

Consultation on Section 80 order

A consultation on a proposed order and recommendation to the Lord Chancellor to be made under Section 80 of the Legal Services Act 2007 for licensing authority appeal arrangements for CILEx Regulation on behalf of the Chartered Institute of Legal Executives (**CILEx**)

This consultation will close on **16 November 2018 at 5pm**

This Consultation Paper will be of interest to:

Approved regulators

Providers of legal services

Legal representative bodies

Legal advisory organisations

Other third sector organisations

Non-departmental public bodies

Consumer groups

Members of the legal profession

Potential new entrants to the legal services market

Government departments

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Introduction

Consultation by the Legal Services Board

1. The Legal Services Act 2007 (**the Act**) gives the Legal Services Board (**LSB**) a power to recommend to the Lord Chancellor the designation of approved regulators as licensing authorities to license and regulate Alternative Business Structures (**ABS**).
2. In order to be designated as a licensing authority, there must be in place an appellate body to hear and determine appeals from the decisions of the licensing authority. Section 80 of the Act is the mechanism by which the Lord Chancellor may by order establish a body to hear and determine such appeals. Such an order can only be made on the recommendation of the LSB.¹ Section 81 of the Act sets out the procedural requirements for such orders and includes the requirement for the LSB to consult on both the proposed recommendation and the proposed order. Any order made by the Lord Chancellor under section 80 of the Act must be made by statutory instrument through the affirmative procedure, i.e. approved by both the House of Commons and the House of Lords, to become law.
3. This consultation, which will last for four weeks (closing date 16 November 2018), invites representations on a draft statutory instrument and a supporting recommendation proposed under section 80 of the Act. The order relates to CILEx Regulation's application (on behalf of CILEx) to become a licensing authority for the existing reserved legal activities undertaken by Chartered Legal Executives and/or CILEx Practitioners.² The LSB recommended the application be approved and the Lord Chancellor accepted that recommendation. CILEx is an approved regulator under the Act, and has historically regulated the conduct of Chartered Legal Executives. In view of the Act's requirement for separation of representative and regulatory functions, CILEx established and delegated its regulatory functions to CILEx Regulation.
4. CILEx Regulation, having consulted on the matter (see paragraphs 12 and 13 below), proposes in its licensing authority application that appeals relating to licensing decisions should be heard by the General Regulatory Chamber of the First-tier Tribunal (**FTT**).³ The proposed draft recommendation and draft order on

¹ A recommendation can only be made by the LSB under section 80 of the Act with the consent of that approved regulator.

² CILEx Regulation is an approved regulator for the following reserved legal activities: the exercise of right of audience, the conduct of litigation, reserved instrument activities, probate activities, the administration of oaths.

³ Licensing decisions encompass those decisions made by CILEX Regulation as a licensing authority that are appealable under its regulatory arrangements.

which we are now inviting representations would establish the FTT as the appellate body to hear and determine such appeals.

5. The draft order and the draft recommendation made to the Lord Chancellor can be found at **Annex A**. Representations are welcomed from respondents about the proposals in the draft order and draft recommendation; specific questions are set out below at paragraphs 23 and 24.
6. As required in support of policy proposals, CILEx Regulation has prepared a draft justice impact test to accompany the draft order, which summarises the rationale for the order.⁴ This can be found at **Annex B**. Respondents are also invited to comment on the justice impact test.
7. Any representations about the proposals should be made by 5pm on 16 November 2018. Further details on how to make representations can be found on page 10.

⁴ A justice impact test is a mandatory specific impact test, as part of the impact assessment process that considers the impact of government policy and legislative proposals on the justice system.

Policy rationale for a single appellate body to hear and determine appeals

8. The LSB first consulted on the proposal for a single appellate body to hear all appeals on licensing authority decisions by ABS in the *Approaches to Licensing* consultation in November 2009.⁵ The LSB proposed that appeals should be heard by the FTT with the paper setting out the rationale for this approach, and an analysis of the options.
9. In August 2010, the LSB published a further consultation document *Alternative business structures: appeal arrangements*.⁶ This set out our detailed proposals for providing a single mechanism for hearing appeals against decisions made by licensing authorities. The proposal that appeals should be heard by the FTT received broad support from consultees, as reflected in our response to the consultation.⁷
10. Six approved regulators have so far been designated as licensing authorities. The Council for Licensed Conveyancers, the Institute of Chartered Accountants in England and Wales, and the Chartered Institute of Patent Attorneys (**CIPA**), the Institute of Trade Mark Attorneys (**ITMA**) (CIPA and ITMA's regulatory functions are delegated to the Intellectual property Regulation Board) and the General Council of the Bar, all elected to use the FTT as their appellate body. The Law Society (whose regulatory functions are delegated to the Solicitors Regulation Authority) was designated as a licensing authority and elected to use its existing disciplinary body, the Solicitors Disciplinary Tribunal, as its appellate body.
11. Notwithstanding this different approach we remain of the view that in order to mitigate the risk of inconsistent decisions and penalties being made in respect of, and imposed on ABS, all appeals against decisions made by licensing authorities should be heard and determined by a single body. The LSB supports the approach taken by CILEx Regulation in using the FTT as its appellate body for appeals against licensing decisions.
12. This consultation is not concerned with the policy. CILEx Regulation, as part of the development of its application for designation as a licensing authority,

⁵See: Alternative business structures: approaches to licensing - draft guidance consultation paper http://www.legalservicesboard.org.uk/what_we_do/consultations/2009/pdf/consultation_181009.pdf

⁶See: Alternative business structures: appeal arrangements – consultation paper http://www.legalservicesboard.org.uk/news_publications/latest_news/pdf/abs_appeals_sdt_consultation.pdf

⁷See: Alternative business structures: appeal arrangements http://www.legalservicesboard.org.uk/news_publications/latest_news/pdf/20110509_absappeals_decision_doc.pdf

consulted on the proposal to use the FTT as its appellate body for appeals against licensing decisions.⁸

13. Following the conclusion of its consultation, CILEx Regulation considered the position in relation to appeals and confirmed within its application to become a licensing authority that it intended for the FTT to be the appellate body for appeals against licensing decisions.

Background to the CILEx Regulation designation application

14. CILEx is an approved regulator under the Act. In order to meet the requirements for separation of regulatory and representative functions,⁹ CILEx has established a regulatory body, CILEx Regulation (formerly known as ILEX Professional Standards). While the proposed order makes modifications to the functions of CILEx, in the remainder of this paper reference to CILEx Regulation is made when describing the exercise of its regulatory functions.
15. Under the Act, CILEx Regulation authorises Chartered Legal Executives and CILEx Practitioners to carry out reserved legal activities. In 2015, CILEx Regulation started registering and regulating entities in its capacity as an approved regulator. In December 2015, CILEx Regulation issued a consultation document on becoming a licensing authority for ABS. Following the consultation CILEx Regulation concluded it should submit an application to the LSB.
16. In August 2017, CILEx Regulation made an application to the LSB seeking designation as a licensing authority under Part 1 of Schedule 10 to the Act in respect of those reserved activities for which it is an approved regulator.¹⁰ The full designation application, as well as a summary prepared by the LSB and the decision notice have been published on the LSB website.¹¹ The application has been granted and a recommendation was made to the Lord Chancellor that CILEx Regulation be designated as a licensing authority. The Lord Chancellor accepted that recommendation on 11 July 2018.

⁸ Licensing decisions encompass those decisions made by CILEX Regulation as a licensing authority that are appealable under its regulatory arrangements.

(https://www.cilexregulation.org.uk/~media/pdf_documents/cilex-regulation/consultations/closed-consultations/idar-consultation-june-2017/consultation-idar-changes-june-2017.pdf)

⁹ Internal governance rules:

http://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/Internal_Governance_Rules_Version%203_Final.pdf

¹⁰ The exercise of a right of audience, the conduct of litigation, reserved instrument activities, probate activities, and the administration of oaths

¹¹ See: Current designation applications – reference number 2017/CILEx Regulation

http://www.legalservicesboard.org.uk/Projects/statutory_decision_making/current_designation_applications.htm

CILEx Regulation Section 80 order

17. A section 80 order is required to establish the FTT as the appellate body to hear and determine appeals against licensing authority decisions by CILEx Regulation.
18. This consultation now seeks representations about the proposals in the draft statutory instrument and the related recommendation which will give effect to the proposal.

What the order seeks to do

19. The order under section 80 of the Act would establish the FTT as the relevant appellate body.¹² Article 4 gives CILEx Regulation the power (but would not require it) to create a right of appeal to the FTT against decisions that it makes as a licensing authority. It also gives the FTT the power to uphold, overturn, alter or remit decisions to CILEx Regulation once the appeal has been heard.

Rationale

20. The proposal facilitates CILEx Regulation's intent, as set out in its application for designation as a licensing authority, and its subsequent consultation on amendment to its powers that the FTT hears appeals against its decisions related to licensing.
21. To be designated as a licensing authority there needs to be an appellate body in place. The LSB has previously expressed the view that the FTT appears to be the most appropriate body to hear appeals against decisions by licensing authorities.¹³ CILEx Regulation has confirmed it is its intention that the appeals discussed above will go to the FTT.
22. Any change to the approach proposed by CILEx Regulation would involve a change to its regulatory arrangements requiring consultation by CILEx Regulation and approval by the LSB as per the procedure set out in the Act¹⁴ and associated rules made by the LSB.¹⁵ This would include consideration of whether CILEx Regulation's proposal was consistent with the terms of the order.

¹² Appeals in the first instance are proposed to be heard by CILEx Regulation's Appeals Panel.

¹³ See: Alternative business structures: appeal arrangements

http://www.legalservicesboard.org.uk/news_publications/latest_news/pdf/20110509_absappeals_decision_doc.pdf

¹⁴ See Part 3 of Schedule 4 to the Act

¹⁵ See: Rules for rule change

applications http://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/rules_for_rule_change_applications_v2_November2010.pdf

The draft recommendation and order

23. **Annex A** contains the draft recommendation and the draft order.

Question 1: *Do you have any representations on the draft order?*

Question 2: *Does the draft order deliver the CILEx Regulation policy intention of allowing the FTT to be established to hear and determine appeals from decisions made by CILEx Regulation in its capacity as a licensing authority?*

Justice Impact Test

24. A draft Justice Impact Test has been prepared by CILEx Regulation to accompany the order. **Annex B** contains the draft justice impact test on which views from respondents would also be welcome.

Question 3: *Do you have any comments on the draft justice impact test, in particular, the costs/benefits estimates and whether any additional costs/benefits should also be identified?*

How to make representations

25. We would prefer to receive responses electronically (in Microsoft word or PDF format), but hard copy responses by post or fax are also welcome. Responses should be sent to:

Post: Consultation Co-ordinator
Legal Services Board
One Kemble Street
London
WC2B 4AN

Fax number: 020 7271 0051

Email: consultations@legalservicesboard.org.uk

26. The consultation period will end at **5pm on 16 November 2018** four weeks after publication. In accordance with section 81(3) of the 2007 Act, you are given notice that any representation about the proposed section 80 order must be made to the LSB by the end of this period.

27. The LSB is happy to meet respondents to discuss views on the consultation if you would find that helpful. Please send requests to:
consultations@legalservicesboard.org.uk

28. We consider that this consultation satisfies the requirements of section 81 of the 2007 Act to publish a proposed draft order and proposed draft recommendation before making a recommendation to the Lord Chancellor under section 80.

29. The LSB plans to publish all responses received during the consultation period on its website. While the LSB is happy to discuss varying this general policy in individual cases, there is a strong presumption in favour of transparency. It will therefore note publicly that a submission has been received from an identified body which had withheld its consent for publication in the summary of the consultation.

Complaints

30. Complaints or queries about the LSB's consultation process should be directed to the Consultation Co-ordinator, at the following address:

Consultation Co-ordinator
Legal Services Board
One Kemble Street
London WC2B 4AN

Or by e-mail to: consultations@legalservicesboard.org.uk

Annex A – Draft recommendation to the Lord Chancellor and draft section 80 order

Draft recommendation by the LSB to the Lord Chancellor under section 80 or the Legal Services Act 2007

Proposed recommendation for the Chartered Institute of Legal Executives

1. At its meeting on **XX XXXXXXXX 2018** the Legal Services Board decided to make a recommendation to the Lord Chancellor that he make an order under section 80 of the Legal Services Act 2007 (**the Act**) that the First-tier Tribunal may hear and determine appeals against the decisions made by CILEx acting in its capacity as a licensing authority (should it be designated as such). A draft of the order is attached to this recommendation at **Annex XX**.
2. In accordance with the requirements of section 81(2) of the Act, the Board published a draft of the proposed recommendation and draft order on **[DATE]** and invited representations about the proposals to be made to the Board by **[DATE]**. **DELETE ONE: [The Board has had regard to the representations duly made] or [no representations were received]**.
3. **[DELETE paragraph if no changes to the recommendation to the order in light of the consultation representations]**. In accordance with the requirements of section 81(5) of the Act, the draft order annexed to the recommendation differs from the draft published under subsection 2(b) in a way in which in the option of the Board, is material. The Board has therefore, before making the recommendation published on its website, published the draft order along with a statement detailing the changes made and the reasons for those changes.
4. In accordance with section 81(1) of the Act, the recommendation is made with the consent of CILEx Regulation.

Chair, Legal Services Board

[DATE]

DRAFT STATUTORY INSTRUMENTS

2018 No.

LEGAL SERVICES, ENGLAND AND WALES

The Legal Services Act 2007 (Chartered Institute of Legal Executives) (Appeals from Licensing Authority Decisions) Order 2018

Made - - - - - ***

Coming into force in accordance with article 1- -

The Lord Chancellor, in exercise of the powers conferred by sections 80(1)(b), (4) and (5) and 204(3) and (4) of the Legal Services Act 2007(16), makes the following Order.

In accordance with section 80(3) of that Act, this Order is made following a recommendation made by the Legal Services Board to which was annexed a draft order in a form not materially different from this Order.

The Legal Services Board has made its recommendation under section 80 of that Act with the consents required by section 81(1) of that Act and after complying with the requirements in section 81(2) to (5) of that Act.

A draft of this Order has been approved by resolution of each House of Parliament pursuant to section 206(4) and (5) of the Legal Services Act 2007.

Citation and commencement

—(1) This Order may be cited as the Legal Services Act 2007 (Chartered Institute of Legal Executives) (Appeals from Licensing Authority Decisions) Order 2018.

Except as provided under paragraph (3), this Order comes into force on [date] [the day after the day on which it is made].

Articles 4 and 5 of this Order—

do not have effect unless an order is made designating CILEx as a licensing authority under Part 1 of Schedule 10 to the 2007 Act in relation to one or more reserved legal activities; and where such an order is made, come into force at the same time as that order.

Interpretation

In this Order—

“the 2007 Act” means the Legal Services Act 2007;

“CILEx” means the Chartered Institute of Legal Executives.

Application

This Order applies to appeals from decisions made by CILEx in its capacity as a licensing authority.

Appeals to be made to the First-tier Tribunal

—(2) The First-tier Tribunal may hear and determine appeals from decisions made by CILEx which are appealable under any provision of—

Part 5 of the 2007 Act; or

CILEx’s licensing rules(17).

The First-tier Tribunal may suspend the effect of a decision of CILEx (whether or not the decision has already taken effect) while an appeal against that decision has been brought and has not yet been finally determined or withdrawn.

The First-tier Tribunal may, in relation to appeals from decisions which are appealable under the licensing rules—

affirm CILEx’s decision in whole or in part;

quash CILEx’s decision in whole or in part;

substitute for all or part of CILEx’s decision another decision of a kind that CILEx could have taken; or

remit the matter to CILEx (generally, or for determination in accordance with a finding made or direction given by the First-tier Tribunal).

Modifications to the 2007 Act

The Schedule to this Order (which modifies provisions of the 2007 Act) has effect.

Signed by authority of the Lord Chancellor

Date

Name
Parliamentary Under Secretary of State
Ministry of Justice

SCHEDULE

Article 5

Modifications to the 2007 Act

Modifications to section 96 of the 2007 Act

1. Section 96 of the 2007 Act (appeals against financial penalties) has effect in relation to a penalty imposed by CILEx as if—

in subsection (1), “, before the end of such period as may be prescribed by rules made by the Board,” were omitted;

subsections (6) and (7) were omitted; and

for subsection (8) there were substituted—

(b) Section 83 of the 2007 Act defines and makes other provisions relating to licensing rules. By reason of article 4, the First-tier Tribunal is the “relevant appellate body” as defined in section 111 of the 2007 Act.

“(8) Except as provided by this section or Part 1 of the Tribunals, Courts and Enforcement Act 2007, the validity of a penalty is not to be questioned by any legal proceedings whatever.”

Modifications to Schedule 13 to the 2007 Act

—(1) Schedule 13 (ownership of licensed bodies) to the 2007 Act has effect in relation to decisions of CILEx with the following modifications.

Paragraph 18 (appeal from decision to approve notified interest subject to conditions) has effect as if—
in sub-paragraph (1), “before the end of the prescribed period” were omitted;
sub-paragraphs (3) and (4) were omitted; and
in sub-paragraph (5), after “an appeal under this paragraph” there were inserted “or Part 1 of the Tribunals, Courts and Enforcement Act 2007”.

Paragraph 20 (appeal from decision to object to a notified interest) has effect as if—
in sub-paragraph (1), “before the end of the prescribed period” were omitted;
sub-paragraphs (3) and (4) were omitted; and
in sub-paragraph (5), after “an appeal under this paragraph” there were inserted “or Part 1 of the Tribunals, Courts and Enforcement Act 2007”.

Paragraph 29 (appeal from decision to approve a notifiable interest subject to conditions) has effect as if—
in sub-paragraph (1), “before the end of the prescribed period” were omitted;
sub-paragraphs (3) and (4) were omitted; and
in sub-paragraph (5), after “an appeal under this paragraph” there were inserted “or Part 1 of the Tribunals, Courts and Enforcement Act 2007”.

Paragraph 32 (appeal from decision to object to acquisition of a notifiable interest) has effect as if—
in sub-paragraph (1), “before the end of the prescribed period” were omitted;
sub-paragraphs (3) and (4) were omitted; and
in sub-paragraph (5), after “an appeal under this paragraph” there were inserted “or Part 1 of the Tribunals, Courts and Enforcement Act 2007”.

Paragraph 34 (appeal from decision to impose conditions (or further conditions) on existing restricted interest) has effect as if—
in sub-paragraph (1), “before the end of the prescribed period” were omitted;
sub-paragraphs (3) and (4) were omitted; and
in sub-paragraph (5), after “an appeal under this paragraph” there were inserted “or Part 1 of the Tribunals, Courts and Enforcement Act 2007”.

Paragraph 37 (appeal from decision to object to existing restricted interest) has effect as if—
in sub-paragraph (1), “before the end of the prescribed period” were omitted;
sub-paragraphs (4) and (5) were omitted; and
in sub-paragraph (6), after “an appeal under this paragraph” there were inserted “or Part 1 of the Tribunals, Courts and Enforcement Act 2007”.

Paragraph 47 (notifying the Board of objection or condition as to a person’s holding of a restricted interest) has effect as if, in sub-paragraph (4), for “to the High Court” there were substituted “under Part 1 of the Tribunals, Courts and Enforcement Act 2007”.

Paragraph 48 (notifying the Board of approval of the holding of a restricted interest by a person included in the Board’s list of persons subject to objections and conditions) has effect as if, in sub-paragraph (3), for “to the High Court” there were substituted “under Part 1 of the Tribunals, Courts and Enforcement Act 2007”.

Paragraph 50 (appeal from decision to notify the Board where share limit or voting limit breached) has effect as if—
in sub-paragraph (1), “before the end of the prescribed period” were omitted;

sub-paragraphs (3) and (4) were omitted; and

in sub-paragraph (5), after “an appeal under this paragraph” there were inserted “or Part 1 of the Tribunals, Courts and Enforcement Act 2007”.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision under section 80 of the Legal Services Act 2007 (c. 29) (“the 2007 Act”) for the First-tier Tribunal to hear and determine appeals from decisions made by the Chartered Institute of Legal Executives (“CILEx”) in its capacity as a licensing authority. Licensing authorities regulate licensed bodies under the provisions of Part 5 of the 2007 Act (alternative business structures). The decisions are those which are appealable under Part 5 of the 2007 Act or under CILEx’s licensing rules. Section 83 of the 2007 Act defines licensing rules as rules about the licensing and regulation of licensed bodies. A separate order will designate CILEx as a licensing authority.

Article 4 provides for such appeals to be heard and determined by the First-tier Tribunal and sets out the powers of the First-tier Tribunal in relation to an appeal under the licensing rules. The 2007 Act provides for the grounds of appeal and the First-tier Tribunal’s powers in relation to an appeal under Part 5 of the 2007 Act.

Certain provisions of the 2007 Act are modified by article 5 of, and the Schedule to, this Order in relation to appeals against decisions of CILEx. The modifications take account of the provision in Part 1 of the Tribunals, Courts and Enforcement Act 2007 (c. 15) for appeals from the First-tier Tribunal to go to the Upper Tribunal.

An impact assessment has not been produced for this Order as no, or no significant, impact on the private, voluntary or public sector is foreseen.

Annex B: Draft justice impact test

CILEx Regulation analysis of impacts in respect of an order to be made under Section 80 of the Legal Services Act 2007 (so that the First-tier Tribunal may hear and determine appeals against the decisions made by CILEx Regulation acting in its capacity as a licensing authority (should it be designated as such))



Before you complete this form, please read the Justice Impact Test Guidance, and ensure that the content has been discussed with your analytical, finance and legal departments. It is available at: <https://www.gov.uk/government/publications/justice-impact-test>

Please answer as many questions as possible on this form before you contact the Ministry of Justice (MoJ). If exact figures are not yet known, please provide your best estimates along with any evidence and assumptions you have based these on. When submitting this form, allow at least 20 working days for a response. If there are considered to be no impacts arising from your proposals, MoJ will agree this with you and no further correspondence will be required. However, if MoJ identifies a potential impact, you will be contacted to discuss and agree an estimate of costs including funding arrangements for the additional costs. In both cases, the outcome must be included in the Impact Assessment accompanying your final proposals.



1. Your contact details

Name

Department / office / business area

Telephone number

Email address

By when would you like a response?

2. General information

2.1. Please provide contact details of your lead analyst for the cost appraisal, and the Ministry of Justice policy/operational lead if known.

2.2. In brief, what is your proposal? (no more than half a page please)

CILEx Regulation is seeking to become a Licensing Authority for ABS entities and will require an appellate jurisdiction for certain regulatory decisions relating to the authorisation of ABS entities before CILEx Regulation (on behalf of the Chartered Institute of Legal Executives) can be designated as a Licensing Authority.

CILEx Regulation wishes to create a new appellate jurisdiction for the First Tier Tribunal of the General Regulatory Chamber relating to appeals under the Legal Services Act 2007. This relates to decisions about whether to authorise ABS entities, whether to approve owners and managers as suitable, whether to impose conditions on authorisation and whether to withdraw authorisations etc. The statutory appeals process comes from Schedule 11 of the Act.

2.3. Please specify the/any relevant legislation/Bill

An order under s80 of the Legal Services Act 2007 to create an appellate body for certain regulatory decisions relating to ABS entities once the Chartered Institute of Legal Executives becomes a Licensing Authority under Part 5 of that Act.

2.4. Please advise when the changes are expected to be introduced, and when MoJ are likely to be impacted.

TBC – estimated around January 2018?? (then see below)

2.5. If introducing a new offence, sanction or penalty, which of the following groups will the proposal affect? (Tick all that apply)

- Individuals
- Private Institutions (e.g. Businesses)
- Public Institutions (e.g. Government Departments)

2.6. What is your proposal intended to achieve, and in what timescale?

The proposal is seeking to create an appellate jurisdiction for the First Tier Tribunal of the General Regulatory Chamber for certain regulatory decisions relating to the authorisation of ABS entities by the Chartered Institute of Legal Executives under the Legal Services Act 2007. This should be in place by around January 2018 subject to LSB approval (TBC – depending on legislation being in force by then)

2.7. Which geographical area/s will this proposal affect? (Tick all that apply). Please note that, with the exception of tribunals, MoJ administers the justice system in England and Wales only. Please contact the Scotland Office or Northern Ireland Office if you anticipate your proposal will have an impact on courts or prisons in those jurisdictions.

- England
- Wales
- Scotland

Northern Ireland

Other (Please Specify)

2.8. What public commitments have been given, when were they made, and to whom? If not, are any commitments expected to be made prior to publishing an impact assessment?

CILEx Regulation will be proposing this policy within its application to the LSB to be designated as an ABS Licensing Authority. An appellate jurisdiction must be established before CILEx Regulation (acting on behalf of the CILEx) can be designated as a Licensing Authority.

2.9. What are the options under consideration and how does this change what happens now?

Only one option under consideration.

2.10. If you are creating a new civil sanction or penalty which court or tribunal, in your opinion, should deal with it?

N/A

2.11. Who will be affected by the new sanction/penalty?

Licensed Bodies - no more than two appeals in the first five years.

3. Criminal Offences and Civil Penalties and Sanctions

3.1. Which of the following are you creating/amending? (Tick all that apply)

Civil Sanctions

Fixed Penalties

Civil Orders

Criminal Sanctions

Criminal Offences

Other (Please Specify)

3.2. If you are creating a criminal offence, is it:

- Summary Only
- Triable Either Way
- Indictable Only

3.3. What is the anticipated number of cases per year? Please provide details of any evidence of assumptions on which estimates are based.

N/A

3.4. What proportion of offenders will be tried in the Crown Court and what proportion will be tried in the Magistrates' Court?

N/A

3.5. Please state the maximum associated fine and/or custodial penalties. In the case of offences involving penalties of a fine and custody or both, then please indicate and justify the likelihood of receiving a custodial sentence upon conviction.

N/A

3.6. Please provide details of any proxy or current offences and/or penalties on which the proposed penalties are based.

N/A

3.7. Please provide details of the relevant legislation (where appropriate) and confirm whether the creation or amendment of criminal offences and penalties has been agreed in line with the guidance available at <https://www.gov.uk/government/publications/making-new-criminal-offences>

N/A

4. HM Courts & Tribunals Service

Estimating the change to caseload of the Courts and Tribunals Service

4.1. Do you expect there to be a change in Court or Tribunals process or an increase/decrease in applications/cases to HM Courts and Tribunals Service through the creation or amendment of this law? Please provide an estimate of the change to volumes of cases going through the court system as a whole, explain any changes in process and outline the evidence and sources that support these estimates.

We do not believe that there would be any change in process or increase in applications, as we estimate that there will be no more than 2 appeals within the first five years. This number of appeals is based on the modest forecast we have for new Licensed Bodies, which will be within our Business plan.

4.2. Please confirm if the courts would be under any duty to inform any regulatory authorities of any convictions made under this offence.

No

Yes (please provide details)

Appeal Rights

4.3. Does your proposal create a new right of appeal or expand an existing jurisdiction in the Unified Tribunals System or route to judicial review? If so, how do you expect these to be handled (i.e. administered by HM Courts & Tribunals Service)?

Yes, this proposal will create a new appeal to the FTT. We expect that the appeals will be handled in a similar way to those that are already in place for the other Approved Regulators and Licensing Authorities under the Legal Services Act 2007.

4.4. Do you expect to establish a new tribunal jurisdiction? If so, has this been discussed with the Ministry of Justice?

We would suggest that the new appeal rights are incorporated into the jurisdiction of the General Regulatory Chamber of the First Tier Tribunal.

Alternative Dispute Resolution

4.5. Has the use of alternative dispute resolution (ADR) procedures (including mediation) been considered? If not, why not?

No as this is not an appropriate alternative for appeals against regulatory decisions.

Prosecution and Enforcement

4.6. If the proposal is to add a new offence, will the Crown Prosecution Service act to prosecute defendants? If not, please state who will do so.

N/A

4.7. Will the proposal require enforcement mechanisms for civil debts, civil sanctions or criminal penalties? If yes, who do you expect to enforce these?

No

HMCTS Procedural Rules, Sentencing and Penalty Guidelines

4.8. Do you anticipate that Court and/or Tribunal procedural rules will have to be amended? If so, when is the likely date for the changes?

No

4.9. Will the proposals require sentencing and/or penalty guidelines to be amended?

No

5. Legal Aid

5.1. Once implemented, is your proposal likely to require individuals to seek legal advice and to apply for legal aid in any of the following areas? In each case please provide supporting evidence.

- Criminal
- Civil (including Family)
- Asylum
- Legal aid not available (please provide supporting evidence)

No

5.2. If legal aid may be affected, would legal aid costs increase or be reduced (and by what margin)?

N/A

6. Prisons and Offender Management Services

Impact on HM Prison Services

6.1. Will the proposals result in an increase in the number of offenders being committed to custody (including on remand) or probation (and community sentences)? If so, please provide an estimate and reasoning behind it, an estimated timeframe to reach this number of sentences, what evidence this is based on, and its source.

No

6.2. Does the proposal create or edit an existing offence with a custodial or probationary sentence, or change the way offenders go through the prison/probation service? If so, please provide details, including the expected impact on probationary services.

No

7. Summary

7.1. Volumes and Costs (please lengthen if necessary):

Who will be affected by this proposal in MoJ? (details from information provided above)	Volumes (please provide numeric estimates or ranges)	Type (e.g. prison place, tribunal hearing, fixed penalty, etc.)	Estimated costs (£)
Criminal Offences and Sanctions	N/A		
Civil Penalties	N/A		
HM Courts & Tribunals Services	2 within first 5 years	Tribunal Hearing	
Legal Aid	N/A		

7.2. Prisons and Offender Management Services (lengthen if necessary, only complete if maximum penalty is something other than a fine):

Offence	Maximum Penalty	No. of prosecutions brought per annum	Likely proportion sentenced to immediate custody	Likely average custodial sentence length given	Estimated costs (£)
N/A					

Please be aware that your department may be required to meet any costs incurred by the MoJ as a result of any changes/additional work that is created by the introduction of this proposal.