rather than being limited to the services provided by authorised persons.²
13. Finally, one respondent considered that there should be a focus on addressing gaps and over-laps in regulatory cover, to ensure that duplicated regulatory burdens or unnecessary restrictions on practice structures are removed, while also ensuring that consumers are adequately protected in relation to the provision of services in the areas of their greatest need.

Simplify/reduce the number of regulatory objectives

14. The LSB and approved regulators must act in a way that is compatible with, and which they consider most appropriate in meeting, the regulatory objectives set out in Section 1 of the Legal Services Act. These regulatory objectives are: protecting and promoting the public interest; supporting the constitutional principles of the rule of law; improving access to justice; protecting and promoting the interests of consumers; promoting competition in the provision of services by authorised persons; and encouraging an independent, strong, diverse and effective legal profession. The Act does not set any order of priority for these regulatory objectives.
15. A significant number of respondents argued that the regulatory objectives should be reviewed, with a view to simplifying and reducing the number, and / or making their order of priority clear. This was motivated either by a desire to reduce the emphasis on consumer interests, in favour of the wider public interest or the interest of the profession, or conversely to entrench the consumer focus more securely.
16. One respondent considered that there were too many regulatory objectives and argued that they are too broad. They considered that the objectives should be limited to a single regulatory purpose which can be clearly defined. They also considered that the oversight and front-line regulators are able to 'cherry pick' the objectives they wish to concentrate on and a danger of mission creep and lack of focussed attention on the primary objectives of regulation.
17. One respondent considered that since 2007, too great an emphasis has been placed on the objective of 'protecting and promoting the consumer interest'. They emphasised that as a matter of fundamental constitutional propriety, the overriding objective of the regulation of legal services is and should unambiguously be stated as, supporting the constitutional principle of the rule of law.

Bringing regulation closer to the profession

18. The Legal Services Act provides for a two-tier regulatory system, independent of government, with a single oversight regulator (the Legal Services Board), and a number of Approved Regulators. The LSB must make rules setting out requirements to be met by Approved Regulators to ensure that their regulatory functions are not

² The Legal Ombudsman scheme deals with complaints about the services provided by authorised persons or entities authorised under the Act. Complaints may relate to the acts and or omissions of authorised persons but the scheme does not deal with conduct matters, which concern a breach of the Code of Conduct and remain the responsibility of the relevant regulatory body such as the Bar Standards Board, to determine whether to take disciplinary action. The Ombudsman will not generally comment on the quality of legal advice given, nor can the scheme investigate negligence complaints which are for the courts to determine.

prejudiced by their representative functions, and that decisions relating to regulatory functions are taken independently from decisions relating to their representative functions. In effect, Approved Regulators have established independent bodies to undertake their regulatory functions.

19. Some respondents considered that the LSB should be abolished. One respondent considered that the legal professions are best placed to regulate themselves, and believed that if necessary, a smaller and more focused alternative to the LSB should be established.
20. A number of respondents expressed a view that the role of the Legal Services Board should be reduced. One respondent considered that the LSB should be chaired by a judge rather than a lay-person. A further respondent expressed concerns that the LSB micro-manages the way in which the approved regulators carry out their regulatory functions and creates unnecessary burden on their time and resources.
21. One respondent considered that changes to regulatory arrangements should be left to the front line regulators, after appropriate consultation, without any need for a further approval process by the LSB. They also suggested that the LSB should be reduced to providing a “reasonableness” oversight function, stepping in only when the frontline regulator is acting unlawfully or unreasonably. They argued that this would provide a statutory mechanism under which regulatory decisions could be challenged as lacking independence, in breach of the regulatory objectives, in breach of the regulatory principles, or as otherwise unlawful.
22. One respondent considered that the different regulators should continue to be responsible for regulation of their members. However, in order to bring them closer to the profession, training, authorisation to practice and standard setting should revert to the representative body rather than the regulator. Investigations and prosecution of offences should remain separate in an arms-length body with independent decision-making, but which reports to the approved regulator.
23. Another respondent suggested that there should be one regulator for each discrete branch of the profession, effectively the current approved regulators without any form of dual regulation which the respondent considered has had the effect of complicating rather than simplifying the regulatory framework.
24. Four respondents argued that the role of oversight regulation should no longer be undertaken by the LSB, which should be replaced by a “College of Regulators”, comprised of representatives of each of the approved regulators together with some lay members and representatives of the Judiciary, and chaired by a senior member of the Judiciary. Another respondent raised concerns that the current system of oversight from the LSB required complex and expensive governance arrangements, which created delay in decision making and consumed unnecessary resources.

Moving from a two-tier regulatory framework towards a single tier

25. One respondent recognised that there may be a need to preserve and honour the differing histories and functions of the different branches of the profession, for example, barristers and solicitors. However they were not convinced that complete separation of regulation is required to achieve that. They considered that the current two-tier nature of regulation is unnecessarily complex and expensive, and suggested that moving to a single point of regulation should at least be explored.

26. Two respondents considered that structurally, there should be full operational independence of regulatory bodies from professional or representative bodies. A further respondent considered that it should be possible for regulation to be independent of government and the legal profession.
27. Another respondent argued that a Legal Services Authority would be easier to deal with and understand for consumers of legal services. It would also be far simpler for a single body to implement a common risk-based framework across the legal professions. This ought to enable resources to be better targeted and used more efficiently. It should also permit greater standardisation of training and consequently offer greater consistency in quality standards between different types of lawyer.
28. One respondent argued that consideration be given to the introduction of activity-based regulation, whereby a single regulator regulates each of the reserved-legal activities that bear on the work of the courts, which would result in simplification of the present regulatory structure.
29. One respondent considered that given a lawyer can now (or will shortly be able to) undertake the same range of activities in the same way in the same range of business structures whether solicitor or barrister, it makes absolutely no sense to perpetuate a structure which regulates the different groups separately, particularly when what distinguishes them are historic (but no longer current) patterns of regulatory restriction.
30. One respondent considered that that the current regulatory structure was disproportionately complex and costly, and called for the abolition of the Legal Services Board within the next two to three years.

Changes within existing framework to remove/amend elements of statutory process

31. Currently, the Legal Services Act provides a separate regulatory framework for Alternative Business Structures (ABS), through licensing authorities authorised by the LSB for this purpose.
32. A number of respondents argued that the Act is generally too prescriptive and needed, somehow, to be made less prescriptive. In particular, one respondent argued that the role of the LSB should be better defined, to ensure it remains a flexible, light-touch oversight regulator. They consider that the LSB should intervene only when necessary, i.e. when a regulator has made a decision which is clearly unreasonable. For example, the LSB should take a de minimus approach to its approval of rule changes, and should not need to approve fees levels; the concept of 'reserved legal activities' should be revised to 'regulated legal activities' allowing more competition, and a more level playing-field. It is further suggested that the legal services framework legislation should be referred to the Law Commission for a review and potential consolidation.
33. Another respondent considered that the changes introduced by the Legal Services Act have created 'an unnecessarily complex and expensive regulatory framework'. It is particularly critical of 'one-size-fits-all' regulation of law firms.
34. Some respondents argued that there should not be a need for a separate ABS framework.

35. One respondent raised concerns about the fee to become a licensing authority which was felt to be unaffordable for the smaller Approved Regulators. Another respondent considered that the necessary submissions and undertakings required of a professional body seeking to apply for designation as a licensing authority, are extremely demanding and involve considerable timescales.
36. Another respondent referred to the cost and complication of having multiple layers of bureaucracy. They argue for simplification of the current system, in advance of more significant structural changes, including improving the powers of the LSB, by amending section 59 of the Legal Services Act.
37. One respondent considered that the current complex and overlapping regulatory framework (individuals/entities) needs to be reconsidered. For example, it is argued that there is no requirement for LSB approval of regulatory arrangements of the approved regulators, as there are checks and measures put in place by the approved regulators level including the executive, non-executive board (lay and non-lay persons) and consultation including lawyers and their representative body.
38. Numerous respondents called for a provision in the Legal Services Act or in the licensing rules that allow work where legal activities are only a small or incidental part of the relationship with the client to be excluded from the scope of regulation. Other respondents welcomed the prospect of extension of the regulatory regime to special bodies, however, called for regulation to be appropriate and proportionate, and relative to the risks that the not-for-profit sector present.

Changes to the legal ombudsman's remit

39. One respondent considered that it would be desirable if the Legal Ombudsman's remit be extended to enable it to consider complaints against individuals regulated by the Office of the Immigration Services Commissioner (OISC). Another respondent suggested that the Legal Ombudsman's remit should be extended to include all legal services. A further respondent considers that the Legal Ombudsman should be able to deal with "third party" complaints.

Annex B – List of respondents

<i>Legal Services Act 2007 statutory body</i>	
1	Legal Services Board
2	Legal Ombudsman
3	Legal Services Consumer Panel
<i>Approved Regulator / Professional body</i>	
4	The Law Society
5	The Bar Council
6	The Chartered Institute of Legal Executives (CILEx) and ILEX Professional Standards (IPS)
7	The Council for Licensed Conveyancers (CLC)
8	The Institute of Trade Mark Attorneys (ITMA)
9	Chartered Institute of Patent Attorneys (CIPA)
10	The Institute of Chartered Accountants in England and Wales (ICAEW)
11	The Notaries Society
<i>Regulator / regulatory arm of AR</i>	
12	Solicitors Regulation Authority
13	Bar Standards Board
14	ICAEW Professional Standards
15	Costs Lawyer Standards Board
16	The Faculty Office
<i>Others</i>	
17	The Intellectual Property Office
18	The Office of Fair Trading (OFT)
19	Judiciary – Heads of Division
20	The Institute of Paralegals
21	The Co-Operative Legal Services (CLS)
22	The Forum of insurance lawyers (FOIL)
23	Immigration Law Practitioners' Association (ILPA)
24	Slater and Gordon Lawyers

25	Professor Stephen Mayson
26	The City of London Law Society (CLLS)
27	Institute of Professional Willwriters
28	The Young barristers' committee
29	Citizens Advice
30	Shelter
31	School of Transnational Law – China
32	KPMG LLP
33	access solicitor.com
34	Khiara Law LLP
35	Association of British Insurers
36	The South Eastern Circuit
37	Baroness Hayter of Kentish Town
38	The Criminal Bar Association
39	Kingston Smith LLP
40	Professional and Business Services Council
41	Association of Personal Injury Lawyers
42	Abbey Protection Group Ltd
43	Civil Court Users Association (CCUA) Legal and Technical Committee
44	The Law Society of Scotland
45	John Briton, Queensland Legal Services Commissioner
46	SIFA LTD
47	DAS LAW
48	Andrew Hopper QC
49	Martin Surr
50	David Wolfe
51	Stephen Morgan
52	The Honourable Society of the Middle Temple
53	The Honourable Society of Lincoln's Inn
54	Baker Tilly
55	Kent County Council Legal Services
56	The National Consumer Federation
57	DAS Legal Expenses Insurance Company
58	DAC Beachcroft
59	Mark Trafford and John Lofthouse (Chambers of Timothy Mousley Q.C)

60	Ray Worthy Campbell
61	Professor George Yarrow
62	Elaine Campbell
63	David Hartley
64	Michael Robinson
65	Paul Cowdrey
66	Individual respondent
67	Neil Sirkett
68	Chris Kirk-Blythe LLB (Hons.)
69	David B Wilkins – Harvard Law School Legal professionals
70	Rt Hon Lord Hunt of Wirral MBE
71	R Briarley

© Crown copyright 2014
Produced by the Ministry of Justice

You may re-use this information (excluding logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit <http://www.nationalarchives.gov.uk/doc/open-government-licence/> or email: psi@nationalarchives.gsi.gov.uk

Where we have identified any third party copyright material you will need to obtain permission from the copyright holders concerned.

Alternative format versions of this report are available on request from nalini.deen@justice.gsi.gov.uk