

EXPLANATORY MEMORANDUM TO
THE COURTS AND LEGAL SERVICES ACT 1990 (MODIFICATION OF
POWER TO MAKE RULES ABOUT LICENSED CONVEYANCERS) ORDER
2008

2008 No. 537

1. This Explanatory Memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

2. Description

2.1. The Council for Licensed Conveyancers (CLC) was established by the Administration of Justice Act 1985 to regulate Licensed Conveyancers in the provision of conveyancing services. It has applied to the Secretary of State to be an approved body to allow its members to provide probate services under section 55 of the Courts and Legal Services Act 1990 (CLSA). One of the criteria for granting approval to a professional or other body is that its members must have in place satisfactory arrangements for covering adequately the risk of any claim made against them in connection with the provision of probate services.

2.3. At present, the CLC's compensation fund is limited by statute to conveyancing matters. This Order amends section 21 of the Administration of Justice Act 1985 (AJA) to allow the CLC to make rules establishing a compensation fund in relation to the provision of probate services.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Background

4.1. This Order is made under section 53 (8) of the CLSA which allows the Lord Chancellor to make an Order amending the provisions of part II of the AJA. The Order amends section 21 of the AJA by inserting new provision allowing the CLC to make rules establishing a compensation fund in relation to the provision of probate services.

4.2. Currently section 21(2) of the AJA allows the CLC to make rules for paying compensation to people who have suffered loss as a result of the negligence, fraud or dishonesty of licensed conveyancers in connection with their practice as licensed conveyancers, or as a result of their failure to account for money received by them in connection with their practices. It is envisaged that, following the making of this order, the CLC will extend this fund to cover the probate practices of its members.

5. Extent

5.1 The Order extends to England and Wales.

6. European Convention on Human Rights

6.1. As the order is subject to negative resolution and does not amend primary legislation, no statement is required.

7. Policy Background

7.1. The provisions of section 23 of the Solicitors Act 1974 make it an offence for anyone other than a solicitor, a barrister, or a duly certified notary, to provide probate services for reward.

7.2. Section 55 of the CLSA provides for approved bodies to exempt their members from this prohibition, thereby enabling them to provide probate services (defined in section 119 of the CLSA as “the drawing or preparation of any papers on which to found or oppose a grant of probate or a grant of letters of administration of the estate by a deceased person and the administration of the estate of a deceased person”.) The mechanism by which bodies may become “approved” for these purposes is set out in Schedule 9 to the CLSA.

7.3. In his report *Competition in Professions* published in March 2001, the Director General of Fair Trading suggested that consideration should be given to implementing section 55 of the CLSA. It was considered that doing so would increase competition in the market for offering probate services for a fee. Section 55 was commenced in early 2005 following this recommendation.

7.4. The CLC has applied to the Secretary of State for authorisation as an approved body to allow its members to provide probate services. As required under the statutory approval process, the Secretary of State sought the advice of the Legal Services Consultative Panel (LSCP) and the President of the Family Division (the President). The LSCP and the President have recommended that the Secretary of State approve the CLC’s application provided adequate compensation arrangements are put in place to cover the provision of probate services by licensed conveyancers.

7.5 Before the CLC’s probate application can be progressed further and the approval of Ministers and Parliament sought, the CLC is required to extend its existing compensation fund to cover probate services in order to comply with the statutory requirements for those members providing probate services under Section 55(2) of the CLSA.

8. Impact

8.1 A full Regulatory Impact Assessment (RIA) was completed for the Implementation of section 55 of, and schedule 9 to, the CLSA to open up the

market for the provision of probate services. This looked at both the cost and business implications for new providers. In addition paragraphs 28 to 30 of the RIA sets out the provisions for enforcement and sanctions. New providers would need to ensure they have adequate complaints handling schemes, and that they comply with any additional regulations made by the Secretary of State in respect of those schemes. For professional or other bodies authorised under Section 55, there would be additional measures in relation to professional standards, ethics, training etc, which would also need to be complied with. The Department will make appropriate arrangements to secure compliance, in this case a statutory instrument which will extend the CLC's existing compensation fund. Full details of the RIA can be found at http://www.opsi.gov.uk/si/em2004/uksiem_20042951_en.pdf

9. Contact

9.1. Any enquiries about the contents of this Memorandum should be addressed to:

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