

Title: Economic Crime and Corporate Transparency Bill – New proactive information request power for the Solicitors Regulation Authority to use in relation to economic crime IA No: MoJ038/2022 RPC Reference No: N/A Lead department or agency: Ministry of Justice Other departments or agencies:	Impact Assessment (IA)			
	Date: 23/08/2022			
	Stage: Final			
	Source of intervention: Domestic			
	Type of measure: Primary legislation			
Contact for enquiries: Laurene.Rousseau@justice.gov.uk				
Summary: Intervention and Options				RPC Opinion: Not applicable

Cost of Preferred (or more likely) Option			
Total Net Present Social Value	Business Net Present Value	Net cost to business per year	Business Impact Target Status NQRP
-£2.0m	-£2.0m	-£2.0m	

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

Under the Solicitors Act 1974, the Solicitors Regulation Authority (SRA) has the power to require information or documents, as specified in a notice, to be provided. This power allows the SRA to request information from solicitors and their employees, recognised bodies and their employees and managers, and persons with an interest in the body, only where it is necessary to do so for the purposes of an investigation. The SRA also has the power to request information and documents from individuals or firms it supervises in its role as a “Professional Body Supervisor” under the Money Laundering Regulations (MLRs) 2017 which allows the SRA to proactively spot-check information from individuals and firms that are subject to the MLRs. However, many firms are not covered by the MLRs, meaning that the SRA cannot effectively practise proactive checks, and therefore risk-based regulation, across the whole of its regulated community. The crisis in Ukraine has exposed professional services sectors to potential economic crime and we need to ensure that the SRA has the necessary powers in this space. Government intervention to give the SRA the necessary proactive information request is necessary because making changes to the SRA’s regulatory powers requires primary legislation.

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

The policy objective is to ensure that the SRA has the necessary powers to fulfil its obligations to effectively oversee and promote the prevention and detection of economic crime. The intended effect is to enable effective risk-based regulation and better targeting of the SRA’s monitoring and enforcement work, by giving the SRA the ability to spot-check all the individuals and firms it regulates. This will also reduce the risk of SRA members questioning its information request powers in respect of economic crime and should create a more effective regulatory regime, which allows for a more agile and flexible response to the threats posed by economic crime and those who enable it.

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

- **Option 0** – Do nothing; leave the SRA’s information request powers as they are.
- **Option 1** – Create a new information request power for the SRA in respect of economic crime.

The preferred option is **Option 1**, as this will best meet the policy objectives.

Will the policy be reviewed? No plans to review. If applicable, set review date: N/A				
Is this measure likely to impact on international trade and investment?			No	
Are any of these organisations in scope?	Micro No	Small No	Medium No	Large No
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)		Traded: N/A	Non-traded: N/A	

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

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

Summary: Analysis & Evidence

Policy Option 1

Description: New proactive information request power for the SRA in relation to economic crime

FULL ECONOMIC ASSESSMENT

Price Base Year 2022	PV Base Year 2022	Time Period 10 years	Net Benefit (Present Value (PV)) (£m)		
			Low: -1.3m	High: -3.9m	Best Estimate: -2.0m

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional		£150,000	Optional
High	Optional		£450,000	Optional
Best Estimate	0		£0.23 m	£2.0m

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

Under option 1, the SRA does not anticipate a significant increase in staffing or data storage costs.

Law firms may incur additional costs by virtue of responding to the additional information requests completed by the SRA. The estimated cost to all firms is approximately £225,270 per year.

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

There will be costs to the SRA from updating guidance. These costs are likely to be negligible and will form part of its business-as-usual costs. There will also be costs to regulated professionals from having to familiarise themselves with the new information power. However, these costs have been assumed to be minimal.

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

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

None

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

The new information request power will benefit the SRA's enforcement powers and monitoring duties in the context of economic crime compliance. The power will allow for a more flexible and proactive approach to be taken by the SRA in gathering information and is expected to reduce the risk of challenges to information requests by their members. This should result in less time being focused on addressing challenges and more time on discharging the SRA's regulatory functions.

Key assumptions/sensitivities/risks	Discount rate	3.5%
--	----------------------	------

The costs to firms and individuals and working time taken to respond to information requests are difficult to estimate effectively. Additionally, figures on average hourly earnings from the ONS encompass a broader selection of occupations than will likely be involved in servicing information requests. As data on the average hourly earnings of those groups is not available from the ONS, the broader ONS legal services activities group has been used to calculate estimates.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m: -£2m			Score for Business Impact Target (qualifying provisions only) £m: -£2.0m
Costs: -£2m	Benefits: 0	Net: -£2m	

Evidence Base

A. Background

Current Regulatory Framework

1. Under section 44B of the Solicitors Act 1974, the Solicitors Regulation Authority (SRA), acting on its delegated powers as the regulatory arm of the Law Society, may require a person to provide specified information or documents. The power applies to a solicitor, an employee of a solicitor, a recognised body or an employee or manager of, or a person with an interest in, a recognised body.
2. For example, an information request could be made in response to a suspected professional misconduct by a solicitor or a failure to comply with a relevant requirement. The power continues to be exercisable after a person ceases to fall into one of these categories. The power can only be used where the SRA is satisfied that it is necessary to do so for the purpose of investigating:
 - whether there has been professional misconduct by a solicitor;
 - whether a solicitor, or employee of a solicitor has failed to comply with a relevant requirement imposed on them under the 1974 Act or rules set by the SRA;
 - whether a recognised body or its managers or employees have failed to comply with a relevant requirement under the Administration of Justice Act 1985 or rules set by the SRA;
 - whether there are grounds to make an application to the Tribunal for the control of a solicitors' employee or consultant under section 43 of the 1974 Act.
3. Legal services regulators who are 'Professional Body Supervisors' under the Money Laundering Regulations (MLA) 2017 also have powers to request information from individuals and firms to which the MLRs apply (approximately two thirds of firms regulated by the SRA). Legal services regulators who are Professional Body Supervisors include the SRA (acting on delegated powers as the regulatory arm of the Law Society), the Bar Standards Board (acting on delegated powers as the regulatory arm of the Bar Council), the Council of Licensed Conveyancers, CILEx Regulation Board (acting on delegated powers as the regulatory arm of the Chartered Institute of Legal Executives), and the Faculty Office.
4. Under regulation 66 of the MLRs, Professional Body Supervisors can issue a notice in writing to require a person to whom the regulations apply or applied (this includes a relevant person, payment service provider or a connected person) to provide information or documents of a specific description, or to attend before an officer of the supervisory authority to answer questions in connection with the exercise of supervisory functions (i.e. information related to firms' systems, processes and controls to prevent money laundering). The power also extends to requesting documents from third persons, where the Supervisor has the power under the regulations to require a person to produce a document and it appears that the document is in possession of a third person.
5. This power enables a pro-active approach to enforcement, enabling spot-checking of firms without the need for an active investigation to be in progress. This enables supervisors to assess both levels of exposure to risk in the regulated population and levels of compliance in the regulated population.

ERROR! UNKNOWN DOCUMENT PROPERTY NAME.

6. Part 9 of the MLRs sets out penalties as part of the further enforcement regime for the MLRs, exercisable by designated supervisory authorities (Financial Conduct Authority and Her Majesty's Revenue and Customs). Where the SRA finds that firms or individuals have breached the MLRs, it enforces using its usual enforcement regime. This may include fines or rebukes for minor breaches, or referral to the Solicitors Disciplinary Tribunal (SDT) if more serious breaches are found.
7. Additionally, Section 93 of the Legal Services Act 2007 gives 'Licensing Authorities' of Licensed Bodies (i.e., Alternative Business Structures (ABS)) the power to require the following individuals to provide information or documents:
 - a manager or employee (or former manager or employee) of a licensed body.
 - any non-authorised person who has an interest or an indirect interest or holds a material interest in the licensed body.
8. The power can be exercised for the purpose of enabling the Licensing Authority to ascertain whether the terms of the licensed body's licence are being, or have been, complied with.

Problem Under Consideration

9. At present, many firms are not covered by the MLRs, meaning that the SRA cannot effectively practise proactive checks, and therefore risk-based regulation, across the whole of its regulated community.
10. The crisis in Ukraine has shone a light on the exposure of professional services sectors to economic crime. The legal services sector was assessed in HMT's National Risk Assessment of money laundering and terrorist financing¹ (2020) as being at high risk of abuse for money laundering purposes. The sector is also exposed to further-reaching risks such as fraud and breaches of sanctions legislation.
11. The risks of economic crime are not restricted to money laundering, with fraud and breaches of sanctions regulations also posing significant risk. The SRA is also at risk of its members questioning its powers in this space, with time and resource implications which may limit the SRA's targeted compliance activity in relation to economic crime.
12. The new proactive information request power assessed in this Impact Assessment (IA) will support the new regulatory objective measure which affirms the duties and responsibilities of regulators in relation to upholding the economic crime regime. The new regulatory objective also provides a clear basis upon which the LSB can assess how effectively the legal services regulators uphold the economic crime regime. Therefore, the LSB's oversight of the SRA's regulatory activities in relation to requesting information from legal services providers ensures that the new economic crime objective is upheld by the SRA.
13. Further, we need to ensure that the SRA has the enforcement powers it needs to effectively promote the prevention and detection of economic crime and investigate legal professionals who may enable economic crime. Government intervention is necessary to ensure it can fulfil its obligations to effectively oversee and promote the prevention and detection of economic crime and a primary legislation is required to achieve this.

¹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/945411/NRA_2020_v1.2_FOR_PUBLICATION.pdf

B. Rationale and Policy Objectives

14. 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 or where there are failures with existing government interventions. The proposed new interventions should avoid creating a further set of disproportionate costs and distortions. The government may also intervene for equity and re-distributional reasons (e.g., to reallocate goods and services to more the needy groups in society).
15. The primary rationales for intervention in this case are efficiency and consistency. More closely aligning the SRA's powers to request information with those of other legal services regulators will allow for a more uniform approach and allow the SRA to be more flexible in its approach to tackling economic crime. This measure also supports our other policy intention, which is to introduce a new regulatory objective to the Legal Services Act 2007.
16. The key objectives of this policy are:
- To ensure the SRA has sufficient information request powers to fulfil its obligations to deter and detect economic crime
 - To enable effective risk-based regulation and better targeting of the SRA's monitoring and enforcement work in relation to economic crime
 - To reduce the risk of challenge to information requests from the SRA's regulated community.

C. Affected Stakeholder groups, organisations and sectors

17. The following groups will be most affected by the options described in this IA:
- The LSB, which, as the oversight regulator, oversees how the approved regulators discharge their functions and will have some oversight of how effectively this power is used.
 - The SRA, which will have an additional statutory power and therefore an anticipated increase in regulatory activity.
 - Regulated solicitors and law firms and other similar individuals who may face additional costs from complying with the new statutory power.
 - Consumers of regulated legal services who will pay more, should any increases to operating costs be passed on in the form of higher prices.
 - The wider public, which benefits from the integrity of the legal system.

D. Description of options considered

18. To meet the policy objectives, the following options are assessed in this IA:
- **Option 0:** Do nothing: Under this option, no changes will be made to current legislation.
 - **Option 1:** Create a new information request power for the SRA in respect of economic crime.
19. Option 1 is preferred as it best meets the policy objectives.

Option 0

ERROR! UNKNOWN DOCUMENT PROPERTY NAME.

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

Option 1

21. This Option will strengthen the SRA's ability to meet its responsibilities in overseeing compliance with the existing economic crime regime, such as the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLRs) and sanctions regulations.

22. This will create greater certainty as to the SRA's ability to gather information to monitor economic crime compliance. This is expected to reduce challenge from its members and allow for the redirection of resources to tackle economic crime and those who enable it.

23. This option also will enable effective risk-based regulation and better targeting of the SRA's monitoring and enforcement work, through the ability to spot-check all the individuals, firms and entities it regulates. It will also allow for a more effective regulatory regime, which is more agile and flexible to the threats posed by economic crime and professional enablers.

24. This option is expected to come into effect in 2023.

E. Cost and Benefit Analysis

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

26. This IA identifies impacts on individuals, groups and businesses in England and Wales, with the aim of understanding what the overall impact to society will 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.

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

28. The monetised impacts in this IA are expressed in 2022 prices and NPV has been assessed over a 10-year appraisal period which begins in 2022.

Option 1: Create a new information request power for the SRA in respect of economic crime

Costs of Option 1

Legal Services Board

29. As the LSB already conducts a wide range of oversight functions for the regulators, it is not expected that the oversight of the information request power will create additional costs for the LSB. Oversight of the information request power will instead fall within the general performance cycle that the LSB administers. The new regulatory objective (see paragraph 12 above) also provides a clear basis upon which the LSB can assess how effectively the legal services regulators uphold the economic crime regime.

Solicitors Regulation Authority

ERROR! UNKNOWN DOCUMENT PROPERTY NAME.

30. The SRA anticipates it will build up to a steady state of use of the information request power, given the need to build the evidence based and to identify emerging areas of risk. The SRA has assumed a transitional period of 2 years for this, with a thematic review in each of those years (approximately 30 firms each time). Also, depending on emerging evidence, the SRA may undertake a declaration exercise during a 2-year period. If the SRA does carry out a declaration exercise, it may request information from firms, or a sample of firms, to verify the declaration they have made.
31. In the longer term, the SRA estimates that, in steady state, it may make approximately 750 additional information requests per year. This figure is around half the number of anti-money laundering (AML) requests the SRA completes as it will continue to use its existing powers for AML work, and the SRA's assumption is that risk is lower in other areas of economic crime.
32. The SRA conducted 1,537 AML checks in financial year 2021/22 and 1,229 in 2020/21. Since the SRA already conducts information requests, the SRA expects its existing staffing resource to be sufficient to complete the additional 750 information requests per year. The SRA also expects that the creation of new guidance for its members will fall under business-as-usual activities and will therefore not generate additional costs.
33. It is anticipated that the SRA's data storage costs may increase slightly by virtue of additional data being gathered and stored. The infrastructure to store this information is in place, but costs for storing data are charged for the volume of data stored.

Solicitors and law firms

34. As noted, law firms may incur additional costs by virtue of responding to the additional information requests completed by the SRA. The estimated cost to all firms is approximately £225,270 per year.
35. This estimate is based on data provided by the SRA on how long firms take to respond with information requests, how many additional checks the SRA may conduct using this new power and based on ONS data, for the average gross hourly earnings of those within the legal activities SOC code 6910. This reflects staffing costs to respond directly to information requests. Ancillary costs, including data storage and file retention, are typically part of a firm's/solicitor's operating costs and have therefore not been added on top of this figure.
36. The SRA already conducts information requests and this power is intended to provide a more explicit statutory basis on which it may do so. The above data has been used to develop an estimated range of the annual staffing costs to businesses.
37. Per ONS data from 2021, mean gross full-time hourly earnings for those working in legal activities (4 digit SIC code 6910) are approximately £25. The legal activities SIC code includes, but is not limited to, legal representation of one party's interest against another party, advice and representation in cases, general counsel and advice, and preparation of legal documents. Data is not available for SIC69102 which focuses specifically on solicitors and therefore data for the broader SIC6910 has been used.
38. Based on figures provided above, we estimate that the average cost to respond to an information request is approximately £25 per hour per staff member. Typically, multiple staff members are involved in responding to information requests each contributing varying amounts of time. We estimate that the equivalent to 2 staff members, each inputting between 6 and 9 hours of paid work at the value set out above, is a reasonable estimate of staff time and costs. Therefore, each information request could cost firms approximately £50 per hour in staffing costs. Firms are already expected to maintain effective records. It is not

ERROR! UNKNOWN DOCUMENT PROPERTY NAME.

anticipated that this new requirement will create additional record retention burdens on firms and solicitors, therefore any additional record cost will be negligible.

39. We have modelled the costs to businesses assuming that in a steady state the additional information requests carried out by the SRA will be approximately 750 requests per year. This figure is around half the number of AML requests the SRA completes as it will continue to use its existing powers for AML work, and the SRA's assumption is that risk is lower in other areas of economic crime.
40. The SRA anticipates it will build up to a steady state of use of the information request power, given the need to build the evidence based and to identify emerging areas of risk. The SRA has assumed a transitional period of 2 years for this, with a thematic review in each of those years (approximately 30 firms each time). Taking the figure of 30 requests per year and each request costs approximately £50 per hour in staffing costs, we estimate the total cost for the two-year transitional period will be approximately £22,500.
41. Following this two-year period, the SRA estimates it will conduct 750 requests per year and each request costs approximately £50 per hour, we estimate that the total cost will be approximately £225,270 per year.
42. Taking into consideration the total cost of the two-year transitional period and the steady state of requests per year, we estimate that over 10 years the total cost will be approximately £2,000,000.

Benefits of Option 1

Legal Services Board

43. With a new information request power for the SRA, closely connected to the new regulatory objective on economic crime, the LSB will have a strong basis on which to hold all regulators to account for effectively using the respective information request powers available to them and promoting adherence to the economic crime regime.

Solicitors Regulation Authority

44. The SRA will benefit from a new power that will reduce the risk of challenge to its information requests and give it a strong platform from which to uphold the economic crime regime. This will have the additional benefit of reducing the resources spent addressing challenges and instead allow for resources to be redirected to tackling economic crime.

Legal Services practitioners and consumers, the wider public

45. We anticipate this measure will help the SRA identify and investigate breaches of the economic crime regime and will act as a deterrent to those who might otherwise commit such offences. As such, the measure is also likely to help preserve public trust in the legal services sector and therefore the attractiveness of the jurisdiction, which may also positively increase practitioners' turnover. It is however difficult to quantify these benefits.

F. Risks and Assumptions and Sensitivity Analysis

46. The key assumptions and risks underlying the analysis above are described below.
47. The SRA has provided an estimate of the time required for a firm to respond to an information request. As the new information request power is anticipated to be similar or smaller in scope to current SRA desk-based reviews, the time taken to respond to an information request may be slightly less than 6 hours and therefore potential cost implications of this measure may be lower than estimated.

ERROR! UNKNOWN DOCUMENT PROPERTY NAME.

48. The costs to firms and individuals and working time taken to respond to information requests are difficult to estimate effectively. Figures for working hours taken to respond are based on existing data held by the SRA which estimates, based on the types of check or information requested, how long it expects firms to take to gather such information. This assumes that these proactive information requests will take firms approximately the same amount of time to respond to.
49. Additionally, figures on average hourly earnings from the ONS encompass a broader selection of occupations than will likely be involved in servicing information requests. This is because those involved will likely encompass legal assistants through to fee earners. Data on the average hourly earnings of those groups is not available from the ONS and therefore the broader ONS legal services activities group has been used to calculate estimates. Therefore, average gross hourly earnings may in some cases overstate earnings.

G. Wider Impacts

Equalities

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

Better Regulation

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

Environmental Impact Assessment

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

International Trade

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

H. Monitoring and Evaluation

54. There are no further plans to monitor the impacts of this policy from a governmental perspective. The LSB will be responsible for monitoring the effectiveness of the SRA's implementation of this policy.