

<p>Title: Section 69 Order: To modify the functions of Intellectual Property Regulation Board (IPReg).</p> <p>IA No: MoJ039/2014</p> <p>Lead department or agency: Ministry of Justice</p> <p>Other departments or agencies: Intellectual Property Regulation Board (IPReg), Legal Services Board</p>	Impact Assessment (IA)			
	Date: 17/10/2014			
	Stage: Final			
	Source of intervention: Domestic			
	Type of measure: Secondary Legislation			
Contact for enquiries: Admin.justice@justice.gsi.gov.uk				

Summary: Intervention and Options	RPC Opinion: 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
NQ	NQ	NQ	No	Zero net cost

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

Current legislation does not give IPReg consistency of powers, between its role as a regulator and as a licensing authority. Government intervention is necessary, as the proposed changes require legislation, to harmonise IPReg’s powers in respect of its role as both a licensing authority for Alternative Business Structures (ABS) and its role as an approved regulator for non-Alternative Business Structures. It will also ensure regulation is consistent and adequately protects the public and consumers, regardless of the type of firm (ABS or non-ABS),

What are the policy objectives and the intended effects?

The main policy objective is to ensure that consumers, of all legal service providers, have the same level of protection regardless of the provider of those services (i.e., the type of firm). The policy intends to ensure that the overall regulatory framework for legal services have appropriate indemnification and compensation arrangements. The policy intends a ‘polluter pays principle’, for example, those who are the cause of regulatory expenditure, e.g. investigations or interventions, should bear the cost of that expenditure; and that this should provide clarity and assurance for those being regulated and their clients.

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

There are ten proposals being implemented which are covered by three key options:

- Grant IPReg the power to recover costs and request information from ABS and non-ABS firms, and grant rights of appeal.
- Grant IPReg the power to make rules about how ABS and non-ABS firms operate and ensure there are arrangements to protect clients, including compensation arrangements.
- Grant IPReg the power to investigate, discipline and intervene in ABS and non-ABS firms and individual practitioners

Will the policy be reviewed? It will not be reviewed.						
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.		Micro Yes	< 20 Yes	Small Yes	Medium Yes	Large Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)				Traded: NA		Non-traded: NA

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: 17 October 2014

Summary: Analysis & Evidence

Policy Option 1

Description: Grant IPReg the power to recover costs and request information from firms and regulated persons, and grant rights of appeal

FULL ECONOMIC ASSESSMENT

Price Base Year N/A	PV Base Year N/A	Time Period Years N/A	Net Benefit (Present Value (PV)) (£m)			
			Low:	High:	Best Estimate: NQ	
COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Cost (Present Value)	
Low						
High						
Best Estimate	NQ		NQ		NQ	
<p>Description and scale of key monetised costs by ‘main affected groups’</p> <p>It has not been possible to fully monetise this option. The costs incurred by the regulator will be recovered from the regulated community. IPReg will incur additional annual costs estimated to be around £2,000 for providing information from registrant ABS and non-ABS firms.. IPReg will also face an additional cost of around £38,000 during the first year for any appeals to the First-Tier Tribunal.</p>						
<p>Other key non-monetised costs by ‘main affected groups’</p> <p>Non-ABS firms will incur minor additional administrative burdens. For example, non-ABS firms will incur additional costs if they appeal a decision by IPReg. It has not been possible to monetise these additional costs to non-ABS firms. Consumers may face increased costs if registrants pass on their additional costs via increased prices.</p>						
BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Benefit (Present Value)	
Low						
High						
Best Estimate	NQ		NQ		NQ	
<p>Description and scale of key monetised benefits by ‘main affected groups’</p> <p>It has not been possible to monetise the benefits of this option.</p>						
<p>Other key non-monetised benefits by ‘main affected groups’</p> <p>IPReg will benefit from carrying out its regulatory functions more effectively. The appeals process will lead to better decision making within IPReg.</p> <p>Non-ABS firms will benefit from being able to appeal IPReg decisions.</p> <p>Consumers of patent and trade mark work will have appropriate redress, indemnification and compensation arrangements.</p>						
Key assumptions/sensitivities/risks					Discount rate (%)	NA
<p>Appeals will take around two days to hear.</p> <p>There is a risk that responding to significant requests for information puts a financial strain on ABS and non-ABS firms This is being mitigated by the inclusion of a provision that in certain circumstances those subject to requests may be able to recover costs.</p> <p>There is a risk that the existence of an external right of appeal will encourage firms and individuals to make appeals, even where there are no substantive grounds for appeal. This risk is reduced by virtue of the fact that the appellant will have to bear the cost of the appeal, although they may be able to recover such costs if they are successful.</p>						

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £:	In scope of OITO?	Measure qualifies as
---	--------------------------	-----------------------------

Costs: NQ	Benefits: NQ	Net: NQ	No	Zero net cost
-----------	--------------	---------	----	---------------

Summary: Analysis & Evidence

Policy Option 2

Description: Grant IPReg the power to make rules in respect of the manner in which firms are run and arrangements to protect firms' clients including compensation arrangements.

FULL ECONOMIC ASSESSMENT

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

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

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

The costs incurred by the regulator will be recovered from the regulated community. IPReg will incur a first year cost of £35,000 for the establishment of an insurance bond, which will be used to pay consumers compensation. Non-ABS firms will incur costs of around £400 for the application for Head of Legal Practice (HoLP) and Head of Finance and Administration (HoLF).

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

Non-ABS firms may incur costs for improving monitoring and reporting systems used by HOLP and HOFA as a result of complying with their reporting obligations.

Non-ABS firms may incur minor costs for ensuring that client money is segregated.

Non-ABS firms may incur additional annual costs after the first year if IPReg implements an annual fee to pay for compensation arrangements. Consumers may incur higher costs if non-ABS firm's pass on the additional costs to them..

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

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

It has not been possible to monetise the benefits of this option.

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

IPReg will benefit from having improved oversight of the sector and a source to address concerns to HOLP and HOFA.

Consumers will benefit from greater protection as a result of the segregation of client money and have appropriate indemnification and compensation arrangements where malpractice has occurred.

Key assumptions/sensitivities/risks	Discount rate (%)	NA
<p>It is assumed that ABS and non-ABS firms will not require external appointments to fulfil HOLP and HOFA positions and can be absorbed within the firm's current establishment. Smaller ABS and non-ABS firms may struggle to bear the cost of having a HOLP and HOFA, although one person can hold both positions. ABS and non-ABS firms will be able to easily segregate client money, i.e. client money that is generally ring-fenced.</p> <p>It is expected that the existence of compensation arrangements will not lead to an increase in claims for compensation. Smaller non-ABS firms may experience financial difficulties as a result of the increased costs resulting from the compensation arrangements.</p>		

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £:	In scope of OITO?	Measure qualifies as
Costs:	No	Zero net cost
Benefits:		
Net:		

Summary: Analysis & Evidence

Policy Option 3

Description: Grant IPReg the power to investigate and discipline firms and individuals, and intervene into firms

FULL ECONOMIC ASSESSMENT

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

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

Description and scale of key monetised costs by 'main affected groups'
It has not been possible to monetise this option.

Other key non-monetised costs by 'main affected groups'
The costs incurred by the regulator will be recovered from the regulated community. IPReg would face the costs of investigations or interventions in cases where a non compliant ABS firm does not pay. Costs are likely to be around £30,000 per intervention. Non-ABS firms would be required to pay for the costs of interventions or investigations where they are found to be non-compliant with the regulations. The cost of each intervention is expected to be around £30,000.

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

Description and scale of key monetised benefits by 'main affected groups'
It has not been possible to monetise the benefits of this option.

Other key non-monetised benefits by 'main affected groups'
IPReg would benefit from being a regulator with statutory powers that allows it to effectively regulate ABS and non-ABS firms to the same regulatory requirements.. Consumers would benefit from greater protection and have appropriate indemnification and compensation arrangements

Key assumptions/sensitivities/risks	Discount rate (%)
It may be more difficult to collect the costs of investigation if collection is focused on non-compliant ABS and non-ABS firms. ABS and non-ABS firms may take evasive action to avoid paying the costs of investigations.	NA

BUSINESS ASSESSMENT (Option 3)

Direct impact on business (Equivalent Annual) £:			In scope of OITO?	Measure qualifies as
Costs: NQ	Benefits: NQ	Net: NQ	No	Zero net cost

Evidence Base

1. Introduction

Background

- 1.1 The Chartered Institute of Patent Attorneys (CIPA) and the Institute of Trade Mark Attorneys (ITMA) are approved regulators under the Legal Services Act 2007 (the Act) and have applied to be designated as licensing authorities for Alternative Business Structures (ABS). Their regulatory functions are delegated to the Intellectual Property Regulation Board (IPReg).
- 1.2 These proposals concern the effectiveness of the regulation of legal services providers, and in particular the need to ensure adequate consumer protection. This is to be achieved through the creation of (i) a consistent regulatory framework between ABS and non-ABS (or traditional firms) - such that all firms are subject to the same, appropriate, level of regulation - and (ii) a credible deterrent to non-compliance. The credible deterrent is established through regulators of legal services having appropriate disciplinary powers. Any disparity in the powers of regulators creates the risk of regulatory arbitrage - where the decision as to the type of firm and services to be offered are driven by the desire for the lowest level of regulation – and can also distort competition.
- 1.3 Non-ABS are registered under the Copyright, Design and Patents Act 1998 (CDPA) and Trade Marks Act 1994 (TMA) and regulated by CIPA and ITMA in their capacity as approved regulators. Many existing non-ABS are dual-authorized (i.e. under both the CDPA and TMA). This is why it is important not just for CIPA and ITMA to have consistent powers but also for them to act jointly in relation to compensation arrangements as IPReg.
- 1.4 The following table sets out the number of individual non-ABS (patent and trade mark attorneys) and firms over the past three years:

	Individuals		Firms
Year	Patent Attorneys	Trade Mark Attorneys	Patent and Trade Mark Attorneys
2010	1798	772	161
2011	1687	620	181
2012	1745	639	184
2013	1827	675	195

- 1.5 Of the current firms, approximately 40 firms are licensable, of which 9 are large or medium-sized, which provides some indication of the number of ABS in the first year, assuming CIPA and ITMA (with delegated authority to IPReg) are designated as LAs. Therefore, the powers in respect of non-ABS would be exercisable in relation to approximately 155 firms, and those in respect of ABS, would be exercisable in respect of around 40 firms.

Problem under consideration

1. 6 IPReg recognises that in order to remove the current inconsistency resulting from transitional arrangements of the Act, they need consistency of powers between its role as an approved regulator and licensing authority. This will ensure that IPReg harmonise the approach they take in regulating all registrants as either non-ABS or ABS firms. It will also ensure regulation is consistent and adequately protects the public and consumers, regardless of the type of firm,
1. 7 Intervention powers are necessary to protect the consumer and allow IPReg to step in when businesses are, or are at the risk of, failing and there is likely to be consumer detriment. By way of further detail, the transitional arrangements of the Act undermine the effectiveness of IPReg as a regulator and exposes consumers to unnecessary risk. It is worth noting that the powers that IPReg require as a licensing authority are defined by the Act and so have already been the subject of Parliamentary scrutiny and are in statute.

Policy objective and policy options

1. 8 The main policy objective is to ensure that consumers of all legal service providers benefit from an equal level of protection regardless of the provider of those services (i.e., the type of firm) and the basis upon which they are being provided. Further objectives include:
 - the overall regulatory framework for legal services to be efficient;
 - that regulatory powers should have a firm statutory basis (where necessary);
 - those who are the cause of regulatory expenditure, e.g. investigations or interventions, should bear the cost of that expenditure; and
 - that these should provide clarity and assurance for those being regulated and their clients.
1. 9 There are ten proposals (proposal A-J) detailed below which address the broader policy objective of consistent and effective regulation outlined in paragraph 1.1. These proposals fall under three key options:
 1. Grant IPReg the power to recover costs and request information from ABS and non-ABS firms, and grant rights of appeal
 2. Grant IPReg the power to make rules in respect of the manner in which ABS and non-ABS firms are run and arrangements to protect firms' clients including compensation arrangements
 3. Grant IPReg the power to investigate and discipline ABS, non-ABS firms and individuals, and intervene into firms.

Option 1: Grant IPReg the power to recover costs and request information from firms and regulated persons, and grant rights of appeal

1. 10 There are two proposals under this option. The first is to give the IPReg the power to require non-ABS persons to provide information and documentation. The second is to give the IPReg the power to give rights of appeal to persons subject to decisions in respect of non-ABS. The regulator gains the power to recover costs from the regulated community from investigations. Firms will be able to recover reasonable costs from providing information to the regulator e.g. printing and photocopying. Increased regulatory costs may ultimately be passed on to consumer via higher prices.

Proposal A: Giving IPReg the power to require non-ABS to provide information and documentation

1. 11 The proposal is to grant the power to require information and documentation, to make regulations in respect of such requests and to enforce such requests through the High Court in respect of non-ABS, their managers and employees. It would also provide a consistent regulatory framework with IPReg's powers as a licensing authority.
1. 12 Currently, IPReg has no express power to require non-ABS to provide information and documentation, which is capable of being enforced through the High Court.
1. 13 As a licensing authority, IPReg would have the right to require ABS, managers, employees and interest holders to provide information and documentation for the purposes of ascertaining whether the terms of ABS are being complied with. It is not in the public interest that such information could be required by IPReg acting in the capacity of a licensing authority, but that they have no clear statutory basis for obtaining the same information from non-ABS's and their managers. This could present particular difficulties in the event, for example, of an investigation involving multiple firms of different types. Moreover, in the absence of a statutory power, it would not be possible to enforce any request for information through the High Court, which would undermine IPReg's regulatory effectiveness.

Proposal B: Giving IPReg the power to give rights of appeal to persons subject to decisions in respect of non-ABS

1. 14 The proposal is to give IPReg the power to grant rights of appeal to persons subject its decisions. The decisions the rights of appeal apply are in relation to matters such as the imposition of a financial penalty, the refusal of a licence or the decision not to approve or suspend the right of an individual to hold a particular role as a non-ABS.
1. 15 It is LSB policy that there is a single appellate body, namely the General Regulatory Chamber of the First-Tier Tribunal (FTT), to hear appeals to all ABS decisions.¹ IPReg has adopted this policy as it does not also have its own existing, independent appellate body. Other options were considered, such as the High Court or the Solicitors Disciplinary Tribunal, but rejected as it would not achieve consistency and would therefore be less efficient.

¹ LSB consultation document: Alternative business structures: appeal arrangement; August 2010.
http://www.legalservicesboard.org.uk/news_publications/latest_news/pdf/20110509_absappeals_decision_doc.pdf

Option 2: Grant IPReg the power to make rules in respect of the manner in which firms are run and arrangements to protect firms' clients including compensation arrangements.

1. 16 There are three proposals under this option. The first is to give the IPReg the power to require non-ABS to appoint a Head of Legal Practice (HOLP) and a Head of Finance and Administration (HOFA). The second is to give the IPReg the power to make rules regarding the treatment of client money and the keeping of accounts in respect of such money. The third is to give the IPReg the power to make indemnification and compensation arrangements for non-ABS and ABS. The costs of this proposal will be borne by the regulated community. The regulated community may pass on these costs to consumers via higher prices.

Proposal C: Giving IPReg the power to require non-ABS to appoint a Head of Legal Practice (HOLP) and a Head of Finance and Administration (HOFA)

1. 17 The proposal is for IPReg to be granted the power to require non-ABS to appoint a HOLP and HOFA. Such provisions should be consistent with the provisions in respect of ABS in order to maximise regulatory efficiency.

Proposal D: Giving IPReg the power to make rules regarding the treatment of client money and the keeping of accounts in respect of such money

1. 18 The proposal is to grant IPReg the power to make rules regarding the treatment of client money and the keeping of accounts in respect of such money. The proposal poses a simple, low cost requirement to keep money in a separate account to which access is restricted.

Proposal E: Giving IPReg the power to make indemnification and compensation arrangements for non-ABS persons and Licensed Bodies

1. 19 It is proposed that IPReg be given the power to make indemnification and client compensation arrangements for non-ABS and ABS, and that CIPA and ITMA acting together as IPReg further be permitted jointly to establish common client compensation arrangements. As a licensing authority, IPReg is already obliged to have indemnification and compensation arrangements. IPReg, acting as an approved regulator only has power to make "provision as to the indemnification of non-ABS or ABS against losses arising from claims in respect of civil liability incurred by them".
1. 20 Under this proposal, non-ABS' would be required to participate in compensation arrangements and may be required to contribute to the cost of the compensation arrangements. IPReg will maintain an insurance policy (or a Compensation Bond) under which grants may be made to compensate for losses or hardship suffered by clients in consequence of fraud or other dishonesty, or a failure to account for money by a Registered Body or its employees and Managers, to the extent that such losses are not covered by professional indemnity insurance.

Option 3: Grant IPReg the power to investigate and discipline firms and individuals, and intervene into firms

1. 21 There are five proposals under this option. The first is to give the IPReg the power to make rules to recover the costs of investigations. The second is to give the IPReg the power to issue notices, warnings or reprimands. The third is to give the IPReg the power to impose financial penalties. The fourth is to give the IPReg the power to disqualify individuals from holding certain roles. The

fifth is to give the IPReg the power to intervene in respect of certain registrants. The costs to the regulator of this proposal will be recovered from the regulated community.

Proposal F: Giving IPReg the power to make rules to recover the costs of investigations

1. 22 Regulators of legal services must be able to create a credible deterrent against misconduct or breaches of its regulatory arrangements. Part of that credible deterrent is conducting investigations where necessary, for example in response to upheld complaints or where breaches of regulatory arrangements are identified. It could also be where non-ABS and ABS businesses are found to be non-compliant from disciplinary action. This also serves the purpose of informing current and potential clients of the non-ABS of their disciplinary record.
1. 23 The proposal is to allow IPReg to recover the costs of investigations into ABS and non-ABS or their managers, employees, the HoLP, the HoFA, or any person holding an interest (direct or indirect) or material interest in the licensed body. Such costs would be recoverable from the ABS, non-ABS, manager, employee, HOLP, HOFA or material interest holder, as appropriate.

Proposal G: Giving IPReg the power to issue public notices, warnings or reprimands

1. 24 The proposal is to grant IPReg, when acting in the capacity either as an approved regulator or licensing authority, the power to issue public notices, warnings or reprimands.

Proposal H: Giving IPReg the power to impose financial penalties

1. 25 It is proposed to grant to IPReg the power to impose financial penalties and to make rules in respect of these. Financial penalties are required in order to provide a form of sanction against those non-ABS who fail to comply with IPReg's regulatory arrangements. The maximum amount of such fines should be set in order for there to be clarity in the regulated community. It seems sensible for this maximum to be in line with the maximum fining power IPReg would have as a licensing authority at the point of designation (i.e. the amounts set under rules made under s 95(3) of the LSA, currently this is £250 million for an ABS body and £50 million for a manager or employee of a ABS). Given the need for consistency, it would seem appropriate for the powers of IPReg to reflect as much as possible the powers that they would have as a licensing authority.

Proposal I: Giving IPReg the power to disqualify individuals from holding certain roles

1. 26 The proposal is to give IPReg the power to disqualify individuals from holding the role of HOLP, HOFA, manager or employee of a non-ABS and to make regulations in respect of disqualifications consistent with the provisions of the LSA.

Proposal J: Giving IPReg intervention powers in respect of Non-ABS

1. 27 As licensing authorities, CIPA and ITMA (with delegated authority to IPReg) would have powers to intervene into firms in specified circumstances. These circumstances are where a serious risk is to clients is posed and intervention is required as a last resort. For example, intervention might be required if an insolvency event has occurred. Intervention would allow IPReg to ensure that, for example, client money was being handled as required under IPReg's regulatory arrangements and that the non-ABS complied with its obligations to its clients. Essentially, it is proposed to grant IPReg as an approved regulator, intervention powers in respect of non-ABS in the same form as it does acting as a licensing authority under Schedule 14 of the LSA. It is not expected that this power would be exercised frequently.

Main affected groups

1. 28 The proposals are likely to affect the following groups:
- **IPReg**: in order for it to carry out its regulatory role;
 - **Potential alternative business structures (ABS)**: the proposals relate to the way in which ABS would be regulated, and interaction between ABS and their regulators;
 - **Non-ABS**: IPReg would have more extensive regulatory powers; and
 - **Consumers of legal services**: the proposals relate to the levels of consumer protection provided, and the regulatory costs, which may ultimately be passed on to consumers, albeit mostly to a negligible extent.

2. Costs and Benefits

2. 1 This IA identifies, where possible, the monetised and non-monetised costs and benefits for individuals, groups and businesses in England and Wales with the aim of understanding what the overall impact might be on society from implementing these proposals.

Option 0 – Base case (do nothing)

Description

2. 2 Under the do nothing base case the proposals highlighted in Options 1-2 would not be implemented. The do nothing is compared to itself and therefore the costs and benefits are necessarily zero, as is its Net Present Value (NPV).

Option 1: Grant IPReg the power to recover costs and request information from firms and regulated persons, and grant rights of appeal

Description

1. 29 Under this option the IPReg gains the power to require non-ABS persons to provide information and documentation and the power to give rights of appeal to persons subject to decisions in respect of non-ABS. The regulator gains the power to recover costs from the regulated community from investigations. Firms will be able to recover reasonable costs from providing information to the regulator e.g. printing and photocopying. Increased regulatory costs may ultimately be passed on to consumer via higher prices.

Costs of Option 1

Cost to IPReg

2. 3 The proposals include the power for IPReg to pay the reasonable costs of any person providing information (firms may need to carry the cost if the firm provided information that was not necessary or requested or the estimate of cost is considered by IPReg to be unreasonable, but this would need to be decided on a case-by-case basis and is likely to be negligible) and which is expected to be limited to the costs of printing and photocopying. In respect of the overall costs for the length of staff time taken to gather information; best estimates are based

on a scenario of 5% of all firms per year (or less than 10 firms per year) required to provide information. The number of hours taken could range from 2 hours for 1 firm to 20 hours for 10 firms. Based on the cost of staff at £100 per hour (for one or more staff members to collect the information and provide it to IPReg) annual costs to IPReg could equate to a lower estimate of £200 to a top estimate of £2,000. The overall costs are therefore assumed to be negligible.

2. 4 Firms that refused to comply with requests may incur costs, should IPReg choose to enforce their request through the High Court. However, this would be limited to cases of non-compliance. This cost has not been monetised as it would fall on non-compliant firms and it is unknown how many firms would refuse to comply with IPReg's request for information.
2. 5 IPReg would have to bear the costs of defending appeals and, depending on the appellate body, may not be able to recover the costs from unsuccessful appellants; in this event the costs would be borne by the regulated community, since all costs are, of necessity, passed on to those whom IPReg regulates. The number of appeals is unknown. However, the level of such appeals is expected to be very low.
2. 6 IPReg may also have to bear the additional operating costs of the appellate body, in this case the FTT, including daily fees for panel members plus administrative support and training costs. For example, estimated total cost in the first year of the FTT is £38,000 with unit running costs per case of £3,500. Appeals are likely to be in lower quartile of 0-10 per year, so overall monetised cost to IPReg will not be significant. Any additional IT and telephony costs are expected to be negligible.

Cost to non-ABS and ABS

2. 7 Firms would face small costs in administrative time to provide the requested data. These costs would be offset by the fact that IPReg will compensate firms for providing the requested data. These costs would fall on both compliant and non-compliant firms.
2. 8 Non-ABS making appeals will have to bear the costs of any appeals to an external body. Non-ABS and individuals/bodies will have a right of appeal to IPReg before they exercise their external right of appeal. Because of this, the likelihood of an external appeal is reduced. Firms may choose to be legally represented, which would result in additional unquantifiable costs.

Cost to Consumers

2. 9 All regulatory costs may ultimately be passed on to the consumers of legal services in the form of higher fees. This includes the extra costs associated with any appeals in relation to IPReg's decisions. These costs are expected to be negligible.

Benefits of Option 1

Benefits to IPReg

2. 10 Being able to request information from firms based on a statutory power, backed up by the right to enforce such orders through the High Court, should increase the effectiveness of IPReg and reduce the cost of obtaining the information in terms of wasted management time.
2. 11 The experience of defending appeals may have the effect of improving the process of decision making, in the event that any decision was successfully appealed. In any event, any external review of IPReg's decision making may help to identify areas for improvement.

Benefits to non-ABS

2. 12 Those subject to decisions will benefit from being able to appeal to an independent external body. A credible appeals mechanism is also a key part of a strong and effective regulatory

framework, which enhances public confidence in the regulatory system and produces consumer welfare benefits.

Benefits to Consumers of Legal Services

2. 13 Ultimately, the proposal should lead to a better regulatory system – of which a credible appeal mechanism is an essential part. This is likely to enhance consumer confidence in the legal services market.

Assumptions and risks for Option 1

The following assumptions have been made:

- Allowing IPReg to obtain information and documentation would have no impact on the number of cases for which information or documentation was required or the overall amount of investigation work done per case.
- There will be no change in the number of appeals following investigation rulings arising out of requests for information, and hence no impact on the justice system.
- If the number of appeals is higher than anticipated, the costs of the appeal mechanism will increase. However, a higher number of appeals are likely to occur in proportion to a higher number of licensed businesses, so the cost of the appeal mechanism as an element of the licence fee for individual businesses is not likely to increase significantly. The average cost of the appeal mechanism as part the licence fee for individual businesses is correlated to the marginal increase in the volume of appeals.
- Each appeal will require a two day hearing on average.

The following risks have been identified:

- There is a risk that responding to significant requests for information puts a financial strain on firms. This is being mitigated by the inclusion of a provision that in certain circumstances those subject to requests may be able to recover costs.
- There is a risk that the existence of an external right of appeal will encourage firms and individuals to make appeals, even where there are no substantive grounds for appeal. This risk is reduced by virtue of the fact that the appellant will have to bear the cost of the appeal, although they may be able to recover such costs if they are successful. Alternatively, the costs of appeals may act as an inhibitor to appeals. This risk would be mitigated by IPReg nominating an appellate body whose rules and operating procedures seek to limit cost wherever possible.

Option 2: Grant IPReg the power to make rules in respect of the manner in which firms are run and arrangements to protect firms' clients including compensation arrangements

Description

2. 14 Under this option the IPReg gains the power to require non-ABS to appoint a HOLP and a HOFA. In addition the IPReg can make rules regarding the treatment of client money and the keeping of accounts in respect of such money. The IPReg can also make indemnification and compensation arrangements for registered persons and licensed bodies.

Costs of Option 2

Cost to IPReg

2. 15 The £200 additional fee charged to non-ABS will cover the cost of approving a new HoLP or HoFA (a £200 fee will also be charged when approving a new manager). However, IPReg will have to bear the additional cost of approving HOLPs and HOFAs which will come out of IPReg's Annual Budget and will include both start up and running costs for the process. Numbers of HOLPs and HOFAs to be approved will reflect the size of the regulated community. IPReg will seek to reduce the operational costs by introducing HOLPs and HOFAs for non-ABS after a transitional period, enabling the work to be conducted over a period of time.
2. 16 In circumstances where there is a high level of non-compliance in terms of firms nominating HOLPs and HOFAs, the costs of making the necessary decisions on each application will escalate and will include costs of enforcement.
2. 17 IPReg will bear the cost of the compensation arrangements in the first year, and the policy is expected to cost in the region of £35,000. IPReg will also bear the cost of operating the compensation arrangements in terms of staff time, although this is likely to be limited, since the number of claims in any year is expected to be very low. This is based on the fact that IPReg has never had a case in which a firm has appropriated client money, which would give rise to a claim under the compensation arrangements.

Costs to non-ABS and ABS

2. 18 Compared to the base case, Non-ABS will have to bear the cost of appointing a HOLP and HOFA and having them approved by IPReg. It is anticipated that the cost of handling each application will be set at £200 to be paid by the Registrant.
2. 19 Taking into account the fact those firms may appoint an existing manager/employee, together with the fact that firms already have to take responsibility for compliance and have the necessary arrangements for reporting in place, it is anticipated that the cost to firms will be negligible.
2. 20 There may be additional costs of improving systems and controls to enable the HOLP and HOFA to comply with their obligations, including reporting obligations. However, firms should already have such controls in place.
2. 21 Non-ABS would have to separate client money (including money held on account of fees and disbursements) from the firm's own money. Generally, levels of client money held are very low and these usually relate to fees and disbursements held on account. Based on information held by IPReg, the amount of client money held is likely to peak at £25,000, the average holding being in the region of £10,000-£15,000. It should be noted that this average level of holding of client money is due to the nature of intellectual property legal work (related to patents, designs and registered trademarks).
2. 22 IPReg does not intend to introduce complex rules regarding client money, but merely to ensure that it is properly segregated and capable of being identified, monitored and reported upon. Non-ABS should already be in a position to identify monies belonging to clients, although the obligation to segregate the money would be new. Since this primarily involves setting up a new bank account, and paying bank charges for the new account it is not expected that this will be a significant cost to firms. There is a possibility that bank charges could apply as a handling fee per transaction, however, IPReg firms hold very low levels of client money and most transactions would be online, therefore incurring minimal to no transaction fees.
2. 23 In the first year of operation, IPReg will bear the costs of the insurance policy. For illustration, the forecast for the 2015 draft Budget currently being consulted on (until 18 September 2014) totalled an allocation of £35,000 for 2015, but in subsequent years these may be passed on to ABS and non-ABS. IPReg is unable to provide figures on any future costs to Non-ABS as the fee calculation will be determined in due course after the first year of operation if it is deemed

appropriate. Any fee structure imposed is likely to cost the industry around £35,000 per annum.

2. 24 Compared to the base case, it is unlikely that there will be any additional cost for ABS, given that they are required, under the LSA, to contribute to compensation arrangements. Indeed, having the same arrangements for both types of firm should reduce the costs.

Costs to Consumers

2. 25 Any regulatory costs imposed on businesses would ultimately be passed on to consumers. Any additional costs related to the appointment and approval of a HOLP and HOFA may therefore be passed on.

Benefits of Option 2

Benefits to IPReg

2. 26 The IPReg will benefit from being able to approve HOLP and HOFA, who play a key role in ensuring compliance. Having HOLP and HOFA as points of contact on compliance generally (HOLP) and finance and administration (the HOFA) will enable the IPReg to oversee the regulation of the market more effectively. The additional information provided by the HOLPs and the HOFAs as a result of their reporting obligation will help the IPReg oversee the market more effectively.
2. 27 IPReg may benefit from making better regulatory decisions through improved reporting with regard to monies held on behalf of clients.
2. 28 IPReg will have the benefit of being able to establish common compensation arrangements for all firms, which should increase their efficiency.

Benefits to non-ABS and ABS

2. 29 The roles of the HOLP and HOFA are intended to ensure that firms are run effectively with systems and controls to ensure compliance with statutory and regulatory obligations, and any breaches of those obligations are reported to IPReg. Appointing a HOLP and HOFA may therefore improve standards of compliance and the process of approving nominees for these roles may help to identify concerns within firms.
2. 30 Compared to the base case, non-ABS may indirectly benefit from the assurance provided to consumers that they will be protected by compensation arrangements compared to firms that are not regulated.
2. 31 ABS may benefit from the economies of scale, through having common arrangements for both types of firm and for firms authorised by both CIPA and ITMA.

Benefits to Consumers

2. 32 Consumers may benefit from improved standards of compliance.
2. 33 Segregated client money should provide a greater level of protection to clients in circumstances, for example, where a firm experiences financial difficulties.
2. 34 Although it is anticipated that the number of instances in which clients will need to claim under the compensation arrangements will be small, and those that do claim will be remunerated for losses suffered that are covered by the arrangements.

Assumptions and risks for option 2

The following assumptions have been made:

- The majority of firms will not need to make external appointments but will nominate persons as HOLPs and HOFAs from within their firm.
- Levels of non-compliance will be low, given the previous regulatory history of non-ABS.
- Firms are able easily to segregate client money, i.e., that generally client money is ring-fenced.
- It is assumed that the circumstances giving rise to a need to claim under compensation arrangements will not increase merely by virtue of the existence of such arrangements.
- The cost of compensation arrangements will be reduced by having common arrangements for both types of firm and for firms authorised by CIPA and ITMA (acting together as IPReg).

The following risks have been identified:

- Smaller firms are unable to bear the cost of having a HOLP and HOFA. This risk is being mitigated by the fact that the HOLP and HOFA can be the same person.
- Significant levels of non-disclosure on the applications for approval and/or failure to cooperate with requests to nominate HOLPs and HOFAs lead to a higher than expected workload for IPReg. This risk is mitigated by the fact that historically, IPReg has experienced high levels of compliance e.g. in the years that returns have been submitted to IPReg (2010-2012), IPReg has annually had significantly in excess of 95% of firms that are compliant with their obligation and 98% of all firms responded to a 2012 survey that requested information concerning their practices. In addition, IPReg have, to date, no evidence of non-disclosure by firms and their managers.
- The introduction of new provisions regarding client money may lead to the discovery of mishandling of client money by some firms, or alternatively puts financial strain on firms. Whilst this risk is acknowledged, it would be in the public interest that such matters were brought to light and addressed.
- Compensation arrangements for non-ABS represent too great a cost for smaller non-ABS, discouraging the establishment of small firms or causing them to experience financial difficulties. This risk is to be mitigated in the first year by IPReg bearing the cost of the compensation arrangements and, in subsequent years, by the allocation of the costs of compensation arrangements on a pro rata basis by reference to the size of the firm.

Option 3: Grant IPReg the power to investigate and discipline firms and individuals, and intervene into firms

Description

2.35 There are five proposals under this option. The IPReg gains the power to make rules to recover the costs of its investigations. The IPReg will be able to issue notices, warnings or reprimands. The IPReg also gains the power to impose financial penalties when registrants fail to comply with IPReg regulations. The IPReg will also be able to disqualify individuals from holding the role of HOLP, HOFA, manager or employee of a non-ABS. Finally the IPReg will gain intervention powers allowing it to intervene in specified circumstances where a serious risk is posed to clients.

Costs of Option 3

Costs to IPReg

2. 36 IPReg's sanction and appeal system includes a review committee who can issue minor administrative sanctions and refer cases to a disciplinary board. The disciplinary board has more significant sanctions and is able to issue financial penalties of up to £5,000 and suspend/revoke authorisation of authorised persons. An independent adjudicator considers appeals of the decisions made by the disciplinary board. This independent adjudication process is administered by IPReg. In order to be able to offer a process with greater independence IPReg is seeking the ability to use the FTT. All the processes use the civil standard of proof. The LSB has recommended, and the Lord Chancellor has agreed, that IPReg is designated as a licensing authority. This will give IPReg higher penalty powers for ABS and provide ABS with the ability to appeal decisions made by the disciplinary board to the FTT.
2. 37 IPReg would bear the costs of any disciplinary action against firms and regulated persons; although IPReg will seek to recover the costs of investigations.
2. 38 IPReg would bear the costs of disqualification proceedings, which may be significant. However, where this is linked to an investigation, the cost of the related investigation would be recoverable. Given the regulatory history of patent and trade mark attorneys in the last three years (complaints against firms have been extremely low, as have the instances in which it has been necessary to bring disciplinary action) it is believed that the benefits outweigh the costs of this proposal. The importance of the power to disqualify lies not in the potential numbers of disqualifications but rather in the deterrent effect of having the power, and exercising it when that is justifiable in the public interest.
2. 39 The overall costs of this proposal would be minimal or negligible; IPReg do not have any past experience of interventions and the probability of an intervention is very low. IPReg will have to have procedures and staff to support interventions. In terms of establishing procedures for interventions, these costs are not thought to be significant and will be covered by the day to day operating costs of IPReg. The greater cost will be incurred in conducting an intervention. The SRA, which has the power to exercise interventions, identify the main costs as being:
- internal staff;
 - intervention agents' fees;
 - archiving, repatriation and ultimate destruction of closed client files.
2. 40 By way of illustration, the average cost in 2011 and 2012 for the SRA was around £30,000 per intervention. With these illustrative figures the following table provides estimates of costs based on a range of 0-5 interventions per annum (5 being the absolute maximum IPReg could expect):

Number of interventions	Potential cost per annum (<i>assumption of £30k estimate derived from SRA average costs per intervention in 2011 and 2012</i>)
0 (Most likely)	£0
1 (Possible)	30k
2 (Possible)	60k

3 (Less likely)	90k
4 (Unlikely)	120k
5 (Very unlikely)	150k

Source of data: SRA Consultation Paper "Exercising the statutory power to pay the cost of firm interventions from the Compensation Fund".

2. 41 The estimate of £30,000 per intervention as a comparison with the SRA needs to come with a caveat that this may be an overestimation. The cost per intervention is determined by the complexity of the matter, including the number of client files and levels of client money held. Essentially, the larger and more complex the firm, the greater the costs. Patent and trade mark attorney firms tend to hold low levels of client money (the average being £10,000-15,000). Therefore, intervention costs could be lower than the estimates provided in the table.
2. 42 As set out above, IPReg would, under the proposal, have the power to recover these costs from the sole practitioner/firm that was the subject of the intervention but there may be circumstances in which this might not be possible. The remaining cost would be borne by IPReg. However, as explained it is expected that the number of interventions annually is likely to be nil or extremely small.

Costs to non-ABS and ABS

2. 43 Compared to the base case, any firm (or their HOLP, HOFA, manager, employee, owner, depending on the subject of the investigation) found in breach of regulations following an investigation would be worse off, as they would be liable for the costs of the investigation. It is assumed that any additional investigation costs would form part of the sanction and be ordered to be paid in addition to the relevant sanction. With regard to investigations leading to disciplinary action, the total expenditure on disciplinary matters in 2012 was £73,000 and in 2013 was £50,000. However, the size of the regulated community needs to be borne in mind together with the fact that this community has always demonstrated high levels of compliance. Given this fact, the instances of investigations have been, and are expected to continue to be, very low and less than 5% of all firms. The number of disciplinary cases in 2011 and 2012 was less than 5% of the total number of firms.
2. 44 Firms would face additional costs associated with investigations if they are found to be non-compliant, which in practice would be equivalent to an order for costs in addition to any financial penalty or other sanction being levied for non-compliance. In response to these potential additional costs all firms may therefore face additional costs associated with ensuring they have adequate compliance systems in place.
2. 45 Compared to the base case, any firm found to be in breach of regulations may be worse off in the sense that they could be publicly censured. This may not result in direct costs to them, but could result in a loss of business, although this would be as a result of a matter that it would be in the public interest to disclose (e.g. wrongdoing at the firm). These costs fall on non-compliant firms.
2. 46 The frequency with which such public censure would occur is unknown, as it depends on the disciplinary action of IPReg, and on the compliance of firms. The amount of disciplinary activity is assumed not to be influenced by the power publicly to censure, and hence there is no expected change to overall levels of disciplinary action.
2. 47 The overall costs of this proposal would be minimal or negligible, IPReg already have arrangements for bringing and hearing disciplinary cases and therefore the anticipated costs of operation and implementation are not significant. As the costs of any disciplinary action

against firms and regulated persons incurred by IPReg would be recovered through the costs of investigations. The main cost, therefore, would be on those subject to financial penalties (see paragraph below which indicates that IPReg's disciplinary board may issue financial penalties of up to £5,000). IPReg have published two current/concluded cases, both with decisions dated from 2013 on their website. In one case, the respondent was required to pay £8000 towards the Applicant's costs (but no financial sanction was recorded). The other case involved the Board imposing a fine of £500 (but did not seek costs).²

2. 48 In the event that any person holding the HOLP or HOFA roles in a non-ABS or an employee was subject to proceedings to disqualify them from holding that role, the firm may incur costs in defending the person in such proceedings. Moreover, should the person be disqualified there may be a financial impact in terms of restructuring the firm, appointing a successor or even closing the firm (should a number of managers be disqualified). These costs would fall on firms who were non-compliant.
2. 49 IPReg would have the right to recover their costs from the firm/sole practitioner that was subject to the intervention. IPReg may require the firm/practitioner to pay all or part of IPReg's costs in investigating a matter. This would be decided on a case-by-case basis but it is expected that such costs would be borne by non-compliant firms.

Costs to Consumers

2. 50 Any regulatory costs imposed on businesses would ultimately be passed on to consumers. Any additional costs related to ensuring compliance with the relevant regulations as a result of the proposal may therefore be passed on to the consumers of legal services.
2. 51 Any regulatory costs imposed on businesses would ultimately be passed on to consumers. Any additional costs related to ensuring compliance with the relevant regulations as a result of the proposal may therefore be passed on to the consumers of legal services.
2. 52 Any regulatory costs imposed on businesses would ultimately be passed on to consumers. Any additional costs related to the improving standards of compliance in order to prevent financial sanctions may therefore be passed on, in the relatively small number of cases where disciplinary action was taken.
2. 53 Any regulatory costs imposed on businesses would ultimately be passed on to consumers. Any additional costs related to the improving standards of compliance in order to avoid disciplinary action that may lead to disqualification may therefore be passed on.
2. 54 In the event that IPReg had to pass on the cost of one or more interventions to non-ABS and ABS, this cost would be expected, in turn, to be passed on to clients of firms, although given the anticipated low number of interventions, the costs passed on to consumers will be virtually non-existent.

Benefits of Option 3

Benefits to IPReg

2. 55 The proposal would mean that IPReg would be able to recover costs from those who were the cause of the expenditure. Being unable to recover such costs from non-compliant firms may result in an incentive to continue with non-compliant activities, since the costs would otherwise be borne by the entire regulated community. This proposal removes such a disincentive. Moreover, the ability to recover such costs as a debt due facilitates collection of these costs.
2. 56 IPReg needs to create a credible deterrent to non-compliance. The imposition of financial penalties that reflect the severity of the non-compliance is one of the key elements in the creation of that credible deterrent. This proposal would significantly increase the effectiveness of IPReg.

² IPReg website: case reports <http://ipreg.org.uk/public/what-to-do-when-things-go-wrong/case-reports/>

2. 57 As stated above, for regulation to be effective, regulators need to create a credible deterrent to non-compliance. In addition, they need to be able to prevent persons from participating within (holding particular roles in) regulated firms who are not fit to do so. Being able to disqualify persons from holding particular roles is not only one of the key elements in the creation of that credible deterrent, but it also prevents further risks to the public from such persons continuing to hold those roles. This proposal would therefore significantly increase the effectiveness of IPReg.
2. 58 The effectiveness of IPReg in managing risks to clients and consumers generally, will be significantly improved. This is not because it is anticipated that there will be significant levels of interventions, but rather that clients are most in jeopardy in the circumstances where an intervention is required, and will be protected. Clients can be exposed in the following ways:
- the client matter may need to be transferred to another firm at a critical juncture;
 - defaults on the client account may need to be rectified and there may be a significant risk of further loss of client money;
 - client files, and therefore client confidentiality, may be at risk due to non-payment of archiving fees.

In such circumstances, interventions can be highly beneficial for clients.

Benefits to non-ABS and ABS

2. 59 The proposal would mean compliant firms would bear no costs associated with investigations when a firm is found to be non-compliant and this results in some form of disciplinary action. Currently, all firms would share investigation costs through practising fees. Based on the assumptions made, the proposal should lead to a reduction in the practising fee, or at least ensure that the practising fee does not rise as a result of investigations, which would benefit all firms.
2. 60 In the absence of the proposal, those seeking to set up firms may decide to establish themselves as non-ABS rather than seek to exploit the opportunities for new business structures offered by ABS, given that IPReg would have more limited disciplinary powers. This proposal should therefore ensure that ABS and non-ABS are subject to the same disciplinary powers. This should help to achieve a level playing field and would represent a benefit for ABS.
2. 61 The fact that IPReg would have the power to intervene into a sole practitioner or firm may encourage firms to ensure that they are run properly with appropriate financial management.

Benefits to Consumers

2. 62 The consumers of legal services would benefit from the proposal if it provides an additional deterrent effect and thus improves the compliance of firms. Consumers would benefit directly in cases where non-compliance was deterred, but more generally consumers may benefit from increased confidence in the regulatory system.
2. 63 Further, any net reduction in costs for firms as a result of this proposal may benefit the consumers of legal services if these costs were to be passed on by firms. However, the overall impact on firms, and therefore consumers, is unclear.
2. 64 The consumers of legal services would benefit from the proposal if it provides an additional deterrent effect and thus improves the compliance of firms. Consumers would benefit directly in cases where non-compliance was deterred, but more generally consumers may be better informed regarding those firms whose standard of compliance may be lower than those of their peers, and benefit from increased confidence in the regulatory system.

2. 65 Further, any net reduction in costs for firms as a result of this proposal may benefit the consumers of legal services if these costs were to be passed on by firms. However, the overall impact on firms, and therefore consumers, is unclear.
2. 66 The consumers of legal services would benefit from the proposal if it provides an additional deterrent effect and thus improves the compliance of firms. Consumers would benefit directly in cases where non-compliance was deterred, but more generally consumers may be better informed regarding those firms whose standard of compliance may be lower than those of their peers, and benefit from increased confidence in the regulatory system. Moreover, publication of such fines will better inform consumers in their choice of legal services provider.
2. 67 Consumers would directly benefit in that those who were not fit to hold roles in firms could be removed from firms and would be unable to hold those roles until the disqualification was lifted. In addition, IPReg would make public details of disqualifications, reducing the risk that any attempt to continue to hold such roles without approval would be successful.

Assumptions and risks for option 3

The following assumptions have been made:

- It is assumed that the proposal would have no impact on the ability of IPReg to collect income to fund investigations. It is also assumed that the amount of investigation work undertaken would remain unchanged. The costs of implementing the order are expected to be negligible, except in the case where a party failed to pay the costs for which they were liable, in which case the matter would need to be pursued through the courts.
- It is assumed that the amount of disciplinary action undertaken would remain unchanged and therefore that the costs of such disciplinary action will not rise significantly. It is also anticipated that the number of disciplinary cases will be low (i.e. less than 5% of the total number of firms) and therefore the overall cost to IPReg both in terms of direct costs and staff time will be low.
- Allowing IPReg to recover the cost of investigations from guilty parties would have no impact on the overall amount of investigation work done per case, and no change on the number of investigations undertaken.
- The proposal would have no impact on investigation outcomes, particularly that the probability of being found in breach of the regulations is unchanged. This is a strong assumption.
- There would be no change in the number of appeals following investigation rulings, and hence no impact on the justice system.
- The proposal would have no impact on any punishments given for non-compliance, i.e., that punishments would be determined separately to any order in respect of investigation costs that would also be imposed.
- Allowing IPReg to censure publicly those subject to disciplinary action and warn the general public would have no impact on the overall amount of work done per disciplinary case, and no change in the level of disciplinary action undertaken.
- The proposal would have no impact on the outcome of disciplinary action, particularly given the probability of being found in breach of the regulations is unchanged.
- Allowing IPReg to impose financial penalties would have limited impact on the overall number of disciplinary cases and would not significantly increase the overall amount of work involved, or costs of, such disciplinary proceedings.
- Assumed that giving IPReg the power to disqualify individuals would not significantly change the number of disciplinary proceedings undertaken by IPReg.
- Assumed that the size of the regulated community (firms and sole practitioners) will not increase significantly.

- Assumed that the type of bodies regulated by IPReg and the nature of the work conducted will not change significantly.

The following risks have been identified:

- It may be more difficult to collect the costs of investigation if collection is focused on non-compliant firms. Firms may take evasive action to avoid paying the costs of investigations.
- IPReg may set practising fees on the basis that it will be able to recover the costs of investigations from those subject to the investigations but then be unable to do so, meaning that such money has to be recovered from all firms by levy on an unplanned basis. This risk can be mitigated by assessing the success of other regulators in recovering such costs and making realistic assumptions about the likelihood of recovering all costs.
- The key risk is that IPReg's costs significantly increase as a result of their enhanced disciplinary powers, both in terms of the costs of implementation and of operation. IPReg already have arrangements for bringing and hearing disciplinary cases and therefore the anticipated costs of operation and implementation are not significant and may in fact be negligible.
- Although there is a general level of compliance i.e. deducing from the number of complaints IPReg have the smallest number of complaints among the existing ARs, there is a high compliance for CPD returns and a low number of disciplinary cases year on year and very low levels of appeals (assumption since 2012 is 0-5). However, the powers gained under this proposal will ensure a strong incentive for firms to be compliant.
- There is a risk is that disqualifications do not achieve the desired effect of preventing those who are not fit to hold certain roles from doing so. This is only likely to happen in circumstances where the power granted is not exercised, meaning that it is only of theoretical regulatory benefit. An additional risk is that the power to disqualify is over-used, making persons reluctant, e.g., to hold the role of HOLP or HOFA. Both risks are felt to be low, in the first case because IPReg intend to use the powers against individuals in tandem with their powers against firms to achieve a credible deterrent against non-compliance, and in the second case because the arrangements in place to hear disciplinary cases mean that individuals will be protected against unjustified attempts to disqualify and, moreover, there will be a right of appeal against disqualification decisions.

Summary

2. 68 The preferred option is Option 1; to modify the functions of IPReg, as both an approved regulator and licensing authority, by a s69 order containing the proposals set out above. The net costs are not believed to be significant, given the number of firms impacted and the low costs to them and to IPReg.
2. 69 The benefits are common enhanced consumer protection and improved efficiency and effectiveness in the regulatory system e.g. all clients of firms authorised by IPReg having access to the compensation arrangements, not just clients of ABS. To do otherwise seems unfair and arbitrary.
2. 70 The benefits set out above are expected to outweigh any such costs incurred by the introduction of the proposals under the proposed s69 order.

Implementation

2. 71 The commencement provisions in Article 2 of the Order set out the timing for the coming into force of the different provisions. As the proposed entail changes to legislation that modifies some of the functions of IPReg, together operating as IPReg, it is not envisaged that a post-implementation review of the changes will take place. However, the LSB, as the oversight regulator of the legal services market will, through its information collection from approved

regulators and licensing authorities, be reviewing regulatory arrangements and functions of IPReg on an ongoing basis.

Annex A- Small and Micro Buisness Assessment

For the purposes of this assessment, the parameter used to define small businesses is up to 49 full time employees, and for micro businesses up to 10 employees.

The aim of the policy is to remove the inconsistencies from transitional arrangements of the Legal Services Act 2007. The IPReg needs consistency of powers between its role as an approved regulator and licensing authority. This will ensure that IPReg harmonise the approach they take in regulating all its regulated community as either non-ABS or ABS firms. It will also ensure regulation is consistent and adequately protects the public and consumers, regardless of the type of firm, Intervention powers are necessary to protect the consumer and allow IPReg to step in when businesses are, or are at the risk of, failing and there is likely to be consumer detriment.

In 2013 there were 195 trade mark and patent firms operating in the UK with a total of around 2,500 staff. The average number of employees per firm is therefore around 13.

For the purpose of the small and micro businesses assessment, the following exemptions were considered:

- Full exemption
- Partial exemption
- Extended transition period
- Temporary exemption
- Varying requirements by type and/or size of business
- Direct financial aid for smaller businesses
- Opt-in and voluntary solutions
- Specific information campaigns or user guides training and dedicated support for smaller businesses

Following from the evidence above, allowing any exemptions targeted at small and micro business could have a negative impact on the benefit derived from the changes to the regulatory powers of IPReg. IPReg could not effectively oversee the industry if small and micro businesses were excluded given that the majority of firms will have less than 49 staff.