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## **Economic Advice on Likely Market Impacts of Changes to Regulation - 2010-2015**

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<sup>1</sup> Director, Oxford Economic Consulting Ltd. and Barrister, Serle Court, respectively, both of whom would like to thank Mr. Robert Cross and Mr. Paul Greening and other LSB staff for their generous help with this project. It is however the authors that remain fully responsible for the content of this independent analysis.

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## **Glossary**

“1s” - less important measures (changes to regulation)

“2s” - intermediate measures (changes to regulation)

“3s” - important measures (changes to regulation)

Act - The 2007 Legal Services Act

ARs - Approved Regulators

BSB - Bar Standards Board

CLC - Council for Licensed Conveyancers

CLSB - Costs Lawyer Standards Board

CMA - Competition and Markets Authority

CS - composition of supply

ICAEW - Institute of Chartered Accountants in England and Wales

II - intended impacts

IPREG - Intellectual Property Regulation Board

IPS/CILEX Reg - ILEX (Institute of Legal Executives) Professional Standards (IPS) / Chartered Institute of Legal Executives Regulation.

LeO - Legal Ombudsman

LSB - the Legal Services Board (the LSB)

MF - market functioning

MO - market outcomes

MoF - Master of the Faculties

OFT - Office of Fair Trading

Oxecon - Oxford Economic Consulting (Oxecon) Ltd.

RPI - Regulatory Policy Institute

SDT - Solicitors Disciplinary Tribunal

SRA - Solicitors Regulation Authority

## Executive Summary

1. The objectives of this report were to assess the likely cumulative market impacts of changes to regulation processed by the LSB between January 2010 and October 2015 and to understand how these changes can be expected to have acted as drivers for change in the legal services market.
2. In the period under consideration, the LSB processed **195 applications** (192 from the ARs and three from the SDT and LeO), that is, on average, almost exactly 40 applications per year, of which 178 became changes in regulation. Among them there were 6 designations (5 recommended to the Lord Chancellor, one allowed in part), 81 rule changes and 91 exemptions<sup>2</sup>.
3. **Our approach** consisted in:
  - **grading**, in collaboration with LSB staff, all individual changes to regulation as important, intermediate and less important; and
  - **mapping the intended impacts onto likely market impacts**, which we defined following earlier work done for the LSB by Oxera.
4. **Our analysis showed** that:
  - the **most affected professions** in terms of all measures were solicitors (35%), then barristers (20%) and chartered legal executives and licensed conveyancers (both 12%). Since the largest share of changes to regulation (by number of changes) affected the largest profession (by number of lawyers), this probably strengthened the cumulative market impact of these measures;
  - in all cases apart from the most important measures, slightly more than 50 per cent of measures affected all **reserved activities**. The most affected individual reserved activities were "the exercise of a right of audience" and, "reserved instrument activities" (21 out of the remaining 87 "specific" measures), then, "probate activities" and, "the conduct of litigation"; and
  - in all categories with the exception of the most important measures more than half of the changes to regulation were not specific to a **market segment**. As far as the segment specific measures are concerned, the most affected market segments were wills, trusts and probate and conveyancing.
5. Our overall conclusion is that the **likely cumulative market impact of all changes to regulation** is by and large **procompetitive** and that **these changes can be expected to have acted as drivers for procompetitive changes** in the legal services market and relevant segments of that market.

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<sup>2</sup> "Exemptions are used where the proposed change is assessed as being of low significance, risk or impact." – the LSB Brief.

# 1. Introduction

6. The 2007 Legal Services Act (the Act) created the Legal Services Board (the LSB) as an oversight regulator of the legal services market and empowered it to supervise changes to regulation that the Approved Regulators (ARs)<sup>3</sup> proposed to introduce. In the years 2010 - 2015 the LSB processed 195 such changes<sup>4</sup> and it is now interested in **likely cumulative market impacts** of these changes. It decided that it needs "a credible assessment of how the changes to regulation can be expected to have acted as drivers for market change across all and within the different market segments; how they may have affected the functioning of the markets, the composition of supply, and ultimately market outcomes". Oxford Economic Consulting (Oxecon) Ltd. was commissioned to conduct the necessary research and prepare this report.
7. This report commences with a brief presentation of changes to regulation under consideration (Part 2) and then we will proceed to assess the challenges involved in and associated with our task as set by the LSB (Part 3). Since the LSB's own overview of changes to regulation specifies, among other things, their "intended impacts", organised in 19 categories, and the LSB is now interested in market impacts, the latter are defined and then the former will be mapped onto them. For each intended impact of a given change to regulation its likely market impact will be identified (Part 4). Part 5 will contain the actual analysis of likely cumulative market impacts of changes to regulation processed by the LSB in the years 2010 - 2015 and of the transmission mechanisms<sup>5</sup> involved. The report will end with conclusions and suggestions for further research (Part 6).

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<sup>3</sup> The approved regulators are: The Law Society, General Council of the Bar, Council for Licensed Conveyancers, The Chartered Institute of Legal Executives, The Chartered Institute of Patent Attorneys, The Institute of Trade Mark Attorneys, Association of Law Costs Draftsmen, Master of the Faculties, Association of Certified and Chartered Accountants, Institute of Chartered Accountants of Scotland, Institute of Chartered Accountants in England and Wales. Neither Legal Ombudsman (LeO) nor the Solicitors Disciplinary Tribunal (SDT) is an approved regulator, but since the Act provides that the Office for Legal Complaints (OLC) must seek the consent of the Board before making any scheme rules and for SDT the approval of the LSB is needed in relation to any changes it makes to the rules that govern its procedures the three changes to regulation initiated by these two bodies and approved by the LSB will be covered in our research. They are Applications 62 and 132 from SDT and 110 from LeO. (all application numbers are the numbers from the original LSB spreadsheet available online: <https://research.legalservicesboard.org.uk/>).

<sup>4</sup> This includes 7 designations, 5 of which were, in line with the legal provisions governing them, recommended by the LSB to the Lord Chancellor. For details see Parts 2.2 and 5.4, below. They are included here because of the LSB involvement.

<sup>5</sup> By "transmission mechanisms" we mean what the LSB called "how the changes to regulation can be expected to have acted as drivers for market change" (The LSB Brief, para 3).

## 2. Changes to regulation - an overview and impact gradation

8. In this part we will briefly provide the necessary background information related to the task of assessing likely cumulative market impact of changes to regulation processed by the LSB from January 2010, when the LSB received its powers, until October 2015. It has to be stressed that although changes to regulation were also introduced earlier, there is no comprehensive data on their numbers and content and therefore it cannot safely be concluded that the period under consideration was characterised by an unusually high level of activities. There is however no doubt that practically all changes to regulation to be analysed in this report are directly or indirectly related to the Act. In this part we present basic information on the changes themselves, such as who initiated them and when, and how they affected various professions, reserved activities and market segments. The process of making these changes can be found on the LSB website.
  
9. In the process of commissioning this research the LSB collated summary information on all the applications to change regulation received over the past five years. We used that data to consider the changes to regulation from different perspectives. There were 195 applications processed by the LSB in the years 2010 - 2015. One application was not granted or to be more specific the LSB refused to recommend to the Lord Chancellor the CLC application to become an AR to award rights of audience and rights to conduct litigation (Application 89)<sup>6</sup>. Three applications were withdrawn. The actual number of changes to regulation was however slightly smaller as 13 applications for rule changes became exemptions and they are duplicated in the spreadsheet: first as an application for a rule change that was decided to qualify for an exemption and then as an exemption. Since it is only the latter that can be considered as a change in regulation, we will not count and analyse the impacts of the first stage of this process. This leaves us with 178 changes to regulation. We will however not consider all exemptions as automatically being of low significance, risk or impact. On the basis of the data provided these 178 changes to regulation can be further looked at from the following points of view:
  1. who submitted them,
  2. when were they submitted (and when they were supposed to enter into force),
  3. their type,
  4. profession affected,
  5. reserved activities affected,
  6. market segments affected and
  7. intended impacts.

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<sup>6</sup> The LSB has not granted this application on the grounds that the CLC lacks the legal power to make rules and regulations that would allow it to authorise entities for these activities and failed to demonstrate an appropriate understanding of the specific risks of the new activities. For details see: [www.legalservicesboard.org.uk/what\\_we\\_do/regulation/rights\\_of\\_audience\\_and\\_litigation\\_application.htm](http://www.legalservicesboard.org.uk/what_we_do/regulation/rights_of_audience_and_litigation_application.htm).

*Approved Regulators and the year of changes to regulation*

8. The first two entries are summarised in Table 1<sup>7</sup>, below.

**Table 1: Changes to regulation within the scope of this report, 2010 - 2015**

Year	BSB	CLC	CLS B	ICA EW	IPR EG	IPS/ CIL Ex Reg	MoF	SDT	SRA	LeO	Tot's
<b>2010</b>	8	1	0	0	0	3	3	0	8	1	<b>24</b>
<b>2011</b>	10	8	3	0	3	3	1	2	8	0	<b>38</b>
<b>2012</b>	5	2	1	0	1	1	4	0	14	0	<b>28</b>
<b>2013</b>	6	4	3	1	0	8	1	0	8	0	<b>31</b>
<b>2014</b>	3	4	2	3	2	3	2	0	14	0	<b>33</b>
<b>2015</b>	3	3	0	1	0	3	1	0	13	0	<b>24</b>
<b>Tot's</b>	<b>35</b>	<b>22</b>	<b>9</b>	<b>5</b>	<b>6</b>	<b>21</b>	<b>12</b>	<b>2</b>	<b>65</b>	<b>1</b>	<b>178</b>

Source: The LSB spreadsheet and own calculations.

**Key:**

BSB - Bar Standards Board

CLC - Council for Licensed Conveyancers

CLSB - Costs Lawyer Standards Board

ICAEW - Institute of Chartered Accountants in England and Wales

IPREG - Intellectual Property Regulation Board

IPS/CILEX Reg - ILEX (Institute of Legal Executives) Professional Standards (IPS) / Chartered Institute of Legal Executives Regulation.

MoF - Master of the Faculties

SDT - Solicitors Disciplinary Tribunal

SRA - Solicitors Regulation Authority

<sup>7</sup> In comparison with applications within the scope of the project, the table excludes the one application that was not granted, the three applications that were withdrawn and the 13 applications that became exemptions.

10. In terms of **applicants and years in which their submissions were decided** (approved, exempted or recommended to the Lord Chancellor and became changes to regulation) the data in Table 1, above, show that the stream of what was processed by the LSB was more or less steady, peaking at 38 in 2011 and never falling below 24 (in 2010 and 2015, but the data do not cover the last two months of 2015). As far as the ARs submitting their applications are concerned, by far the most active was the SRA, which, taking into account its scope, is hardly surprising. The SRA submitted 65 applications, while the second most active AR, the BSB, submitted 35 applications. Together they accounted for 56% of changes to regulation in the period January 2010 - October 2015. The LeO and the SDT are not ARs but their 3 successful applications will be considered here, as requested by the LSB.
11. As far as their **types** are concerned, the 178 changes under consideration can be subdivided as follows:
  - 6 designations
  - 81 rule changes and
  - 91 exemptions.
12. Since in this project we are interested in impacts of changes to regulation, we will not further consider the one designation application that was not granted (ie that was not recommended by the LSB to the Lord Chancellor), which leaves us with 6 designation applications. In what follows we will not consider either the 13 rule changes applications that were granted by exemption because they are already included in the number of exemptions and to include them here would constitute double counting.
13. In theory the type of a given application is a purely formal category, but it also tells us something about the importance (relevance) of changes for which an approval is sought. For example exemptions are granted, as the LSB puts it, when the changes are considered as being of low significance, risk or impact. Such an assessment may come either from the AR submitting its application (seeking granting of an exemption) or from the LSB. The latter happens when an AR applies for a change in regulation as a rule change but the proposed change is granted an exemption. We will, however, not treat all exemptions as automatically of little relevance. On the other hand and leaving aside designations as their nature is quite different, one cannot assume that applying for a rule change implies that the intended change in regulation is going to be very important and that all changes subject to such approval procedure will be equally important. That is why, in view of the subject matter of this research, it seemed of paramount importance to be able to distinguish between measures that were important (graded “3”), intermediate (graded “2”) and less

important (graded "1")<sup>8</sup>. Such a grading exercise was performed in collaboration with the LSB staff and it was agreed that 16 changes to regulation should be graded as "3" (5 of them were designations), and an additional 29 changes to regulation should be graded "2" (one of them a designation). 133 were graded "1". We will refer to these grades throughout the remainder of this report, and although in what follows we will assess the likely market impacts of all changes, we will devote particular attention to measures graded "3" and analyse their impacts in-depth.

14. Tables 2, 3, and 4, below, are extracts from the LSB spreadsheet enhanced among other things by our grading of individual measures. Taken together with Table 1, above, these three tables give a reasonably accurate and manageable picture of changes to regulation in the period 2010 - 2015.

### *Professions*

15. In the LSB spreadsheet, changes to regulation are first reviewed from the point of view of the "**professions affected**"<sup>9</sup>. The headings were as follows:

- solicitors;
- barristers;
- chartered legal executives;
- patent attorneys;
- trademark attorneys;
- licensed conveyancers;
- cost lawyers;
- notaries; and
- accountants.

16. The solicitors are by far the most numerous group (in December 2015 there were 172,033 solicitors on the roll, of whom 132,245 were practising<sup>10</sup>), followed by barristers (in 2014 there were 15,716 in practice<sup>11</sup>). This allows us to look at the measures under consideration in two ways: professions affected in absolute terms, and taking into account the relative sizes of each and every profession. In Table 2, below, we additionally distinguish between important, intermediate and less important changes to regulation, as well as consider jointly the first two grades. Since the LSB spreadsheet identifies professions that are affected by changes to regulation either directly or indirectly, the numbers in the table take account of this distinction. Just counting professions affected, regardless of whether directly or indirectly, is obviously a very crude method of assessing likely cumulative market

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<sup>8</sup> These grades should not be interpreted as saying that the most important measures were three times more important than the less important ones and one and a half times more important than the intermediate ones. The grades simply ascribe a given measure to one of the three groups of measures, which differ from each other in accordance with the importance of measures included in them.

<sup>9</sup> Covering individual professionals and regulated entities

<sup>10</sup> [http://www.sra.org.uk/sra/how-we-work/reports/data/population\\_solicitors.page](http://www.sra.org.uk/sra/how-we-work/reports/data/population_solicitors.page)

<sup>11</sup> <https://www.barstandardsboard.org.uk/media-centre/research-and-statistics/statistics/practising-barrister-statistics/>

impacts but one has to remember that this is only one measure and any conclusions reached should be considered jointly with those drawn from all other measures elaborated in this report. The same applies to these other measures.

**Table 2: Graded changes to regulation according to profession affected**

No \ No	Grade	Solicitors	Barristers	Chartered Legal Executives	Patent Attorneys	Trademark Attorneys	Licensed Conveyancers	Costs Lawyers	Notaries	Accountants
	1	2	3	4	5	6	7	8	9	10
1	All affected directly (188) + indirectly (17)	64 + 8	37 + 5	24	6 + 1	7 + 1	23 + 1	10	12	5 + 1
2	All weighted "1s" + "2s" x 2 + "3s" x 3 (278)	102	61	32	9	11	32	12	12	8
3	"1s" (154)	47 + 3	26 + 3	17	5 + 1	4 + 1	20	10	12	4 + 1
4	"2s" (29)	12 + 2	6 + 1	6	0	1	0	1	0	0
5	"3s" (22)	5 + 3	5 + 1	1	1	1	3 + 1	0	0	1

No \ No	Grade	Solicitors	Barristers	Chartered Legal Executives	Patent Attorneys	Trademark Attorneys	Licensed Conveyancers	Costs Lawyers	Notaries	Accountants
	1	2	3	4	5	6	7	8	9	10
6	"2s" and "3s" (51)	17 + 5	11 + 2	7	1	2	3 + 1	1	0	1

Source: The LSB spreadsheet, Oxecon's calculations.

"3s" - important measures

"2s" - intermediate measures

"1s" - less important measures

NB1: In column 1 numbers in the brackets are sums of the values in columns 2 - 10 in each row.

NB2: First numbers in individual cells correspond to the numbers of measures that affected a given profession directly and the second ones – to the numbers of measures that affected it indirectly.

NB3: As explained above (see in particular Footnote 8), the values "3", "2" and "1" ascribed to important, intermediate and less important measures do not reflect their relative importance (relevance). This has to be kept in mind when looking at rows entitled "all weighted" in this and subsequent tables. This kind of "weighting", consisting in multiplying the number of measures in a given grade by the value ascribed to this grade, was introduced for purely illustrative purposes. It is supposed to show the implications

of the fact that the set of changes to regulation, under consideration in this report, is very diverse. Since we are interested above all in cumulative impacts of these changes, there is no doubt that measures identified as important contributed most to the overall impact of all measures and this simple “weighting” helps concretise it.

17. The spreadsheet identified “professions affected” for each and every change to regulation and some measures affected more than one profession (either directly or indirectly). On this basis we can say that in total there were 205 instances of such impacts, of which 188 were direct and 17 indirect. The most affected professions in terms of all measures were solicitors. They were affected by 72 measures (64 measures affected them directly), which constituted 35% of all such impacts (31% of all direct impacts). Barristers were affected by 42 measures (37 directly), which constituted 20% of impacts on professions (18% of direct impacts) Chartered legal executives and licensed conveyancers were both affected by 24 changes to regulation. The least affected were patent and trademark attorneys and accountants, each of whom were affected by ca. 3% of changes to regulation under consideration in this report. Since the largest share of changes to regulation affected the largest profession, this certainly strengthened the cumulative market impacts of these measures. Similar conclusions can be reached if we look at the implications of grading these measures. The 16 important measures affected 22 professions. 8 of them affected solicitors (5 directly) and 6 – barristers (5 directly), while 8 - the remaining 7 professions (4 affected licensed conveyancers). The effects of the 29 intermediate measures were again concentrated on solicitors (14, of which 12 directly) and barristers (7, of which 6 directly), although in this case chartered legal executives came as a close third with 6 measures, which left only 2 measures for the remaining 6 professions.

#### *Reserved activities*

18. A second criterion according to which the LSB spreadsheet classified changes to regulation under consideration was the **reserved activities affected**. The Act provides that the following activities are reserved and therefore subject to regulation:

- the exercise of a right of audience;
- the conduct of litigation;
- reserved instrument activities;
- probate activities;
- notarial activities; and
- for the administration of oaths.

19. In addition to identifying the reserved activity affected by each and every change to regulation the LSB did consider two more options: namely that a given change to regulation affected all reserved activities, and that it affected none of them. Table 3, below, presents the data on how many measures affected individual reserved activities (as well as all of them and none of them). This is done for all measures under consideration, for all measures taking into account their importance ("all weighted" where the number of important measures was multiplied by 3 and the number of intermediate measures was multiplied by 2) and for each grade of measures separately as well as jointly for the measures graded "2" and "3".

**Table 3: Graded changes to regulation according to reserved activities affected**

No / No	Grade \ Reserved activity affected	ALL RELEVANT	The conduct of litigation	The exercise of a right of audience	Probate activities	Reserved instrument activities	Notarial activities	The administration of oaths	NONE
	1	2	3	4	5	6	7	8	9
1	All (190)	103	12	21	15	21	11	1	6
2	All weighted "1s" + "2s" x 2 + "3s" x 3 (260)	138	19	28	21	31	11	3	9
3	"1s" (139)	77	6	15	12	15	11	0	3
4	"2s" (32)	17	5	5	0	2	0	0	3
5	"3s" (19)	9	1	1	3	4	0	1	0
6	"2s" and "3s" (51)	26	6	6	3	6	0	1	3

Source: The LSB spreadsheet, own calculations.

NB: Numbers in the brackets in column 1 are sums of values in columns 2 - 9 in a given row.

20. In all cases apart from the important changes to regulation, slightly more than 50% of measures affected all reserved activities. The least affected was the administration of oaths (6 out of 190). When all measures are taken into account the most affected were the exercise of a right of audience and reserved instrument activities (21 out of the remaining 87 "specific" measures), then probate activities and the conduct of litigation, but the ranking of individual reserved activities

changed considerably when grading of individual measures was taken into consideration. For example in "all weighted" and "3s" rows the most affected was reserved instrument activities, and in the "2s" and "3s" row, comprising measures that were not less important the "first" place is shared by the conduct of litigation, the exercise of a right of audience and reserved instrument activities (6 each out of the remaining 25 "specific" measures").

### *Market segments*

- 21.** The LSB spreadsheet also identifies market segments affected by each and every change to regulation. The list, following the analysis done for the LSB by Oxera, comprises 17 categories and an additional column takes account of the measures that were not segment specific. Similarly to professions and reserved activities (see Tables 2 and 3, above) Table 4, below, presents data on the number of measures (all, "all weighted" and measures grouped according to their importance) that affected each individual market segment and all segments (not segment specific). Because of the large number of segments, the table is split vertically into two tables, as reflected in the numbers given to individual columns.

**Table 4: Graded changes to regulation according to relevant segments affected**

		ALL - not segment specific	Crime—prosecution	Crime—defence	Injury	Wills, trusts and probate	Conveyancing	Family	Property, construction and planning	Employment (excluding injury at work)	Immigration and nationality
	1	2	3	4	5	6	7	8	9	10	11
1	All (203)	109	7	7	2	26	20	3	1	1	4
2	All weighted "1s" + "2s" x 2 + "3s" x 3 (292)	154	10	12	7	34	26	6	6	3	6
3	"1s" (154)	82	5	6	1	22	17	3	0	0	2
4	"2s" (25)	19	1	0	0	0	0	0	0	0	2
5	"3s" (24)	8	1	2	2	4	3	1	1	1	0

		ALL - not segment specific	Crime—prosecution	Crime—defence	Injury	Wills, trusts and probate	Conveyancing	Family	Property, construction and planning	Employment (excluding injury at work)	Immigration and nationality
	1	2	3	4	5	6	7	8	9	10	11
1	All (203)	109	7	7	2	26	20	3	1	1	4
6	"2s" + "3s" (49)	27	2	2	2	4	3	1	1	1	2

**Table 4, Continued**

		Consumer problems	Welfare and benefits	Civil liberties	Intellectual property rights	Corporate taxation	Corporate structuring and finance	Other business affairs	Other	Other public and administrative law
	1	12	13	14	15	16	17	18	19	20
1	All (203)	0	0	0	7	0	2	0	14	0
2	All weighted "1s" + "2s" x 2 + "3s" x 3 (292)	0	0	0	10	0	3	0	15	0
3	"1s" (154)	0	0	0	5	0	1	0	13	0
4	"2s" (25)	0	0	0	1	0	1	0	1	0
5	"3s" (24)	0	0	0	1	0	0	0	0	0

		Consumer problems	Welfare and benefits	Civil liberties	Intellectual property rights	Corporate taxation	Corporate structuring and finance	Other business affairs	Other	Other public and administrative law
	1	12	13	14	15	16	17	18	19	20
1	All (203)	0	0	0	7	0	2	0	14	0
6	"2s" + "3s" (49)	0	0	0	2	0	1	0	1	0

Source: The LSB spreadsheet, Oxecon's calculations.

NB: Numbers in the brackets in column 1 are sums of values in columns 2 - 20 in a given row.

22. As one can see, in all rows with the exception of the most important measures ("3s") those changes to regulation that were not segment specific constituted more than half of the total number. For example, out of all 203 measures (which is larger than the 178 measures being considered because some measures affected more than one market segment) there were 109 non segment specific ones. For "all weighted" - 154 out of 292, for "1s" - 82 out of 154 and for "2s" - 19 out of 25 (almost 80 per cent of intermediate changes to regulation were not segment specific). As far as the segment specific measures are concerned, the most affected market segments were wills, trusts and probate and conveyancing, which in the row "all" accounted for 46 out of 94 of measures (80 if we exclude 14 "other", column 19; 13 out of them were "1s"). The rest were distributed over 9 segments, and 6 segments were not affected at all.

### **3. The problem and its background**

23. The previous part showed that in the period 2010 - 2015 there were numerous changes to regulation which varied in their importance and which affected all legal professions, reserved activities and market segments and, as we shall see later, which had various intended impacts. With perfect information there are two possible approaches, either:

- a top-down approach - observed changes in the market are referred back to changes in regulation processed by the LSB after separating the effects of other changes to regulation and the effects of other factors; or
- a bottom-up approach - the impacts of each and every change to regulation are monitored and then their net impact is assessed.

24. Because of a lack of data neither seems possible. We found no evidence that ARs have monitored the reaction of those they regulated to the changes the ARs have made<sup>12</sup>. If ARs do monitor and investigate whether their changes worked and achieved their objectives (as in some cases they did) the results are not readily available to the public. This state of affairs means that without extensive primary data collection, not much is or can be known about what happened after each and every change to regulation, processed by the LSB, was approved. This is in the absence of published impact assessments of changes to regulation.

25. In theory this difficulty could be remedied via extensive collection of primary data, but even if such an exercise could be justified in terms of its cost-benefit analysis, which is unlikely, the time dimension would remain an important issue. On the one hand, some changes in the legal services market could be impacts of earlier changes

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<sup>12</sup> One has to remember that the LSB's approval does not force the ARs to implement these changes and, as the data in the spreadsheet shows in some cases it is not readily ascertainable whether they were actually implemented. In this report it will be assumed that this was the case.

in regulation. On the other hand, the changes in regulation under consideration in this report could take a while to impact the market as distinguished from coming into force. Both considerations also apply to other changes to regulation of legal services and other factors affecting the legal services market. This is particularly relevant when one realises that the changes to regulation under consideration here, *i.e.* changes processed by the LSB, are only a subset of all changes to regulation. In the period under consideration there were also legislative changes to regulation and one must not forget that the legal services market and relevant markets of its segments evolved subject to the influences of many other factors.

26. What makes the extensive collection of primary data prohibitively expensive is the sheer number of changes to regulation and the fact that one would have to try to reconstruct what was happening in the last five years. However what makes the issue of cumulative impacts of changes to regulation so relevant and interesting, namely their number and diversity, is also the reason, together with data availability and cost-benefit aspect of their collection, why it is so difficult to solve this issue. That is why the LSB is interested in the *likely* cumulative impacts of these changes as well as in an assessment of how the changes to regulation *can be expected* to have acted as drivers for market change across all and within the different market segments; how they may have affected the functioning of the markets, the composition of supply, and ultimately market outcomes. The stress in the formulation of these two aspects of our task and in our approach has to be on *likely* and *can be expected*.

#### **4. Intended impacts and likely market impacts**

27. All changes to regulation under consideration in this report that were proposed, approved (either in whole or part) or were granted an exemption and finally implemented had to be compatible with regulatory objectives set by the Act (see Part 2, above). Not all of them could be called "market" or "economic" and some of them could be difficult to interpret in these terms (*e.g.* increase in the quality of advice) but there is no doubt that measures aimed at their achievement will certainly have impact, even if only indirectly, on the legal services market and relevant markets of its segments.
28. These objectives vary in their nature, especially from the economic point of view, and the degree to which they can be operationalised and quantified and their achievement verified also differs. The same is true with respect to the regulatory objectives of ARs and in order to combine the two sets, allow comparisons between individual changes to regulation and their sets as well as to increase potential granulation of their analysis, the LSB introduced in its overview spreadsheet a set of columns jointly labelled "intended impacts". They are as follows:
1. Increase professional standards;

2. Increase quality of advice;
  3. New regulator for entities;
  4. New client protections;
  5. Increase the range of services that can be offered within regulation;
  6. Increase the range of business models that are permitted within regulation;
  7. Remove existing regulations for incumbents;
  8. Rules converting to outcome (increased flexibility);
  9. Remove barrier to entry to the market;
  10. Remove barrier to exit;
  11. Widen/improve access to legal services;
  12. Lowers costs of supply or improves efficiency of supply;
  13. Increase trust/confidence in provision of legal services;
  14. Improves the ability of customers to engage with providers (e.g.: improves information provision or education etc);
  15. Could allow for greater innovation in service delivery;
  16. Reduce risks associated with provision of legal services;
  17. Increases security of supply/resilience;
  18. Improves customer understanding or engagement with the legal services market; and
  19. (Other)<sup>13</sup>.
29. These "intended impacts" and their identification for each and every change in regulation evaluated by the LSB will be the most important reference point for our assessment of their likely cumulative impacts (and expected ways of acting as drivers). The market impacts we will be interested in will first have to be selected and defined and then the intended impacts will have to be translated into / mapped onto them, which will constitute the corner stone of our approach.
30. Since the LSB not only oversees ARs and processes changes to regulation proposed by them, it also monitors legal services markets. In 2011 it commissioned Oxera to prepare a report entitled: *A framework to monitor the legal services sector*<sup>14</sup>. This report covered market segmentation, indicators and how to collect and interpret data. The report became an analytical framework for the LSB's work on markets, which is why it will be our second key reference point after the LSB's spreadsheet.
31. The report is quite well known both on its own and through the work done by the LSB and therefore, it will suffice here to remind that Oxera's approach to indicators starts with a question as to how to identify them and in the process of answering this question it is suggested that one considers the following aspects:
- final market outcomes;
  - indicators to measure the functioning of markets;

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<sup>13</sup> These numbers are later used in our analysis.

<sup>14</sup> <https://research.legalservicesboard.org.uk/wp-content/media/A-framework-to-monitor-the-legal-services-sector.pdf>.

- regulatory objectives; and
  - regulation and regulatory reform.
32. Taking into account these different objectives and sources of indicators, Oxera classifies them into the following areas:
- drivers - "monitor the emergence of changes, shocks or trends";
  - market functioning - "help to understand the mechanisms and processes through which the drivers may alter the composition of supply and/or market outcomes";
  - composition of supply - "relevant to understand how drivers may alter market outcomes"; and
  - market outcomes - "monitor the performance of markets (...) consider what matters to consumers (...) and evidence on the efficiency of the market more generally".
33. Figure 3.1 in Oxera's report, summarises "broader topics in each of these areas while identification of specific indicators relevant to each topic is provided in Appendix 2" (p. 28), which, among other things, puts our quest in a broader, comprehensive context.
34. What Oxera calls "topics" can and will be treated by us as (areas of, instances of) impacts and these will be the impacts in which we will be interested in our assessment. Oxera's elaboration of them can be summarised as follows:
- functioning of the market:
    - elasticity of supply<sup>15</sup> - cannot be measured directly, but to support or substitute its analysis other indicators can be particularly informative:
      - identification of barriers to entry;
      - evidence of effective barriers to entry;
      - evidence of effective barriers to exit, sunk costs, transfer of investment to other legal markets or indeed simply other markets...; and
      - evidence of supply-side substitution.
    - elasticity of demand - cannot be measured directly, but alternative indicators can provide a rough approximation, including:
      - evidence of consumer switching;
      - evidence of effective consumer choice; and
      - bundling of services.
    - consumer conduct:
      - consumer understanding - overlap with the two elasticities, influenced by the level of information available in the market and therefore by providers' customer acquisition techniques; what matters is consumer understanding in relation to:

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<sup>15</sup> Strictly speaking the concept of elasticity of supply relates changes in supplied quantities to changes in prices. We will not investigate them here as they are a subject matter of a separate research that was commissioned by the LSB to be conducted in parallel with our work

- the value of legal services offered;
  - how to access legal services; and
  - what is a competent service and supplier.
- buyer power - depends on the buyer's market share, the availability of alternatives to the buyer, the cost of switching and the extent to which the supplier can switch to other consumers.
- composition of supply:
  - horizontal integration and coordination:
    - market share analysis (concentration ratios and their volatility); and
    - factors that facilitate and inhibit competition.
  - business models; and
  - value chain and vertical integration - intermediaries and outsourcing (customer acquisition, representation in court).
- (final) market outcomes:
  - price;
  - quality:
    - average level within the market cannot be directly monitored;
    - separate quality of advice from quality of service; and
    - when it falls below a threshold, various data on adjournments, complaints and disciplinary actions could be available.
  - volume; and
  - efficiency (allocative and productive), innovation (competition creates incentives to increase productivity through innovation) and productivity<sup>16</sup>.

35. Our assessment will concentrate on three areas of market impacts (*i.e.* **market functioning, composition of supply and (final) market outcomes**) and the "topics" suggested by Oxera will be used as likely market impact equivalents of intended impacts. In this way we will build on Oxera's work and take it forward. At the same time we will ensure that our analysis coheres within the overall framework of the LSB's approach to markets.

36. Before we present our mapping it has to be pointed out that what the framework proposed was a state of art, an almost ideal world approach, based on collecting huge amounts of primary data, which simply cannot and was not supposed to be done in our case. What is an even bigger challenge is that when one talks about market impacts of changes to regulation one almost always means only individual changes<sup>17</sup> and market monitoring is designed to be just that: monitoring, without

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<sup>16</sup> See Oxera, *op. cit.*, pp. 28 - 32.

<sup>17</sup> See for example Section 3.3 of the Oxera's report: *How to assess the impact of a specific change in regulation*, where they exemplified their approach by a box entitled "Monitoring the potential impact of ABS on the localised provision of legal advice". Their chosen example is a change to regulation that was introduced by the Act.

going into the details of how the perceived *status quo* and developments are related to changes in regulation, least of all to the changes processed by the LSB.

37. Changes to regulation are widely recognised as a key driver for change within markets but they are not the only driver. What is more, changes approved by the LSB are a subset of changes to regulation, and there are other drivers in play. Apart from regulation Oxera lists state of economy, Ministry of Justice, technology and international developments and there is no doubt that any expectations regarding the ability of the changes to regulation approved by the LSB to act as drivers has to take into account this wider context<sup>18</sup>. Examples given by Oxera<sup>19</sup> imply that very few of the changes under consideration here can be expected to have acted as important drivers for market changes, which is precisely what makes the cumulative aspect of our research so relevant.
38. Taking all of this into account, we first proposed and then assumed in the remainder of our analysis the following mapping of intended impacts onto market impacts:

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<sup>18</sup> It has to be stressed that it was not the intention of the Act for the Schedule 4 powers to be used to act as such drivers.

<sup>19</sup> The Jackson review, the recovery of success fees, changes to contracting and funding of legal aid, court closures, the introduction of ABS and the creation of the Legal Ombudsman - see Oxera, *op. cit.*, p. 28.

**Table 5: Intended impacts and likely market impacts - mapping**

No \ No	Intended impact	How many times appears (351)	Market functioning	Composition of supply	Market outcomes
	1	2	3	4	5
1	Increase professional standards	44			X quality
2	Increase quality of advice	21			X quality
3	New regulator for entities	5		X volume composition of supply	
4	New client protections	37			X quality
5	Increase the range of services that can be offered within regulation	12		X	
6	Increase the range of business models that are permitted within regulation	21			X efficiency
7	Remove existing regulations for incumbents	32			X innovation
8	Rules converting to outcome (increased flexibility)	19			X innovation
9	Remove barrier to entry to the market	17	X elasticity of supply		

No \ No	Intended impact	How many times appears (351)	Market functioning	Composition of supply	Market outcomes
	1	2	3	4	5
10	Remove barrier to exit	0	X elasticity of supply		
11	Widen/improve access to legal services	12	X elasticity of demand consumer conduct		
12	Lowers costs of supply or improves efficiency of supply	6			X price efficiency
13	Increase trust/confidence in provision of legal services	19			X quality
14	Improves the ability of customers to engage with providers (e.g.: improves information provision or education etc)	6	X consumer conduct		
15	Could allow for greater innovation in service delivery	12			X efficiency innovation
16	Reduce risks associated with provision of legal services	21			X quality

No \ No	Intended impact	How many times appears (351)	Market functioning	Composition of supply	Market outcomes
	1	2	3	4	5
17	Increases security of supply/resilience	10			X quality
18	Improves customer understanding or engagement with the legal services market	2	X consumer conduct		
19	Other	55	?	?	?

Source: Oxecon's calculations.

39. As one can see, the mapping assumes only three principal market impacts, although where possible we tried to identify their subcategories. However, as this could not be done in each case and the mapping had to be complete and homogeneous in the sense that each intended impact had to be linked unequivocally to the same level of market impacts, we had to stop at the general level. We also assumed that each and every intended impact should be linked to only one market impact as doing it differently would lead to inconsistencies and double counting. Last but not least, as we shall see in the next part, although the authors of the LSB spreadsheet distinguished as many as 18 intended impacts, in 55 cases they classified their intended impacts as, "other". We shall discuss them in more detail later on, however, "other" intended impacts were the most popular category - constituting almost 17% of all identified intended impacts.

## 5. Likely cumulative market impacts and drivers

40. In Part 3, *The problem and its background*, above, we briefly discussed various problems with assessing cumulative market impacts of changes to regulation

processed by the LSB in the period 2010 - 2015. There we concluded that neither a top-down nor a bottom-up approach was possible, above all because there is no data readily available and there is a constraint the on collection of primary data. This does not mean that no assessment is possible, and our assessment of **likely cumulative market impacts** builds on the results of two exercises performed earlier; (i) the mapping of intended impacts, as identified by the LSB in its spreadsheet, onto likely market impacts; and (ii) the grading of changes in regulation under consideration here according to their importance / relevance. However, before we apply our approach, we would like first to suggest that the likely cumulative impacts of changes to regulation be looked at from the point of view of how these changes affected legal professions, reserved activities and market segments (see Tables 2 - 4, above). We will proceed to present a numerical analysis of intended impacts and likely market impacts, both of them from the cumulative point of view. We will finish this key part of our report with an in depth assessment of the most important changes to regulation; first designations and then the remaining 11 of those graded important.

## **5.1. Professions, reserved activities and market segments affected**

41. Tables 2 - 4, presented in Part 2, above, contain data on how all changes to regulation under consideration affected three categories: legal professions, reserved activities and market segments. Individual rows of these tables contained data on all measures, all “weighted” measures (see the explanations at the bottom of Table 2) and on three grades of measures (important, intermediate and less important measures plus for important and intermediate measures jointly). This data allows us to look at the distribution of changes to regulation, and the basic hypothesis is that the more changes in regulation and the more important changes to regulation are concentrated in a given category, the more likely this category is to be affected by their cumulative impacts. And the more important this “concentrated” category is in comparison with other categories of the same type, the stronger the likely cumulative market impact of changes to regulation under consideration here. In other words, these changes can be expected to have acted as drivers for market change across all and within the different market segments precisely because of how they were distributed among various categories affected by them. For example, solicitors, by far the most numerous profession, were affected by the largest proportion not only of all changes in regulation (35%) but also by the largest proportion of important and intermediate measures which in turn is reflected in an even larger share of “all weighted” measures (37%)<sup>20</sup>. For market segments there exist data only for solicitors, but it is worth noting that more than a half of all

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<sup>20</sup> See Table 2, column 2.

measures were not sector specific. In the case of "2s", that is intermediate measures, they constituted as much as 80% of so graded measures.

## **5.2. Intended impacts - all measures**

42. One of the key assumptions of our analysis is that intended impacts of changes to regulation, identified in the LSB spreadsheet, were the best possible indicator of the likely cumulative market impacts of these changes. This is why in Part 4, above, we first defined and categorised the market impacts that we are going to be interested in and secondly we mapped the 18 categories of intended impact (19 if we include, "other") onto these market impacts. Each intended impact is now ascribed to a market impact, and when possible also to its particular type, as specified in Oxera's approach. The next step consists in presenting the data on intended impacts and the results of applying our mapping to them.
43. Table 6, below, presents data on intended impacts of all changes to regulation, of all changes to regulation weighted in accordance with our grading and to individual grades of these changes.

**Table 6: Graded changes to regulation according to intended impacts<sup>21</sup>**

Impacts 1 - 9

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<sup>21</sup> **Key:**

"1s", "2s", "3s" - assessment of importance, from the least to the most important changes in regulation

MF - market functioning  
El of supp - Elasticity of supply  
El of dem - Elasticity of demand  
Cons cond - Consumer conduct

CS - composition of supply

MO - market outcomes  
Qual - Quality  
Eff etc - Efficiency, innovation and productivity

No	Grade \ Intended impact	Number of measures	Increase professional standards	Increase quality of advice	New regulator for entities	New client protections	Increase the range of <u>services</u> that can be offered within regulation	Increase the range of <u>business models</u> that are	Remove existing regulations for incumbents	Rules converting to outcome (increased flexibility)	Remove barrier to entry to the market
	1	2	3	4	5	6	7	8	9	10	11
	Intended impact (II) number		II1	II2	II3	II4	II5	II6	II7	II8	II9
1	All	178	44	21	5	37	12	21	32	19	17
2	All weighted "1s" + "2s" x 2 + "3s" x 3	178	58	29	15	49	28	50	52	27	33
3	"1s"	133	34	15	0	27	2	5	17	13	4
4	"2s"	29	6	4	0	8	4	6	10	4	10
5	"3s"	16	4	2	5	2	6	11	5	2	3
6	"2s" and "3s"	45	10	6	5	10	10	17	15	6	13
7	Market impact		MO Qual	MO Qual	CS	MO Qual	MO Eff etc	CS	MO Eff	MO Inn	MF El of supp

**Table 6, cont.** Impacts 10 - 18

	Grade \ Intended impact		Remove barrier to exit	Widen/improve access to legal services	Lowers costs of supply or improves efficiency of supply	Increase trust/confidence in provision of legal services	Improves the ability of customers to engage with providers (e.g.: improves information provision or	Could allow for greater innovation in service	Reduce risks associated with provision of legal services	Increases security of supply/resilience	Improves customer understanding or engagement with the legal services market	Other
	Intended impact (II) number		II10	II11	II12	II13	II14	II15	II16	II17	II18	19
1	All	178	0	12	6	19	6	12	21	10	2	55
2	All weighted 1 + 2 x "2" + 3 x "3"	178	0	25	13	28	14	23	31	18	5	57
3	"1s"	133	0	1	5	12	1	2	14	4	0	53
4	"2s"	29	0	8	1	5	3	7	4	4	1	2
5	"3s"	16	0	3	2	2	2	3	3	2	1	0
6	"2s" and "3s"	45	0	11	3	7	5	10	7	6	2	2
7	Market impact		MF El of supp	MF El of dem Cons cond	MO Price Eff etc	MO Qual MF Cons cond	MF Cons cond	MO Eff	MO Qual	MO Qual	MF Cons cond	-

44. The data in Table 6, above, shows that from the purely numerical point of view the number of intended impacts is almost twice the number of changes to regulation under consideration (351 as compared to 178). This means that many measures had more than one intended impact or even that some measures had many intended impacts. At the same time it is hard not to notice that although the LSB's list of intended impacts is quite long and there are as many as 18 items listed, the most popular category of intended impact is, "other", which certainly deserves a closer look.
45. All in all, out of 178 changes to regulation considered here, 55 were found to have "other" intended impacts. Of these 55 measures 8 were rule changes and the rest were exemptions. In the case of 6 out of 8 rule changes the authors of the spreadsheet decided that they also had one of the 18 principal intended impacts. Only one of 55 has been graded as intermediate (and none of them as important), and the rest as less important measures ("1s"), which means that out of 133 changes graded "1" almost 40 per cent had intended impacts escaping their principal categorisation.
46. The list of explanations given in the next column of the LSB spreadsheet includes for example simplifying, refreshing, updating (because of wider legislative changes or to reflect case law decisions), clarifying and tidying up rules and making them more transparent. A few changes corrected errors, oversights and omissions. Some of them concerned fees and costs (outside the scope of this report) and others - internal structures and functioning and even names of the ARs. It would certainly be wrong to ignore these changes or to declare them as completely irrelevant, but it would be equally wrong to consider them as likely to have considerable market impact, even collectively or cumulatively. In most cases these changes simply had to be made in order to improve and maintain the quality of the regulatory framework of legal services and we will stop their analysis at a simple generalisation that most likely they improved market functioning.
47. For all measures (row no 1) among 18 specific intended impacts (II) the most popular were:
- increase professional standards (II1) – 44;
  - new client protections (II4) – 37; and
  - remove existing regulations for incumbents (II7) - 32.
48. In the "all weighted" row however, II7 moved to the second place and an intended impact entitled, "increase the range of business models that are permitted within regulation" (II6) overtook II4 and became the third most popular intended impact. Designations graded as important changes to regulation were mostly responsible for that. In row 2 therefore the most popular intended impacts were:
- increase professional standards (II1) – 58;
  - remove existing regulations for incumbents (II7) – 52; and

- increase the range of business models that are permitted within regulation (II6) - 50.
49. When we look at the intended impacts of important and intermediate changes to regulation (graded "3" and "2", rows no 5 and 4, respectively), the most popular intended impacts were:
- for "2s":
    - remove existing regulations for incumbents (II7) and remove barrier to entry to the market (II9) – 10; and
    - new client protections (II4) and widen/improve access to legal services (III1) - 8.
  - for "3s":
    - the range of business models that are permitted within regulation (II6) – 11;
    - increase the range of services that can be offered within regulation (II5) – 6; and
    - new regulator for entities (II3) and remove existing regulations for incumbents (II7) - both 5.
50. The overall picture seems quite clear. The more important the measures under consideration, the more procompetitive their intended impacts and therefore, as we shall see below, their likely cumulative impacts. That is so because this is precisely the common denominator of II1, II5, II3 and II7. It is, however, worth noticing that II7 ("remove existing regulation for incumbents") scores well in all gradation categories, which to the extent that regulations limited rivalry, further reinforced the procompetitive focus.

### **5.3. Likely market impacts - all measures**

51. The link between intended impacts of all changes to regulation, identified in the LSB spreadsheet, and likely market impacts, first individual and then cumulative, is one of the key assumptions of our analysis and we dealt with it already twice. Firstly, in Part 4 we elaborated a mapping of intended impacts onto likely market impacts (see in particular Table 5). Secondly, the last row of Table 6 (row no 7) in which the data on intended impacts were presented, contained information on what was the likely market impact of a given intended impact. We will now try to go a step further and present a more complete picture of likely cumulative impacts of measures under consideration here. Our results are presented in Table 7, below. As previously, we provide data on all changes to regulation, "all weighted" and on changes to regulation subdivided according to their grades.

**Table 7: Changes to regulation according to their likely market impacts**

No \ No		Market functioning	Composition of supply	Market outcomes
	1	2	3	4
	Grade \ Intended impact numbers	9, 10, 11, 14, 18	3, 6	1, 2, 4, 5, 7, 8, 12, 13, 15, 16, 17
1	All (298)	37	26	235
2	All weighted (298) "1s" + "2s" x 2 + "3s" x 3	76	64	348
3	"1s" (155)	6	4	145
4	"2s" (85)	22	6	57
5	"3s" (58)	9	16	33
6	"2s" and "3s" (143)	33	22	90

Source: the LSB spreadsheet, Oxecon's calculations.

NB: The impacts numbers are the same as in Table 6, above.

52. In the above table we decided to continue with three most important market impacts, defined by us in line with Oxera's approach. These are:

- market functioning;

- composition of supply; and
  - market outcomes.
53. As there are only 3 market impacts and 18 intended impacts (we dealt separately with, "other" intended impacts - see Part 5.2, above), and for some changes to regulation multiple intended impacts were identified<sup>22</sup>, this explains the ranges of values in Table 7.
54. When we look at the numbers in row no 1 it seems that the vast majority of market impacts is likely to appear in the area of market outcomes - 235 out of 298 or almost 79 per cent. This could be hardly surprising as this is a purely numerical approach and as many as 11/18 intended impacts were mapped onto market outcomes, although the picture changes slightly once we take into account, "other" intended impacts by either adding them to market functioning or subtracting them from the overall number of likely market impacts. Furthermore, the ratio falls to 71 per cent for "all weighted" intended impacts and to 67 per cent and 57 per cent respectively for the important and intermediate impacts ("3s" and "2s"). At the same time this ratio for the least important changes to regulation is as high as 94 per cent. Market outcomes is still the most important likely cumulative market impact and that not only for all and "all weighted" categories but also for all grades of importance. There is however no doubt that other market impacts were not neglected by the ARs and the LSB.
55. This should be looked at together with our conclusions in Part 5.2., above, where we analysed intended impacts and discovered that the more important the measures under consideration, the more procompetitive their intended impacts<sup>23</sup>. Obviously, although promotion of competition in provision of services is one of the regulatory objectives set by the Act, competition is not a goal in itself (the reason for promoting competition is to secure better outcomes for consumers in a well-functioning market) and the legal services market is currently undergoing a transformation towards outcomes based regulation. What is more, this is a relatively highly regulated sector and competition in it will never be unfettered. Nevertheless, one can safely expect that procompetitive changes, the likely cumulative impacts of which were in the areas of market functioning and composition of supply, will act as drivers for change in the legal services market and the relevant markets of its segments, and therefore contribute to the achievement of better market outcomes in a more spontaneous way.

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<sup>22</sup> On average there were two intended impacts per measure. This was partly due to the fact that some intended impacts are very closely linked with other intended impacts.

<sup>23</sup> In other words, the precompetitive measures were identified as the most important ones and graded as important ("3s").

## 5.4. Designations

56. As we mentioned, one problem with assessing the cumulative impacts of changes to regulation stems from the sheer number of these changes, the number of ARs involved and the professions and sectors affected and the number and diversity of intended impacts. This problem could be partially solved by concentrating one's attention on the most important changes to regulation, but even such a limited impact assessment would require new data and market data currently collected by the LSB and/or given to it by the ARs do not allow for any reliable separation of impacts of various exogenous and endogenous factors. On the other hand, one cannot *a priori* rule out the hypothesis that a lot of small changes, perhaps not very relevant when considered individually, could jointly have a significant market impact.
57. Nevertheless, in close collaboration with the LSB staff an attempt was undertaken to identify the most, intermediate and less important changes to regulation. We ascribed to them grades of "3", "2" and "1" respectively<sup>24</sup>. The results are presented in Part 2.2 and the data in most other tables are presented in such a way as to take account of our grading. This however presented us with another problem. Out of 16 important changes, graded by us as "3s", 5 were designations which *prima facie* were quite different from the remaining, approved or exempted rule changes. Firstly, in the case of designations, the LSB does not approve them but only after going through the prescribed process recommends them to the Lord Chancellor<sup>25</sup>. It has to be noted that all recommendations for designation made by the LSB in the period under consideration were accepted. Secondly, designations ultimately consist in empowering ARs to take decisions aimed at achieving goals judged to be important from the point of view of the regulatory objectives set by the Act, but being empowered does not imply that such decisions would be taken either at all or in the right way and within the right timeframe. What happened to the approval of ABSs illustrates well this problem and we shall discuss this case in more detail in Part 6. Thirdly and closely related, one must not forget that again, as in the case of ABS, although the designation application was processed by the LSB and in this sense falls into the remit of this project, it was actually the Act itself that allowed ABSs to be created and the eventual applications, recommendations and designations were only parts of the process of implementing the Act<sup>26</sup>. For all these reasons we decided to treat designations as a separate category of important changes to regulation and in this part we will concentrate our attention exclusively on them,

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<sup>24</sup> Just as a reminder, these grades should not be interpreted as saying that the important measures were three times more important than the less important ones and one and a half times more important than the intermediate ones. The grades simply ascribe a given measure to one of the three groups of measures.

<sup>25</sup> The only exception was, "ILEX Application to award rights of audience and rights to conduct litigation to Associate Prosecutor members of ILEX" approved in part by the LSB itself – see Footnote 4, above, for details.

<sup>26</sup> This is obviously true about all changes to regulation as each and every of them required a legal basis (empowering legislation), but following the controversy it caused, one could argue that allowing ABSs was particularly important and qualitatively different.

while the remaining important measures will be analysed and assessed in the next part of this report.

58. In the period under consideration, the LSB processed the following seven designation applications, presented here as they are listed on the LSB website:

- CLC Rights of Audience and Litigation Application – Application 89, not granted;
- SRA Licensing Authority application - Application 6<sup>27</sup>;
- CLC Licensing Authority Application – Application 5;
- ILEX Application to award rights of audience and rights to conduct litigation to Associate Prosecutor members of ILEX – Application 4, graded 2;
- Intellectual Property Regulation Board Licensing Authority application – Application 3;
- The Institute of Chartered Accountants in England and Wales (ICAEW) AR and Licensing Authority Application for Probate Activities – Application 2; and
- ILEX Professional Standards Ltd (IPS) AR Application for Probate Activities and Reserved Instrument Activities – Application 1<sup>28</sup>.

59. The first of them was not granted and will not be further considered by us. Application 4 was graded "2" (intermediate) (the remaining 5 were graded "3" (important)) and was not recommended to the Lord Chancellor but, "allowed in part" by the LSB itself. It will nevertheless be included in our analysis. The main characteristics of all of them are summarised in Table 8, below.

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<sup>27</sup> All numbers of Applications refer to the original spreadsheet prepared by the LSB and are also the same as in all our tables.

<sup>28</sup> [www.legalservicesboard.org.uk/Projects/statutory\\_decision\\_making/closed\\_designation\\_applications.htm](http://www.legalservicesboard.org.uk/Projects/statutory_decision_making/closed_designation_applications.htm),

The same web page informs us that two designation applications were withdrawn:

- [ILEX Rights of Audience and Litigation Application; and](#)
- [ILEX Probate Application.](#)

**Table 8: Designations**

Number in the LSB spreadsheet		Grade	Title	Profession	Reserved activities	Market segment	How affected	Intended impact	Likely market impact
	1	2	3	4	5	6	7	8	9
1	ILEX Professional Standards Ltd (IPS) AR Application	3	Application by ILEX Professional Standards Ltd for CILEx to be designated as an AR to award probate and reserved instrument practice rights	Chartered Legal Executives  (Solicitors and Barristers - indirectly)	Probate Activities  Reserved Instruments Activities	Wills, trusts and probate  Conveyancing	IPS have opportunity to deliver services in probate and conveyancing	New regulator for entities  Increase the range of services that can be offered within regulation  Increase the range of business models that are permitted within regulation	CS, MO
2	The Institute of Chartered Accountants in England and Wales (ICAEW) AR and Licensing Authority applications	3	Applications by the Institute of Chartered Accountants in England and Wales (ICAEW) to the Legal Services Board for a recommendation to the Lord Chancellor that it be designated as an AR and licensing authority for probate activities	Accountants  (Solicitors and Licensed Conveyancers - indirectly)	Probate Activities	Wills, trusts and probate	Accountants can choose to deliver probate services	New regulator for entities  Increase the range of services that can be offered within regulation  Increase the range of business models	CS, MO

Number in the LSB spreadsheet		Grade	Title	Profession	Reserved activities	Market segment	How affected	Intended impact	Likely market impact
1	2	3	4	5	6	7	8	9	
								that are permitted within regulation	
3	Intellectual Property Regulation Board Licensing Authority application	3	Application by the Intellectual Property Regulation Board to become a Licensing Authority. To allow IPReg, on behalf of CIPA and ITMA, to authorise and regulate ABS. The scope of the application is restricted to IPReg's current reserved legal activities. Only applies to firms whose primary business is intellectual property services - and all non IP services are excluded.	Patent Attorneys Trademark Attorneys (Solicitors - indirectly)	The Conduct of Litigation The Exercise of a Right of Audience Reserved Instruments Activities The Administration of Oaths	Intellectual property rights	Non TNA and PA owned firms can be regulated to deliver intellectual property and unreserved legal services	New regulator for entities Increase the range of business models that are permitted within regulation	CS
4	ILEX Application to award rights of audience and rights to conduct litigation to	2	Application by the Institute of Legal Executives (ILEX) to become an AR to award rights of audience and rights to conduct litigation to Associate Prosecutor member of ILEX	Chartered Legal Executives (Solicitors and Barristers - indirectly)	The conduct of Litigation The Exercise of a Right of Audience	Crime - prosecution Immigration and Nationality	Individual chartered legal executives can get qualified to do advocacy and litigation for		

Number in the LSB spreadsheet		Grade	Title	Profession	Reserved activities	Market segment	How affected	Intended impact	Likely market impact
	1	2	3	4	5	6	7	8	9
	Associate Prosecutor members of ILEX						crime and immigration		
5	CLC Licensing Authority application	3	ABS Licensing authority application	Licensed Conveyancers	Probate Activities Reserved Instrument Activities	Wills, trusts and probate Conveyancing	Non conveyancer owned firms can be regulated to deliver probate conveyancing and unreserved legal services	New regulator for entities Increase the range of business models that are permitted within regulation	CS
6	SRA Licensing Authority application	3	ABS Licensing authority application	Solicitors	All	All	Non solicitor owned firms can be regulated to deliver all reserved and unreserved legal services	New regulator for entities Increase the range of business models that are permitted within regulation	CS

Source: The LSB spreadsheet, Oxecon's calculations.

60. As one can see and as one could expect, the designations constitute a rather diverse set of measures. Only chartered legal executives were affected by more than one of them – specifically those employed by the Crown Prosecution Service. In terms of reserved activities, probate services and reserved instrument activities were affected by 4 out of 6 designations and the conduct of litigation and the exercise of a right of audience by 3 designations, one of which however affected all reserved activities (Application 6). The most affected market segments were wills, trusts and probate (4 out of 6) and conveyancing (3) but again Application 6 affected all market segments. Unsurprisingly, the intended impacts of 5 out of 6 designations were "new regulator for entities" and "increase the range of business models that are permitted within regulation", and 2 of them were - "increase the range of services that can be offered within regulation". In accordance with our mapping of intended impacts onto likely market impacts this allows us to expect the designations recommended by the LSB to the Lord Chancellor to affect above all - and potentially very significantly - the composition of supply.
61. In order to analyse the likely cumulative impact of the six designations under consideration here, one can group them according to their common intended impacts. Two designations (Applications 5 and 6) exclusively concern the designation of the relevant AR as a licensing authority for the approval of ABSs ("ABS Designations"). Three concern approval of the relevant AR for the conduct of specific reserved activities (Applications 1, 2 and 4) ("Activities Designations"). Application 3 is a hybrid one and combines both the designation of the AR as a licensing authority for the approval of ABSs, and as the regulatory body for specific reserved activities.

### *ABS Designations*

62. When examining the likely impact of the ABS Designations it is useful to revisit the original aim for such reforms which have their genesis in the OFT's 2001 report *Competition in professions*. The OFT stated that: "[m]arkets generally work best for consumers when there is unrestricted competition between existing suppliers, and unrestricted potential competition from new suppliers and from new forms of supply"<sup>29</sup>. Viewed in this context, the aim of introducing ABSs was to increase competition by creating opportunities and encouraging new entry into the legal services market in the form of new business structures and multidisciplinary practices. This change goes to the very heart of the nature and structure of the entities providing legal services. Their diversification was likely to have a positive impact on market functioning by removing barriers to entry, on the composition of supply and eventually on market outcomes.
63. The likely market impacts may be expected to include the following:

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<sup>29</sup> *Competition in professions, A report by the Director General of Fair Trading (OFT 328)*, March 2001, para. 6.

- greater diversity in terms of the variety of entities providing legal services beyond the traditional solicitor partnership model, including incorporation as a limited company, outsourcing, joint ventures and sharing of services between firms [MF, CS]<sup>30</sup>;
- mergers and acquisitions between law firms and other entities operating in different sectors, for example the accountancy profession [CS];
- greater access of law firms to investment which would not have been possible previously by allowing non-lawyers to own and invest in law firms. Possibilities include private equity investment in law firm businesses as well as in more discrete elements of service provision such as IT [MF];
- greater access to litigation by allowing for the possibility of third party investment in specific pieces of litigation/ litigation funding vehicles via ABSs [MF];
- introduction of market discipline to law firm performance with the possibility of flotation of law firms [MO];
- more legal work being done by non-lawyers such as paralegals under supervision through the introduction of non-traditional business structures [CS];
- in-house legal departments becoming income generating by providing legal services to third parties [CS];
- entry of major brands into the legal services markets in pursuit of control over consumers buying power ‘all under one roof’ (e.g. supermarkets) [CS];
- innovation in the provision of legal services in terms of marketing and delivery where approaches that are tried and trusted elsewhere infiltrate the legal services market through the introduction of shareholders and managers who have honed their skills outside the legal services professions. Examples include online provision, virtual law firms and customer service initiatives where sales staff handle the initial client relationship calls so that a lawyer can deal with the legal problem later [MO];
- greater focus among existing law firms on marketing, business development and investment in new technology in recognition of the new challenges to their business and client base [MO];
- greater commoditisation of less specialised legal services law with non-lawyers expanding their business interests and leveraging existing corporate support infrastructure to provide high volume lower cost solutions [MO];
- new induced demand where consumers are introduced to legal services through new channels and providers and at potentially lower cost [MF]; and

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<sup>30</sup> The abbreviations in the brackets are the same as in Table 5 on mapping and stand for the following likely market impacts:

- MF – market functioning,
- CS – composition of supply and
- MO – market outcomes.

- emergence of a more liquid market for law firm control where shareholder and other interests in the business are tradeable [MF].
64. The above likely market impacts may be viewed as positive in the sense of expanding the opportunities for new business models for the provision of legal services. While not underestimating the role of ABSs as a catalyst for change, one may be somewhat circumspect about the degree of innovation that is likely to occur across the market as a whole as a result of their introduction in a profession that is traditionally viewed as relatively conservative. This does not undervalue the initiatives that are likely to be fuelled by the introduction of new business structures. Nor does it ignore the likely effect of the introduction of new possible business models on existing players who do not necessarily take up the opportunity to enter into an ABS but who are prompted to change how they operate their existing business. Rather, what is likely to occur in practice across the market as a whole may be less of a radical change than a rethink and refinement by law firms in terms of how they operate in response to changing times.
65. At the same time it is reasonable to expect that intended impacts and likely market impacts, positive almost by definition, are not risk free, especially as far as their second order (possibly unintended) effects and side effects are concerned<sup>31</sup>. The risks, *i.e.* potential negative impacts without making a qualitative assessment on their likelihood and how they may be offset by related benefits may reasonably be expected to include:
- reduction in confidence among the public in the quality of legal services provision as new and untested providers enter the market [MF, MO];
  - decline in the ‘high street’ law firm practice limited in their ability to compete with lower cost providers who benefit from economies of scale. This might be expected to impact consumer choice at the local level, for example by reducing the number and range of local practices, although it would need to be balanced against the expansion of consumer choice through other routes to markets and providers, such as online [CS]; and
  - decline in the personal nature of legal services provision. Again and in common with the previous issue related to the potential change in the mix of local offerings, this shift in purchasing patterns may also be expected to be accompanied by increased access and potential cost savings [CS, MO].
66. Since our assessment concerns only *likely* market impacts it is beyond the scope of this report to assess whether and the extent to which such risks did in fact materialise. Viewed against the prevailing legal, regulatory and market environment in the reference period, there is every reason to consider that the risk of such negative market impacts is mitigated by a number of factors:

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<sup>31</sup> This is probably one of the most important things missing from the data collated in the LSB spreadsheet, namely potential risks.

- The regulators – both the frontline regulators and the LSB as oversight regulator – may be expected to operate as a safeguard to ensure that professional standards are maintained and that appropriate enforcement action is taken. The existence of effectively a two stage regulatory system (the making by the relevant AR of an individual application for their regulated community and the approval by LSB/ Lord Chancellor as appropriate) may be expected to limit the risk of bad outcomes for consumers with reference to the LSA statutory objectives.
- ABSs do not exist in a vacuum and were introduced into a pre-existing and somewhat difficult economic climate in which law firms were having to address other changes such as cuts in legal aid funding, new technology and clients demanding more be done for less. In other words, the introduction of potential new competition through new business structures represents another challenge to old ways of thinking. Thus the contribution of ABSs though important was not the only driver of market change and any unintended consequences cannot safely be attributed solely to their introduction. The threats to traditional law firm business models and consumer confidence were prevalent without ABSs.
- The activities of some of the most likely law firm co-venturers (e.g. accountants, tax advisers, surveyors) were already subject to varying forms of formal and informal professional conduct regulation/ conduct codes before the introduction of ABS. Their entry into legal services may not be expected to represent such a significant cultural change as some opponents of ABSs at the time of their introduction argued.
- While it may be expected that some smaller and more traditional legal practices would be exposed to competitive challenge from newer business models competing for lower value work, the introduction of ABSs is unlikely to lead to the complete demise of such businesses. Furthermore, the disappearance of some such practices may be viewed as the natural outcome of the competitive process. In any event there are likely to remain some areas of legal services provision that new providers will be more reluctant to enter, at least in the earlier stages of adoption of ABSs. It can be expected that newer providers seeking to exploit scale economies will want to target areas of legal practice that can be delivered on a volume basis where cost-effective methods of communicating with the customer such as email or telephone can provide opportunities for reducing costs, or where the client can be charged a flat fee rather than by the hour. Areas such as probate and estate administration and personal injury are examples. Bigger brands whose core business is not legal services can be expected to select their markets based on a balancing of the benefits of new market penetration against the potential risk of brand dilution through association with certain areas of legal practice that they perceive to be inconsistent with their brand proposition.

67. Our assessment of the likely risks and market effects of the introduction of ABSs would not be complete without a brief comment on one of the risks put forward by opponents of ABSs at the time of their introduction, namely the risk of a conflict of

interest between providers of legal services and their clients where corporate values such as profit maximisation take precedence over professional values. In our view, this risk is overstated not least due to the regulatory framework applying to ABSs and the professional obligations that accompany authorisation. Those delivering services through an ABS are likely to have mixed objectives, including securing investment, introducing a non-lawyer owner/manager or diversifying their channels to the customer. Further, law firms are also commercial undertakings that need to make a profit and face financial incentives while being subject to professional obligations.

### *Activities Designations*

68. In contrast to the ABS designations, the activities designations may be expected to have the more specific effect of expanding the range of services that can be offered to the market within regulation rather than increasing the scope for different business models. However, our analysis of likely cumulative market impacts leads us to appreciate that this distinction is overly simplistic in that the two types of designation are to some extent related and cross-fertilising.
69. Strictly speaking, the designations which relate to the status of the AR as the regulator for specific reserved activities (whether probate, rights of audience etc) do not change the type of service that can be offered within regulation in the sense that new activities will be added to the list of reserved activities under the Legal Services Act 2007. Rather, as a result of the Reserved Activities Designations the pool of potential providers of such activities may be expected to increase with the expansion in the number and range of regulators each focusing on a specific segment of the market (*e.g.* ICAEW in the case of accountants). At the same time, the market changes that are likely to be facilitated by the Activities Designations are likely to be supported by the ABS Designations since an ABS may itself be the business vehicle for new market entry by non-traditional providers.
70. Trying to assess the cumulative impact of designations which straddle a number of reserved activities inevitably requires us to return to the detail of the individual designations in order to understand how they relate to each other and to wider legal, regulatory and market developments. We offer the following observations on the likely cumulative impacts of the Activities Designations (*i.e.* those ostensibly concerned with expanding the range of services) in that context.
71. The probate sector is the market segment most affected by the reserved legal activities designations (with Application 1 and 2 expanding the opportunities for market entry into this segment). Such a change may be expected to alter the composition of supply of probate services by introducing alternative suppliers. An interesting question is whether widening the pool of providers of a service might be expected to create new sources of demand, for example where customers are being marketed to through new and different channels and techniques. This will only be the case where the demand for the legal service is not finite. This is the case with

probate since an individual may apply for probate without the assistance of a solicitor or other professional authorised to provide probate services. In the case of probate services, it is conceivable that suppliers of, say, will writing (who do not need to be regulated for such services) might cross-sell probate services to their client once authorised to do so. It is also conceivable that newly authorised suppliers of probate services might be expected to cross-sell other services such as will writing by persuading a customer that they need a will themselves when previously they had put this decision off.

72. Two Applications concern rights to conduct litigation/ rights of audience (Applications 3 and 4). The extension of the right to conduct litigation may be expected to create new demand (at least from a claimant perspective) as a result of cross-marketing from other legal services. However, the overall likely market impact may be expected to be modest since such changes when implemented by a sector AR tend to be limited to discrete areas (here intellectual property in the case of Application 3). As regards the extension of rights of audience, experience suggests that adoption and actual exercise will occur gradually. Data from the LSB indicates that whereas the pool of potential advocates has grown over time, not all of them engage in advocacy<sup>32</sup>.

73. As with the case of ABSs, the risk of a reduction in quality or standards as a result of expanding the range of services that can be provided within regulation are mitigated by a number of factors:

- The extension of rights of audience / right to conduct litigation (Applications 3 and 4) requires regulatory safeguards to be in place to protect clients and to ensure that they can be confident that they are being represented by an appropriately trained and regulated professional.
- From the perspective of the efficient discharge of court and probate functions, it may be expected that on the whole those representing clients in these activities will want to be assured that they are conversant and familiar with the procedures given the serious reputational and business risks of errors and substandard performance. This recognition may be expected to stem the flow of over-zealous practitioners taking on cases that are beyond their experience or expertise.
- The expansion of service offerings must be seen against the backdrop of consumer protections such as professional indemnity insurance and complaints systems in respect of reserved activities. While these systems are far from perfect, they operate as a further safeguard for consumers.

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<sup>32</sup> In 2012 nearly 150,000 professionals had rights of audience in the lower courts, and over 20,000 individuals had rights of audience in the higher courts. Since 2010, 5% of all solicitors have had higher rights of audience, though the numbers have grown from 5,400 in 2010 to 6,300 in 2013. While most of these professionals have rights of audience, not all of them will engage in advocacy. Further, not all barristers will engage in regular advocacy. A 2011 survey by the BSB found that 16% of employed barristers had limits on their rights of audience and 12% had no rights of audience at all (see, further, *Criminal Advocacy services in England & Wales*, LSB Briefing Pack, 5 December 2013, slide 7).

74. It is beyond the scope of this report to assess how effective such safeguards have actually been in practice but their existence moderates our assessment of likely market effects.
75. There is therefore reason to believe that the activities designations are likely to have a gradual and positive overall market impact.

#### *Transmission mechanisms*

76. When considering how the changes to regulation can be expected to have acted as drivers for market change across all and within the different market segments, it is useful to follow the chain of logic from the change to regulation through to market change.
77. The change to regulation (proposed by the AR and approved by the LSB/ Lord Chancellor as appropriate) may be viewed as the empowering act or catalyst that has the potential to set in motion a chain of events which may ultimately result in market change. Whether and how market change occurs depends on a number of drivers and agents.
78. The LSB's role is at one step removed from the market in that once it has approved a change to regulation it is not in a position to direct how the change will be implemented by the relevant AR or whether it will be implemented at all.
79. The relevant ARs can be considered important first stage drivers of market change. They decide whether and how to implement the regulatory change and control for example, the speed and efficiency of their review of applications from their regulated community, the nature of (any) regulatory guidance provided by them on what the change means in practice and the enforcement action taken by them in the event of compliance failures.
80. Other regulatory or professional bodies may also act as facilitators or intermediators of change. For example, promptings by the Law Society to solicitors to consider the opportunities presented by market liberalisation may be expected to inspire new ways of thinking and operating among solicitors.
81. Market participants are important drivers of market change and fall into two broad categories – regulated service providers and third parties. As a result of changes to regulation, regulated service providers are provided with opportunities and challenges to the way they operate their businesses. Whether and the extent to which they act on those depends on them and their individual appetite for change and risk. Even where a regulated service provider may want to take advantage of an opportunity or respond to a challenge presented by a change to regulation the resultant outcome may depend on the actions of other third parties. Such third parties may include: potential business partners; investors; and other service providers (e.g. marketers, advertisers, IT suppliers, estate agents).

82. Finally, consumers may be expected to be important drivers of market change as well as the beneficiaries. For example, a legal/professional services provider may be incentivised to diversify its offering to the market in response to client feedback or market enquiries. A legal service provider is unlikely to embark on a new service offering without this being to some extent demand-driven.

## 5.5. Likely cumulative market impacts – other “3s”

83. The LSB identified 178 changes to regulation covering a period of almost five years (January 2010 – October 2015) and one of the first steps of our analysis consisted in reviewing all these changes from the point of view of their importance and relevance. As noted above, we graded them from “3” (important) to “1” less important. The group graded as “3s” contained 16 changes, but 5 of them were designations which, as we discussed it in Part 5.2, should be considered separately. This leaves us with the remaining 11 measures. In this Part we consider these measures in more detail from the point of view of their likely market impacts and from the point of view of how they can be expected to have acted as drivers for market change across all and within the different market segments.

84. The titles of these remaining 11 important changes to regulation are as follows:

- **Application 12** to LSB for the approval of amendments to BSB’s regulatory arrangements to enable the regulation of entities.
- **Application 42** to LSB for the approval of changes to regulatory arrangements in respect of the payment and receipt of referral fees in personal injury cases.
- **Application 43** to LSB for the approval of changes to regulatory arrangements relating to the SRA’s Financial Services Rules (Independent Financial Advice).
- **Application 63** to LSB for approval to amend the Bar Code of Conduct – Barrister Participation in Alternative Business Structures.
- **Application 71** to the LSB for approval of the new SRA Handbook.
- **Application 73** to LSB for approval to revise the CLC’s Rules and Guidance.
- **Application 84** – Amendments to the Bar Code of Conduct – application of the Public Access Scheme.
- **Application 87** – Amendments to the Bar Code of Conduct – The Structure of Self Employed Practice.
- **Application 88** – Amendments to the Bar Code of Conduct – Legal Disciplinary Practices & Partnerships of Barristers.
- **Application 90** to LSB for the approval of amendments to SRA’s regulatory arrangements in respect of Separate Business Rule.
- **Application 188** to LSB for the approval of amendments to CLC’s regulatory arrangements arising from the Deregulation Act 2015.

85. Basic information on these 11 measures are presented in Table 9, below.



**Table 9: Important changes to regulation (other than designations)<sup>33</sup>**

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<sup>33</sup> Explanations:

Column 1: Title

the numbers refer to the LSB spreadsheet

Column 2: Professions Affected

B - Barristers

S - Solicitors

LC - Licensed Conveyancers

Column 3: Reserved Activities Affected

RIA - Reserved Instruments Activities

Column 4: Market Segment Affected

C-P - Crime - Prosecution

C-D - Crime - Defence

I - Injury

F - Family

Prop - Property, construction and planning

Emp - Employment (excluding injury at work)

WTP - Wills, Trusts and Probate

Conv - Conveyancing

Column 5: Intended Impacts

1. Increase professional standards
2. Increase quality of advice
3. New regulator for entities
4. New client protections
5. Increase the range of services that can be offered within regulation
6. Increase the range of business models that are permitted within regulation
7. Remove existing regulations for incumbents
8. Rules converting to outcome (increased flexibility)
9. Remove barrier to entry to the market
10. Remove barrier to exit
11. Widen/improve access to legal services

No \ No	Title	Professions affected	Reserved activities affected	Market segment affected	Intended impact	Likely market impact
	1	2	3	4	5	6
1	12. Application to LSB for the approval of amendments to BSB's regulatory arrangements to enable the regulation of entities.	B	All	All	6	MO
2	42. Application to LSB for the approval of changes to regulatory arrangements in respect of the payment and receipt of referral fees in personal injury cases.	S	None	C-P, C-D, I, Prop, Emp	4, 13	MO x 2
3	43. Application to LSB for the approval of changes to regulatory arrangements relating to the SRA's Financial Services Rules (Independent Financial Advice).	S	All	All	1, 5, 14	MF, MO x 2
4	63. Application to LSB for approval to amend the Bar Code of Conduct – Barrister Participation in Alternative Business Structures	B	All	All	5 - 7, 9, 11, 14	MF x 3, CS, MO x 2
5	71. Application to the LSB for approval of the new SRA Handbook	S	All	All	1, 2, 4 - 8, 13, 15 - 17	CS, MO x 10

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- 12. Lowers costs of supply or improves efficiency of supply
  - 13. Increase trust/confidence in provision of legal services
  - 14. Improves the ability of customers to engage with providers (e.g.: improves information provision or education etc)
  - 15. Could allow for greater innovation in service delivery
  - 16. Reduce risks associated with provision of legal services
  - 17. Increases security of supply/resilience
  - 18. Improves customer understanding or engagement with the legal services market
  - 19. (Other).

Column 6: Likely Market Impacts  
MF - Market Function  
CS - Composition of Supply  
MO - Market Outcomes

No \ No	Title	Professions affected	Reserved activities affected	Market segment affected	Intended impact	Likely market impact
	1	2	3	4	5	6
6	73. Application to LSB for approval to revise the CLC's Rules and Guidance	LC	RIA	WTP, Conv	1, 16	MO x 2
7	84. Amendments to the Bar Code of Conduct – application of the Public Access Scheme	B	All	C-D, I, F	5, 6, 9, 11, 15	MF x 2, CS, MO x 2
8	87. Amendments to the Bar Code of Conduct – The Structure of Self Employed Practice	B	All	All	6, 7, 18	MF, CS, MO
9	88. Amendments to the Bar Code of Conduct – Legal Disciplinary Practices & Partnerships of Barristers	B	All	All	1, 2, 4, 13, 16, 17	MO x 6
10	90. Application to LSB for the approval of amendments to SRA's regulatory arrangements in respect of Separate Business Rule	S	All	All	6 - 8, 11, 12, 15	MF, CS, MO x 4
11	188. Application to LSB for the approval of amendments to CLC's regulatory arrangements arising from the Deregulation Act 2015 <sup>34</sup>	LC	All	All	6, 7, 9, 12	MF, CS, MO x 2

Source: the LSB spreadsheet, Oxecon's calculations

<sup>34</sup> This is the only important change to regulation that was exempted.

86. As one can see, out of these 11 important changes to regulation:

- in terms of **professions affected** 4 measures affected solicitors, 5 affected barristers and the only other profession affected was licensed conveyancers (2 measures),
- in terms of **reserved activities** 9 affected all of them, 1 affected reserved instrument activities and 1 did not affect any reserved activity
- in terms of **market segments** affected, 8 of these 11 measures affected all of them and 3 measures (Applications 42, 73 and 84) some of them:
  - Crime – Prosecution (Application 42),
  - Crime – Defence (Applications 42 and 84),
  - Injury (Applications 42 and 84),
  - Family (Application 84),
  - Property, construction and planning (Application 42),
  - Employment (excluding injury at work) (Application 42),
  - Wills, Trusts and Probate (Application 73) and
  - Conveyancing (Application 73).

87. The LSB identified the **intended impacts** of these measures in its spreadsheet and we have used this as the starting point for our assessment<sup>35</sup>. The list below ranks intended impacts in terms of how many of the 11 measures under consideration here were approved in order to achieve them:

- Increase the range of business models that are permitted within regulation – 7 measures.
- Remove existing regulations for incumbents – 5 measures.
- Increase professional standards – 4 measures.
- Increase the range of services that can be offered within regulation – 4 measures.
- Remove barrier to entry to the market – 3 measures.
- Widen/improve access to legal services – 3 measures.
- Could allow for greater innovation in service delivery – 3 measures.
- Reduce risks associated with provision of legal services – 3 measures.
- New client protections – 3 measures.
- Increase trust/confidence in provision of legal services – 3 measures.
- Increase quality of advice – 2 measures.
- Rules converting to outcome (increased flexibility) – 2 measures.
- Lowers costs of supply or improves efficiency of supply – 2 measures.
- Increases security of supply/resilience – 2 measures.
- Improves the ability of customers to engage with providers (e.g.: improves information provision or education etc) – 2 measures.
- Improves customer understanding or engagement with the legal services market – 1 measure.

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<sup>35</sup> No measure had, “other” (i.e. unspecified and not included in the list of 18 intended impacts) intended impacts.

88. Altogether the LSB identified 49 occurrences of various specific intended impacts across these 11 measures. Only two items on the list of 18 potential intended impacts were not identified as intended by any of these 9 important changes to regulation. They were, “new regulator for entities” and, “remove barriers to exit”.
89. One has to remember however that the intended impact of a, “new regulator for entities” is equivalent to a designation which may explain why we do not observe this as an intended impact for other changes that are not concerned with designations. 5 designations were graded by us as important (“3s”) and 1 as intermediate (“2”), but because of the specific nature of these changes to regulation we analysed them separately, in Part 5.4, above.
90. As far as the main barriers to exit are concerned, in the legal services industry they tend to fall into three categories, namely (1) closing business regulatory requirements (e.g. notification, information provision and record-keeping obligations); (2) insurance requirements (e.g. the requirement to maintain run-off cover); and (3) fiscal (e.g. tax implications of closing a business which may inhibit the ability to set off past losses against the income of a new business). Categories (1) and (2) are largely concerned with consumer protection as they aim to safeguard the interests of consumers in the event of supplier exit from the market. The absence of any mention of removing barriers to exit as an intended impact may be explained by the reluctance of ARs to seek to remove obligations that have a consumer protection focus, at least in the early stages of implementation of the Legal Services Act reforms when one would expect to find entry from new and untested sources. Since category (3) is outside the area of legal services regulation we do not consider it further in this report.
91. Finally, in terms of **likely market impacts** the data in Table 9 show that once the 49 intended impacts of the 11 important measures had been mapped onto likely market impacts the results were as follows:
- market functioning scored 9,
  - composition of supply scored 6 and
  - market outcomes scored 34.
92. This means that on the basis of intended impacts of these 11 important changes to regulation, their likely cumulative impact would be concentrated in the area of market outcomes. However, when one considers these results jointly with the likely cumulative market impacts of designations then the relative importance of composition of supply increases considerably. Only 2 out of 18 intended impacts have as their likely market impact composition of supply but the joint score for 16 important measures in this category is 11. (Their joint score in terms of market functioning remains at 9, and in terms of market outcomes is 36.) Or to put it differently, apart from 6 designations, composition of supply was the likely cumulative market impact of another 6 out of 11 important changes to regulation.

93. The assessment of likely cumulative market impacts of what we refer to here as “other important changes to regulation” is more complex than for designations. This is due to the absence of common, explicit or implicit, objectives across what *prima facie* appears as disparate changes with their own specific rationales. By contrast, designations where possible were conveniently grouped as having as their main objectives not only new regulator for entities, which was the case by definition, but also the expansion of business models (5 out of 6 designations) or the range of services that can be provided under regulation (2 out of 6 designations), albeit across different segments of the legal services market.
94. As mentioned in Part 2.1, above, the Act provides the framework for the current regulatory arrangements and sets out eight objectives for regulators. While a comprehensive assessment of all important changes to regulation by reference to these objectives is beyond the scope of this report, many of these measures have implicit linkages to the objective to promote competition in the provision of legal services. This competition objective may be expected to be achieved in different ways but a fair assessment of the likely cumulative impact of other important changes to regulation can be viewed as the (direct or indirect) furtherance of this objective. For example, Application 84 (widening the range of work that barristers can undertake directly for members of the public without the involvement of a professional client) and Application 88 (which includes allowing barristers to practice as self-employed or employed at the same time) are likely jointly to contribute to promotion of competition between barristers *inter-se* and between barristers and other legal services providers even though there is no explicit link between these changes. At a basic level, these changes may be expected to expand the routes through which barristers may offer their services (whether direct to the public, as an employee or as an independent practitioner). The LSB and the BSB have commissioned research that will provide insight into the wider operation of public access including the effects of these rule changes on the market.
95. It has to be pointed out that although the LSB’s spreadsheet does not explicitly link designations and other important changes to regulation, clearly many of the latter were a necessary by-product of the introduction of ABSs or the conferral on the relevant AR of regulatory powers over specific reserved activities. This intimate relationship between designations and other important changes to regulation may be expected to feed through to the assessment of their likely market impacts as supporting or facilitative mechanisms for the primary impacts brought about by ABSs/ extension of the remit of the relevant AR. Examples of changes having such an intimate connection with designations as supporting mechanisms include Applications 12, 63, 73, 87, 90 and 188 (see Table 9 for further details).
96. Even where different regulatory changes have no readily apparent relationship with each other, implicit linkages may be discerned so that one may conclude that different changes are mutually reinforcing. Application 42 (approval for the introduction of new indicative behaviours to support outcomes in relation to

payment and receipt of referral fees in claims for personal injury or death) is connected with Application 43 (approval for changes to the SRA's regulatory arrangements concerning the referral by law firms of clients to third parties for financial services) in that it provides guidance to solicitors on how the relevant outcomes may be interpreted.

97. Finally, a more holistic assessment of individual important changes to regulation reviewed against the backdrop of other important changes to regulation may yield more complex cumulative effects which are not fully captured in the initial categorisation of intended impacts and which can only be properly ascertained following close analysis and informed deduction. Such an assessment is fraught with uncertainties in the absence of any *ex post* evaluation of actual impacts as it requires a number of assumptions. Nevertheless, following the chain of logic from changes to regulation and their intended impacts through transmission mechanisms to likely market impacts does provide a deeper insight into the potential significance of the likely cumulative market impacts of interacting measures. This is well illustrated by Application 71 and is worth looking at in more detail.
98. Application 71 concerns an application by the SRA to change its regulatory arrangements in light of its outcomes focused regulation. The SRA reviewed most of its rules and brought them together in one Handbook for all of its current regulatory community of firms and solicitors. The foundation for this approach is to eliminate a rules-based 'one size fits all' approach in preference to focusing regulatory tools and compliance on achieving outcomes in areas where there is greater risk to consumers. Outcomes are supplemented by indicative behaviours (i.e. illustrative examples of how specific outcomes may be achieved).
99. Outcomes-focused regulation was not mandated by the Legal Services Act but became the result of later discretionary choices on implementation in relation to the Act. For example, the SRA notes in its 2009/2010 Annual Report that: "The LSA 2007 had far-reaching consequences for the legal services market and for the way in which it was regulated. (...) OFR<sup>36</sup> was designed to allow freedom to innovate, while providing a strong focus on the quality of the services provided to clients"<sup>37</sup>.
100. In the LSB spreadsheet the following intended impacts (IIs) of this application are identified:
- II1 - Increase professional standards;
  - II2 - Increase quality of advice;
  - II4 - New client protections;
  - II5 - Increase the range of services that can be offered within regulation;
  - II6 - Increase the range of business models that are permitted within regulation;

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<sup>36</sup> OFR = Outcomes-focused regulation.

<sup>37</sup> SRA Annual Report 2009-2010, *The path to outcomes-focused regulation*, page 11.

- II7 - Remove existing regulations for incumbents;
- II8 - Rules converting to outcome (increased flexibility);
- III3 - Increase trust/confidence in provision of legal services;
- III5 - Could allow for greater innovation in service delivery;
- III6 - Reduce risks associated with provision of legal services; and
- III7 - Increases security of supply/resilience.

101. On a simplistic level it may be unrealistic to view one change to regulation (i.e. the change from a rules-based to outcomes-focused approach and enshrining this in the Handbook) to have such an all-pervasive effect. However, the likely impact of what on first impression may seem to be a relatively discrete change should not be underestimated. The SRA Handbook itself (version 15 released 1 November 2015) spans some 408 pages and includes changes in the following areas: separate businesses; activities of a recognised body or recognised sole practice; accounts and overseas practice; authorisation of sole practitioners; training regulations – apprenticeship pathway; Qualified Lawyers Transfer Scheme; financial services – consumer credit activities; insolvency practice. When this change to regulation is considered in conjunction with other important measures it becomes easier to understand the range of these intended impacts.
102. The move to outcomes-focused regulation was intended to provide new opportunities for innovation and flexibility while safeguarding the interests of consumers in areas of greater risk. However, whether such impacts would be likely to be realised in practice is dependent to a considerable extent on how both ARs and regulated service providers respond. While the avowed purpose of outcomes-focused regulation was to provide greater flexibility in terms of how regulated service providers meet their regulatory obligations, the day-to-day practice and enforcement behaviour of ARs is pivotal to ensuring a more flexible regulatory culture. Similarly, if regulated service providers approach outcomes in the same way as rules, for example by treating Indicative Behaviours as equivalent to rules, there is a risk that there will be no change in the *status quo*. The picture presented is not necessarily one of a transmission from changes to regulation to market outcomes operating in one direction. Rather there appears to be a bi-directional flow of incentives and responses where the behaviour of regulators and those they regulate may each be expected to influence the other.
103. As with outcomes-focused regulation, the introduction of ABSs may be expected to stimulate new ways of thinking by introducing management and business approaches from outside the traditional legal services sector. Thus, while the move to outcomes-focused regulation could exist without ABS and ABSs could operate within a rule-based regulatory framework, the two changes are reflective of a new and changing regulatory environment which is intended to foster new ways of providing legal services.

104. As further legislative developments continue to shape the legal services market, so too changes are required to the content of outcomes-focused regulation and indicative behaviours in discrete areas (e.g. Application 42 concerning new indicative behaviours to support outcomes in relation to referral fees). However, such a change is only comprehensible when viewed against the wider move to outcomes-focused regulation as represented by Application 71.
105. Application 90 (removal of limitations on SRA entities having links with separate businesses that carry out non-reserved activities) is supplemented with a new outcome of informed consent prior to sharing information or work with a separate business. While this change is not dependent on the existence of an ABS it may be seen as consistent with the fundamental change to regulation that makes ABSs possible. This change should also be seen as intended to help level the competitive playing field between ABS and traditional law firms. Thus both changes may be expected to contribute to the fostering of more flexible business models and the provision of joined up legal and non-legal services.
106. All of this suggests that it would be myopic to view any important change to regulation in isolation of other measures. This in turn indicates that one crucial aspect of how these changes can be expected to have acted as drivers for market change across all and within the different market segments is by mutually reinforcing their likely market impacts and by complementing each other. More specifically, and covering all important changes to regulation, that is both designations and the other “3s”, the way in which they act as drivers of market change may first be in terms of empowering ARs. The frontline regulators therefore may be expected to play a significant role in terms of translating the regulatory approval into practice (i.e. there is a question of whether and how they implement the change once it is approved by the LSB). Secondly, the way in which these changes to regulation act as drivers will consist in creating opportunities for regulated service providers, although it will be up to those service providers whether and to what extent they take advantage of market opportunities presented by liberalising and precompetitive changes to regulation. Thirdly, the same line of reasoning can be applied to other market agents outside the legal sector. Changes to regulation also create for them an opportunity to act as facilitators of market changes that are made possible by these measures. For example, banks and other sources of finance may be expected to provide the necessary finance to facilitate the realisation of new business models and provision of new types of legal services by different providers. Similarly, financial institutions by providing the necessary capital for investment in real estate and other resources may be expected to be drivers of market impacts for other important changes to regulation such as the sharing of premises between self-employed barristers and non-barrister parties (Application 87).
107. The current project is ambitious in trying to discern cumulative impacts of multiple changes to regulation, by different regulators and across different market segments.

The task is particularly challenging since it takes place in the first few years following an important reform measure (the Legal Services Act) and with no direct analogue against which to compare it.

108. In these circumstances it might be argued that any derived view of cumulative impacts across all and within the different market segments is at best equivocal. However, our assessment is that the contrary is true at least from the perspective of appraising the likely cumulative market impacts and we do discern a degree of coherence and consistency between what may on first inspection appear to be disparate changes when looked at in isolation. First, it can be said that most if not all measures can be traced back to the competition objective of the Act. Second, changes to regulation rarely act as drivers of market impacts in and of themselves and must be viewed along with other regulatory changes and the actions of regulators, regulated service providers and other third parties which facilitate or contribute to market outcomes.
109. Our assessment demonstrates that while the market impact of individual changes would not typically be expected to be particularly disruptive (perhaps with the exception of those relating to ABSs), the cumulative effect of changes can be significant. The clear implication for policy development is that regulators should be aware not only of the likely impact of individual changes that they are promulgating but also of the likely effect of such changes when coupled with other actual and likely changes affecting the sector and related sectors.

## 6. Conclusions

110. As far as the two key issues of this project are concerned, our overall conclusion is that the **likely cumulative market impact of all changes to regulation** processed by the LSB from January 2010 until October 2015 is by and large **procompetitive** and that **these changes can be expected to have acted as drivers for procompetitive changes** in the legal services market and relevant segments of that market.
111. On the one hand, this conclusion seems to be in line with the legislative intentions behind the Act and its provisions. On the other hand, this conclusion is not an assessment of the regulators' performance, both individually and collectively, nor of the processes, structures and legislative framework involved. Neither is it an answer to the question whether more and/or better could and/or should have been done. However, these issues could and perhaps should become subject matters of some future research, the more so as their relevance significantly increased in the

context of the Competition and Markets Authority's (CMA's) market study, announced when we were working on our project<sup>38</sup>.

112. The market impacts that we considered were **market functioning, composition of supply, and market outcomes**. Having mapped 18 **intended impacts** identified by the LSB (Table 6) onto our set of likely market impacts (Table 5), our purely numerical analysis of the likely cumulative market impacts showed that the clear winner was "market outcomes" (Table 7). However, when one takes into account that as many as 11 intended impacts were related to this likely market impact (and only 2 to "composition of supply") and that among the most important measures (as well as in the intermediate measures) the numerical preponderance of market outcomes significantly diminishes, then it becomes clear that the quantity of changes to regulation may hide the **clearly procompetitive direction of travel**. In consequence it seemed fair to conclude that the likely cumulative market impact of changes to regulation is a more competitive, dynamic and diversified market for legal services which is better able to satisfy demand with good quality services.
113. How can all these changes to regulation be expected to have acted as **drivers** for market change across all and within the different market segments? Our research showed that the most important way in which the measures under consideration could be expected to have acted as drivers was **through their intended impacts** (Table 6). More was learned about the way in which these measures acted as drivers by analysing in depth the most important changes in regulation, especially after we subdivided them into designations and other important measures. The six **designations** could be expected to have acted as drivers by **empowering** ARs and **creating opportunities** for the regulated service providers and other market actors to act more freely (for details, see Table 8). And our analysis of the remaining **11 other most important changes** revealed yet another way in which they could have been expected to act as drivers for change, namely by **complementing** and **reinforcing** each other. *Prima facie*, as apparent in Table 9, this subset is very diversified and these changes have no obvious common denominator. But especially when taken together with the designations, they appear to be underpinned by a concerted effort to allow new business models, increase the range of services etc, all of which are in line with the regulatory objectives set in the Act, in particular to promote competition.
114. However, **some caveats seem justified**. Firstly, the **sheer volume of changes** in itself is likely to have a market impact and could be expected to have acted as a driver for change. Many of the changes to regulation can be viewed as inevitable consequences of implementing the Act. This is the main factor explaining their number, but if this were the only factor, we would expect to see their rate per annum diminish, which was not the case. A further, paradoxical, driver may be that to

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<sup>38</sup> The CMA has launched a market study into legal services in England and Wales to see if they are working well for consumers and small businesses - <https://www.gov.uk/government/news/legal-services-study-launched-by-cma>.

reduce the regulatory burden and increase competition while preserving standards one may need to make a lot of changes to regulation. In addition, tidying up the rules, which could also be seen as procompetitive, accounts for a further raft of changes. Nevertheless, there was **a considerable risk that so many changes might undermine the credibility of the whole regulatory structure, provoke disregard for individual measures and obfuscate the direction of travel.**

115. Secondly, one must not ignore the issue of the **cost of compliance** with such a large number of changes to regulation, on top of the considerable cost of complying with all regulations in force at any given point in time<sup>39</sup>. Much depends on the nature of what these additional costs relate to, but to the extent that they increase overall costs **competition may suffer**. That is so because relative costs of compliance depend on the size of those who are regulated. These conceivably anticompetitive effects may be strengthened by redistributive consequences of the costs of compliance. Also the very necessity to comply with so many changes to regulation may distract rivals from competing with each other.
116. Thirdly, as far as designations are concerned, it is important not to ignore the **indeterminacies or risks involved**: one can lead horses to water, but cannot make them drink. It was this uncertainty regarding the behaviour of those newly empowered or those given new opportunities that justified treating designation separately. Although in this report we are not interested in actual impacts of changes to regulation, the history of licensing ABSs by the SRA well illustrates the inherent problem<sup>40</sup>. On the one hand, ultimately, it was the Act that allowed ABSs and the statutory role of the LSB consisted in recommending to the Lord Chancellor the SRA's application. However, once the SRA had been designated, its performance was met with criticisms, concerns were expressed by the OFT<sup>41</sup> and independent researchers<sup>42</sup> and outcomes were probably not in line with what was intended and expected. This means that, despite the fact that the SRA had clearly set regulatory objectives, its empowerment with new regulatory responsibilities was not sufficient

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<sup>39</sup> The LSB has researched the issue of the cost of regulation which proved to be not only considerable but also different for various market participants: (<https://research.legalservicesboard.org.uk/news/latest-research-7/>). However so far very little is known about how this cost changes over time in general, and how it is affected by changes to regulation in particular.

<sup>40</sup> The actual developments are analysed in detail in the Evaluation report.

<sup>41</sup> OFT press release 21 January 2013: "The research also looked at progress in authorising alternative business structures, where legal services can be supplied by a one stop shop as part of a package with other, non legal, services, such as accountancy and property services. The research found approval processes for these new businesses to be slow with only around 70 out of more than 150 applications for non-traditional legal service firms approved to date. The OFT is calling for regulators to speed up the process for approvals and to make sure there are no unnecessary barriers preventing businesses from entering the market to deliver legal services to consumers in new and innovative ways.": (<http://www.wired-gov.net/wg/wg-news-1.nsf/0/CD8769264958B10080257AFA003873D0?OpenDocument>).

<sup>42</sup> RPI, *Understanding barriers to entry, exit and changes to the structure of regulated legal firms, Final Report*, December 2013 said, "Our discussions with ABSs identified a number of potential concerns with the authorisation process. In particular, interviewees claimed that there is a lack of accountability, the process is highly subjective, and the process involves significant time, cost and effort by the applicant" ([http://www.rpieurope.org/Research/RPI\\_Final\\_Report\\_for\\_LSB\\_and\\_TLS\\_December\\_2013.pdf](http://www.rpieurope.org/Research/RPI_Final_Report_for_LSB_and_TLS_December_2013.pdf), para. 4.3.2.).

to achieve them. On the other hand, regardless of whether such developments could have been prevented in the approval process, the built-in error correction mechanisms seem to have worked<sup>43</sup>. Following the LSB's intervention the ABSs and therefore the changes in regulation regarding them, are now, as likely and initially expected, playing an increasingly important role in the legal services market and may be expected to act as drivers for change.

117. These conclusions answer the questions put forward by the LSB and point out some of their implications, but they also force us to ask two more important questions. Firstly, one should be interested in whether the likely cumulative **market impacts of changes to regulation actually materialised** (and whether the same could be said of the intended impacts) and in whether and to what extent these changes **actually acted as drivers** for change as expected. Both of these questions were clearly outside the scope of this report but they also acquire new significance in the context of the CMA market study<sup>44</sup>. We mentioned earlier that the ARs could be expected to monitor the impacts of the changes to regulation that they initiated but that applying indiscriminately the approach recommended by Oxera was not practical and would not stand up to any cost-benefit analysis. Nevertheless, market data remain a problem in this context, a problem that is exacerbated by the LSB's statutory powers (or rather the lack thereof) to access what is collected, especially by the ARs, and to publish it.
118. Secondly, although the LSB should be pleased with the results of its oversight in terms of the likely cumulative market impact of the changes to regulation that it processed, there arises the question **what can be learned** from this analysis by a body that has no control over what applications it receives. It is beyond the scope of this report to provide any recommendations as to future regulatory initiatives, but perhaps two fundamental substantive issues deserve further exploration. If empowering and creating opportunities are such important drivers for change but at the same time there is no guarantee of them actually working, some additional actions, perhaps even only informal, should be considered to help all concerned exploit the potential created.
119. There is also no doubt that what can be learned from our independent analysis is that **more research is certainly needed**. In this conclusions section we have already pointed out two important, promising areas:

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<sup>43</sup> The LSB used its statutory powers, and in its *Annual Report and Accounts for the Year Ended 31 March 2014*, stated that: "During 2013/14 we have been monitoring the length of time that it takes the SRA to consider ABS licence applications through the use of our powers to obtain information under section 55 of the Act and regular discussions. Our view is that although the SRA now considers applications more quickly than it used to, there are still a number of areas where considerable improvement is needed to reduce the time taken to reach a decision, adopt a more proportionate approach to the regulation of multi-disciplinary firms and minimise the overall regulatory burden on applicants. We will therefore continue our scrutiny in 2014/15"[http://www.legalservicesboard.org.uk/news\\_publications/publications/pdf/20140610\\_LSB\\_Annual%20Report\\_2014.pdf](http://www.legalservicesboard.org.uk/news_publications/publications/pdf/20140610_LSB_Annual%20Report_2014.pdf), p. 19).

<sup>44</sup> See Footnote 38 above.

- what the changes to regulation that we considered here in such detail tell about the processes, structures and legal provisions of the regulation of legal services and about the performance of the regulators, both individually and collectively; and
  - the actual impact of (and the actual extent of change driven by) the changes to regulation in the legal services market and the relevant segments of that market (which could include the issue of relative importance of these changes in comparison to the other factors affecting these markets).
120. Other areas of future research could and perhaps should cover issues relating to data collection and publication (looking at them for example from the point of view of costs and benefits) and the relationship between regulated and unregulated services.