



To:	Board		
Date of Meeting:	30 September 2010	Item:	Paper (10) 63

Title:	Commencement of Schedule 18 of Legal Services Act 2007
Workstream(s):	2G – Improving access to justice
Introduced by:	Crispin Passmore, Strategy Director crispin.passmore@legalservicesboard.org.uk / 020 7271 0086
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Status:	Protect

Summary:

This paper provides an overview of the implications of commencing Schedule 18 of the Legal Services Act 2007 (**'the Act'**) and asks the Board to agree a recommendation to the Lord Chancellor under paragraph 18 (3) of Schedule 18 to end the transitional period for Schedule 18 on 31 March 2011, attached at **Annex A**.

Schedule 18 relates to oversight regulation of immigration advice and services. Currently, under the Immigration and Asylum Act 1999, one responsibility of the Immigration Services Commissioner (**ISC**) and her Office (**OISC**) is to ensure that The Law Society, Institute of Legal Executives (**ILEX**) and The Bar Council regulate those of their members who provide immigration advice and services effectively.

Commencement of Schedule 18 would transfer this responsibility to the LSB and additionally allow the LSB to provide for other Approved Regulators (**AR**) to apply to become regulators of immigration advice.

Risks and mitigations

Financial:	The ISC charged The Law Society, The Bar Council and ILEX a total of £110k in 2009/10 for its regulatory oversight of immigration advice. The Executive considers that the transfer of this burden to the LSB will need to be recognised in future budget rounds.
FoIA:	N/A.
Legal:	Low – the ARs are likely to welcome commencement and commencement enacts what was always envisaged by Clementi.
Reputational:	Low – the ARs are likely to welcome the clarity around regulatory oversight for immigration advice that commencement will bring.
Resource:	Medium – OISC currently charges The Law Society, The Bar Council and ILEX for each regulatory activity that it does. The LSB does not consider that this arrangement would practically fit with its regulatory approach.

Consultation	Yes	No	Who / why?
Board Members:	✓		David Wolfe.
Consumer Panel:	✓		Steve Booker (Consumer Panel Manager). Impact on consumers of this change is likely to be positive as it will enable one point of contact for complaints and consistency in the way they are handled.
Others:	Ministry of Justice (MoJ) and the ISC have been consulted and are keen for commencement of Schedule 18 to take place as soon as possible.		

Recommendation(s):

The Board is invited:

- (1) to note the content of this paper;
- (2) to note the planned commencement of Schedule 18 of Legal Services Act 2007, with a view to the changes taking effect from 1 April 2011; and
- (3) to agree to recommend to the Lord Chancellor that he ends the Schedule 18 transitional period on 31 March 2011, as set out in the draft recommendation at **Annex A**.

LEGAL SERVICES BOARD

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Commencement of Schedule 18 of Legal Services Act 2007

Executive Summary

Recommendation

The Board is invited:

- (a) to note the content of this paper;
- (b) to note the planned commencement of Schedule 18 of Legal Services Act 2007, with a view to the changes taking effect from 1 April 2011; and
- (c) to agree to recommend to the Lord Chancellor that he ends the Schedule 18 transitional period on 31 March 2011, as set out in the draft recommendation attached at **Annex A**.

Background

1. As well as being ARs under the Act, The Law Society, The Bar Council and ILEX (and their regulatory arms) are Designated Professional Bodies under the Immigration and Asylum Act 1999 and are regulated by the OISC in their regulation of their members who provide immigration advice and services. The ISC largely discharges this function by monitoring and reporting on the handling of complaints about immigration advisers by these bodies.
2. The ISC additionally has oversight regulation of the other Designated Professional Bodies in the 1999 Act (which include The Law Society of Scotland, The Law Society of Northern Ireland, The Faculty of Advocates and the General Council of the Bar of Northern Ireland). The ISC's main role is in the direct regulation of immigration advisers and organisations that are not members of Designated Professional Bodies but who offer immigration advice and are licensed to do so by the Commissioner.
3. In his review of legal services, Sir David Clementi proposed that: "the dual role of the ISC should cease, and the oversight function in respect of the designated bodies within England and Wales (the Law Society, the Bar Council and ILEX) moved to the LSB."¹ This intention is reflected in Schedule 18 of the Act, which has not yet been commenced.
4. In our Business Plan 2010/11, we undertook to consider how immigration might fit into the regulatory framework. Schedule 18 and its implications for the LSB have now been assessed in full and in discussion with the MoJ and the ISC. While it is likely that the LSB will have to take on some additional work without any additional resource, the Executive believes that in order to create a clear and consistent regulatory framework, it is desirable for Schedule 18 to be commenced

¹ Sir David Clementi, Report of the Review of the Regulatory Framework for Legal Services in England and Wales, December 2004, p43.

in full and for the Board to recommend to the Lord Chancellor that he ends the transitional period for Schedule 18 on 31 March 2011.

What commencing Schedule 18 means for the LSB

5. Schedule 18 creates and makes arrangements for 'designated qualifying regulators'. These are bodies that are exempted from oversight regulation from ISC for their members who undertake immigration advice by virtue of having oversight regulation from the LSB.
6. In order to become a 'designated qualifying regulator', a body must follow a series of steps:
 - The body must either already be, or have made an application to become, an AR under the Act.
 - It may apply to the LSB to become a 'qualifying regulator' under the Act in accordance with rules which the Board must make (this can take place in parallel with the application for AR status).
 - Once the LSB has published a decision notice stating that a body has become a qualifying regulator, the Home Secretary may then, after consultation with the Lord Chancellor, 'designate' it under the 1999 Act.
 - The body is then listed as a 'designated qualifying regulator' under the 1999 Act and receives oversight regulation from the LSB for its regulation of immigration advisers (as well as any reserved activities it carries out).
7. Schedule 18 provides for The Law Society, ILEX and The Bar Council to be passported to 'qualifying regulator' status under the Act and 'designated qualifying regulator' status under the 1999 Act. We are not aware of any other current or putative ARs who wish to apply for "qualifying regulator" status.
8. Commencing Schedule 18 will remove the ISC's powers and duties under the 1999 Act in respect of The Law Society, The Bar Council and ILEX.
9. A new obligation for the LSB is set out by amendments to the 1999 Act, which requires the LSB to make a report to the Secretary of State (the Home Secretary) and the Lord Chancellor, should the LSB consider that a designated qualifying regulator is failing to provide effective regulation of those it authorises to provide immigration advice or services.
10. It should be noted that as designated qualifying regulators would also be ARs, we would expect to pick up any failures in the regulation of immigration advisers through our over-arching responsibilities. Likewise, our powers to rectify any problems would not be limited to making a report but would be associated with our powers over ARs more generally.
11. In summary, the two key activities that the LSB would have to take on should Schedule 18 be commenced would be: a) to make rules for ARs (both existing and potential) to apply to LSB to become a qualifying regulator; and b) to report to the Home Secretary and Lord Chancellor should a designated qualifying regulator be failing in its regulation of immigration advisers.

Benefits and risks of commencing Schedule 18

12. Benefits of commencement include:

- (a) The Law Society, ILEX and The Bar Council currently pay a levy to the ISC for the oversight regulation role. This amounted to approximately £110k in 2009/10 (for work carried out in 2008/09).
- (b) Commencing Schedule 18 creates a clear and consistent regulatory framework for the affected ARs, which would not be subject to two oversight regulators thereby reducing the risk of conflict between the different regulatory requirements.
- (c) Commencement of Schedule 18 creates more clarity in the handling of complaints. Given that the ISC is currently responsible for monitoring complaints in respect of immigration advisers regulated by The Law Society, ILEX and The Bar Council, a memorandum of understanding (MoU) would be needed to govern the relationship between the ISC and, on opening, the Legal Ombudsman (LeO). Schedule 18 removes the need for an overly complex MoU as it removes the ISC's responsibilities in this area. However, OISC and LeO are discussing liaison arrangements to ensure that the former is notified about any intelligence LeO generates about OISC regulated firms.
- (d) Full commencement would enable the LSB to create a framework for allowing other ARs to apply to become qualifying regulators, which is in line with meeting our regulatory objectives around ensuring an open and competitive legal services market.

13.



Process and timings

14.



However, we have agreed that in terms of our financial and resource planning, it would be most appropriate for the commencement of Schedule 18 to take place at the beginning of the next financial year (1 April 2011). We have written an OISC / LSB joint letter to The Law Society, The Bar Council and ILEX (and their regulatory arms) to advise them of this. A summary timeline is set out below.

September 2010	Paper and draft recommendation to Lord Chancellor considered by Board.
Early October 2010	Detailed discussions between LSB and MoJ about the Commencement Order.
Mid October 2010	Commencement Order finalised by MoJ lawyers.

Late October 2010 / early November 2010	Commencement Order laid and in force in order to make rules for new immigration regulators, but with full commencement delayed until April 2011.
December 2010	LSB to consult on draft rules to allow ARs (existing and potential) to apply to be qualifying regulators (and any amendments to existing rules that may be necessary). The aim will be to keep changes to our standard AR and Licensing Bodies approval rules to the minimum.
January 2011	LSB to provide The Law Society, the Bar Council and ILEX (and their regulatory arms) with a progress update.
March 2011	Board formally makes new rules to allow for qualifying regulators.
1 April 2011	Schedule 18 commencement takes effect. LSB takes on oversight regulation of The Law Society / The Bar Council / ILEX regulated advisers and allows potential new regulators to apply to become regulators of immigration advice.

15.



23.09.10

DRAFT RECOMMENDATION TO THE LORD CHANCELLOR UNDER SCHEDULE 18 OF THE LEGAL SERVICES ACT 2007

At its meeting on [date] the Legal Services Board resolved to commence Schedule 18 of the Legal Services Act 2007 and to recommend to the Lord Chancellor that the transitional period for the purposes of paragraph 18 (1) (b) of Schedule 18 is thereby ended on 31 March 2011.

The Board considers that it is desirable for there to be arrangements in place for it to allow and make qualifying regulators for the purposes of Part 5 of the Immigration and Asylum Act 1999.

In reaching its decision, the Board has consulted with the Immigration Services Commissioner, who has endorsed the Board's recommendation. The Board has also had regard to the regulatory objectives and its responsibility to ensure that it regulates proportionately, efficiently and effectively. The Board believes that ending the transitional period in order to give effect to the commencement of Schedule 18 will ensure greater clarity for consumers and providers of immigration advice and services about the regulation of this work.

David Edmonds
Chairman, Legal Services Board