

Please note: This document was amended on 31 October 2013 to rectify an error in the section on Legal Disciplinary Partnerships

Removing transitional protection and ABS licensing

Stakeholder update: special bodies, law firms and LDPs

Next steps

Special bodies

Following discussion with stakeholders, the Legal Services Board (LSB) has concluded that work on licensing special bodies as alternative business structures (ABS) should be deferred, in order to take account of the outcome of the Ministry of Justice's [review of Legal Services Regulation](#). This means that the transitional protection given by [section 23](#) of the Legal Services Act 2007 (LSA) (meaning that licences are not required by special bodies in order to provide reserved legal activities) will remain in place for the time being.

We will keep this situation under review, and will update stakeholders on the future timetable. At this point, however, we do not anticipate further work on this issue before 2015, meaning that there would be an additional period after this date before the transitional protection would come to an end.

Law firms with LSA Schedule 5 rights

There are currently some commercial law firms that, but for the transitional period established in Part 2 of Schedule 5 to the LSA, would require an ABS licence. We have indicated previously that this transitional period cannot continue indefinitely. However, before the LSB can recommend to the Lord Chancellor that he should end the transitional period, there must be a licensing authority in place to license these firms.

A number of these firms are currently regulated by the Intellectual Property Regulation Board ("IPReg"). IPReg has [applied to become a licensing authority](#) under [Part 1 of Schedule 10](#) to the LSA and we are currently considering its application. We expect our Board to consider whether to make a recommendation to the Lord Chancellor on that application at its November meeting. If a recommendation is made to and accepted by the Lord Chancellor, then the necessary order is expected to be made in 2014.

Once the overall timetable becomes clearer, we will consult again on a specific date for ending the transitional period.

Legal Disciplinary Partnerships (LDPs)

The LSA amended the Administration of Justice Act 1985 to permit LDPs, which are law firms where up to 25% of its managers are non-lawyers¹. These firms also fall within the definition of “licensable body” in [section 72](#) of the LSA and could therefore be licensed as ABS. Our current view is that it is not desirable to continue to have multiple routes to market entry and it is therefore likely that when we consult on ending the transitional period, as discussed above, we will also consult on repealing the LDP framework. This would mean that LDPs would have to apply for ABS licences.

Scope of regulation

More widely, our review of the regulation of special bodies identified significant concerns around the scope of regulation to be applied in licensing of ABS. This is an issue in both the not for profit and for profit sectors. We will continue to discuss this, and the problems it creates, with licensing authorities where relevant, and encourage recognition of the discretion that the LSA gives regulators.

Background

1. The transitional protection provided by [section 23](#) of the LSA means that non-commercial bodies do not currently need to be licensed as an ABS by a licensing authority. Following discussions with stakeholders, the LSB has reviewed the extent of change needed to the existing regulatory landscape before licensing could reasonably be introduced.
2. This work involves balancing the promotion of the regulatory objectives, in particular extending consumer protections to often vulnerable clients, against recognition of the challenging environment in which such bodies operate. It is therefore important that the timetable for change is able to take account of the results of the Ministry of Justice’s review of the impact of regulation.
3. In the meantime, licensing authorities have the opportunity to maintain momentum on developing licensing arrangements. They will be able to consider and address risks presented by all types of ABS in a targeted and proportionate way and take account of the discretion in the LSA in terms of the scope of regulation. In all likelihood, this should bring about reductions in the cost and complexity of regulation in this area.

¹ This has been amended to rectify a previous error, in which the text referred to “at least 25% of its managers are non-lawyers”

4. Any subsequent timetable for ending the transitional protection for non-commercial bodies will take account of the impact of these developments, and implications for the amount of change still needed.
5. [Section 23](#) of the LSA created transitional protection for non-commercial bodies, which are not for profit bodies, community interest companies, and independent trade unions. During the transitional period these bodies are able to carry out reserved legal activities without the need to be licensed by a licensing authority.
6. Once commenced, [section 106](#) of the LSA gives non-commercial bodies and low-risk bodies, which are collectively known as special bodies, the right to ask a licensing authority to make an order modifying its licensing rules and/or modifying or disapplying [schedule 13](#) (approval requirements in relation to ownership of licensed bodies).
7. The transitional protection will only come to an end by order of the Lord Chancellor, following a recommendation by the LSB. The LSB will only make such a recommendation once it is satisfied that there is at least one licensing authority with appropriate arrangements in place to license special bodies.
8. The LSB published two previous documents on this issue in [April](#) and [December](#) 2012. These considered what appropriate licensing arrangements might look like in this context.
9. The LSB has since explored issues and proposals with stakeholders from not-for-profit organisations, approved regulators and licensing authorities, the Legal Ombudsman and the Ministry of Justice. This includes at individual meetings and at two workshops.
10. The Act also provides transitional protection for some commercial law firms which means that they do not need an ABS licence even though they technically fall within the definition of an ABS. Once this transitional protection ends, they will need to be licensed if they provide one or more reserved legal activities.