

<b>To:</b>	Board	
<b>Date of Meeting:</b>	30 November 2010	<b>Item:</b> Paper (10) 84

<b>Title:</b>	LSB as a Licensing Authority	
<b>Workstream(s):</b>	Workstream(s) 5B: Widening access to the legal market	
<b>Author / presented by:</b>	Fran Gillon, Director of Regulatory Practice fran.gillon@legalservicesboard.org.uk / 020 7271 0087	
<b>Status:</b>	Restricted	

<b>Summary:</b>
<p>The issue of direct licensing raises a number of strategic, policy, tactical and operational issues for LSB. [REDACTED]</p> <p>[REDACTED] Given that some members of The Law Society Council are opposed to alternative business structures (ABS) and/or want to delay its start, and if it is The Law Society that must make the application to be designated as an LA, then there is the potential to delay the start of ABS beyond 6 October 2011 by either not applying or applying much later than March 2011 (which would mean that Ministry of Justice (MoJ) could not meet the required Parliamentary timetable). Against that background, this paper considers what approach LSB should take towards becoming an LA in order to enable ABS 'go live' on 6 October 2011.</p>

<b>Risks and mitigations</b>	
<b>Financial:</b>	High – significant resource would be required to carry out LA functions, even if these were outsourced.
<b>FoIA:</b>	Pre-meeting assessment of exempted text is highlighted.
<b>Legal:</b>	The process of LSB becoming an LA will require a high level of legal input, but no specific legal risks have been identified to date.
<b>Reputational:</b>	Depending on the circumstances in which we become an LA, there could be damage to LSB's reputation.
<b>Resource:</b>	High – significant resource will be required to undertake the preparation needed, including budget expenditure in Q4 10/11.

Consultation	Yes	No	Who / why?
<b>Board Members:</b>		✓	
<b>Consumer Panel:</b>		✓	
<b>Others:</b>	We have obtained external legal advice on whether it is SRA or The Law Society from whom we can accept an application to become an LA.		

<b>Recommendation(s):</b>
The Board is invited to note and to comment on the paper in general, and the proposed approach set out at paragraph 7 in particular.

## LEGAL SERVICES BOARD

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### LSB as a Licensing Authority

#### Recommendation(s)

The Board is invited to note and to comment on the paper in general, and the proposed approach set out at paragraph 7 in particular.

#### Introduction

1. When direct licensing was discussed in the May 2009 discussion paper, it was seen as part of the way to introduce change to the legal services market. [REDACTED]

[REDACTED] (The statutory background is set out at **Annex A**.)

2. This paper sets out the key issues that the Board needs to consider and proposes a strategy to take forward over the next 3-6 months. In considering the options, it is important to bear in mind that the key provisions in Legal Services Act 2007 ('**the Act**') that enable ABS have not yet been commenced and that this will need to be done for LSB to become a LA.

3. [REDACTED]

4. [REDACTED] On 21 October, The Law Society's Regulatory Affairs Board (**RAB**) (a *representative* Board) considered a paper about the provisions that it wants included in SRA's rules. Our initial analysis of RAB's demands indicates that many are either in the draft SRA rules or are requirements of the Act,



[REDACTED] The formal application needs to be received by us by mid-March in order to allow MoJ sufficient time to go through its own processes and then for Parliamentary debate.

5. The issue of consent is likely to manifest itself soon in two areas, [REDACTED]  
[REDACTED]:

(a) Consent is required to make a Section 69 order to amend SRA's regulatory functions. We are currently consulting on this; the consultation closes on 20 December. [REDACTED]  
[REDACTED]

(b) Consent is required for the First-Tier Tribunal to be the ABS appellate body.  
[REDACTED]

6. [REDACTED]  
[REDACTED] The relevant provisions of the Act are either 'on' or 'off' – there is no provision to restrict them only to certain reserved legal activities (and, therefore, for example, CLC). Turning them 'on' will mean that we will become an LA and that licensable bodies can apply to us for a licence for those reserved legal activities that CLC cannot regulate. Those entities that CLC currently regulates that are in fact ABS are protected by transitional arrangements in the Act, which means that they do not have to apply for a licence until the arrangements are lifted. (However, MoJ could still consider CLC's application and designate it as an LA, since those parts of the Act are already commenced. That designation would be for its existing reserved legal activities of reserved instrument activities and administration of oaths. (If we make a positive recommendation, the extension of its reserved legal activities to include the right of audience and conduct of litigation may not be considered by Parliament before the summer recess.))

### Proposed approach

7. We have considered what approach LSB should take. [REDACTED]  
[REDACTED]

a. [REDACTED]  
[REDACTED]

[Redacted]

b. Some parts of Schedule 12 (relating to the entitlement to make an application for a licence to the Board) have been commenced:

- paragraphs 2(4) and (5) and (4), which require us to make rules (as a Board rather than as a LA) about reviewing any decision we make about whether a licensable body is entitled to make an for a licence to LSB.

[Redacted]

c. Include in the Business Plan 2011/12:

[Redacted]

d. [Redacted]

e. [Redacted]

8. [Redacted]



## Statutory background

1. The Act includes provisions in Schedule 12 to allow licensable bodies to apply directly to LSB for a licence in certain circumstances. For example, if there is no competent (or potentially competent) LA or if each potentially competent LA has determined it does not have suitable regulatory arrangements.
2. The process will be that a licensable body applies to LSB for a decision that the body is entitled to make a licence application to it in its capacity as an LA.
3. LSB then has a period of between 14 – 60 days to decide whether an application can be made. This decision will be based on our assessment of whether there is a competent (or potentially competent) LA or if each potentially competent LA has suitable regulatory arrangements. We will have to be particularly careful to ensure that our assessment of “suitable regulatory arrangements” is based on the LA’s overall framework, rather than becoming a quasi-appellate body for entities that have been refused a licence.
4. Once we have decided that there is no competent or potentially competent LA with suitable regulatory arrangements, the Act gives us up to 12 months to make our own licensing rules.
5. Our current analysis is that we do not first have to be designated as an AR in order to be an LA.

## *Governance arrangements*

6. Section 62(4) of the Act states that in discharging its functions as an Approved Regulator (**AR**), the Board must take such steps as are necessary to ensure an appropriate financial and organisational separation between the activities of the Board that relate to the carrying out of those functions and the other activities of the Board. Although this specifically refers to LSB in its capacity as an AR, other sections of the Act refer to the Board acting in its capacity as an LA – so separation of LA functions is clearly required.