

Title: Economic Crime and Corporate Transparency Bill – New regulatory objective in the Legal Services Act 2007 IA No: MoJ037/2022 RPC Reference No: N/A Lead department or agency: Ministry of Justice Other departments or agencies:	Impact Assessment (IA)			
	Date: 29/07/2022			
	Stage: Final			
	Source of intervention: Domestic			
	Type of measure: Primary legislation			
	Contact for enquiries: Jasmin Aulakh			

Summary: Intervention and Options	RPC Opinion: Not applicable
--	------------------------------------

Cost of Preferred (or more likely) Option, 2019 prices			
Total Net Present Social Value -£1.48m	Business Net Present Value -£1.48m	Net cost to business per year £1.48m	Business Impact Target Status NQRP

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

The Legal Services Act 2007 established the Legal Services Board (LSB) as an independent oversight body for the frontline legal regulators and sets out the “regulatory objectives” the regulators, the Office for Legal Complaints and the LSB must promote. These objectives include, for example: protecting and promoting the public interest; supporting the rule of law; and promoting and maintaining adherence to the professional principles. While it can be inferred that regulators should ensure lawyers are not breaching the economic crime regime, this is not set out as an explicit duty in current legislation. As a result, frontline regulators may have different interpretations of the extent of their duties relating to economic crime, and unequal effectiveness in monitoring and enforcing compliance. Regulators can also face legal challenge to their compliance activity, making monitoring and enforcement costly.

The crisis in Ukraine has shone a light on the exposure of professional services sectors to economic crime. We need to ensure that legal services regulators have the powers they need in this space. Government intervention is necessary because making any changes to regulatory objectives requires primary legislation.

What are the policy objectives of the action or intervention and the intended effects?

The policy objective is to put beyond doubt that it is the frontline regulators’ duty to promote the prevention and detection of economic crime, and that they may carry out such regulatory action as is appropriate to uphold this objective. The intended effects are more effective enforcement action from legal services regulators, as well as reduced challenge of any type for regulators carrying out proportionate monitoring and enforcement activities to ensure economic crime compliance.

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

Option 0: Do nothing: Under this option the current legislation would continue.

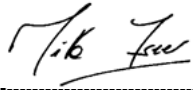
Option 1: Add a new regulatory objective to section 1 of the Legal Services Act 2007 to promote the prevention and detection of economic crime.

Option 1 is preferred as it best meets the policy objectives.

Will the policy be reviewed? No plans to review. If applicable, set review date: N/A

Is this measure likely to impact on international trade and investment?				
Are any of these organisations in scope?	Micro Yes/No	Small Yes/No	Medium Yes/No	Large Yes/No
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)	Traded:		Non-traded: N/A	

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 SELECT SIGNATORY:  Date: 02/02/2023

Summary: Analysis & Evidence

Policy Option 1

Description: Add a new regulatory objective focused on promoting adherence to the economic crime regime to section 1 of the Legal Services Act 2007

FULL ECONOMIC ASSESSMENT

Price Base Year 2019	PV Base Year 2022	Time Period 10 Years	Net Benefit (Present Value (PV)) (£m)		
			Low: £0.74m	High: £2.21m	Best Estimate: £1.48m

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional		Optional	Optional
High	Optional		Optional	Optional
Best Estimate	0		£200k	£1.48m

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

There will be costs to front line legal services regulators as we expect the measure to contribute to enhanced enforcement activity, which will create additional resource costs for regulators. While these costs are uncertain, we expect them to range from between £100k-£300k per annum in total (best estimate £200k per annum). This cost would be passed on to regulated legal professionals via an increase in practising certificate fees.

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

There will be costs to the LSB and regulators from updating guidance. These costs are likely to be small and form part of their business-as-normal costs, as updating guidance is a business-as-usual activity which would already be accounted for in regulators' budgets. There will also be costs to regulated professionals from having to familiarise themselves with the new objective. However, these costs have been assumed to be minimal.

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional			Optional
High	Optional			Optional
Best Estimate	0		0	0

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

None

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

A new regulatory objective will help the LSB exercise its oversight function by providing it with a clear basis against which to measure economic crime oversight effectiveness. However, this benefit cannot be quantified.

Legal services regulators' regulatory action may be facilitated as their ability to take regulatory action to promote the objective will be put beyond doubt. It is likely this will reduce the risk of regulated members challenging regulators' regulatory actions, which is likely to result in a lower amount of regulators' resources being used and lower compliance costs. This could potentially also lead to lower legal costs, although this is dependent on several factors and difficult to quantify. It is difficult to quantify the benefits of this option, as we do not currently hold data on the nature and costs of legal challenges that regulators may be facing. Further, we anticipate the measure will lower the risk of lawyers facilitating economic crime, which is likely to improve confidence in the sector.

Key assumptions/sensitivities/risks	Discount rate (%)
	3.5%

Data on the potential costs and benefits to regulators of this option is very sparse and there are wide discrepancies between the cost estimates provided by the two of the biggest regulators. As such, it is very difficult to precisely estimate the overall cost to the sector. The current estimate, provided for illustrative purposes only, assumes that the option will take up a moderate proportion of a senior staff member's time for most regulators. Data on potential impacts on professional bodies is unavailable at the time of the analysis. However, as it is already part of professional bodies' activity to monitor new guidance, it is unlikely the measure would represent an additional cost. Were this to be an underestimate, the costs to regulators, and hence to those paying practising certificate fees, could be higher.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m: -£1.48m			Score for Business Impact Target (qualifying provisions only) £m: -£1.48m
Costs: -£1.48m	Benefits: 0	Net: -£1.48m	

Evidence Base

Background

Regulatory framework and levy

The Legal Services Act 2007 ('the Act') created the framework for the regulation of legal services in England and Wales by establishing the Legal Services Board (LSB) as an independent oversight body for the frontline regulators. The Act designates "approved regulators"¹ in relation to the various reserved legal activities and those approved regulators can authorise a person to carry on a particular reserved legal activity. The Act defines the "reserved legal activities" which can only be carried out by a person if they are entitled to do so, either because they are an "authorised person" or an "exempt person" in relation to that activity.

Section 1 of the Act also sets out the "regulatory objectives" that the LSB, Office for Legal Complaints and approved regulators should promote. The existing regulatory objectives include the objective to protect and promote the public interest, the objective to support the constitutional principle of the rule of law and to promote and maintain adherence to the professional principles. The Act also gives the LSB the power to measure the performance of frontline regulators against these objectives, by setting performance targets and monitoring regulators, issuing directions and imposing financial penalties.

The LSB is funded by a levy on the sector, paid by the approved frontline regulators. The regulators pay an amount equal to the relevant proportion of leviable LSB expenditure, which is based on the number of persons authorised by the leviable body to carry on a reserved legal activity. The regulators are, in turn, primarily funded by a practising fee income paid by their regulated members. The amount of the fees is approved by the LSB. As such, any increases to regulators' or the LSB's costs may be reflected in an increased cost to businesses, through potentially increased practice certificate fees.

Economic crime duties

Economic crime has a serious impact on the UK's reputation and economy. According to The Treasury's July 2020 "Economic crime levy: Funding new government action to tackle money laundering" consultation, Serious and Organised crime, which is mostly driven by economic crime, is estimated to cost the UK £37 billion a year. The legal services sector was also rated as being at high risk of exposure to money laundering – a key part of economic crime – in the Treasury's 2020 National Risk Assessment.

Most regulated legal professionals have extensive anti-money laundering duties under the Money Laundering Regulations 2017, which impose certain requirements on lawyers, such as carrying source of funds checks. Regulations under the Sanctions and Anti-Money Laundering Act 2018 also require lawyers to ensure they are not accepting payment from clients who are on designated person lists without having obtained a licence to pay for legal services. Finally, most

¹ The approved regulators are the Solicitors Regulation Authority, the Bar Standards Board, CILEx Regulation, the Intellectual Property Regulation Board, the Council for Licensed Conveyancers, the Costs Lawyers Standards Board, the Master of the Faculties, the Association of Chartered Certified Accountant and the Institute of Chartered Accountants in England and Wales.

frontline regulators are also Professional Body Supervisors (PBSs) whose role is to ensure their members comply with the duties in the Money Laundering Regulations.

While it can already be inferred from the existing regulatory objectives in the Legal Services Act 2007 that frontline regulators should ensure lawyers are not breaching economic crime rules, this duty is not explicitly set out in legislation. Regulators have also faced challenge on the legal basis of some of the regulatory actions they have carried out to ensure approved persons are upholding their economic crime duties; this can make monitoring and enforcement long and costly. Finally, some regulators themselves have mentioned that the extent of their duties with respect to economic crime are unclear.

The crisis in Ukraine has shone a light on the exposure of professional services sectors to economic crime. We need to ensure that legal services regulators have the powers they need in this space. Government intervention is required because making any changes to regulatory objectives requires primary legislation.

The option included in this Impact Assessment (IA) therefore aims to: put beyond doubt that it is legal services regulators' duty to promote the prevention and detection of economic crime; reduce challenge from regulated members on regulatory action designed to ensure economic crime regime compliance; and ensure the LSB is able to monitor the effectiveness of regulators' actions in the economic crime space.

Rationale and Policy Objectives

The conventional economic rationales for government intervention are based on efficiency and equity arguments. The government may consider intervening if there are failures in the way markets operate (e.g., monopolies overcharging consumers) or where there are failures with existing government interventions (e.g., waste generated by misdirected rules). The proposed new interventions 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 more the needy groups in society).

The primary rationale for intervention in this case is efficiency: clarifying the role of regulators with regard to economic crime will create greater legal certainty as to when interventions are required and act as an extra deterrent to those who might otherwise commit such offences.

The associated policy objectives are to:

- put beyond doubt that it is frontline regulators' duty to promote the prevention and detection of economic crime, and that they may carry out such regulatory action as is appropriate to uphold this objective.
- promote more effective enforcement action from legal services regulators across the board, as well as reduced challenge for regulators carrying out proportionate monitoring and enforcement activities to ensure economic crime compliance.

Affected Stakeholder groups, organisations and sectors

The following groups will be most affected by the options described in this IA:

- The LSB which, as the oversight regulator, oversees how the approved regulators uphold the regulatory objectives.
- The approved regulators tasked with promoting the regulatory objectives and in their role as PBSs.

- Regulated legal professions who fund the frontline regulators via practising fees.
- Consumers of regulated legal services who would pay more should any increases to practising fees be passed on in the form of higher prices.
- The wider public who benefit from the integrity of the legal system.

Description of options considered

To meet the policy objectives, the following options are assessed in this IA:

Option 0: Do nothing: Under this option current legislation would remain unchanged.

Option 1: Add a new regulatory objective focused on promoting adherence to the economic crime regime to section 1 of the Legal Services Act 2007.

Option 1 is preferred as it best meets the policy objectives.

Option 0

Under this option, the problems identified above would continue. Therefore, this option has been rejected as it would not address the policy objectives.

Option 1

This option will add a new regulatory objective to section 1 of the Legal Services Act 2007 focused on promoting the prevention and detection of economic crime.

When implemented, this option will put beyond doubt that it is the duty of legal services regulators to promote and uphold adherence to the economic crime regime, thus likely reducing challenge from regulated members. It will also provide the LSB with a metric against which to measure the performance of regulators in ensuring economic crime regime compliance, promoting a unified and effective approach to preventing economic crime across all frontline regulators.

Costs and Benefits Analysis

This IA follows the procedures and criteria set out in the IA Guidance and is consistent with the HM Treasury Green Book.

This IA identifies impacts on individuals, groups and businesses in England and Wales, with the aim of understanding what the overall impact to society would be from implementing the options considered. IAs typically 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 that cannot sensibly be monetised which might include how the policy impacts differently on particular groups of society or changes in equity and fairness.

The costs and benefits of each option are usually compared to the 'do nothing' or 'counterfactual' option. As the counterfactual is compared to itself, its costs and benefits are zero, as is its Net Present Value (NPV).

In order to obtain an NPV, the monetised impacts of the options considered in this IA have been discounted using HMT's 3.5 per cent discount rate over a ten-year appraisal period beginning in 2022-23. Option 1 would increase the monitoring and enforcement activity costs required for legal services and legal services providers. As a result, regulators were approached for their best estimate of these costs and these are

described below. However, as will be clear, these costs are both uncertain and are likely to differ between regulators. This uncertainty also affects the extent to which these costs might lead to an increase in practising fees paid by regulated members. Monetised costs are given in 2019 prices. Given the expected date of implementation, the addition monetised costs to regulators are assumed to begin at the start of 2023-24.

Option 1: Add a new regulatory objective to promote adherence to the economic crime regime to section 1 of the Legal Services Act 2007

Costs of Option 1

Legal Services Board

Under section 162 of the Legal Services Act 2007 the LSB has the power to make guidance which could include further explaining the regulatory objectives. As this option will create a new regulatory objective, there will be costs to the LSB. The LSB, however, already has plans to review its regulatory objective guidance. As such, no additional costs to the LSB are expected as a result of this option.

The option will also enable the LSB to performance manage legal services regulators against the new regulatory objective. The LSB considers that as the objective is only putting beyond doubt that regulators should be effectively promoting adherence to the economic crime regime, and that regulators should already be doing this, it will not create additional oversight costs for the LSB.

As such, the overall costs to the LSB are estimated to be negligible.

Legal services regulators

This option might similarly impact regulators, as they may need to provide their members with additional guidance and employ more resource to effectively promote the objective. However, most legal services regulators were unable to provide an estimate of these costs, as they indicated they would need to consider the details of the option and of any additional LSB guidance to understand how they may be impacted.

The Solicitors Regulation Authority (SRA) indicated that this option will not create any additional costs, as creating guidance is a business-as-usual activity. The SRA also indicated that the measure will not create additional oversight costs, as any new obligation will be picked up by existing teams, such as their anti-money laundering team. The Bar Standards Board (BSB) indicated that the resource implications of this option will depend on the assessment of the risks posed to that objective by the activities of barristers. That risk is likely to vary over time and the BSB would expect to keep it under continuing review, including by commissioning independent expert advice from time to time. Taking the current resources dedicated to meeting the money laundering obligations as a benchmark, the BSB indicate it would be reasonable to estimate that this option will likely require at least one full-time additional senior officer post to deal with the added oversight and awareness raising costs, as well as require it to conduct research and seek expert external advice. In total, the BSB estimates that this option will cost around £100,000 a year in the early years of implementation.

Given the discrepancy in estimated costs between regulators, it is difficult to precisely estimate the cost of this option on legal services regulators. We estimate the measures are likely to take up at least some senior officer time, although it is very uncertain how this may vary between regulators.

For illustrative purposes only, we estimate that the likely cost to the regulators will be a minimum total of £100k a year and a maximum total of £300k (best estimate £200k, NPC £1.48m), to account for the use of some senior officer time. While the Bar Standards Board estimated it would need to hire a senior staff member to comply with the measure, the picture is mixed for other regulators. The SRA for example is large enough to absorb any new activity and other regulators have not identified additional costs to them as a result of this policy.

Legal services businesses and consumers

Overall, we estimate the total cost of the option for the sector to be between £100k and £300k (best estimate £200k). This cost may indirectly impact businesses, whose practising certificate fees may increase, which in turn may impact legal services consumers.

Regulated legal professionals will need to familiarise themselves with the new objective. However, these costs are not expected to be significant.

Benefits of Option 1

Legal Services Board

A new regulatory objective will help the LSB exercise its oversight function by providing it with a clear basis against which to measure economic crime oversight effectiveness. However, this benefit cannot be quantified.

Legal services regulators

Legal services regulators' regulatory action may be facilitated as their ability to take regulatory action to promote the objective will be put beyond doubt. It is likely this will reduce the risk of regulated members challenging regulators' regulatory actions, which is likely to result in a lower amount of regulators' resources being used, and possibly lower legal costs. It is however difficult to quantify the benefits of this option, as we do not currently hold data on the nature and costs of legal challenges that regulators may be facing.

Legal Services practitioners & consumers, the wider public

We anticipate the measure will help reduce the facilitation of economic crime, which is likely to lead to reduced rates of economic crime overall. As such, the measure is also likely to help preserve public trust in the legal services sector and therefore the attractiveness of the jurisdiction, which may also affect practitioners' turnover. It is however difficult to quantify these benefits.

Risks and Assumptions

The key assumptions and risks underlying the analysis above are described below.

Assumptions and risks underlying Option 1

Data on potential costs and benefits to regulators of this option is very sparse and there are wide discrepancies between the cost estimates provided by the two of the biggest regulators. As such, it is very difficult to precisely estimate the overall cost to the sector.

Data on the potential impacts of the measure on professional bodies, such as The Law Society or the Bar Council, who are tasked with monitoring the creation of new guidance, is unavailable at the time of the analysis. However, as the monitoring of new guidance is part of professional bodies' day to day activity, it is unlikely the measure would create an additional cost.

The current illustrative cost estimate assumes Option 1 will take up a moderate proportion of a senior staff member's time for most regulators. Were this to be an underestimate, the costs to regulators, and hence to those paying practising certificate fees, could be higher.

Wider Impacts

Equalities

An Equalities Statement has been carried out in addition to this IA.

Better Regulation

This proposal is classed as a non-qualifying regulatory provision under the Small Business Enterprise and Employment Act 2015 and will not count towards the department's business impact target.

Environmental Impact Assessment

We expect there to be no environmental impacts as a result of the options within this IA.

International Trade

There are no international trade implications from the options considered in this IA.

Monitoring and Evaluation

There are no further plans to monitor the impacts of this policy.