

<p>Summary section, third and fourth paragraphs.</p> <p>Recommendation.</p> <p>Risks and mitigations: Legal and Reputational risks.</p> <p>Paragraph 3, first full sentence.</p> <p>Paragraph 4, final full sentence.</p> <p>Paragraph 5, final full sentence.</p> <p>Paragraph 6, final full sentence.</p> <p>Paragraphs 7-11.</p> <p>Paragraph 12</p>	<p>Section 36(2)(b): likely to inhibit the exchange of views for the purposes of deliberation</p>	<p>N/A</p>
<p>Annexes A-B</p>	<p>Section 44: restricted information under s167 LSA which was obtained by the Board in the exercise of its functions and therefore must not be disclosed.</p>	<p>N/A</p>
<p>Annex C</p>	<p>Section 42: this is confidential internal legal advice to help the Board make its decision.</p>	<p>N/A</p>

LEGAL SERVICES BOARD

To:	Legal Services Board	
Date of Meeting:	26 November 2014	Item: Paper (14) 62

Section 69 of the Legal Services Act 2007 (“LSA”) in respect of modification to the Council for Licensing Conveyancers (“CLC”) statutory framework

Background

1. CLC is a long established approved regulator for reserved instrument and probate activities. In 2011 CLC made an application to the LSB seeking designation as an approved regulator and licensing authority for the reserved legal activities of the conduct of litigation and the rights of audience. In April 2012 the LSB made a decision¹ not to grant the application on the grounds that the CLC lacked the legal power to make rules and regulations that would allow it to authorise entities for the activities it had applied for. We identified that the current statutory framework for CLC contains a restriction on the CLC’s rule-making powers in relation to the reserved legal activities forming the substance of that application. Since our decision, the LSB has been working with the CLC and MoJ on secondary legislation to modify the CLC’s powers, in a number of ways.
2. The draft order that is the subject of this paper aims to modify the CLC’s power so as to:
 - enable the CLC to regulate conveyancing services bodies for all reserved legal activities for which CLC is designated; this includes continuing to regulate probate services when the transitional period in the LSA ends
 - allow appeals about determinations made by CLC’s Discipline Appeals Committee to be made to the First-tier Tribunal (instead of the High Court)
 - allow the CLC to automatically suspend licences when it intervenes into a recognised body or licensed body
 - remove the requirement for the number of non-licensed conveyancer (ie lay) members of CLC Council to exceed licensed conveyancer members by one (while maintaining the lay majority)
 - allow the time within which CLC is required to determine applications for licences to be prescribed by regulatory rules, rather than statute.

¹ Link to Decision Notice issued on 2 April 2012

http://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/decisionnoticefinal.pdf

3. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]. At present, CLC is prevented from authorising an individual for probate activities without that individual first becoming a licensed conveyancer, even if they have no intention of practising as a licensed conveyancer. Such a restriction does not apply to other regulators and indeed would not apply to any new applicant for designation. This is because the Administration of Justice Act 1985 ('AJA') that created the CLC confined its role *at that time* to the regulation of conveyancers. The LSB's view is that the restriction presents an unnecessary barrier to entry, is inconsistent with the Government's deregulatory agenda and is therefore not in the public interest nor in the interest of consumers.

Issues

4. Those that drafted the AJA, and subsequent amendments to it, could not have envisaged how the legal services market, and its regulatory framework, would evolve. Our position has been that section 69 of the LSA (which post-dates the AJA) is designed to deal with those situations i.e. to allow the functions of an approved regulator to be modified so that it can carry out its role more effectively and that its impact is not limited by whether the regulator concerned has a base in statute or not. [REDACTED]
[REDACTED]
[REDACTED]
5. It should be noted that MoJ lawyers decided some months ago they wanted to take responsibility for the drafting of the order, because of their particular experience of the parliamentary process. The LSB questioned the appropriateness of this decision and was told that whilst MoJ was willing to discuss ways of working, it would nevertheless assume responsibility for the drafting of the order relating to the CLC.² Since then, and acting on instructions from CLC, the order was developed and has passed all of the MoJ legal quality assurance processes, as well as being cleared by Parliamentary Counsel. [REDACTED]
[REDACTED]
[REDACTED]
6. Another key procedural stage was that a draft of the order was consulted upon by the LSB, in accordance with section 70 of the LSA, and no representations were received. There were no technical problems identified by key stakeholders in respect of the content of the order. [REDACTED]

² Letter from Shaun Gallagher to Chris Kenny, 5 June 2014.

[Redacted]

7. [Redacted]

8. [Redacted]

9. [Redacted]

Implications and risks for the LSB

10. [Redacted]

11. [Redacted]

Recommendation

12. [REDACTED]

26 November 2014