
STATUTORY INSTRUMENTS

2011 No. 2038

LEGAL SERVICES, ENGLAND AND WALES

The Legal Services Act 2007 (Designation
as a Licensing Authority) Order 2011

<i>Made</i>	- - - -	<i>11th August 2011</i>
<i>Laid before Parliament</i>		<i>18th August 2011</i>
<i>Coming into force</i>	- -	<i>12th September 2011</i>

The Council for Licensed Conveyancers, being an approved regulator, has applied to the Legal Services Board under paragraph 1 of Schedule 10 to the Legal Services Act 2007⁽¹⁾ (“the Schedule”).

The Legal Services Board has made a recommendation to the Lord Chancellor under paragraph 14 of the Schedule, having granted the Council for Licensed Conveyancers’ application under Part 1 of the Schedule.

The Lord Chancellor makes the following Order in exercise of the powers conferred by section 208(2) of the Legal Services Act 2007 and paragraph 15 of the Schedule.

Citation and commencement

1. This Order may be cited as the Legal Services Act 2007 (Designation as a Licensing Authority) Order 2011 and comes into force on 12th September 2011.

Designation as a licensing authority

2.—(1) The Council for Licensed Conveyancers is designated as a licensing authority in relation to the reserved legal activities mentioned in paragraph (2).

(2) The reserved legal activities are—

- (a) reserved instrument activities;
- (b) the administration of oaths;
- (c) probate activities.

Supplementary provision

3. The Schedule to this Order (which makes supplementary provision) has effect.

(1) 2007 c. 29.

Signed by authority of the Lord Chancellor

11th August 2011

J Djanogly
Parliamentary Under Secretary of State
Ministry of Justice

SCHEDULE

Article 3

Provision of information as to compliance with licensed body's licence

1.—(1) The High Court, on the application of the Council for Licensed Conveyancers, may order a person who does not fall within section 93(2) of the 2007 Act (information) to—

- (a) provide information, or information of a description, specified in the order; or
- (b) produce documents, or documents of a description, specified in the order.

(2) The High Court may make an order under this paragraph only if it is satisfied that—

- (a) it is likely that the information or document is in the possession or custody of, or under the control of, the person; and
- (b) there is reasonable cause to believe that the information or document is likely to be of material significance for the purpose of enabling the Council for Licensed Conveyancers to ascertain whether the terms of a licensed body's licence are being, or have been, complied with.

(3) An order under this paragraph may direct the Council for Licensed Conveyancers to pay to a person specified in the order such reasonable costs as may be incurred by that person in connection with the provision of any information, or production of any document, by that person pursuant to the order.

(4) An order under this paragraph —

- (a) may specify the time and place at which, and the manner and form in which, the information is to be provided or the document is to be produced;
- (b) must specify the period within which the information is to be provided or the document produced;
- (c) may require the information to be provided, or the document to be produced, to the Council for Licensed Conveyancers or to a person specified in the order.

(5) Paragraphs 10, 12, 13 and 15 to 17 of Schedule 14 to the 2007 Act apply in relation to an order under this paragraph as they apply in relation to an order under paragraph 9 of that Schedule, except that for this purpose, each reference to the licensing authority in paragraph 13(1) and (2) of that Schedule is to be construed as including a reference to any person specified under sub-paragraph (4) (c) of this paragraph.

Bank accounts of licensed bodies

2.—(1) This paragraph applies where a licensed body keeps an account with a bank or a building society in accordance with licensing rules made by the Council for Licensed Conveyancers.

(2) The bank or building society—

- (a) does not incur any liability;
- (b) is not under any obligation to make any inquiry;
- (c) is not deemed to have any knowledge of any right of any person to any money paid or credited to the account,

which it would not incur, or be under, or be deemed to have, in the case of an account kept by a person entitled absolutely to all the money paid or credited to it.

(3) The bank or building society has no recourse or right against money standing to the credit of the account, in respect of any liability of the licensed body to the bank or society, other than a liability in connection with the account.

(4) In this paragraph—

Status: This is the original version (as it was originally made).

- (a) “bank” means—
 - (i) the Bank of England;
 - (ii) a person (other than a building society) who under Part 4 of the Financial Services and Markets Act 2000(2) has permission to accept deposits;
 - (iii) an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3(3) to that Act that has permission under paragraph 15 of that Schedule(4) (as a result of qualifying for authorisation under paragraph 12(1) of that Schedule(5)) to accept deposits; and
- (b) “building society” means a building society incorporated (or deemed to be incorporated) under the Building Societies Act 1986(6).

Modifications to existing enactments relating to conveyancing etc

3.—(1) Any reference to a solicitor to which this sub-paragraph applies shall be construed as including a reference to a licensed body.

(2) Any reference to a person’s solicitor to which this sub-paragraph applies shall be construed as including a reference to a licensed body acting for that person.

(3) Sub-paragraphs (1) and (2) apply to any such reference in sections 10(2), 48 and 182 of the Law of Property Act 1925(7).

4. The Estate Agents Act 1979(8) shall not, by virtue of section 1 of that Act, apply to things done in the course of the provision of conveyancing services by a licensed body.

Interpretation

5. In this Schedule—

- (a) “the 2007 Act” means the Legal Services Act 2007;
- (b) “licensed body” means a licensed body which holds a licence issued by the Council for Licensed Conveyancers which is in force under Part 5 of the 2007 Act; and
- (c) references to the Council for Licensed Conveyancers are to the Council for Licensed Conveyancers in its capacity as a licensing authority.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order designates the Council for Licensed Conveyancers (“the Council”) as a licensing authority in relation to reserved instrument activities, the administration of oaths and probate

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- (2) 2000 c. 8. Part 4 is amended by Section 3(1) to (3) of the Financial Services Act 2010 (c. 28), S.I. 2001/544, S.I. 2003/1476, S.I. 2006/2383, S.I. 2007/126, S.I. 2007/1973 and S.I. 2009/1342.
 - (3) Paragraph 5(b) is substituted by S.I. 2006/3221.
 - (4) Paragraph 15 is amended by paragraph 40(1) and (19)(a) of Schedule 25 to the Enterprise Act 2002 (c. 40), section 33(9) of the Consumer Credit Act 2006 (c. 14), S.I. 2003/2066 and S.I. 2007/3253.
 - (5) There are amendments to paragraph 12 which are not relevant to this Order.
 - (6) 1986 c. 53.
 - (7) 1925 c. 20.
 - (8) 1979 c. 38. There are amendments to section 1 which are not relevant to this Order.

activities. The Council is already an approved regulator in relation to these reserved legal activities by virtue of Part 1 of Schedule 4 to the Legal Services Act 2007 (c.29).

The Schedule makes supplementary provision in consequence of the designation of the Council as a licensing authority.

Paragraph 1 of the Schedule makes provision for the Council, on an application to the High Court, to obtain information and documents for the purpose of allowing it to ascertain whether the terms of a licensed body's licence have been or are being complied with. This is similar to the provision which is made by section 44BB of the Solicitors Act 1974 (c.47) in relation to the provision of information relating to solicitors and legal services bodies recognised by the Law Society.

Paragraph 2 makes provision to prevent a bank or building society being required to enquire, in relation to an account held with it by a licensed body, as to the beneficial ownership of the funds in the account to any greater extent than it would if the account was kept by the person entitled to the funds in it. It also prevents the bank or building society from having recourse to any money in such an account in respect of a liability of the licensed body to the bank or building society, other than in relation to a liability arising in connection with the account. This is similar to the provision made by section 85 of the Solicitors Act 1974 in relation to accounts held by solicitors, and extended to apply to accounts held by legal services bodies recognised by the Law Society by paragraph 31 of Schedule 2 to the Administration of Justice Act 1985 (c.61).

Paragraph 3 provides for certain references to "solicitor" which, by virtue of section 34(2) of the Administration of Justice Act 1985, must already be read as including a reference to a licensed conveyancer or a conveyancing services body recognised by the Council, to be read as also including a reference to a licensed body which has been granted a licence by the Council.

Paragraph 4 provides that the Estate Agents Act 1979 does not apply to a licensed body which has been granted a licence by the Council. This mirrors provision made by section 34(3) of the Administration of Justice Act 1985 in relation to licensed conveyancers and conveyancing services bodies recognised by the Council.

A full regulatory impact assessment has not been produced for this instrument as no impact on the private and voluntary sectors is foreseen.