EXPLANATORY MEMORANDUM TO

THE LEGAL SERVICES ACT 2007 (DISCLOSURE OF RESTRICTED INFORMATION) ORDER 2011

2011 No. 122

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

2. Purpose of the Instrument

2.1 The Office for Legal Complaints (OLC) and Legal Services Board (LSB) are currently prevented from disclosing restricted information[1] other than in accordance with sections 152 and 168 of the Legal Services Act 2007 ("the 2007 Act") which permit, for example, disclosure with the consent of the person to whom the information relates or for the purpose of considering criminal proceedings.

2.2 This instrument is made under sections 152(3)(g) and 168(3)(g) of the 2007 Act and enables the OLC and LSB to disclose restricted information to the persons and bodies exercising regulatory functions specified in the instrument. This instrument also specifies the purpose for which information can be disclosed, which is to enable the listed bodies to exercise their regulatory functions.

2.3 The persons and bodies exercising regulatory functions to which the OLC will be able to disclose restricted information are:

The Office of Fair Trading
The Financial Services Authority
The Financial Reporting Council Limited
The Claims Management Regulator
The Law Society of Scotland
The Scottish Legal Complaints Commission
The Law Society of Northern Ireland
The Insolvency Service
The Bar Council of Northern Ireland

2.4 The persons and bodies exercising regulatory functions to which the LSB will be able to disclose restricted information are:

The Insolvency Service
The Financial Reporting Council Limited

[1] 'Restricted information' in relation to the OLC is defined by section 151(2) of the Legal Services Act 2007 ('the 2007 Act') as information obtained by the OLC, its ombudsmen, or a person exercising delegated functions of the OLC in the course of, or for the purposes of, an investigation into a complaint or for the purpose of deciding whether to begin an investigation. 'Restricted information in relation to the LSB is defined by section 167(2) of the 2007 Act as information which is obtained by the LSB in the exercise of its functions.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1. There are no matters of special interest to the Committee.

4. Legislative Context

4.1 This instrument is made under sections 152(3)(g) and 168(3)(g) of the Legal Services Act 2007 ('the 2007 Act'), which allow the Lord Chancellor to make an Order prescribing the persons and bodies exercising regulatory functions to whom the OLC and LSB respectively can disclose information and the purposes for which information can be disclosed. This is the first occasion on which this power has been used.

4.2 To date, nine commencement orders have been made under sections 204, 208 and 211 of the 2007 Act. The purpose of these orders has been to establish the new oversight regulator (the LSB) and a new regulatory regime for the provision of legal services. The orders have also established the OLC and its ombudsman scheme. Provision has also been made in preparation for the introduction of alternative business structures.

5. Territorial Extent and Application

5.1 The instrument applies to England and Wales only.

6. European Convention on Human Rights

6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy Background

- ***What is being done and why***

7.1 The 2007 Act reforms the way in which legal services are regulated in England and Wales. It establishes the LSB as the oversight regulator for the legal profession in England and Wales. It establishes the OLC, a new independent complaints-handling body for complaints about members of the legal profession. The LSB assumed its full statutory functions on 1st January 2010 and the OLC assumed its full statutory functions on 6th October 2010. The regulatory regime for ABS is not yet operational.

7.2 The OLC and LSB are already able to share restricted information with the approved regulators[2] and to disclose information in accordance

[2] The approved regulators are listed in the table in Part 1 of Schedule 4 to the 2007 Act as amended by the Legal Services Act 2007 (Approved Regulators) Order 2009 (SI 2009 No. 3233).

with the sections 152 and 168 of the 2007 Act. This Order allows the OLC and LSB to share information with other regulatory bodies for the purpose of assisting those bodies to exercise their regulatory functions.

7.3 If the OLC and LSB were not able to disclose restricted information to other regulatory bodies, this could be detrimental to consumers of legal services as it would prevent the OLC and LSB sharing information with other regulators who may be better placed to deal with a complaint or issue. In accordance with the powers conferred by the 2007 Act, this instrument aims to remove this obstacle to information disclosure thereby providing greater protection for consumers and enabling better communication between regulators.

7.4 An important safeguard is that information shared by the OLC and LSB will be disclosed in line with the Data Protection Act 1998 and other information-sharing protocols. Regulators to whom information is disclosed will also be obliged to comply with the Data Protection Act and other relevant information-sharing protocols.

7.5 A detailed explanation of the provisions relating to the OLC and LSB is set out below.

OLC

7.6 Section 151 of the 2007 Act restricts the circumstances in which the OLC can disclose information acquired in the course of investigating a complaint. However, section 152 sets out circumstances in which disclosure may be made and, specifically, section 152(3)(g) enables the Lord Chancellor to make an order specifying certain persons to whom the OLC (or a person exercising delegated functions of the OLC[3]) may disclose information.

7.7 If the OLC was unable to disclose information to other bodies with regulatory functions, this could reduce the effectiveness of the regulatory system; investigations could be hampered resulting in less informed decisions and slower resolution of complaints. For example, if the OLC investigates a complaint that involves financial issues or that relates to the conduct of a body regulated by the Financial Services Authority (FSA), it may wish to share the information that it has come across with the FSA, which may wish to investigate aspects of the complaint further.

LSB

7.8 The LSB is placed under similar restrictions to the OLC by section 167, which prevents it disclosing restricted information. Section 168

[3] Paragraph 15 of Schedule 22 enables the OLC to authorise its chairman, its members, a committee or subcommittee, an ombudsman or any member of its staff appointed under paragraph 13 of Schedule 22 to exercise functions on its behalf.

sets out circumstances in which disclosure is permitted and section 168(3)(g) gives the Lord Chancellor the power to make an Order specifying other persons who exercise regulatory functions to whom the LSB (or a person exercising delegated functions of the LSB) may disclose information.

7.9 The LSB is responsible for overseeing the approved regulators who are in turn responsible for regulating their members.

7.10 As the LSB will primarily hold information regarding approved regulators, it will only need to disclose information to other regulatory bodies with an interest in the activities of those approved regulators. These regulatory bodies are likely to be bodies whose members are regulated by an approved regulator. For example, some insolvency practitioners are solicitors and are regulated by both an approved regulator (the Law Society) and the Insolvency Service. It is not anticipated that the LSB will need to rely on an Order to disclose information as frequently, or to as many persons, as the OLC.

- ***Consolidation***

7.11 There are no issues relating to consolidation.

8. Consultation Outcome

8.1 A public consultation was issued in January 2010 to determine which persons exercising regulatory functions should be included in the order. The consultation closed on 21 April 2010. The responses broadly supported the regulatory bodies proposed for inclusion by the consultation and recommended further bodies for inclusion. Following consideration of the consultation and responses (and taking into account the views of the OLC, LSB and other regulatory bodies) it was concluded that the regulatory bodies now named in the instrument (which all exercise regulatory functions) should be included.

8.2 The consultation responses have informed the content of the instrument. In addition to the consultation responses, the bodies specified in the instrument have agreed to their inclusion.

8.3 The consultation and response paper can be found at: www.justice.gov.uk/consultations/olc-lsb-disclosure.htm.

9. Guidance

9.1 The decision to share information will be made on a case by case basis. Although no specific guidance is planned at this stage, once the OLC

and LSB have begun to share information they may be in a better position to issue wider guidance based on operational experience.

10. Impact

10.1 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk. The IA showed that the instrument would have significant benefits and relatively low costs. This instrument is expected to support more effective and efficient communication between regulators, which will benefit consumers and regulatory bodies.

10.2 A privacy impact assessment (PIA) was prepared for the consultation and this instrument. The PIA found that there would be no substantial impacts on privacy as a result of the OLC and LSB being able to share information with other regulators as the other regulators are already processing information in accordance with the provisions of the Data Protection Act 1998. In addition, protocols are in place to prevent possible adverse impacts relating to privacy: information will be disclosed and processed within established data protection principles and no significant effects on privacy are anticipated.

10.3 An equality impact assessment (EIA) was prepared for the consultation and this instrument. The EIA found that there would be no positive or negative equality impacts as a result of the OLC and LSB being able to share information with the regulatory bodies specified in the instrument.

10.4 A full regulatory impact assessment (RIA) was prepared for the Legal Services Bill in November 2006 and a supplementary memorandum was published in June 2007. The full RIA can be found at http://www.dca.gov.uk/risk/ria-legal-services.pdf and the supplementary memorandum can be found at http://www.justice.gov.uk/docs/RIA-supplement-v021.pdf.

11. Regulating small business

11.1 The instrument has no impact on small business.

12. Monitoring and review

12.1 The OLC and LSB have agreed that it would be most practical to include a review of these changes as part of a wider review of their functions. This review is expected to take place by the end of 2012.

12.2 A key objective of the review will be to consider the information-sharing arrangements, including what information has been shared, whether new bodies need to be specified in the instrument and whether the inclusion of the existing bodies is still necessary.

13. Contact

Please contact Lori Frecker at the Ministry of Justice (tel: 020 3334 5455 or email: lori.frecker@justice.gsi.gov.uk) regarding any queries about this instrument.

Title: **Impact assessment on the Legal Services Act 2007 (Disclosure of Restricted Information) Order 2011** **Lead department or agency:** The Ministry of Justice **Other departments or agencies:**	Impact Assessment (IA) **IA No: MOJ034** **Date: 19/01/2011** **Stage:** Final **Source of intervention:** Domestic **Type of measure:** Secondary legislation **Contact for enquiries:** Lori Frecker lori.frecker@justice.gsi.gov.uk

Summary: Intervention and Options

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

Under the Legal Services Act 2007 ("the 2007 Act"), the Office for Legal Complaints ("OLC") and Legal Services Board ("LSB") are restricted from disclosing certain information obtained in the exercise of their functions to other persons. This restriction was intended to prevent the OLC and LSB gratuitously sharing sensitive information, but it may prevent other regulators from fulfilling their regulatory functions as they would not have access to information that may lead to investigations and/or enforcement action, where appropriate.

The Lord Chancellor can make an Order under sections 152 (3) (g) and 168 (3) (g) of the 2007 Act specifying certain persons, who exercise regulatory functions, to whom the OLC and LSB would be able to disclose information. Government intervention is therefore necessary to make the Order enabling the OLC and LSB to disclose information, thus facilitating information-sharing between regulators.

What are the policy objectives and the intended effects?

To enable the OLC and LSB to disclose restricted information (defined as information obtained in the exercise of their functions) with the regulatory bodies and persons named in the Order. Widening the scope of who the OLC and LSB can share information with will help other regulators to obtain information they need to perform their regulatory functions more effectively. Consumers will benefit from a more effective regulatory system.

What policy options have been considered? Please justify preferred option (further details in Evidence Base)

Option 0 (do-nothing option): Do not make Order, continuing to restrict the OLC and LSB from disclosing any information to third party regulators
Option 1 (preferred option): Make Order under sections 152 (3) (g) and 168 (3) (g), enabling the OLC and LSB to share information with other regulatory bodies

When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?	It will be reviewed 10/2012
Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?	Yes

Ministerial Sign-off For final proposal stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.

Signed by the responsible Minister: ..... Date: 21st January 2011

Summary: Analysis and Evidence

Policy Option 1

Description: Make the order under sections 152 (3) (g) and 168 (3) (g), enabling the OLC and LSB to share information with other regulatory bodies

Price Base Year 2010	PV Base Year N/A	Time Period Years N/A	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: N/A

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

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

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

There may be some administrative costs to the OLC and LSB resulting from the disclosure of information. It is assumed that the costs faced by the OLC will be similar to the costs faced by complaints-handling bodies prior to the OLC becoming operational on 6 October 2010. There is likely to be a need for some additional disclosures as a result of the LSB being established as the new oversight regulator. Therefore, there may be some additional costs to other regulators such as admin costs from increased number of disclosures and potential enforcement action. Any increased enforcement action may result in costs to the justice system. Any increased enforcement action may result in additional costs to organisations from being investigated.

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

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

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

Consumers may benefit from better communication between regulators and from complaints being investigated more thoroughly as a result of the OLC and LSB being able to share information with other regulators. Consumers may also benefit from the increase in the level of consumer protection brought about by a more efficient oversight regulatory system. Regulators may benefit from additional information, resulting in more informed decisions and potentially speedier resolution of complaints. Regulators may benefit from being able to obtain the information they require from one complaints-handling body (the OLC). Under the previous complaints-handling system, regulators would have needed to share information with numerous legal complaints-handling bodies. Regulators may benefit from streamlined channels of communication.

Key assumptions/sensitivities/risks **Discount rate (%)** N/A

Given that the volume of information disclosures is expected to be low, admin costs to the OLC and LSB are expected to be small. However, these admin costs could vary depending on the number of information disclosures. There is a potential risk to complainants and those who are the subject of complaints from information being shared more widely, however this risk will be mitigated by the protocols and procedures that the OLC, LSB and other regulators have in place to prevent this.

Impact on admin burden (AB) (£m):			Impact on policy cost savings (£m):	In scope
New AB: 0	AB savings: 0	Net: 0	Policy cost savings: 0	No

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			England and Wales		
From what date will the policy be implemented?			February 2011		
Which organisation(s) will enforce the policy?			The Office for Legal Complaints and the Legal Services Board		
What is the annual change in enforcement cost (£m)?			N/A		
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			No		
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded:** 0	**Non-traded:** **0**	
Does the proposal have an impact on competition?			Yes		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			**Costs:** 0	**Benefits:** 0	
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	**Micro** N/Q	**< 20** N/Q	**Small** N/Q	**Medium** N/Q	**Large** N/Q
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on…?	**Impact**	**Page ref within IA**
Statutory equality duties[1] Statutory Equality Duties Impact Test guidance	Yes	p.9
Economic impacts		
Competition Competition Assessment Impact Test guidance	No	p.9
Small firms Small Firms Impact Test guidance	No	p.9
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	p.9
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	p.9
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	p.9
Human rights Human Rights Impact Test guidance	No	p.9
Justice system Justice Impact Test guidance	No	p.9
Rural proofing Rural Proofing Impact Test guidance	No	p.9
Sustainable development Sustainable Development Impact Test guidance	No	p.9

[1] Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Enactment).

No.	Legislation or publication
1	The Legal Services Act 2007
2	OLC Scheme Rules, which can be found at: http://www.legalombudsman.org.uk/downloads/documents/publications/23176_OLC_Scheme%
3	Disclosure of Information by the Office for Legal Complaints and Legal Services Board Consultation Paper, which can be found at: http://www.justice.gov.uk/consultations/docs/olc-lsb-info-disclosure.pdf
4	Disclosure of Information by the Office for Legal Complaints and Legal Services Board Consultation Response, which can be found at: http://www.justice.gov.uk/consultations/docs/disclosure-information-consultation-response.pdf

+ Add another row

Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

Annual profile of monetised costs and benefits* - (£m) constant prices

	Y_0	Y_1	Y_2	Y_3	Y_4	Y_5	Y_6	Y_7	Y_8	Y_9
Transition costs										
Annual recurring cost										
Total annual costs										
Transition benefits										
Annual recurring benefits										
Total annual benefits										

* For non-monetised benefits please see summary pages and main evidence base section



Microsoft Office
Excel Worksheet

Evidence Base (for summary sheet)

1. Introduction

Background

1. The Legal Services Act 2007 ("the 2007 Act") established the Legal Services Board ("LSB") as the new oversight regulator of legal services in England and Wales. Under the Act direct regulation of legal services remains, in the first instance, in the hands of the existing regulators, the "approved regulators"[2]. However, the Legal Services Board ("LSB") will now act as an oversight regulator of the approved regulators.

2. The 2007 Act also creates the Office for Legal Complaints ("OLC"), to handle consumer complaints about legal professionals. The OLC will take over responsibility for handling consumer complaints from the approved regulators. It will administer an ombudsman scheme to determine complaints about legal professionals that will be able to award redress where necessary.

3. These two new bodies are subject to restrictions on the circumstances in which they can disclose information acquired in the exercise of their functions. However, there are exceptions to these restrictions in both cases, as well as the power for the Lord Chancellor to make an order specifying certain persons that the OLC and LSB will be able to disclose information to.

4. The LSB assumed its statutory functions on 1 January 2010 and the OLC assumed its statutory functions on 6 October 2010.

5. A consultation was carried out to identify the bodies that may need to receive disclosed information from the OLC and LSB. As a result, 9 bodies are to be included in the Order, thereby allowing the OLC and LSB to share information with those bodies. These are:
   - The Office of Fair Trading
   - The Financial Services Authority
   - The Financial Reporting Council
   - The Claims Management Regulator
   - The Law Society of Scotland
   - The Scottish Legal Complaints Commission
   - The Law Society of Northern Ireland
   - The Insolvency Service
   - The Bar Council of Northern Ireland
6. It is contended that all of these bodies might benefit from receiving information that the OLC and/or LSB will gather in the course of investigating complaints about legal professionals. Most of them currently receive information pertaining to legal professionals that an approved regulator is investigating, although with varying frequency. They would all like to retain the ability to receive such information once the OLC takes over complaints-handling.

7. The order will set out the persons that should receive information as well as stating the purposes for which the OLC and/or LSB will be able to disclose information to these persons.

[2] Initially the bodies listed in Part 1 of Schedule 4 to the 2007 Act: the Law Society, General Council of the Bar, Master of the Faculties, Institute of Legal Executives, Council for Licensed Conveyancers, Chartered Institute of Patent Attorneys, Institute of Trade Mark Attorneys and the Association of Law Costs Draftsmen. The Association of Chartered Certified Accountants and Institute of Chartered Accountants of Scotland are being added to that list by order. Other bodies may apply to become approved regulators under the procedures set out in Part 2 of Schedule 4.

Rationale for Intervention

8. The conventional economic approach to government intervention is based on efficiency or equity arguments. The Government may consider intervening if there are strong enough failures in the way markets operate ("market failures") or if there are strong enough failures in existing intervention ("institutional failures"). In both cases the proposed new intervention itself should avoid creating a further set of disproportionate costs and distortions. The Government may also intervene for equity (fairness) and distributional reasons.
9. There is an efficiency argument for enabling information to flow to regulatory bodies as those bodies will be able to perform their regulatory functions more effectively. This is because they will be able to make use of a wider set of information to investigate matters and take appropriate enforcement action.

10. Under the Legal Services Act 2007 the OLC and LSB are restricted from disclosing certain information obtained in the exercise of their functions to other persons. However, the 2007 Act also includes the power for the Lord Chancellor to make orders specifying certain persons, who exercise regulatory functions, to whom the OLC and LSB would be able to disclose information. Government intervention is necessary to lay the order enabling the OLC and LSB to disclose information to those specified bodies, to ensure the efficiency and effectiveness of the regulatory framework.

11. The LSB will undertake a new regulatory function, as outlined above. It is considered that the efficiency of the oversight regulatory framework would be improved by allowing the LSB to disclose information to certain persons (outlined in the list above).

12. To prevent any breaches of privacy and/or data protection that would arise from information sharing, protocols are in place to prevent possible adverse impacts relating to privacy: information will be disclosed and processed within established data protection principles and no significant effects on privacy are anticipated.

Affected Stakeholder groups, Organisations and Sectors

13. The persons exercising regulatory functions to be added to the Order are:

    - The Office of Fair Trading
    - The Financial Services Authority
    - The Financial Reporting Council
    - The Claims Management Regulator
    - The Law Society of Scotland
    - The Scottish Legal Complaints Commission
    - The Law Society of Northern Ireland
    - The Insolvency Service
    - The Bar Council of Northern Ireland

14. Other individuals/sectors that are likely to be affected by the proposals:

    - *The Office for Legal Complaints;*
    - *The Legal Services Board;*
    - *Approved Regulators, (as defined in Schedule 4 of the 2007 Act to include the Law Society, The General Council of the Bar and the Institute of Legal Executives) ;*
    - *Legal services providers*
    - *Consumers of legal services*
    - *Legal professionals*
    - *HM Courts Service*

2. Costs and Benefits

15. This Impact Assessment identifies both monetised and non-monetised impacts from society's perspective, with the aim of understanding what the net social impact to society might be from implementing these options. The costs and benefits of each option are compared to the do nothing option. Impact Assessments place a strong emphasis on the monetisation of costs and benefits. However there are important aspects that cannot sensibly be monetised. These might be distributional impacts on certain groups of society or changes in equity or fairness, either positive or negative.

OPTION 0: Base Case (do nothing)

16. Prior to the OLC becoming operational on 6 October 2010, consumer complaints were handled by approved regulators. The approved regulators are not restricted from disclosing information obtained in the course of investigating a complaint to other regulatory bodies. It is understood that the approved regulators do currently disclose information where they think it is relevant to the operation of another regulatory regime.

17. If the Order is not made, the OLC will be able to disclose relevant information to third party regulators. This would have adverse effects on the efficiency of the regulatory system. It would also potentially result in reduced consumer protection, regulatory matters not being investigated and enforcement action not being taken where it could have been justified.

18. The LSB will undertake a new regulatory function, as oversight regulator of the approved regulators. Since becoming operational on January 2010, the LSB has not been permitted to disclose information to third party regulators. Under the do-nothing scenario, it will continue to not be able to disclose any information to third party regulators. If an order is not made enabling the LSB to disclose this information, regulatory breaches may not be investigated by other regulators and enforcement action may not be taken where it could otherwise have been justified.

19. Because the do-nothing option is compared against itself its costs and benefits are necessarily zero, as is its Net Present Value (NPV)

OPTION 1: Make an Order under sections 152(3)(g) and 168(3)(g)

20. Making an Order under sections 152 (3) (g) and 168 (3) (g) would enable the OLC and LSB respectively to share information with other regulatory persons and bodies. The OLC and LSB will be under no obligation to disclose information to the specified bodies listed in an Order (and outlined above). They will only disclose information where it concludes that disclosure would be required to assist another regulator in discharging its duties.

Costs of Option 1

Annual costs:

21. There may be minor administrative costs to the OLC when disclosing information. It is assumed that these costs and the frequency of information disclosure would be similar to the overall levels faced by the complaints-handling bodies of the approved regulators. The increase in administrative costs compared to the current situation is therefore not expected to be significant.

22. The LSB is performing a new regulatory function. Therefore, any administrative costs faced by the LSB through information disclosure will be additional compared to the current situation. It is difficult to estimate the frequency or cost of information disclosure by the LSB, though it is anticipated that enabling the LSB to disclose information will result in a marginal increase in volumes of disclosures. However, disclosure is likely to follow enforcement action. The LSB will only take enforcement action as a last resort and it is not envisaged that this will happen frequently. Nor are the administrative costs per disclosure expected to be significant. Therefore, the overall costs faced by the LSB are not expected to be significant.

23. There may be additional costs to other regulators from an increased volume of information disclosure. This consists of administrative costs associated with processing extra information disclosures and any costs that these regulators bear in enforcement action.

24. There may be additional costs to the justice system from an increased volume of enforcement actions. As the volumes of information disclosure are expected to be marginal, these costs are expected to be minimal.

25. In the process of investigating legal professionals who are the subject of complaints, legal services providers and consumers of legal services may incur costs from being investigated, in terms of time, inconvenience and reduced privacy. These costs are expected to be minimal and are considered in the attached Privacy Impact Assessment.

Benefits of Option 1

Annual benefits:

26. If the order is laid enabling the OLC and the LSB to disclose information to other regulators, channels of communication between the OLC and other relevant regulators will be supported. This could enhance the overall efficiency and effectiveness of the wider regulatory framework.

27. Regulators will benefit from being able to obtain the information they require from one complaints-handling body (the OLC). Under the previous complaints-handling system, regulators would have needed to share information with numerous legal complaints-handling bodies. Regulators will therefore benefit from streamlined channels of communication.

28. Regulators may benefit from additional information, resulting in more informed decisions and potentially resulting in enforcement action.

29. Consumers may benefit from better communication between regulators and from the higher number of complaints investigated as a result of the OLC and LSB being able to share information with other regulators. Consumers may also benefit from the increase in the level of consumer protection brought about by a more efficient oversight regulatory system. There may also be benefits to consumers as this proposal may increase the probability of action against legal services providers who breach the rules of professional service and conduct. This will result in higher standards of professional conduct. These benefits to consumers would only arise if additional enforcement action is taken as a result of this proposal.

Net impact of Option 1

30. It has not been possible to quantify the costs or benefits associated with making this Order as we cannot predict the number or nature of disclosures made, or if these would result in additional enforcement action. However, the identified impacts set out above suggest that any costs compared to the current situation should be minimal. The benefits are considered to outweigh the costs.

3. Specific Impact Tests

Statutory equality duties

An Equalities Impact Assessment (EIA) is attached.

Competition Assessment

It is considered that there will be a minimal impact on competition from the implementation of this policy. There may also be benefits to businesses as this proposal will increase the probability of action against legal services providers who breach the rules of professional service and conduct. This will result in higher standards of professional conduct and a fairer environment for providers of legal services.

Small Firms Impact Test

Information obtained by the OLC and LSB in the exercise of their functions (principally during the investigation of complaints) will be disclosed to other regulators. It is considered that this will impact on all legal services firms, including small legal services firms.

Carbon Assessment

It is not considered that there will be any impact on Carbon Emissions from the implementation of this policy.

Other Environment

It is not considered that there will be any environmental impact from the implementation of this policy.

Health Impact Assessment

It is not considered that there will be any impact on human health from the implementation of this policy.

Human Rights

The policy is Human Rights Act compliant.

Justice Impact Test

It is considered that there may be a minimal impact on the justice system from some additional enforcement proceedings taken forward as a result of information disclosure to the specified regulatory bodies.

Rural proofing

It is not considered that there will be any rural impact from the implementation of this policy.

Sustainable Development

It is considered that this policy will contribute towards sustainable development principles including promoting good governance and ensuring a strong, just and healthy society.

Privacy Impact Test (an MoJ Specific Impact Test)

A privacy impact assessment is attached.

Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added where the Specific Impact Tests yield information relevant to an overall understanding of policy options.

Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

Basis of the review: [The basis of the review could be statutory (forming part of the legislation), it could be to review existing policy or there could be a political commitment to review]; N/A
Review objective: [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?] N/A
Review approach and rationale: [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach] N/A
Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured] N/A
Success criteria: [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives] N/A
Monitoring information arrangements: [Provide further details of the planned/existing arrangements in place that will allow a systematic collection of monitoring information for future policy review] N/A
Reasons for not planning a PIR: [If there is no plan to do a PIR please provide reasons here] It has been agreed with the OLC and LSB that a specific PIR does not need to be completed for this policy. This is because a wider review of the OLC and LSB is planned and it would be more practical to review this policy as part of the wider review in 2012.