

Title: Economic Crime and Corporate Transparency Bill – Scottish Solicitors Discipline Tribunal financial penalty IA No: RPC Reference No: N/A Lead department or agency: Ministry of Justice Other departments or agencies: Scottish Government	Impact Assessment (IA)			
	Date:			
	Stage:			
	Source of intervention: Domestic			
	Type of measure: Primary legislation			
	Contact for enquiries:			

Summary: Intervention and Options	RPC Opinion:
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Cost of Preferred (or more likely) Option, 2019 prices

Total Net Present Social Value	Business Net Present Value	Net cost to business per year	Business Impact Target Status
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What is the problem under consideration? Why is government action or intervention necessary?

The UK regulator, the Office for Professional Body Anti-Money Laundering Supervision (OPBAS) has commented on the value of financial sanction available to the Scottish Solicitors Discipline Tribunal (SSDT), in respect of disciplinary matters relating to Scottish solicitors. Currently the SSDT may impose a maximum financial penalty of £10,000, as set out in the Solicitors (Scotland) Act 1980¹. To provide a comparison, the Solicitors Disciplinary Tribunal in England and Wales may impose an unlimited financial penalty^{2,3}.

The crisis in Ukraine has shone a light on the exposure of professional services sectors to economic crime. We need to ensure that legal services regulators have the powers they need in this area. Government intervention is necessary as the proposed change to the SSDT financial sanction requires to be made by primary legislation.

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

The policy objective is to provide the SSDT with enhanced enforcement powers that enable it to act appropriately should any solicitor be found to have undermined the economic crime regime. The intended effects are a more effective deterrent, which will be used in a proportionate way, to ensure economic crime compliance.

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

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

Option 1: Rely on planned legislative reform of legal services regulation in Scotland, anticipated within this session of the Scottish Parliament.

Option 2: Amend the value of financial sanction available to the SSDT in respect of economic crime through this Bill.

Option 2 is the preferred approach, as it best meets the policy objectives, while presenting a more immediate opportunity to amend the financial sanction powers of the SSDT in respect of economic crime.

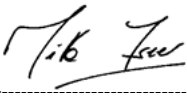
Will the policy be reviewed? Yes If applicable, set review date: Within this session of the Scottish Parliament

Is this measure likely to impact on international trade and investment?	It will not impact lawful trade and investment.			
Are any of these organisations in scope?	Micro Yes	Small Yes	Medium Yes	Large Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)	Traded:		Non-traded: N/A	

¹ [Solicitors \(Scotland\) Act 1980, S53\(2\)\(c\) \(legislation.gov.uk\)](http://legislation.gov.uk)
² [Solicitors Disciplinary Tribunal, Guidance Note on Sanctions](#)
³ [Solicitors Act 1974 S47\(2\)\(c\) \(legislation.gov.uk\)](http://legislation.gov.uk)

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I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible SELECT SIGNATORY:  Date: 02/02/2023

Summary: Analysis & Evidence

Policy Option 2

Description: Amend the value of financial sanction available to the SSDT in respect of economic crime through this Bill.

FULL ECONOMIC ASSESSMENT

Price Base Year 2019	PV Base Year 2022	Time Period 10 Years	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate:
COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Cost (Present Value)
Low	0	1	Optional		Optional
High	£1,932	1	Optional		Optional
Best Estimate	£1,932	1	0		0
Description and scale of key monetised costs by 'main affected groups'					
Transition costs are expected to be minimal and met by existing budgets. The SSDT is funded by the Law Society of Scotland in accordance with its obligations under paragraph 22 of Schedule 4 to the Solicitors (Scotland) Act 1980. The Scottish Government funds the expenses of tribunal lay members.					
Other key non-monetised costs by 'main affected groups'					
There are no significant financial implications to the regulatory framework. There may be a significant impact on those subject to financial sanction, however the SSDT would determine any sanction based on the facts and circumstances of each case. There would also be a right of appeal against any sanction. The SSDT 2020-21 Annual Report indicates that it imposed the maximum financial sanction of £10,000 once in that period ¹ . In the prior year the maximum fine was not imposed ²					
BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Benefit (Present Value)
Low	Optional				Optional
High	Optional				Optional
Best Estimate	0		0		0
Description and scale of key monetised benefits by 'main affected groups'					
None					
Other key non-monetised benefits by 'main affected groups'					
The proposal will provide the SSDT parity with England and Wales in respect of the financial sanctions available to the tribunal for economic crime. We anticipate the measure will lower the risk of solicitors facilitating economic crime, which is likely to improve confidence in the sector. However, this benefit is difficult to quantify.					
Key assumptions/sensitivities/risks					Discount rate (%)
The focused scope of this measure and the Court of Session's oversight represent an appropriate safeguard that will guarantee the proportionate application of this power by the SSDT. In addition, solicitors directed to pay a penalty will continue to have a right of appeal to the Court of Session.					
Section 52 of the Solicitors (Scotland) Act 1980 sets out that Lord President requires to approve the SSDT rules and procedure.					

¹ SSDT Annual Report 2020-21, Summary of Sanctions Imposed. (ssdt.org.uk)

² SSDT Annual Report 2019-20, Summary of Sanctions Imposed. (ssdt.org.uk)

BUSINESS ASSESSMENT (Option 2)

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

Evidence Base

Background

SSDT Financial Sanctions

In 2020-21 the SSDT imposed fines that came to a total of £15,500. The maximum financial penalty of £10,000 was imposed once in this period³.

In the prior year, these fines came to a total of £22,000, the maximum fine imposed in this year was £5,000⁴.

The Scottish Solicitors' Discipline Tribunal Rules⁵ set out the rules and procedures that govern the SSDT. Section 52 of the Solicitors (Scotland) Act 1980 sets out that Lord President requires to approve the SSDT rules and procedure.

Economic crime duties

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

Most regulated legal professionals have extensive anti-money laundering duties under the Money Laundering Regulations 2017, which impose certain requirements on solicitors, such as carrying source of funds checks. Regulations under the Sanctions and Anti-Money Laundering Act 2018 also require solicitors to ensure they are not accepting payment from clients who are on designated person lists without having obtained a licence to pay for legal services. Finally, the Law Society of Scotland who regulates solicitors in Scotland is also the Professional Body Supervisor (PBS) whose role is to ensure its members comply with the duties in the Money Laundering Regulations.

While it can already be inferred from the existing regulatory objectives in the Legal Services (Scotland) Act 2010 that the Law Society of Scotland should ensure solicitors are not breaching economic crime rules, providing parity with England and Wales in respect of the financial sanctions available to the discipline tribunal will provide a proportionate deterrent against economic crime.

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

³ [SSDT Annual Report 2020-21, Summary of Sanctions Imposed. \(ssdt.org.uk\)](https://www.ssdtd.org.uk/annual-reports/2020-21-summary-of-sanctions-imposed)

⁴ [SSDT Annual Report 2019-20, Summary of Sanctions Imposed. \(ssdt.org.uk\)](https://www.ssdtd.org.uk/annual-reports/2019-20-summary-of-sanctions-imposed)

⁵ [Scottish Solicitors' Discipline Tribunal Rules 2008 \(ssdt.org.uk\)](https://www.ssdtd.org.uk/discipline-tribunal-rules)

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The option included in this Impact Assessment (IA) therefore aims to: provide a UK wide approach to deterring economic crime, designed to ensure economic crime regime compliance.

Rationale and Policy Objectives

The conventional economic rationales for government intervention are based on efficiency and equity arguments. The government may consider intervening if there are failures in the way markets operate (e.g., monopolies overcharging consumers) or where there are failures with existing government interventions (e.g., waste generated by misdirected rules). The proposed new interventions should avoid creating a further set of disproportionate costs and distortions. The government may also intervene for equity (fairness) and re-distributional reasons (e.g., to reallocate goods and services to more the needy groups in society).

The primary rationale for intervention in this case is equity: providing parity with England and Wales in respect of solicitor discipline tribunal financial sanctions with regard to economic crime will create greater legal certainty and act as an appropriate deterrent to those who might otherwise commit such offences.

The associated policy objectives is to:

- Provide a UK wide approach to legal services regulation discipline sanctions, to ensure economic crime compliance.

Affected Stakeholder groups, organisations and sectors

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

- The SSDT which, as the discipline tribunal, is required to consider appropriate sanctions based on the facts and circumstances of cases before it.
- The Law Society of Scotland who regulates solicitors, and acts as the Professional Body Supervisor for solicitors in Scotland.
- Regulated solicitors in Scotland.
- Consumers of regulated legal services.
- The wider public who benefit from the integrity of the legal system.

Description of options considered

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

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

Option 1: Rely on reform of Legal Services Regulation in Scotland, anticipated within this session of the Scottish Parliament.

Option 2: Amend the value of financial sanction available to the SSDT in respect of economic crime through this Bill.

Option 2 is preferred as it best meets the policy objectives, while presenting a more immediate opportunity to amend the financial sanction powers of the SSDT in respect of economic crime.

Option 0

Under this option, there would continue to be a weaker financial sanction available to the solicitor discipline tribunal in Scotland, compared to England and Wales. Therefore, this option has been rejected as it would not address the policy objectives.

Option 1

Under this option, there would not be an immediate opportunity to address the weakness described. Therefore, this option has been rejected as it would not address the policy objectives. However, provides an opportunity to review the effectiveness of the provision.

Option 2

This option will provide for parity in respect of the financial sanction available to the solicitor discipline tribunal in Scotland with that in England and Wales, with regard to economic crime.

It is expected that, assuming the legislation receives Royal Assent, this will come into effect in the summer of 2023.

When implemented, this provision will provide a UK wide approach to legal services regulation discipline sanctions in respect of economic crime compliance.

Costs and Benefits Analysis

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

This IA identifies impacts on individuals, groups and businesses in Scotland, with the aim of understanding what the overall impact to society would be from implementing the options considered. IAs typically place a strong emphasis on valuing the costs and benefits in monetary terms (including estimating the value of goods and services that are not traded). However, there are important aspects that cannot sensibly be monetised which might include how the policy impacts differently on particular groups of society or changes in equity and fairness.

The costs and benefits of each option are usually compared to the 'do nothing' or 'counterfactual' option. In this instance, the option relying on anticipated Scottish legislation is also considered, but discounted as option 2 provides a more immediate response. As the counterfactual is compared to itself, its costs and benefits are zero, as is its Net Present Value (NPV).

In order to obtain an NPV, the monetised impacts of the options considered in this IA have been discounted using HMT's 3.5 per cent discount rate over a ten-year appraisal period beginning in 2022-23. In respect of Option 2 the transition cost on the SSDT is expected to be minimal.

The Tribunal is made up of twelve solicitor and twelve non-lawyer members (sometimes referred to as lay members). Solicitor members are not paid while lay members are paid a fee for their time. There would require to be additional training for tribunal members. If training could be accommodated within the Tribunal's annual training day (held in June each year) there would be no additional cost. If an additional day was required there would be a cost of around £161 per lay member, a total one off transition cost of around £1,932. Updating of the SSDT website, members' and chairs guidance, and publication of the new sanction would all be administered by the Tribunal, and be met within existing budgets. Given the expected date of implementation, any transition cost is assumed to begin at the start of 2023-24.

Option 2: Amend the value of financial sanction available to the SSDT in respect of economic crime.

Costs of Option 2

Scottish Solicitors' Discipline Tribunal

The SSDT currently already has available the option of imposing a financial sanction in respect of disciplinary matters. The SSDT imposed 14 fines between 2019 and 2021. As such, the overall transition costs to the SSDT are estimated to be minimal.

The flow chart for disciplinary matters considered by the tribunal may be viewed [here](#).

Law Society of Scotland

The Law Society of Scotland (LSS) regulates solicitors, and acts as the Professional Body Supervisor for solicitors in Scotland.

The Law Society usually brings complaints of professional misconduct before the Tribunal. The Law Society appoints a Fiscal to prosecute the Complaint before the Tribunal. Certain other bodies have the power to bring a Complaint about an incorporated practice, although this rarely happens in practice. Members of the public cannot bring a case before the Tribunal themselves. Complaints against legal professionals in Scotland must be made in the first instance to the Scottish Legal Complaints Commission. Conduct matters are passed to the Law Society for investigation and it may bring a prosecution before the Tribunal. Solicitors and Lay Complainers may appeal against the Law Society's finding or a failure to make a finding of unsatisfactory professional conduct. These appeals are made under Section 42ZA of the Solicitors (Scotland) Act 1980.

The SSDT is funded by the Law Society of Scotland in accordance with its obligations under paragraph 22 of Schedule 4 to the Solicitors (Scotland) Act 1980.

However, costs to the LSS are expected to be minimal as there will be no change to the LSS processes as a result of the provisions.

Legal services businesses and consumers

There may be a significant impact on those subject to financial sanction, however the SSDT would determine any sanction based on the facts and circumstances of each case. There would also be a right of appeal against any sanction.

There are not expected to be any cost to consumers.

Benefits of Option 2

Scottish Solicitors' Discipline Tribunal

The provision will provide the SSDT parity with England and Wales in respect of financial sanctions of the solicitors' discipline Tribunal, with regard to economic crime.

Law Society of Scotland

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The provision will support the LSS in its role as Professional Body Supervisor for solicitors in Scotland.

Legal services businesses and consumers

An appropriate and proportionate deterrent to economic crime would likely improve confidence in the sector.

Risks and Assumptions

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

Assumptions and risks underlying Option 2

The current illustrative cost estimate of Option 2 assumes that current level of disciplinary proceedings before the SSDT remain at current levels

Wider Impacts

Equalities

It is not anticipated that this provision will negatively impact on equalities.

Better Regulation

The provision is in keeping with the Better Regulation principles, in that it seeks to take a proportionate, consistent approach.

Environmental Impact Assessment

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

International Trade

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

Monitoring and Evaluation

The impacts of this policy will be considered in respect of wider legal services regulation reform in Scotland.