

To:	Board
Date of Meeting:	26 May 2011
Item:	Paper (11) 38

Title:	Ending transitional protections
Workstream(s):	Workstream(s) 5B: Widening access to the legal market
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Status:	Unclassified

Summary:

Schedule 5 to the Legal Services Act 2007 (**LSA**) makes provision for the continuity of certain rights that existed when the LSA came into force, and for certain categories of people to be deemed to be authorised by an Approved Regulator (**AR**) to conduct certain reserved legal activities for the duration of a transitional period. At the end of the transitional period, unless a person (which the LSA defines as including an entity and an individual) is authorised or exempt, they will commit an offence if they carry out a reserved legal activity.

Ministry of Justice wants to include in the commencement order for Part 5 of the LSA provision ending the transitional protection that the LSA provides. The transitional period can only be ended on the recommendation of the LSB.

We consulted on this issue in November 2009 as part of the wider consultation on licensing rules. Our decision document issued in March 2010 stated that we considered that the transitional arrangements should end 12 months after the commencement of Alternative Business Structures (**ABS**). Given the passage of time, we wrote to ARs again on 14 April this year to get their views.

NB: This paper does not concern the transitional protection for Special Bodies, such as not for profit organisations. Our approach to the regulation of Special Bodies will be the subject of a separate consultation later this year.

Risks and mitigations

Financial:	N/A
FoIA:	Initial assessment of exempted text is highlighted.
Legal:	No specific legal concerns
Reputational:	No significant issues
Resource:	No significant issues

Consultation	Yes	No	Who / why?
Board Members:		✓	N/A
Consumer Panel:		✓	N/A
Others:	N/A		

Recommendation(s):

The Board is invited:


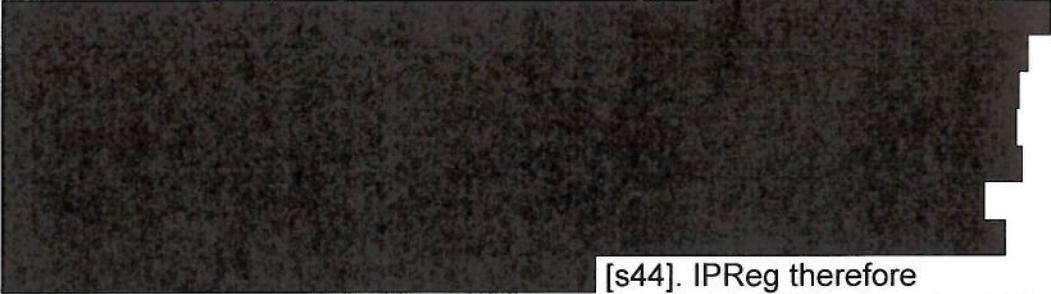
- 1) to agree to recommend to the Lord Chancellor that the transitional period should end 18 months after Part 5 of the LSA is commenced (except in relation to Special Bodies (as defined by Section 23(2) of LSA))
- 2) to delegate authority to finalise the recommendation to the Chairman and the Chief Executive
- 3) to note the 'next steps' (at paragraphs 7-8).

LEGAL SERVICES BOARD

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Current position – summary of responses from ARs

1. We received three responses and there was general agreement that the arrangements should come to an end. The responses were from:
 - Council for Licensed Conveyancers (**CLC**) – if they are designated as a Licensing Authority (**LA**), CLC is content for the transitional period to end 12 months after the commencement of Part 5; otherwise, they consider a 24 month period to be appropriate to allow CLC-regulated entities a reasonable period in which to transfer to an appropriate LA
 - Intellectual Property Regulation Board (**IPReg**) – 
 [s44]. IPReg therefore considers it appropriate for the end date to be March 2013 – i.e. about 18 months after the start of ABS
 - Costs Lawyer Standards Board (**CLSB**) – CLSB considers that 12 months does not seem unreasonable.

Discussion

2. Our March 2010 document indicated that we thought it was reasonable for the transitional period to end 12 months after the commencement of Part 5. However, both CLC and IPReg have indicated that it may be desirable to extend that period. It does not seem necessary for that period to be two years longer than mainstream ABS in order for what will be existing ABS or LDPs to transfer to another regulator. Those entities will know by this summer whether or not the CLC is to be designated as an LA. If it is not, they can start to make preparations then to apply to SRA (if it is designated as an LA) or to re-organise their business so that they no longer need to be licensed as an ABS.
3. Nevertheless, in general it may be appropriate for the transitional period to be slightly longer than we had previously anticipated. Because some ARs do not have accurate information about the number of people or the type of bodies they currently regulate, there will need to be publicity / information work done by them to ensure that those they regulate are made aware of the circumstances under which they may need to be licensed in future and to which LA(s) they can apply. It may also be that there are some individuals who have not received specific

authorisation by an AR. Although the LSA allows different end dates for different purposes it seems unnecessarily complex to specify different dates for different categories of person or AR. It therefore seems reasonable to allow an additional 18 months after Part 5 is commenced across the board.

4. In the meantime, there is no impact on consumer detriment since the status quo remains.

Next steps

5. We will send the recommendation in the form of a letter to the Lord Chancellor.
6. We will send a letter from the Chief Executive to both the representative and regulatory part of the ARs explaining the implications of the recommendation and that they must make appropriate arrangements to ensure that those currently deemed to be authorised are actually authorised in practice by the end of the transitional period. We will also expect them to provide information and advice to those who will need to be authorised once the transitional period ends. A copy of the letter will be put on our website.