
EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision about the functions of the Law Society (“the Society”) and the Council for Licensed Conveyancers (“the Council”). It modifies the Solicitors Act 1974 (c.47) (“the 1974 Act”) and amends the Administration of Justice Act 1985 (c.61) (“the 1985 Act”).

The Order also makes provision for licensing rules made by the Society or the Council in their capacity as licensing authorities under Part 5 of the Legal Services Act 2007 (c.29) (“the 2007 Act”) which allows the Lord Chancellor, on the recommendation of the Legal Services Board, to designate licensing authorities to regulate the carrying on of reserved legal activities by bodies which are wholly or partly owned, controlled or managed by non-lawyers. These bodies are known as licensed bodies. Both the Council and the Society have applied to the Legal Services Board to be designated as a licensing authority.

Articles 4 to 6 and the Schedule make provision relating to the Society. Articles 7 to 10 make provision relating to the Council.

Article 4 amends section 9 of the 1985 Act. It enables the Society to make rules that require legal services bodies recognised under that section to pay periodical fees to the Society.

Article 5 and the Schedule modify provisions of the 1974 Act that relate to compensation for persons who suffer loss in connection with acts or omissions by solicitors or their employees or in connection with the Society’s powers of intervention in relation to solicitors. The modifications enable the Society to make rules so that the compensation arrangements will also extend to bodies licensed under Part 5 of the 2007 Act. Such rules are to apply only during a transitional period whilst the Society undertakes a general review of its compensation arrangements.

Article 6 applies to the Society in its capacity as a licensing authority. It provides for the Society to make licensing rules to require payments to be made to the Society to cover its costs in determining whether a licensed body, or specified persons connected with a licensed body, are in compliance with the terms of the body’s licence or with other requirements to which they are subject.

Article 7 amends section 15 of the 1985 Act to enable the Council to issue licences to licensed conveyancers for an indefinite period or a fixed period.

Article 8 amends section 21 of the 1985 Act to extend the Council’s rule-making powers in relation to compensation. The amendment extends the scope of the rule-making power to include certain additional reserved legal activities so long as the Council is designated as an approved regulator in relation to any such activity. This reflects the extension of the Council’s regulatory powers in such circumstances under section 53 of the Courts and Legal Services Act 1990 (c.41). The Council is already an approved regulator in relation to probate activities, in addition to the reserved legal activities it regulates under the 1985 Act. It may apply for further designation as an approved regulator in relation to the exercise of a right of audience and the conduct of litigation.

Article 9 makes changes to provisions of Schedule 3 to the 1985 Act which deal with the membership of the Council. It also requires that there be a majority of lay members.

Article 10 applies to the Council in its capacity as a licensing authority. It provides for the Council to make licensing rules to require payments to be made to the Council to cover its costs in determining whether a licensed body, or specified persons connected with a licensed body, are in compliance with the terms of the body’s licence or with other requirements to which they are subject.

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: *The Legal Services Act 2007 (The Law Society and The Council for Licensed Conveyancers) (Modification of Functions) Order 2011 No. 1716*

A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is published with the Explanatory Memorandum alongside the instrument on www.legislation.gov.uk.