

<b>Title:</b> Section 80 order: Modification of the Institute of Chartered Accountants in England and Wales (ICAEW) in respect of Appeals from Licensing Authority Decisions  <b>IA No:</b> MoJ017/2014  <b>Lead department or agency:</b> Ministry of Justice <b>Other departments or agencies:</b> Legal Services Board	<b>Impact Assessment (IA)</b>		
	<b>Date:</b> 29/05/2014		
	<b>Stage:</b> Final		
	<b>Source of intervention:</b> Domestic		
	<b>Type of measure:</b> Secondary legislation		
<b>Contact for enquiries:</b> Paul Greening paul.greening@legalservicesboard.org.uk			
<b>Summary: Intervention and Options</b>			<b>RPC Opinion:</b> Not Applicable

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

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

The Institute of Chartered Accountants in England and Wales (ICAEW) has applied to be designated as a licensing authority for alternative business structures (ABS). The Legal Services Act 2007 (LSA 2007) states that a licensing authority must make provision in its licensing rules for appeals in relation to decisions it makes as a licensing authority with respect to ABS. LSB intervention is required as a permanent appeals arrangement for ICAEW licensing decisions can only be established by an order under section 80 of the LSA 2007.

**What are the policy objectives and the intended effects?**

A section 80 order is needed so that ICAEW can make the necessary rules to allow the General Regulatory Chamber (GRC) of the First-tier Tribunal (FTT) to hear appeals against decisions made by ICAEW. The policy objective of the LSB is also to put in place an appeal mechanism through the use of the GRC of the FTT to hear appeals against decisions made by all licensing authorities, including those made by ICAEW.

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

Option 0: Do nothing.

Option 1: Propose a section 80 order which addresses the objectives outlined above in respect of hearing appeals against decisions made by ICAEW as an LA.

Option 1 is the preferred option, as the expertise of the FTT is considered appropriate for the issues that ABS licensing appeals may involve. The FTT already acts as the appeals body for ABS licensing appeals for decisions of the Council for Licensed Conveyancers. It is also consistent with the LSB's overall policy aim that the FTT's jurisdiction be expanded in the longer term to create a single appeals mechanism for all approved regulators in respect of ABS and non-ABS decisions.

<b>Will the policy be reviewed?</b> It will not be reviewed. <b>If applicable, set review date:</b> N/A					
Does implementation go beyond minimum EU requirements?				N/A	
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.		<b>Micro</b> Yes	<b>&lt; 20</b> Yes	<b>Small</b> Yes	<b>Medium</b> Yes
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)				<b>Traded:</b>	
				<b>Non-traded:</b>	

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible Minister: \_\_\_\_\_ **Shailesh Vara** \_\_\_\_\_ Date: 29 May 2014

# Summary: Analysis & Evidence

# Policy Option 1

**Description:** First tier Tribunal as the appellate body for appeals against IPReg decisions as a licencing authority

## FULL ECONOMIC ASSESSMENT

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

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

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

The key monetised costs by main affected groups is likely to mostly impact on ICAEW who will bear the costs of the FTT in hearing appeals. Estimate of total costs in first year of £38,000 with unit running costs per case of £3,500. Might be some monetised costs to individual ABS who appeal (e.g. legal and representative costs) but this is not possible to quantify.

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

Some non-monetised costs to FTT in terms of using internal resources (e.g. legal, judges, staffing, training etc). However, FTT already has allocated resources for its tribunal functions and will invoice ICAEW for actual monetised costs. ICAEW could incur non-monetised human and IT resource costs for representing itself in appeals cases. There may be small regulatory costs to consumers as the ICAEW passes on hearing costs to ABS businesses in the form of higher fees.

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

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

Difficult to quantify specific monetised benefits for main affected groups. FTT will invoice ICAEW for costs in dealing with appeals but this will not be to achieve a profit, so the monetised benefit to FTT will be neutral. An effective and fair appeals mechanism may increase confidence in the in the probate ABS market which could in turn reap unquantifiable monetised benefits for ABS firms regulated by ICAEW.

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

The main non-monetised benefit will be that ABS and ABS applicants will have access to an stable long term, independent and transparent tribunal process. This will support the perception of fairness and therefore confidence in regulatory decisions made by ICAEW, encouraging entry into the market. Consumers of legal services may also benefit from increased consumer protection as a result of consistent arrangements for dealing with appeals in relation to licensing authority decisions.

Key assumptions/sensitivities/risks	Discount rate (%)	N/A
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Key assumption is that the number of appeals will be in the 0-10 spectrum of cases the HM Courts and Tribunals Service (HMCTS) has costed for. The assumption of low number of cases is based on the estimate of firms that ICAEW considers are thought to be licensable (around 100) and that historically there has been a very low number of higher appeals against ICAEW's regulatory decisions. There is an extremely low risk that the number of cases will exceed the 0-10 range per annum costed.

## BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs:	Benefits:	Net:	No	N/A

## Evidence Base (for summary sheets)

### References

No.	
1	Legal Services Act (2007)
2	LSB Consultation Paper Approaches to Licensing
3	LSB Response to Consultation on Approaches to Licensing
4	ICAEW application documents for designation as an approved regulator and licensing authority
4	Draft section 80 order

# Evidence Base (for summary sheets)

## 1. Introduction

### Background

- 1.1 The Legal Services Board (LSB) was created by the Legal Services Act 2007 (LSA 2007) and is charged with the responsibility of overseeing the regulators of legal services and ensuring that their activities reflect the regulatory objectives set out in the LSA 2007. The LSB's mandate is to ensure that regulation in the legal services industry is carried out in a manner that is consistent with the public interest and that the interest of consumers is central in policy making. The LSA 2007 gives the LSB and approved regulators (the regulators of traditional legal services providers) the same regulatory objectives. In full these objectives are:
- Protecting and promoting the public interest;
  - Supporting the constitutional principle of the rule of law;
  - Improving the access to justice;
  - Protecting and promoting the interests of consumers;
  - Promoting competition in the provision of legal services;
  - Encouraging an independent, strong, diverse and effective legal services profession;
  - Increasing public understanding of the citizen's legal rights and duties; and
  - Promoting and maintaining adherence to the professional principles.
- 1.2 The LSA 2007 enables the operation of Alternative Business Structures (ABS) by permitting the ownership of legal firms by non-lawyers. The LSA 2007 also details the process of establishing licensing authorities and the statutory basis on which they license and regulate Alternative Business Structures (ABS).
- 1.3 The LSA 2007 provides the Lord Chancellor with an order making power (to be exercised only on the recommendation of the LSB) to establish a new body to hear and determine appeals, or make provision about an existing body for the purpose of enabling it to hear and determine the appeals.
- 1.4 A mechanism is required to hear appeals by ABS businesses against decisions of ICAEW should it be designated as a licensing authority under Part 5 of the LSA 2007. An order under section 80 is required for appeals to be heard by the First-tier Tribunal (FTT) which is part of the unified tribunals structure established under the Tribunals, Courts and Enforcement Act 2007 and administered by HM Courts and Tribunal Service.
- 1.5 The FTT combines a number of previously separate administrative tribunals into one unified structure, which has its own infrastructure and administrative support function. The FTT is made up of a variety of jurisdictions which are grouped into Chambers, including the General Regulatory Chamber (GRC) which consists of a number of jurisdictions concerned with hearing appeals against the decisions of regulatory bodies.

1.6 It should be noted that it is the intention the GRC will also hear appeals against ICAEW decisions in relation to the non-ABS probate individuals and firms the ICAEW regulates as an approved regulator. However, this is not the subject of this impact assessment.

1.7 There are some explicit appeal rights under the LSA 2007 (schedule 96 and schedule13), concerning decisions to impose a financial penalty or to impose restrictions on the ownership of a licensed body. Licensing rules made by ICAEW. The LSB has issued guidance in December 2010 specifying those decisions which, as a minimum, the LSB considers ought to be appealable. We expect the following decisions of licensing authorities to be appealable, with the relevant sections or schedules of the LSA 2007 shown in brackets:

- Refusal of application for a licence (s.84)
- Imposition of conditions on a licence (s.85)
- Modification of a licence (s.86)
- Refusal to designate as Head of a Legal Practice, or withdrawal of approval (Schedule 11, paragraph 12)
- Refusal to designate as Head of Finance and Administration, or withdrawal of approval (Schedule 11, paragraph 14)
- Disqualification from some or all roles within a licensed body (s.99)
- Suspension and revocation of licence (s.101)
- Power to modify application of licensing rules etc to special bodies s.106 and s.107.

1.8 The ICAEW is a regulator and professional membership body for the accountancy profession in England and Wales. In December 2012 it made two applications to the LSB. The first application was for designation as an approved regulator for probate activities. The second was for designation as a licensing authority for probate activities. It is the latter which is the subject of this impact assessment in respect of an appeals mechanism for the decisions ICAEW will make as a licensing authority.

1.9 We anticipate that if the Lord Chancellor agrees to the LSB recommendation for the ICAEW to be a licensing authority it will take effect from the summer of 2014.

#### **Problem under consideration**

1.10 The ICAEW set out in its application for designation that it had elected to use the GRC as a single appellate body for all regulatory decisions relating to probate, as both an approved regulator and licensing authority. A section 80 order is needed so that ICAEW can make the relevant rules to allow the

GRC to consider the ICAEW decisions it makes as a licensing authority. While an interim measure established the existing ICAEW Appeals Committee as a single appellate body for all probate decisions (including those relating to ICEAW licensing decisions), without a section 80 order it will not be possible to establish the GRC as the independent appellate body for the licensing decisions of the ICAEW in respect of probate ABS firms.

### Economic rationale

- 1.11 In terms of the wider context, the conventional economic approach to government intervention to resolve a problem is based on efficiency or equity arguments. The Government may consider intervening if there are strong enough failures in the way markets operate (e.g. monopolies overcharging consumers) or if there are strong enough failures in existing government interventions (e.g. waste generated by misdirected rules). In both cases the proposed new intervention itself should avoid creating a further set of disproportionate costs and distortions. The Government may also intervene for equity (fairness) and re-distributional reasons (e.g. to reallocate goods and services to the more needy groups in society).
- 1.12 In this case, the intervention is required on both efficiency and equity grounds, as setting up a long term independent appeals body process through the FTT would enable the net benefits of ABS to be realised in relation to the services provided by firms regulated by the ICAEW. More generally, setting up an appropriate appeals mechanism through the FTT would benefit ABS businesses directly, and may result in increased consumer confidence in the overall regulatory framework for legal services. Providing probate ABS firms regulated by the ICAEW with a right of appeal may also be seen as fairer from society's perspective as it signals an important fair market entry process for ICAEW probate firms who want to become ABS. The proposal for the FTT to be the independent appeals body may therefore generate further economic gains for society, through providing greater confidence to consumers and providers in the independence and efficacy of the appeal arrangements.

### Policy objective

- 1.13 The policy objective is to put in place an appeal mechanism to hear appeals against decisions made by ICAEW should it be designated 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 resources and expertise to deal with the potentially complex issues that ABS appeals may relate to. The FTT is considered to be the appropriate independent appeal route to fulfil that role. It is already the appeal body for Council for Licensed Conveyancers (CLC) licensing authority decisions. Moreover, there has been a trend following the Review of Tribunals by Sir Andrew Leggatt to consolidate tribunal jurisdictions. The FTT now operates the unified tribunal service organised into Chambers, including the GRC. It is the stated policy position of the LSB that the FTT should hear appeals against decisions by all approved regulators and licensing authorities of legal services regardless of the type of legal service being provided or whether it is ABS or non-ABS. This will lead to greater consistency in decision making, enable

a body of expertise to develop, and enable economies of scale to be achieved in relation to administrative and appellate functions.

## Affected stakeholders

1.14 The following individuals, organisations and sectors are affected:

- ICAEW– the body whose decisions will be appealed.
- HM Courts and Tribunal Service – which contains the First-tier Tribunal to which appeals will be made.
- ICAEW ABS firms providing probate services (and applicants to the ICAEW for an ABS licence) – who will be the subject of the decisions that are appealable.
- Consumers – who may ultimately bear the regulatory costs through the process paid for legal services.
- Appeals related service providers such as suppliers of legal advice and representation services.

## 2. Costs and Benefits

2.1 This Impact Assessment identifies impacts on individuals, groups and businesses in the UK, with the aim of understanding what the overall impact to society might be from implementing the two options. The costs and benefits of Option 1 is compared to the do nothing option (Option 0). Impact Assessments place a strong emphasis on valuing the costs and benefits in monetary terms (including estimating the value of goods and services that are not traded). However, there are important aspects of the proposal that cannot sensibly be monetised. These might include how the proposal impacts differently on particular groups of society or changes in equity and fairness, either positive or negative.

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

2.2 Doing nothing is not considered a feasible option, as without intervention in the form of an order under section 80 of the LSA 2007, the ICAEW cannot make the relevant rules to allow the GRC to consider the ICAEW decisions it makes as a licensing authority. The do nothing option is presented as a hypothetical base case only.

2.3 Because the do nothing option is compared against itself, its costs and benefits are necessarily zero, as is its Net Present Value (NPV being the difference between the money inflows and outflows from an option).

### Option 1: The First-tier Tribunal acts as the appeals body for appeals against decisions of ICAEW

#### Description

2.4 Under this option, an order would be made under section 80 of the LSA 2007 making provision for the FTT to hear appeals against the decisions of ICAEW in its function as a licensing authority, with the functions allocated to the GRC of the FTT.

## Costs

### *HM Courts and Tribunals Service*

2.5 HM Courts and Tribunals Service (HMCTS) would face additional costs associated with a potential increase in cases heard at the Tribunal. However, set up and operating costs (e.g. tribunal member sitting fees) will be recovered from the ICAEW by HMCTS, meaning there should be no net financial impact on HMCTS as a result of the proposal.

### *ICAEW*

2.6 HMCTS has provided costs (which, as mentioned in 2.5, will be recovered from the ICAEW) for considering and hearing appeals as follows:

- Start up costs - £3,000
- First year's running costs - £35,000
- The unit running cost - £3,500

2.7 Start up costs cover update of the website, guidance, forms, staff and judicial training, senior judicial input into implementation, implementation time and expenses incurred by HMCTS. The running cost covers judicial cost for salaried and fee paid judges, administration for those appeals and use of HMCTS estate for both hearing and administration. If panel members were used they would be factored in to the cost per case.

2.8. The running costs aim to capture as much of the expenditure of bringing in a new appeal right as possible, even if that appeal right is expected to have no appeals in practice. However, it cannot be fully cost reflective - particularly on smaller appeals - as a lot of the preparatory work will be in-house and involvement by divisions within HMCTS. Legal, policy, judicial, communications and IT colleagues will be required and travel expenses, for instance, might be incurred. The same amount of work would need to be carried out if HMCTS were to receive 0 or 10 appeals. To that end, HMCTS policy is to charge for a minimum of ten appeals in the first year. This would be invoiced as soon as the main work to implement starts. Any appeals over that number, and in subsequent years, will be charged, on a quarterly invoice basis to ICAEW, based on cost per case heard by the tribunals system. Therefore if ICAEW did not have any appeals, it would not be required to make any payment after the initial payment - even if new judges require training in the future.

2.9 The number of cases referred to FTT in respect of ICAEW licensing decisions is likely to be well within the 0-10 spectrum. There is no precise equivalent proxy for ABS licensing appeals at the ICAEW, however, the assumption of 0-10 cases is partly based on appeals from the ICAEW's Review Committee, a professional conduct committee of the ICAEW which reviews appeals against regulatory decisions of the ICAEW. The number of appeals from the Review Committee has been very small, one or two per annum.



This is from some 2,500 firms ICAEW currently licences as a Designated Professional Body. An ICAEW survey conducted in 2011 indicated that around 100 firms currently licensed by ICAEW may seek to become probate ABS. The potential therefore for appeals against licensing decisions is from an even smaller pool of firms than is currently licensed by ICAEW. It is worth noting for comparison that to date no appeals to the FTT have been made from the pool of over 30 ABS firms licensed by the CLC. All this indicates that the estimate of 0-10 ABS appeal cases per annum is wholly realistic.

2.10 The table below summarises the range of potential minimum and maximum range of HMCTS costs which are projected to be incurred by ICAEW (based on cost estimates provided by HMCTS).

<b>Number of cases</b>	<b>Potential range of case HMCTS costs for IPReg based on HMCTS estimate of £3,500 per case unit and after payment of start-up and first year running costs.</b>
0-3 (Most likely)	£0-£10,500
4-6 (Less likely)	£14,000-£21,000
7-10 (Least likely)	£24,300-£35,000

2.11 ICAEW would face costs associated with appeals being heard by the FTT. These would consist primarily of daily fees for panel members, plus administrative support supplied by the HMCTS. The administrative support would include dealing with enquiries and all administrative tasks associated with the appeals, including scheduling appeal dates. It is assumed that the FTT has sufficient capacity available to hear appeals and that no additional accommodation or staff resources would be required as a result of the proposal given the likely negligible number of cases going to appeal as a result of ICAEW decisions.

2.12 Any additional IT and telephony costs for ICAEW are expected to be negligible.

2.13 ICAEW would incur costs associated with defending appeals, which may include the cost of legal advice and representation. The GRC has limited power to award costs against parties, so it is assumed that ICAEW would normally be expected to bear its own legal costs. These costs have not been quantified, however it is unlikely that costs would be significant in the context of ICAEW's overall budget as it is not expected that there will be a large number of appeals in relation to ICAEW decisions as a licensing authority.

### *ABS businesses*

- 2.14 Any ICAEW cost in its function as a licensing authority would be passed on to ABS businesses in the form of higher license fees. As mentioned above it is not anticipated that costs will be significant in the context of ICAEW's overall budget and the likely low number of appeals.
- 2.15 For the purposes of this Impact Assessment it is assumed that both ICAEW and the ABS concerned would be legally represented at an appeal. Individual ABS businesses appealing decisions would incur costs associated with preparing for appeals. ABS firms may also choose to be legally represented before the GRC, which would result in additional costs for the firm concerned.

### *Consumers of legal businesses*

- 2.16 All regulatory costs may ultimately be passed on to consumers of legal services in the form of higher prices. This includes any additional costs associated with any appeals in relation to ICAEW decisions. However, as referred to above, these costs are unlikely to be significant.

### *Providers of legal advice and representation services*

- 2.17 It is assumed that both ICAEW and ABS businesses would be legally represented in an appeal. Any additional appeals that take place as a result of the proposal would therefore represent an increase in the demand for legal advice and representation services. This would represent a benefit for providers of such services.

## **Benefits**

### *ABS*

- 2.18 ICAEW regulated ABS probate firms would benefit under the proposal as they would have the right to appeal to an independent body against the decisions of ICAEW as a licensing authority. The right of appeal would apply in relation to the range of decisions listed in paragraph 1.6 of this Impact Assessment. Compared to the base case ABS firms would benefit directly from the ability to appeal a decision. The recourse to an independent appeals mechanism will support the perception of fairness in the process and therefore greater confidence in the regulatory decisions of ICAEW acting as a licensing authority. This in turn signals fair entry to the market and an encouragement for new business models and entrants to ABS, which should enhance competition and consequently help to improve the efficiency of ABS and their provision of probate services in the market.

### *HM Courts and Tribunals Service*

- 2.19 HMCTS would benefit from additional income if cases were referred to it. However, this income would be intended to cover set up and operating costs (e.g. tribunal member sitting fees), meaning there should be no net financial impact on HMCTS as a result of this option.

## *Society*

- 2.20 The proposal may lead to increased consumer confidence in the probate legal services regulated by ICAEW, which may provide economic welfare gains for society. Furthermore, providing ABS firms the right to appeal decisions may be seen as fairer from society's perspective.

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

- 3.1 The assumption for the proposal is that ICAEW will enforce licensing compliance and that the FTT will implement and operate the appeals system. It is anticipated that subject to the statutory order timetable, it will be implemented from summer 2014.

### **4. Specific Impact Tests**

#### *Equality Impact Assessment*

- 4.1 After carrying out an initial impact assessment screening, we do not believe that the proposals will affect any sector of society more than another and we do not believe there are any significant age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation issues involved in this proposal. Therefore, after carrying out an initial screening we concluded that a full Equality Impact Assessment was not needed.

#### *Competition Assessment*

- 4.2 The Office of Fair Trading Report in January 2013 identified that ABS had removed a key barrier to market entry to the legal services market in general. Therefore, putting in place an independent trusted appeals mechanism would allow the implementation of ABS, and hence enable the associated competition benefits in relation to probate services regulated by ICAEW. This in turn will help with the government's overall objective of increasing competition and growth in the economy.

#### *Small firms impact assessment*

- 4.3 An independent appeals mechanism provided by the FTT should help encourage general confidence among small business ABS firms licensed by ICAEW.

#### *Environmental Impacts*

- 4.4 The proposal is not expected to have any environmental impacts of note.

#### *Health Impact Assessment*

- 4.5 No significant impacts on human health or the demand for health and social care services in the UK are anticipated as a result of the proposed option.

#### *Human Rights*

- 4.6 Article 6(1) of the European Convention on Human Rights, states that: *"...in the determination of civil rights and obligations..., everyone is entitled to a fair hearing within a reasonable time by an independent*

*and impartial tribunal established by law*". Therefore human rights are likely to be enhanced by the right of an ABS to appeal a decision to a recognised independent tribunal such as the FTT.

#### *Justice Impact test*

- 4.7 As the proposed option is not expected to significantly increase the volume of cases that will go through the justice system, it is not anticipated that the proposal will have a significant justice impact.

#### *Rural proofing*

- 4.8 No rural impacts have been identified.

#### *Sustainable Development*

- 4.9 No sustainable development impacts have been identified.