



# Courts and Legal Services Act 1990

## 1990 CHAPTER 41

### PART II

#### LEGAL SERVICES

##### *Introductory*

#### **17 The statutory objective and the general principle**

- (1) The general objective of this Part is the development of legal services in England and Wales (and in particular the development of advocacy, litigation, conveyancing and probate services) by making provision for new or better ways of providing such services and a wider choice of persons providing them, while maintaining the proper and efficient administration of justice.
- (2) In this Act that objective is referred to as “the statutory objective”.
- (3) As a general principle the question whether a person should be granted a right of audience, or be granted a right to conduct litigation in relation to any court or proceedings, should be determined only by reference to—
  - (a) whether he is qualified in accordance with the educational and training requirements appropriate to the court or proceedings;
  - (b) whether he is a member of a professional or other body which—
    - (i) has rules of conduct (however described) governing the conduct of its members;
    - (ii) has an effective mechanism for enforcing the rules of conduct; and
    - (iii) is likely to enforce them;
  - (c) whether, in the case of a body whose members are or will be providing advocacy services, the rules of conduct make satisfactory provision in relation to the court or proceedings in question requiring any such member not to withhold those services—
    - (i) on the ground that the nature of the case is objectionable to him or to any section of the public;

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- (ii) on the ground that the conduct, opinions or beliefs of the prospective client are unacceptable to him or to any section of the public;
  - (iii) on any ground relating to the source of any financial support which may properly be given to the prospective client for the proceedings in question (for example, on the ground that such support will be available under the Legal Aid Act 1988); and
  - (d) whether the rules of conduct are, in relation to the court or proceedings, appropriate in the interests of the proper and efficient administration of justice.
- (4) In this Act that principle is referred to as “the general principle”.
- (5) Rules of conduct which allow a member of the body in question to withhold his services if there are reasonable grounds for him to consider that, having regard to—
- (a) the circumstances of the case;
  - (b) the nature of his practice; or
  - (c) his experience and standing,
- he is not being offered a proper fee, are not on that account to be taken as being incompatible with the general principle.

## **18 The statutory duty**

- (1) Where any person is called upon to exercise any functions which are conferred by this Part with respect to—
- (a) the granting of rights of audience;
  - (b) the granting of rights to conduct litigation;
  - (c) the approval of qualification regulations or rules of conduct; or
  - (d) the giving of advice with respect to any matter mentioned in paragraphs (a) to (c),
- it shall be the duty of that person to exercise those functions as soon as is reasonably practicable and consistent with the provisions of this Part.
- (2) A person exercising any such functions shall act in accordance with the general principle and, subject to that, shall—
- (a) so far as it is possible to do so in the circumstances of the case, act to further the statutory objective; and
  - (b) not act in any way which would be incompatible with the statutory objective.

### *The Advisory Committee*

## **19 The Lord Chancellor’s Advisory Committee on Legal Education and Conduct**

- (1) There shall be a body corporate to be known as the Lord Chancellor’s Advisory Committee on Legal Education and Conduct (in this Act referred to as “the Advisory Committee”).
- (2) The Advisory Committee shall consist of a Chairman, and 16 other members, appointed by the Lord Chancellor.
- (3) The Chairman shall be a Lord of Appeal in Ordinary or a judge of the Supreme Court of England and Wales.

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- (4) Of the 16 other members of the Advisory Committee—
- (a) one shall be a judge who is or has been a Circuit judge;
  - (b) 2 shall be practising barristers appointed after consultation with the General Council of the Bar;
  - (c) 2 shall be practising solicitors appointed after consultation with the Law Society;
  - (d) 2 shall be persons with experience in the teaching of law, appointed after consultation with such institutions concerned with the teaching of law and such persons representing teachers of law as the Lord Chancellor considers appropriate; and
  - (e) 9 shall be persons other than—
    - (i) salaried judges of any court;
    - (ii) practising barristers;
    - (iii) practising solicitors; or
    - (iv) teachers of law,appointed after consultation with such organisations as the Lord Chancellor considers appropriate.
- (5) In appointing any member who falls within subsection (4)(e), the Lord Chancellor shall have regard to the desirability of appointing persons who have experience in, or knowledge of—
- (a) the provision of legal services;
  - (b) civil or criminal proceedings and the working of the courts;
  - (c) the maintenance of professional standards among barristers or solicitors;
  - (d) social conditions;
  - (e) consumer affairs;
  - (f) commercial affairs; or
  - (g) the maintenance of professional standards in professions other than the legal profession.
- (6) The Advisory Committee shall not be regarded as the servant or agent of the Crown, or as enjoying any status, immunity or privilege of the Crown.
- (7) The Advisory Committee’s property shall not be regarded as property of, or held on behalf of, the Crown.
- (8) In this section “practising” means—
- (a) in relation to a barrister, one who is in independent practice or is employed wholly or mainly for the purpose of providing legal services to his employer;
  - (b) in relation to a solicitor, one who has a practising certificate in force or is employed wholly or mainly for the purpose of providing legal services to his employer.
- (9) The provisions of Schedule 1 shall have effect with respect to the constitution, procedure and powers of the Advisory Committee and with respect to connected matters.

## **20 Duties of the Advisory Committee**

- (1) The Advisory Committee shall have the general duty of assisting in the maintenance and development of standards in the education, training and conduct of those offering legal services.
- (2) The Advisory Committee shall carry out that general duty by performing the functions conferred on it by Schedule 2.
- (3) In discharging its functions the Advisory Committee shall—
  - (a) where it considers it appropriate, have regard to the practices and procedures of other member States in relation to the provision of legal services;
  - (b) have regard to the desirability of equality of opportunity between persons seeking to practise any profession, pursue any career or take up any employment, in connection with the provision of legal services.

### *The Legal Services Ombudsman*

## **21 The Legal Services Ombudsman**

- (1) The Lord Chancellor shall appoint a person for the purpose of conducting investigations under this Act.
- (2) The person appointed shall be known as “the Legal Services Ombudsman”.
- (3) The Legal Services Ombudsman—
  - (a) shall be appointed for a period of not more than three years; and
  - (b) shall hold and vacate office in accordance with the terms of his appointment.
- (4) At the end of his term of appointment the Legal Services Ombudsman shall be eligible for re-appointment.
- (5) The Legal Services Ombudsman shall not be an authorised advocate, authorised litigator, licensed conveyancer, authorised practitioner or notary.
- (6) Schedule 3 shall have effect with respect to the Legal Services Ombudsman.

## **22 Ombudsman’s functions**

- (1) Subject to the provisions of this Act, the Legal Services Ombudsman may investigate any allegation which is properly made to him and which relates to the manner in which a complaint made to a professional body with respect to—
  - (a) a person who is or was an authorised advocate, authorised litigator, licensed conveyancer, registered foreign lawyer, recognised body or duly certificated notary public and a member of that professional body; or
  - (b) any employee of such a person,  
has been dealt with by that professional body.
- (2) If the Ombudsman investigates an allegation he may investigate the matter to which the complaint relates.
- (3) If the Ombudsman begins to investigate an allegation he may at any time discontinue his investigation.

- (4) If the Ombudsman decides not to investigate an allegation which he would be entitled to investigate, or discontinues an investigation which he has begun, he shall notify the following of the reason for his decision—
- (a) the person making the allegation;
  - (b) any person with respect to whom the complaint was made; and
  - (c) the professional body concerned.
- (5) The Ombudsman shall not investigate an allegation while—
- (a) the complaint is being investigated by the professional body concerned;
  - (b) an appeal is pending against the determination of the complaint by that body; or
  - (c) the time within which such an appeal may be brought by any person has not expired.
- (6) Subsection (5) does not apply if—
- (a) the allegation is that the professional body—
    - (i) has acted unreasonably in failing to start an investigation into the complaint; or
    - (ii) having started such an investigation, has failed to complete it within a reasonable time; or
  - (b) the Ombudsman is satisfied that, even though the complaint is being investigated by the professional body concerned, an investigation by him is justified.
- (7) The Ombudsman shall not investigate—
- (a) any issue which is being or has been determined by—
    - (i) a court;
    - (ii) the Solicitors Disciplinary Tribunal;
    - (iii) the Disciplinary Tribunal of the Council of the Inns of Court; or
    - (iv) any tribunal specified in an order made by the Lord Chancellor for the purposes of this subsection; or
  - (b) any allegation relating to a complaint against any person which concerns an aspect of his conduct in relation to which he has immunity from any action in negligence or contract.
- (8) The Ombudsman may—
- (a) if so requested by the Scottish ombudsman, investigate an allegation relating to a complaint made to a professional body in Scotland; and
  - (b) arrange for the Scottish ombudsman to investigate an allegation relating to a complaint made to a professional body in England and Wales.
- (9) For the purposes of this section, an allegation is properly made if it is made—
- (a) in writing; and
  - (b) by any person affected by what is alleged in relation to the complaint concerned or, where that person has died or is unable to act for himself, by his personal representative or by any relative or other representative of his.
- (10) The Ombudsman may investigate an allegation even though—
- (a) the complaint relates to a matter which arose before the passing of this Act; or

- (b) the person making the complaint may be entitled to bring proceedings in any court with respect to the matter complained of.

(11) In this section—

“professional body” means any body which, or the holder of any office who—

- (a) has disciplinary powers in relation to any person mentioned in subsection (1)(a); and
- (b) is specified in an order made by the Lord Chancellor for the purposes of this subsection;

“recognised body” means any body recognised under section 9 of the Administration of Justice Act 1985 (incorporated practices) or under section 32 of that Act (incorporated bodies carrying on business of provision of conveyancing services); and

“the Scottish ombudsman” means any person appointed to carry out functions in relation to the provision of legal services in Scotland which are similar to those of the Ombudsman.

## 23 Recommendations

(1) Where the Legal Services Ombudsman has completed an investigation under this Act he shall send a written report of his conclusions to—

- (a) the person making the allegation;
- (b) the person with respect to whom the complaint was made;
- (c) any other person with respect to whom the Ombudsman makes a recommendation under subsection (2); and
- (d) the professional body concerned.

(2) In reporting his conclusions, the Ombudsman may recommend—

- (a) that the complaint be reconsidered by the professional body concerned;
- (b) that the professional body concerned or any other relevant disciplinary body consider exercising its powers in relation to—
  - (i) the person with respect to whom the complaint was made; or
  - (ii) any person who, at the material time, was connected with him;
- (c) that—
  - (i) the person with respect to whom the complaint was made; or
  - (ii) any person who, at the material time, was connected with him,
 pay compensation of an amount specified by the Ombudsman to the complainant for loss suffered by him, or inconvenience or distress caused to him, as a result of the matter complained of;
- (d) that the professional body concerned pay compensation of an amount specified by the Ombudsman to the person making the complaint for loss suffered by him, or inconvenience or distress caused to him, as a result of the way in which the complaint was handled by that body;
- (e) that the person or professional body to which a recommendation under paragraph (c) or (d) applies make a separate payment to the person making the allegation of an amount specified by the Ombudsman by way of reimbursement of the cost, or part of the cost, of making the allegation.

(3) More than one such recommendation may be included in a report under this section.

- (4) Where the Ombudsman includes any recommendation in a report under this section, the report shall give his reasons for making the recommendation.
- (5) For the purposes of the law of defamation the publication of any report of the Ombudsman under this section and any publicity given under subsection (9) shall be absolutely privileged.
- (6) It shall be the duty of any person to whom a report is sent by the Ombudsman under subsection (1)(b) or (c) to have regard to the conclusions and recommendations set out in the report, so far as they concern that person.
- (7) Where—
  - (a) a report is sent to any person under this section; and
  - (b) the report includes a recommendation directed at him,he shall, before the end of the period of three months beginning with the date on which the report was sent, notify the Ombudsman of the action which he has taken, or proposes to take, to comply with the recommendation.
- (8) Any person who fails to comply (whether wholly or in part) with a recommendation under subsection (2) shall publicise that failure, and the reasons for it, in such manner as the Ombudsman may specify.
- (9) Where a person is required by subsection (8) to publicise any failure, the Ombudsman may take such steps as he considers reasonable to publicise that failure if—
  - (a) the period mentioned in subsection (7) has expired and that person has not complied with subsection (8); or
  - (b) the Ombudsman has reasonable cause for believing that that person will not comply with subsection (8) before the end of that period.
- (10) Any reasonable expenses incurred by the Ombudsman under subsection (9) may be recovered by him (as a civil debt) from the person whose failure he has publicised.
- (11) For the purposes of this section, the person with respect to whom a complaint is made (“the first person”) and another person (“the second person”) are connected if—
  - (a) the second person—
    - (i) employs the first person; and
    - (ii) is an authorised advocate, authorised litigator, duly certificated notary public, licensed conveyancer or partnership;
  - (b) they are both partners in the same partnership; or
  - (c) the second person is a recognised body which employs the first person or of which the first person is an officer.

## **24 Advisory functions**

- (1) The Legal Services Ombudsman may make recommendations to any professional body about the arrangements which that body has in force for the investigation of complaints made with respect to persons who are subject to that body’s control.
- (2) It shall be the duty of any professional body to whom a recommendation is made under this section to have regard to it.

- (3) The Ombudsman may refer to the Advisory Committee any matters which come to his notice in the exercise of his functions and which appear to him to be relevant to the Committee's functions.

## **25 Procedure and offences**

- (1) Where the Legal Services Ombudsman is conducting an investigation under this Act he may require any person to furnish such information or produce such documents as he considers relevant to the investigation.
- (2) For the purposes of any such investigation, the Ombudsman shall have the same powers as the High Court in respect of the attendance and examination of witnesses (including the administration of oaths or affirmations and the examination of witnesses abroad) and in respect of the production of documents.
- (3) No person shall be compelled, by virtue of subsection (2), to give evidence or produce any document which he could not be compelled to give or produce in civil proceedings before the High Court.
- (4) If any person is in contempt of the Ombudsman in relation to any investigation conducted under section 22, the Ombudsman may certify that contempt to the High Court.
- (5) For the purposes of this section a person is in contempt of the Ombudsman if he acts, or fails to act, in any way which would constitute contempt if the investigation being conducted by the Ombudsman were civil proceedings in the High Court.
- (6) Where a person's contempt is certified under subsection (4), the High Court may enquire into the matter.
- (7) Where the High Court conducts an inquiry under subsection (6) it may, after—
- (a) hearing any witness produced against, or on behalf of, the person concerned; and
  - (b) considering any statement offered in his defence,
- deal with him in any manner that would be available to it had he been in contempt of the High Court.

## **26 Extension of Ombudsman's remit**

- (1) The Lord Chancellor may by regulation extend the jurisdiction of the Legal Services Ombudsman by providing for the provisions of sections 21 to 25 to have effect, with such modifications (if any) as he thinks fit, in relation to the investigation by the Ombudsman of allegations—
- (a) which relate to complaints of a prescribed kind concerned with the provision of probate services; and
  - (b) which he would not otherwise be entitled to investigate.
- (2) Without prejudice to the generality of the power given to the Lord Chancellor by subsection (1), the regulations may make provision for the investigation only of allegations relating to complaints—
- (a) made to prescribed bodies; or
  - (b) with respect to prescribed categories of person.



*Rights of audience and rights to conduct litigation*

**27 Rights of audience**

- (1) The question whether a person has a right of audience before a court, or in relation to any proceedings, shall be determined solely in accordance with the provisions of this Part.
- (2) A person shall have a right of audience before a court in relation to any proceedings only in the following cases—
  - (a) where—
    - (i) he has a right of audience before that court in relation to those proceedings granted by the appropriate authorised body; and
    - (ii) that body’s qualification regulations and rules of conduct have been approved for the purposes of this section, in relation to the granting of that right;
  - (b) where paragraph (a) does not apply but he has a right of audience before that court in relation to those proceedings granted by or under any enactment;
  - (c) where paragraph (a) does not apply but he has a right of audience granted by that court in relation to those proceedings;
  - (d) where he is a party to those proceedings and would have had a right of audience, in his capacity as such a party, if this Act had not been passed; or
  - (e) where—
    - (i) he is employed (whether wholly or in part), or is otherwise engaged, to assist in the conduct of litigation and is doing so under instructions given (either generally or in relation to the proceedings) by a qualified litigator; and
    - (ii) the proceedings are being heard in chambers in the High Court or a county court and are not reserved family proceedings.
- (3) No person shall have a right of audience as a barrister by virtue of subsection (2)(a) above unless he has been called to the Bar by one of the Inns of Court and has not been disbarred or temporarily suspended from practice by order of an Inn of Court.
- (4) Nothing in this section affects the power of any court in any proceedings to refuse to hear a person (for reasons which apply to him as an individual) who would otherwise have a right of audience before the court in relation to those proceedings.
- (5) Where a court refuses to hear a person as mentioned in subsection (4) it shall give its reasons for refusing.
- (6) Nothing in this section affects any provision made by or under any enactment which prevents a person from exercising a right of audience which he would otherwise be entitled to exercise.
- (7) Where, immediately before the commencement of this section, no restriction was placed on the persons entitled to exercise any right of audience in relation to any particular court or in relation to particular proceedings, nothing in this section shall be taken to place any such restriction on any person.
- (8) Where—
  - (a) immediately before the commencement of this section; or

(b) by virtue of any provision made by or under an enactment passed subsequently,

a court does not permit the appearance of advocates, or permits the appearance of advocates only with leave, no person shall have a right of audience before that court, in relation to any proceedings, solely by virtue of the provisions of this section.

(9) In this section—

“advocate”, in relation to any proceedings, means any person exercising a right of audience as a representative of, or on behalf of, any party to the proceedings;

“authorised body” means—

- (a) the General Council of the Bar;
- (b) the Law Society; and
- (c) any professional or other body which has been designated by Order in Council as an authorised body for the purposes of this section;

“appropriate authorised body”, in relation to any person claiming to be entitled to any right of audience by virtue of subsection (2)(a), means the authorised body—

- (a) granting that right; and
- (b) of which that person is a member;

“family proceedings” has the same meaning as in the Matrimonial and Family Proceedings Act 1984 and also includes any other proceedings which are family proceedings for the purposes of the Children Act 1989;

“qualification regulations”, in relation to an authorised body, means regulations (however they may be described) as to the education and training which members of that body must receive in order to be entitled to any right of audience granted by it;

“qualified litigator” means—

- (i) any practising solicitor ( “practising” having the same meaning as in section 19(8)(b));
- (ii) any recognised body; and
- (iii) any person who is exempt from the requirement to hold a practising certificate by virtue of section 88 of the Solicitors Act 1974 (saving for solicitors to public departments and the City of London);

“recognised body” means any body recognised under section 9 of the Administration of Justice Act 1985 (incorporated practices);

“reserved family proceedings” means such category of family proceedings as the Lord Chancellor may, after consulting the President of the Law Society and with the concurrence of the President of the Family Division, by order prescribe; and

“rules of conduct”, in relation to an authorised body, means rules (however they may be described) as to the conduct required of members of that body in exercising any right of audience granted by it.

(10) Section 20 of the Solicitors Act 1974 (unqualified person not to act as a solicitor) section 22 of that Act (unqualified person not to prepare certain documents etc) and section 25 of that Act (costs where an unqualified person acts as a solicitor), shall not apply in relation to any act done in the exercise of a right of audience.

## **28 Rights to conduct litigation**

- (1) The question whether a person has a right to conduct litigation, or any category of litigation, shall be determined solely in accordance with the provisions of this Part.
- (2) A person shall have a right to conduct litigation in relation to any proceedings only in the following cases—
  - (a) where—
    - (i) he has a right to conduct litigation in relation to those proceedings granted by the appropriate authorised body; and
    - (ii) that body’s qualification regulations and rules of conduct have been approved for the purposes of this section, in relation to the granting of that right;
  - (b) where paragraph (a) does not apply but he has a right to conduct litigation in relation to those proceedings granted by or under any enactment;
  - (c) where paragraph (a) does not apply but he has a right to conduct litigation granted by that court in relation to those proceedings;
  - (d) where he is a party to those proceedings and would have had a right to conduct the litigation, in his capacity as such a party, if this Act had not been passed.
- (3) Nothing in this section affects any provision made by or under any enactment which prevents a person from exercising a right to conduct litigation which he would otherwise be entitled to exercise.
- (4) Where, immediately before the commencement of this section, no restriction was placed on the persons entitled to exercise any right to conduct litigation in relation to a particular court, or in relation to particular proceedings, nothing in this section shall be taken to place any such restriction on any person.
- (5) In this section—

“authorised body” means—

  - (a) the Law Society; and
  - (b) any professional or other body which has been designated by Order in Council as an authorised body for the purposes of this section;

“appropriate authorised body”, in relation to any person claiming to be entitled to any right to conduct litigation by virtue of subsection (2)(a), means the authorised body—

  - (a) granting that right; and
  - (b) of which that person is a member;

“qualification regulations”, in relation to an authorised body, means regulations (however they may be described) as to the education and training which members of that body must receive in order to be entitled to any right to conduct litigation granted by it; and

“rules of conduct”, in relation to any authorised body, means rules (however they may be described) as to the conduct required of members of that body in exercising any right to conduct litigation granted by it.
- (6) Section 20 of the Solicitors Act 1974 (unqualified person not to act as a solicitor), section 22 of that Act (unqualified person not to prepare certain documents etc.) and section 25 of that Act (costs where unqualified person acts as a solicitor) shall not apply in relation to any act done in the exercise of a right to conduct litigation.

## **29 Authorised bodies: designation and approval of regulations and rules**

(1) In order to be designated as an authorised body for the purposes of section 27 or 28 a professional or other body must—

- (a) apply to the Lord Chancellor under this section, specifying the purposes for which it is seeking authorisation; and
- (b) comply with the provisions of Part I of Schedule 4 as to the approval of qualification regulations and rules of conduct and other matters.

(2) Where—

- (a) an application has been made to the Lord Chancellor under this section;
- (b) the requirements of Part I of Schedule 4 have been satisfied; and
- (c) the application has not failed,

the Lord Chancellor may recommend to Her Majesty that an Order in Council be made designating that body as an authorised body for the purposes of section 27 or (as the case may be) section 28.

(3) Where an authorised body alters—

- (a) any of its qualification regulations; or
- (b) any of its rules of conduct,

those alterations shall not have effect, so far as they relate to any right of audience or any right to conduct litigation granted by that body, unless they have been approved under Part II of Schedule 4.

(4) Where an authorised body makes any alteration to the rights of audience or rights to conduct litigation granted by it (including the grant of a new right), the qualification regulations and rules of conduct of that body must be approved under Part II of Schedule 4.

(5) Where the Lord Chancellor or any of the designated judges considers that it might be appropriate for an authorised body to alter—

- (a) any of its qualification regulations or rules of conduct; or
- (b) any right of audience, or right to conduct litigation, which it is entitled to grant, he may advise that body accordingly.

(6) Where—

- (a) the Lord Chancellor gives any advice under subsection (5), he shall inform the designated judges; and
- (b) where a designated judge gives any such advice, he shall inform the Lord Chancellor and the other designated judges.

(7) Where an authorised body has been given any such advice it shall, in the light of that advice, consider whether to make the recommended alteration.

## **30 Revocation of authorised body's designation**

(1) Where an Order in Council has been made under section 29 designating a body as an authorised body, the Lord Chancellor may recommend to Her Majesty that an Order in Council be made revoking that designation.

(2) An Order under this section may only be made if—

- (a) the authorised body has made a written request to the Lord Chancellor asking for it to be made;

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- (b) that body has agreed (in writing) to its being made; or
  - (c) the Lord Chancellor is satisfied that the circumstances at the time when he is considering the question are such that, had that body then been applying to become an authorised body, its application would have failed.
- (3) The provisions of Part III of Schedule 4 shall have effect with respect to the revocation of designations under this section.
- (4) An Order made under this section may make such transitional and incidental provision as the Lord Chancellor considers necessary or expedient.
- (5) Where such an Order is made, any right of audience or right to conduct litigation granted to any person by the body with respect to whom the Order is made shall cease to have effect, subject to any transitional provision made by the Order.
- (6) Where such an Order is made, the Lord Chancellor shall—
  - (a) give the body with respect to whom the Order is made written notice of the making of the Order;
  - (b) take such steps as are reasonably practicable to bring the making of the Order to the attention of the members of that body; and
  - (c) publish notice of the making of the Order in such manner as he considers appropriate for bringing it to the attention of persons (other than those members) who, in his opinion, are likely to be affected by the Order.

### **31 The General Council of the Bar**

- (1) On the coming into force of section 27—
  - (a) barristers shall be deemed to have been granted by the General Council of the Bar the rights of audience exercisable by barristers (in their capacity as such) immediately before 7th December 1989; and
  - (b) the General Council of the Bar shall be deemed to have in force qualification regulations and rules of conduct which have been properly approved for the purposes of section 27.
- (2) Those qualification regulations and rules of conduct shall be deemed to have been approved only—
  - (a) in relation to the rights of audience mentioned in subsection (1)(a); and
  - (b) so far as they relate to those rights of audience.
- (3) If any particular provision of those regulations or rules would not have been approved for the purposes of section 27 had it been submitted for approval under Part I of Schedule 4 it (but no other such provision) shall not be deemed to have been approved.
- (4) In the event of any question arising as to whether any provision is deemed to have been approved, subsection (5) shall apply in relation to that question if the Lord Chancellor so directs.
- (5) Where a direction is given under subsection (4)—
  - (a) the Lord Chancellor shall seek the advice of the Advisory Committee and the Director;
  - (b) the Lord Chancellor and each of the designated judges shall consider, in the light of that advice, whether the provision in question is deemed to have been so approved; and

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- (c) that provision shall not be deemed to have been so approved unless the Lord Chancellor and each of the designated judges are satisfied that it has been.
- (6) In the event of any question arising as to whether any provision of the qualification regulations or rules of conduct of the General Council of the Bar requires to be approved by virtue of section 29(3) or (4), subsection (7) shall apply in relation to that question if the Lord Chancellor so directs.
- (7) Where a direction is given under subsection (6)—
  - (a) the Lord Chancellor shall seek the advice of the Advisory Committee and the Director;
  - (b) the Lord Chancellor and each of the designated judges shall consider, in the light of that advice, whether the provision in question requires approval; and
  - (c) it shall require approval unless the Lord Chancellor and each of the designated judges are satisfied that it does not require approval.
- (8) Where, by virtue of subsection (5)(c), any provision is not deemed to have been approved—
  - (a) it shall cease to have effect, so far as it relates to any right of audience deemed to have been granted by the General Council of the Bar; and
  - (b) the regulations and rules which are deemed, by virtue of subsection (1)(b), to have been properly approved shall be taken not to include that provision.
- (9) Nothing in this section shall affect the validity of anything done in reliance on any provision of regulations or rules at any time before—
  - (a) it is determined in accordance with subsection (5)(c) that that provision is not deemed to have been approved; or
  - (b) it is determined in accordance with subsection (7)(c) that that provision requires approval.

### **32 The Law Society: rights of audience**

- (1) On the coming into force of section 27—
  - (a) solicitors shall be deemed to have been granted by the Law Society the rights of audience exercisable by solicitors (in their capacity as such) immediately before 7th December 1989; and
  - (b) the Law Society shall be deemed to have in force qualification regulations and rules of conduct which have been properly approved for the purposes of section 27.
- (2) Those qualification regulations and rules of conduct shall be deemed to have been approved only—
  - (a) in relation to the rights of audience mentioned in subsection (1)(a); and
  - (b) so far as they relate to those rights of audience.
- (3) If any particular provision of those regulations or rules would not have been approved for the purposes of section 27 had it been submitted for approval under Part I of Schedule 4 it (but no other such provision) shall not be deemed to have been approved.
- (4) In the event of any question arising as to whether any provision is deemed to have been approved, subsection (5) shall apply in relation to that question if the Lord Chancellor so directs.

- (5) Where a direction is given under subsection (4)—
- (a) the Lord Chancellor shall seek the advice of the Advisory Committee and the Director;
  - (b) the Lord Chancellor and each of the designated judges shall consider, in the light of that advice, whether the provision in question is deemed to have been so approved; and
  - (c) that provision shall not be deemed to have been so approved unless the Lord Chancellor and each of the designated judges are satisfied that it has been.
- (6) In the event of any question arising as to whether any provision of the qualification regulations or rules of conduct of the Law Society requires to be approved by virtue of section 29(3) or (4), subsection (7) shall apply in relation to that question if the Lord Chancellor so directs.
- (7) Where a direction is given under subsection (6)—
- (a) the Lord Chancellor shall seek the advice of the Advisory Committee and the Director;
  - (b) the Lord Chancellor and each of the designated judges shall consider, in the light of that advice, whether the provision in question requires approval; and
  - (c) it shall require approval unless the Lord Chancellor and each of the designated judges are satisfied that it does not require approval.
- (8) Where, by virtue of subsection (5)(c), any provision is not deemed to have been approved—
- (a) it shall cease to have effect, so far as it relates to any right of audience deemed to have been granted by the Law Society; and
  - (b) the regulations and rules which are deemed, by virtue of subsection (1)(b) to have been properly approved shall be taken not to include that provision.
- (9) Nothing in this section shall affect the validity of anything done in reliance on any provision of regulations or rules at any time before—
- (a) it is determined in accordance with subsection (5)(c) that that provision is not deemed to have been approved; or
  - (b) it is determined in accordance with subsection (7)(c) that that provision requires approval.

### **33 The Law Society: rights to conduct litigation**

- (1) On the coming into force of section 28—
- (a) solicitors shall be deemed to have been granted by the Law Society the rights to conduct litigation exercisable by solicitors (in their capacity as such) immediately before 7th December 1989; and
  - (b) the Law Society shall be deemed to have in force qualification regulations and rules of conduct which have been properly approved for the purposes of section 28.
- (2) Those qualification regulations and rules of conduct shall be deemed to have been approved only—
- (a) in relation to the rights to conduct litigation mentioned in subsection (1)(a); and
  - (b) so far as they relate to those rights to conduct litigation.

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- (3) If any particular provision of those regulations or rules would not have been approved for the purposes of section 28 had it been submitted for approval under Part I of Schedule 4 it (but no other such provision) shall not be deemed to have been approved.
- (4) In the event of any question arising as to whether any provision is deemed to have been approved, subsection (5) shall apply in relation to that question if the Lord Chancellor so directs.
- (5) Where a direction is given under subsection (4)—
- (a) the Lord Chancellor shall seek the advice of the Advisory Committee and the Director;
  - (b) the Lord Chancellor and each of the designated judges shall consider, in the light of that advice, whether the provision in question is deemed to have been so approved; and
  - (c) that provision shall not be deemed to have been so approved unless the Lord Chancellor and each of the designated judges are satisfied that it has been.
- (6) In the event of any question arising as to whether any provision requires to be approved by virtue of section 29(3) or (4), subsection (7) shall apply in relation to that question if the Lord Chancellor so directs.
- (7) Where a direction is given under subsection (6)—
- (a) the Lord Chancellor shall seek the advice of the Advisory Committee and the Director;
  - (b) the Lord Chancellor and each of the designated judges shall consider, in the light of that advice, whether the provision in question requires approval; and
  - (c) it shall require approval unless the Lord Chancellor and each of the designated judges are satisfied that it does not require approval.
- (8) Where, by virtue of subsection (5)(c), any provision is not deemed to have been approved—
- (a) it shall cease to have effect, so far as it relates to any right to conduct litigation deemed to have been granted by the Law Society; and
  - (b) the regulations and rules which are deemed, by virtue of subsection (1)(b), to have been properly approved shall be taken not to include that provision.
- (9) Nothing in this section shall affect the validity of anything done in reliance on any provision of regulations or rules at any time before—
- (a) it is determined in accordance with subsection (5)(c) that that provision is not deemed to have been approved; or
  - (b) it is determined in accordance with subsection (7)(c) that that provision requires approval.

*Extension of conveyancing services*

**34 The Authorised Conveyancing Practitioners Board**

- (1) There shall be a body corporate to be known as the Authorised Conveyancing Practitioners Board (in this Act referred to as “the Board”).
- (2) The Board shall consist of a Chairman and at least four, and at most eight, other members appointed by the Lord Chancellor.



- (3) In appointing any member, the Lord Chancellor shall have regard to the desirability of—
  - (a) appointing persons who have experience in, or knowledge of—
    - (i) the provision of conveyancing services;
    - (ii) financial arrangements associated with conveyancing;
    - (iii) consumer affairs; or
    - (iv) commercial affairs; and
  - (b) securing, so far as is reasonably practicable, that the composition of the Board is such as to provide a proper balance between the interests of authorised practitioners and those who make use of their services.
- (4) The Board shall not be regarded as the servant or agent of the Crown, or as enjoying any status, immunity or privilege of the Crown.
- (5) The Board's property shall not be regarded as property of, or held on behalf of, the Crown.
- (6) Neither the Board nor any of its staff or members shall be liable in damages for anything done or omitted in the discharge or purported discharge of any of its functions.
- (7) Subsection (6) does not apply where the act or omission is shown to have been in bad faith.
- (8) The provisions of Schedule 5 shall have effect with respect to the constitution, procedure and powers of the Board and with respect to connected matters.

### **35 Functions of the Board and financial provisions**

- (1) It shall be the general duty of the Board—
  - (a) to seek to develop competition in the provision of conveyancing services;
  - (b) to supervise the activities of authorised practitioners in connection with the provision by them of conveyancing services.
- (2) In discharging the duty imposed on it by subsection (1)(b) the Board shall, in particular, make arrangements designed to enable it to ascertain whether authorised practitioners are complying with regulations made by the Lord Chancellor under section 40.
- (3) The Board shall have the specific functions conferred on it by or under this Act.
- (4) Where the Lord Chancellor refers to the Board any matter connected with—
  - (a) the provision of conveyancing services by authorised practitioners; or
  - (b) the organisation or practice of authorised practitioners,it shall be the duty of the Board to consider the matter and to report its conclusions to the Lord Chancellor.
- (5) Any report made under subsection (4) may be published by the Lord Chancellor in such manner as he thinks fit.
- (6) A copy of any guidance for authorised practitioners issued by the Board shall be sent by the Board to the Lord Chancellor.

- (7) Where it appears to the Lord Chancellor that there are grounds for believing that the Board has failed in any way to carry out any of its duties under this Act, he may give such directions to the Board as he considers appropriate.
- (8) The Board may make rules providing for the expenses which it incurs in exercising its functions, after taking into account any grants made to it under subsection (10) and any fees received by it, to be met by the imposition on each authorised practitioner of an annual levy calculated, and payable, in accordance with the provisions of the rules.
- (9) Any amount due to the Board from an authorised practitioner in respect of any levy payable by that practitioner under the rules shall be recoverable by the Board as a civil debt.
- (10) The Lord Chancellor may, with the approval of the Treasury, make grants to the Board towards meeting the expenses incurred, or to be incurred, by it in the discharge of its functions.
- (11) Any such grant may be made subject to such terms and conditions (including conditions as to repayment) as the Lord Chancellor sees fit to impose.
- (12) Any sums required by the Lord Chancellor for making grants under subsection (10) shall be paid out of money provided by Parliament.
- (13) Any sums repaid by the Board in accordance with conditions imposed under subsection (11) shall be paid into the Consolidated Fund.

### **36 Provision of conveyancing services by authorised practitioners**

- (1) The restriction imposed by section 22 of the Solicitors Act 1974 (which has the effect of limiting the categories of person who may provide conveyancing services) shall not apply to any act done in connection with the provision of conveyancing services—
  - (a) by an individual at any time when he is an authorised practitioner;
  - (b) by a body corporate at any time when it is an authorised practitioner;
  - (c) by an officer or employee of a body corporate at any time when that body is an authorised practitioner; or
  - (d) by a member or employee of an unincorporated association at any time when that association is an authorised practitioner.
- (2) In subsection (1)(c) and (d) “officer”, “employee” and “member” mean respectively an officer, employee or member who (at the time of the act in question) satisfies, and is acting in accordance with, regulations under section 40.
- (3) Any rule (however described) which is imposed by a professional or other body and which would, but for this subsection, result in restricting or preventing a qualified person from—
  - (a) providing any conveyancing services as an authorised practitioner;
  - (b) acting as an employee of an authorised practitioner in connection with the provision of any such services; or
  - (c) acting on behalf of an authorised practitioner in connection with the provision of any such services,

shall be of no effect unless it is given partial effect by subsection (4)(a) or full effect by subsection (4)(b).

- (4) If the result mentioned in subsection (3) is not the main or only result of the rule in question, subsection (3)—
  - (a) shall apply only to the extent that the rule would have that result; but
  - (b) shall not apply if the rule is reasonably required as a rule of general application for the purpose of regulating the conduct or practice of all members of that body.
- (5) Nothing in this section prevents a professional or other body from imposing a rule that any member of that body who is acting as mentioned in subsection (3)(c) may do so only on terms which allow him to give independent legal or financial advice to the person for whom conveyancing services are being provided by the authorised practitioner concerned.
- (6) In this section “qualified person” means—
  - (a) any barrister, solicitor, duly certificated notary public or licensed conveyancer;
  - (b) any body recognised under section 9 of the Administration of Justice Act 1985 (incorporated practices); or
  - (c) any body recognised under section 32 of the Act of 1985 (incorporated bodies carrying on business of provision of conveyancing services).

### **37 Authorisation of practitioners**

- (1) On an application duly made by a person who proposes to provide conveyancing services, the Board shall authorise that person to provide those services, if—
  - (a) it is satisfied that the applicant’s business is, and is likely to continue to be, carried on by fit and proper persons or, in the case of an application by an individual, that he is a fit and proper person; and
  - (b) it is of the opinion that the applicant will comply with the requirements mentioned in subsection (7).
- (2) Any such authorisation shall be given in writing and shall take effect on such date as the Board may specify.
- (3) A person so authorised is referred to in this Act as “an authorised practitioner”.
- (4) An application for authorisation must be made in accordance with rules made by the Board, with the approval of the Lord Chancellor, for the purposes of this section.
- (5) On making any such application, the applicant shall pay to the Board such fee as may be specified in the rules.
- (6) The rules may, in particular, make provision—
  - (a) as to the form in which any application must be made; and
  - (b) for the furnishing by applicants of information required by the Board in connection with their applications.
- (7) The requirements are that the applicant—
  - (a) complies with any rules made by the Board and any regulations made under section 40, so far as applicable;
  - (b) ensures that satisfactory arrangements are at all times in force for covering adequately the risk of any claim made against the applicant in connection with

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the provision of conveyancing services provided by the applicant, however arising;

- (c) maintains satisfactory procedures for—
    - (i) dealing with complaints made about any aspect of conveyancing services provided by the applicant; and
    - (ii) the payment of compensation;
  - (d) has in force satisfactory arrangements to protect the applicant's clients in the event of the applicant ceasing to provide conveyancing services;
  - (e) is a member of the Conveyancing Ombudsman Scheme.
- (8) Where the applicant is—
- (a) an institution which is authorised by the Bank of England, under Part I of the Banking Act 1987, to carry on a deposit taking business;
  - (b) a building society which is authorised by the Building Societies Commission, under section 9 of the Building Societies Act 1986, to raise money from its members; or
  - (c) an insurance company which is authorised under section 3 or 4 of the Insurance Companies Act 1982,
- the Board shall have regard to the fact that it is so authorised in determining whether the Board is satisfied as mentioned in subsection (1)(a).
- (9) The Board shall maintain a register of authorised practitioners which shall be open to inspection, at all reasonable times, without charge.
- (10) The Lord Chancellor may by order amend the provisions of subsection (7) by imposing any additional requirement or by varying or removing any requirement.

### **38 Refusal of approval and imposition of conditions**

- (1) Where the Board proposes to refuse an application for authorisation under section 37 it shall give the applicant written notice of its proposal.
- (2) The notice shall give the Board's reasons for proposing to refuse the application and inform the applicant of the effect of subsection (7).
- (3) Any authorisation under section 37 may be given subject to the applicant complying with conditions imposed by the Board with a view to the protection of clients.
- (4) Any such conditions—
  - (a) may be imposed by the Board either when granting the application for authorisation or at any later time; and
  - (b) may be expressed to apply in relation to a specified part of the authorised practitioner's business (for example, to a specified branch or office).
- (5) Before imposing any such conditions, the Board shall give written notice of its intention to do so to the applicant or (as the case may be) authorised practitioner concerned.
- (6) The notice shall inform the person to whom it is given of the effect of subsection (7).
- (7) Where a notice is served under subsection (1) or (5), it shall be the duty of the Board to consider any representations duly made by the person on whom the notice is served before determining whether to grant or refuse the application or to impose any of the proposed conditions.

- (8) For the purposes of subsection (7), representations are duly made if—
- (a) they are made to the Board before the end of the period of 28 days beginning with the day on which the notice is served; and
  - (b) unless the Board directs otherwise in a particular case, are in writing.
- (9) Where the Board—
- (a) proposes to impose a condition under this section on an authorised practitioner; and
  - (b) is satisfied that the circumstances of the case are exceptional and justify the condition taking effect immediately,
- it may disregard subsections (5) to (8) when imposing the condition.
- (10) If the Board refuses the application, or imposes any of the proposed conditions, it shall give the applicant notice in writing and, in the case of a refusal, the notice shall give the Board's reasons for refusing.
- (11) A notice under subsection (10) shall inform the applicant of his rights of appeal under section 41.
- (12) An authorised practitioner who fails to comply with a condition imposed on him under this section shall not thereby cease to be such a practitioner; but in such a case the Board may—
- (a) impose additional, or substituted, conditions on him; or
  - (b) revoke or suspend his authorisation in accordance with rules made under section 39(1).

### **39 Revocation and suspension of authorisation**

- (1) The Board shall, with the approval of the Lord Chancellor, make rules providing for the circumstances in which the authorisation of a person under section 37 may be revoked or suspended by the Board.
- (2) Where any such authorisation is revoked or suspended in accordance with the rules, the person concerned shall cease to be an authorised person for the purposes of this Act.
- (3) The rules may, in particular—
- (a) provide for any suspension to be indefinite or for a period specified by the Board;
  - (b) provide for the total, or partial, lifting of any suspension in specified circumstances;
  - (c) provide for the publication by the Board of notice of any suspension or revocation under the rules;
  - (d) make transitional provision for dealing with any work in hand at the time when a revocation or suspension takes effect.
- (4) Where the Board—
- (a) revokes or suspends any authorisation in accordance with the rules; or
  - (b) lifts a suspension so imposed,
- it shall take such steps as are reasonably practicable to inform any body which has any regulatory functions in relation to that authorised practitioner of the action which it has taken.

**40 Regulations about competence and conduct etc. of authorised practitioners**

- (1) The Lord Chancellor may by regulation make such provision as he considers expedient with a view to securing—
- (a) that authorised practitioners maintain satisfactory standards of competence and conduct in connection with the provision by them of conveyancing services;
  - (b) that in providing such services (and in particular in fixing their charges) they act in a manner which is consistent with the maintenance of fair competition between authorised practitioners and others providing conveyancing services; and
  - (c) that the interests of their clients are satisfactorily protected.
- (2) The regulations may, in particular, make provision—
- (a) designed to—
    - (i) provide for the efficient transaction of business;
    - (ii) avoid unnecessary delays;
  - (b) as to the supervision, by persons with such qualifications as may be prescribed, of such descriptions of work as may be prescribed;
  - (c) requiring authorised practitioners to arrange, so far as is reasonably practicable, for each transaction to be under the overall control of one individual;
  - (d) designed to avoid conflicts of interest;
  - (e) as to the terms and conditions on which authorised practitioners may provide conveyancing services;
  - (f) as to the information to be given to prospective clients, the manner in which or person by whom it is to be given and the circumstances in which it is to be given free of charge;
  - (g) as to the handling by authorised practitioners of their clients' money;
  - (h) as to the disclosure of and accounting for commissions.

**41 The Conveyancing Appeal Tribunals**

- (1) There shall be tribunals to be known as “Conveyancing Appeal Tribunals” which shall hear appeals under this section.
- (2) Any person who is aggrieved by any decision of the Board to—
- (a) refuse an application for authorisation under section 37;
  - (b) suspend any authorisation given under section 37;
  - (c) refuse to lift such a suspension;
  - (d) revoke any such authorisation; or
  - (e) impose any condition under section 38,
- may appeal to a Conveyancing Appeal Tribunal.
- (3) No such decision of the Board shall have effect until—
- (a) any appeal against it which is duly made under this section is disposed of; or
  - (b) the period within which an appeal may be made has expired without an appeal having been made.
- (4) Subsection (3) shall not apply where—

- (a) the Board is satisfied that the circumstances of the case are exceptional and justify the decision in question taking effect immediately, or earlier than would otherwise be the case; and
  - (b) notifies the person concerned to that effect.
- (5) In this Part a Conveyancing Appeal Tribunal is referred to as “a Tribunal”.
- (6) A Tribunal shall consist of a Chairman and two other members appointed by the Lord Chancellor.
- (7) To be qualified for appointment as Chairman of a Tribunal, a person must have a 7 year general qualification (within the meaning of section 71).
- (8) Of the other two members of a Tribunal—
  - (a) one must have experience in, or knowledge of, the provision of conveyancing services; and
  - (b) the other must have experience in, or knowledge of, accountancy.
- (9) The Lord Chancellor shall appoint a person to be Secretary to the Tribunals.
- (10) On receipt of notice of an appeal which is being made to a Tribunal, the Secretary shall inform the Lord Chancellor and the Lord Chancellor shall appoint a Tribunal to hear that appeal.
- (11) Schedule 6 shall have effect with respect to the Tribunals.

#### **42 Appeals from Tribunals on points of law**

- (1) At the instance of a person aggrieved by a decision of a Tribunal, or at the instance of the Board, an appeal shall lie to the High Court on any question of law arising from that decision.
- (2) If, on an appeal to the High Court under this section, the court is of the opinion that the decision appealed against was wrong in law, it shall remit the matter for re-hearing and determination by the Tribunal concerned or, where it is not reasonably practicable for the case to be re-heard by that Tribunal, by another Tribunal.
- (3) No appeal to the Court of Appeal shall be brought from a decision of the High Court under this section except with the leave of the Court of Appeal or of the judge from whose decision the appeal is to lie.

#### **43 The Conveyancing Ombudsman Scheme**

- (1) The Board shall, with the approval of the Lord Chancellor, make rules establishing a scheme (to be known as “the Conveyancing Ombudsman Scheme”) for the investigation, by a person appointed by the Board with the approval of the Lord Chancellor, of complaints against authorised practitioners in connection with the provision by them of conveyancing services.
- (2) The person so appointed shall be known as “the Conveyancing Ombudsman”.
- (3) No person shall be appointed to be the Conveyancing Ombudsman if he is, or has at any time within the period of three years ending with his appointment been—
  - (a) involved in any capacity in the provision by an authorised practitioner of conveyancing services; or

- (b) a member of the Board.
- (4) Schedule 7 shall have effect for the purpose of supplementing this section.
- (5) A person may be appointed to be both a member of the staff of the Board and a member of the staff of the Conveyancing Ombudsman.
- (6) The Conveyancing Ombudsman may not make any charge for the use of his services.
- (7) His expenses under the Scheme shall be defrayed by the Board and shall rank as expenses of the Board for the purposes of section 35.
- (8) The Conveyancing Ombudsman shall submit to the Board an annual report on the discharge of his functions.
- (9) The Board shall, when submitting its own annual report to the Lord Chancellor, send him a copy of the Conveyancing Ombudsman's annual report.
- (10) When laying the Board's annual report before Parliament, the Lord Chancellor shall also lay before Parliament a copy of the Conveyancing Ombudsman's report.
- (11) It shall be the duty of the Conveyancing Ombudsman to inform the Board of any evidence which comes to his attention suggesting that there has been, or may have been, a breach of any of the rules made under subsection (1) or of the regulations made under section 40.
- (12) The Board may—
  - (a) pay such remuneration and travelling and other allowances to the Conveyancing Ombudsman as may be determined by the Board;
  - (b) pay such pension, allowances or gratuities to or in respect of the Conveyancing Ombudsman as may be so determined; and
  - (c) if the Conveyancing Ombudsman ceases to hold office and it appears to the Board that there are special circumstances which make it right that he should receive compensation, pay him such sum as may be so determined.

#### **44 Compensation scheme**

- (1) The Board may, with the approval of the Lord Chancellor, make rules establishing a scheme for compensating persons who have suffered loss in consequence of dishonesty on the part of authorised practitioners or their employees.
- (2) The rules may, in particular—
  - (a) provide for the establishment and functioning of an independent body (whether corporate or unincorporate) to administer the scheme and, subject to the rules, determine and regulate any matter relating to its operation;
  - (b) establish a fund out of which compensation is to be paid;
  - (c) provide for the levying of contributions from authorised practitioners and otherwise for financing the scheme and for the payment of contributions and other money into the fund;
  - (d) specify the terms and conditions on which, and the extent to which, compensation is to be payable and any circumstances in which the right to compensation is to be excluded or modified; and
  - (e) contain incidental and supplementary provisions.



#### **45 Advisory and supervisory functions of Director General of Fair Trading**

- (1) Where the Lord Chancellor is considering whether—
  - (a) to approve any rules which the Board is proposing to make; or
  - (b) to make any regulations under section 40,he shall first send a copy of the proposed rules or regulations to the Director.
- (2) The Director shall consider whether the proposed rules or regulations would have, or would be likely to have, the effect of restricting, distorting or preventing competition to any significant extent.
- (3) When the Director has completed his consideration he shall give such advice to the Lord Chancellor as he thinks fit.
- (4) The Director shall keep under review the rules made by the Board and the regulations made by the Lord Chancellor under section 40.
- (5) If the Director is of the opinion that any such rule or regulation has, or is likely to have, the effect of restricting, distorting or preventing competition to any significant extent, he shall report his opinion to the Lord Chancellor.
- (6) Any report under subsection (5) shall state what, in the Director's opinion, is the effect of the rule or regulation or its likely effect.
- (7) The Director may publish any advice given by him under subsection (3) or report made by him under subsection (5).
- (8) The Director shall, so far as practicable, exclude from anything published under subsection (7) any matter—
  - (a) which relates to the affairs of a particular person; and
  - (b) the publication of which would, or might in the Director's opinion, seriously and prejudicially affect the interests of that person.

#### **46 Investigatory powers of Director**

- (1) For the purpose of investigating any matter under section 45, the Director may by notice in writing—
  - (a) require any person to produce to him or to any person appointed by him for the purpose, at a time and place specified in the notice, any documents which are specified or described in the notice and which—
    - (i) are in that person's custody or under that person's control; and
    - (ii) relate to any matter relevant to the investigation; or
  - (b) require any person carrying on any business to furnish to him (within such time and in such manner and form as the notice may specify) such information as may be specified or described in the notice.
- (2) A person shall not be required under this section to produce any document or disclose any information which he would be entitled to refuse to produce or disclose on grounds of legal professional privilege in proceedings in the High Court.
- (3) Subsections (6) to (8) of section 85 of the Fair Trading Act 1973 (enforcement provisions) shall apply in relation to a notice under this section as they apply in relation to a notice under subsection (1) of that section.

**47 Power to obtain information and require production of documents**

- (1) The Board may serve a notice on any—
  - (a) authorised practitioner;
  - (b) officer or employee of an authorised practitioner;
  - (c) qualified person who is acting, or has acted, on behalf of an authorised practitioner; or
  - (d) officer or employee of such a qualified person,requiring him to provide the Board (within such time and at such place as may be specified in the notice) with such document, or documents of such a description, or with such information, as may be so specified.
- (2) The Board shall not exercise its powers under subsection (1) except for the purpose of obtaining such information as it thinks reasonably necessary in connection with the discharge of any of its functions.
- (3) The Board’s power under this section to require a person to produce any document includes power—
  - (a) if the document is produced, to take copies of it or extracts from it and to require that person, or any other person who is or was a director or officer of, or is or was at any time employed by or acting as an employee of, the practitioner concerned, to provide an explanation of the document;
  - (b) if the document is not produced, to require the person who was required to produce it to state, to the best of his knowledge and belief, where it is.
- (4) The Board’s power under this section may be exercised in relation to a person who falls within subsection (1)(c) or (d) only in relation to the provision of conveyancing services on behalf of the authorised practitioner concerned.
- (5) Any person who, without reasonable excuse, fails to comply with a requirement imposed on him under this section shall be guilty of an offence and liable on summary conviction to a fine not exceeding level five on the standard scale.
- (6) Any person who, in response to any requirement imposed on him under this section, knowingly or recklessly provides any information or explanation or makes any statement which is false or misleading in a material particular shall be liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum; and
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.
- (7) Where any person from whom production of a document is required under this section claims a lien on the document, the production of it shall be without prejudice to the lien.
- (8) Nothing in this section shall compel—
  - (a) the production of a document containing a communication which is privileged from disclosure in legal proceedings in England and Wales; or
  - (b) the furnishing of information contained in such a communication.
- (9) In this section “document” includes any information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its production include references to producing a copy in legible form.

## **48 Investigations on behalf of the Board**

- (1) If it appears to the Board desirable to do so—
  - (a) in connection with the discharge of any of its functions; and
  - (b) in the interests of customers or potential customers of an authorised practitioner,it may appoint one or more competent persons (“the investigators”) to investigate and report to it on the state and conduct of the affairs of that authorised practitioner.
- (2) The Board shall give written notice of any such appointment to the authorised practitioner concerned.
- (3) If the investigators think it necessary for the purposes of their investigation, they may also investigate the affairs of any qualified person who is acting, or has acted, on behalf of the authorised practitioner (so far as concerns the provision of conveyancing services on behalf of the authorised practitioner), after giving the qualified person written notice of their investigation.
- (4) Any investigation under this section of the affairs of—
  - (a) any institution which is authorised by the Bank of England under Part I of the Banking Act 1987, to carry on a deposit-taking business;
  - (b) any building society which is authorised to raise money from its members by the Building Societies Commission under section 9 of the Building Societies Act 1986; or
  - (c) any insurance company which is authorised under section 3 or 4 of the Insurance Companies Act 1982,shall be subject to such direction (if any) given by the Lord Chancellor with a view to limiting the scope of the investigation to matters concerned with the provision of conveyancing services.
- (5) Any such direction may be general or be given with respect to a particular investigation.
- (6) It shall be the duty of every person whose affairs are being investigated and of any officer or employee of his—
  - (a) to produce to the investigators, within such time and at such place as they may reasonably require, all documents relating to the provision of conveyancing services by the practitioner which are in that person’s custody or power;
  - (b) to provide the investigators, within such time as they may require, with such information as they may reasonably require with respect to the provision of those services; and
  - (c) to give the investigators such assistance in connection with the investigation as he is reasonably able to give.
- (7) The investigators may take copies of, or extracts from, any document produced to them under subsection (6).
- (8) This section applies in relation to a former authorised practitioner or former qualified person as it applies in relation to an authorised practitioner or qualified person.
- (9) Any person who, without reasonable excuse, fails to produce any document, or provide any information, which it is his duty to produce under subsection (6) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level five on the standard scale.

- (10) Any person who, in response to any requirement imposed on him under this section, knowingly or recklessly provides any information or explanation or makes any statement which is false or misleading in a material particular shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum; and
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.
- (11) Nothing in this section shall compel the production by an authorised practitioner or qualified person acting on his behalf of a document containing a privileged communication made by him or to him in that capacity.

#### **49 Restrictions on disclosure of information**

- (1) Subject to section 50, restricted information which relates to the business or other affairs of any person shall not be disclosed—
- (a) by the Board or any member of its staff;
  - (b) by any person appointed as an investigator under section 48 or any officer or servant of his; or
  - (c) by any person obtaining it directly or indirectly from a person mentioned in paragraph (a) or (b),
- without the consent of the person from whom it was obtained and, if they are different, the person to whom it relates.
- (2) Subject to subsection (3), information is restricted information for the purposes of this section if it was obtained (whether or not in response to any requirement that it be provided) for the purposes of, or in the discharge of functions under, any provision made by or under this Act.
- (3) Information shall not be treated as restricted information for the purposes of this section if it has been made available to the public by virtue of being disclosed in any circumstances in which, or for any purpose for which, disclosure is not prevented by this section.
- (4) Any person who contravenes this section shall be guilty of an offence and liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.

#### **50 Exceptions from restrictions on disclosure**

- (1) Section 49 shall not prevent the disclosure of information—
- (a) with a view to the institution, or otherwise for the purposes, of any criminal proceedings;
  - (b) with a view to the institution, or otherwise for the purposes, of any civil proceedings arising under or by virtue of this Act;
  - (c) in a summary or collection of information framed in such a way as not to enable the identity of any person to whom the information relates to be ascertained; or
  - (d) in pursuance of any Community obligation.

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- (2) Section 49 shall not prevent the disclosure of information for the purpose of enabling or assisting—
- (a) the Lord Chancellor to discharge any of his functions under this Act with respect to the Board or authorised practitioners;
  - (b) the Board to discharge any of its functions;
  - (c) the Law Society, the General Council of the Bar, the Council for Licensed Conveyancers or the Faculty Office of the Archbishop of Canterbury to discharge any of its functions;
  - (d) the Building Societies Commission to discharge any of its functions;
  - (e) the competent authority or a designated agency, recognised investment exchange, recognised clearing house, recognised self-regulating organisation or recognised professional body (all those expressions having the meaning given in the Financial Services Act 1986) to discharge any of its functions;
  - (f) the Bank of England to discharge any of its functions;
  - (g) the Secretary of State to discharge any of his functions under this Act, the Financial Services Act 1986 or any enactment relating to competition, companies, insurance or insolvency;
  - (h) any inspector appointed by the Secretary of State under any of the enactments mentioned in paragraph (g) to discharge any of his functions;
  - (i) an official receiver to discharge any of his functions under any enactment relating to insolvency;
  - (j) a body which is a recognised professional body under section 391 of the Insolvency Act 1986 to discharge any of its functions as such a body;
  - (k) the Insurance Brokers Registration Council to discharge any of its functions under the Insurance Brokers (Registration) Act 1977;
  - (l) any person appointed or authorised to discharge any powers under section 94, 106 or 177 of the Financial Services Act 1986 to exercise any of those powers;
  - (m) the Director to discharge any of his functions under—
    - (i) this Act;
    - (ii) the Fair Trading Act 1973 (other than Part II);
    - (iii) the Consumer Credit Act 1974;
    - (iv) the Restrictive Trade Practices Act 1976;
    - (v) the Estate Agents Act 1979;
    - (vi) the Competition Act 1980;
    - (vii) the Financial Services Act 1986;
    - (viii) the Control of Misleading Advertisements Regulations 1988;
  - (n) the Monopolies and Mergers Commission to discharge any of its functions under the Fair Trading Act 1973 and the Competition Act 1980;
  - (o) the Scottish Conveyancing and Executry Services Board to discharge any of its functions;
  - (p) an authority in a country or territory outside the United Kingdom to discharge any functions corresponding to—
    - (i) the functions of the Board, the Building Societies Commission or the Bank of England; or
    - (ii) those functions of the Secretary of State mentioned in paragraph (g);
  - (q) the Insolvency Practitioners Tribunal to discharge any of its functions under the Insolvency Act 1986;

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- (r) the Financial Services Tribunal to discharge any of its functions under the Financial Services Act 1986.
- (3) Subject to subsection (4), section 49 shall not prevent the disclosure of information for the purpose of enabling or assisting any public or other authority for the time being designated for the purposes of this section by an order made by the Lord Chancellor to discharge any functions which are specified in the order.
- (4) An order under subsection (3) designating an authority for the purposes of this section may—
  - (a) impose conditions subject to which the disclosure of information is permitted by subsection (3); and
  - (b) otherwise restrict the circumstances in which disclosure is permitted.
- (5) Where information has been disclosed by one person (“the first person”) to another, by virtue of subsection (2), section 49 shall not prevent that other person from disclosing that information to any person to whom it could have been disclosed by the first person by virtue of subsection (2).
- (6) The Lord Chancellor may by order modify the application of any provision of this section so as—
  - (a) to prevent the disclosure of information by virtue of that provision; or
  - (b) to restrict the extent to which disclosure of information is permitted by virtue of that provision.

## **51 Board’s intervention powers**

- (1) The powers conferred on the Board by this section may be exercised if it appears to the Board to be desirable to do so for the purpose of protecting the interests of the clients, or prospective clients, of an authorised practitioner.
- (2) The Board may, in particular, exercise any such power where it appears to it—
  - (a) that an authorised practitioner who is an individual is no longer fit to provide conveyancing services;
  - (b) that any person carrying on the business of an authorised practitioner is not fit to provide such services; or
  - (c) that an authorised practitioner has failed, or is likely to fail, to comply with any regulation made under section 40.
- (3) The Board may direct the authorised practitioner not to dispose of, or otherwise deal with, except in accordance with the terms of the direction—
  - (a) any assets belonging to any client of the authorised practitioner and held by or under the control of the authorised practitioner in connection with his business as an authorised practitioner; or
  - (b) any assets of such a kind which are specified in the direction.
- (4) The Board may direct the authorised practitioner to transfer to the Board, or to such persons (“the trustees”) as may be specified in the direction—
  - (a) all assets belonging to any client of that practitioner and held by or under his control in connection with his business as an authorised practitioner; or
  - (b) any assets of such a kind which are specified in the direction.

- (5) Any assets which have been transferred as a result of a direction given under subsection (4) shall be held by the Board, or by the trustees, on trust for the client concerned.
- (6) The trustees may deal with any assets which have been transferred to them only in accordance with directions given to them by the Board.
- (7) In this section—  
“assets” includes any sum of money held (in whatever form and whether or not in any bank, building society or other account) by the authorised practitioner or on behalf of the client concerned and any instrument or other document belonging to that client; and  
“authorised practitioner” includes a person whose authorisation has been suspended or revoked under section 39.
- (8) Any direction under this section—  
(a) must be given in writing;  
(b) must state the reason why it is being given;  
(c) shall take effect on such date as may be specified in the direction (which may be the date on which it is served on the authorised practitioner);  
(d) may be varied or revoked by a further direction given by the Board.

## **52 Board’s intervention powers: supplemental provisions**

- (1) In this section—  
“the intervention powers” means the powers given to the Board by section 51; and  
“a direction” means a direction given under that section.
- (2) An authorised practitioner to whom a direction is given may appeal against it to a Conveyancing Appeal Tribunal.
- (3) Any authorised practitioner to whom a direction is given shall comply with it as soon as it takes effect (and whether or not he proposes to appeal).
- (4) If, on an application made to the High Court by the Board, the court is satisfied—  
(a) that an authorised practitioner has failed, within a reasonable time, to comply with any direction given to it; or  
(b) that there is a reasonable likelihood that an authorised practitioner will so fail, it may make an order requiring the authorised practitioner, and any other person whom the court considers it appropriate to subject to its order, to take such steps as the court may direct with a view to securing compliance with the direction.
- (5) Where an authorised practitioner is—  
(a) an authorised person under the Financial Services Act 1986; or  
(b) an appointed representative (as defined in section 44(2) of that Act) of such an authorised person,  
the intervention powers may be exercised only after consultation with the body by reference to which the authorised person acquired its authorisation under that Act.
- (6) Where an authorised practitioner is—

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- (a) an institution which is authorised by the Bank of England under Part I of the Banking Act 1987 to carry on a deposit-taking business; or
  - (b) an appointed representative of such an institution,
- the intervention powers may be exercised only after consultation with the Bank of England.
- (7) Where an authorised practitioner is—
- (a) a building society which is authorised to raise money from its members by the Building Societies Commission under section 9 of the Building Societies Act 1986; or
  - (b) an appointed representative of such a building society,
- the intervention powers may be exercised only after consultation with the Commission.
- (8) Where an authorised practitioner falls within more than one of subsections (5) to (7), the Board shall comply with each of the subsections in question.

#### *Licensed conveyancers*

### **53 The Council for Licensed Conveyancers**

- (1) Subject to subsection (2), the Council for Licensed Conveyancers shall have the powers necessary to enable it to become—
- (a) an authorised body for the purposes of granting rights of audience under section 27(2)(a);
  - (b) an authorised body for the purposes of granting rights to conduct litigation under section 28(2)(a); and
  - (c) an approved body for the purposes of granting, in accordance with section 55, exemption from the provisions of section 23(1) of the Solicitors Act 1974 (preparation of probate papers).
- (2) The Council may exercise the powers given to it by this section only with respect to persons who are licensed conveyancers.
- (3) Where the Council—
- (a) becomes an authorised body for the purposes of section 27 and grants any right of audience;
  - (b) becomes an authorised body for the purposes of section 28 and grants any right to conduct litigation; or
  - (c) becomes an approved body for the purposes of section 55 and grants an exemption under that section,
- it shall do so by issuing a licence to the licensed conveyancer to whom the right or exemption is being granted.
- (4) Any such licence may be granted as a separate licence or as part of a composite licence comprising the licensed conveyancer's licence issued under Part II of the Administration of Justice Act 1985 and any other licence which the Council may grant to the licensed conveyancer concerned.
- (5) The Council's general duty shall include the duty to ensure that the standards of competence and professional conduct among licensed conveyancers who are granted rights of audience, rights to conduct litigation or an exemption under section 55 are



sufficient to secure adequate protection for consumers, and that the advocacy, litigation or (as the case may be) probate services provided by such persons are provided both economically and efficiently.

- (6) Where the Council exercises any of its powers in connection with—
- (a) an application under section 29 for authorisation or an application under Schedule 9 for approval; or
  - (b) the granting of any right of audience or right to conduct litigation or of an exemption under section 55,

it shall do so subject to any requirements to which it is subject in accordance with the provisions of this Act relating to the grant of any such right or exemption.

- (7) Schedule 8 makes further provision in connection with the powers given to the Council by this section and the provision made by the Act of 1985 in relation to licensed conveyancers, including amendments of Part II of that Act.

- (8) The Lord Chancellor may by order make such—
- (a) amendments of, or modifications to, the provisions of Part II of the Act of 1985; or
  - (b) transitional or consequential provision,

as he considers necessary or expedient in connection with the provision made by this section and Schedule 8.

- (9) Subject to any provision made by this section, Schedule 8 or any order made by the Lord Chancellor under subsection (8), the provisions of Part II of the Act of 1985 shall, with the necessary modifications, apply with respect to—

- (a) any application for an advocacy, litigation or probate licence;
- (b) any such licence;
- (c) the practice of any licensed conveyancer which is carried on by virtue of any such licence;
- (d) rules made by the Council under Schedule 8;
- (e) the management and control by licensed conveyancers (or by licensed conveyancers together with persons who are not licensed conveyancers) of bodies corporate carrying on businesses which include the provision of advocacy, litigation or probate services; and
- (f) any other matter dealt with by this section or Schedule 8,

as they apply with respect to the corresponding matters dealt with by Part II of that Act.

#### *Probate services*

### **54 Preparation of papers for probate etc**

- (1) In section 23 of the Solicitors Act 1974 (preparation of papers for probate etc. by unqualified persons), the following subsections shall be substituted for subsections (2) and (3)—

“(2) Subsection (1) does not apply to—

- (a) a barrister;
- (b) a duly certificated notary public;
- (c) the Public Trustee;
- (d) the Official Solicitor;

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- (e) any institution which—
    - (i) is authorised by the Bank of England, under Part I of the Banking Act 1987, to carry on a deposit-taking business ; and
    - (ii) satisfies the conditions mentioned in subsection (2A);
  - (f) any building society which—
    - (i) is authorised to raise money from its members by the Building Societies Commission under section 9 of the Building Societies Act 1986; and
    - (ii) satisfies those conditions;
  - (g) any insurance company which—
    - (i) is authorised under section 3 or 4 of the Insurance Companies Act 1982; and
    - (ii) satisfies those conditions;
  - (h) any subsidiary (as defined by section 736(1) of the Companies Act 1985) of a body falling within paragraph (e), (f) or (g)—
    - (i) whose business, or any part of whose business, consists of acting as trustee or executor; and
    - (ii) which satisfies those conditions.
- (2A) The conditions are that the body is a member of, or otherwise subject to, a scheme which—
- (a) has been established (whether or not exclusively) for the purpose of dealing with complaints about the provision of probate services; and
  - (b) complies with such requirements as may be prescribed by regulations made by the Lord Chancellor with respect to matters relating to such complaints.
- (3) Subsection (1) also does not apply to—
- (a) any act done by an officer or employee of a body corporate at a time when it is exempt from subsection (1) by virtue of any of paragraphs (e) to (h) of subsection (2) or by virtue of section 55 of the Courts and Legal Services Act 1990 (preparation of probate papers etc.); or
  - (b) any act done by any person at the direction and under the supervision of another person if—
    - (i) that other person was at the time his employer, a partner of his employer or a fellow employee; and
    - (ii) the act could have been done by that other person for or in expectation of any fee, gain or reward without committing an offence under this section.
- (4) For the avoidance of doubt, where a person does any act which would constitute an offence under subsection (1) but for an exemption given to him by this section or by or under any other enactment, he shall not be guilty of an offence under section 22 by virtue of having done that act.”
- (2) In section 115 of the Supreme Court Act 1981 (grants to trust corporations) the following subsection shall be added at the end—
- “(4) Subsections (1) to (3) shall also apply in relation to any body which is exempt from the provisions of section 23(1) of the Solicitors Act 1974 (unqualified

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persons not to prepare papers for probate etc.) by virtue of any of paragraphs (e) to (h) of subsection (2) of that section.”

- (3) If a person who applies for any grant of probate or letters of administration—
- (a) makes a statement in his application, or supports his application with a document, which he knows to be false or misleading in a material particular; or
  - (b) recklessly makes a statement in his application, or supports his application with a document, which is false or misleading in a material particular,
- he shall be guilty of an offence.
- (4) Any person guilty of an offence under subsection (3) shall be liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both;
  - (b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both.
- (5) In subsection (3) “letters of administration” includes all letters of administration of the effects of deceased persons, whether with or without a will annexed, and whether granted for general, special or limited purposes.

## **55 Preparation of probate papers etc: exemption from section 23(1) of Solicitors Act 1974**

- (1) The provisions of section 23(1) of the Solicitors Act 1974 (preparation of papers for probate etc. by unqualified persons) shall not apply to any person to whom exemption from those provisions is granted by an approved body.
- (2) An approved body may only grant such an exemption to a person who is one of its members and who satisfies it—
- (a) that his business is, and is likely to continue to be, carried on by fit and proper persons or, in the case of an individual, that he is a fit and proper person;
  - (b) that he, and any person employed by him in the provision of probate services, is suitably trained;
  - (c) that satisfactory arrangements will at all times be in force for covering adequately the risk of any claim made against him in connection with the provision of probate services by him, however arising;
  - (d) that he is a member of, or otherwise subject to, a scheme which—
    - (i) has been established (whether or not exclusively) for the purpose of dealing with complaints about the provision of probate services; and
    - (ii) complies with such requirements as may be prescribed by regulations made by the Lord Chancellor with respect to matters relating to such complaints; and
  - (e) that he has in force satisfactory arrangements to protect his clients in the event of his ceasing to provide probate services.
- (3) In this section “approved body” means a professional or other body which is approved by the Lord Chancellor under Schedule 9.
- (4) The approval of any body under Schedule 9 may be revoked under that Schedule.

**56 Administration of oaths etc. by justices in certain probate business**

- (1) Every justice shall have power to administer any oath or take any affidavit which is required for the purposes of an application for a grant of probate or letters of administration made in any non-contentious or common form probate business.
- (2) A justice before whom any oath or affidavit is taken or made under this section shall state in the jurat or attestation at what place and on what date the oath or affidavit is taken or made.
- (3) No justice shall exercise the powers conferred by this section in any proceedings in which he is interested.
- (4) A document purporting to be signed by a justice administering an oath or taking an affidavit shall be admitted in evidence without proof of the signature and without proof that he is a justice.
- (5) In this section—
  - “affidavit” has the same meaning as in the Commissioners for Oaths Act 1889;
  - “justice” means a justice of the peace;
  - “letters of administration” includes all letters of administration of the effects of deceased persons, whether with or without a will annexed, and whether granted for general, special or limited purposes; and
  - “non-contentious or common form probate business” has the same meaning as in section 128 of the Supreme Court Act 1981.

*Notaries*

- 57** (1) Public notaries shall no longer be appointed to practise only within particular districts in England, or particular districts in Wales.
- (2) It shall no longer be necessary to serve a period of apprenticeship before being admitted as a public notary.
- (3) Accordingly, the following enactments relating to public notaries shall cease to have effect—
  - (a) section 2 of the Public Notaries Act 1801 (which provides that no person shall be admitted as a public notary unless he has served as an apprentice for seven years);
  - (b) section 1 of the Public Notaries Act 1833 (which restricts the requirement to serve an apprenticeship to London and an area of ten miles from the Royal Exchange);
  - (c) section 2 of the Public Notaries Act 1833 (appointment of public notaries to practise within particular districts in England);
  - (d) section 3 of the Public Notaries Act 1843 (which reduced the period of apprenticeship to five years);
  - (e) section 37 of the Welsh Church Act 1914 (appointment of public notaries to practise within particular districts in Wales); and
  - (f) section 29 of the Administration of Justice Act 1969 (which reduced the period of apprenticeship for public notaries in London).
- (4) The Master may by rules make provision—

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- (a) as to the educational and training qualifications which must be satisfied before a person may be granted a faculty to practise as a public notary;
  - (b) as to further training which public notaries are to be required to undergo;
  - (c) for regulating the practice, conduct and discipline of public notaries;
  - (d) supplementing the provision made by subsections (8) and (9);
  - (e) as to the keeping by public notaries of records and accounts;
  - (f) as to the handling by public notaries of clients' money;
  - (g) as to the indemnification of public notaries against losses arising from claims in respect of civil liability incurred by them;
  - (h) as to compensation payable for losses suffered by persons in respect of dishonesty on the part of public notaries or their employees; and
  - (i) requiring the payment, in such circumstances as may be prescribed, of such reasonable fees as may be prescribed, including in particular fees for—
    - (i) the grant of a faculty;
    - (ii) the issue of a practising certificate by the Court of Faculties of the Archbishop of Canterbury; or
    - (iii) the entering in that court of a practising certificate issued under the Solicitors Act 1974.
- (5) The repeal of section 2 of the Act of 1833 and section 37 of the Act of 1914 by this Act shall not affect any appointment made under either of those sections; but the Master may by rules make such provision as he considers necessary or expedient in consequence of either, or both, of those repeals.
- (6) Rules made under subsection (5) may, in particular, provide for the grant by the Master of a new faculty for any person to whom the Notary Public (Welsh Districts) Rules 1924 applied immediately before the commencement of this section, in place of the faculty granted to him by the Clerk of the Crown in Chancery.
- (7) Subsections (4) to (6) shall not be taken to prejudice—
- (a) any other power of the Master to make rules; or
  - (b) any rules made by him under any such power.
- (8) With effect from the operative date, any restriction placed on a qualifying district notary, in terms of the district within which he may practise as a public notary, shall cease to apply.
- (9) In this section—
- “Master” means the Master of the Faculties;
  - “the operative date” means the date on which subsection (1) comes into force or, if on that date the notary concerned is not a qualifying district notary (having held his faculty for less than five years)—
    - (a) the date on which he becomes a qualifying district notary; or
    - (b) such earlier date, after the commencement of subsection (1), as the Master may by rules prescribe for the purpose of this subsection;
  - “prescribed” means prescribed by rules made under this section; and
  - “qualifying district notary” means a person who—
    - (a) holds a faculty as a notary appointed under section 2 of the Act of 1833 or section 37 of the Act of 1914; and
    - (b) has held it for a continuous period of at least five years.

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- (10) Section 5 of the Ecclesiastical Licences Act 1533 (which amongst other things now has the effect of requiring faculties to be registered by the Clerk of the Crown in Chancery) shall not apply in relation to any faculty granted to a public notary.
- (11) Nothing in this section shall be taken—
- (a) to authorise any public notary to practise as a notary or to perform or certify any notarial act within the jurisdiction of the Incorporated Company of Scriveners of London or to affect the jurisdiction or powers of the Company; or
  - (b) to restrict the power of the Company to require a person seeking to become a public notary within its jurisdiction to serve a period of apprenticeship.

### *Miscellaneous*

## **58 Conditional fee agreements**

- (1) In this section “a conditional fee agreement” means an agreement in writing between a person providing advocacy or litigation services and his client which—
- (a) does not relate to proceedings of a kind mentioned in subsection (10);
  - (b) provides for that person’s fees and expenses, or any part of them, to be payable only in specified circumstances;
  - (c) complies with such requirements (if any) as may be prescribed by the Lord Chancellor; and
  - (d) is not a contentious business agreement (as defined by section 59 of the Solicitors Act 1974).
- (2) Where a conditional fee agreement provides for the amount of any fees to which it applies to be increased, in specified circumstances, above the amount which would be payable if it were not a conditional fee agreement, it shall specify the percentage by which that amount is to be increased.
- (3) Subject to subsection (6), a conditional fee agreement which relates to specified proceedings shall not be unenforceable by reason only of its being a conditional fee agreement.
- (4) In this section “specified proceedings” means proceedings of a description specified by order made by the Lord Chancellor for the purposes of subsection (3).
- (5) Any such order shall prescribe the maximum permitted percentage for each description of specified proceedings.
- (6) An agreement which falls within subsection (2) shall be unenforceable if, at the time when it is entered into, the percentage specified in the agreement exceeds the prescribed maximum permitted percentage for the description of proceedings to which it relates.
- (7) Before making any order under this section the Lord Chancellor shall consult the designated judges, the General Council of the Bar, the Law Society and such other authorised bodies (if any) as he considers appropriate.
- (8) Where a party to any proceedings has entered into a conditional fee agreement and a costs order is made in those proceedings in his favour, the costs payable to him shall

not include any element which takes account of any percentage increase payable under the agreement.

- (9) Rules of court may make provision with respect to the taxing of any costs which include fees payable under a conditional fee agreement.
- (10) The proceedings mentioned in subsection (1)(a) are any criminal proceedings and any proceedings under—
- (a) the Matrimonial Causes Act 1973;
  - (b) the Domestic Violence and Matrimonial Proceedings Act 1976;
  - (c) the Adoption Act 1976;
  - (d) the Domestic Proceedings and Magistrates' Courts Act 1978;
  - (e) sections 1 and 9 of the Matrimonial Homes Act 1983;
  - (f) Part III of the Matrimonial and Family Proceedings Act 1984;
  - (g) Parts I, II or IV of the Children Act 1989; or
  - (h) the inherent jurisdiction of the High Court in relation to children.

## **59 Representation under the Legal Aid Act 1988**

- (1) Nothing in this Part shall affect the right of a person who is represented in proceedings in the Supreme Court or the House of Lords under the Legal Aid Act 1988 to select his legal representative.
- (2) The power to make regulations with respect to representation under section 2(7) or 32(8) of that Act shall not be exercised so as to provide that representation in any such proceedings may only be by a single barrister, solicitor or other legal representative (but that is not to be taken as restricting the power to make regulations under section 34(2)(e) of that Act).

## **60 Regulation of right of Scottish and Northern Ireland lawyers to practise in England and Wales**

- (1) The Lord Chancellor may by regulations prescribe circumstances in which, and conditions subject to which, a practitioner who is qualified to practise in Scotland or Northern Ireland may, in such capacity as may be prescribed, exercise in England and Wales—
- (a) prescribed rights of audience; or
  - (b) prescribed rights to conduct litigation,
- without being entitled to do so apart from the regulations.
- (2) The Lord Chancellor may by regulations make provision for the purpose of enabling practitioners who are qualified to practise in Scotland or Northern Ireland to become qualified to practise in England and Wales on terms, and subject to conditions, corresponding or similar to those on which practitioners who are qualified to practise in member States may become qualified to practise in that jurisdiction.
- (3) Regulations made under subsection (1) may, in particular—
- (a) prescribe any right of audience which may not be exercised by a person in England and Wales unless he is instructed to act together with a person who has that right of audience there;
  - (b) prescribe legal services which may not be provided by any person practising by virtue of the regulations;

- (c) prescribe the title or description which must be used by any person practising by virtue of the regulations;
  - (d) provide for the means by which the qualification of any person claiming to be entitled to practise by virtue of the regulations is to be verified;
  - (e) provide for such professional or other body as may be prescribed to have power to investigate and deal with any complaint made against a person practising by virtue of the regulations.
- (4) Regulations made under subsection (1) or (2) may modify any rule of law or practice which the Lord Chancellor considers should be modified in order to give effect to the regulations.
- (5) In this section “practitioner” means—
- (a) a member of the Bar of Northern Ireland or a solicitor of the Supreme Court of Northern Ireland or an advocate or solicitor in Scotland; and
  - (b) any person falling within such category as may be prescribed.

#### **61 Right of barrister to enter into contract for the provision of his services**

- (1) Any rule of law which prevents a barrister from entering into a contract for the provision of his services as a barrister is hereby abolished.
- (2) Nothing in subsection (1) prevents the General Council of the Bar from making rules (however described) which prohibit barristers from entering into contracts or restrict their right to do so.

#### **62 Immunity of advocates from actions in negligence and for breach of contract**

- (1) A person—
- (a) who is not a barrister; but
  - (b) who lawfully provides any legal services in relation to any proceedings,
- shall have the same immunity from liability for negligence in respect of his acts or omissions as he would have if he were a barrister lawfully providing those services.
- (2) No act or omission on the part of any barrister or other person which is accorded immunity from liability for negligence shall give rise to an action for breach of any contract relating to the provision by him of the legal services in question.

#### **63 Legal professional privilege**

- (1) This section applies to any communication made to or by a person who is not a barrister or solicitor at any time when that person is—
- (a) providing advocacy or litigation services as an authorised advocate or authorised litigator;
  - (b) providing conveyancing services as an authorised practitioner; or
  - (c) providing probate services as a probate practitioner.
- (2) Any such communication shall in any legal proceedings be privileged from disclosure in like manner as if the person in question had at all material times been acting as his client’s solicitor.



- (3) In subsection (1), “probate practitioner” means a person to whom section 23(1) of the Solicitors Act 1974 (unqualified person not to prepare probate papers etc.) does not apply.

#### **64 Discrimination by, or in relation to, barristers**

- (1) The following shall be inserted in the Sex Discrimination Act 1975 after section 35—

##### *“Barristers*

#### **35A Discrimination by, or in relation to, barristers**

- (1) It is unlawful for a barrister or barrister’s clerk, in relation to any offer of a pupillage or tenancy, to discriminate against a woman—
- (a) in the arrangements which are made for the purpose of determining to whom it should be offered;
  - (b) in respect of any terms on which it is offered; or
  - (c) by refusing, or deliberately omitting, to offer it to her.
- (2) It is unlawful for a barrister or barrister’s clerk, in relation to a woman who is a pupil or tenant in the chambers in question, to discriminate against her—
- (a) in respect of any terms applicable to her as a pupil or tenant;
  - (b) in the opportunities for training, or gaining experience, which are afforded or denied to her;
  - (c) in the benefits, facilities or services which are afforded or denied to her; or
  - (d) by terminating her pupillage or by subjecting her to any pressure to leave the chambers or other detriment.
- (3) It is unlawful for any person, in relation to the giving, withholding or acceptance of instructions to a barrister, to discriminate against a woman.
- (4) In this section—
- “barrister’s clerk” includes any person carrying out any of the functions of a barrister’s clerk; and
  - “pupil”, “pupillage”, “tenancy” and “tenant” have the meanings commonly associated with their use in the context of a set of barristers’ chambers.
- (5) Section 3 applies for the purposes of this section as it applies for the purposes of any provision of Part II.
- (6) This section does not apply to Scotland.”
- (2) The following shall be inserted in the Race Relations Act 1976 after section 26—

*“Barristers***26A Discrimination by, or in relation to, barristers**

- (1) It is unlawful for a barrister or barrister’s clerk, in relation to any offer of a pupillage or tenancy, to discriminate against a person—
  - (a) in the arrangements which are made for the purpose of determining to whom it should be offered;
  - (b) in respect of any terms on which it is offered; or
  - (c) by refusing, or deliberately omitting, to offer it to him.
- (2) It is unlawful for a barrister or barrister’s clerk, in relation to a pupil or tenant in the chambers in question, to discriminate against him—
  - (a) in respect of any terms applicable to him as a pupil or tenant;
  - (b) in the opportunities for training, or gaining experience which are afforded or denied to him;
  - (c) in the benefits, facilities or services which are afforded or denied to him; or
  - (d) by terminating his pupillage or by subjecting him to any pressure to leave the chambers or other detriment.
- (3) It is unlawful for any person, in relation to the giving, withholding or acceptance of instructions to a barrister, to discriminate against any person.
- (4) In this section—
  - “barrister’s clerk” includes any person carrying out any of the functions of a barrister’s clerk; and
  - “pupil”, “pupillage”, “tenancy” and “tenant” have the meanings commonly associated with their use in the context of a set of barristers’ chambers.
- (5) This section does not apply to Scotland.”

**65 Discrimination by, or in relation to, advocates**

- (1) The following shall be inserted in the Sex Discrimination Act 1975 after section 35A (as inserted by this Act)—

*“Advocates***35B Discrimination by, or in relation to, advocates**

- (1) It is unlawful for an advocate, in relation to taking any person as his pupil, to discriminate against a woman—
  - (a) in the arrangements which he makes for the purpose of determining whom he will take as his pupil;
  - (b) in respect of any terms on which he offers to take her as his pupil; or
  - (c) by refusing, or deliberately omitting, to take her as his pupil.

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

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- (2) It is unlawful for an advocate, in relation to a woman who is a pupil, to discriminate against her—
    - (a) in respect of any terms applicable to her as a pupil;
    - (b) in the opportunities for training, or gaining experience, which are afforded or denied to her;
    - (c) in the benefits, facilities or services which are afforded or denied to her; or
    - (d) by terminating the relationship or by subjecting her to any pressure to terminate the relationship or other detriment.
  - (3) It is unlawful for any person, in relation to the giving, withholding or acceptance of instructions to an advocate, to discriminate against a woman.
  - (4) In this section—
    - “advocate” means a member of the Faculty of Advocates practising as such; and
    - “pupil” has the meaning commonly associated with its use in the context of a person training to be an advocate.
  - (5) Section 3 applies for the purposes of this section as it applies for the purposes of any provision of Part II.
  - (6) This section does not apply to England and Wales.”
- (2) The following shall be inserted in the Race Relations Act 1976 after section 26A (as inserted by this Act)—

*“Advocates*

**26B Discrimination by, or in relation to, advocates**

- (1) It is unlawful for an advocate, in relation to taking any person as his pupil, to discriminate against a person—
  - (a) in the arrangements which he makes for the purpose of determining whom he will take as his pupil;
  - (b) in respect of any terms on which he offers to take any person as his pupil; or
  - (c) by refusing, or deliberately omitting, to take a person as his pupil.
- (2) It is unlawful for an advocate, in relation to a person who is a pupil, to discriminate against him—
  - (a) in respect of any terms applicable to him as a pupil;
  - (b) in the opportunities for training, or gaining experience, which are afforded or denied to him;
  - (c) in the benefits, facilities or services which are afforded or denied to him; or
  - (d) by terminating the relationship or by subjecting him to any pressure to terminate the relationship or other detriment.
- (3) It is unlawful for any person, in relation to the giving, withholding or acceptance of instructions to an advocate, to discriminate against any person.

(4) In this section—

“advocate” means a member of the Faculty of Advocates practising as such; and

“pupil” has the meaning commonly associated with its use in the context of a person training to be an advocate.

(5) This section does not apply to England and Wales.”.

## 66 Multi-disciplinary and multi-national practices

- (1) Section 39 of the Solicitors Act 1974 (which, in effect, prevents solicitors entering into partnership with persons who are not solicitors) shall cease to have effect.
- (2) Nothing in subsection (1) prevents the Law Society making rules which prohibit solicitors from entering into any unincorporated association with persons who are not solicitors, or restrict the circumstances in which they may do so.
- (3) Section 10 of the Public Notaries Act 1801 (which, in effect, prevents notaries entering into partnership with persons who are not notaries) shall cease to have effect.
- (4) Nothing in subsection (3) prevents the Master of the Faculties making rules which prohibit notaries from entering into any unincorporated association with persons who are not notaries, or restrict the circumstances in which they may do so.
- (5) It is hereby declared that no rule of common law prevents barristers from entering into any unincorporated association with persons who are not barristers.
- (6) Nothing in subsection (5) prevents the General Council of the Bar from making rules which prohibit barristers from entering into any such unincorporated association, or restrict the circumstances in which they may do so.

## 67 Right of audience for solicitors in certain Crown Court centres

—For section 83 of the Supreme Court Act 1981 (right of audience for solicitors) there shall be substituted the following section—

### “83 Right of audience for solicitors in certain Crown Court centres

- (1) The Lord Chancellor may at any time direct, as respects one or more specified places where the Crown Court sits, that solicitors, or such category of solicitors as may be specified in the direction, may have rights of audience in the Crown Court.
- (2) Any such direction may be limited to apply only in relation to proceedings of a description specified in the direction.
- (3) In considering whether to exercise his powers under this section the Lord Chancellor shall have regard, in particular, to the need to secure the availability of persons with rights of audience in the court or proceedings in question.
- (4) Any direction under this section may be revoked by direction of the Lord Chancellor.
- (5) Any direction under this section may be subject to such conditions and restrictions as appear to the Lord Chancellor to be necessary or expedient.

(6) Any exercise by the Lord Chancellor of his power to give a direction under this section shall be with the concurrence of the Lord Chief Justice, the Master of the Rolls, the President of the Family Division and the Vice-Chancellor.”

## **68 Preparation of documents etc. by registered patent agents and trade mark agents**

(1) Section 22 of the Solicitors Act 1974 (unqualified person not to prepare certain instruments) shall be amended as follows.

(2) In subsection (2) (persons exempt from subsection (1)), the following paragraphs shall be inserted after paragraph (a)—

“(aa) a registered trade mark agent drawing or preparing any instrument relating to any design, trade mark or service mark;

(ab) a registered patent agent drawing or preparing any instrument relating to any invention, design, technical information, trade mark or service mark.”

(3) The following subsection shall be inserted after subsection (3)—

“(3A) In subsection (2)—

“registered trade mark agent” has the same meaning as in section 282(1) of the Copyright, Designs and Patents Act 1988; and

“registered patent agent” has the same meaning as in section 275(1) of that Act.”

## **69 Exemption from liability for damages etc**

(1) Neither the Lord Chancellor nor any of the designated judges shall be liable in damages for anything done or omitted in the discharge or purported discharge of any of their functions under this Part.

(2) For the purposes of the law of defamation, the publication by the Lord Chancellor, a designated judge or the Director of any advice or reasons given by or to him in the exercise of functions under this Part shall be absolutely privileged.

### *Offences*

## **70 Offences**

(1) If any person does any act in the purported exercise of a right of audience, or right to conduct litigation, in relation to any proceedings or contemplated proceedings when he is not entitled to exercise that right he shall be guilty of an offence.

(2) If any person does any act in the purported exercise of any right granted to authorised practitioners by virtue of this Act when he is not an authorised practitioner he shall be guilty of an offence.

(3) If any person—

(a) wilfully pretends—

(i) to be entitled to exercise any right of audience in relation to any proceedings, or contemplated proceedings; or

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

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- (ii) to be entitled to exercise any right to conduct litigation in relation to any proceedings, or contemplated proceedings, when he is not so entitled;
  - (b) wilfully pretends to be an authorised practitioner when he is not; or
  - (c) with the intention of implying falsely that he is so entitled, or is such a practitioner, takes or uses any name, title or description,he shall be guilty of an offence.
- (4) A person guilty of an offence under subsection (1) or (2) shall be liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both; or
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.
- (5) A person guilty of an offence under subsection (3) shall be liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.
- (6) A person guilty of an offence under this section, by virtue of subsection (1), shall also be guilty of contempt of the court concerned and may be punished accordingly.
- (7) Subsection (8) applies where an offence under this section is committed by a body corporate.
- (8) If the offence is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of—
  - (a) any director, secretary or other similar officer of the body corporate; or
  - (b) any person who was purporting to act in any such capacity,he (as well as the body corporate) shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.