

Section 69 Order: To modify the functions of the Council for Licensed Conveyancers

A consultation paper under section 70 of the Legal Services Act 2007 on a recommendation and a proposed draft statutory order to the Lord Chancellor, to be made under Section 69 of the Legal Services Act 2007 to enable the Council for Licensed Conveyancers to amend its statutory framework

This consultation will close on **Monday 18 August 2014 at 5pm**

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Introduction

1. Under section 69 of Legal Services Act 2007 (the 2007 Act), the Legal Services Board (LSB) has the power to make a recommendation to the Lord Chancellor that an order is made to modify, or make other provision relating to, the functions of an approved regulator or any other body other than the LSB.¹ This can include modifying provisions made by or under any enactment, instrument or document.²
2. Any order made by the Lord Chancellor under section 69 of the 2007 Act must be made by statutory instrument³ through the affirmative procedure⁴ i.e. approved by both the House of Commons and the House of Lords to become law.
3. Section 70 of the 2007 Act sets out the procedural requirements relating to a recommendation under section 69. Section 70(2) requires the LSB to publish the proposed recommendation and the proposed draft order and invite representations on the proposals, before making a recommendation to the Lord Chancellor. The LSB must state the period in which representations must be made. Section 70(1) of the 2007 Act requires that the recommendation may only be made under section 69 with the consent of the approved regulator.
4. This consultation invites representations on a proposed draft recommendation and proposed draft order about changes to the statutory framework of the Council for Licensed Conveyancers (CLC) which will:
 - i) enable the CLC to regulate conveyancing services bodies for all reserved legal activities for which the CLC is designated; this includes continuing to regulate probate services when the transitional period in the 2007 Act ends
 - ii) enable the CLC to regulate individuals and entities without them also having to be regulated for conveyancing services
 - iii) allow appeals about determinations made by the CLC's Discipline and Appeals Committee (DAC) to be made to the First-tier Tribunal (instead of to the High Court)
 - iv) allow CLC to appeal against DAC determinations
 - v) provide powers for CLC to automatically suspend licences when they intervene into a recognised body or licensed body

¹ The Act 2007 s69 (1)

² The Act 2007 s69 (6)

³ The Act 2007 s204 (1)

⁴ The Act 2007 s206(4)(h)

- vi) remove the requirement for the number of non-licensed conveyancer (lay) members of the Council to exceed licensed conveyancer members by one (while maintaining the lay majority)
 - vii) allow the time within which the CLC is required to determine applications for licences to be prescribed by regulatory rules, rather than in statute.
5. Any representations on the proposals should be made by 5pm on Monday 18 August 2014. The proposed recommendation and draft order can be found at **Annex A**.
6. Further details on how to make representations can be found on page 9.

Background to the proposed changes

7. The CLC was established under the Administration of Justice Act 1985 (the 1985 Act) to regulate licensed conveyancers. Under the 2007 Act, CLC is an approved regulator for reserved instrument activities, probate and the administration of oaths. CLC was designated a licensing authority for alternative business structures, in relation to those three reserved legal activities, in October 2011.
8. CLC was created in statute and many of its powers are therefore set out in statute. This means that many changes to how it regulates can usually only be achieved through changes to legislation.
9. Although there have been amendments to the 1985 Act to change the CLC's statutory framework, most notably those made by the 2007 Act, the CLC considers that the 1985 Act still restricts it from fully achieving its regulatory ambitions and those of the 2007 Act.
10. 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 our decision notice⁵, we identified that the current statutory framework for the CLC contains a restriction which prevented us from approving the application. Specifically, section 32(1)(ba) of the 1985 Act states that the Council may make rules prescribing the "Council's arrangements for authorising recognised bodies, for the purposes of the Legal Services Act 2007, to carry on reserved instrument activities or the administration of oaths, within the meaning of the Act". This led us to the conclusion that the CLC is currently unable to make rules and regulations for the regulation of the activities that were the subject of the application. The draft order on which we are now consulting contains provisions which will address this.
11. The draft order contains provisions for a new category of regulated individual (a licensed CLC practitioner) and entity (a CLC practitioner services body) who could be authorised or licensed by the CLC for reserved legal activities without having to be regulated for reserved instrument activities.
12. In addition, the CLC has identified a number of other matters that require amendment in order to improve its regulatory framework to make it more efficient.
13. The CLC considers that the changes set out in the draft order would better enable it to meet the Act's regulatory objectives by enabling licensed conveyancers to expand the scope of their practice. The CLC also considers that the changes will help to promote competition in the provision of legal services

⁵ Available from the LSB website at:

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

and encourage an independent, strong, diverse and effective legal profession⁶ by allowing new businesses and professionals to be licensed for areas of practice other than conveyancing and probate. This in turn would help serve the regulatory objectives for protecting and promoting the interests of consumers and improving access to justice by increasing consumer choice.

14. This consultation is not seeking views on the policy intentions of CLC in respect of the proposals. CLC consulted on standalone licences in March 2013⁷, discipline and appeals arrangements in January 2013⁸, and on regulating rights of audience and the conduct of litigation in February 2010⁹. This consultation therefore focuses on whether the proposed section 69 order (at **Annex A**) as drafted reflects the policy intentions of CLC.
15. The LSB supports the CLC's proposals. We agree that the order will help CLC to promote the regulatory objectives of the Act.

⁶ The regulatory objectives are listed in full in section 1 of the 2007 Act.

⁷ http://www.clc-uk.org/pdf_files/consultations/Standalone_Consultation_paper.pdf

⁸ http://www.clc-uk.org/pdf_files/consultations/DAC_Consultation_paper.pdf

⁹ <http://www.clc-uk.org/consultations7.php>

The proposals set out in the section 69 order

Proposals relating to conveyancing services bodies

16. Before CLC can be designated for additional reserved legal activities, it is necessary to amend the 1985 Act to remove the restriction described in paragraph 10 above.
17. Article 2 of the proposed order is drafted to amend section 32 of the 1985 Act to extend the CLC's powers so that it can make regulations for conveyancing services bodies for the exercise of rights of audience, the conduct of litigation, probate activities and other legal services.
18. It is important to note that while the change will allow the CLC to make rules for the additional activities, it will only be able to authorise and regulate the exercise of rights of audience or the conduct of litigation if it makes, and LSB grants, designation applications under Schedules 4 and 10 of the 2007 Act.

Proposals relating to Licensed CLC practitioners and CLC Practitioner Services Bodies

19. The CLC's consultation paper on "Standalone Licences" sets out the rationale for removing the current requirement that to be licensed by the CLC an individual must first be licensed as a licensed conveyancer even if the individual does not intend to provide conveyancing services. The LSB agrees that if the CLC is able to license a range of services, then the requirement that an individual must first be a licensed conveyancer is neither necessary nor proportionate.
20. To achieve this, Article 2(4) sets out an addition to the 1985 Act. The new section 32B defines "CLC practitioner services bodies" which will be bodies that are recognised by the CLC for reserved legal activities other than reserved instrument activities.
21. Further, Article 3 of the order, which amends section 53 of the Courts and Legal Services Act 1990 (the 1990 Act), includes a definition of a "licensed CLC practitioner" (someone licensed by the CLC other than a licensed conveyancer).
22. In order to ensure that there is consistency in the regulation by the different types of bodies and individuals, the draft order contains provisions which mirror those for conveyancing services bodies and licensed conveyancers. For example,
 - In article 2, the proposed section 32B(1) of the 1985 Act sets out that to be a CLC Practitioner Services Body, management and control, services and authorised persons conditions must be met

- Article 3 sets out a new section 53(4A) in the 1990 Act to allow for composite licences to licensed CLC practitioners, mirroring the provisions for licensed conveyancers.

23. Schedule 1 of the order makes amendments to the 1985 Act, the 1990 Act the 2007 Act and other legislation consequential on the creation of licensed activity bodies and licensed individuals.

Other changes

24. The CLC is using this opportunity to make some other amendments to its statutory basis, primarily to improve its efficiency. These additional changes are contained in Schedule 2 of the Order and cover the following

- Replacing the 42 day period in which the CLC should decide an application for a licence with a requirement that the CLC make rules prescribing the period. This will allow the CLC to have a consistent approach between recognised and licensed bodies (*Schedule 2, paragraph 2*)
- Allow for the automatic suspension of any licence of an employee or manager of a recognised or licensed body where the body's licence is suspended (*Schedule 2, paragraph 3*)
- Allow for information on disciplinary measures to be included on the Register of Licensed Conveyancers (*Schedule 2, paragraph 4*). Schedule 1, paragraph 19, 6A(2) contains the same provision in relation to CLC practitioner services bodies and its managers and employees
- For the First Tier Tribunal to become the appellate body (replacing the High Court) in relation to appeals on all appealable decisions made by the CLC, whether acting as an approved regulator or a licensing authority. This is consistent with the LSB's overarching objective to have a single appellate body for all legal services regulators (*Schedule 2, paragraphs 6 – 8 and 10*). This includes the right for the CLC to appeal a decision made by either the Discipline and Appeals Committee or the Investigating Committee of the CLC.
- Remove the requirement that the number of non-licensed conveyancer (lay) members of the CLC Council should exceed by one the number of licensed conveyancer members. The requirement for lay members to be in the majority remains but this give the CLC more flexibility when deciding the appropriate balance of membership (*Schedule 2, paragraph 9*)

The draft recommendation and order

25. Annex A contains the draft recommendation and the draft order.

Question 1: *Do you have any comments on either the draft recommendation or the draft order?*

Question 2: *Does the drafting of the order meet the policy intentions of the CLC, as set out above?*

Impact Assessment

26. A draft impact assessment has been prepared to accompany the order. **Annex B** contains the draft impact assessment on which views from respondents would be welcome.
27. Given the available evidence, it is the LSB's view that this represents a reasonable assessment of the likely costs, benefits and impact of the preferred options.

Question 3: ***Do you have any comments on the draft impact assessment, in particular, the costs/benefits estimates and whether any additional costs/benefits should also be identified?***

How to respond

28. We would prefer to receive responses electronically (in Microsoft word or PDF format), but hard copy responses by post or fax are also welcome. Responses should be sent to:

Post: Michael Mackay
Legal Services Board
One Kemble Street
London WC2B 4AN

Fax number: 020 7271 0051

Email: Consultations@LegalServicesBoard.org.uk

29. The consultation period will end at **5pm on Monday 18 August 2014**, four weeks after publication. In accordance with section 70(3) of the 2007 Act, you are given notice that any representation about the proposed section 69 order must be made to the LSB by the end of this period.

30. The LSB is happy to meet respondents to discuss views on the consultation if you would find that helpful. Please send requests to:
Consultations@LegalServicesBoard.org.uk

31. We consider that this consultation satisfies the requirements of section 70 of the 2007 Act to publish a proposed draft order and proposed draft recommendation before making a recommendation to the Lord Chancellor under section 69.

32. The LSB plans to publish all responses received during the consultation period on its website. While the LSB is happy to discuss varying this general policy in individual cases, there is a strong presumption in favour of transparency. It will therefore note publicly that a submission has been received from an identified body which had withheld its consent for publication in the summary of the consultation.

Complaints

33. Complaints or queries about the LSB's consultation process should be directed to Michelle Jacobs, Consultation Co-ordinator, at the following address:

Michelle Jacobs
Legal Services Board
One Kemble Street
London WC2B 4AN

Or by e-mail to: michelle.jacobs@legalservicesboard.org.uk

Annex A – Draft recommendation to the Lord Chancellor and draft section 69 order which will be annexed to the recommendation

Draft recommendation by the LSB to the Lord Chancellor under section 69 of the Legal Services Act 2007

Proposed recommendation for CLC

1. At its meeting on [date] the Legal Services Board (the Board) decided to make a recommendation to the Lord Chancellor that he makes an order under section 69 of the Legal Services Act 2007 (the Act) to:
 - i) enable the CLC to regulate conveyancing services bodies for all reserved legal activities for which the CLC is designated; this includes continuing to regulate probate services when the transitional period in the 2007 Act ends
 - ii) enable the CLC to regulate individuals and entities without them also having to be regulated for conveyancing services
 - iii) allow appeals about determinations made by the CLC's Discipline and Appeals Committee (DAC) to be made to the First-tier Tribunal (instead of to the High Court)
 - iv) allow CLC to appeal against DAC determinations
 - v) provide powers for CLC to automatically suspend licences when they intervene into a recognised body or licensed body
 - vi) remove the requirement for the number of non-licensed conveyancer (lay) members of the Council to exceed licensed conveyancer members by one (while maintaining the lay majority)
 - vii) allow the time within which the CLC is required to determine applications for licences to be prescribed by regulatory rules, rather than in statute.
2. A draft of the order is attached to this recommendation at **Annex A**.
3. In accordance with the requirements of section 70(2) of the Act, the Board published a draft of the proposed recommendation and draft order on **[DATE]** and invited representations about the proposals to be made to the Board by **[DATE]**. **[DELETE ONE: The Board has had regard to the representations duly made] or [no representations were received]**.

4. **[DELETE paragraph if no changes to the recommendation or the order in light of the consultation representations]**. In accordance with the requirements of section 70(5) of the Act, the draft order annexed to the recommendation differs from the draft published under subsection 2(b) in a way in which in the opinion of the Board, is material. The Board has therefore, before making the recommendation published on its website, published the draft order along with a statement detailing the changes made and the reasons for those changes.
5. In accordance with section 70(1) of the Act, the recommendation is made with the consent of CLC.

Chair, Legal Services Board

[DATE]

DRAFT STATUTORY INSTRUMENTS

2014 No.

LEGAL SERVICES, ENGLAND AND WALES

The Legal Services Act 2007 (Council for Licensed Conveyancers) (Modification of Functions) Order 2014

Made - - - - - *******

Coming into force in accordance with article 1(2)

The Lord Chancellor makes the following Order in exercise of the powers conferred by sections 69(1), (4) and (6) and 204(3) of the Legal Services Act 2007(a).

In accordance with section 69(2) and (3) of that Act, this Order is made following a recommendation made by the Legal Services Board to which was annexed a draft Order in a form not materially different from this Order.

The Legal Services Board has made the recommendation with the consent required by section 70(1) of that Act and after complying with the requirements in section 70(2) to (4) of that Act.

In accordance with section 206(5) of that Act, a draft of this instrument was laid before Parliament and approved by resolution of each House of Parliament.

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Legal Services Act 2007 (Council for Licensed Conveyancers) (Modification of Functions) Order 2014.

(2) This Order comes into force 21 days after the day on which it is made.

(3) In this Order—

“the 1985 Act” means the Administration of Justice Act 1985(b);

“the 1990 Act” means the Courts and Legal Services Act 1990(c);

“the 2007 Act” means the Legal Services Act 2007.

Recognised bodies

2.—(1) The 1985 Act is amended as follows.

(a) 2007 c. 29.
(b) 1985 c. 61.
(c) 1990 c. 41.

- (2) In the heading of section 32 after “conveyancing” insert “or other”.
- (3) In section 32(a)—
- (a) in subsection (1)(a) after “conveyancing services bodies” insert “or CLC practitioner services bodies”;
 - (b) in subsection (1)(b)—
 - (i) for “such bodies” substitute “conveyancing services bodies”;
 - (ii) for the words from “to undertake” to the end substitute—
 - “to undertake—
 - (i) the provision of conveyancing services,
 - (ii) the administration of oaths,
 - (iii) the exercise of a right of audience,
 - (iv) the conduct of litigation,
 - (v) probate activities, or
 - (vi) the provision of other relevant legal services;”;
 - (c) after subsection (1)(b) insert—
 - “(bza) prescribing the circumstances in which CLC practitioner services bodies may be recognised by the Council as being suitable bodies to undertake—
 - (i) the administration of oaths,
 - (ii) the exercise of a right of audience,
 - (iii) the conduct of litigation,
 - (iv) probate activities, or
 - (v) the provision of other relevant legal services;”;
 - (d) in subsection (1)(ba) for the words from “carry on” to the end substitute—
 - “carry on—
 - (i) reserved instrument activities, where the recognised body is a conveyancing services body,
 - (ii) the administration of oaths,
 - (iii) the exercise of a right of audience,
 - (iv) the conduct of litigation,
 - (v) probate activities, or
 - (vi) other relevant legal services;”;
 - (e) in subsection (3)(e) after “those bodies” insert “(including information about disciplinary measures taken)”;
 - (f) in subsection (3C) after paragraph (a) insert—
 - “(aa) conditions restricting the kinds of CLC practitioner services that may be provided by the body;”;
 - (g) for subsection (8) substitute—
 - “(8) In this section—
 - “administration of oaths” has the same meaning as in the Legal Services Act 2007 (see section 12 of, and Schedule 2 to, that Act);
 - “CLC practitioner services” has the meaning given by section 32B;
 - “CLC practitioner services body” has the meaning given by section 32B;

(a) As amended by the 2007 Act, section 182; Schedule 17, paragraph 20; and Schedule 23.

“conduct of litigation” has the same meaning as in the Legal Services Act 2007 (see section 12 of, and Schedule 2 to, that Act);

“conveyancing services body” has the meaning given by section 32A;

“probate activities” has the same meaning as in the Legal Services Act 2007 (see section 12 of, and Schedule 2 to, that Act);

“relevant legal services”—

(a) in relation to a conveyancing services body, has the meaning given by section 32A; and

(b) in relation to a CLC practitioner services body, has the meaning given by section 32B;

“reserved instrument activities” has the same meaning as in the Legal Services Act 2007 (see section 12 of and Schedule 2 to that Act);

“right of audience” has the same meaning as in the Legal Services Act 2007 (see section 12 of and Schedule 2 to that Act).”.

(4) After section 32A(a) (conveyancing services bodies) insert—

“CLC practitioner services bodies

32B.—(1) For the purposes of section 32 a “CLC practitioner services body” means a body (corporate or unincorporate) in respect of which—

(a) the management and control condition,

(b) the services condition, and

(c) the authorised person condition,

are satisfied.

(2) The management and control condition is satisfied in the case of a partnership if at least one of the partners is a licensed conveyancer or a licensed CLC practitioner.

(3) The management and control condition is satisfied in the case of an unincorporated body (other than a partnership), or a body corporate which is managed by its members, if at least one of those members is a licensed conveyancer or a licensed CLC practitioner.

(4) The management and control condition is satisfied in the case of any other body corporate if at least one director of the body is a licensed conveyancer or a licensed CLC practitioner.

(5) The services condition is satisfied in respect of a body if—

(a) the body is carrying on a business consisting of the provision of—

(i) CLC practitioner services; or

(ii) CLC practitioner services and other relevant legal services; and

(b) the body does not provide conveyancing services.

(6) The authorised person condition is satisfied if the licensed conveyancer or licensed CLC practitioner by reference to whom the management and control condition is satisfied, or one of the persons by reference to whom that condition is satisfied, is an authorised person in respect of any of the CLC practitioner services that are provided by the body.

(7) For the purposes of this section—

(a) a reference to CLC practitioner services is a reference to those of the following reserved legal activities in relation to which the Council is designated as an approved regulator—

(i) the administration of oaths,

(a) As inserted by the 2007 Act, section 182 and Schedule 17, paragraph 21.

- (ii) the exercise of a right of audience,
 - (iii) the conduct of litigation, and
 - (iv) probate activities;
 - (b) a reference to designation as an approved regulator is a reference to designation as an approved regulator—
 - (i) by Part 1 of Schedule 4 to the Legal Services Act 2007, by virtue of an order under paragraph 5 of Schedule 22 to that Act; or
 - (ii) under Part 2 of Schedule 4 to that Act;
 - (c) a person has an interest in a body if the person has an interest in the body within the meaning of Part 5 of the Legal Services Act 2007 (see sections 72 and 109 of that Act).
- (8) In this section—
- “administration of oaths” has the same meaning as in the Legal Services Act 2007 (see section 12 of and Schedule 2 to that Act);
- “authorised person” means an authorised person in relation to an activity which is a reserved legal activity (within the meaning of the Legal Services Act 2007);
- “conduct of litigation” has the same meaning as in the Legal Services Act 2007 (see section 12 of and Schedule 2 to that Act);
- “probate activities” has the same meaning as in the Legal Services Act 2007 (see section 12 of and Schedule 2 to that Act);
- “relevant legal services”, in relation to a CLC practitioner services body, means—
- (a) CLC practitioner services; and
 - (b) where authorised persons are managers or employees of, or have an interest in the body, such services as are provided by individuals practising as such authorised persons (whether or not those services involve the carrying on of reserved legal activities), except for conveyancing services;
- “reserved legal activity” has the same meaning as in the Legal Services Act 2007 (see section 12 of and Schedule 2 to that Act);
- “right of audience” has the same meaning as in the Legal Services Act 2007 (see section 12 of and Schedule 2 to that Act).”.

Licensed CLC practitioners

3.—(1) The 1990 Act is amended as follows.

(2) In the cross-heading preceding section 53, after “conveyancers” insert “and other persons”.

(3) In section 53(a)—

- (a) in subsection (2) omit “only if the person is a licensed conveyancer”;
- (b) in subsection (3)—
 - (i) for “a licensed conveyancer” substitute “a person”;
 - (ii) for “the licensed conveyancer” substitute “the person in respect of that activity”;
- (c) in subsection (4) for “Any such” substitute “If the person granted a licence under this section is a licensed conveyancer, the licence”;
- (d) after subsection (4) insert—

“(4A) If the person granted a licence under this section is not a licensed conveyancer, the licence may be granted as a separate licence or as part of a composite licence comprising any other licence under this section which the Council may grant to the person.

(a) As amended by the 2007 Act, section 182; Schedule 17, paragraph 34; and Schedule 23.

(4B) A licence under this section granted to a person who is not a licensed conveyancer ceases to have effect if the person becomes a licensed conveyancer.”;

(e) in subsection (9)—

(i) before paragraph (a) insert—

“(za) persons who apply for, or hold, an advocacy, litigation or probate licence;”;

(ii) in paragraph (c), for “any licensed conveyancer” substitute “any person”;

(iii) after paragraph (d) insert—

“(da) individuals describing themselves or holding themselves out as licensed CLC practitioners without holding a licence in force under this section;”;

(iv) after “with respect to” insert “persons who apply for, or hold, a licence under Part 2 of the Act of 1985 and”;

(f) after subsection (9) insert—

“(9A) The modifications mentioned in subsection (9) may differ depending on whether the person applying for, or holding, an advocacy, litigation or probate licence is or is not a licensed conveyancer.

(9B) Subsection (9) does not apply to section 34 of the Act of 1985 (modifications of certain references to solicitors).”;

(g) after subsection (10) insert—

“(11) In this section—

“advocacy licence” means a licence issued under this section by which the Council authorises the person concerned to exercise a right of audience;

“CLC practitioner services” has the same meaning as in section 32B of the Act of 1985;

“licensed CLC practitioner” means a person, other than a licensed conveyancer, who holds a licence under this section;

“litigation licence” means a licence issued under this section by which the Council authorises the person concerned to carry on activities which constitute the conduct of litigation;

“the practice of a licensed CLC practitioner” means the provision by a person, as the holder of a licence under this section, of CLC practitioner services in accordance with the licence; and

“probate licence” means a licence issued under this section by which the Council authorises the person concerned to carry on activities that constitute probate activities.”.

Schedule 1: recognised bodies and licensed CLC practitioners: consequential amendments

4. Schedule 1 (recognised bodies and licensed CLC practitioners: consequential amendments) has effect.

Schedule 2: other amendments to the 1985 Act

5. Schedule 2 (other amendments to the 1985 Act) has effect.

Transitional provisions

6.—(1) The amendments to section 15 of the 1985 Act made by paragraph 2 of Schedule 2 do not take effect, other than for the purposes of making rules under section 15(3A), until the date on which those rules come into force.

(2) If an application under section 14 of the 1985 Act is received, but not determined, by the Council before the date the rules made under section 15(3A) of the 1985 Act (as inserted by paragraph 2 of Schedule 2) come into force, the application will be subject to the provisions of section 15(3)(b) of the 1985 Act, disregarding the amendment made by paragraph 2 of Schedule 2.

(3) The amendments made by paragraph 3 of Schedule 2 only apply to an exercise of the powers in paragraph 6(1) or 9(1) of Schedule 5 to the 1985 Act or paragraph 3(1) or 8(1) of Schedule 14 to the 2007 Act that arises by virtue of an act or omission that occurs on or after the date of commencement of those amendments.

(4) The amendments to the 1985 Act made by paragraphs 3(d) and (e), 6, 7, 8 and 10 of Schedule 2 in relation to the right of appeal against certain decisions only apply in relation to a decision that is taken on or after the day on which this Order comes into force.

Signed by authority of the Lord Chancellor

Date _____
Name
Parliamentary Under Secretary of State
Ministry of Justice

SCHEDULE 1 Article 4

Recognised bodies and licensed CLC practitioners: consequential amendments

PART 1

Amendments to the 1985 Act

1. The 1985 Act is amended as follows.
2. In section 16(1)(a)—
 - (a) in sub-paragraph (b) for “each” substitute “a”;
 - (b) after sub-paragraph (b) insert—

“(ba) when a licence previously held by him under section 53 of the Courts and Legal Services Act 1990 was subject to conditions under paragraph 5 of Schedule 8 to that Act;”;
 - (c) in sub-paragraph (c) after “this Part” insert “or a licence in force under section 53 of the Courts and Legal Services Act 1990”;
 - (d) in sub-paragraph (ca), after “section 24A” insert “, whether the order relates to a licence under this Part or a licence under section 53 of the Courts and Legal Services Act 1990”;
 - (e) in sub-paragraph (d), after “section 26” insert “, whether the order relates to a licence under this Part or a licence under section 53 of the Courts and Legal Services Act 1990”;
 - (f) in sub-paragraph (e) after “his conduct” insert “(whether as a person holding a licence under this Part or a person holding a licence under section 53 of the Courts and Legal Services Act 1990)”;

(a) As amended by the 2007 Act, section 182; Schedule 17, paragraph 5; section 235(3) of, and Schedule 10 to, the Insolvency Act 1985 (c.65), S.I.2012/2404 and paragraph 44 of Schedule 7 to the Serious and Organised Crime and Police Act 2005 (c.15).

- (g) in sub-paragraph (ea) after section 22 insert “(including section 22 as applied by section 53 of the Courts and Legal Services Act 1990)”.

3. In section 26(a)—

- (a) in subsection (2)—
- (i) in paragraph (a), after “any licence” insert “under this Part”;
 - (ii) in paragraph (b), for “a licence under this Part” substitute “any relevant licence”;
 - (iii) in paragraph (c), after “any licence” insert “under this Part”;
- (b) after subsection (8) insert—
- “(9) In this section “relevant licence” means—
- (a) a licence under this Part, or
 - (b) a licence under section 53 of the Courts and Legal Services Act 1990.”.

4. In section 28(b)—

- (a) in subsection (1)—
- (i) after “a licence” insert “under this Part”;
 - (ii) for “the licence” substitute “all of the relevant licences held by that person”;
- (b) for subsection (2) substitute—
- “(2) Where a person has had any relevant licence which was held by him revoked because of fraud on that person’s part, the person may not be issued with a licence under this Part except on the advice of the Committee given to the Council as the result of an application made by the person to that Committee.”;
- (c) in subsection (3), for “a licence under this Part” substitute “any relevant licence”;
- (d) after subsection (6) insert—
- “(7) In this section “relevant licence” has the meaning given by section 26.”.

5. In the heading to section 33A(c) after “licensed conveyancers” insert “or licensed CLC practitioners”.

6. In section 33A after “licensed conveyancers” insert “or licensed CLC practitioners”.

7. In section 34(d) (modification of existing enactments relating to conveyancing etc.)—

- (a) in subsection (2), after “to a recognised body” insert “which is a conveyancing services body”;
- (b) in subsection (2), after “conveyancer or” insert “such a”;
- (c) in subsection (3), after a “recognised body” insert “which is a conveyancing services body”; and
- (d) after subsection (3) insert—
- “(4) In this section “conveyancing services body” has the meaning given by section 32A.”.

8. In section 39(1)(e) (interpretation of Part 2) at the appropriate place insert—

““licensed CLC practitioner” means a person, other than a licensed conveyancer, who holds a licence under section 53 of the Courts and Legal Services Act 1990;”.

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- (a) As amended by the 2007 Act, section 182; Schedule 17, paragraph 15 and the Courts and Legal Services Act 1990 (c.41), section 124, 125, Schedule 19 and 20.
- (b) As amended by the 2007 Act, Schedule 17.
- (c) As inserted by the 2007 Act, section 182 and Schedule 17, paragraph 23.
- (d) As amended by the Family Law Act 1996 (c. 27), Schedule 10; the Land Registration Act 2002 (c. 9), section 135 and Schedule 13; and the 2007 Act, section 182; Schedule 17, paragraph 24; and Schedule 23.
- (e) As amended by S.I. 1991/1997; the Statute Law (Repeals) Act 1993 (c. 50), section 1 and Schedule 1; S.I. 2001/1090; and the 2007 Act, section 182; Schedule 17, paragraph 28; and Schedule 23.

9. In Schedule 3(a) (the Council for Licensed Conveyancers: supplementary provisions) after paragraph 2(1)(a)(i) (constitution of the Council) (and before the “or”) insert—

“(ia) licensed CLC practitioners;”.

10. In Schedule 6(b) (bodies recognised under section 32: supplementary provisions)—

(a) after paragraph 3(1)(aa) insert—

“(aaa) it is alleged that a manager or employee of a recognised body who is not a licensed CLC practitioner has failed to comply with any rules applicable to him by virtue of section 32;”;

(b) in paragraph 3A(1)(b) after “paragraph 3(1)(aa)” insert “or (aaa)”;

(c) in paragraph 4(2A) (disciplinary control of recognised bodies) after “paragraph 3(1)(aa)” insert “or (aaa)”;

(d) in paragraph 14(1) after “paragraph 3(1)(a)(ii), (aa)” insert “, (aaa)”.

PART 2

Amendments to the 1990 Act

11. The 1990 Act is amended as follows.

12. In section 75(c)(e) (judges etc. barred from legal practice) for “or licensed conveyancer” substitute “, licensed conveyancer or licensed CLC practitioner”.

13. In section 119(1)(d) (interpretation) at the appropriate place insert—

““licensed CLC practitioner” has the meaning given in section 53;”.

14. For the title of Schedule 8 substitute “Council for Licensed Conveyancers”.

15. In Schedule 8(e)—

(a) in paragraph 1 (general), for the definition of “advocacy licence” substitute—

““advocacy licence”, “litigation licence” and “probate licence” have the meaning given by section 53;”;

(b) in paragraph 1, omit the definitions of—

(i) “litigation licence”, and

(ii) “probate licence”;

(c) in paragraph 4 (issue of licences), in sub-paragraph (3) for the words from “with respect” to “as they” substitute—

“with respect to—

(a) any application under paragraph 3 for an advocacy licence and any advocacy licence in force under section 53;

(b) any application under paragraph 3 for a litigation licence and any litigation licence in force under section 53; and

(a) As amended by S.I. 2011/1716. There are other amendments to the Schedule which are not relevant to this Order.

(b) As amended by the 2007 Act, section 182; Schedule 17, paragraph 32; and Schedule 23.

(c) As amended by the 2007 Act, Schedule 21, paragraph 95.

(d) As amended by the Tribunals and Inquiries Act 1992 (c. 53), section 18 and Schedule 3, paragraph 35; S.I. 2001/1090; the Access to Justice Act 1999 (c. 22), section 35 and Schedule 6, paragraph 10; the Enterprise Act 2002 (c. 40), Schedule 25, paragraph 23 and Schedule 26; Constitutional Reform Act 2005 (c. 4), section 15(1); Schedule 4 paragraph 216; and Schedule 11, paragraphs 1 and 4; the 2007 Act, Schedule 21, paragraph 97 and Schedule 23; and S.I. 2013/1881. There are other amendments to the section which are not relevant to this Order.

(e) As amended by the 2007 Act, section 182; Schedule 17, paragraph 35; and Schedule 21, paragraph 100. There are other amendments to the Schedule which are not relevant to this Order.

- (c) any application under paragraph 3 for a probate licence and any probate licence in force under section 53 (as the case may be), as they”;
- (d) in paragraph 5 (conditional licences)—
 - (i) in sub-paragraph (1)(c) for “of that kind” insert “issued under section 53 or Part 2 of the Act of 1985”;
 - (ii) in sub-paragraph (1)(d), at the end insert “, whether the order relates to a licence under section 53 or a licence under Part 2 of the Act of 1985”;
 - (iii) in sub-paragraph (6), omit “or” after paragraph (a);
 - (iv) in sub-paragraph (6)(b)—
 - (aa) at the beginning insert “in the case of an applicant who is a licensed conveyancer,”;
 - (bb) at the end for “,” substitute “; or”;
 - (v) after sub-paragraph (6)(b) insert—
 - “(c) for requiring the applicant to take any specified steps that will, in the opinion of the Council, be conducive to his carrying on an efficient practice as a licensed CLC practitioner,”;
- (e) after paragraph 6 insert—

“Register of licensed CLC practitioners

6A.—(1) The Council must establish and maintain, in such form as the Council may determine, a register containing the names and places of business of all persons who for the time being hold an advocacy, litigation or probate licence and are not licensed conveyancers.

(2) The Council may make rules specifying the further information, including information about disciplinary measures taken, to be recorded in the register in relation to a person.

(3) The Council must cause the appropriate entries and deletions to be made in the register on the issue and termination of advocacy, litigation and probate licences; and where any licence held by a person is for the time being suspended by virtue of any provision of Part 2 of the Act of 1985 as applied by this Act the Council must cause that fact to be noted in the register against that person’s name.

(4) Any change in a licensed CLC practitioner’s place or places of business must be notified by that person to the Council within the period of fourteen days beginning with the date on which the change takes effect.

(5) The Council must provide facilities for making the information contained in the entries in the register available for inspection in visible and legible form by any person during office hours and without payment.

(6) A certificate signed by an officer of the Council appointed for the purpose and stating—

- (a) that any person does or does not, or did or did not at any time, hold an advocacy, litigation or probate licence, or
- (b) that any licence held by any person is or was at any time either free of conditions or subject to any particular conditions,

is, unless the contrary is proved, evidence of the facts stated in the certificate; and a certificate purporting to be so signed is to be taken to have been so signed unless the contrary is proved.”;

- (f) for paragraph 8 and the heading preceding it substitute—

“Effect of suspension or revocation

8.—(1) Where a relevant licence ceases to be in force because of—

- (a) a direction under section 24(5) of the Act of 1985, or
- (b) an order under section 26(2)(a) or (c) of the Act of 1985,

any other relevant licence in force with respect to that person at the time shall cease to have effect to the same extent as the licence in question.

- (2) In this paragraph “relevant licence” means—
 - (a) an advocacy, litigation or probate licence, or
 - (b) a licence under Part 2 of the Act of 1985.”;
- (g) omit paragraph 9 (removal of disqualification from holding an advocacy, litigation or probate licence);
- (h) omit paragraph 10 (revocation on grounds of fraud or error);
- (i) in paragraph 21 (power to examine files)—
 - (i) in sub-paragraph (1)(a), after “licensed conveyancer” insert “or licensed CLC practitioner”;
 - (ii) in sub-paragraph (1), for “the licensed conveyancer”, in both places it occurs, substitute “the person complained of”; and
- (j) in paragraph 22 (interest on clients’ money), after “licensed conveyancer” insert “or licensed CLC practitioner”.

PART 3

Amendments to other legislation

16.—(1) The 2007 Act is amended as follows.

(2) In section 104(2) (prevention of regulatory conflict: account rules) after “licensed conveyancer” insert “or licensed CLC practitioner”.

(3) After section 104(2) insert—

“(3) In this section “licensed CLC practitioner” means a person, other than a licensed conveyancer, who holds a licence under section 53 of the Courts and Legal Services Act 1990.”.

(4) In Schedule 5, in paragraph 11 (authorised persons: rights during transitional period: licensed conveyancers)—

(a) after sub-paragraph (1) insert—

“(1A) During the transitional period every individual, not being a licensed conveyancer, who holds a licence under section 53 of the Courts and Legal Services Act 1990 is deemed to be authorised by the Council to administer oaths.”;

(b) in sub-paragraph (2) after “sub-paragraph (1)” insert “or (1A)”;

(c) in sub-paragraph (3), in the opening words—

(i) after “and every” insert “conveyancing services”;

(ii) after “provide conveyancing” insert “or other”;

(d) after sub-paragraph (3) insert—

“(3A) During that period, every CLC practitioner services body recognised under section 32 of the Administration of Justice Act 1985 is deemed to be authorised by the Council to administer oaths.”;

(e) in sub-paragraph (4), after “sub-paragraph (3)” insert “or (3A)”;

(f) for sub-paragraph (5) substitute—

“(5) In this paragraph—

“CLC practitioner services body” has the meaning given by section 32B of the Administration of Justice Act 1985;

“conveyancing partnership” means a partnership at least some of the members of which are licensed conveyancers, but does not include a CLC practitioner services body;

“conveyancing services body” has the meaning given by section 32A of the Administration of Justice 1985.”;

(g) in sub-paragraph (6), after “conveyancing licence” insert “or a licence under section 53 of the Courts and Legal Services Act 1990”.

(5) In Schedule 24(a) (index of defined expressions), at the appropriate places insert—

“CLC practitioner services body	paragraph 11 of Schedule 5”
“conveyancing services body	paragraph 11 of Schedule 5”
“licensed CLC practitioner	section 104(3)”.

SCHEDULE 2

Article 5

Other amendments to the 1985 Act

1. The 1985 Act is amended as follows.

2. In section 15(b) (issue of licences by Council)—

(a) in subsection (3)(b) for “the period of 42 days beginning with the date when the application was received by the Council” substitute “the period prescribed under subsection (3A)”; and

(b) after subsection (3) insert—

“(3A) The Council must by rules prescribe the period that applies for the purposes of subsection (3)(b).”.

3. In section 18 (suspension or termination of licences)—

(a) after subsection (2A)(c) insert—

“(2AA) Where the power conferred by paragraph 6(1) or 9(1) of Schedule 5 is exercised in relation to a recognised body by virtue of paragraph 10(1)(a) of Schedule 6, the exercise of that power shall operate immediately to suspend any licence under this Part held by a person who is a manager of the recognised body.

(2AB) Where the power conferred by paragraph 6(1) or 9(1) of Schedule 5 is exercised in relation to a recognised body by virtue of paragraph 10(1)(d) of Schedule 6, the exercise of that power shall operate immediately to suspend any licence under this Part held by a person who is—

(a) a manager of the recognised body, or

(b) an employee of the recognised body.

(2AC) Where the power conferred by paragraph 3(1) or 8(1) of Schedule 14 to the Legal Services Act 2007 is exercised in relation to a licensed body by virtue of paragraph 1(2)(d) of that Schedule, the exercise of that power shall operate immediately to suspend any licence under this Part held by a person who is—

(a) a manager of the licensed body, or

(a) As amended by the Enterprise and Regulatory Reform Act 2013 (c. 24), Schedule 6, paragraph 123.

(b) As amended by the 2007 Act, section 182 and Schedule 17, paragraph 4. There are other amendments to the section which are not relevant to this Order.

(c) Subsections (2A) to (2H) were inserted by the 2007 Act, section 182 and Schedule 17, paragraph 9. There are other amendments to the section which are not relevant to this Order.

(b) an employee of the licensed body.”;

(b) after subsection (2C) insert—

“(2CA) At the time when the power referred to in subsection (2AA), (2AB) or (2AC) is exercised, the Council may direct that subsection (2AA), (2AB) or (2AC) (as the case may be) is not to apply in relation to a particular licensed conveyancer.

(2CB) The Council may give a direction under subsection (2CA) in relation to a licensed conveyancer only if—

- (a) the Council is satisfied that the licensed conveyancer did not fail to comply with the rules applicable to the recognised body by virtue of section 32, or contribute to the body’s failure to comply with such rules, in a case where the Council acts by virtue of paragraph 10(1)(a) of Schedule 6,
- (b) the Council does not suspect the licensed conveyancer of dishonesty, in a case where the Council acts by virtue of—
 - (i) paragraph 10(1)(d) of Schedule 6, or
 - (ii) paragraph 1(2)(d) of Schedule 14 to the Legal Services Act 2007,
- (c) the Council is satisfied that the licensed conveyancer was not a manager of the recognised body when the conduct providing the basis for the exercise of the power in paragraph 6(1) or 9(1) of Schedule 5 took place, in a case where the Council acts by virtue of paragraph 10(1)(a) of Schedule 6,
- (d) the Council is satisfied that the licensed conveyancer was not a manager or employee of the recognised body when the conduct providing the basis for the exercise of the power in paragraph 6(1) or 9(1) of Schedule 5 is suspected of having taken place, in a case where the Council acts by virtue of paragraph 10(1)(d) of Schedule 6, and
- (e) the Council is satisfied that the licensed conveyancer was not a manager or employee of the licensed body when the conduct providing the basis for the exercise of the power in paragraph 3(1) or 9(1) of Schedule 14 to the Legal Services Act 2007 is suspected of having taken place, in a case when the Council acts by virtue of paragraph 1(2)(d) of Schedule 14 to that Act.

(2CC) At the time when the power referred to in subsection (2AA), (2AB) or (2AC) is exercised, the Council may direct that such of the licensed conveyancers concerned as are identified in the direction may continue to act in relation to any matter specified in the direction as if their licences had not been suspended by virtue of subsection (2AA), (2AB) or (2AC) (as the case may be), subject to such conditions (if any) as the Council sees fit to impose.”;

(c) in subsection (2D) after “subsection (2A)” insert “, (2AA), (2AB) or (2AC)”;

(d) in subsection (2G) for “the High Court” substitute “the First-tier Tribunal”; and

(e) omit subsection (2H).

4. In section 19 (register of licensed conveyancers)—

(a) after subsection (1) insert—

“(1A) The Council may make rules specifying the further information, including information about disciplinary measures taken, to be recorded in the register in relation to a person.”; and

(b) in subsection (2), omit “accordingly”.

5. In section 20(a) (rules as to professional practice, conduct and discipline), omit subsection (2).

6. In section 24 (preliminary investigation of disciplinary cases)—

(a) Amended by the 2007 Act, section 1821 Schedule 17 paragraphs 1, 10; Schedule 23.

- (a) in subsection (10)(a) for “High Court” substitute “First-tier Tribunal”;
 - (b) in subsection (11) for “High Court” substitute “First-tier Tribunal”; and
 - (c) omit subsection (12).
- 7.** In section 24A(b) (determination of allegations by Investigating Committee)—
- (a) in subsections (8) and (9) for “High Court” substitute “First-tier Tribunal”; and
 - (b) omit subsection (10).
- 8.** In section 26 (proceedings in disciplinary cases)—
- (a) for subsection (7) substitute—
 - “(7) Where the Discipline and Appeals Committee make an order by virtue of subsection (1)—
 - (a) the person against whom the order is made, or
 - (b) the Council,
 may appeal to the First-tier Tribunal, and on any such appeal the First-tier Tribunal may make such order as it thinks fit.”;
 - (b) in subsection (7A) for “High Court” in both places substitute “First-tier Tribunal”; and
 - (c) omit subsection (8).
- 9.** In paragraph 4(2)(c) of Schedule 3 (the Council for Licensed Conveyancers: supplementary provision: constitution of the Council) omit “by one”.
- 10.** In Schedule 6 (bodies recognised under section 32: supplementary provisions)—
- (a) in paragraph 3A(d) (allegations to be determined by the Investigating Committee)—
 - (i) in sub-paragraphs (8) and (9) for “High Court” substitute “First-tier Tribunal”;
 - (ii) omit sub-paragraph (10); and
 - (b) in paragraph 6(e) (appeals against orders of the discipline and appeals committee)—
 - (i) for sub-paragraph (1) substitute—
 - “(1) Where the Committee make an order by virtue of paragraph 4(1) or (2A) or 5(1)—
 - (a) the person as regards whom the order is made, or
 - (b) the Council,
 may appeal to the First-tier Tribunal, and on any such appeal the First-tier Tribunal may make such order as it thinks fit.”;
 - (ii) in sub-paragraph (1A), for “High Court”, in both places, substitute “First-tier Tribunal”; and
 - (iii) omit sub-paragraph (2).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order modifies the functions of the Council for Licensed Conveyancers (“the Council”).

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- (a) Section 24(10) to (12) were inserted by the 2007 Act, section 182 and Schedule 17, paragraph 12. There are other amendments to the section which are not relevant to this Order.
 - (b) As inserted by the 2007 Act, section 182 and Schedule 17, paragraph 13.
 - (c) Paragraph 4(2) has been amended by S.I. 2011/1716. There are other amendments to the Schedule which are not relevant to this Order.
 - (d) Paragraph 3A was inserted by the 2007 Act, section 182 and Schedule 17, paragraph 32. There are other amendments to the Schedule which are not relevant to this Order.
 - (e) Paragraph 6 has been amended by the 2007 Act, section 182 and Schedule 17, paragraph 32. There are other amendments to the Schedule which are not relevant to this Order.

Article 2 amends section 32 of the Administration of Justice Act 1985 (c. 61) (“the 1985 Act”) to modify the Council’s existing powers under that section in relation to bodies that it may recognise. The amendments allow the Council to recognise a new kind of body to be known as a CLC practitioner services body. A CLC practitioner services body is defined in new section 32B of the 1985 Act. A CLC practitioner services body will need to meet the conditions set out in section 32B before it can be recognised.

Article 3 amends section 53 of the Courts and Legal Services Act 1990 (c. 41) (“the 1990 Act”) to modify the Council’s existing powers to license individuals. Following the amendments made by this Order the Council will be able to give licences to individuals to be known as licensed CLC practitioners.

Article 4 gives effect to Schedule 1 and Schedule 1 to the Order makes amendments to the 1985 Act, the 1990 Act and the Legal Services Act 2007 (c. 29) consequential on the creation of CLC practitioner services bodies and licensed CLC practitioners.

Article 5 gives effect to Schedule 2. Schedule 2 makes other amendments to the 1985 Act. Paragraph 2 amends section 15 of the 1985 Act to allow the Council to prescribe in rules the period which is to apply for the purposes of section 15(3)(b). This replaces the current fixed period of 42 days. Paragraph 3 amends section 18 (suspension and termination of licences) to provide certain circumstances in which the licence of a licensed conveyancer will be suspended due to action being taken against the recognised body of which the licensed conveyancer is a manager or, in certain cases, an employee. It also amends section 18 to provide certain circumstances in which the licence of a licensed conveyancer will be suspended due to action being taken against the licensed body of which that person is a manager or employee.

Paragraph 3 (in addition) together with paragraphs 6, 7, 8 and 10 make amendments to the provisions in sections 18, 24, 24A, 26 of, and Schedule 6 to, the 1985 Act concerning appeals, including changing the venue for appeals from the High Court to the First-tier Tribunal. Paragraph 4 amends section 19 of the 1985 Act to allow the Council to make rules about further information to be included in the register of licensed conveyancers. Paragraph 9 amends paragraph 4 of Schedule 3 to the 1985 Act to provide that the lay members of the Council must be one or more greater than the non-lay members of the Council.

Article 6 makes transitional provisions in relation to the amendments in Schedule 2.

An impact assessment has been prepared for this Order and is available at [to be completed].

Annex B - Draft Impact Assessment

Council for Licensed Conveyancers (CLC) analysis of impacts in respect of an order to be made under Section 69 of the Legal Services Act 2007 (to enable the CLC to amend its statutory framework)

Background

1. The Council for Licensed Conveyancers (the CLC) is an approved regulator under the Legal Services Act 2007 (the 2007 Act) regulating individual licensed conveyancers and recognised bodies (also referred to as 'CLC Entities'). With effect from 6 October 2011 the CLC has been designated as a Licensing Authority authorised to license licensed bodies (also called Alternative Business Structures – ABS). Currently there are 674 registered students (566 in June 2013), 1,231 licensed conveyancers (1,171 in June 2013), 174 recognised bodies (205 in June 2013) and 41 licensed bodies/ABS (19 in June 2013). A large part of the increase in numbers of licensed bodies/ABS and decrease in numbers of recognised bodies is accounted for by recognised bodies with external owners or managers converting to licensed body/ABS status. The total turnover of CLC practices (most of which is generated by the provision of conveyancing services) is over £120 million (based on turnover figures declared in June 2014). Returns received to date leading to renewal of professional indemnity insurance in June 2014 suggests the total turnover of CLC Entities increased by a further 13% over 2013.
2. The CLC regulates licensed conveyancers and CLC Entities in the provision of three reserved legal activities, namely reserved instrument activities (i.e. conveyancing), probate activities and the administration of oaths, as well as other legal services which are currently not reserved. The CLC's aim is to create more choice and better access for consumers in legal services (so protecting and promoting the interests of consumers and improving access to justice).
3. It will also help the CLC regulated community to expand their scope into other areas of legal practice (by promoting competition in the provision of services and encouraging an independent, strong, diverse and effective legal profession).
4. The CLC's expertise lies in consumer focused retail legal services and we have created a regulatory regime that can respond to consumer need for better value for money and multi-channel delivery in the conveyancing market. Our consumer focused regulatory framework encourages new, innovative providers to enter the market. Having created a vibrant and successful regulatory framework in conveyancing, we have established a

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firm foundation to move into other areas of legal practice, and in doing so, we will allow legal service providers to be innovative and deliver more choice and greater access to legal services for retail consumers.

5. This will give the opportunity for the practices we currently regulate to develop new sources of income. It will also allow the CLC to license new businesses and professionals wanting to be regulated for specific areas of practice beyond conveyancing and probate.

Problem under Consideration

The reason for the CLC seeking amendment to its statutory framework

6. The CLC's current statutory framework has been transformed from the Administration of Justice Act 1985 (the 1985 Act) as originally enacted. Although some welcome amendments have since been made, particularly by the 2007 Act, further amendments would allow the CLC to achieve its regulatory objectives outlined above. The CLC believes that the amendments outlined in this Impact Assessment will enable it to resolve these issues.
7. The CLC is seeking these amendments in order to enable the following proposals:
 - a) entitlement for the CLC to regulate all reserved legal activities and non-reserved legal service
 - b) the ability for the CLC to issue standalone licences to licensed conveyancers and recognised body certificates
 - c) appeals from disciplinary determinations made by the CLC's Discipline and Appeals Committee (DAC) to be made to the First-tier Tribunal (instead of to the High Court, as present)
 - d) entitlement of the CLC to appeal against DAC determinations
 - e) licences of licensed conveyancer managers and employees to be automatically suspended where the CLC intervenes into a recognised body or licensed body
 - f) the time within which the CLC is required to determine applications for licences to be prescribed by rules.

Vires for making the amendments proposed

8. Section 69 of the 2007 Act (at Schedule 5 with s.70) set out the circumstances in which the LSB may make a recommendation to the Lord Chancellor (only the three which are considered most relevant to the amendments sought by the CLC are set out):

"...only with a view to an order being made which enables the

body to which it relates to do one or more of the following -

a) to become designated by an order under Part 2 of Schedule 4 as an approved regulator, or designated by an order under Part 1 of Schedule 10 as a licensing authority, in relation to one or more reserved legal activities;

b) to authorise persons or any category of persons (whether corporate or unincorporate) to carry on one or more activities which are reserved legal activities in relation to which the body is (at the time the authorisation has effect) designated as an approved regulator, or to make regulatory arrangements;

c) to authorise persons to carry out its role as an approved regulator (including its role, if any, as a licensing authority) more effectively or efficiently;”

Proposals

Proposal A: Entitlement for the CLC to regulate all reserved legal activities

Background

9. The amendments sought are closely aligned to those sought at Proposal B (see below) in respect of standalone licences, although the CLC relies on a different sub-section of section 69(3) of the 2007 Act, for authority for the amendments to be made under this part.
10. In February 2011 the CLC made an application to regulate litigation and advocacy services (at the same time as it made an application to be designated as a licensing authority). The CLC’s litigation and advocacy application was rejected by the LSB in April 2012:
 - on the grounds that the CLC lacks the legal power to make rules; and
 - regulations that would allow it to authorise entities for these activities.
11. The current intention is for the CLC to submit a new extension of scope in its application in 2015/2016.

In summary

Problem under consideration

12. Once the transitional provisions under the 2007 Act are brought to an end, the CLC will no longer be able to license recognised bodies in the provision of probate services (and the other reserved legal activities such as litigation activities, in the event it is authorised to regulate and license these activities).

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Rationale for intervention

13. In the CLC's view, it was clearly intended at the time the CLC was authorised to license and regulate probate services in 2008 that the CLC should be able to regulate recognised bodies providing these services. Until this issue is resolved it will not be possible to bring the transitional provisions in the 2007 Act to an end.

Preferred Option (legislative change)

14. The CLC believes that this legislative change can be achieved by Statutory Instrument made under section 69 of the 2007 Act.
15. No implementation plan is required since this option would enable the current status quo to continue.

Economic Rationale

16. The number of providers of probate services will increase providing additional competition in the market.

Costs and Benefits

Main affected groups

17. The affected groups are the CLC regulated community, the CLC and consumers.

Costs

18. There are no costs, since in effect the status quo continues. But the CLC will need to amend the CLC's regulatory arrangements.

Benefits

19. The overall benefits to the *CLC regulated community* is that it will have the ability to extend the range of services it provides. The benefits are not possible to explicitly quantify as the proposal is more to do with regulatory efficiency than direct savings in costs, but it will allow CLC Entities to provide further reserved legal activities, subject to the CLC's application to extend the scope of services it regulates being successful. The principal benefits are that the transitional provisions in the 2007 Act can be brought to an end and there will be no requirement for the recognised bodies currently regulated by the CLC:

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- to cease to provide probate services,
- transfer to a different regulator (with additional costs and disruption to that business);or
- continue to provide administrative estate services outside the regulatory framework.

20. The overall benefit to *the CLC* is that its ability to extend the services it can license is likely to result in a reduction in regulatory costs. The CLC anticipates that this will lead to an increase in the size of the profession over a number of years and lead to a reduction in unit costs. Since this is predicated on a successful application which has yet to be made, it is not possible currently to quantify these costs.

21. The benefits *consumers* will realise from extension of services to CLC regulated practices will be increased competition within the regulated market, which in turn will result in overall reductions of costs and reduced risk to consumers resulting from accessing services which are not regulated or are not properly regulated. These benefits are non-quantifiable.

Proposal B: The ability for the CLC to issue standalone licences and recognised body certificates

Background

22. As the 1985 Act and the 1990 Act is currently framed, the CLC may only license individuals to carry out the extended scope of services if the person making the application is already licensed by the CLC as a licensed conveyancer (to provide conveyancing services) .

23. The CLC was established to regulate licensed conveyancers in the provision of conveyancing services. As it extends the scope of services it regulates, the CLC considers that its power to issue licences should be modified so it is no longer a requirement for an individual who has been issued with a probate or litigation licence to have been issued with a conveyancing licence. The CLC's rationale for this proposal is that, depending on the profile of regulated services the licensee intends to provide, it is highly unlikely that a qualification in conveyancing law and practice will in all cases enable a licensee (who specialises in litigation) to provide a better litigation service to their client, though it is accepted that some general familiarity with the conveyancing process may be desirable.

24. Broadly the same considerations apply to a probate licence. A licensee with a probate licence would need to have a conveyancing licence only if that licensee also intended, for example, to provide conveyancing services to the personal representative of an estate on the sale of a property. Drawing a parallel with another sector of the legal profession, in many high street

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solicitors' practices (admittedly dependent on the size of the particular practice) the provision of probate services and conveyancing services is undertaken or supervised by different solicitors (one specialising in trusts and probate and the other in conveyancing).

25. The CLC's view is that it is unduly restrictive to continue to require all licensed conveyancers to have a conveyancing licence if they have no intention of providing conveyancing services. The individuals concerned are required to incur costs and time unnecessarily gaining qualifications which are of no practical use to them. The CLC believes it inhibits entry into the legal services market and hampers the natural development of the profession. Ultimately any requirement that restricts supply limits any potential for increased competition and access for consumers envisaged by the 2007 Act. As a result any anticipated price reductions, increases in quality and innovation, and impacts on the time for consumers within the legal markets may be more muted than originally envisaged by the legal service reforms.

26. The savings identified are as follows:

- the individual would not have to pass three courses: Introduction to Legal Method (by assignment) cost, Land Law, Conveyancing and Landlord and Tenant (by examination) at a cost per course including course materials, completing past papers and examination fees of £1,655
- Of more importance the individual would not be required to spend 1,200 hours (or one year full time) undergoing practical training in order to satisfy the CLC that the individual has sufficient skills and experience in a range of conveyancing activities in order to be issued with a licence
- Additional examinations would need to be passed and practical training undertaken (both at further cost to the individual and to the firm) for the individual to be licensed to provide additional services, such as probate services (which the CLC is currently authorised to regulate) and other reserved legal activities (when the CLC is authorised to regulate those services).

27. Given the existence of information asymmetries (as between legal professional and consumers) there are clear benefits in requiring legal professionals to meet certain standards. In its application to the Legal Services Board in 2011 to extend the scope of reserved legal activities it regulates, the CLC addressed any concerns which might arise in this context by proposing a framework of incremental permissions.

In summary

Problem under consideration

28. The CLC is currently only able to regulate and license individuals in the

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provision of probate services (as well as litigation and advocacy services, in the event it is authorised to license and regulate these services) if they are also being licensed to provide conveyancing services.

Rationale for intervention

29. The current requirement is disproportionate; it increases unnecessarily the costs to the individual of being licensed and regulated by the CLC, and so increases the costs to the consumer of accessing probate services (and potentially other reserved legal activities).

Policy objective

30. To enable the CLC to regulate and license probate services independent of conveyancing services.

Economic Rationale

31. The number of providers of probate services will increase providing additional competition in the market. These are likely to apply different business and charging models leading to increased competition, an increase in the quality of service and a downward pressure on fees charged. In the short term, the CLC expects this to lead to the number of solicitors (estimated 5-10 in the first year) applying to be regulated by the CLC to increase (since they will not be required to demonstrate that they have recent and relevant conveyancing experience). One or two may transfer an existing practice. Others are likely to set up entirely new practices. In the medium term the CLC anticipates that businesses will set up (perhaps as ABS) managed by CLC probate practitioners offering a variety of probate support services at a range of different prices tailored more closely to the needs of the individual clients. The numbers may not be substantial (currently estimated at up to 5) but the effect they are likely to have on the market as a whole is anticipated to be substantial.

Costs and Benefits

Main affected groups

32. The affected groups are the CLC regulated community, the CLC and consumers.

Costs

33. No additional costs identified.

Benefits

34. Reduction in costs in that individuals would only need education and training to enable them to be licensed and regulated to provide probate services without the necessity of also being educated and trained in the provision of conveyancing services. The direct costs savings are estimated at £1,655 per CLC student (see paragraph 26 above). This would not, of

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course, prevent these individuals if they wished to extend the scope of services they provide.

35. Non-quantifiable costs to consumers, but greater choice resulting in increased competition and the potential for reduced costs of services with no detriment to quality.

Proposal C: Appeals from determinations made by the CLC's Discipline and Appeals Committee (DAC) to be made to the First-tier Tribunal

Background

36. As drafted, section 80 of the 2007 Act provides for appeals against determinations made by the CLC as a licensing authority to be heard by the CLC's Discipline and Appeals Committee (DAC). In consultation with the LSB and the Tribunals Service, it was agreed that appeals from the CLC acting as a licensing authority should be heard by the First-tier Tribunal (established under the Tribunals, Courts and Enforcement Act 2007). Following consultation, SI 2011/1712 was made. As a consequence, any appeal against a determination made by the CLC's Adjudication Panel (where the CLC acts as a licensing authority) is heard by the First-tier Tribunal.
37. One of the principles the CLC has tried to follow in the development of its regulatory arrangements as a licensing authority is that, so far as possible, the same rules and processes apply to regulated individuals and entities whether they are regulated by the CLC as an approved regulator or as a licensing authority. It is also consistent with the LSB's overarching objective to have a single appellate body for all legal service regulators.
38. With effect from 30 September 2013 rules made by the CLC came into effect providing for the jurisdiction of the DAC to be transferred to the Adjudication Panel.
39. Currently, appeals against determinations made by the Adjudication Panel (assuming the functions and jurisdiction of the DAC) under section 26 and Schedule 6 of the 1985 Act may be made to the High Court. The CLC proposes that those provisions should be amended so that appeals from the Adjudication Panel (which has assumed the jurisdiction of the DAC) should be determined by the First-tier Tribunal (and not by the High Court), so mirroring the appeals procedure for licensed bodies and managers of licensed bodies.
40. Appeals against determinations made by the DAC are relatively rare, since the DAC itself sits relatively infrequently. Since 2000, there has been just one appeal.
41. The amendment the CLC seeks is relatively straightforward, although amendments would be required to a number of sections and to Schedule 6 to the 1985 Act, as specified in the Draft Order. The main non-monetised

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benefit will be that licensed conveyancers and recognised bodies will have the same access to an independent and transparent tribunal process as ABS. This strengthens the perception of fairness and therefore confidence in regulatory decisions made by the CLC, encouraging entry into the market. Consumers of legal services may also benefit from increased consumer protection as a result of consistent arrangements for dealing with appeals in relation to approved regulator decisions made by the CLC.

In summary

Problem under consideration

42. Appeals against determinations made by the Adjudication Panel may currently be made to the High Court (where the CLC is acting as an approved regulator) or to the First-tier Tribunal (where the CLC is acting as a licensing authority).

Rationale for intervention

43. The CLC's view is that the First-tier Tribunal is the most appropriate forum for determination of such appeals. There are advantages to the regulated person in that the First-tier Tribunal regularly determines cases where at least one of the parties acts in person. The risks of adverse costs order for the regulated person are greatly reduced because of the limited scope for the First-tier Tribunal to make orders for costs. The policy of the CLC is for the licensing and regulatory processes when it acts as an approved regulator or as a licensing authority are the same (in this case the forum to which an appeal can be made).

Policy objective

44. All appeals from determinations made by the CLC's Adjudication Panel are to the First-tier Tribunal.

Preferred option (legislative change)

45. Amendment is made by Statutory Instrument made under section 69 of the 2007 Act enabling all appeals from determinations made by the CLC's Adjudication Panel to be heard by the First-tier Tribunal (rather than the First-tier Tribunal or the High Court).

Economic Rationale

46. The main non-monetised benefit will be that ABS and ABS applicants will have access to an independent and transparent tribunal process. This strengthens the perception of fairness and therefore confidence in regulatory decisions made by the CLC, encouraging entry into the market. Consumers of legal services may also benefit from increased consumer protection as a result of consistent arrangements for dealing with appeals in relation to licensing authority decisions.

Costs and Benefits

Main affected groups

47. The main affected groups are the CLC regulated community, the CLC and consumers.

Costs

48. CLC contribute directly to the costs of holding hearings. The FTT has a restricted entitlement to direct a party to pay the other party's costs. No direct cost impact on consumers.

Benefits

49. Hearings determined more quickly at less cost both to individual licensed conveyancers and CLC entities directly associated with individual cases and the profession as a whole. Depending on the nature of the appeal, the costs of each party for the hearing in the High Court are conservatively estimated to be in the range of £10-25,000. Whilst litigants in person are appearing more frequently in the High Court, the First-tier Tribunal already has in place a very flexible procedure which enables it to deal with cases fairly and justly. Depending on the nature of the matters in issue, there is likely therefore to be a saving in legal costs in that the CLC and/or the appellant may not be represented in the First-tier Tribunal. In the High Court, either the CLC or the appellant is likely to be directed to pay the other's legal costs, dependant on the outcome of the hearing. In contrast, the First-tier Tribunal only directs a party to pay the other's legal costs if it is satisfied that it has acted unreasonably. There is therefore less risk of an adverse costs order (assuming the CLC is legally represented) being made against the appellant in the event they are unsuccessful.

Proposal D: Entitlement of the CLC to appeal against DAC determinations

Background

50. Whilst the 1985 Act entitles a Respondent to appeal to the High Court (or, if the proposal at (c) is accepted, the First-tier Tribunal) against a substantive disciplinary determination made by the DAC, no equivalent entitlement is given to the CLC. The rationale for this omission is presumably that it would seem perverse for the CLC to be able to appeal against a determination of one of its own committees. This was correct up to 2001 when the DAC comprised members who were also members of the Council of the CLC. The DAC is now separate from the CLC.

51. The CLC is concerned that the one way right of appeal favours only the Respondent who may appeal against an order made by the DAC to the

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High Court (or to the First-tier Tribunal if the amendments proposed at (c) above are made). The CLC's view is that it is reasonable (and in the wider public interest) for it to have the entitlement to appeal against such determinations where it believes that the determination of the DAC (or the Adjudication Panel) is perverse or otherwise open to challenge, or the sanction imposed is in some way disproportionate (either too lenient or – less likely – too harsh).

52. It should be noted that the CLC is already able to appeal to the High Court against an adverse order for costs.

In summary

Problem under consideration

53. The CLC is currently only able to appeal against determinations made by the CLC's Adjudication Panel in very limited circumstances. The Adjudication Panel is now separated from the CLC in that none of its members are members of the Council of the CLC. There may be circumstances in which the CLC wishes to challenge a determination made by the Adjudication Panel where it is concerned that the Adjudication Panel may have made a mistake in law or where both the CLC and the Adjudication Panel would benefit from guidance from the First-tier Tribunal (or the High Court, if the amendment the CLC has asked for under (c) above is not made).

Rationale for intervention

54. The amendments requested is an additional safeguard in relation to the exercise of functions by both the CLC and the Adjudication Panel, so ensuring that the rule of law is maintained.

Policy objective

55. To enable the CLC to appeal against determinations made by the Adjudication Panel.

Preferred option (legislative change)

56. Amendment is made by Statutory Instrument made under section 69 of the 2007 Act, enabling the CLC to appeal against determinations made by the Adjudication Panel.

Economic Rationale

57. The two way entitlement to appeal strengthens the perception of fairness and therefore confidence in regulatory decisions made by the CLC, encouraging entry into the market. Consumers of legal services may also benefit from increased consumer protection as a result of consistent arrangements for dealing with appeals.

Costs and Benefits

Main affected groups

58. The affected groups are the CLC regulated community, the CLC and consumers.

Costs

59. The CLC will be required as regulator to make a contribution towards the costs to the Tribunal Service, based on the number of hearings in which CLC licensees are involved, on an annual basis, dependent on demand. The cost the Tribunals Service indicated in 2011 it would charge per case was in the range of £2,500 to £4,000. To date, there has been no case involving the CLC in the First-tier Tribunal, and there is currently no case which the CLC believes is likely to be referred to the First-tier Tribunal.

60. Non-quantifiable, but likely to be negligible indirect costs to consumers resulting from any costs incurred by the CLC.

Benefits

61. Provide additional safeguard in the unlikely event a decision of the Adjudication Panel appears out of the range of decisions normally expected.

Proposal E: Licences of licensed conveyancer managers and employees to be automatically suspended where the CLC intervenes into a recognised body

Background

62. Section 18(2A) of the 1985 Act currently provides for the automatic suspension of a licence where the CLC intervenes into a licensed conveyancer practice under Schedule 5 of the 1985 Act unless the CLC directs otherwise.

63. Since 31 March 2009, when the Regulation of Practices (Recognised Bodies) Rules 2009 came into force, the CLC has, when acting as an Approved Regulator regulated all licensed conveyancer practices (whether they are sole principals, partnerships, LLPs or limited companies) as recognised bodies. As a result, section 18(2A) of the 1985 Act is of no practical effect because the CLC has not and will not intervene into a practice exercising its powers under Schedule 5, though it will intervene into CLC Entities exercising its powers under Schedule 6 1985 Act where the relevant entity is a recognised body or where it exercises the powers of intervention conferred by Schedule 14 of the 2007 Act where the relevant entity is a licensed body (ABS).

64. The proposal is that a licence is suspended where the CLC exercises its powers of intervention under s.10(1)(a) Schedule 6 of the 1985 Act on the grounds that:

- a. it is the failure of a licensed conveyancer (or licensed person) manager to comply with the CLC's Rules which has resulted in intervention by the CLC; or
- b. the suspected dishonesty of a licensed conveyancer (or licensed person) has resulted in intervention by the CLC.

65. Parallel provisions referring to Schedule 14 of the 2007 Act apply in respect of managers and employees of licensed bodies (also article 8(2) of the Draft Order).

In summary

Problem under consideration

66. Licences of licensed conveyancer managers are not automatically suspended when the CLC intervenes into a recognised body (although they would be if it were regulated as a practice).

Rationale for intervention

67. There is inevitably a delay in effecting a suspension if the CLC is required to follow the process for suspension of a licence (as s.24(5)-(12) of the 1985 Act). This causes delay and puts the consumer at risk. The CLC's preference is for the licence to be automatically suspended on intervention, and for it to resolve to lift the suspension if it is satisfied that a licensed conveyancer has not in effect contributed to the circumstances giving rise to the intervention (as a result of dishonesty or failure to comply with the CLC's rules). Separately, the CLC would also be able to intervene if the licensed conveyancer has been committed to prison.

Policy objective

68. On intervention into a recognised body the licences of the Licensed conveyancer managers are suspended automatically, subject to the CLC lifting the suspension and the licensed conveyancer manager being able to apply for the suspension to be lifted and appeal against any refusal.

Preferred option (legislative change)

69. Amendment is made by Statutory Instrument made under s.69 of the 2007 Act ensuring that the licence of the licensed conveyancer is suspended on intervention. The CLC would also make limited amendments to its regulatory arrangements to give effect to the legislative change. The CLC has scoped the changes which need to be made. An application to make the necessary changes will be made to the Legal Services Board in good

time so that they can come into force on the date the Statutory Instrument itself comes into force, currently expected by December 2014.

Economic Rationale

70. Implementing the proposed change would ensure there is a presumption in favour of suspending the licence of a manager of a practice into which the CLC has intervened, subject to an entitlement for that individual to make representations for the CLC to lift the suspension and, if refused, to appeal against such refusal.

Costs and Benefits

Main affected groups

71. The affected groups are the CLC regulated community, the CLC and consumers.

Costs

72. No additional costs identified for any groups.

Benefits

73. Reputation of profession as a whole is safeguarded.
74. Enables the CLC more effectively to manage an intervention into a CLC practice. It is difficult to estimate specifically how many times the CLC will intervene, however, as an indicator, in 2013 the CLC exercised its powers of intervention in respect of six practices.
75. It will also help ensure licensed conveyancers cease practising on intervention, so avoiding further delay (and indirect cost) and providing more assured protection for consumers.

Proposal F: The time within which the CLC is required to determine applications for licences is prescribed by rules

Background

76. Section 15(3)(b) of the 1985 Act currently requires the CLC to determine applications for licences within 42 days. This compares with 90 days for determination of applications to be licensed as a licensed body.
77. As originally enacted, section 15(3)(b) of the 1985 Act provided for licence application determinations to be made within 21 days. This period has been extended to 42 days (paragraph 4(2) Schedule 17 of the 2007 Act) as a result of submissions made by the CLC to the Ministry of Justice whilst the 2007 Act was being drafted.

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78. It is suggested that it is unnecessarily prescriptive for time limits of this nature to be prescribed by statute. It is accepted that it is appropriate for the CLC to be required to make rules prescribing the time within which applications should be determined (which may then be varied from time to time with the agreement of the LSB). In order to ensure the same resources are applied to all applications it determines, the CLC expects to prescribe the same time scales.

In summary

Problem under consideration

79. The time limited for the CLC to determine licence applications to be a licensed conveyancer is prescribed by the 1985 Act. This is inconsistent with the time limits prescribed elsewhere (applications for ABS licences need to be determined in 90 days). This raises the risk that the CLC will direct resources to meet the shorter timescales required to determine individual licence applications, rather than entity applications.

Rationale for intervention

80. The CLC wishes to have the flexibility to vary the time limit so that it is aligned with the requirements for the determination of licensed body (ABS) applications.

Policy objective

81. The AJA 1985 Act is amended so that the time limit is prescribed by rules made by the CLC.

Preferred option

82. That amendment is made by Statutory Instrument made under section 69 of the 2007 Act, ensuring that the time limit for determining licence applications to be a licensed conveyancer is prescribed by rules made by the CLC, rather than by statute.

Economic Rationale

83. Additional flexibility since time limits will be set in rules which can be varied according to standards set by the CLC.

Costs and Benefits

Main affected groups

84. The affected groups are the CLC regulated community, the CLC and consumers.

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Costs

85. No costs identified to any group.

Benefits

86. Additional flexibility, since time limits will be set in rules which can be varied according to standards set by the CLC and the CLC can apply resources according to its business need rather than time limits which are inconsistent.