

Alternative business structures: Draft Order to be made under Section 69 of the Legal Services Act 2007

Summary of responses to consultation and decision document
relating to a recommendation and Order to be made under
Section 69 Legal Services Act 2007

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Decision document – Making an Order under Section 69 Legal Services Act 2007

Introduction

1. On 14 April 2011 the Legal Services Board (LSB) published a consultation statement containing a proposed draft Order to be made under the section 69 of the Legal Services Act 2007 (the Act). The consultation closed on 21 April.
2. The consultation statement included the following draft recommendation to the Lord Chancellor:

The Legal Services Board recommends to the Lord Chancellor that he makes the following order under section 69 of the Legal Services Act 2007.

3. This paper summarises the responses received and confirms that the LSB will make the recommendation to the Lord Chancellor. The final draft Order has been published with this document.
4. The final draft order covers the following issues (which were the subject of the recent consultation):

a) Issues that apply to the Law Society/Solicitors Regulation Authority only

- Collecting periodic fees from non-ABS firms regulated by the SRA (Article 2); and
- Enabling the SRA to establish a single compensation fund for ABS and non-ABS (Article 3 and the Schedule).

b) Issues that apply to Law Society/Solicitors Regulation Authority and the Council for Licensed Conveyancers

- The power to make rules to recover investigation costs (Article 4 and Article 8)

c) Issues that apply to the Council for Licensed Conveyancers only

- Enabling the Council to issue licences for indefinite periods (Article 5);
- Enabling the Council to make rules about the compensation fund for other regulated entities (Article 6); and
- Changes to the constitution of the Council (Article 7):
 - Extending the definition of “licensed conveyancer” member of the Council;
 - Change the definition of “lay member” of the Council;

- Require a lay majority on the Council; and
- Change the requirements for consumer representatives.

Background

5. In September 2010 the LSB published a consultation document on proposals to modify the functions of the Solicitors Regulation Authority (the SRA) and the Council for Licensed Conveyancers (the CLC)¹. The consultation was accompanied by a draft order. Having considered responses to the consultation, the Board agreed to recommend to the Lord Chancellor that he should use the powers in section 69 of the Act to change certain powers of the Solicitors Regulation Authority (SRA) and the Council for Licensed Conveyancers (CLC) in order to ensure that they can carry out their functions (both as approved regulators and, if so designated, licensing authorities for ABS) more effectively or efficiently.
6. The LSB was subsequently told by the MoJ that it did not consider that section 69 provides the power to include some of the measures in a section 69 order but that it would introduce these separately. The Board therefore decided to withdraw the previous recommendation and submit a new one with the measures removed. The revised section 69 draft with these sections removed then became the subject of the consultation in April 2011².

Consultation responses

7. Three consultation responses were received from the following organisations:
 - The Law Society
 - The Council for Licensed Conveyancers
 - Costs Lawyer Standards Board (CLSB)
8. The Law Society supported the draft Order but noted the removal of the two sections of the previously consulted Order which covered protecting client accounts in the event of insolvency and applications to the High Court for information from third parties. The Law Society stated that it would not be satisfactory to introduce the regime without those sections in place.
9. The Council for Licensed Conveyancers said that it had considered the draft Order and was content for the Order to be made as drafted.
10. The CLSB noted that the Order did not impact on the Cost Lawyer profession and had no comment to make.

¹ http://www.legalservicesboard.org.uk/what_we_do/consultations/2010/pdf/section_70_consultation_document.pdf

² http://www.legalservicesboard.org.uk/news_publications/latest_news/pdf/section_69_consultation_statement_TO_PUBLISH

LSB's response

11. All the respondents were supportive of the section 69 Order as drafted. However, as a result of subsequent discussions with the SRA and the MoJ, we have made a material change to the draft order to be annexed to the recommendation, since publication of the draft on 14 April 2011. The material change that has been made is to clarify that the Law Society's power to make compensation rules extends to acts or omissions (during the transitional period) of persons who have interests, or indirect interests, in former licensed bodies. It has consistently been our policy that consumers should not lose the benefit of compensation arrangements simply because a body ceases to be a licensed body before a claim is made pursuant to those arrangements. We have, however, concluded that the drafting of the Order should be clarified to reflect this and accordingly have published a statement pursuant to s70(5) of the Act.
12. We have considered whether the Order is consistent with our Statement of Policy on section 69 Orders and have decided that it is. We will therefore make the recommendation to the Lord Chancellor.
13. MoJ has confirmed that it will include the powers removed from the previously consulted Order as part of any process to designate the SRA and/or the CLC as licensing authorities using the appropriate vires.