

DEREGULATION ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 86: CLC practitioner services bodies

396. This section amends the Administration of Justice Act 1985 (“the AJA 1985”) so that the Council for Licensed Conveyancers (“CLC”) may recognise a new type of body as suitable to do certain legal services.
397. The CLC’s role as regards legal services is controlled by the Legal Services Act 2007 (“the LSA 2007”). The LSA 2007 governs the regulation of legal services in England and Wales. Under the LSA 2007, only a person who is authorised by an approved regulator or who is exempt from the requirement to be authorised (see section 19 of, and Schedule 3 to, the LSA 2007) may carry on a reserved legal activity (see section 12 of the LSA 2007). Approved regulators are responsible for ensuring that the persons authorised by them act in a way that is consistent with the regulatory objectives set out in the LSA 2007 (see section 1 of the LSA 2007).
398. Part 2 of the LSA 2007 established the Legal Services Board (“the LSB”) as the oversight regulator with responsibility for approved regulators. The approved regulators and the reserved legal activities in relation to which they are designated are set out in Part 1 of Schedule 4 and in designation orders made under Schedule 4. Part 2 of Schedule 4 allows for bodies to apply to the LSB to be recommended to the Lord Chancellor for designation as an approved regulator in relation to one or more of the reserved legal activities. The CLC is now an approved regulator for reserved instrument activities, the administration of oaths and probate activities.
399. **Schedule 10** to the LSA 2007 provides that an approved regulator may also be designated by the Lord Chancellor as a licensing authority. Licensing authorities may authorise (license) bodies, known as alternative business structures, which are partly or wholly owned or controlled by non-lawyers to carry on reserved legal activities. Part 5 of the LSA 2007 sets out arrangements under which licensing authorities may regulate such bodies. The CLC is now a licensing authority for reserved instrument activities, the administration of oaths and probate activities.
400. The CLC itself is governed by provisions in the AJA 1985, the Courts and Legal Services Act 1990 and the LSA 2007.
401. **Section 86** amends section 32 of the AJA 1985. Section 32 empowers the CLC to recognise bodies to carry on legal services. The amendments of section 32 alter the CLC’s powers to make rules about:
- a) the management and control of conveyancing services bodies (see section 32(1)(a) of the AJA 1985);
 - b) the circumstances in which bodies may be recognised (see section 32(1)(b) of the AJA 1985);

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- c) the CLC's arrangements for authorising recognised bodies to carry on specific legal services (see section 32(1)(ba) of the AJA 1985); and
 - d) the requirements which must at all times be satisfied by recognised bodies if they are to remain recognised (see section 32(1)(c) of the 1985 Act).
402. At present, section 32 only allows the CLC to recognise a body known as a conveyancing services body (as defined in section 32A of the AJA 1985). (In essence, a conveyancing services body is a body that must have a licensed conveyancer as part of its management or control.)
403. As amended by *subsection (3)(a)*, the CLC's powers in section 32(1)(a) relate to conveyancing services bodies and also to a new kind of body that will be known as a CLC practitioner services body.
404. As amended by *subsection (3)(b) and (c)*, section 32(1)(b) still relates only to the recognition of conveyancing services bodies, but it allows the CLC to make rules under section 32 prescribing the circumstances in which those bodies may be recognised in relation to a wider range of services. At present, rules under section 32(1)(b) may be made that relate to the provision of conveyancing services or other relevant legal services. The amendments add the exercise of a right of audience, the conduct of litigation, probate activities and the administration of oaths to the list of services covered by section 32(1)(b).
405. *Subsection (3)(d)* inserts section 32(1)(bza). Paragraph (bza) allows the CLC to make rules on the circumstances in which it may recognise a new kind of body, to be known as a CLC practitioner services body. The services that may be provided by this new kind of body do not include conveyancing services (see comments on inserted section 32B below).
406. *Subsection (3)(e)* amends section 32(1)(ba) so that it covers both conveyancing services bodies and CLC practitioner services bodies and allows the CLC to prescribe its arrangements for authorising, for the purposes of the LSA 2007, the carrying on of the following reserved legal activities:
- a) the exercise of a right of audience;
 - b) conduct of litigation;
 - c) reserved instrument activities (but only where the recognised body is a conveyancing services body);
 - d) probate activities; and
 - e) the administration of oaths.
407. Reserved instrument activities arise only in the context of conveyancing services which CLC practitioner services bodies do not provide.
408. *Subsection (3)(f)* amends section 32(1)(c) to include a reference to requirements that may be imposed by the CLC as regards activities that are not reserved legal activities under the LSA 2007.
409. *Subsection (7)* inserts section 32(8A) which make clear that nothing in section 32 of the AJA 1985 affects the rule that authorisation to carry on reserved legal activities is governed by the LSA 2007. Provision in the amended section 32 about rights of audience and the conduct of litigation is subject to the need for the CLC to become an approved regulator as regards those activities.
410. *Subsection (8)* inserts section 32B of the AJA 1985. Section 32B describes CLC practitioner services bodies, and corresponds to section 32A of the AJA 1985 which describes conveyancing services bodies. Section 32B(5) makes clear that a CLC

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practitioner services body must not provide conveyancing services. Section 32B(6) contains a condition that does not have an equivalent in section 32A. The condition relates to the authorised person by reference to whom the management and control condition is satisfied for the CLC practitioner services body. That person would have to be an authorised person in respect of at least one of the reserved legal activities falling within the CLC practitioner services in respect of which the body is to be recognised. The effect of section 32B(7)(a) is that the CLC must be an approved regulator in relation to the listed activities before that activity becomes a CLC practitioner service. This means that the CLC must be designated in relation to the exercise of a right of audience or the conduct of litigation before it can exercise its new powers in relation to those matters. The CLC has already been designated for the administration of oaths (see Part 1 of Schedule 4 to the LSA 2007) and probate activities (see the amendment of Part 1 of Schedule 4 to the LSA 2007 by the [Legal Services Act 2007 \(Approved Regulators\) Order 2009 \(S.I. 2009/3233\)](#)).

411. Rules made by the CLC under section 32(3)(e) of the AJA 1985 may make provision for the keeping by the CLC of a register containing the names and principal places of business of all the bodies which are for the time being recognised under section 32 of the AJA 1985 and such other information relating to those bodies as may be specified in the rules. *Subsection (4)* amends this power to provide that the rules may provide that information about disciplinary measures taken be included on the register.
412. Section 32 of the AJA 1985 provides a power for the CLC to make rules concerning recognised bodies relating to the matters listed in section 32(3). For example, rules may be made on the manner and form of applications, the payment of fees and the names that may be used by recognised bodies. Section 32(3A) of the AJA 1985 provides that rules made by the CLC may provide for the CLC to grant a body recognition under section 32 subject to one or more conditions in circumstances prescribed under section 32(3B). Section 32(3C) gives examples of conditions that may be imposed under section 32(3A) and (3B). *Subsection (5)* amends section 32(3C) to include CLC practitioner services bodies so that conditions may be placed on the kinds of CLC practitioner services that may be provided by such a body.