



# Administration of Justice Act 1985

## 1985 CHAPTER 61

An Act to make further provision with respect to the administration of justice and matters connected therewith; to amend the Solicitors Act 1974; to regulate the provision of solicitors' services in the case of incorporated practices; to regulate the provision of conveyancing services by persons practising as licensed conveyancers; to make further provision with respect to complaints relating to the provision of legal aid services; to amend the law relating to time limits for actions for libel and slander; and to make further provision with respect to arbitrations and proceedings in connection with European patents.

[30th October 1985]

<sup>X1</sup>Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### Editorial Information

**X1** The text of ss. 1–10, 60–62, 65, 67–69, Schs. 1, 2, 7 paras. 4–6, Sch. 8 Pt. III, Sch. 9 paras. 1–7, 17 was taken from S.I.F. Group 76:1 (Lawyers and Notaries), ss. 11–39, 66, 68, 69, Schs. 3–6 from S.I.F. Group 98:1 (Property, England and Wales), ss. 40–46, 67–69, Sch. 7 paras. 1–3, Sch. 8 Pt. III, Sch. 9 paras. 8, 9 from S.I.F. Group 77:1 (Legal Aid), ss. 47–50, 51(2), 52, 53, 56–59, 67(2), 68, 69, Sch. 8, Sch. 9 paras. 10, 11, 14, 15 from S.I.F. Group 37 (Courts: Supreme Court, England and Wales), ss. 51(1), 52–56, 67–69, Sch. 7 paras. 7, 8, Sch. 8 Pts. II, III, Sch. 9 paras. 11–13 from S.I.F. Group 34 (County Courts: England and Wales), ss. 63, 68, 69, Sch. 9 para. 16 from S.I.F. Group 122:3 (Tort and Delict) and ss. 64, 68, 69 from S.I.F. Group 47 (Evidence); provisions omitted from S.I.F. have been dealt with as referred to in other commentary.

### Modifications etc. (not altering text)

**C1** By [Criminal Justice Act 1991 \(c.53, SIF 39:1\)](#), s. 101(1), [Sch. 12 para. 23](#); [S.I. 1991/2208](#), art. 2(1), [Sch.1](#) it is provided (14.10.1991) that in relation to any time before the commencement of s.70 of that 1991 Act (which came into force on 1.10.1992 by [S.I. 1992/333](#), art. 2(2), [Sch. 2](#)) references in any enactment amended by that 1991 Act, to youth courts shall be construed as references to juvenile courts.

**Status:** Point in time view as at 07/03/2008. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** There are outstanding changes not yet made by the legislation.gov.uk editorial team to Administration of Justice Act 1985. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

**C2** Act: functions transferred (19.8.2003) by [The Secretary of State for Constitutional Affairs Order 2003 \(S.I. 2003/1887\)](#), **arts. 1(2), 4** {Sch 1}

**PART I**

SOLICITORS

*Solicitors’ discipline*

**1** ..... <sup>F1</sup>

**Textual Amendments**  
**F1** S. 1 repealed (*I. 4. 1991*) by [Courts and Legal Services Act 1990 \(c. 41, SIF 76:1\)](#), s. 125(7), **Sch. 20**; S.I. 1991/608, art. 2, **Sch.**

**2 Examination of solicitors’ files in connection with complaints.**

After the section 44A inserted in the <sup>M1</sup>Solicitors Act 1974 by the preceding section there shall be inserted—

*“ Examination of files*

**44B Power of Society to examine files in connection with complaints.**

- (1) Where the Council are satisfied that it is necessary to do so for the purpose of investigating any complaint made to the Society—
  - (a) alleging professional misconduct by a solicitor; or
  - (b) relating to the quality of any professional services provided by a solicitor,

the Society may give notice to the solicitor or his firm requiring the production or delivery to any person appointed by the Society, at a time and place to be fixed by the Society, of all documents in the possession of the solicitor or his firm in connection with the matters to which the complaint relates (whether or not they relate also to other matters).

- (2) Sub-paragraphs (2) to (12) of paragraph 9 of Schedule 1, together with paragraphs 12 to 16 of that Schedule, shall apply in relation to the powers conferred by subsection (1) as they apply in relation to the powers conferred by sub-paragraph (1) of paragraph 9, and accordingly in those provisions—
  - (a) any reference to a person appointed, or to a requirement, under that sub-paragraph shall be construed as including a reference to a person appointed, or to a requirement, under subsection (1); and
  - (b) any reference to any such documents as are mentioned in that sub-paragraph shall be construed as including a reference to any such documents as are mentioned in subsection (1).”.

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### Marginal Citations

M1 1974 c. 47.

3

F2

### Textual Amendments

F2 S. 3 wholly repealed (the repeal being in force on 1. 1. 1991 as regards s. 3(1) and 1. 4. 1991 as regards s. 3(2)) by [Courts and Legal Services Act 1990 \(c. 41, SIF 76:1\)](#), s.125(7), [Sch.20.](#); [S.I. 1990/2484](#), 1991/608, art. 2, Sch.

## *Practising certificates*

### 4 Issue of practising certificates subject to conditions.

(1) Section 12 of the <sup>M2</sup>Solicitors Act 1974 (discretion of Law Society with respect to issue of practising certificates in special cases) shall be amended as follows.

(2) In subsection (1)—

- (a) in paragraph (e), for “affecting” there shall be substituted “relating to”; and
- (b) after that paragraph there shall be inserted—

“(ee) when, having been required by section 34(1) to deliver an accountant’s report to the Society, he has not delivered that report within the period allowed by section 34(2); or”.

(3) In subsection (2)—

- (a) after “(e),” there shall be inserted “(ee),”; and
- (b) after “subsection (1)” there shall be inserted “then, except in the case of any circumstances of whose existence the Society is unaware at the time the certificate is issued,”.

(4) After subsection (4) there shall be inserted—

“(4A) Without prejudice to the generality of subsection (4)(b)—

- (a) conditions may be imposed under that provision for requiring the applicant to take any specified steps that will, in the opinion of the Society, be conducive to his carrying on an efficient practice as a solicitor; and
- (b) conditions may be so imposed (whether for the purpose mentioned in paragraph (a) or otherwise) notwithstanding that they may result in expenditure being incurred by the applicant.”.

### Marginal Citations

M2 1974 c. 47.

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## 5 Conditions imposed on current certificates.

After section 13 of the <sup>M3</sup>Solicitors Act 1974 there shall be inserted—

### “13A Imposition of conditions while practising certificates are in force.

- (1) Subject to the provisions of this section, the Society may in the case of any solicitor direct that his practising certificate for the time being in force (his “current certificate”) shall have effect subject to such conditions as the Society may think fit.
- (2) The power to give a direction under this section in the case of any solicitor shall be exercisable by the Society at any time during the period for which his current certificate is in force if—
  - (a) in the event of an application for a practising certificate being made by him at that time, section 12 would have effect in relation to him by reason of any such circumstances as are mentioned in paragraph (d), (e), (ee), (k) or (l) of subsection (1) of that section; or
  - (b) a receiving order in bankruptcy is in force against him; or
  - (c) he has entered into a composition with his creditors or a deed of arrangement for the benefit of his creditors.
- (3) Subject to subsection (4), the conditions specified in a direction under this section shall have effect as from the time when the solicitor concerned is notified of the Society’s decision to give the direction.
- (4) The Society may, if it thinks fit, provide in a direction under this section that the conditions specified in the direction shall not have effect pending the hearing and determination of any appeal under subsection (6).
- (5) Where there is a pending against any judgment or order an appeal by a solicitor which, if successful, would result in subsection (2) no longer being applicable to him, the Society shall not give a direction under this section in his case so long as the appeal is pending, unless in the opinion of the Society the proceedings on that appeal have been unduly protracted by him or are unlikely to be successful.
- (6) A solicitor in whose case a direction is given under this section may appeal to the Master of the Rolls against the decision of the Society within one month of being notified of it.
- (7) On an appeal under subsection (6), the Master of the Rolls may—
  - (a) affirm the decision of the Society; or
  - (b) direct that the appellant’s current certificate shall have effect subject to such conditions as the Master of the Rolls thinks fit; or
  - (c) by order revoke the direction; or
  - (d) make such other order as he thinks fit.
- (8) Subsection (4A) of section 12 shall apply for the purposes of subsection (1) of this section as it applies for the purposes of subsection (4)(b) of that section.”.

#### Marginal Citations

M3 1974 c. 47.

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### *Restrictions applying to unqualified persons*

## **6 Preparation of conveyancing documents by unqualified persons.**

(1) Section 22 of the <sup>M4</sup>Solicitors Act 1974 (restriction on person preparing certain instruments when not qualified to act as a solicitor) shall be amended as follows.

(2) In subsection (1), for “subsection (2)” there shall be substituted “subsections (2) and (2A)”.

(3) After subsection (2) there shall be inserted—

“(2A) Subsection (1) also does not apply to any act done by a person at the direction and under the supervision of another person if—

- (a) that other person was at the time his employer, a partner of his employer or a fellow employee; and
- (b) 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) In subsection (3)—

- (a) after “instrument” there shall be inserted “includes a contract for the sale or other disposition of land (except a contract to grant such a lease as is referred to in section 45(2) of the Law of Property Act 1925 (short leases)), but”; and
- (b) at the end of paragraph (b) there shall be inserted “other than a contract that is included by virtue of the preceding provisions of this subsection;”.

(5) After that subsection there shall be inserted—

“(4) A local weights and measures authority may institute proceedings for an offence under this section.”.

### **Marginal Citations**

**M4** 1974 c. 47.

## **7 Preparation of papers for probate etc. by unqualified persons.**

For section 23 of the <sup>M5</sup>Solicitors Act 1974 there shall be substituted—

### **“23 Unqualified person not to prepare papers for probate etc.**

(1) Subject to subsections (2) and (3), any unqualified person who, directly or indirectly, draws or prepares any papers on which to found or oppose—

- (a) a grant of probate, or
- (b) a grant of letters of administration,

shall, unless he proves that the act was not done for or in expectation of any fee, gain or reward, be guilty of an offence and liable on summary conviction to a fine not exceeding the first level on the standard scale.

(2) Subsection (1) does not apply to a barrister or duly certificated notary public.

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- (3) Subsection (1) also does not apply to any act done by a person at the direction and under the supervision of another person if—
- (a) that other person was at the time his employer, a partner of his employer or a fellow employee; and
  - (b) 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.”.

#### Marginal Citations

M5 1974 c. 47.

#### *Other amendments*

### 8 Other amendments of Solicitors Act 1974.

The Solicitors Act 1974 shall have effect subject to the further amendments specified in Schedule 1.

#### *Incorporated practices*

### 9 Incorporated practices.

- (1) The Council may make rules—
- (a) making provision as to the management and control by solicitors [<sup>F3</sup>or solicitors and one or more registered foreign lawyers] of bodies corporate carrying on businesses consisting of the provision of professional services such as are provided by individuals practising as solicitors [<sup>F4</sup>or by multi-national partnerships];
  - (b) prescribing the circumstances in which such bodies may be recognised by the Council as being suitable bodies to undertake the provision of any such services;
  - (c) prescribing the conditions which (subject to any exceptions provided by the rules) must at all times be satisfied by bodies corporate so recognised if they are to remain so recognised; and
  - (d) regulating the conduct of the affairs of such bodies.
- (2) Rules made by the Council may also make provision—
- (a) for the manner and form in which applications for recognition under this section are to be made, and for the payment of fees in connection with such applications;
  - (b) for regulating the names that may be used by recognised bodies;
  - (c) as to the period for which any recognition granted under this section shall (subject to the provisions of this Part) remain in force;
  - (d) for the revocation of any such recognition on the grounds that it was granted as a result of any error or fraud;
  - (e) for the keeping by the Society of a list containing the names and places of business of all bodies corporate which are for the time being recognised under

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- this section, and for the information contained in any such list to be available for inspection;
- (f) for rules made under any provision of the 1974 Act to have effect in relation to recognised bodies with such additions, omissions or other modifications as appear to the Council to be necessary or expedient;
- (g) .....<sup>F5</sup>
- (h) for the manner of service on recognised bodies of documents authorised or required to be served on such bodies under or by virtue of this Part.
- (3) Notwithstanding section 24(2) of the 1974 Act (application of penal provisions to bodies corporate), sections 20, 22(1) and 23(1) of that Act (prohibition on unqualified person acting as solicitor, etc.) shall not apply to a recognised body; and nothing in section 24(1) of that Act shall apply in relation to such a body.
- (4) Section 22(1), or (as the case may be) section 23(1), of that Act shall not apply to any act done by an officer or employee of a recognised body if—
- (a) it was done by him at the direction and under the supervision of another person who was at the time an officer or employee of the body; and
- (b) it could have been done by that other person for or in expectation of any fee, gain or reward without committing an offence under the said section 22 or (as the case may be) under the said section 23.
- (5) A certificate signed by an officer of the Society and stating that any body corporate is or is not, or was or was not at any time, a recognised body shall, unless the contrary is proved, be evidence of the facts stated in the certificate; and a certificate purporting to be so signed shall be taken to have been so signed unless the contrary is proved.
- (6) Schedule 2 (which makes provision with respect to the application of provisions of the 1974 Act to recognised bodies and with respect to other matters relating to such bodies) shall have effect.
- (7) Subject to the provisions of that Schedule, the [<sup>F6</sup>Secretary of State] may by order made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament provide for any enactment or instrument passed or made before the commencement of this section and having effect in relation to solicitors to have effect in relation to recognised bodies with such additions, omissions or other modifications as appear to the [<sup>F6</sup>Secretary of State] to be necessary or expedient.
- (8) In this section—
- “the 1974 Act” means the <sup>M6</sup>Solicitors Act 1974;
- “the Council” and “the Society” have the meaning given by section 87(1) of the 1974 Act; <sup>F7</sup> . . .
- [<sup>F8</sup>“multi-national partnership” means a partnership whose members consist of one or more registered foreign lawyers and one or more solicitors;]
- [<sup>F9</sup>“officer”, in relation to a limited liability partnership, means a member of the limited liability partnership;]
- “recognised body” means a body corporate for the time being recognised under this section.
- [<sup>F10</sup>“registered European lawyer” means a person who is registered with the Law Society under regulation 17 of the European Communities (Lawyers’s Practice) Regulations 2000.]

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- (9) Any rules made by the Council under this section shall be made with the concurrence of the Master of the Rolls.

#### Textual Amendments

- F3** Words in s. 9(1)(a) inserted (14.10.1991) by Courts and Legal Services Act 1990 (c. 41, SIF 37), s. 125(3), **Sch. 18 para. 54(2)(a)**; S.I. 1991/1883, art. 3, **Sch.**
- F4** Words at end of s. 9(1)(a) inserted (14.10.1991) by Courts and Legal Services Act 1990 (c. 41, SIF 37), s. 125(3), **Sch. 18 para. 54(2)(b)**; S.I. 1991/1883, art. 3, **Sch.**
- F5** S. 9(2)(g) repealed (1.1.2000) by 1999 c. 22, s. 106, **Sch. 15 Pt. II** (with Sch. 14 para. 7(2), 36(9)); S.I. 1999/3344, art. 2(d), **Sch. 1**
- F6** Words in s. 9 substituted (19.8.2003) by The Secretary of State for Constitutional Affairs Order 2003 (S.I. 2003/1887), arts. 1(2), 9, **Sch. 2 para. 6(a)**
- F7** Word in s. 9(8) repealed (1.6.1992) by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), s. 125(7), **Sch. 20**; S.I. 1992/1221, art. 2, **Sch.**
- F8** Definitions in s. 9(8) inserted (14.10.1991) by Courts and Legal Services Act 1990 (c. 41, SIF 37), s. 125(3), **Sch. 18 para. 54(3)**; S.I. 1991/1883, art. 3, **Sch.**
- F9** Definition of “officer” in s. 9(8) inserted (6.4.2001) by S.I. 2001/1090, reg. 9, **Sch. 5 para. 12**
- F10** S. 9(8): definition “registered European lawyer” substituted (22.5.2000) for definition “registered foreign lawyer” by The European Communities (Lawyers Practice) Regulations 2000 (SI 2000/1119), reg 37(3), {Sch. 4 para. 15(1)(3)(b)} (as amended (1.7.2009) by S.I. 2009/1587, arts. 1(1), **3(4)**)

#### Modifications etc. (not altering text)

- C3** S. 9 definition of “recognised body” applied (14.10.1991) by Courts and Legal Services Act 1990 (c. 41, SIF 37), s. **89(9)**; S.I. 1991/1883, art. 3, **Sch.**  
S. 9 extended (22.5.2000) by S.I. 2000/1119, reg. 37(3), Sch. 4 para. 1(3)(b) (as amended (1.7.2009) by S.I. 2009/1587, arts. 1(1), **3(12)**)

#### Commencement Information

- II** S. 9 wholly in force at 1.1.1992 see s. 69(2) and S.I. 1991/2683

#### Marginal Citations

- M6** 1974 c. 47.

VALID FROM 31/03/2009

#### [<sup>F11</sup>9A] Legal services bodies

- (1) For the purposes of section 9, a “legal services body” means a body (corporate or unincorporate) in respect of which —
- (a) the management and control condition, and
  - (b) the relevant lawyer condition,
- are satisfied.
- (2) The management and control condition is satisfied if—
- (a) at least 75% of the body's managers are legally qualified,
  - (b) the proportion of shares in the body held by persons who are legally qualified is at least 75%,



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- (c) the proportion of voting rights in the body which persons who are legally qualified are entitled to exercise, or control the exercise of, is at least 75%,
  - (d) all the persons with an interest in the body who are not legally qualified are managers of the body, and
  - (e) all the managers of the body who are not legally qualified are individuals approved by the Society as suitable to be managers of a recognised body.
- (3) The Society may by rules under section 9 provide that, in relation to specified kinds of bodies, subsection (2) applies as if the references to 75% were to such greater percentage as may be specified (and different percentages may be specified for different kinds of bodies).
- (4) The relevant lawyer condition is satisfied in relation to a body if at least one manager of the body is—
- (a) a solicitor,
  - (b) a registered European lawyer, or
  - (c) a qualifying body.
- (5) For that purpose a qualifying body is a body in respect of which—
- (a) the management and control condition is satisfied
  - (b) the relevant lawyer condition is satisfied by virtue of subsection (4)(a) or (b), and
  - (c) the services condition is satisfied.
- (6) For the purposes of this section the following are legally qualified—
- (a) an authorised person who is an individual;
  - (b) a registered foreign lawyer (within the meaning of section 89 of the Courts and Legal Services Act 1990 (c. 41));
  - (c) a person entitled to pursue professional activities under a professional title to which the Directive applies in a state to which the Directive applies (other than the title of barrister or solicitor in England and Wales);
  - (d) an authorised person which is a body in respect of which—
    - (i) the services condition is satisfied, and
    - (ii) the management and control condition would be satisfied if the references in subsection (2) to persons who are legally qualified were to persons who are legally qualified by virtue of paragraphs (a) to (c);
  - (e) a body which provides professional services such as are provided by individuals who are authorised persons or lawyers of other jurisdictions, and in respect of which the management and control condition would be satisfied if the references in subsection (2) to persons who are legally qualified were to persons who are legally qualified by virtue of paragraphs (a) to (c).
  - (f) a legal partnership which—
    - (i) was in existence immediately before the commencement of this paragraph,
    - (ii) since that time has continued to be a partnership of the kind mentioned in rule 12.01(1)(b), 12.02(1)(b) or 12.04(1)(c)(i) of the pre-commencement conduct rules (framework of practice), and
    - (iii) has not, since that time, had a body corporate (other than a body within paragraph (g)) as a member;
  - (g) a body corporate which—

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- (i) was recognised under section 9 immediately before the commencement of this paragraph, and
  - (ii) has since that time continued to satisfy the requirements of rule 14.03(1) and 14.04(1) to (3) or the requirements of rule 14.05(1) to (3) of the pre-commencement conduct rules (restrictions on directors, owners etc. of incorporated practices);
- (h) a body which—
- (i) is an authorised person and satisfies the services condition, or
  - (ii) provides professional services such as are provided by individuals who are authorised persons or lawyers of other jurisdictions, and which satisfies the requirements of rules under subsection (6C).
- (6A) For the purposes of subsection (6)(f), a partnership is to be treated as the same partnership despite a change in membership, if any person who was a member before the change remains a member.
- (6B) For the purposes of subsection (6)(f) and (g), the references in the pre-commencement conduct rules to a recognised body are to be construed as references to a body which was recognised under section 9 immediately before the commencement of subsection (6)(f) and (g).
- (6C) The Society must make rules for the purposes of paragraph (h) of subsection (6) prescribing the requirements relating to management and control which must be satisfied by or in relation to a body for it to fall within that paragraph.
- (7) For the purposes of this section, the services condition is satisfied in relation to a body if the body provides only services which may be provided by a recognised body (having regard to rules under section 9(1A) and (1C)).
- (8) For the purposes of this section—
- “authorised person” has the same meaning as in section 9;
  - “the Directive” means Directive [98/5/EC](#) of the European Parliament and the Council, to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained;
  - “legal partnership” means a partnership in which a solicitor, a registered European lawyer or a recognised body is permitted to practise by virtue of rules made under section 31 of the Solicitors Act 1974 (c. 47), as those rules had effect immediately before the commencement of subsection (6)(f);
  - “manager”, in relation to a body, has the meaning given by section 9;
  - “pre-commencement conduct rules” means rules under Part 2 of the Solicitors Act 1974 or section 9 of this Act, known as the Solicitors' Code of Conduct 2007, as those rules had effect immediately before the commencement of subsection (6)(f) and (g);
  - “recognised body” has the same meaning as in section 9(subject to subsection (6B) above);
  - “registered European lawyer” has the same meaning as in section 9;
  - “shares” has the same meaning as for the purposes of Part 5 of the Legal Services Act 2007 (see sections 72 and 109 of that Act);
  - “the Society” has the meaning given by section 87(1) of the Solicitors Act 1974;
  - “specified” means specified in rules made by the Society;

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and a person has an interest in a body if the person has an interest in the body for the purposes of section 9.]

#### Textual Amendments

**F11** S. 9A inserted (31.3.2009) by Legal Services Act 2007 (c. 29), ss. 177, 211, **Sch. 16 para. 82** (with ss. 29, 192, 193); S.I. 2009/503, **art. 2(b)(ii)** (subject to art. 4) (which amending Sch. 16 para. 82 was amended (27.11.2008) by The Legal Services Act 2007 (Functions of a Designated Regulator) Order 2008 (S.I. 2008/3074), arts. 1, 2)

#### Modifications etc. (not altering text)

**C4** S. 9A modified (temp.) (31.3.2009) by Legal Services Act 2007 (c. 29), ss. 209, 211, **Sch. 22 para. 15** (with ss. 29, 192, 193); S.I. 2009/503, **art. 2(e)** (subject to art. 4)

### 10 Penalty for pretending to be a body recognised under s. 9.

- (1) A body corporate shall not describe itself or hold itself out as a body corporate for the time being recognised under section 9 unless it is so recognised.
- (2) Any body corporate which contravenes subsection (1) shall be guilty of an offence and liable on summary conviction to a fine not exceeding the fourth level on the standard scale.
- (3) Where an offence under this section which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person 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.
- (4) .....

F12

#### Textual Amendments

**F12** S. 10(4) repealed (5.11.1993) by 1993 c. 50, s. 1(1), **Sch. 1 Pt.XIV**.

#### Commencement Information

**I2** S. 10 wholly in force at 1.1.1992 see s. 69(2) and S.I. 1991/2683

## PART II

### LICENSED CONVEYANCING

#### Modifications etc. (not altering text)

**C5** Pt. 2: power to amend conferred (1.4.1991 for certain purposes, otherwise 7.12.2004) by Courts and Legal Services Act 1990 (c. 41), ss. 53(8)(a), 124 (with s. 59(1)); S.I. 1991/608, **art. 2**, Sch; S.I. 2004/2950, **art. 2(a)**

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- C6** Pt. 2: power to amend conferred (1.4.1991 for certain purposes, otherwise 7.12.2004) by [Courts and Legal Services Act 1990 \(c. 41\)](#), [ss. 53\(9\)](#), 124 (with [s. 59\(1\)](#)); [S.I. 1991/608](#), [art. 2](#), Sch; [S.I. 2004/2950](#), [art. 2\(a\)](#)

### *Preliminary*

## **11 Provision of conveyancing services by licensed conveyancers.**

- (1) The provisions of this Part shall have effect for the purpose of regulating the provision of conveyancing services by persons who hold licences in force under this Part.
- (2) In this Part—
  - “licence” means a licence to practise as a licensed conveyancer;
  - “licensed conveyancer” means a person who holds a licence in force under this Part;
 and references in this Part to practising as a licensed conveyancer are references to providing, as the holder of such a licence, conveyancing services in accordance with the licence.
- (3) References in this Part to conveyancing services are references to the preparation of transfers, conveyances, contracts and other documents in connection with, and other services ancillary to, the disposition or acquisition of estates or interests in land; and for the purposes of this subsection—
  - (a) “disposition”—
    - (i) does not include a testamentary disposition or any disposition in the case of such a lease as is referred to in section 54(2) of the <sup>M7</sup>Law of Property Act 1925 (short leases); but
    - (ii) subject to that, includes in the case of leases both their grant and their assignment; and
  - (b) “acquisition” has a corresponding meaning.
- (4) Section 22(1) of the <sup>M8</sup>Solicitors Act 1974 (restriction on person preparing certain instruments when not qualified to act as a solicitor) shall not apply to any act done by a licensed conveyancer in the course of the provision of any conveyancing services if he is not precluded from providing those services as a licensed conveyancer by any conditions imposed as mentioned in section 16(3)(a).

#### **Marginal Citations**

**M7** 1925 c. 20.

**M8** 1974 c. 47.

### *The Council for Licensed Conveyancers*

## **12 Establishment of the Council.**

- (1) For the purposes of this Part there shall be a body to be known as the Council for Licensed Conveyancers.

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- (2) It shall be the general duty of the Council to ensure that the standards of competence and professional conduct among persons who practise as licensed conveyancers are sufficient to secure adequate protection for consumers, and that the conveyancing services provided by such persons are provided both economically and efficiently.
- (3) Schedule 3 shall have effect with respect to the Council.

*Training and licensing of persons seeking to practise as licensed conveyancers*

**13 Training rules.**

- (1) The Council shall make rules relating to the education and training of those seeking to practise as licensed conveyancers, and those rules shall, in particular, include provisions prescribing—
  - (a) the examinations to be taken by such persons; and
  - (b) requirements as to practical training and experience.
- (2) Rules made by the Council under this section may—
  - (a) prescribe minimum standards of general education that must have been attained by persons who seek to practise as licensed conveyancers;
  - (b) provide for the recognition by the Council of courses of study provided by educational institutions or other bodies as being adequate for the purpose of preparing candidates for any examinations held in pursuance of subsection (1)(a);
  - (c) prescribe any education or training to be undergone by persons who are licensed conveyancers, and, in connection therewith, provide for the approval by the Council of courses of study provided by educational institutions or other bodies;
  - (d) include provision for the charging of fees by the Council;
  - (e) make different provision in relation to different classes of persons.
- (3) Rules under subsection (1)(b) may provide—
  - (a) for the manner in which a person may satisfy the Council that he has complied with any requirement of the rules as to practical experience;
  - (b) for attendance by a person at a training course approved by the Council for the purposes of the rules to count as practical training for those purposes.
- (4) Without prejudice to the generality of subsection (2)(e), rules under this section may provide for persons who—
  - (a) hold such qualifications as may be specified in the rules; or
  - (b) have acquired such experience in relation to the provision of conveyancing services as may be so specified; or
  - (c) satisfy such other conditions as may be so specified, to be exempt from any of the requirements of the rules.
- (5) The Council may—
  - (a) appoint, or approve the appointment of, persons as examiners or moderators in connection with examinations held in pursuance of subsection (1)(a); and
  - (b) remunerate any person appointed by it under paragraph (a) of this subsection.

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## **14 Applications for licences.**

- (1) An application for a licence under this Part shall be made to the Council in such manner, and shall be accompanied by such fee, as may be prescribed by rules made by the Council under this section.
- (2) Any such rules—
  - (a) may prescribe the forms to be used in connection with applications for licences under this Part;
  - (b) may provide for applications of any description specified in the rules to be exempt from any of the requirements of the rules.

## **15 Issue of licences by Council.**

- (1) If, on an application for a licence under this Part made in accordance with section 14, the Council is satisfied—
  - (a) that the applicant has complied with such rules under section 13 (if any) as are applicable in his case; and
  - (b) that he has made adequate arrangements for the purpose of complying with any rules made under or for the purposes of section 21(1); and
  - (c) that he is a fit and proper person to practise as a licensed conveyancer or, in the case of an applicant in relation to whom section 16 has effect, that he is a fit and proper person to practise as such a conveyancer subject to his complying with any particular conditions that may be imposed under that section,the Council shall issue the applicant either with a licence free of conditions or with a licence subject to such conditions as aforesaid, as the case may require.
- (2) If the Council is for any reason not so satisfied it shall refuse the application, and shall notify the applicant of the refusal of the application and of the grounds on which it has been refused.
- (3) Where—
  - (a) an application for a licence has been made in accordance with section 14; and
  - (b) the Council has within the period of 21 days beginning with the date when the application was received by the Council neither issued a licence in pursuance of the application nor refused the application under subsection (2),then, for the purposes of this Part, the application shall be deemed to have been so refused by the Council, and the applicant shall be deemed to have been notified of the refusal at the end of the said period.
- (4) Subject to the provisions of this Part, the period for which a licence shall be in force under this Part shall be the period of twelve months beginning with the date of its issue.
- (5) Where—
  - (a) an application for a licence is made in accordance with section 14 by a person who, at the date of the application, already holds a licence under this Part; and
  - (b) no new licence is issued to him in pursuance of the application before the time when his existing licence would, apart from this subsection, expire in accordance with subsection (4),

his existing licence shall not expire at that time but shall continue in force until a new licence is issued to him in pursuance of the application or, if the application is refused by the Council—

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- (i) until the end of the period within which an appeal may be brought against the refusal under section 29(1)(a); or
  - (ii) if such an appeal is brought, until the appeal is determined or abandoned.
- (6) Where an applicant for a licence under this Part has held such a licence at any time within the period of twelve months ending with the date of his application, any licence granted to him in pursuance of the application shall, unless the Council directs otherwise, be deemed to have been issued on the day following the date when his previous licence expired in accordance with subsection (4) (or would have so expired but for subsection (5)) and accordingly to have been held by him as from that day.
- [<sup>F13</sup>(7) A licence issued under this Part may be endorsed by the Council as—
- (a) a full licence, if the Council is satisfied that the person to whom it is issued has complied, or will comply, with the requirements made under this Part with respect to professional indemnity and compensation; or
  - (b) as a limited licence, if the Council is not so satisfied.
- (8) Rules made under section 21 may make provision for the making, or removal, of endorsements while a licence is in force and for the recording of any such endorsement, or of its removal, in the register maintained under section 19.]

#### Textual Amendments

**F13** S. 15(7)(8) added (1. 4. 1991 for certain purposes, otherwise 7.12.2004) by [Courts and Legal Services Act 1990 \(c. 41, SIF 76:1\)](#), s. 53, Sch. 8 para. 23 (with s. 59(1)); S.I.1991/608, art. 2, Sch; S.I. 2004/2950, art. 2(a)

#### Modifications etc. (not altering text)

**C7** S. 15(3)-(6) applied (with modifications) (1.4.1991 for certain purposes, otherwise 7.12.2004) by [Courts and Legal Services Act 1990 \(c. 41\)](#), ss. 53, 124, [Sch. 8 para. 4\(3\)](#) (with s. 59(1)); S.I. 1991/608, art. 2, Sch; S.I. 2004/2950, art. 2(a)

## 16 Conditional licences.

- (1) Subject to subsection (4), this section has effect in any case where a person applies for a licence under this Part—
- (a) for the first time;
  - (b) when each licence previously held by him under this Part has been subject to conditions under this section;
  - (c) when, on the first day of the period to which the licence would (if granted) relate, a period of twelve months or more will have elapsed since he held a licence in force under this Part;
  - (d) after the Discipline and Appeals Committee established under section 25 have made any order in his case under section 26;
  - (e) after he has been invited by the Council to give an explanation in respect of any matter relating to his conduct and has failed to give an explanation in respect of that matter which the Council regards as satisfactory, and has been notified in writing by the Council that he has so failed;
  - (f) while he is an undischarged bankrupt . . . <sup>F14</sup>;

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- (g) after having been adjudged bankrupt [<sup>F15</sup>and discharged] or after having entered into a composition with his creditors or a deed of arrangement for the benefit of his creditors;
  - (h) while he is a person as to whom powers have been exercised under section 98 of the <sup>M9</sup>Mental Health Act 1983 (judge's powers in cases of emergency);
  - [<sup>F16</sup>(i) after having been committed to prison in civil proceedings;
  - (ia) after having been convicted of an offence involving dishonesty or deception or [<sup>F17</sup>an indictable offence]; or]
  - (j) after having had given against him any judgment which involves the payment of money, not being a judgment—
    - (i) limited to the payment of costs; or
    - (ii) as to whose whole effect upon him he is entitled to indemnity or relief from some other person; or
    - (iii) evidence of whose satisfaction has been produced to the Council.
- (2) In any case where this section has effect the Council may, on issuing a licence to the applicant under section 15, issue it subject to such conditions as the Council thinks fit; and the Council's decision in any such case to impose any particular conditions under this subsection may be made by reference to such criteria of general application as may have been determined by the Council.
- (3) Without prejudice to the generality of subsection (2), conditions may be imposed under that subsection—
- (a) for restricting the kinds of conveyancing services that may be provided by the applicant as a licensed conveyancer; or
  - (b) for requiring the applicant to take any specified steps that will, in the opinion of the Council, be conducive to his carrying on an efficient practice as a licensed conveyancer;
- and conditions may be imposed under that subsection (whether for the purpose mentioned in paragraph (b) or otherwise) notwithstanding that they may result in expenditure being incurred by the applicant.
- (4) Where a licence free of conditions is issued by the Council under section 15 to an applicant in relation to whom this section has effect by reason of any such circumstances as are mentioned in paragraph (d), (e), (f), (g), (h), (i) or (j) of subsection (1), then, except in the case of any circumstances of whose existence the Council is unaware at the time the licence is issued, this section shall not thereafter have effect in relation to that person by reason of those circumstances.
- (5) Where the Council decides to issue an applicant with a licence subject to conditions, it may, if it thinks fit, direct that the conditions shall not have effect—
- (a) pending the hearing and determination of any appeal brought by the applicant under section 29(1)(b); or
  - (b) if this section has effect in relation to the applicant by reason only of any such circumstances as are mentioned in paragraph (f), (i) or (j) of subsection (1) and an appeal has been made to the appropriate court against the order or judgment in question, pending the hearing and determination of that appeal.

#### Textual Amendments

**F14** Words repealed by [Insolvency Act 1985 \(c. 65, SIF 66\)](#), s. 235(3), [Sch. 10 Pt. III](#) (with saving in [Insolvency Act 1986 \(c. 45, SIF 66\)](#), s. 437, [Sch. 11 para. 10](#))



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- F15** Words substituted by Insolvency Act 1985 (c. 65, SIF 66), s. 235(1), **Sch. 8 para. 40** (with saving in Insolvency Act 1986 (c. 45, SIF 66), s. 437, **Sch. 11 para. 10**)
- F16** S. 16(1)(i)(ia) substituted (1. 4. 1991 for certain purposes, otherwise 7.12.2004) for s. 16(1)(i) by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), s. 53, **Sch. 8 para.24** (with s. 59(1)); S.I.1991/608, art. 2, Sch; S.I. 2004/2950, **art. 2(a)**
- F17** Words in s. 16(1)(ia) substituted (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 111, 178, **Sch. 7 para. 44**; S.I. 2005/3495, **art. 2(m)**

**Modifications etc. (not altering text)**

- C8** S. 16(4)(5) extended (with modifications) (1.4.1991 for certain purposes, otherwise 7.12.2004) by Courts and Legal Services Act 1990 (c. 41), ss. 53, 124, **Sch. 8 para. 5(7)** (with s. 59(1)); S.I. 1991/608, **art. 2**, Sch; S.I. 2004/2950, **art. 2(a)**

**Marginal Citations**

- M9** 1983 c. 20.

VALID FROM 31/03/2009

**[<sup>F18</sup>16A Additional fee payable by certain persons when applying for licences**

- (1) This section applies where a person applies for a licence at a time when section 16 has effect in relation to him by reason of the circumstances mentioned in section 16(1)(ea).
- (2) The application must be accompanied by an additional fee of an amount prescribed by rules made by the Council for the purposes of this section.]

**Textual Amendments**

- F18** S. 16A inserted (31.3.2009) by Legal Services Act 2007 (c. 29), ss. 182, 211, **Sch. 17 para. 6** (with ss. 29, 192, 193); S.I. 2009/503, **art. 2(c)(i)**

**17 Imposition of conditions during currency of licence.**

- (1) Subject to the provisions of this section the Council may in the case of any licensed conveyancer direct that his licence shall have effect subject to such conditions as the Council thinks fit.
- (2) The power to give a direction under this section in the case of any licensed conveyancer shall be exercisable by the Council at any time during the period for which his licence is in force if—
- (a) in the event of an application for a licence being made by him at that time, section 16 would have effect in relation to him by reason of any such circumstances as are mentioned in paragraph (d), (e), (i) or (j) of subsection (1) of that section; or
- (b) .....
- (c) he has entered into a composition with his creditors or a deed of arrangement for the benefit of his creditors.

**F19**

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- (3) Subject to subsection (4), the conditions specified in a direction under this section shall have effect as from the time when the licensed conveyancer concerned is notified of the Council's decision to give the direction.
- (4) The Council may, if it thinks fit, provide in a direction given under this section in the case of any licensed conveyancer that the conditions specified in the direction shall not have effect—
- (a) pending the hearing and determination of any appeal brought by the licensed conveyancer under section 29(1)(c); or
  - (b) if an appeal has been made by the licensed conveyancer to the appropriate court against any order or judgment which, if successful, would result in subsection (2) no longer being applicable to him, pending the hearing and determination of that appeal.
- (5) Subsection (3) of section 16 shall apply for the purposes of subsection (1) of this section as it applies for the purposes of subsection (2) of that section.

#### Textual Amendments

**F19** S. 17(2)(b) repealed by *Insolvency Act 1985* (c. 65, SIF 66), s. 235(3), **Sch. 10 Pt. III** (with saving in *Insolvency Act 1986* (c. 45, SIF 66), s. 437, **Sch. 11 para. 10**)

VALID FROM 31/03/2009

#### <sup>F20</sup>17A Variation of conditions

- (1) This section applies where a licensed conveyancer's licence has effect subject to conditions.
- (2) On an application made by the licensed conveyancer, the Council may in prescribed circumstances direct—
- (a) the removal of a condition;
  - (b) the variation of a condition in the manner described in the application.
- (3) “Prescribed” means prescribed by rules made by the Council.
- (4) Section 14 (applications for licences) applies in relation to an application under this section as it applies in relation to applications for a licence under this Part.]

#### Textual Amendments

**F20** S. 17A inserted (31.3.2009) by *Legal Services Act 2007* (c. 29), ss. 182, 211, **Sch. 17 para. 8** (with ss. 29, 192, 193); S.I. 2009/503, **art. 2(c)(i)**

## 18 Suspension or termination of licences.

- (1) Where an adjudication in bankruptcy is made against a licensed conveyancer, any such adjudication shall operate immediately to suspend the licence held by that person

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under this Part; and, subject to subsection (2), the suspension of the licence shall continue until the licence expires.

- (2) The suspension of a licence by virtue of subsection (1) shall terminate if the adjudication in question is annulled and an office copy of the order annulling the adjudication is served on the Council.
- (3) A licence held by a person under this Part shall terminate if [<sup>F21</sup>he becomes a person who lacks capacity (within the meaning of the Mental Capacity Act 2005) to practise as a licensed conveyancer.]
- (4) For the purposes of this Part a licence shall be treated as not being in force at any time while it is suspended by virtue of any provision of this Part.

#### Textual Amendments

**F21** Words in s. 18(3) substituted (1.10.2007) by [Mental Capacity Act 2005 \(c. 9\)](#), ss. 67(1), 68(1)-(3), [Sch. 6 para. 30](#) (with ss. 27, 28, 29 and 62); [S.I. 2007/1897](#), [art. 2\(1\)\(c\)\(d\)](#)

## 19 Register of licensed conveyancers.

- (1) The Council shall establish and maintain, in such form as the Council may determine, a register containing the names and places of business of all persons who for the time being hold licences in force under this Part.
- (2) The Council shall accordingly cause the appropriate entries and deletions to be made in the register on the issue and termination of licences under this Part; and where any licence held by a person is for the time being suspended by virtue of any provision of this Part the Council shall cause that fact to be noted in the register against that person's name.
- (3) Any change in a licensed conveyancer's place or places of business shall be notified by him to the Council within the period of fourteen days beginning with the date on which the change takes effect.
- (4) The Council shall provide facilities for making the information contained in the entries in the register available for inspection in visible and legible form by any person during office hours and without payment.
- (5) A certificate signed by an officer of the Council appointed for the purpose and stating—
  - (a) that any person does or does not, or did or did not at any time, hold a licence in force under this Part; or
  - (b) that any licence held by any person is or was at any time either free of conditions or subject to any particular conditions,shall, unless the contrary is proved, be evidence of the facts stated in the certificate; and a certificate purporting to be so signed shall be taken to have been so signed unless the contrary is proved.

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### *Code of conduct*

#### **20 Rules as to professional practice, conduct and discipline.**

- (1) The Council shall, in pursuance of its general duty referred to in section 12(2), make rules for regulating the professional practice, conduct and discipline of licensed conveyancers.
- (2) Rules made by the Council under this section may provide for regulating the association of licensed conveyancers with other persons in connection with the provision of conveyancing services to members of the public.

### *Financial requirements*

#### **21 Professional indemnity and compensation.**

- (1) The Council shall make rules for indemnifying licensed conveyancers and former licensed conveyancers against losses arising from claims in respect of any description of civil liability incurred by them, or by employees or associates or former employees or associates of theirs, in connection with their practices as licensed conveyancers.
- (2) The Council shall also make rules for the making of grants or other payments for the purpose of relieving or mitigating losses suffered by persons in consequence of—
  - (a) negligence or fraud or other dishonesty on the part of licensed conveyancers, or of employees or associates of theirs, in connection with their practices (or purported practices) as licensed conveyancers; or
  - (b) failure on the part of licensed conveyancers to account for money received by them in connection with their practices (or purported practices) as licensed conveyancers.
- (3) For the purpose of providing such indemnity and of enabling such grants or other payments to be made, rules under this section—
  - (a) may authorise or require the Council to establish and maintain a fund or funds;
  - (b) may authorise or require the Council to take out and maintain insurance with authorised insurers;
  - (c) may require licensed conveyancers or licensed conveyancers of any specified description to take out and maintain insurance with authorised insurers.
- (4) Without prejudice to the generality of the preceding subsections, rules under this section—
  - (a) may specify the terms and conditions on which indemnity or a grant or other payment is to be available, and any circumstances in which the right to it is to be excluded or modified;
  - (b) may provide for the management, administration and protection of any fund maintained by virtue of subsection (3)(a) and require licensed conveyancers or licensed conveyancers of any specified description to make payments to any such fund;
  - (c) may require licensed conveyancers or licensed conveyancers of any specified description to make payments towards the premium payable on any insurance policy maintained by the Council by virtue of subsection (3)(b);
  - (d) may prescribe the conditions which an insurance policy must satisfy for the purposes of subsection (3)(c);

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- (e) may authorise the Council to determine the amount of any payments required by the rules, subject to such limits, or in accordance with such provisions, as may be prescribed by the rules;
- (f) may specify circumstances in which, where a licensed conveyancer for whom indemnity is provided has failed to comply with the rules, the Council or insurers may take proceedings against him in respect of sums paid by way of indemnity in connection with a matter in relation to which there has been a failure to comply with the rules;
- (g) may specify circumstances in which, where a grant or other payment is made in consequence of the act or omission of a licensed conveyancer, the Council or insurers may take proceedings against him in respect of the sum so paid;
- (h) may specify circumstances in which licensed conveyancers are exempt from any of the requirements of the rules;
- (i) may empower the Council to take such steps as it considers necessary or expedient to ascertain whether or not the rules are being complied with; and
- (j) may contain incidental, procedural or supplementary provisions.

[<sup>F22</sup>(5)

“Authorised insurer” means—

- (a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to effect or carry out contracts of insurance of a relevant class;
  - (b) an EEA firm of the kind mentioned in paragraph 5(d) of Schedule 3 to that Act, which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to effect or carry out contracts of insurance of a relevant class; or
  - (c) a person who does not fall within sub-paragraph (i) or (ii) and who may lawfully effect or carry out contracts of insurance of a relevant class in a member State other than the United Kingdom.
- (6) A contract of insurance is of a relevant class for the purposes of subsection (5) if it insures against a risk arising from—
- (a) accident;
  - (b) credit;
  - (c) legal expenses;
  - (d) general liability to third parties;
  - (e) sickness;
  - (f) suretyship; or
  - (g) miscellaneous financial loss.
- (7) Subsections (5) and (6) must be read with—
- (a) section 22 of the Financial Services and Markets Act 2000;
  - (b) any relevant order under that section; and
  - (c) Schedule 2 to that Act.]

#### Textual Amendments

**F22** S. 21(5)-(7) substituted (1.12.2001) for s. 21(5) by S.I. 2001/3649, arts. 1, 298

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## 22 Keeping of accounts and establishment of client accounts.

- (1) The Council shall make rules requiring licensed conveyancers to keep such accounts in relation to their practices as may be prescribed by the rules.
- (2) The Council shall also make rules requiring licensed conveyancers—
  - (a) to open and keep at authorised institutions accounts for clients’ money;
  - (b) to hold and pay out money so received in such manner as may be prescribed by the rules; and
  - (c) without prejudice to the generality of subsection (1), to keep accounts containing particulars and information as to money received or held or paid by them for or on account of their clients;

and rules under this subsection shall specify the institutions which are authorised for the purposes of rules under paragraph (a).
- (3) Rules under subsection (1) or (2) of this section may empower the Council—
  - (a) to require licensed conveyancers to deliver to the Council at such intervals as may be prescribed by the rules reports given by <sup>F23</sup> . . . accountants and containing such information as may be so prescribed—
    - (i) for the purpose of giving a true and fair view of the state of their businesses; or
    - (ii) for the purpose of enabling the Council to ascertain whether or not the rules have been complied with;
  - (b) to take such other steps as it considers necessary or expedient for the latter purpose;

and any such rules may specify circumstances in which persons are exempt from any of the requirements of the rules.
- [<sup>F24</sup>(4) Provision made in rules by virtue of subsection (3)(a) may provide that the reports delivered to the Council must be reports given by accountants in respect of whom requirements prescribed by the rules are met.]

### Textual Amendments

**F23** Words in s. 22(3)(a) repealed (7.3.2008) by [Legal Services Act 2007 \(c. 29\)](#), ss. 182, 210, 211, [Sch. 17 para. 11\(a\)](#), [Sch. 23](#) (with ss. 29, 192, 193); S.I. 2008/222, [art. 2\(k\)\(n\)\(ii\)](#)

**F24** S. 22(4) substituted (7.3.2008) for s. 22(4)(5) by [Legal Services Act 2007 \(c. 29\)](#), ss. 182, 211, [Sch. 17 para. 11\(b\)](#), (with ss. 29, 192, 193); S.I. 2008/222, [art. 2\(k\)](#)

## 23 Interest on clients’ money.

- (1) Rules made under subsection (2) of section 22 shall make provision for requiring a licensed conveyancer who has received money from a client to account, in such cases as may be prescribed by the rules, to the person who is or becomes entitled to the money for the interest which was, or could have been, earned by putting the money in a separate deposit account at an institution authorised for the purposes of rules under paragraph (a) of that subsection.
- (2) The cases in which a licensed conveyancer may be required to account for interest by rules made by virtue of subsection (1) may be defined by reference to, among other things, the amount of the sum held or received by him or the period for which it is likely to be retained, or both; and any such rules may include provision for enabling

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a client (without prejudice to any other remedy) to require that any question arising under the rules in relation to the client's money be referred to and determined by the Council.

- (3) Except as provided by any rules so made and subject to subsection (4), a licensed conveyancer who maintains an account in pursuance of section 22(2)(a) in which he keeps money received or held for or on account of his clients generally shall not be liable to account to any person for interest received by him on money in that account.
- (4) Nothing in this section or in any rules under section 22(2) shall affect any arrangement in writing between a licensed conveyancer and his client as to the application of the client's money or the payment of interest on it.

### *Disciplinary and other proceedings*

## **24 Preliminary investigation of disciplinary cases.**

- (1) The Council shall establish a committee, to be known as the Investigating Committee, for the preliminary investigation of cases in which—
  - (a) it is alleged that a licensed conveyancer—
    - (i) has (whether while a licensed conveyancer or not) been convicted by any court in the United Kingdom of a criminal offence which renders him unfit to practise as a licensed conveyancer; or
    - (ii) has, while holding a licence in force under this Part, failed to comply with any condition to which that licence was subject; or
    - (iii) has failed to comply with any rules made by the Council under this Part; or
  - (b) a complaint is made to the Council by or on behalf of a member of the public about a licensed conveyancer,with a view to determining whether such cases ought to be referred by the Committee to the Discipline and Appeals Committee established under the following section for hearing and determination by that Committee under section 26.
- (2) For the purposes of subsection (1)(b) a complaint about a person who at the time when the conduct to which the complaint relates took place was an employee or associate of a licensed conveyancer shall be treated as a complaint about the licensed conveyancer.
- (3) Any reference in subsection (1) or (2) to a licensed conveyancer in relation to any such allegation or complaint as is mentioned in paragraph (a)(ii) or (iii) or paragraph (b) of subsection (1) includes a reference to a person who was a licensed conveyancer at the time when the conduct to which the allegation or complaint relates took place.
- (4) The Council shall make rules as to the constitution of the Investigating Committee and any such rules may provide for the appointment to the Committee of persons (whether licensed conveyancers or not) who are not members of the Council.
- (5) where it appears to the Investigating Committee—
  - (a) that any such allegation or complaint as is mentioned in subsection (1) ought to be referred to the Discipline and Appeals Committee for hearing and determination by that Committee under section 26; and
  - (b) that it is necessary for the protection of consumers to do so,

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the Investigating Committee may, if they think fit, direct that any licence held by the licensed conveyancer in question shall be suspended until the allegation or complaint is determined by the Discipline and Appeals Committee or until the expiration of such period as may be prescribed by rules made by the Council, whichever is the earlier.

VALID FROM 31/03/2009

#### **[<sup>F25</sup>24A Determination of allegations by Investigating Committee**

- (1) Where, on hearing an allegation by virtue of section 24(1A)(a), the Investigating Committee are satisfied that a licensed conveyancer—
  - (a) has, while holding a licence in force under this Part, failed to comply with any condition to which that licence was subject, or
  - (b) has failed to comply with any rules made by the Council under this Part, the Committee may, if they think fit, make an order directing the payment by the licensed conveyancer of a penalty to be forfeited to Her Majesty.
- (2) In relation to proceedings before the Investigating Committee by virtue of section 24(1A)(a), the Committee may make such order as they consider fit as to the payment of costs by—
  - (a) the Council,
  - (b) the licensed conveyancer against whom the proceedings were brought, or
  - (c) if the person on whose allegation the proceedings were brought was heard (in person, or through a representative) by the Committee in the course of the proceedings, that person.
- (3) In subsection (2), for the purposes of paragraph (a) or (b) of that subsection, the reference to costs includes costs incurred in connection with a preliminary investigation of the allegation under section 24(1A).
- (4) The amount of any penalty required to be paid under subsection (1) may not exceed such amount as may be prescribed by rules made by the Council for the purposes of this subsection.
- (5) Paragraphs 1, 2(1) and (3) and 4 of Schedule 4 have effect in relation to—
  - (a) proceedings for the hearing and determination of an allegation by the Investigating Committee, as they have effect in relation to proceedings before the Discipline and Appeals Committee under section 26, and
  - (b) orders of the Investigating Committee, as they have effect in relation to orders of the Discipline and Appeals Committee.
- (6) A person against whom an order is made by the Investigating Committee by virtue of subsection (1) may appeal to the Discipline and Appeals Committee, and on any such appeal the Discipline and Appeals Committee may make such order as they think fit.
- (7) Where an order is made by the Investigating Committee by virtue of subsection (2), a person listed in paragraphs (a) to (c) of that subsection may appeal to the Discipline and Appeals Committee, and on any such appeal the Discipline and Appeals Committee may make such order as they think fit.
- (8) Where an order is made by the Discipline and Appeals Committee under subsection (6) or (7)—



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- (a) a party to the appeal, or
  - (b) if not within paragraph (a), the Council,
- may appeal against the order to the High Court.
- (9) On an appeal under subsection (8) the High Court may make such order as it thinks fit.
- (10) The decision of the High Court on an appeal under subsection (8) shall be final.]

#### Textual Amendments

**F25** S. 24A inserted (31.3.2009) by Legal Services Act 2007 (c. 29), ss. 182, 211, Sch. 17 para. 13 (with ss. 29, 192, 193); S.I. 2009/503, art. 2(c)(i)

## 25 The Discipline and Appeals Committee.

- (1) The Council shall establish a committee, to be known as the Discipline and Appeals Committee, for the hearing and determination of—
- (a) cases referred to them by the Investigating Committee under section 24; and
  - (b) applications and appeals made or brought under sections 27 to 29.
- (2) The Council shall make rules as to the constitution of the Discipline and Appeals Committee, the times and places of the meetings of the Committee, the quorum and the mode of summoning the members of the Committee.
- (3) Rules under this section—
- (a) shall secure that a person who acted in relation to any case as a member of the Investigating Committee does not act in relation to that case as a member of the Discipline and Appeals Committee;
  - (b) may provide for the appointment to the Discipline and Appeals Committee of persons (whether licensed conveyancers or not) who are not members of the Council.

## 26 Proceedings in disciplinary cases.

- (1) Where on the hearing of any allegation the Discipline and Appeals Committee are satisfied that a licensed conveyancer—
- (a) has been convicted as mentioned in section 24(1)(a)(i) of an offence which renders him unfit to practise as a licensed conveyancer;
  - (b) has, while holding a licence in force under this Part, failed to comply with any condition to which that licence was subject; or
  - (c) has failed to comply with any rules made by the Council under this Part,
- the Committee may, if they think fit, make one or more of the orders referred to in subsection (2).
- (2) Those orders are—
- (a) an order revoking any licence held by the licensed conveyancer;
  - (b) an order directing that the licensed conveyancer shall be disqualified (either permanently or during a specified period) from holding a licence under this Part;

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- (c) an order suspending any licence held by the licensed conveyancer;
  - (d) an order that any such licence shall have effect subject to such conditions as may be specified in the order;
  - (e) an order directing the payment by the licensed conveyancer of a penalty not exceeding £3,000, to be forfeited to Her Majesty;
  - (f) an order that the licensed conveyancer be reprimanded by the Council;
  - (g) an order requiring the licensed conveyancer to pay the costs incurred in bringing against him the proceedings before the Committee or a contribution towards those costs, being a contribution of such amount as the Committee consider reasonable.
- (3) ..... F26
- (4) References in this section to a licensed conveyancer include, in relation to an allegation or complaint which has been referred to the Committee in pursuance of section 24 (3), references to any such person as is mentioned in that provision.
- (5) If it appears to the [F27Secretary of State] that there has been a change in the value of money since the relevant date, he may by order made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament substitute for the sum for the time being specified in subsection (2)(e) such other sum as appears to him to be justified by the change.
- (6) In subsection (5) “the relevant date” means—
- (a) in relation to the first order under that subsection, the commencement of this section;
  - (b) in relation to each subsequent order, the last occasion when the sum specified in subsection (2)(e) was altered.
- (7) A person against whom an order is made by the Committee by virtue of subsection (1) may appeal to the High Court, and on any such appeal the High Court may make such order as it thinks fit.
- (8) The decision of the High Court on an appeal under subsection (7) shall be final.

#### Textual Amendments

**F26** S. 26(3) repealed (*I. 4. 1991*) by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), s. 125(6)(7), Sch. 20 (with **Sch. 19 para. 15(1)(b)**); S.I. 1991/608, art. 2, **Sch.**

**F27** Words in s. 26 substituted (19.8.2003) by The Secretary of State for Constitutional Affairs Order 2003 (S.I. 2003/1887), arts. 1(2), 9, **Sch. 2 para. 6(a)**

## 27 Removal of disqualification from holding a licence.

- (1) Where the Discipline and Appeals Committee have made any such order as is referred to in section 26(2)(b), the person to whom the order relates shall not, while his disqualification continues in force, be issued with a licence under this Part unless the Committee, on an application made to them in that behalf, direct otherwise.
- (2) An application under subsection (1) shall not be made by a person to the Committee—
- (a) within ten months of the date of the Committee’s order; or
  - (b) within ten months of a previous such application by that person.

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## **28 Revocation of licence on grounds of fraud or error.**

- (1) Where the Discipline and Appeals Committee are satisfied that a licence was issued to a person as a result of any error, or as a result of fraud on the part of that person, the Committee may, if they think fit, by order revoke the licence.
- (2) A person may be issued with a licence under this Part notwithstanding that a licence previously held by him has been revoked under this section; but if it was so revoked on the ground of fraud he shall not be issued with a licence except on an application made in that behalf to the Committee.
- (3) On any such application the Committee may, if they think fit, direct that the applicant shall be disqualified from holding a licence under this Part until the expiration of such period as may be specified in the direction.
- (4) Section 27 shall apply in relation to a direction under subsection (3) as it applies in relation to any such order as is referred to in section 26(2)(b).

## **29 Appeals from decisions of Council in relation to licences.**

- (1) Where, in the case of any person, the Council—
  - (a) refuses an application for a licence made by that person;
  - (b) decides to issue that person with a licence subject to conditions under section 16; or
  - (c) decides to give a direction in relation to that person under section 17,that person may appeal to the Discipline and Appeals Committee against that refusal or decision within one month of being notified of it.
- (2) On an appeal under this section the Discipline and Appeals Committee may—
  - (a) in the case of an appeal under subsection (1)(a) or (b), by order direct the Council to issue the appellant with—
    - (i) a licence free from conditions; or
    - (ii) a licence subject to such conditions as may be specified by the Committee in the direction;
  - (b) in the case of an appeal under subsection (1)(c), by order—
    - (i) revoke the direction of the Council under section 17; or
    - (ii) direct that the appellant's licence shall have effect subject to such conditions as may be specified by the Committee in the direction;
  - (c) in any case, except an appeal in respect of a deemed refusal under section 15(3), affirm the refusal or decision of the Council appealed against;
  - (d) in the said excepted case, by order direct the Council not to issue a licence to the appellant.
- (3) On an appeal under this section the Committee may make such order as to the payment of costs by the Council or by the appellant as they think fit.

## **30 Supplementary provisions relating to disciplinary and other proceedings.**

Schedule 4 (which contains provisions supplementary to sections 26 to 29) shall have effect.

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### *Intervention by Council*

#### **31 Intervention in licensed conveyancer's practice and examination of files.**

- (1) The powers conferred by Part II of Schedule 5 shall be exercisable in the circumstances specified in Part I of that Schedule.
- (2) Where the Investigating Committee are satisfied that it is necessary to do so for the purpose of investigating any such allegation or complaint as is mentioned in paragraph (a)(ii) or (iii) or paragraph (b) of section 24(1), the Committee may give notice to the licensed conveyancer to whom the allegation or complaint relates, or to his firm, requiring the production or delivery to any person appointed by the Committee, at a time and place to be fixed by the Committee, of all documents in the possession of the licensed conveyancer or his firm in connection with the matters to which the allegation or complaint relates (whether or not they relate also to other matters).
- (3) Sub-paragraphs (2) to (12) of paragraph 9 of Schedule 5, together with paragraphs 11 and 12 of that Schedule, shall apply in relation to the powers conferred on the Investigating Committee by subsection (2) as they apply in relation to the powers conferred on the Council by sub-paragraph (1) of paragraph 9, and accordingly in those provisions—
  - (a) any reference to the Council shall be construed as including a reference to the Committee;
  - (b) any reference to a person appointed, or to a requirement, under that sub-paragraph shall be construed as including a reference to a person appointed, or to a requirement, under subsection (2); and
  - (c) any reference to any such documents as are mentioned in that sub-paragraph shall be construed as including a reference to any such documents as are mentioned in subsection (2).
- (4) The reference in subsection (2) to a licensed conveyancer includes a reference to a person who was a licensed conveyancer at the time when the conduct to which the allegation or complaint relates took place; and references to the licensed conveyancer in the provisions applied by subsection (3) shall be construed accordingly.

### *Recognised bodies*

#### **32 Provision of conveyancing services by recognised bodies.**

- (1) The Council may make rules—
  - (a) making provision as to 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 consisting of the provision of conveyancing services;
  - (b) prescribing the circumstances in which such bodies may be recognised by the Council as being suitable bodies to undertake the provision of such services;
  - (c) prescribing the conditions which (subject to any exceptions provided by the rules) must at all times be satisfied by bodies so recognised if they are to remain so recognised; and
  - (d) regulating the conduct of the affairs of such bodies.

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- (2) In this Part “recognised body” means a body corporate for the time being recognised under this section.
- (3) Rules made by the Council may also make provision—
- (a) for the manner and form in which applications for recognition under this section are to be made, and for the payment of fees in connection with such applications;
  - (b) for regulating the names that may be used by recognised bodies;
  - (c) as to the period for which any recognition granted under this section shall (subject to the provisions of this Part) remain in force;
  - (d) for the imposition by the Council, when granting recognition of a body corporate under this section, of restrictions on the kinds of conveyancing services that it may undertake to provide as a recognised body, and for enabling such restrictions to be imposed by reference to criteria of general application;
  - (e) for the keeping by the Council of a list containing the names and principal places of business of all bodies corporate which are for the time being recognised under this section, and for the information contained in any such list to be available for inspection;
  - (f) for rules made under any other provision of this Part to have effect in relation to recognised bodies with such additions, omissions or other modifications as appear to the Council to be necessary or expedient;
  - (g) for empowering the Council to take such steps as it considers necessary or expedient to ascertain whether or not any rules applicable to recognised bodies by virtue of this section are being complied with;
  - (h) for the manner of service on recognised bodies of documents authorised or required to be served on such bodies under this Part.
- (4) Notwithstanding section 24(2) of the <sup>M10</sup>Solicitors Act 1974 (application of penal provisions to bodies corporate), section 22(1) of that Act shall not apply to a body corporate by reason of any act done by an officer or employee of the body if—
- (a) at the time it was done the body was a recognised body; and
  - (b) it was done in the course of the provision of conveyancing services which the body was not precluded from undertaking to provide as a recognised body by any restrictions imposed in pursuance of subsection (3)(d) of this section.
- (5) Section 22(1) of that Act shall also not apply to any officer or employee of a body corporate by reason of any act done by him if—
- (a) the conditions specified in paragraphs (a) and (b) of the preceding subsection are satisfied in relation to that act; and
  - (b) it was done by him at the direction and under the supervision of another person who was at the time an officer or employee of the body; and
  - (c) it could have been done by that other person for or in expectation of any fee, gain or reward without committing an offence under the said section 22.
- (6) A certificate signed by an officer of the Council and stating—
- (a) that any body corporate is or is not, or was or was not at any time, a recognised body; or
  - (b) that no restrictions were imposed in pursuance of subsection (3)(d) on the grant of a body corporate’s recognition under this section or that any particular restrictions were so imposed,

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

(7) Schedule 6 shall have effect with respect to recognised bodies.

#### Modifications etc. (not altering text)

**C9** S. 32 amended (1.4.1991 for certain purposes, otherwise 7.12.2004) by [Courts and Legal Services Act 1990 \(c. 41\)](#), ss. 53, 124, [Sch. 8 para. 11](#) (with s. 59(1)); S.I. 1991/608, [art. 2](#), Sch; S.I. 2004/2950, [art. 2\(a\)](#)

#### Marginal Citations

**M10** 1974 c. 47.

VALID FROM 31/03/2009

### <sup>F28</sup>32A Conveyancing services bodies

- (1) For the purposes of section 32 a “conveyancing services body” means a body (corporate or unincorporate) in respect of which—
  - (a) the management and control condition, and
  - (b) the services condition,
 are satisfied.
- (2) The management and control condition is satisfied in the case of a partnership if at least one of the partners is a licensed conveyancer.
- (3) The management and control condition is satisfied in the case of an unincorporated body (other than a partnership), or a body corporate which is managed by its members, if at least one of those members is a licensed conveyancer.
- (4) The management and control condition is satisfied in the case of any other body corporate if at least one director of the body is a licensed conveyancer.
- (5) The services condition is satisfied in respect of a body if the body is carrying on a business consisting of the provision of—
  - (a) conveyancing services, or
  - (b) conveyancing services and other relevant legal services.
- (6) For the purposes of this section—
 

“authorised person” means an authorised person in relation to an activity which is a reserved legal activity (within the meaning of the Legal Services Act 2007);

“relevant legal services”, in relation to a body, means—

  - (a) conveyancing services, and
  - (b) where authorised persons are managers or employees of, or have an interest in, the body, services such as are provided by individuals practising as such authorised persons (whether or not those services involve the carrying on of reserved legal activities within the meaning of the Legal Services Act 2007);

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and a person has an interest in a body if the person has an interest in the body within the meaning of Part 5 of the Legal Services Act 2007 (see sections 72 and 109 of that Act).]

#### Textual Amendments

**F28** S. 32A inserted (31.3.2009) by Legal Services Act 2007 (c. 29), ss. 182, 211, **Sch. 17 para. 21** (with ss. 29, 192, 193); S.I. 2009/503, **art. 2(c)(i)**

#### Modifications etc. (not altering text)

**C10** S. 32A modified (temp.) (31.3.2009) by Legal Services Act 2007 (c. 29), ss. 209, 211, **Sch. 22 para. 15** (with ss. 29, 192, 193); S.I. 2009/503, **art. 2(e)** (subject to art. 4)

### Miscellaneous and supplemental

## 33 Legal professional privilege.

(1) Any communication made—

(a) to or by a licensed conveyancer in the course of his acting as such for a client;  
or

(b) to or by a recognised body in the course of its acting as such for a client,  
shall in any legal proceedings be privileged from disclosure in like manner as if the licensed conveyancer or body had at all material times been acting as the client's solicitor.

VALID FROM 01/01/2010

### [<sup>F29</sup>33A Administration of oaths by licensed conveyancers

The Council may make rules prescribing its arrangements for authorising licensed conveyancers, for the purposes of the Legal Services Act 2007, to carry on activities which consist of the administration of oaths.]

#### Textual Amendments

**F29** S. 33A inserted (1.1.2010) by Legal Services Act 2007 (c. 29), ss. 182, 211, **Sch. 17 para. 23** (with ss. 29, 192, 193); S.I. 2009/3250, **art. 2(f)(iii)** (with art. 9)

## 34 Modification of existing enactments relating to conveyancing etc.

(1) In the following provisions, namely—

(a) sections 69 and 75(1) of the <sup>M11</sup>Law of Property Act 1925; <sup>F30</sup> . . .

(b) <sup>F30</sup> . . . . .

any reference to a solicitor shall be construed as including a reference to a licensed conveyancer and any reference to a person's solicitor shall be construed as including a reference to a licensed conveyancer acting for that person.

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- (2) In the following provisions, namely—
- (a) sections 10(2), 48 and 182 of the Law of Property Act 1925;
  - (b) <sup>F31</sup> .....
  - (c) section 12 of the <sup>M12</sup>Land Charges Act 1972;
  - (d) section 13 of the <sup>M13</sup>Local Land Charges Act 1975;
  - (e) section 11(8) of the <sup>M14</sup>Estate Agents Act 1979; <sup>F32</sup> . . .
  - (f) <sup>F32</sup> .....

any reference to a solicitor shall be construed as including a reference to a licensed conveyancer or to a recognised body, and any reference to a person's solicitor shall be construed as including a reference to a licensed conveyancer or recognised body acting for that person.

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

#### Textual Amendments

**F30** S. 34(1)(b) and preceding word repealed (13.10.2003) by Land Registration Act 2002 (c. 9), ss. 135, 136(2), **Sch. 13** (with s. 129, Sch. 12 para. 1); S.I. 2003/1725, **art. 2(1)**

**F31** S. 34(2)(b) repealed (23.10.2003) by Land Registration Act 2002 (c. 9), ss. 135, 136(2), **Sch. 13** (with s. 129, Sch. 12 para. 1); S.I. 2003/1725, **art. 2(1)**

**F32** S. 34(2)(f) and the word immediately preceding it repealed (1.10.1997) by 1996 c. 27, s. 66(3), **Sch.10** (with Sch. 9 para. 5); S.I. 1996/1892, **art. 3(1)(iv)**

#### Marginal Citations

**M11** 1925 c. 20.

**M12** 1972 c. 61.

**M13** 1975 c. 76.

**M14** 1979 c. 38.

### 35 Penalty for pretending to be a licensed conveyancer or recognised body.

- (1) An individual shall not describe himself or hold himself out as a licensed conveyancer unless he holds a licence in force under this Part.
- (2) A body corporate shall not describe itself or hold itself out as a recognised body unless it is for the time being recognised under section 32.
- (3) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and liable on summary conviction to a fine not exceeding the fourth level on the standard scale.

### 36 Offences by bodies corporate.

Where an offence under this Part which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person 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.



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### 37 Service of documents.

Any notice or other document authorised or required to be given or served under this Part may be sent by post; and for the purpose of the application to this section of section 7 of the <sup>M15</sup>Interpretation Act 1978 (service by post) the proper address of a licensed conveyancer shall be the address of any place specified in the register as his place of business or one of his places of business.

#### Marginal Citations

M15 1978 c. 30.

### 38 Rules.

- (1) Any rules made by the Council under this Part shall be made with the concurrence of the [<sup>F33</sup>Secretary of State].
- (2) Any such rules may make different provision for different circumstances.
- (3) Without prejudice to the generality of subsection (2), any rules prescribing a fee may provide for that fee to be reduced, or to be waived by the Council, in such circumstances as may be specified in the rules.

#### Textual Amendments

F33 Words in s. 38 substituted (19.8.2003) by [The Secretary of State for Constitutional Affairs Order 2003 \(S.I. 2003/1887\)](#), arts. 1(2), 9, {Sch 2. para. 6(a)}

### 39 Interpretation of Part II.

- (1) In this Part—

“associate” means, in the case of a licensed conveyancer practising in partnership with other persons, any partner of his not holding a licence in force under this Part or any employee of such a partner;

“client” means—

- (a) in relation to a licensed conveyancer, any person by whom or on whose behalf instructions regarding the provision of conveyancing services are given to the licensed conveyancer or his firm;
- (b) in relation to a recognised body, any person by whom or on whose behalf such instructions are given to the body;

and “client account” means an account in whose title the word “client” is required by rules under section 22(2);

“conveyancing services” shall be construed in accordance with section 11(3);

“the Council” means the Council for Licensed Conveyancers;

[<sup>F34</sup>“director”, in relation to a limited liability partnership, means a member of the limited liability partnership;]

“fees” includes charges, disbursements, expenses and remuneration;

“functions” includes powers and duties;

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“licence” and “licensed conveyancer” have the meaning given by section 11(2);

“officer”, in relation to a recognised body, includes a director, manager or secretary;

“recognised body” means a body corporate for the time being recognised under section 32;

F35 . . .

F36 . . .

- (2) Any reference in this Part to a licensed conveyancer practising as a sole practitioner is a reference to a licensed conveyancer practising either as the sole principal in the practice or in partnership with other persons of whom none are licensed conveyancers.

#### Textual Amendments

- F34** Definition of “director” in s. 39(1) inserted (6.4.2001) by [S.I. 2001/1090, reg. 9, Sch. 5 para. 13](#)
- F35** Definition in s. 39(1) omitted (1.10.1991) by virtue of [S.I. 1991/1997, regs. 1, 2, Sch. para. 55\(3\)](#) (with [reg. 4](#))
- F36** [S. 39\(1\)](#): definition repealed (5.11.1993) by [1993 c. 50, s. 1\(1\), Sch. 1 Pt. XIV](#).

## PART III

### LEGAL AID

#### *Legal aid complaints*

#### 40 Legal aid complaints: preliminary.

- (1) For the purposes of this Part of this Act a legal aid complaint is a complaint relating to the conduct of a barrister or solicitor in connection with [<sup>F37</sup>the provision for any person of services [<sup>F38</sup>funded by the Legal Services Commission as part of the Community Legal Service or Criminal Defence Service] including, in the case of a solicitor, provision for any person of such services in the capacity of agent for that person’s solicitor.]

- (2) In this Part—

“legally assisted person” means a person to whom aid is ordered to be given under section 28 of the <sup>M16</sup>Legal Aid Act 1974;

“the Senate” means the Senate of the Inns of Court and the Bar; and

“Senate Disciplinary Tribunal” means any committee of the Senate which in accordance with the regulations of the Senate is to be known as a Disciplinary Tribunal.

- (3) In the Legal Aid Act 1974, sections 12(3) to (5) and 38(2) to (6) (which are superseded by this Part) shall cease to have effect.

#### Textual Amendments

- F37** Words substituted by [Legal Aid Act 1988 \(c. 34, SIF 77:1\), s. 45\(1\), Sch. 5 para. 17](#)

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**F38** Words in s. 40(1) substituted (1.4.2000) by 1999 c. 22, s. 24, **Sch. 4 para.33** (with Sch. 14 para. 7(c)); S.I. 2000/774, **art. 2(a)(ii)** (subject to arts. 3, 4)

**Modifications etc. (not altering text)**

**C11** S. 40 applied (with modification) by S.I. 2000/1119, **Sch. 4 para. 24(1)** (as substituted (1.7.2009) by **The Legal Services Act 2007 (Registered European Lawyers) Order 2009 (S.I. 2009/1587)**, arts. 1(1), 3(17))

**Marginal Citations**

**M16** 1974 c. 4.

[<sup>F39</sup>**41** **Application to legal aid complaints against barristers of disciplinary provisions.**

- (1) The disciplinary provisions applicable to barristers shall apply to legal aid complaints relating to the conduct of barristers as they apply to other complaints about their conduct.
- (2) Subject to any exclusion or restriction made by those provisions, any disciplinary tribunal which hears a legal aid complaint relating to the conduct of a barrister may, if it thinks fit and whether or not it makes any other order, order that any fees [<sup>F40</sup>otherwise payable by the Legal Services Commission in connection with services provided by him as part of the Community Legal Service or Criminal Defence Service]] shall be reduced or cancelled.
- (3) ..... <sup>F41</sup>
- (4) An appeal shall lie in the case of an order under subsection (2) above in the same manner as an appeal would lie in the case of any other order of such a tribunal.
- (5) The reference in subsection (2) above to a disciplinary tribunal is a reference to a tribunal acting under the disciplinary provisions applicable to barristers and it includes a reference to a member exercising any functions of the tribunal delegated to him.

**Textual Amendments**

**F39** Ss. 41, 42 substituted by **Legal Aid Act 1988 (c. 34, SIF 70:1)**, s. 33

**F40** Words in s. 41(2) substituted (1.4.2000) for s. 41(2)(a)(b) by 1999 c. 22, s. 24, **Sch. 4 para. 34** (with Sch. 14 para. 7(2)); S.I. 2000/774, **art. 2(a)(ii)** (subject to arts. 3, 4)

**F41** S. 41(3) repealed (2.4.2001) by 1999 c. 22, s. 106, **Sch. 15 Pt. I** (with Sch. 14 paras. 7(2), 36(9)); S.I. 2001/916, **art. 3(b)** (with Sch. 2 para. 2)

[<sup>F42</sup>**42** **Exclusion of barristers from legal aid work.**

- (1) Subject to any exclusion or restriction made by the disciplinary provisions applicable to barristers, where a disciplinary tribunal hears a charge of professional misconduct or breach of professional standards against a barrister, it may order that he shall be excluded from [<sup>F43</sup>providing representation funded by the Legal Services Commission as part of the Criminal Defence Service]], either temporarily or for a specified period, if it determines that there is good reason for the exclusion arising out of—
  - (a) his conduct in connection with any such services as are mentioned in section 40(1), or
  - (b) his professional conduct generally.

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- (2) Subsection (4) of section 41 shall apply to an order under subsection (1) as it applies to an order under subsection (2) of that section.
- (3) The disciplinary provisions applicable to barristers shall include provision enabling a barrister who has been excluded from [F43 providing representation funded by the Legal Services Commission as part of the Criminal Defence Service] under this section to apply for an order terminating his exclusion F44 . . .
- (4) In this section—
- (a) the reference to a disciplinary tribunal shall be construed in accordance with section 41(5); F45 . . .
- (b) . . . . .

#### Textual Amendments

- F42** Ss. 41, 42 substituted by Legal Aid Act 1988 (c. 34, SIF 70:1), s. 33
- F43** Words in s. 42(1)(3) substituted (2.4.2001) by 1999 c. 22, s. 24, Sch. 4 para.35 (with Sch. 14 para. 7(2)); S.I. 2001/916, art. 3(a) (with Sch. 2 para. 2)
- F44** Words in s. 42(3) repealed (2.4.2001) by 1999 c. 22, s. 106, Sch. 15 Pt.I (with Sch. 14 paras. 7(2), 36(9)); S.I. 2001/916, art. 3(b) (with Sch. 2 para. 2)
- F45** S. 42(4)(b) repealed (2.4.2001) by 1999 c. 22, s. 106, Sch. 15 Pt.I (with Sch. 14 paras. 7(2), 36(9)); S.I. 2001/916, art. 3(b) (with Sch. 2 para. 2)

### 43 Jurisdiction and powers of Solicitors Disciplinary Tribunal in relation to complaints against solicitors.

- (1) The Solicitors Disciplinary Tribunal shall have jurisdiction to hear and determine any legal aid complaint relating to the conduct of a solicitor and made to the Tribunal under this section by or on behalf of the Law Society.
- (2) In the following provisions of the M17 Solicitors Act 1974, namely—
- (a) subsections (7) to (11) of section 46 (procedure of Tribunal); and
- (b) section 47(2) (powers of Tribunal),
- any reference to a complaint or to a complaint made to the Tribunal under that Act shall be construed as including a reference to a legal aid complaint or to a legal aid complaint made to the Tribunal under this section.
- (3) On the hearing of a legal aid complaint against a solicitor the Tribunal may, if it thinks fit and whether or not it makes any other order on the hearing, order that [F46 any costs otherwise payable by the Legal Services Commission in connection with services provided by the solicitor as part of the Community Legal Service or Criminal Defence Service] shall be reduced or cancelled.
- (4) . . . . . F47
- (5) Without prejudice to the generality of subsection (1)(b) of section 49 of the M18 Solicitors Act 1974, an appeal shall lie to the High Court under that section against an order of the Tribunal under subsection (3), but such an appeal shall lie only at the instance of the solicitor with respect to whom the legal aid complaint was made.
- (6) In this section “costs” includes fees, charges, disbursements, expenses and remuneration.

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#### Textual Amendments

- F46** Words in s. 43(3) substituted (1.4.2000) by 1999 c. 22, s. 24, **Sch. 4 para. 36** (with Sch. 14 para. 7(2)); S.I. 2000/774, **art. 2(a)(ii)** (subject to arts. 3, 4)
- F47** S. 43(4) repealed (2.4.2001) by 1999 c. 22, s. 106, **Sch. 15 Pt. I** (with Sch. 14 paras. 7(2), 36(9)); S.I. 2001/916, **art. 3(b)** (with Sch. 2 para. 2)

#### Marginal Citations

- M17** 1974 c. 47.
- M18** 1974 c. 47.

### 44 Exclusion of solicitor from legal aid work.

(1) Section 47 of the Solicitors Act 1974 (jurisdiction and powers of the Solicitors Disciplinary Tribunal) shall be amended as follows.

(2) In subsection (2), after paragraph (b) there shall be inserted—

“(bb) in the circumstances referred to in subsection (2A), the exclusion of that solicitor from legal aid work (either permanently or for a specified period);”.

(3) After that subsection there shall be inserted—

“(2A) An order of the Tribunal may make provision for the exclusion of a solicitor from legal aid work as mentioned in subsection (2)(bb) where the Tribunal determines that there is good reason for doing so arising out of—

- [<sup>F48</sup>(a) his conduct, including conduct in the capacity of agent for another solicitor, in connection with the provision for any person of services under the Legal Aid Act 1988; or
- (b) his professional conduct generally.]

(2B) Where the Tribunal makes any such order as is referred to in subsection (2A) in the case of a solicitor who is a member of a firm of solicitors, the Tribunal may, if it thinks fit, order that any other person who is for the time being a member of the firm shall be excluded (either permanently or for a specified period) from legal aid work.

(2C) The Tribunal shall not make an order under subsection (2B) excluding any person from legal aid work unless an opportunity is given to him to show cause why the order should not be made.

(2D) Any person excluded from legal aid work by an order under this section may make an application to the Tribunal for an order terminating his exclusion from such work.”.

(4) ..... <sup>F49</sup>

#### Textual Amendments

- F48** Words substituted by Legal Aid Act 1988 (c. 34, SIF 77:1), s. 45(1), **Sch. 5 para. 19(a)**
- F49** S. 44(4) repealed (2.4.2001) by 1999 c. 22, s. 106, **Sch. 15 Pt. I** (with Sch. 14 paras. 7(2), 36(9)); S.I. 2001/916, **art. 3(b)** (with Sch. 2 para. 2)

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### *Advice and assistance*

45 ..... F50

#### **Textual Amendments**

**F50** Ss. 45, 46 repealed by Legal Aid Act 1988 (c. 34, SIF 77:1), s. 45(2), Sch. 6

### *Legal aid in criminal proceedings*

46 ..... F51

#### **Textual Amendments**

**F51** Ss. 45, 46 repealed by Legal Aid Act 1988 (c. 34, SIF 77:1), s. 45(2), Sch. 6

## **PART IV**

### **THE SUPREME COURT AND COUNTY COURTS**

#### *Proceedings relating to estates of deceased persons and trusts*

#### **47 Power of High Court to make judgments binding on persons who are not parties.**

- (1) This section applies to actions in the High Court relating to the estates of deceased persons or to trusts and falling within any description specified in rules of court.
- (2) Rules of court may make provision for enabling any judgment given in an action to which this section applies to be made binding on persons who—
  - (a) are or may be affected by the judgment and would not otherwise be bound by it; but
  - (b) have in accordance with the rules been given notice of the action and of such matters connected with it as the rules may require.
- (3) Different provision may be made under this section in relation to actions of different descriptions.

#### **48 Power of High Court to authorise action to be taken in reliance on counsel's opinion.**

- (1) Where—
  - (a) any question of construction has arisen out of the terms of a will or a trust; and
  - (b) an opinion in writing given by a [<sup>F52</sup>person who has a 10 year High Court qualification, within the meaning of section 71 of the Courts and Legal Services Act 1990,] has been obtained on that question by the personal representatives or trustees under the will or trust,

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the High Court may, on the application of the personal representatives or trustees and without hearing argument, make an order authorising those persons to take such steps in reliance on the said opinion as are specified in the order.

- (2) The High Court shall not make an order under subsection (1) if it appears to the court that a dispute exists which would make it inappropriate for the court to make the order without hearing argument.

#### Textual Amendments

**F52** Words substituted by Courts and Legal Services Act 1990 (c. 41, SIF 37), s. 71(2), Sch. 10 para. 63

### 49 Powers of High Court on compromise of probate action.

- (1) Where on a compromise of a probate action in the High Court—
- (a) the court is invited to pronounce for the validity of one or more wills, or against the validity of one or more wills, or for the validity of one or more wills and against the validity of one or more other wills; and
  - (b) the court is satisfied that consent to the making of the pronouncement or, as the case may be, each of the pronouncements in question has been given by or on behalf of every relevant beneficiary,
- the court may without more pronounce accordingly.

- (2) In this section—

“probate action” means an action for the grant of probate of the will, or letters of administration of the estate, of a deceased person or for the revocation of such a grant or for a decree pronouncing for or against the validity of an alleged will, not being an action which is non-contentious or common form probate business; and

“relevant beneficiary”, in relation to a pronouncement relating to any will or wills of a deceased person, means—

- (a) a person who under any such will is beneficially interested in the deceased’s estate; and
- (b) where the effect of the pronouncement would be to cause the estate to devolve as on an intestacy (or partial intestacy), or to prevent it from so devolving, a person who under the law relating to intestacy is beneficially interested in the estate.

### 50 Power of High Court to appoint substitute for, or to remove, personal representative.

- (1) Where an application relating to the estate of a deceased person is made to the High Court under this subsection by or on behalf of a personal representative of the deceased or a beneficiary of the estate, the court may in its discretion—
- (a) appoint a person (in this section called a substituted personal representative) to act as personal representative of the deceased in place of the existing personal representative or representatives of the deceased or any of them; or
  - (b) if there are two or more existing personal representatives of the deceased, terminate the appointment of one or more, but not all, of those persons.

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- (2) Where the court appoints a person to act as a substituted personal representative of a deceased person, then—
- (a) if that person is appointed to act with an executor or executors the appointment shall (except for the purpose of including him in any chain of representation) constitute him executor of the deceased as from the date of the appointment; and
  - (b) in any other case the appointment shall constitute that person administrator of the deceased's estate as from the date of the appointment.
- (3) The court may authorise a person appointed as a substituted personal representative to charge remuneration for his services as such, on such terms (whether or not involving the submission of bills of charges for taxation by the court) as the court may think fit.
- (4) Where an application relating to the estate of a deceased person is made to the court under subsection (1), the court may if it thinks fit, proceed as if the application were, or included, an application for the appointment under the <sup>M19</sup>Judicial Trustees Act 1896 of a judicial trustee in relation to that estate.
- (5) In this section “beneficiary”, in relation to the estate of a deceased person, means a person who under the will of the deceased or under the law relating to intestacy is beneficially interested in the estate.
- (6) In section 1 of the Judicial Trustees Act 1896, after subsection (6) there shall be added—
- “(7) Where an application relating to the estate of a deceased person is made to the court under this section, the court may, if it thinks fit, proceed as if the application were, or included, an application under section 50 of the Administration of Justice Act 1985 (power of High Court to appoint substitute for, or to remove, personal representative).”.

#### Marginal Citations

M19 1896 c. 35.

## 51 Amendments relating to jurisdiction of county courts and district probate registrars in probate proceedings.

- (1) For section 32 of the <sup>M20</sup>County Courts Act 1984 there shall be substituted—

### “32 Contentious probate jurisdiction.

- (1) Where—
- (a) an application for the grant or revocation of probate or administration has been made through the principal registry of the Family Division or a district probate registry under section 105 of the Supreme Court Act 1981; and
  - (b) it is shown to the satisfaction of a county court that the value at the date of the death of the deceased of his net estate does not exceed the county court limit,



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the county court shall have the jurisdiction of the High Court in respect of any contentious matter arising in connection with the grant or revocation.

(2) In subsection (1) “net estate”, in relation to a deceased person, means the estate of that person exclusive of any property he was possessed of or entitled to as a trustee and not beneficially, and after making allowances for funeral expenses and for debts and liabilities.”.

(2) <sup>F53</sup> .....

**Textual Amendments**

**F53** S. 51(2) repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), s. 1(1), {Sch. 1 Pt. 1 Group 4}

**Marginal Citations**

**M20** 1984 c. 28.

*Garnishee proceedings*

**52 Administrative and clerical expenses of garnishees.**

(1) Section 40A of the <sup>M21</sup>Supreme Court Act 1981 and section 109 of the <sup>M22</sup>County Courts Act 1984 (administrative and clerical expenses of garnishees) shall each be amended as follows.

(2) For subsection (1) there shall be substituted—

“(1) Where an order nisi made in the exercise of the jurisdiction mentioned in subsection (2) of the preceding section is served on any deposit-taking institution, the institution may, subject to the provisions of this section, deduct from the relevant debt or debts an amount not exceeding the prescribed sum towards the administrative and clerical expenses of the institution in complying with the order; and the right of an institution to make a deduction under this subsection shall be exercisable as from the time the order nisi is served on it.

(1A) In subsection (1) “the relevant debt or debts”, in relation to an order nisi served on any such institution as is mentioned in that subsection, means the amount, as at the time the order is served on the institution, of the debt or debts of which the whole or a part is expressed to be attached by the order.

(1B) A deduction may be made under subsection (1) in a case where the amount referred to in subsection (1A) is insufficient to cover both the amount of the deduction and the amount of the judgment debt and costs in respect of which the attachment was made, notwithstanding that the benefit of the attachment to the creditor is reduced as a result of the deduction.”.

(3) In subsection (2), for “The prescribed sum may not” there shall be substituted “An amount may not in pursuance of subsection (1)”.

(4) In subsection (4), the word “and” shall be omitted, and after paragraph (b) there shall be inserted—

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“(c) may provide for this section not to apply to deposit-taking institutions of any prescribed description.”.

#### Marginal Citations

M21 1981 c. 54.

M22 1984 c. 28.

### *Reimbursement of costs*

## 53 Reimbursement of additional costs resulting from death or incapacity of presiding judge etc.

(1) Where—

- (a) the judge, or (as the case may be) any of the judges, presiding at any proceedings to which this section applies becomes temporarily or permanently incapacitated from presiding at the proceedings, or dies, at any time prior to the conclusion of the proceedings; and
- (b) any party represented at the proceedings incurs any additional costs in consequence of the judge’s incapacity or death,

the [<sup>F54</sup>Secretary of State] may, if he thinks fit, reimburse that party in respect of any such additional costs, or in respect of such part thereof as he may determine; but the amount of any such reimbursement shall not exceed such sum as the [<sup>F54</sup>Secretary of State] may by order prescribe for the purposes of this section.

(2) Subject to subsection (3), this section applies to—

- (a) proceedings in the civil division of the Court of Appeal;
- (b) civil proceedings in the High Court; and
- (c) proceedings in a county court;

and, in the case of any interlocutory proceedings falling within paragraphs (a) to (c), applies separately to any such proceedings and to any other proceedings in the cause or matter in question.

(3) ..... <sup>F55</sup>

(4) For the purposes of this section the amount of any additional costs incurred by any person as mentioned in subsection (1)(b) shall be such amount as may be agreed between the [<sup>F54</sup>Secretary of State] and that person or, in default of agreement, as may be ascertained by taxation.

(5) Where any proceedings to which this section applies—

- (a) are due to be begun before a judge at a particular time; but
- (b) are not begun at that time by reason of the judge becoming temporarily or permanently incapacitated from presiding at the proceedings or by reason of his death,

subsection (1) shall have effect in relation to the incapacity or death of the judge as it has effect in relation to any such incapacity or death of a presiding judge as is mentioned in paragraph (a) of that subsection, but as if any reference to any party represented at the proceedings were a reference to any party who would have been so represented but for the judge’s incapacity or death.

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- (6) In this section <sup>F56</sup> . . . “judge” in relation to any proceedings, includes—
- (a) a master, registrar or other person acting in a judicial capacity in the proceedings; or
  - (b) a person assisting at the proceedings as an assessor or as an adviser appointed by virtue of section 70(3) of the <sup>M23</sup>Supreme Court Act 1981;
- and, in relation to any such person as is mentioned in paragraph (b), any reference to presiding at any proceedings shall be construed as including a reference to assisting at the proceedings.
- (7) Any order made by the [<sup>F54</sup>Secretary of State] under this section shall be made with the concurrence of the Treasury, and shall be so made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (8) Any sums required by the [<sup>F54</sup>Secretary of State] for making payments under this section shall be paid out of money provided by Parliament.

**Textual Amendments**

- F54** Words in s. 53 substituted (19.8.2003) by [The Secretary of State for Constitutional Affairs Order 2003 \(S.I. 2003/1887\)](#), [arts. 1\(2\), 9](#), {Sch 2. para. 6(a)}
- F55** [S. 53\(3\)](#) repealed (27.9.1999) by [1999 c. 22, ss. 106, 108\(3\)\(f\)](#), [Sch. 15 Pt.III](#) (with [Sch. 14 paras. 7\(2\), 36\(9\)](#))
- F56** Words in [s. 53\(6\)](#) repealed (27.9.1999) by [1999 c. 22, ss. 106, 108\(3\)\(f\)](#), [Sch. 15 Pt.III](#) (with [Sch. 14 paras. 7\(2\), 36\(9\)](#))

**Marginal Citations**

- M23** [1981 c. 54](#).

*Register of county court judgments*

**54 Register of county court judgments.**

<sup>F57</sup> .....

**Textual Amendments**

- F57** [S. 54](#) repealed (1.4.2005) by [Courts Act 2003 \(c. 39\)](#), [ss. 109\(3\), 111](#), [Sch. 10](#); [S.I. 2005/910](#), [art. 3\(aa\)](#)

*Relief from forfeiture in county court*

**55 Power of county court to grant relief from forfeiture for non-payment of rent.**

- (1) Section 138 of the County Courts Act 1984 (provisions as to forfeiture for non-payment of rent) shall be amended as provided in subsections (2) to (4) of this section.
- (2) In subsection (5), the words “Subject to subsection (6),” shall be omitted.
- (3) In subsection (7)—
- (a) for “enforced” there shall be substituted “enforceable”; and

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(b) after “the lessee shall” there shall be inserted “, subject to subsections (8) and (9A),”.

(4) After subsection (9) there shall be inserted—

“(9A) Where the lessor recovers possession of the land at any time after the making of the order under subsection (3) (whether as a result of the enforcement of the order or otherwise) the lessee may, at any time within six months from the date on which the lessor recovers possession, apply to the court for relief; and on any such application the court may, if it thinks fit, grant to the lessee such relief, subject to such terms and conditions, as it thinks fit.

(9B) Where the lessee is granted relief on an application under subsection (9A) he shall hold the land according to the lease without any new lease.

(9C) An application under subsection (9A) may be made by a person with an interest under a lease of the land derived (whether immediately or otherwise) from the lessee’s interest therein in like manner as if he were the lessee; and on any such application the court may make an order which (subject to such terms and conditions as the court thinks fit) vests the land in such a person, as lessee of the lessor, for the remainder of the term of the lease under which he has any such interest as aforesaid, or for any lesser term.

In this subsection any reference to the land includes a reference to a part of the land.”.

(5) In section 139 of the <sup>M24</sup>County Courts Act 1984 (service of summons and re-entry), after subsection (2) there shall be inserted—

“(3) Subsections (9B) and (9C) of section 138 shall have effect in relation to an application under subsection (2) of this section as they have effect in relation to an application under subsection (9A) of that section.”.

**Marginal Citations**

**M24** 1984 c. 28.

*Interpretation*

**56 Interpretation of Part IV.**

In this Part—

“action” means any civil proceedings commenced by writ or in any other manner prescribed by rules of court;

“judgment” includes an order;

“will” includes a nuncupative will and any testamentary document of which probate may be granted.

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## PART V

### MISCELLANEOUS AND SUPPLEMENTARY

#### Miscellaneous

57 ..... F58

##### Textual Amendments

**F58** S. 57 repealed (4.9.1996, 1.4.1999, 28.2.2000 for specified purposes and 6.1.2010 for N.I. in so far as not already in force) by 1996 c. 31, ss. 19(2), 16, Sch. 2 (with s. 20(2)); S.I. 1999/817, art. 2(b); S.I. 2000/222, art. 3(b); S.I. 2009/2858, art. 3(d)

58 ..... F59

##### Textual Amendments

**F59** S. 58 repealed (31.1.1997) by 1996 c. 23, s. 107(2), Sch.4; S.I. 1996/3146, art.3(with art. 4, Sch. 2)

#### 59 Pensions Appeal Tribunals: provision for appeals by non-residents to be heard in Scotland or Northern Ireland.

- (1) The Schedule to the <sup>M25</sup>Pensions Appeal Tribunals Act 1943 shall be amended as follows.
- (2) In paragraph 6 (which provides for appeals by persons not resident in Scotland or Northern Ireland to be heard by one of the Tribunals appointed for England and Wales), after “and” there shall be inserted “, subject to any provision made by virtue of paragraph 6A of this Schedule.”.
- (3) After paragraph 6 there shall be inserted—

“6A

Rules made under this Schedule may make provision for enabling an appeal brought by a person who, at the time when the notice of appeal was given, did not reside in any part of the United Kingdom to be heard by one of the Tribunals appointed for Scotland or, as the case may be, for Northern Ireland where, on an application in that behalf by the appellant made in such manner as may be prescribed by the rules to such authority as may be so prescribed, that authority is satisfied—

- (a) that the appellant has a closer connection with Scotland or, as the case may be, with Northern Ireland than with England and Wales; or
- (b) that there is some other good reason for the appeal to be heard in Scotland or, as the case may be, Northern Ireland.”.

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#### Marginal Citations

**M25** 1943 c. 39.

**60** ..... <sup>F60</sup>

#### Textual Amendments

**F60** S. 60 repealed by Copyright, Designs and Patents Act 1988 (c. 48, SIF 67A), s. 303(2), **Sch. 8**

### **61** Constitution of [<sup>F61</sup>youth courts] in London.

In Schedule 2 to the <sup>M26</sup>Children and Young Persons Act 1963 (which by virtue of section 17(1) of that Act has effect as Schedule 2 to the <sup>M27</sup>Children and Young Persons Act 1933), in Part II (constitution of [<sup>F61</sup>youth courts] in Inner London and the City), after paragraph 15 there shall be inserted—

- (1) Where, in the case of any sitting of a [<sup>F61</sup>youth court], a person nominated under paragraph 15(b) of this Schedule—
  - (a) is available to act as chairman; but
  - (b) considers that it would be appropriate for another member of the court to act as chairman,
 he may nominate that member to act as chairman at that sitting.
- (2) A member of a [<sup>F61</sup>youth court] nominated to act as chairman under subparagraph (1) shall only so act while the person making the nomination continues to sit as a member of the court.”.

#### Textual Amendments

**F61** Words in s. 61 substituted (1.10.1992) by Criminal Justice Act 1991 (c. 53, SIF 39:1), s. 100, **Sch. 11 para. 40(1)(2)(p)**; S.I. 1992/333, art. 2(2), **Sch.2**

#### Marginal Citations

**M26** 1963 c. 37.

**M27** 1933 c. 12.

### **62** Amendments of Judicature (Northern Ireland) Act 1978.

- (1) In section 70(2)(a) of the <sup>M28</sup>Judicature (Northern Ireland) Act 1978 the words “and is in practice as such” (which disqualify non-practising barristers and solicitors for appointment as statutory officers under section 70(2) of that Act) shall be omitted.
- (2) In section 103(3) of that Act (appointment and removal from office of justices of the peace) for the words from “on behalf” to “Chancellor” there shall be substituted the words “by the Lord Chancellor by instrument on behalf and in the name of Her Majesty”.

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#### Marginal Citations

M28 1978 c. 23.

63 ..... F62

#### Textual Amendments

F62 S. 63 repealed by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), ss. 109(5), 125(7), Sch. 20

### 64 Northern Ireland rules of court with respect to disclosure of expert evidence etc.

- (1) Notwithstanding any enactment or rule of law by virtue of which documents prepared for the purpose of pending or contemplated civil proceedings, or in connection with the obtaining or giving of legal advice, are in certain circumstances privileged from disclosure, provision may be made by rules of court for requiring, in the case of civil proceedings of any description specified in the rules—
  - (a) a party who has been afforded a medical examination of another party to disclose to that other party the result of the examination;
  - (b) a party who proposes to adduce at the trial expert evidence with respect to medical matters, or matters of any other class specified in the rules, to disclose that evidence to every other party to the proceedings;and any such disclosure shall be made by the furnishing of any such document or documents as may be specified in the rules, and shall be so made by such time as may be determined by or in accordance with the rules.
- (2) Provision may be made by rules of court as to the conditions subject to which expert evidence may be given in civil proceedings.
- (3) Without prejudice to the generality of subsection (2), rules of court made in pursuance of that subsection may make provision for prohibiting a party from adducing, except with the leave of the court, any expert evidence the contents of which were required to be, but have not been, disclosed by him in accordance with rules under subsection (1) (b).
- (4) Any rules of court made in pursuance of this section may make different provision for different classes of cases and for other different circumstances.
- (5) In this section “rules of court” means—
  - (a) rules of court made under section 55 of the <sup>M29</sup>Judicature (Northern Ireland) Act 1978; or
  - (b) county court rules made under Article 47 of the <sup>M30</sup>County Courts (Northern Ireland) Order 1980;and nothing in this section shall prejudice the generality of either of those provisions.
- (6) Section 71 of the <sup>M31</sup>Administration of Justice Act 1982 (which is superseded by this section) shall cease to have effect.

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#### Marginal Citations

- M29** 1978 c. 23.  
**M30** S.I. 1980/397 (N.I. 13).  
**M31** 1982 c. 53.

**65** ..... **F63**

#### Textual Amendments

- F63** S. 65 repealed (1.1.2000) by 1999 c. 22, s. 106, **Sch. 15 Pt. II** (with Sch. 14 paras. 7(2), 36(9)); S.I. 1999/3344, art. 2(d), **Sch. 1**

### Supplementary

**66** ..... **F64**

#### Textual Amendments

- F64** S. 66 repealed by **Building Societies Act 1986** (c. 53, SIF 16), ss. 54(3)(a)(5), 119(5), 120, **Sch. 19 Pt. I**

#### **67** Consequential amendments and repeals.

- (1) The enactments specified in Schedule 7 shall have effect subject to the amendments there specified, being amendments consequential on the provisions of this Act.
- (2) The enactments specified in Schedule 8 are hereby repealed to the extent specified in the third column of that Schedule.

#### **68** Extent: power to make corresponding provision for Northern Ireland.

- (1) With the exception of the provisions referred to in subsection (2), this Act does not extend to Scotland or Northern Ireland.
- (2) Those provisions are—
  - (a) sections 59 and 60;
  - (b) sections 62 to 64, section 67(2) and Schedule 8 so far as they relate to the <sup>M32</sup>Justices Protection (Ireland) Act 1849, the <sup>M33</sup>Judicature (Northern Ireland) Act 1978 and the <sup>M34</sup>Administration of Justice Act 1982, and paragraph 16 of Schedule 9.
  - (c) section 66;
  - (d) this section; and
  - (e) section 69.
- (3) Of those provisions—



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- (a) subsections (1) to (5) of section 60 extend to the Isle of Man as well as to Scotland and Northern Ireland;
  - (b) the provisions referred to in subsection (2)(b) extend to Northern Ireland only; and
  - (c) section 66 does not extend to Northern Ireland.
- (4) An Order in Council under paragraph 1(1)(b) of Schedule 1 to the <sup>M35</sup>Northern Ireland Act 1974 (legislation for Northern Ireland in the interim period) which states that it is made only for purposes corresponding to those of section 45 or 52 of this Act—
- (a) shall not be subject to paragraph 1(4) and (5) of that Schedule (affirmative resolution of both Houses of Parliament); but
  - (b) shall be subject to annulment in pursuance of a resolution of either House.

#### Marginal Citations

- M32** 1849 c. 16.
- M33** 1978 c. 23.
- M34** 1982 c. 53.
- M35** 1974 c. 28

## 69 Short title, commencement, transitional provisions and savings.

- (1) This Act may be cited as the Administration of Justice Act 1985.
- (2) Subject to subsections (3) and (4), this Act shall come into force on such day as the [<sup>F65</sup>Secretary of State] may by order made by statutory instrument appoint; and an order under this subsection may appoint different days for different provisions and for different purposes.
- (3) The following provisions of this Act shall come into force on the day this Act is passed—
  - (a) section 63;
  - (b) Part I of Schedule 8 and section 67(2) so far as relating thereto;
  - (c) section 68;
  - (d) this section and Schedule 9.
- (4) The following provisions of this Act shall come into force at the end of the period of two months beginning with the day on which this Act is passed—
  - (a) sections 45, 49, 52, 54, 56 to 62 and 64 and 65;
  - (b) paragraph 8 of Schedule 7 and section 67(1) so far as relating thereto;
  - (c) Part II of Schedule 8 and section 67(2) so far as relating thereto.
- (5) The transitional provisions and savings contained in Schedule 9 shall have effect; but nothing in that Schedule shall be taken as prejudicing the operation of sections 16 and 17 of the <sup>M36</sup>Interpretation Act 1978 (which relate to repeals).

#### Subordinate Legislation Made

- P1** Power of appointment conferred by s. 69(2) partly exercised: [S.I. 1986/364](#), 1503, 2260; 1988/1341; 1989/287; 1991/2683

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**Textual Amendments**

**F65** Words in s. 69 substituted (19.8.2003) by [The Secretary of State for Constitutional Affairs Order 2003 \(S.I. 2003/1887\)](#), [arts. 1\(2\), 9](#), {Sch 2. para. 6(a)}

**Marginal Citations**

**M36** 1978 c. 30.

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## SCHEDULES

### SCHEDULE 1

Section 8.

#### MINOR AMENDMENTS OF SOLICITORS ACT 1974

- 1 In section 3 (admission as solicitor), in subsection (3), for “High Court” substitute “Supreme Court”.
- 2 In section 7 (entry of name and restoration of name struck off), omit “not exceeding £15”.
- 3 In section 8 (removal or restoration of name at solicitor’s request), in subsection (2), omit “not exceeding £15”.
- 4 ..... F66

#### Textual Amendments

**F66** Sch. 1 paras. 4, 11 repealed by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), s. 125(7), Sch. 20

- 5 In section 13 (appeals in connection with issue of practising certificates), in subsection (2), for “issues”, in both places where it occurs, substitute “decides to issue”.
- 6 In section 21 (unqualified person not to pretend to be a solicitor), for the words from “a fine” onwards substitute “a fine not exceeding the fourth level on the standard scale.”
- 7 In section 24 (application of penal provisions to body corporate)—
  - (a) in subsection (1)(a), for the words from “a fine” onwards substitute “a fine not exceeding the fourth level on the standard scale, and”; and
  - (b) in subsection (1)(b), for the words from “a fine” onwards substitute “a fine not exceeding the fourth level on the standard scale.”
- 8 (1) Section 28 (regulations) shall be amended as follows.  
(2) After subsection (3) insert—

“(3A) Regulations about the keeping of the roll may—

  - (a) provide for the Society, at such intervals as may be specified in the regulations, to enquire of solicitors of any class so specified whether they wish to have their names retained on the roll;
  - (b) require solicitors of any such class, at such intervals as aforesaid, to pay to the Society a fee in respect of the retention of their names on the roll of such amount as may be prescribed by the regulations; and
  - (c) authorise the Society to remove from the roll the name of any solicitor who—

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- (i) fails to reply to any enquiry made in pursuance of paragraph (a) or to pay any fee payable by virtue of paragraph (b), or
- (ii) replies to any such enquiry by indicating that he does not wish to have his name retained on the roll;
- (d) authorise the Society to remove from the roll the name of any solicitor who has died.”.
- (3) In subsection (4), for “The regulations may” substitute “Regulations about the keeping of the roll may also”.
- 9 In section 34 (accountants’ reports)—
- (a) in subsection (2), for “specified in” substitute “for the purposes of”; and
- (b) after subsection (5) insert—
- “(5A) Without prejudice to the generality of subsection (5)(b), rules under this section may make provision requiring a solicitor in advance of delivering an accountant’s report to notify the Society of the period which is to be the accounting period for the purposes of that report in accordance with the preceding provisions of this section.”.
- 10 In section 43 (control of employment of certain clerks)—
- (a) in subsection (1)(b), for the words from “in respect of” onwards substitute “which involved conduct on his part of such a nature that in the opinion of the Society it would be undesirable for him to be employed by a solicitor in connection with his practice,”; and
- (b) omit subsection (6).
- 11 ..... F67

#### Textual Amendments

F67 Sch. 1 paras. 4, 11 repealed by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), s. 125(7), Sch. 20

- 12 In section 87 (interpretation)—
- (a) in subsection (1)—
- (i) in the definition of “contentious business”, for “section 175(1) of the <sup>M37</sup>Supreme Court of Judicature (Consolidation) Act 1925” substitute “section 128 of the Supreme Court Act 1981”;
- (ii) after the definition of “solicitor in Scotland” insert—
- ““the standard scale” has the meaning given by section 37 of the Criminal Justice Act 1982;” and
- (b) in subsection (2)—
- (i) at the end of paragraph (a) insert “or in pursuance of regulations under section 28(3A);”
- (ii) in paragraph (b), for “otherwise than at his own request” substitute “as a disciplinary sanction”.

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### Marginal Citations

**M37** 1925 c. 49.

- 13 (1) Schedule 1 (intervention in solicitor’s practice) shall be amended as follows.
- (2) In paragraph 1(1), after paragraph (e), insert—
- “(ee) the Council are satisfied that a sole solicitor is incapacitated by illness or accident to such an extent as to be unable to attend to his practice;”.
- (3) In paragraph 5(2), after “bank” insert “or other financial institution”.
- (4) In paragraph 6(4), for “14” substitute “8”.
- (5) In paragraph 7—
- (a) in sub-paragraph (1), for “and any such person” substitute “or into a client account of a solicitor nominated on behalf of the Society, and any such person or solicitor”; and
- (b) in sub-paragraph (2), after “bank” insert “or other financial institution”.
- 14 In Schedule 2 (the Compensation Fund), in paragraph 2(1)(b), omit “not exceeding £50”.

## SCHEDULE 2

Section 9.

### INCORPORATED PRACTICES: SUPPLEMENTARY PROVISIONS

### Commencement Information

**I3** Sch. 2 wholly in force at 1.1.1992 see s. 69(2) and S.I. 1991/2683, art. 2

### *Interpretation*

- 1 (1) Subject to sub-paragraph (2), references in this Schedule to a recognised body are references to a body corporate for the time being recognised under section 9 of this Act.
- (2) References in this Schedule to a recognised body in relation to—
- (a) a complaint (other than such a complaint as is mentioned in paragraph 16(1)(a)); or
- (b) any such application as is mentioned in paragraph 15(2),
- include references to a body corporate that was recognised under section 9 of this Act at the time when the conduct to which the complaint or application relates took place.
- (3) References in this Schedule to an officer of a recognised body include references to a director, manager or secretary of that body <sup>F68</sup>; and references in this Schedule to

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a director, in relation to a limited liability partnership, are references to a member of the limited liability partnership.]

- (4) In section 87(1) of the 1974 Act the definitions of “client”, “contentious business” and “non-contentious business” shall apply for the purposes of—
- (a) this Schedule; and
  - (b) any provision of the 1974 Act in so far as it has effect in relation to a recognised body by virtue of this Schedule,
- as if for any reference to a solicitor there were substituted a reference to a recognised body; and for those purposes “controlled trust”, in relation to a recognised body, means a trust of which it is sole trustee or co-trustee only with one or more of its officers or employees.
- (5) Subject to sub-paragraphs (3) and (4), any expression used in this Schedule which is also used in the 1974 Act has the same meaning as in that Act.
- (6) In this Schedule “the 1974 Act” means the <sup>M38</sup>Solicitors Act 1974.

#### Textual Amendments

**F68** Words in [Sch. 2 para. 1\(3\)](#) inserted (6.4.2001) by [S.I. 2001/1090, reg. 9, Sch. 5 para. 14](#)

#### Commencement Information

**I4** [Sch. 2 para. 1](#) wholly in force at 1.1.1992 see [s. 69\(2\)](#) and [S.I. 1991/2683, art. 2](#)

#### Marginal Citations

**M38** [1974 c. 47.](#)

### *Appeal against refusal of Council to grant recognition*

- 2 (1) Where the Council refuse an application by any body corporate for recognition under section 9 of this Act, that body may appeal to the Master of the Rolls against that refusal within one month of being notified of it.
- (2) On an appeal under this paragraph the Master of the Rolls may—
- (a) direct the Council to grant recognition of the body in question under section 9 of this Act; or
  - (b) affirm the refusal of the Council;
- and he may make such order as to the payment of costs by the Council or by that body as he thinks fit.
- (3) Rules made by the Council with the concurrence of the Master of the Rolls may make provision, as respects any application for recognition that is neither granted nor refused by the Council within such period as may be specified in the rules, for enabling an appeal to be brought under this paragraph in relation to the application as if it had been refused by the Council.
- (4) The Master of the Rolls may make regulations about the procedure for appeals to him under this paragraph.

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**Commencement Information**

**I5** Sch. 2 para. 2 wholly in force at 1.1.1992 see s. 69(2) and S.I. 1991/2683, **art. 2**

*Accounts rules*

- 3 Where rules made under section 32(1) or (2) of the 1974 Act are applied to recognised bodies in accordance with section 9(2)(f) of this Act, the Council shall be at liberty to disclose a report on or information about a recognised body's accounts obtained in pursuance of any such rules <sup>F69</sup> . . . for use in investigating the possible commission of an offence by that body and <sup>F69</sup> . . . for use in connection with any prosecution of that body consequent on the investigation.

**Textual Amendments**

**F69** Words in Sch. 2 para. 3 omitted (29.9.1999) by virtue of 1999 c. 22, s. 48, **Sch. 7 para. 2(b)** and repealed (1.1.2000) by 1999 c. 22, s. 106, **Sch. 15 Pt.II** (with Sch. 14 paras. 7(2), 36(9)); S.I. 1999/2657, **art. 2(a)**; S.I. 1999/3344, **art. 2(d)**, **Sch.1**

**Commencement Information**

**I6** Sch. 2 para. 3 wholly in force at 1.1.1992 see s. 69(2) and S.I. 1991/2683, **art. 2**

*Interest on clients' money*

- 4 (1) Where rules made under section 32 of the 1974 Act and containing any such provision as is referred to in section 33(1)(a) of that Act are applied to recognised bodies in accordance with section 9(2)(f) of this Act, then, except as provided by the rules and subject to sub-paragraph (2), a recognised body which in pursuance of the rules maintains an account in which it keeps money received or held for or on account of its clients generally shall not be liable to account to any person for interest received by it on money in that account.
- (2) Nothing in any such rules or in sub-paragraph (1) shall—
- (a) affect any arrangement in writing between a recognised body and any of its clients as to the application of the client's money or interest on it; <sup>F70</sup> . . .
  - (b) . . . . . <sup>F70</sup>

**Textual Amendments**

**F70** Sch. 2 para. 4(2)(b) and the word “or” immediately preceding it repealed (1.6.1992) by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), s. 125(7), **Sch. 20**; S.I. 1992/1221, **art. 2**, Sch.

**Commencement Information**

**I7** Sch. 2 para. 4 wholly in force at 1.1.1992 see s. 69(2) and S.I. 1991/2683, **art. 2**

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[<sup>F71</sup>4ZA Where rules made under section 32 of the 1974 Act and containing any such provision as is referred to in section 33(1) of that Act are applied to managers or employees of recognised bodies in accordance with section 9(2)(fb), then, except as provided by the rules, a manager or employee to whom the rules are applied is not liable to account to any client, other person or trust for interest received by the manager or employee on money held at a bank or building society in an account which is for money received or held for, or on account of—

(a) clients of the recognised body, other persons or trusts, generally, or

(b) that client, person or trust, separately.]

**Textual Amendments**

**F71** Sch. 2 para. 4ZA inserted (31.3.2009) by Legal Services Act 2007 (c. 29), ss. 177, 211, Sch. 16 para. 90 (with ss. 29, 192, 193); S.I. 2009/503, art. 2(b)(ii)

*[<sup>F72</sup> Inspection of bank accounts]*

**Textual Amendments**

**F72** Sch. 2 para. 4A and cross-heading inserted (27.9.1999) by 1999 c. 22, s. 48, Sch. 7 para.5 (with Sch. 14 para. 7(2)); S.I. 1999/2657, art. 2(a)

[<sup>F73</sup>4A Where rules made under section 33A(1) of the 1974 Act are applied to recognised bodies in accordance with section 9(2)(f) of this Act, the Council shall be at liberty to disclose information about a recognised body's accounts obtained in pursuance of the rules for use in investigating the possible commission of an offence by that body and for use in connection with any prosecution of that body consequent on the investigation.]

**Textual Amendments**

**F73** Sch. 2 para. 4A and cross-heading inserted (27.9.1999) by 1999 c. 22, s. 48, Sch. 7 para.5 (with Sch. 14 para. 7(2)); S.I. 1999/2657, art. 2(a)

*Accountants' reports*

- 5 (1) In section 34 of the 1974 Act—
- (a) subsections (1) and (2); and
- (b) subject to any rules made under that section and applied to recognised bodies in accordance with section 9(2)(f) of this Act, subsection (3),
- shall apply to a recognised body as they apply to a solicitor.



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- (2) A certificate under the hand of the Secretary of the Society shall, unless the contrary is proved, be evidence that a recognised body has or, as the case may be, has not delivered to the Society an accountant’s report or supplied any evidence required under section 34 of the 1974 Act or under any such rules as are referred to in sub-paragraph (1)(b).

#### Commencement Information

**I8** Sch. 2 para. 5 wholly in force at 1.1.1992 see s. 69(2) and S.I. 1991/2683, art. 2

VALID FROM 31/03/2009

[<sup>F74</sup>5A Where rules made under section 34 of the 1974 Act are applied to managers or employees of recognised bodies in accordance with section 9(2)(fb), section 34(9) and (10) of that Act apply in relation to a manager or employee to which the rules are applied as they apply in relation to a solicitor.]

#### Textual Amendments

**F74** Sch. 2 para. 5A inserted (31.3.2009) by Legal Services Act 2007 (c. 29), ss. 177, 211, Sch. 16 para. 93 (with ss. 29, 192, 193); S.I. 2009/503, art. 2(b)(ii)

### *Compensation Fund*

- 6 [<sup>F75</sup>(1) On an application under section 9 of this Act a body corporate shall pay to the Society, with any fee required to be paid by virtue of subsection (2)(a) of that section, a contribution to the Compensation Fund of such amount as the Council may from time to time determine.
- (1A) On being required to do so by the Society, every recognised body shall pay a further contribution to the Compensation Fund of such amount as the Council may from time to time determine.
- (1B) The Society may only require a contribution under sub-paragraph (1A) if—
- (a) the recognised body has held or received clients’ money at any time within the twelve-month period; and
  - (b) no such contribution has been required from that body within that period.
- (1C) In sub-paragraph (1B) “the twelve-month period”, in relation to any requirement for payment of a further contribution, means the period of twelve months ending immediately before the day on which the requirement is imposed.
- (1D) Schedule 2 to the 1974 Act shall apply to amounts paid to the Society in pursuance of sub-paragraph (1) or (1A) of this paragraph as if they were annual contributions or special levies paid in pursuance of paragraph (a) or (b) of paragraph 2(1) of that Schedule.]
- (2) Where the Council are satisfied—

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- (a) that a person has suffered or is likely to suffer loss in consequence of dishonesty on the part of an officer or employee of a recognised body in connection with that body's business (or purported business) as a recognised body or in connection with any trust of which it is or formerly was a trustee; or
- (b) that a person has suffered or is likely to suffer hardship in consequence of failure on the part of a recognised body to account for money which has come into its possession in connection with that body's business (or purported business) as a recognised body or in connection with any trust of which it is or formerly was a trustee; or
- (c) that a member of a recognised body has suffered or is likely to suffer loss or hardship by reason of his liability to any of that body's clients in consequence of some act or default of any officer or employee of that body in circumstances where, but for the liability of that member, a grant might have been made out of the Compensation Fund to some other person,

the Council may make a grant out of the Compensation Fund for the purpose of relieving that loss or hardship.

- (3) Subsections (3) to (7) of section 36 of the 1974 Act shall apply in relation to grants under sub-paragraph (2) as they apply in relation to grants under subsection (2) of that section; and accordingly the reference in subsection (3) of that section to a grant under subsection (2)(c) shall be construed as including a reference to a grant under sub-paragraph (2)(c).

#### Textual Amendments

**F75** Sch. 2 para. 6(1)(1A)(1B)(1C)(1D) substituted by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), s. 90

#### Commencement Information

**I9** Sch. 2 para. 6 wholly in force at 1.1.1992 see s. 69(2) and S.I. 1991/2683, art. 2

*Solicitor who is justice of the peace not to act in certain proceedings*

- 7 In section 38 of the 1974 Act references to any partner of a solicitor shall be construed, in relation to a solicitor who is an officer of a recognised body, as references to any other solicitor who is an officer of that body.

#### Commencement Information

**I10** Sch. 2 para. 7 wholly in force at 1.1.1992 see s. 69(2) and S.I. 1991/2683, art. 2

PROSPECTIVE

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### Textual Amendments

**F76** Sch. 2 para. 8 repealed by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), s. 125(7), Sch. 20

### *Restriction on employment of person struck off roll or suspended*

- 9 Section 41 of the 1974 Act (except subsection (4)) shall apply to a recognised body and its business as such as it applies to a solicitor and his practice as such.

### Commencement Information

**I11** Sch. 2 para. 9 wholly in force at 1.1.1992 see s. 69(2) and S.I. 1991/2683, art. 2

### *Failure to disclose fact of having been struck off or suspended*

- 10 [<sup>F77</sup>Section 42(1) and (1A)] of the 1974 Act shall apply in relation to employment by a recognised body in connection with its business as it applies in relation to employment by a solicitor in connection with his practice.

### Textual Amendments

**F77** Words substituted by Courts and Legal Services Act 1990 (c. 41, SIF 37), sS. 124(2)(C), 125(3), Sch. 18 para. 55

### Commencement Information

**I12** Sch. 2 para. 10 wholly in force at 1.1.1992 see s. 69(2) and S.I. 1991/2683, art. 2

### *Control of employment of persons convicted of offences of dishonesty and certain other persons*

- 11 (1) Where a person who is or was employed [<sup>F78</sup>or remunerated] by a recognised body but is not himself a solicitor—
- (a) has been convicted of a criminal offence which discloses such dishonesty that in the opinion of the Society it would be undesirable for him to be employed [<sup>F78</sup>or remunerated] by a recognised body in connection with its business; or
  - (b) has, in the opinion of the Society, occasioned or been a party to, with or without the connivance of any director of the recognised body by which he is or was employed [<sup>F78</sup>or remunerated], an act or default in relation to that body's business which involved conduct on his part of such a nature that in the opinion of the Society it would be undesirable for him to be employed [<sup>F78</sup>or remunerated] by a recognised body in connection with its business,
- [<sup>F79</sup>the Society may either make, or make an application to the Tribunal for it to make, an order under subsection (2) of section 43 of the 1974 Act with respect to him.]

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- (2) <sup>F80</sup> . . . any reference in subsection (2) of that section to a solicitor or to his practice as a solicitor shall be construed as including a reference to a recognised body or to its business as such a body.
- (3) Any reference in subsection (5) of that section to a solicitor shall be construed as including a reference to a recognised body.

#### Textual Amendments

- F78** Words in Sch. 2 para. 11(1) inserted (27.9.1999) by 1999 c. 22, s. 48, **Sch. 7 para. 10(a)** (with Sch. 14 para. 7(2)); S.I. 1999/2657, **art. 2(a)**
- F79** Words in Sch. 2 para. 11(1) substituted (27.9.1999) by 1999 c. 22, s. 48, **Sch. 7 para. 10(b)** (with Sch. 14 para. 7(2)); S.I. 1999/2657, **art. 2(a)**
- F80** Words in Sch. 2 para. 11(2) repealed (1.1.2000) by 1999 c. 22, s. 106, **Sch. 15 Pt.II** (with Sch. 14 paras. 7(2), 36(9)); S.I. 1999/3344, art. 2(d), **Sch.1**

#### Modifications etc. (not altering text)

- C12** Sch. 2 para. 11 applied (16.9.2004) by S.I. 2000/1119, Sch. 4 para. 24(a) (as substituted by The European Communities (Lawyer's Practice) (Amendment) Regulations 2004 (S.I. 2004/1628), **reg. 7(2)**)

#### Commencement Information

- I13** Sch. 2 para. 11 wholly in force at 1.1.1992 see s. 69(2) and S.I. 1991/2683, **art. 2**

#### *Offences in connection with orders under section 43(2) of the 1974 Act*

- 12 In section 44 of the 1974 Act—
- (a) any reference in subsection (1) to a solicitor or to his practice shall be construed as including a reference to a recognised body or to its business; and
- (b) subsection (3) shall apply in relation to proceedings under this Schedule as it applies in relation to proceedings under that section.

#### Commencement Information

- I14** Sch. 2 para. 12 wholly in force at 1.1.1992 see s. 69(2) and S.I. 1991/2683, **art. 2**

#### *Powers of Council in respect of inadequate professional services*

- 13 (1) In [<sup>F81</sup>Schedule 1A of the Act of 1974 (except paragraphs 5(1) and 9)—
- (a) any reference to a solicitor shall be construed as including a reference to a recognised body; and
- (b) any reference to professional services provided by a solicitor in connection with any matter in which he or his firm had been instructed by a client shall be construed as including a reference to professional services provided by a recognised body in connection with any matter in which it had been instructed by a client.

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- (2) The powers conferred on the Council by [<sup>F82</sup>paragraph 2(1)(a) of Schedule 1A to the Act of 1974] shall be exercisable in relation to a body corporate in accordance with this paragraph notwithstanding that it is no longer a recognised body.
- (3) If a body corporate fails to comply with a direction given to it by the Council by virtue of this paragraph, any person may make a complaint in respect of that failure to the Tribunal; but no other proceedings whatever shall be brought in respect of it.

#### Textual Amendments

- F81** Words in Sch. 2 para. 13 substituted (*I. 4. 1991*) for limited purposes by [Courts and Legal Services Act 1990 \(c. 41, SIF 37\), s. 125\(3\), Sch. 18 para. 56\(a\)](#); S.I. 1991/608, [art. 2](#), Sch.
- F82** Words in Sch. 2 para. 13 substituted (*I. 4. 1991*) for limited purposes by [Courts and Legal Services Act 1990 \(c. 41, SIF 37\), s. 125\(3\), Sch. 18 para. 56\(b\)](#); S.I. 1991/608, [art. 2](#), Sch.

#### Commencement Information

- I15** Sch. 2 para. 13 wholly in force at 1.1.1992 see s. 69(2) and [S.I. 1991/2683, art. 2](#)

### Examination of files

- 14 (1) Where the Council are satisfied that it is necessary to do so for the purpose of investigating—
  - [<sup>F83</sup>(a) whether a recognised body has failed to comply with any requirement imposed by or by virtue of this Act or any rules made by the Council and applicable to it by virtue of section 9 of this Act;
  - (b) whether any professional services provided by a recognised body were not of the quality which it is reasonable to expect of it as a recognised body; or
  - (c) whether there are grounds for making, or making an application to the Tribunal for it to make, an order under section 43(2) with respect to a person who is or was employed or remunerated by a recognised body in connection with its business,]the Society may give notice to the recognised body to which the complaint relates requiring the production or delivery to any person appointed by the Society, at a time and a place to be fixed by the Society, of [<sup>F84</sup>all relevant documents in the body's possession.]
- (2) Sub-paragraphs (2) to (12) of paragraph 9 of Schedule 1 to the 1974 Act (intervention in solicitor's practice), together with paragraphs 12 to 16 of that Schedule, shall apply in relation to the powers conferred by sub-paragraph (1) of this paragraph as they apply in relation to the powers conferred by sub-paragraph (1) of paragraph 9, and accordingly in those provisions—
  - (a) any reference to the solicitor shall be construed as including a reference to the body with respect to which the powers are exercisable by virtue of sub-paragraph (1) of this paragraph;
  - (b) any reference to a person appointed, or to a requirement, under paragraph 9(1) shall be construed as including a reference to a person appointed, or to a requirement, under sub-paragraph (1) of this paragraph; and

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- (c) any reference to any such documents as are mentioned in paragraph 9(1) shall be construed as including a reference to any such documents as are mentioned in sub-paragraph (1) of this paragraph.

#### Textual Amendments

**F83** Sch. 2 para. 14(1)(a)-(c) substituted (27.9.1999) for Sch. 2 para. 14(1)(a)(b) by 1999 c. 22, s. 48, **Sch. 7 para.12** (with Sch. 14 para. 7(2)); S.I. 1999/2657, **art. 2(a)**

**F84** Words in Sch. 2 para. 14(1) substituted (27.9.1999) by 1999 c. 22, s. 48, **Sch. 7 para.12** (with Sch. 14 para. 7(2)); S.I. 1999/2657, **art. 2(a)**

#### Commencement Information

**I16** Sch. 2 para. 14 wholly in force at 1.1.1992 see s. 69(2) and S.I. 1991/2683, **art. 2**

### *[<sup>F85</sup> Payment of costs of investigations]*

#### Textual Amendments

**F85** Sch. 2 para. 14A and cross-heading inserted (27.9.1999) by 1999 c. 22, s. 48, **Sch. 7 para.14** (with Sch. 14 para. 7(2)); S.I. 1999/2657, **art. 2(a)**

- <sup>F86</sup>14A Where the Society investigates a failure or apprehended failure by a recognised body to comply with any requirement imposed by or by virtue of this Act or any rules applicable to it by virtue of section 9 of this Act, the Council may direct the body to pay to the Council an amount which—
- (a) is calculated by the Council as the cost to the Society of the investigation; or
  - (b) in the opinion of the Council represents a reasonable contribution towards that cost.]

#### Textual Amendments

**F86** Sch. 2 para. 14A and cross-heading inserted (27.9.1999) by 1999 c. 22, s. 48, **Sch. 7 para.14** (with Sch. 14 para. 7(2)); S.I. 1999/2657, **art. 2(a)**

VALID FROM 31/03/2009

### *[<sup>F87</sup> Disciplinary powers of the Society]*

#### Textual Amendments

**F87** Sch. 2 paras. 14B, 14C and preceding cross-heading inserted (31.3.2009) by Legal Services Act 2007 (c. 29), ss. 177, 211, **Sch. 16 para. 103** (with ss. 29, 192, 193); S.I. 2009/503, **art. 2(b)(ii)** (subject to art. 4)

- 14B (1) This paragraph applies where the Society is satisfied that a recognised body, or a manager or employee of a recognised body, has failed to comply with a requirement

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imposed by or by virtue of this Act or any rules applicable to that person by virtue of section 9 of this Act.

- (2) The Society may do one or both of the following—
  - (a) give the person a written rebuke;
  - (b) direct the person to pay a penalty not exceeding £2,000.
- (3) The Society may publish details of any action it has taken under sub-paragraph (2) (a) or (b), if it considers it to be in the public interest to do so.
- (4) Where the Society takes action against a person under sub-paragraph (2)(b), or decides to publish under sub-paragraph (3) details of such action under sub-paragraph (2)(a) or (b), it must notify the person in writing that it has done so.
- (5) A penalty imposed under sub-paragraph (2)(b) does not become payable until—
  - (a) the end of the period during which an appeal against the decision to impose the penalty, or the amount of the penalty, may be made under paragraph 14C, or
  - (b) if such an appeal is made, such time as it is determined or withdrawn.
- (6) The Society may not publish under sub-paragraph (3) details of any action under sub-paragraph (2)(a) or (b)—
  - (a) during the period within which an appeal against—
    - (i) the decision to take the action,
    - (ii) in the case of action under sub-paragraph (2)(b), the amount of the penalty, or
    - (iii) the decision to publish the details,may be made under paragraph 14C, or
  - (b) if such an appeal has been made, until such time as it is determined or withdrawn.
- (7) The Society must make rules—
  - (a) prescribing the circumstances in which the Society may decide to take action under sub-paragraph (2)(a) or (b);
  - (b) about the practice and procedure to be followed by the Society in relation to such action;
  - (c) governing the publication under sub-paragraph (3) of details of action taken under sub-paragraph (2)(a) or (b);and the Society may make such other rules in connection with the exercise of its powers under this paragraph as it considers appropriate.
- (8) Before making rules under sub-paragraph (7), the Society must consult the Tribunal.
- (9) A penalty under this paragraph may be recovered as a debt due to the Society, and is to be forfeited to Her Majesty.
- (10) The Lord Chancellor may, by order, amend paragraph (b) of sub-paragraph (2) so as to substitute for the amount for the time being specified in that paragraph such other amount as may be specified in the order.
- (11) Before making an order under sub-paragraph (10), the Lord Chancellor must consult the Society.

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(12) An order under sub-paragraph (10) is to be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

(13) This paragraph is without prejudice to any power conferred on the Society, or any other person, to make an application or complaint to the Tribunal.

14C (1) A person may appeal against—

- (a) a decision by the Society to rebuke that person under paragraph 14B(2)(a) if a decision is also made to publish details of the rebuke;
- (b) a decision by the Society to impose a penalty on that person under paragraph 14B(2)(b) or the amount of that penalty;
- (c) a decision by the Society to publish under paragraph 14B(3) details of any action taken against that person under paragraph 14B(2)(a) or (b).

(2) Subsections (9)(b), (10)(a) and (b), (11) and (12) of section 46 of the 1974 Act (Tribunal rules about procedure for hearings etc) apply in relation to appeals under this paragraph as they apply in relation to applications or complaints, except that subsection (11) of that section is to be read as if for “the applicant” to “application” there were substituted any party to the appeal.

(3) Rules under section 46(9)(b) of the 1974 Act may, in particular, make provision about the period during which an appeal under this paragraph may be made.

(4) On an appeal under this paragraph, the Tribunal has power to make an order which—

- (a) affirms the decision of the Society;
- (b) revokes the decision of the Society;
- (c) in the case of a penalty imposed under paragraph 14B(2)(b), varies the amount of the penalty;
- (d) in the case of a recognised body, contains provision for any of the matters mentioned in paragraph 18(2);
- (e) in the case of a manager or employee of a recognised body, contains provision for any of the matters mentioned in paragraph 18A(2);
- (f) makes such provision as the Tribunal thinks fit as to payment of costs.

(5) Where, by virtue of sub-paragraph (4)(e), an order contains provision for any of the matters mentioned in sub-paragraph (2)(c) of paragraph 18A, sub-paragraphs (5) and (6) of that paragraph apply as if the order had been made under sub-paragraph (2)(c) of that paragraph.

(6) An appeal from the Tribunal shall lie to the High Court, at the instance of the Society or the person in respect of whom the order of the Tribunal was made.

(7) The High Court shall have power to make such order on an appeal under this paragraph as it may think fit.

(8) Any decision of the High Court on an appeal under this section shall be final.

(9) This paragraph is without prejudice to any power conferred on the Tribunal in connection with an application or complaint made to it.]



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### *Lay observers*

15 ..... F88

#### **Textual Amendments**

**F88** Sch. 2 para. 15 repealed by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), s. 125(7), **Sch. 20**

### *Complaints to Tribunal with respect to recognised bodies*

- 16 (1) The Tribunal shall have jurisdiction to hear and determine any of the following complaints made to it under this paragraph with respect to a recognised body, namely—
- (a) a complaint that the body has (while a recognised body) been convicted by any court in the United Kingdom of a criminal offence which renders it unsuitable to be recognised under section 9 of this Act;
  - (b) a complaint that the body has failed to comply with section 34 of the 1974 Act or with any rules applicable to it by virtue of section 9 of this Act;
  - (c) a complaint that the body has acted in contravention of section 39 or 41 of the 1974 Act or of any conditions subject to which a permission has been granted under section 41 of that Act; or
  - (d) a complaint that the body has knowingly acted in contravention of any such order as is mentioned in section 44(2) of the 1974 Act or of any conditions subject to which a permission has been granted under such an order.
- (2) A complaint may be made to the Tribunal under this paragraph by any person.

#### **Commencement Information**

**I17** Sch. 2 para. 16 wholly in force at 1.1.1992 see s. 69(2) and **S.I. 1991/2683, art. 2**

### *Procedure on applications and complaints*

- 17 In subsections (7) to (11) of section 46 of the 1974 Act—
- (a) any reference to an application or complaint shall be construed as including a reference to any such application as is mentioned in paragraph 11(1), 15(2) or 21(1) or any such complaint as is mentioned in paragraph 13(3) or 16(1);
  - (b) any reference to an application or complaint made under that Act shall be construed as including a reference to any such application or complaint as aforesaid made under this Schedule; and
  - (c) in the case of subsection (10)(c), any reference to a solicitor shall be construed as including a reference to a recognised body.

#### **Commencement Information**

**I18** Sch. 2 para. 17 wholly in force at 1.1.1992 see s. 69(2) and **S.I. 1991/2683, art. 2**

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### *Powers of Tribunal with respect to recognised bodies*

- 18 (1) Where on the hearing of any complaint made to it under this Schedule the Tribunal is satisfied that a recognised body—
- (a) has been convicted as mentioned in paragraph (a) of paragraph 16(1); or
  - (b) has failed to comply with section 34 of the 1974 Act or with any such rules as are mentioned in paragraph (b) of paragraph 16(1); or
  - (c) has acted as mentioned in paragraph (c) or (d) of that provision; or
  - (d) has failed to comply with any direction given to it by the Council by virtue of paragraph 13,
- the Tribunal may, if it thinks fit, make one or more of the orders referred to in sub-paragraph (2).
- (2) Those orders are—
- (a) an order revoking the recognition under section 9 of this Act of the body to which the complaint relates;
  - (b) an order directing the payment by that body of a penalty not exceeding £3,000, to be forfeited to Her Majesty;
  - (c) an order requiring that body to pay the costs incurred in bringing against it the proceedings before the Tribunal or a contribution towards those costs, being a contribution of such amount as the Tribunal considers reasonable.
- [<sup>F89</sup>(2A) Where, on the hearing of any application or complaint made to it under this Schedule, the Tribunal is satisfied that more than one allegation is proved against the recognised body to whom the application or complaint relates, it may impose a separate penalty (by virtue of sub-paragraph (2)(b) ) with respect of each such allegation.]
- (3) On the hearing of a complaint under paragraph 13(3) relating to a direction given by the Council, the Tribunal may, if it thinks fit (whether or not it makes any order on the hearing under this paragraph), direct that the Council’s direction shall be treated, for the purpose of enforcement, as if it were contained in an order made by the High Court.
- (4) Subsections (4) and (5) of section 47 of the 1974 Act (power to increase maximum amount of penalty) shall have effect in relation to the sum specified in sub-paragraph (2)(b) of this paragraph as they have effect in relation to the sum specified in subsection (2)(c) of that section.

#### **Textual Amendments**

**F89** Sch. 2 para. 18(2A) inserted (1.1.1991) by [Courts and Legal Services Act 1990 \(c. 41, SIF 37\)](#), ss. 124(2)(c), 125(3), [Sch. 18 para. 57](#)

#### **Commencement Information**

**I19** Sch. 2 para. 18 wholly in force at 1.1.1992 see s. 69(2) and [S.I. 1991/2683, art. 2](#)

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<sup>F90</sup>18A(1) Where, on the hearing of any complaint made to it under paragraph 16(1A) of this Schedule, the Tribunal is satisfied that a manager or employee of a recognised body—

- (a) has been convicted as mentioned in paragraph (a) of paragraph 16(1A),
- (b) has failed to comply with any requirement imposed by or by virtue of this Act or any rules applicable to the relevant person by virtue of section 9 of this Act, or
- (c) has acted as mentioned in paragraph (c) or (d) of paragraph 16(1A),

the Tribunal may, if it thinks fit, make one or more of the orders referred to in sub-paragraph (2).

(2) Those orders are—

- (a) an order directing the payment by the relevant person of a penalty to be forfeited to Her Majesty;
- (b) an order requiring the Society to consider taking such steps as the Tribunal may specify in relation to the relevant person;
- (c) if the person is not a solicitor, an order which states one or more of the matters mentioned in sub-paragraph (3);
- (d) an order requiring the Society to refer to an appropriate regulator any matter relating to the conduct of the relevant person.

(3) The matters referred to in sub-paragraph (2)(c) are—

- (a) that as from the specified date—
  - (i) no solicitor or employee of a solicitor shall employ or remunerate, in connection with the practice carried on by that solicitor, the person with respect to whom the order is made, and
  - (ii) no recognised body, or manager or employee of such a body, shall employ or remunerate that person, in connection with the business of the recognised body,

except in accordance with a Society permission;

- (b) that as from the specified date no recognised body or manager or employee of such a body shall, except in accordance with a Society permission, permit the person with respect to whom the order is made to be a manager of the body;
- (c) that as from the specified date no recognised body or manager or employee of such a body shall, except in accordance with a Society permission, permit the person with respect to whom the order is made to have an interest in the body.

(4) For this purpose a person has an interest in a body if the person has an interest in the body within the meaning of Part 5 the Legal Services Act 2007 (see sections 72 and 109 of that Act).

(5) Subsections (1) to (1C), (3) and (4) of section 44 of the 1974 Act (offences in connection with orders under section 43(2) of that Act) apply in relation to an order under sub-paragraph (2)(c) as they apply in relation to an order under section 43(2) of that Act, except that references in those subsections to provision within section 43(2)(a), (b) or (c) of that Act are to be read as references to provision within sub-paragraph (3)(a), (b) or (c).

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- (6) Section 44(2) of the 1974 Act, paragraph 16(1)(d) and (1A)(d) of this Schedule and paragraph 15(3A) of Schedule 14 to the Courts and Legal Services Act 1990 apply in relation to an order under sub-paragraph (2)(c) as they apply in relation to an order under section 43(2) of the 1974 Act.
- (7) For the purposes of sub-paragraph (2)(d) an “appropriate regulator” in relation to the relevant person means—
- (a) if the person is an authorised person in relation to a reserved legal activity for the purposes of the Legal Services Act 2007, any relevant approved regulator (within the meaning of that Act) in relation to that person, and
  - (b) if the person carries on activities which are not reserved legal activities, any body which regulates the carrying on of such activities by the person.]

#### Textual Amendments

**F90** Sch. 2 para. 18A inserted (31.3.2009) by Legal Services Act 2007 (c. 29), ss. 177, 211, Sch. 16 para. 107 (with ss. 29, 192, 193); S.I. 2009/503, art. 2(b)(ii) (subject to art. 4)

#### Modifications etc. (not altering text)

**C13** Sch. 2 para. 18A(2) applied (with modification) by S.I. 2000/1119, Sch. 4 para. 24(2) (as substituted (1.7.2009) by The Legal Services Act 2007 (Registered European Lawyers) Order 2009 (S.I. 2009/1587), arts. 1(1), 3(17))

**C14** Sch. 2 para. 18A(3) applied (with modification) by S.I. 2000/1119, Sch. 4 para. 24(2) (as substituted (1.7.2009) by The Legal Services Act 2007 (Registered European Lawyers) Order 2009 (S.I. 2009/1587), arts. 1(1), 3(17))

#### *Powers of Tribunal in respect of inadequate professional services*

19 ..... **F91**

#### Textual Amendments

**F91** Sch. 2 para. 19 repealed ( 1. 4. 1991 ) by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), s. 125(6) (7), Sch. 20 (with Sch. 19 para. 14(c)); S.I.1991/608, art. 2, Sch.

#### *Powers of Tribunal in respect of legal aid complaints*

- 20 (1) Where the Tribunal makes any such order as is referred to in subsection (2A) of section 47 of the 1974 Act in the case of a solicitor who is an officer or employee of a recognised body, the Tribunal may, if it thinks fit, order that any solicitor who is for the time being a director of that body shall be excluded (either permanently or for a specified period) from legal aid work.
- (2) The reference in sub-paragraph (1) to a person being excluded from legal aid work shall be construed in accordance with section 47(6) of the 1974 Act.

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#### Commencement Information

**I20** Sch. 2 para. 20 wholly in force at 1.1.1992 see s. 69(2) and S.I. 1991/2683, art. 2

#### *Revocation of recognition by reason of default by director*

- 21 (1) Where—
- (a) any order is made by the Tribunal under section 47 of the 1974 Act in the case of a director of a recognised body; or
  - (b) an order is made by the High Court or the Court of Appeal that the name of a director of a recognised body be struck off the roll or that such a director be suspended from practice as a solicitor; or
  - (c) any such order as is mentioned in paragraph (a) or (b) is made in the case of a person employed by a recognised body and the act or omission constituting the ground on which the order was made was instigated or connived at by a director of the recognised body or, if the act or omission was a continuing act or omission, a director of the body had or reasonably ought to have had knowledge of its continuance,
- the Tribunal may, on an application made with respect to the recognised body by or on behalf of the Society, by order revoke its recognition under section 9 of this Act.
- (2) The Tribunal shall not take a case into consideration during any period within which proceedings by way of appeal may be brought which may result in sub-paragraph (1) being rendered inapplicable in that case, or while any such proceedings are pending.
- (3) Any reference to a director of a recognised body in any of paragraphs (a) to (c) of sub-paragraph (1) includes a reference to a person who was a director of the body at the time of the conduct leading to the making of the order referred to in that paragraph.

#### Modifications etc. (not altering text)

**C15** Sch. 2 para. 21(1)(b) extended (22.5.2000) by S.I. 2000/1119, reg. 37(3), **Sch. 4 para. 24** (as amended (6.4.2001) by S.I. 2001/644, **reg. 2(2)**)

**C16** Sch. 2 para. 21(1)(b) applied (16.9.2004) by S.I. 2000/1119, Sch. 4 para. 24(b) (as substituted by The European Communities (Lawyer's Practice) (Amendment) Regulations 2004 (S.I. 2004/1628), **reg. 7(2)**)

#### Commencement Information

**I21** Sch. 2 para. 21 wholly in force at 1.1.1992 see s. 69(2) and S.I. 1991/2683, art. 2

#### *Costs: general modification of provisions of Part III of 1974 Act*

- 22 (1) In the provisions to which this paragraph applies—
- (a) any reference to a solicitor or to a client of a solicitor shall be construed as including a reference to a recognised body or to a client of such a body; and
  - (b) any reference to a client's solicitor shall be construed as including a reference to any recognised body acting for a client.

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- (2) This paragraph applies to the following provisions of the 1974 Act (which relate to the remuneration of solicitors in respect of contentious and non-contentious business), namely—
- section 56 (except subsections (1)(e) and (5));
  - sections 57 to 59;
  - section 60 (except subsection (5));
  - sections 61 and 62;
  - sections 64 and 65;
  - section 67;
  - section 69(1); and
  - sections 70 to 74.

**Commencement Information**

**I22** Sch. 2 para. 22 wholly in force at 1.1.1992 see s. 69(2) and S.I. 1991/2683, art. 2

*Orders as to remuneration for non-contentious business*

- 23 In relation to an order under section 56 of the 1974 Act regulating (in accordance with paragraph 22) the remuneration of recognised bodies in respect of non-contentious business, subsection (5) of that section shall have effect as if—
- (a) in paragraph (a), for “the solicitor” there were substituted “the recognised body”; and
  - (b) in paragraph (d), for “the solicitor” there were substituted “any solicitor, being an officer or employee of the recognised body.”.

**Commencement Information**

**I23** Sch. 2 para. 23 wholly in force at 1.1.1992 see s. 69(2) and S.I. 1991/2683, art. 2

*Effect of contentious business agreements*

- 24 A provision in a contentious business agreement made between a recognised body and a client that the body shall not be liable for the negligence of any of its officers or employees, or that it shall be relieved from any responsibility to which it would otherwise be subject in the course of carrying on its business as a recognised body, shall be void.

**Commencement Information**

**I24** Sch. 2 para. 24 wholly in force at 1.1.1992 see s. 69(2) and S.I. 1991/2683, art. 2

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*Effect on contentious business agreement of supervening incapacity of recognised body to act for client*

- 25 (1) If, after some business has been done under a contentious business agreement made between a recognised body and a client but before the body has wholly performed it, the body ceases to be capable of wholly performing it by reason of one of the following events, namely—
- (a) the body ceases (for any reason) to be a recognised body;
  - (b) a winding-up order is made with respect to the body or a resolution for voluntary winding-up is passed with respect to the body (other than a resolution passed solely for the purposes of its reconstruction or of its amalgamation with another body corporate); or
  - (c) the client terminates the retainer or employment of the body in favour of another recognised body or a solicitor (as, notwithstanding the agreement, he shall be entitled to do),
- any party to, or the representative of any party to, the agreement may apply to the court, and the court shall have the same jurisdiction as to enforcing the agreement so far as it has been performed, or setting it aside, as the court would have had if the recognised body were still capable of wholly performing it.
- (2) The court, notwithstanding that it is of the opinion that the agreement is in all respects fair and reasonable, may order the amount due in respect of business under the agreement to be ascertained by taxation, and in that case—
- (a) the taxing officer, in ascertaining that amount, shall have regard so far as may be to the terms of the agreement; and
  - (b) payment of the amount found by him to be due may be enforced in the same manner as if the agreement had been wholly performed.
- (3) If in such a case as is mentioned in sub-paragraph (1)(c) an order is made for the taxation of the amount due to the recognised body in respect of the business done under the agreement, the court shall direct the taxing officer to have regard to the circumstances under which the termination of the body's retainer or employment has taken place, and the taxing officer, unless he is of the opinion that there has been no default, negligence, improper delay or other conduct on the part of any officer or employee of the body affording the client reasonable ground for terminating its retainer or employment, shall not allow to the body the full amount of the remuneration agreed to be paid to it.

**Commencement Information**

**I25** Sch. 2 para. 25 wholly in force at 1.1.1992 see s. 69(2) and S.I. 1991/2683, art. 2

*Taxations with respect to contentious business*

- 26 Subject to the provisions of any rules of court, on every taxation of costs in respect of any contentious business done by a recognised body, the taxing officer may—
- (a) allow interest at such rate and from such time as he thinks just on money disbursed by the body for the client, and on money of the client in the possession of, and improperly retained by, the body; and

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- (b) in determining the remuneration of the body, have regard to the skill, labour and responsibility on the part of any solicitor, being an officer or employee of the body, which the business involved.

**Commencement Information**

**I26** Sch. 2 para. 26 wholly in force at 1.1.1992 see s. 69(2) and S.I. 1991/2683, art. 2

*Power of court to order delivery of bill of costs, etc.*

- 27 Any jurisdiction—
- (a) of the High Court to make any such orders as are referred to in subsection (1) of section 68 of the 1974 Act in relation to a solicitor (whether or not business has been done by him in the High Court); or
- (b) of the county court to make any such orders as are referred to in subsection (2) of that section in relation to a solicitor,
- shall be exercisable in like manner in relation to a recognised body.

**Commencement Information**

**I27** Sch. 2 para. 27 wholly in force at 1.1.1992 see s. 69(2) and S.I. 1991/2683, art. 2

*Power of court to order recognised body to pay over clients' money*

- 28 Any jurisdiction of the High Court to make, in the case of a solicitor who is acting or has acted as such for a client, an order requiring the payment or delivery up of, or otherwise relating to, money or securities which the solicitor has in his possession or control on behalf of the client shall be exercisable in like manner in the case of a recognised body which is acting or has acted as such for a client.

**Commencement Information**

**I28** Sch. 2 para. 28 wholly in force at 1.1.1992 see s. 69(2) and S.I. 1991/2683, art. 2

*Actions to recover costs*

- [<sup>F92</sup>29 (1) Subsection (2A) of section 69 of the 1974 Act shall have effect in relation to a bill of costs delivered by a recognised body as if for paragraphs (a) and (b) there were substituted—
- “(a) signed on behalf of the recognised body by any manager or employee of the body authorised by it to do so, or
- (b) enclosed in, or accompanied by, a letter which is so signed and refers to the bill.”
- (2) Subsection (2E) of that section shall have effect in relation to such a bill as if for “the solicitor” there were substituted “the recognised body”.]



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#### Textual Amendments

**F92** Sch. 2 para. 29 substituted (7.3.2008) by Legal Services Act 2007 (c. 29), ss. 177, 211, Sch. 16 para. 115, (with ss. 29, 192, 193); S.I. 2008/222, art. 2(f)(j)(ii) (subject to art. 6)

#### Commencement Information

**I29** Sch. 2 para. 29 wholly in force at 1.1.1992 see s. 69(2) and S.I. 1991/2683, art. 2

### *Power of Society to inspect files relating to certain proceedings*

30 Section 83 of the 1974 Act shall apply in relation to proceedings which have been brought with respect to a recognised body for any of the following purposes, namely—

- (a) for the winding-up of the body;
- (b) for the appointment of a receiver or manager of property of the body; or
- (c) for the [<sup>F93</sup>appointment of an administrator under Schedule B1 to the Insolvency Act 1986],

as it applies in relation to proceedings in bankruptcy which have been taken against a solicitor.

#### Textual Amendments

**F93** Words in Sch. 2 para. 30(c) substituted (15.9.2003) by The Enterprise Act 2002 (Insolvency) Order 2003 (S.I. 2003/2096), arts. 1(1), 4, 5, Sch. Pt. 1 para. 6(a)

#### Commencement Information

**I30** Sch. 2 para. 30 wholly in force at 1.1.1992 see s. 69(2) and S.I. 1991/2683, art. 2

### *Bank accounts*

31 Where rules made under section 32(1) or (2) of the 1974 Act are applied to recognised bodies in accordance with section 9(2)(f) of this Act, section 85 of the 1974 Act shall apply in relation to a recognised body which keeps an account with a bank in pursuance of any such rules as it applies in relation to a solicitor who keeps such an account in pursuance of rules under section 32.

#### Commencement Information

**I31** Sch. 2 para. 31 wholly in force at 1.1.1992 see s. 69(2) and S.I. 1991/2683, art. 2

VALID FROM 31/03/2009

[<sup>F94</sup>31A] Where rules made under section 32(1) of the 1974 Act are applied to managers or employees in accordance with section 9(2)(fb) of this Act, section 85 of the 1974 Act shall apply in relation to a manager or employee to whom the rules are

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applied who keeps an account with a bank or building society in pursuance of any such rules as it applies in relation to a solicitor who keeps such an account in pursuance of rules under section 32.]

#### Textual Amendments

**F94** Sch. 2 para. 31A inserted (31.3.2009) by Legal Services Act 2007 (c. 29), ss. 177, 211, Sch. 16 para. 118 (with ss. 29, 192, 193); S.I. 2009/503, art. 2(b)(ii)

### *Intervention by Society*

- 32 (1) Subject to sub-paragraph (2), where—
- (a) the Council are satisfied that a recognised body has failed to comply with any rules applicable to it by virtue of section 9 of this Act; or
  - (b) a person has been appointed receiver or manager of property of a recognised body; or
  - (c) a winding-up order<sup>F95</sup> . . . has been made with respect to a recognised body, or a resolution for voluntary winding-up has been passed with respect to a recognised body (other than a resolution passed solely for the purposes of its reconstruction or of its amalgamation with another body corporate) [<sup>F96</sup> or a recognised body has entered administration]; or
  - (d) the Council have reason to suspect dishonesty on the part of any officer or employee of a recognised body in connection with that body's business or in connection with any trust of which that body is or formerly was a trustee, the powers conferred by Part II of Schedule 1 to the 1975 Act shall be exercisable in relation to the recognised body and its business in like manner as they are exercisable in relation to a solicitor and his practice.
- (2) Those powers shall only be exercisable by virtue of sub-paragraph (1)(a) if the Society has given the recognised body notice in writing that the Council are satisfied that the body has failed to comply with the rules specified in the notice and also (at the same or any later time) notice that those powers are accordingly exercisable in its case by virtue of sub-paragraph (1)(a).

#### Textual Amendments

**F95** Words in Sch. 2 para. 32(c) omitted (15.9.2003) by virtue of The Enterprise Act 2002 (Insolvency) Order 2003 (S.I. 2003/2096), arts. 1(1), 4, 5, {Sch. Pt. 1 para. 6(b)(i)}

**F96** Words in Sch. 2 para. 32(c) added (15.9.2003) by The Enterprise Act 2002 (Insolvency) Order 2003 (S.I. 2003/2096), arts. 1(1), 4, 5, Sch. Pt. 1 para. 6(b)(ii)

#### Commencement Information

**I32** Sch. 2 para. 32 wholly in force at 1.1.1992 see s. 69(2) and S.I. 1991/2683, art. 2

- 33 The powers conferred by Part II of Schedule 1 to the 1974 Act shall also be exercisable as mentioned in paragraph 32(1) of this Schedule where—

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- (a) a complaint is made to the Society that there has been undue delay on the part of a recognised body in connection with any matter in which it was instructed on behalf of a client or with any controlled trust; and
- (b) the Society by notice in writing invites the body to give an explanation within such period following the giving of the notice as may be specified in it, being a period of not less than eight days; and
- (c) the body fails within that period to give an explanation which the Council regard as satisfactory; and
- (d) the Society gives notice of the failure to the body and (at the same or any later time) notice that the powers conferred by Part II of Schedule 1 to the 1974 Act are accordingly exercisable in its case by virtue of this paragraph.

#### Commencement Information

**I33** Sch. 2 para. 33 wholly in force at 1.1.1992 see s. 69(2) and S.I. 1991/2683, art. 2

- 34 (1) Where the recognition of a body corporate under section 9 of this Act—
- (a) has been revoked by an order of the Tribunal under this Schedule; or
  - (b) has expired and no further recognition of that body has been granted under that section,
- the powers conferred by Part II of Schedule 1 to the 1974 Act shall be exercisable in relation to the body corporate and its former business as a recognised body as they are exercisable in relation to a solicitor and his practice.
- (2) Where the powers conferred by Part II of Schedule 1 to the 1974 Act are exercisable in relation to a recognised body in accordance with paragraph 32 or 33 of this Schedule they shall continue to be so exercisable after that body's recognition under section 9 of this Act has been revoked or has otherwise ceased to be in force.

#### Commencement Information

**I34** Sch. 2 para. 34 wholly in force at 1.1.1992 see s. 69(2) and S.I. 1991/2683, art. 2

- 35 In connection with the application of Part II of Schedule 1 to the 1974 Act for the purposes of this Schedule, in that Part of that Schedule—
- (a) any reference to the solicitor or to his practice shall be construed as including a reference to the body corporate in relation to which the powers conferred by that Part of that Schedule are exercisable by virtue of paragraph 32, 33 or 34(1) of this Schedule or to its business (or former business) as a recognised body;
  - (b) any reference to paragraph 1 of that Schedule shall be construed as including a reference to paragraph 32 or 34(1) of this Schedule; and
  - (c) any reference to paragraph 3 of that Schedule shall be construed as including a reference to paragraph 33 of this Schedule.

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#### Commencement Information

**I35** Sch. 2 para. 35 wholly in force at 1.1.1992 see s. 69(2) and S.I. 1991/2683, art. 2

#### *Privilege from disclosure etc.*

- 36 (1) Any communication made to or by a recognised body in the course of its acting as such for a client shall in any legal proceedings be privileged from disclosure in like manner as if the body had at all material times been a solicitor acting for the client.
- (2) Any enactment or instrument making special provision in relation to a solicitor or other legal representative as to the disclosure of information, or as to the production, seizure or removal of documents, with respect to which a claim to professional privilege could be maintained shall, with any necessary modifications, have effect in relation to a recognised body as it has effect in relation to a solicitor.
- [<sup>F97</sup>(3) In [<sup>F98</sup>section] 778(3) of, and paragraph 14(5) of Schedule 15 to, the Income and Corporation Taxes Act 1988][<sup>F99</sup>and sections 749, 771(5) and (6) and 788(5) and (6) of the Income Tax Act 2007] any reference to a solicitor's client shall, in relation to a solicitor who is an officer or employee of a recognised body, be construed as a reference to a client of that body.

#### Textual Amendments

- F97** Words substituted by [Income and Corporation Taxes Act 1988](#) (c. 1, SIF 63:1), s. 844, [Sch. 29 para. 30](#)
- F98** Words in [Sch. 2 para. 36\(3\)](#) substituted (6.4.2007 with effect as mentioned in s. 1034(1) of the amending Act) by [Income Tax Act 2007](#) (c. 3), ss. 1027, 1034, [Sch. 1 para. 272\(a\)](#) (with [Sch. 2](#))
- F99** Words in [Sch. 2 para. 36\(3\)](#) inserted (6.4.2007 with effect as mentioned in s. 1034(1) of the amending Act) by [Income Tax Act 2007](#) (c. 3), ss. 1027, 1034, [Sch. 1 para. 272\(b\)](#) (with [Sch. 2](#))

#### Commencement Information

**I36** Sch. 2 para. 36 wholly in force at 1.1.1992 see s. 69(2) and S.I. 1991/2683, art. 2

#### *Modification of enactments relating to conveyancing etc.*

- 37 In the following provisions, namely—
- (a) sections 10(2), 48 and 182 of the <sup>M39</sup>Law of Property Act 1925;
  - (b) <sup>F100</sup> . . . . .
  - (c) section 12 of the <sup>M40</sup>Land Charges Act 1972;
  - (d) section 13 of the <sup>M41</sup>Local Land Charges Act 1975; <sup>F101</sup> . . .
  - (e) <sup>F101</sup> . . . . .
- any reference to a solicitor shall be construed as including a reference to a recognised body, and any reference to a person's solicitor shall be construed as including a reference to a recognised body acting for that person.

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#### Textual Amendments

**F100** Sch. 2 para. 37(b) repealed (13.10.2003) by Land Registration Act 2002 (c. 9), ss. 135, 136(2), **Sch. 13** (with s. 129, Sch. 12 para. 1); S.I. 2003/1725, **art. 2(1)**

**F101** Sch. 2 para. 37(e) and the word immediately preceding it repealed (1.10.1997) by 1996 c. 27, s. 66(3), **Sch.10** (with Sch. 9 para. 5); S.I. 1997/1892, **art. 3(1)(d)(iv)**

#### Commencement Information

**I37** Sch. 2 para. 37 wholly in force at 1.1.1992 see s. 69(2) and S.I. 1991/2683, **art. 2**

#### Marginal Citations

**M39** 1925 c. 20.

**M40** 1972 c. 61.

**M41** 1975 c. 76.

## SCHEDULE 3

Section 12.

### THE COUNCIL FOR LICENSED CONVEYANCERS: SUPPLEMENTARY PROVISIONS

#### *Status*

- 1 The Council shall be a body corporate.

#### *Constitution*

- 2 (1) The Council shall consist of—
- (a) not more than eleven persons who are licensed conveyancers; and
  - (b) not more than ten persons who are not licensed conveyancers,
- being persons elected or nominated as members of the Council in accordance with a scheme under paragraph 4.
- (2) The Council shall in accordance with any such scheme elect one of its members to be chairman of the Council.
- (3) This paragraph does not apply during the initial period referred to in paragraph 3.
- 3 (1) During the initial period the Council shall consist of a chairman and not more than ten other members appointed by the [<sup>F102</sup>Secretary of State].
- (2) In this paragraph “the initial period” means the period beginning with the establishment of the Council and ending immediately before the date fixed by the first scheme under paragraph 4 for the coming into office of the first persons elected or nominated as members of the Council in accordance with the scheme.
- (3) The term of office of the chairman appointed under sub-paragraph (1) shall expire immediately before the date fixed by that scheme for the coming into office of the first chairman elected under paragraph 2(2), and the term of office of the other members appointed under sub-paragraph (1) shall expire at the end of the initial period.

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#### Textual Amendments

**F102** Words in Sch. 3 substituted (19.8.2003) by [The Secretary of State for Constitutional Affairs Order 2003 \(S.I. 2003/1887\)](#), [arts. 1\(2\), 9](#), {Sch 2. para. 6(b)}

- 4 (1) The Council shall prepare a scheme making provision as to—
- (a) the election or nomination of persons for the purposes of paragraphs (a) and (b) of paragraph 2(1);
  - (b) the election of a person as chairman under paragraph 2(2); and
  - (c) the tenure and vacation of office of persons elected or nominated as aforesaid, and the eligibility of persons for election or nomination.
- (2) A scheme under this paragraph shall secure that (except during any casual vacancy)
- (a) the total number of persons elected or nominated for the purposes of paragraph (a) of paragraph 2(1) exceeds by one the total number of persons elected or nominated for the purposes of paragraph (b) of that provision; and
  - (b) the persons elected or nominated for the purposes of the said paragraph (b) include at least two persons who represent the interests of consumers.
- (3) A scheme under this paragraph shall not come into force until it has been approved by the <sup>[F103]</sup>Secretary of State]; and the first scheme under this paragraph shall be submitted to the <sup>[F103]</sup>Secretary of State] for approval before the end of the period of two years beginning with the establishment of the Council.
- (4) The <sup>[F103]</sup>Secretary of State] may approve a scheme under this paragraph either as submitted to him or subject to such modifications as he thinks fit; but where the <sup>[F103]</sup>Secretary of State] proposes to approve a scheme subject to modifications he shall notify the modifications to the Council and consider any observations of the Council on them.
- (5) A scheme under this paragraph may be varied or revoked by any subsequent such scheme.

#### Textual Amendments

**F103** Words in Sch. 3 substituted (19.8.2003) by [The Secretary of State for Constitutional Affairs Order 2003 \(S.I. 2003/1887\)](#), [arts. 1\(2\), 9](#), {Sch 2. para. 6(b)}

#### *Remuneration of members*

- 5 The Council shall have power to pay to the members of the Council or any of its committees such fees for attendance and such travelling, subsistence or other allowances as the Council may determine.

#### *Incidental powers*

- 6 The Council shall have power to do anything which in its opinion is calculated to facilitate the proper discharge of its functions, including the borrowing of money.

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### *Officers and staff*

- 7 (1) The Council shall have power to appoint such officers and servants as it may determine.
- (2) The Council shall pay to its officers and servants such remuneration as it may determine.
- (3) The Council shall, as regards any officers or servants in whose case it may determine to do so, pay to or in respect of them such pensions, allowances or gratuities, or provide and maintain for them such schemes (whether contributory or not) for the payment to or in respect of them of such pensions, allowances or gratuities, as it may determine.

### *Committees of the Council*

8 ..... F104

#### **Textual Amendments**

**F104** Sch. 3 para. 8 repealed (1. 4.1991) by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), s. 125(7), Sch. 20; S.I.1991/608, art. 2, Sch.

### *Proceedings*

- 9 (1) The powers of the Council and of any of its committees may be exercised notwithstanding any vacancy, and no proceedings of the Council or of any of its committees shall be invalidated by any defect in the election or nomination of a member.
- (2) The Council may make standing orders for regulating the proceedings (including quorum) of the Council and of any of its committees other than the Discipline and Appeals Committee established under section 25.

### *Expenses of Council*

- 10 (1) The expenses incurred by the Council in the discharge of its functions shall be defrayed out of sums received by it in respect of fees and out of any sums received by it by virtue of sub-paragraph (2).
- (2) The [F105Secretary of State] may make grants to the Council towards meeting the expenses incurred, or to be incurred, by it in the discharge of its functions.
- (3) Any sums required by the [F105Secretary of State] for making grants under sub-paragraph (2) shall be paid out of money provided by Parliament.

#### **Textual Amendments**

**F105** Words in Sch. 3 substituted (19.8.2003) by The Secretary of State for Constitutional Affairs Order 2003 (S.I. 2003/1887), arts. 1(2), 9, {Sch 2. para. 6(b)}

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### *Accounts*

- 11 (1) The Council shall keep proper accounts of all sums received or paid by it and proper records in relation to those accounts.
- (2) The Council shall appoint auditors to the Council, each of whom shall be [<sup>F106</sup>eligible for appointment as a company auditor under section 25 of the Companies Act 1989].
- (3) The Council shall cause their accounts to be audited annually by the auditors to the Council; and, as soon as is practicable after the accounts for any period have been audited, the Council shall cause them to be published and shall send a copy of them to the [<sup>F107</sup>Secretary of State] together with a copy of any report of the auditors thereon.

#### **Textual Amendments**

**F106** Words in Sch. 3 para. 11(2) substituted (1.10.1991) by S.I. 1991/1997, regs. 1, 2, Sch. para. 55(4) (with reg. 4)

**F107** Sch. 3: words in substituted (19.8.2003) by The Secretary of State for Constitutional Affairs Order 2003 (S.I. 2003/1887), arts. 1(2), 9, {Sch 2. para. 6(b)}

## SCHEDULE 4

Section 30.

### THE DISCIPLINE AND APPEALS COMMITTEE: SUPPLEMENTARY PROVISIONS

#### *Rules of procedure*

- 1 (1) The Council shall make rules about the procedure and practice to be followed in relation to proceedings before the Discipline and Appeals Committee under this Part.
- (2) As respects proceedings before the Committee under section 26, rules under this paragraph shall in particular make provision—
- (a) for securing that, where proceedings are to be brought against any person, notice that the proceedings are to be brought shall be given to that person at such time and in such manner as may be specified in the rules;
  - (b) for securing that any party to the proceedings shall, if he so requires, be entitled to be heard by the Committee;
  - (c) for enabling any party to the proceedings to be represented by counsel or solicitor, or (if the rules so provide and the party so elects) by a person of such other description as may be specified in the rules;
  - (d) for requiring proceedings before the Committee to be held in public so far as may be provided by the rules.
- (3) Rules made under this paragraph shall not come into force until approved by order of the [<sup>F108</sup>Secretary of State]; and any such order shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) The [<sup>F108</sup>Secretary of State] may approve rules made under this paragraph either as submitted to him or subject to such modifications as he thinks fit; but where the



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[<sup>F108</sup>Secretary of State] proposes to approve any such rules subject to modifications he shall notify the modifications to the Council and consider any observations of the Council on them.

- (5) In this paragraph and paragraphs 2 and 3 “party”, in relation to any proceedings, means—
- (a) the person against whom the proceedings are brought;
  - (b) a person on whose complaint the proceedings are brought; or
  - (c) a person appointed by the Council to represent the Council at the proceedings.

#### Textual Amendments

**F108** Sch. 4: words substituted (19.8.2003) by [The Secretary of State for Constitutional Affairs Order 2003 \(S.I. 2003/1887\)](#), [arts. 1\(2\), 9](#), {Sch 2. para. 6(c)}

*Evidence etc.*

- 2 (1) For the purposes of any proceedings before the Discipline and Appeals Committee under section 26—
- (a) the Committee may administer oaths; and
  - (b) any party to the proceedings may sue out writs of subpoena ad testificandum and of subpoena duces tecum;
- but no person shall be compelled under any such writ to produce any document which he could not be compelled to produce on the trial of an action.
- (2) Section 36 of the <sup>M42</sup>Supreme Court Act 1981 (subpoena issued by High Court to run through United Kingdom) shall apply in relation to any such proceedings before the Committee as it applies in relation to causes or matters in the High Court.
- (3) Paragraph 1(5) applies for the purposes of this paragraph.

#### Marginal Citations

**M42** 1981 c. 54.

- 3 (1) For the purpose of advising the Discipline and Appeals Committee on questions of law arising in proceedings under section 26, there shall in all such proceedings be an assessor to the Committee, appointed by the Council, who shall be a [<sup>F109</sup>person who has a 10 year general qualification, within the meaning of section 71 of the Courts and Legal Services Act 1990.]
- (2) The [<sup>F110</sup>Secretary of State] may by statutory instrument make rules as to the functions of assessors appointed under this paragraph; and rules under this sub-paragraph may contain such provisions as appear to the [<sup>F110</sup>Secretary of State] expedient for securing—
- (a) that where an assessor advises the Committee on any question of law as to evidence, procedure or any other matter specified in the rules, he shall

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do so in the presence of every party to the proceedings, or every person representing such a party, who appears at the proceedings or, if the advice is tendered after the Committee have begun to deliberate as to their findings, that every such party or person shall be informed what advice the assessor has tendered;

- (b) that every such party or person as is mentioned in paragraph (a) shall be informed if in any case the Committee do not accept the advice of the assessor on any such question as is there mentioned,

and such incidental and supplementary provisions as appear to the [<sup>F110</sup>Secretary of State] expedient.

- (3) Subject to the provisions of this paragraph, an assessor under this paragraph may be appointed either generally or for any particular proceedings or class of proceedings, and shall hold and vacate office in accordance with the terms of the instrument under which he is appointed.
- (4) The Council may pay to persons appointed to act as assessors such remuneration as the Council may determine.
- (5) Paragraph 1(5) applies for the purposes of this paragraph.

#### Textual Amendments

**F109** Words substituted by [Courts and Legal Services Act 1990 \(c. 41, SIF 37\)](#), s. 71(2), **Sch. 10 para. 64**

**F110** [Sch. 4](#): words substituted (19.8.2003) by [The Secretary of State for Constitutional Affairs Order 2003 \(S.I. 2003/1887\)](#), **arts. 1(2), 9**, {Sch 2. para. 6(c)}

#### *Filing of orders of Committee*

- 4 (1) Every order of the Discipline and Appeals Committee under this Part shall be filed with the Council, together with a statement of the Committee's findings signed by the chairman or by some other member of the Committee authorised by him for the purpose.
- (2) Any file kept by the Council under this paragraph may be inspected during office hours without payment.
- (3) An order which has been filed shall be treated, for the purpose of enforcement, as if it had been made by the High Court.

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## SCHEDULE 5

Section 31.

### INTERVENTION IN LICENSED CONVEYANCER'S PRACTICE

#### PART I

##### CIRCUMSTANCES IN WHICH COUNCIL MAY INTERVENE

- 1 (1) Subject to sub-paragraph (2), the powers conferred by Part II of this Schedule shall be exercisable where—
- (a) the Council has reason to suspect dishonesty on the part of—
    - (i) a licensed conveyancer, or
    - (ii) an employee or associate of a licensed conveyancer, or
    - (iii) the personal representatives of a deceased licensed conveyancer, in connection with that licensed conveyancer's practice;
  - (b) following the death of a licensed conveyancer who, immediately before his death was practising as a sole practitioner, the Council considers that there has been undue delay on the part of the personal representatives of that person in connection with his practice;
  - (c) the Council is satisfied that a licensed conveyancer has failed to comply with any rules made by virtue of section 22 or 23;
  - (d) a licensed conveyancer has made a composition or arrangement with his creditors;
  - (e) a licensed conveyancer has been committed to prison in any civil or criminal proceedings;
  - (f) the Council is satisfied that a licensed conveyancer practising as a sole practitioner is incapacitated by illness or accident to such an extent as to be unable to attend to his practice;
  - (g) the powers conferred by section 98 of the <sup>M43</sup>Mental Health Act 1983 (emergency powers) have been exercised in respect of a licensed conveyancer; or
  - (h) the licence held by any person—
    - (i) has been suspended or has terminated in accordance with section 18; or
    - (ii) has been revoked or suspended by an order of the Discipline and Appeals Committee under section 26; or
    - (iii) has expired and no further licence has been issued to him under this Part of this Act.
- (2) The powers conferred by Part II of this Schedule shall only be exercisable under sub-paragraph (1)(c) if the Council has given the licensed conveyancer notice in writing that the Council is satisfied that he has failed to comply with rules specified in the notice and also (at the same or any later time) notice that the powers conferred by Part II of this Schedule are accordingly exercisable in his case.
- (3) For the purposes of the following provisions of this Schedule any person in relation to whom the powers conferred by Part II are exercisable by virtue of sub-paragraph (1) (h) shall be deemed to be a licensed conveyancer.

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### Marginal Citations

**M43** 1983 c. 20.

- 2 On the death of a licensed conveyancer who immediately before his death was practising as a sole practitioner paragraphs 6 to 8 shall apply to the client accounts of his practice.
- 3 The powers conferred by Part II of this Schedule shall also be exercisable, subject to paragraphs 5(4) and 10(3), where—
- (a) a complaint is made to the Council that there has been undue delay on the part of a licensed conveyancer in connection with any matter in which he or his firm was instructed on behalf of a client; and
  - (b) the Council by notice in writing invites the conveyancer to give an explanation within such period following the giving of the notice as may be specified in it, being a period of not less than eight days; and
  - (c) the conveyancer fails within that period to give an explanation which the Council regards as satisfactory; and
  - (d) the Council gives notice of the failure to the conveyancer and (at the same or any later time) notice that the powers conferred by Part II of this Schedule are accordingly exercisable in his case.
- 4 (1) Where the powers conferred by Part II of this Schedule are exercisable in relation to a licensed conveyancer, they shall continue to be exercisable after his death or after his licence has been revoked or suspended or has otherwise ceased to be in force under this Part of this Act.
- (2) The references to the licensed conveyancer or his firm in paragraphs 5(1), 6(2) and (3), 8, 9(1) and (5) and 10(1) include, in any case where the licensed conveyancer has died, references to his personal representatives.

## PART II

### POWERS EXERCISABLE ON INTERVENTION

#### Modifications etc. (not altering text)

- C17** Powers conferred by Sch. 5 Pt. II (paras. 5-12) extended (1. 4. 1991 for certain purposes, otherwise 7.12.2004) by [Courts and Legal Services Act 1990 \(c. 41, SIF 76:1\)](#), ss. 53, 59(1), Sch. 8 para.13(1)(2); [S.I. 1991/608, art. 2, Sch](#); [S.I. 2004/2950, art. 2\(a\)](#)
- C18** Powers conferred by Sch. 5 Pt. II (paras. 5-12) restricted (1. 4. 1991 for certain purposes, otherwise 7.12.2004) by [Courts and Legal Services Act 1990 \(c. 41, SIF 76:1\)](#), ss. 53, 59(1), Sch. 8 para. 13(2); [S.I. 1991/608, art. 2, Sch](#); [S.I. 2004/2950, art. 2\(a\)](#)

#### *Money*

- 5 (1) The High Court, on the application of the Council, may order that no payment shall be made without the leave of the court by any person (whether or not named in the

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- order) of any money held by him (in whatever manner and whether it was received before or after the making of the order) on behalf of the licensed conveyancer or his firm.
- (2) No order under this paragraph shall take effect in relation to any person to whom it applies unless the Council has served a copy of the order on him (whether or not he is named in it) and, in the case of a bank or other financial institution, has indicated at which of its branches the Council believes that the money to which the order relates is held.
- (3) A person shall not be treated as having disobeyed an order under this paragraph by making a payment of money if he satisfies the court that he exercised due diligence to ascertain whether it was money to which the order related but nevertheless failed to ascertain that the order related to it.
- (4) This paragraph does not apply where the powers conferred by this Part of this Schedule are exercisable by virtue of paragraph 3.
- 6 (1) Without prejudice to paragraph 5, if the Council passes a resolution to the effect that any sums of money to which this paragraph applies, and the right to recover or receive them, shall vest in the Council, all such sums shall vest accordingly (whether they were received by the person holding them before or after the Council's resolution) and shall be held by the Council on trust to exercise in relation to them the powers conferred by this Part of this Schedule and subject thereto upon trust for the persons beneficially entitled to them.
- (2) This paragraph applies—
- (a) where the powers conferred by this paragraph are exercisable by virtue of paragraph 1, to all sums of money held by or on behalf of the licensed conveyancer or his firm in connection with his practice,
  - (b) where they are exercisable by virtue of paragraph 2, to all sums of money in any client account; and
  - (c) where they are exercisable by virtue of paragraph 3, to all sums of money held by or on behalf of the licensed conveyancer or his firm in connection with the matter to which the complaint relates.
- (3) The Council shall serve on the licensed conveyancer or his firm and on any other person having possession of sums of money to which this paragraph applies a certified copy of the Council's resolution and a notice prohibiting the payment out of any such sums of money.
- (4) Within eight days of the service of a notice under sub-paragraph (3), the person on whom it was served, on giving not less than 48 hours' notice in writing to the Council and (if the notice gives the name of the solicitor instructed by the Council) to that solicitor, may apply to the High court for an order directing the Council to withdraw the notice.
- (5) If the court makes such an order, it shall have power also to make such other order with respect to the matter as it may think fit.
- (6) If any person on whom a notice has been served under sub-paragraph (3) pays out sums of money at a time when such payment is prohibited by the notice, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding the third level on the standard scale.

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- [<sup>F111</sup>6A(1) Without prejudice to paragraph 5, if the Council passes a resolution to the effect that any rights to which this paragraph applies shall vest in the Council, those rights shall vest accordingly.
- (2) This paragraph applies to any right to recover or receive debts due to the licensed conveyancer or his firm in connection with his practice or former practice.
- (3) Any sums recovered by the Council by virtue of the exercise of rights vested under sub-paragraph (1) shall vest in the Council and shall be held by it on trust to exercise in relation to them the powers conferred by this Part of this Schedule and, subject to those powers and to rules under paragraph 6B, upon trust for the persons beneficially entitled to them.
- (4) The Council shall serve on the licensed conveyancer or his firm, and any person who owes a debt to which the order applies a certified copy of the Council's resolution.

**Textual Amendments**

**F111** Sch. 5 paras. 6A, 6B inserted (31.3.2009) by Legal Services Act 2007 (c. 29), ss. 182, 211, Sch. 17 para. 31(6), (with ss. 29, 192, 193); S.I. 2009/503, art. 2(c)(i)

VALID FROM 31/03/2009

- 6B (1) The Council may make rules governing its treatment of sums vested in it under paragraph 6 or 6A(3).
- (2) The rules may, in particular, make provision in respect of cases where the Council, having taken such steps to do so as are reasonable in all the circumstances of the case, is unable to trace the person or persons beneficially entitled to any sum vested in the Council under paragraph 6 or 6A(3) (including provision which requires amounts to be paid into or out of a fund maintained under section 21).]

**Textual Amendments**

**F111** Sch. 5 paras. 6A, 6B inserted (31.3.2009) by Legal Services Act 2007 (c. 29), ss. 182, 211, Sch. 17 para. 31(6), (with ss. 29, 192, 193); S.I. 2009/503, art. 2(c)(i)

- 7 (1) If the Council takes possession of any sum of money to which paragraph 6 applies, the Council shall pay it into a special account in the name of the Council or of a person nominated on behalf of the Council; and any such person shall hold that sum on trust to permit the Council to exercise in relation to it the powers conferred by this Part of this Schedule and subject thereto, on trust for the persons beneficially entitled to it.
- (2) A bank or other financial institution at which a special account is kept shall be under no obligation to ascertain whether it is being dealt with properly.

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- 8 Without prejudice to paragraphs 5 to 7, if the High Court is satisfied, on an application by the Council, that there is reason to suspect that any person holds money on behalf of the licensed conveyancer or his firm, the court may require that person to give the Council information as to any such money and the accounts in which it is held.

#### *Documents*

- 9 (1) The Council may give notice to the licensed conveyancer or his firm requiring the production or delivery to any person appointed by the Council at a time and place to be fixed by the Council—
- (a) where the powers conferred by this Part of this Schedule are exercisable by virtue of paragraph 1, of all documents in the possession of the licensed conveyancer or his firm in connection with his practice; and
  - (b) where they are exercisable by virtue of paragraph 3, of all documents in the possession of the licensed conveyancer or his firm in connection with the matters to which the complaint relates (whether or not they relate also to other matters).
- (2) The person appointed by the Council may take possession of any such documents on behalf of the Council.
- (3) Except in a case where an application has been made to the High Court under sub-paragraph (4), if any person having possession of any such documents refuses, neglects or otherwise fails to comply with a requirement under sub-paragraph (1), he shall be guilty of an offence and liable on summary conviction to a fine not exceeding the third level on the standard scale.
- (4) The High Court, on the application of the Council, may order a person required to produce or deliver documents under sub-paragraph (1) to produce or deliver them to any person appointed by the Council at such time and place as may be specified in the order, and authorise him to take possession of them on behalf of the Council.
- (5) If on an application by the Council the High Court is satisfied that there is reason to suspect that documents in relation to which the powers conferred by sub-paragraph (1) are exercisable have come into the possession of some person other than the licensed conveyancer or his firm, the court may order that person to produce or deliver the documents to any person appointed by the Council at such time and place as may be specified in the order and authorise him to take possession of them on behalf of the Council.
- (6) On making an order under this paragraph, or at any later time, the court, on the application of the Council, may authorise a person appointed by the Council to enter any premises (using such force as is reasonably necessary) to search for and take possession of any documents to which the order relates.
- (7) The Council, on taking possession of any documents under this paragraph, shall serve upon the licensed conveyancer or personal representatives and upon any other person from whom they were received on the Council's behalf or from whose premises they were taken a notice that possession has been taken on the date specified in the notice.
- (8) Subject to sub-paragraph (9) a person upon whom a notice under sub-paragraph (7) is served, on giving not less than 48 hours' notice to the Council and (if the notice

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gives the name of the solicitor instructed by the Council) to that solicitor, may apply to the High Court for an order directing the Council to deliver the documents to such person as the applicant may require.

- (9) A notice under sub-paragraph (8) must be given within eight days of the service of the Council's notice under sub-paragraph (7).
- (10) Without prejudice to the foregoing provisions of this Schedule, the Council may apply to the High Court for an order as to the disposal or destruction of any documents in its possession by virtue of this paragraph or paragraph 10.
- (11) On an application under sub-paragraph (8) or (10), the court may make such order as it thinks fit.
- (12) Except so far as its right to do so may be restricted by an order on an application under sub-paragraph (8) or (10), the Council may take copies of or extracts from any documents in its possession by virtue of this paragraph or paragraph 10 and require any person to whom it is proposed that such documents shall be delivered, as a condition precedent to delivery, to give a reasonable undertaking to supply copies or extracts to the Council.

**Modifications etc. (not altering text)**

**C19** Sch. 5 Pt. II paras. 9(2)-(12), 11, 12 applied (1. 4. 1991 for certain purposes, otherwise 7.12.2004) for limited purposes by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), s. 53, Sch. 8 para. 21(2) (with s. 59(1)); S.I.1991/608, art. 2, Sch; S.I. 2004/2950, art. 2(a)

*Mail*

- 10 (1) The High Court, on the application of the Council, may from time to time order that, for such time not exceeding 18 months as the court thinks fit, postal packets (as defined by <sup>F112</sup>section 125(1) of the Postal Services Act 2000) addressed to the licensed conveyancer or his firm at any place or places mentioned in the order shall be re-directed to the Council or any person appointed by the Council at any other address there mentioned; and the Council, or that person on its behalf, may take possession of any such packets received at that address.
- (2) Where such an order is made the Council shall pay to the <sup>F113</sup>postal operator (as defined by section 125(1) of the Postal Services Act 2000) concerned] the like charges (if any) as would have been payable for the re-direction of the packets <sup>F114</sup>. . . if the addressee had permanently ceased to occupy the premises to which they were addressed and had applied to the <sup>F115</sup>postal operator] to re-direct them to him at the address mentioned in the order.
- (3) This paragraph does not apply where the powers conferred by this Part of this Schedule are exercisable by virtue of paragraph 3.

**Textual Amendments**

**F112** Words in Sch. 5 para. 10(1) substituted (26.3.2001) by S.I. 2001/1149, art. 3(1), Sch. 1 para. 62(2)

**F113** Words in Sch. 5 para. 10(2) substituted (26.3.2001) by S.I. 2001/1149, art. 3(1), Sch. 1 para. 62(3(a)

**F114** Words in Sch. 5 para. 10(2) repealed (26.3.2001) by S.I. 2001/1149, art. 3(2), Sch. 2 (with art. 4(11))



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**F115** Words in Sch. 5 para. 10(2) substituted (26.3.2001) by S.I. 2001/1149, art. 3(1), Sch. 1 para. 62(3)

VALID FROM 31/03/2009

### *[<sup>F116</sup>Trusts*

#### **Textual Amendments**

**F116** Sch. 5 para. 10 and preceding cross-heading inserted (31.3.2009) by Legal Services Act 2007 (c. 29), ss. 182, 211, Sch. 17 para. 31(11), (with ss. 29, 192, 193); S.I. 2009/503, art. 2(c)(i)

- 10A (1) If the licensed conveyancer or his personal representative is a trustee of a trust, the Council may apply to the High Court for an order for the appointment of a new trustee in substitution for him.
- (2) The Trustee Act 1925 has effect in relation to an appointment of a new trustee under this paragraph as it has effect in relation to an appointment under section 41 of that Act.]

### *General*

- 11 The powers in relation to sums of money and documents conferred by this Part of this Schedule shall be exercisable notwithstanding any lien on them or right to their possession.

#### **Modifications etc. (not altering text)**

**C20** Sch. 5 Pt. II paras. 9(2)-(12), 11, 12 applied (1.4.1991 for certain purposes, otherwise 7.12.2004) by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), s. 53, Sch. 8 para. 21(2) (with s. 59(1)); S.I. 1991/608, art. 2, Sch; S.I. 2004/2950, art. 2(a)

- 12 Subject to any order for the payment of costs that may be made on an application to the court under this Schedule, any costs incurred by the Council for the purposes of this Schedule, including, without prejudice to the generality of this paragraph, the costs of any person exercising powers under this Part of this Schedule on behalf of the Council, shall be paid by the licensed conveyancer or his personal representatives and shall be recoverable from him or them as a debt owing to the Council.

#### **Modifications etc. (not altering text)**

**C21** Sch. 5 Pt. II paras. 9(2)-(12), 11, 12 applied (1.4.1991 for certain purposes, otherwise 7.12.2004) by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), s. 53, Sch. 8 para. 21(2) (with s. 59(1)); S.I. 1991/608, art. 2, Sch; S.I. 2004/2950, art. 2(a)

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VALID FROM 31/03/2009

[<sup>F117</sup>12(A)] The High Court, on the application of the Council, may order a former partner of the licensed conveyancer to pay a specified proportion of the costs mentioned in paragraph 12.

(2) The High Court may make an order under this paragraph only if it is satisfied that the conduct (or any part of the conduct) by reason of which the powers conferred by this Part were exercisable in relation to the licensed conveyancer was conduct carried on with the consent or connivance of, or was attributable to any neglect on the part of, the former partner.

(3) In this paragraph “specified” means specified in the order made by the High Court.]

#### Textual Amendments

**F117** Sch. 5 para. 12A inserted (31.3.2009) by Legal Services Act 2007 (c. 29), ss. 182, 211, Sch. 17 para. 31(13), (with ss. 29, 192, 193); S.I. 2009/503, art. 2(c)(i)

## SCHEDULE 6

Section 32.

### BODIES RECOGNISED UNDER S.32: SUPPLEMENTARY PROVISIONS

#### *Construction of references to recognised bodies*

- 1 (1) Subject to sub-paragraph (2), references in this Schedule to a recognised body are references to a body corporate for the time being recognised under section 32.
- (2) In relation to any such allegation or complaint as is mentioned in paragraph 3(1)(a)(ii) or (b) of this Schedule references in this Schedule to a recognised body include references to a body corporate that was recognised under section 32 at the time when the conduct to which the allegation or complaint relates took place.

#### *Disciplinary control of recognised bodies*

- 2 In addition to the functions conferred on them by sections 24 and 25 the Investigating Committee and the Discipline and Appeals Committee shall have the functions conferred on them by the following provisions of this Schedule.
- 3 (1) The Investigating Committee shall carry out a preliminary investigation of any case in which—
  - (a) it is alleged that a recognised body—
    - (i) has (while a recognised body) been convicted by any court in the United Kingdom of a criminal offence which renders it unsuitable to be recognised under section 32; or

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- (ii) has failed to comply with any rules applicable to it by virtue of that section; or
  - (b) a complaint is made to the Council by or on behalf of a member of the public about a recognised body,  
with a view to determining whether the case ought to be referred by the Committee to the Discipline and Appeals Committee for hearing and determination by that Committee under paragraph 4.
- (2) For the purposes of sub-paragraph (1)(b) a complaint about a person who at the time when the conduct to which the complaint relates took place was an officer or employee of a recognised body shall be treated as a complaint about the body.

VALID FROM 31/03/2009

- [<sup>F118</sup>3A(1) Where, on hearing an allegation by virtue of paragraph 3(1A)(a), the Investigating Committee are satisfied—
- (a) in a case within paragraph 3(1)(a), that a recognised body has failed to comply with any such rules as are mentioned in sub-paragraph (ii) of that paragraph, or
  - (b) in a case within paragraph 3(1)(aa), that a manager or employee has failed to comply with any such rules as are mentioned in that paragraph, or
  - (c) in a case within paragraph 3(1)(ab), that a recognised body has failed to comply with any condition mentioned in that paragraph,
- the Committee may make an order directing the payment by the recognised body, manager or employee of a penalty to be forfeited to Her Majesty.
- (2) In relation to proceedings before the Investigating Committee by virtue of paragraph 3(1A)(a), the Committee may make such order as they consider fit as to the payment of costs by—
- (a) the Council;
  - (b) the recognised body, manager or employee against whom the proceedings were brought;
  - (c) if the person on whose allegation the proceedings were brought was heard (in person, or through a representative) by the Committee in the course of the proceedings, that person.
- (3) In sub-paragraph (2), for the purposes of paragraph (a) or (b) of that sub-paragraph, the reference to costs includes costs incurred in connection with a preliminary investigation of the allegation under paragraph 3.
- (4) The amount of any penalty required to be paid under sub-paragraph (1) may not exceed such amount as is prescribed by rules made by the Council for the purposes of this sub-paragraph.
- (5) Paragraphs 1, 2(1) and (3) and 4 of Schedule 4 have effect in relation to—
- (a) proceedings for the hearing and determination of an allegation by the Investigating Committee, as they have effect in relation to proceedings before the Discipline and Appeals Committee under section 26, and
  - (b) orders of the Investigating Committee, as they have effect in relation to orders of the Discipline and Appeals Committee.

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- (6) A person against whom an order is made by the Investigating Committee by virtue of sub-paragraph (1) may appeal to the Discipline and Appeals Committee, and on any such appeal the Discipline and Appeals Committee may make such order as they think fit.
- (7) If an order is made by the Investigating Committee by virtue of sub-paragraph (2), a person listed in paragraphs (a) to (c) of that sub-paragraph may appeal to the Discipline and Appeals Committee, and on any such appeal the Discipline and Appeals Committee may make such order as they think fit.
- (8) Where an order is made by the Discipline and Appeals Committee under sub-paragraph (6) or (7)—
  - (a) a party to the appeal, or
  - (b) if not within paragraph (a), the Council,
 may appeal against the order to the High Court.
- (9) On an appeal under sub-paragraph (8) the High Court may make such order as it thinks fit.
- (10) The decision of the High Court on an appeal under sub-paragraph (8) shall be final.]

#### Textual Amendments

**F118** Sch. 6 para. 3A inserted (31.3.2009) by [Legal Services Act 2007 \(c. 29\)](#), ss. 182, 211, [Sch. 17 para. 32\(5\)](#), (with ss. 29, 192, 193); [S.I. 2009/503](#), [art. 2\(c\)\(i\)](#) (subject to [art. 4](#))

- 4 (1) Where on the hearing of any allegation the Discipline and Appeals Committee are satisfied that a recognised body—
  - (a) has been convicted as mentioned in sub-paragraph (i) of paragraph (3)(1) (a); or
  - (b) has failed to comply with any such rules as are mentioned in sub-paragraph (ii) of that paragraph,
 the Committee may, if they think fit, make one or more of the orders referred to in sub-paragraph (2).
- (2) Those orders are—
  - (a) an order revoking the recognition under section 32 of the body to which the allegation relates;
  - (b) an order directing the payment by that body of a penalty not exceeding £3,000, to be forfeited to Her Majesty;
  - (c) an order requiring that body to pay the costs incurred in bringing against it the proceedings before the Committee or a contribution towards those costs, being a contribution of such amount as the Committee consider reasonable.
- [<sup>F119</sup>(3) Where it appears to the Council that the professional services provided by a recognised body in connection with any matter in which that body has been instructed by a client have, in any respect, not been of the quality which it is reasonable to expect of that body, the Council may take any step with respect to that recognised body as it could take under paragraphs 14 to 20 of Schedule 8 of the Courts and Legal Services Act 1990 with respect to a licensed conveyancer in similar circumstances.

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- (3A) Those paragraphs shall have effect (with the necessary modifications) with respect to any steps taken against the recognised body under this sub-paragraph as they have effect with respect to any steps taken with respect to a licensed conveyancer under paragraph 14 of that Schedule.]
- (4) Subsections (5) and (6) of section 26 shall have effect in relation to the sum specified in sub-paragraph (2)(b) as they have effect in relation to the sum specified in subsection (2)(e) of that section.

#### Textual Amendments

**F119** Sch. 6 para. 4(3)(3A) substituted (*I. 4. 1991*) for limited purposes by [Courts and Legal Services Act 1990](#) (c. 41, SIF 37), s. 125(6), [Sch. 18](#), para. 58 (with s. 125(3), Sch. 19 para. 15(c,); S.I. 1991/608, art. 2, [Sch.](#)

- 5 (1) Where—
- (a) any order is made by the Discipline and Appeals Committee under section 26 in the case of a director of a recognised body; or
  - (b) any such order is made in the case of a person employed by a recognised body and the act or omission constituting the ground on which the order was made was instigated or connived at by a director of the recognised body, or, if the act or omission was a continuing act or omission, a director of the body had or reasonably ought to have had knowledge of its continuance,
- the Discipline and Appeals Committee may, if they think fit, by order revoke the recognition of that body under section 32.
- (2) The Committee shall not take a case into consideration during any period within which proceedings by way of appeal may be brought which may result in sub-paragraph (1) being rendered inapplicable in that case, or while any such proceedings are pending.
- (3) The reference to a director of a recognised body in paragraph (a) or (b) of sub-paragraph (1) includes a reference to a person who was a director of the body at the time of the conduct leading to the making of the order referred to in that paragraph.

#### *Appeals against orders of the Committee*

- 6 (1) A body corporate in whose case an order is made by the Committee by virtue of paragraph 4(1) or 5 may appeal to the High Court, and on any such appeal the High Court may make such order as it thinks fit.
- (2) The decision of the High Court on an appeal under this paragraph shall be final.

#### *Revocation of recognition on grounds of fraud or error*

- 7 (1) Where the Discipline and Appeals Committee are satisfied that the recognition of a body corporate under section 32 was granted as a result of any error, or as a result of fraud on the part of that body, the Committee may, if they think fit, by order revoke that body's recognition.

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- (2) A body corporate may be granted recognition under that section notwithstanding that any recognition previously granted to it has been revoked under this paragraph; but if any such recognition was so revoked on the ground of fraud that body shall not be granted recognition under that section except on an application made in that behalf to the Committee.

*Appeal against decision of Council in relation to grant of recognition*

- 8 (1) Where, in the case of any body corporate, the Council—
- (a) refuses an application by that body for recognition under section 32; or
  - (b) decides to grant recognition of that body under that section subject to any restrictions,
- that body may appeal to the Discipline and Appeals Committee against that refusal or decision within one month of being notified of it.
- (2) On an appeal under this paragraph the Discipline and Appeals Committee may—
- (a) by order direct the Council to grant recognition of the body in question under section 32, either without restrictions or subject to such restrictions falling within subsection (3)(d) of that section as may be specified by the Committee in the direction; or
  - (b) affirm the refusal or decision of the Council;
- and the Committee may make such order as to the payment of costs by the Council or by that body as they think fit.
- (3) Rules made by the Council may make provision, as respects any application for recognition that is neither granted nor refused by the Council within such period as may be specified in the rules, for enabling an appeal to be brought under this paragraph in relation to the application as if it had been refused by the Council.

*Rules of procedure, etc.*

- 9 (1) Paragraphs 1(2), 2 and 3 of Schedule 4 shall have effect in relation to proceedings under paragraph 4 or 5 of this Schedule as they have effect in relation to proceedings under section 26.
- (2) Paragraph 4 of Schedule 4 applies to orders made by the Discipline and Appeals Committee under this Schedule.

*Intervention by Council*

- 10 (1) Subject to sub-paragraph (2), where—
- (a) the Council is satisfied that a recognised body has failed to comply with any rules applicable to it by virtue of section 32; or
  - (b) a person has been appointed receiver or manager of property of a recognised body; or
  - (c) a winding-up order, <sup>F120</sup> . . . has been made with respect to a recognised body or a resolution for voluntary winding-up has been passed with respect to a

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recognised body (other than a resolution passed solely for the purposes of its reconstruction or of its amalgamation with another body corporate) [<sup>F121</sup>or a recognised body has entered administration]; or

(d) the Council has reason to suspect dishonesty on the part of any officer or employee of a recognised body in connection with that body's business,

the powers conferred by Part II of Schedule 5 shall be exercisable in relation to the recognised body and its business in like manner as they are exercisable in relation to a licensed conveyancer and his practice.

(2) Those powers shall only be exercisable by virtue of sub-paragraph (1)(a) if the Council has given the recognised body notice in writing that the Council is satisfied that the body has failed to comply with the rules specified in the notice and also (at the same or any later time) notice that those powers are accordingly exercisable in its case by virtue of sub-paragraph (1)(a).

#### Textual Amendments

**F120** Words in Sch. 6 para. 10(1)(c) omitted (15.9.2003) by virtue of The Enterprise Act 2002 (Insolvency) Order 2003 (S.I. 2003/2096), arts. 1(1), 4, 5, Sch. Pt. 1 para. 7(a)

**F121** Words in Sch. 6 para. 10(1)(c) added (15.9.2003) by The Enterprise Act 2002 (Insolvency) Order 2003 (S.I. 2003/2096), arts. 1(1), 4, 5, Sch. Pt. 1 para. 7(b)

11 The powers conferred by Part II of Schedule 5 shall also be exercisable as mentioned in paragraph 10(1) of this Schedule where—

(a) a complaint is made to the Council that there has been undue delay on the part of a recognised body in connection with any matter in which it was instructed on behalf of a client; and

(b) the Council by notice in writing invites the body to give an explanation within such period following the giving of the notice as may be specified in it, being a period of not less than eight days; and

(c) the body fails within that period to give an explanation which the Council regards as satisfactory; and

(d) the Council gives notice of the failure to the body and (at the same or any later time) notice that the powers conferred by Part II of Schedule 5 are accordingly exercisable in its case by virtue of this paragraph.

12 (1) Where the recognition of a body corporate under section 32—

(a) has been revoked by an order of the Discipline and Appeals Committee under this Schedule; or

(b) has expired and no further recognition of that body has been granted under that section,

the powers conferred by Part II of Schedule 5 shall be exercisable in relation to the body corporate and its former business as a recognised body as they are exercisable in relation to a licensed conveyancer and his practice.

(2) Where the powers conferred by Part II of Schedule 5 are exercisable in relation to a recognised body in accordance with paragraph 10 or 11 of this Schedule they shall continue to be exercisable after that body's recognition under section 32 has been revoked or has otherwise ceased to be in force.

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- 13 In connection with the application of Part II of Schedule 5 for the purposes of this Schedule, in that Part of that Schedule—
- (a) any reference to the licensed conveyancer or to his practice shall be construed as including a reference to the body corporate in relation to which the powers conferred by that Part of that Schedule are exercisable by virtue of paragraph 10, 11 or 12(1) of this Schedule or to its business (or former business) as a recognised body;
  - (b) any reference to paragraph 1 of that Schedule shall be construed as including a reference to paragraph 10 or 12(1) of this Schedule; and
  - (c) any reference to paragraph 3 of that Schedule shall be construed as including a reference to paragraph 11 of this Schedule.

*Examination of files*

- 14 (1) Where the Investigating Committee are satisfied that it is necessary to do so for the purpose of investigating any such allegation or complaint as is mentioned in paragraph (a)(ii) or (b) of paragraph 3(1), the Committee may give notice to the recognised body to which the allegation or complaint relates requiring the production or delivery to any person appointed by the Committee, at a time and a place to be fixed by the Committee, of all documents in the body's possession in connection with the matters to which the allegation or complaint relates (whether or not they relate also to other matters).
- (2) Sub-paragraphs (2) to (12) of paragraph 9 of Schedule 5, together with paragraphs 11 and 12 of that Schedule, shall apply in relation to the powers conferred on the Investigating Committee by sub-paragraph (1) of this paragraph as they apply in relation to the powers conferred on the Council by sub-paragraph (1) of paragraph 9, and accordingly in those provisions—
- (a) any reference to the Council shall be construed as including a reference to the Committee;
  - (b) any reference to the licensed conveyancer shall be construed as including a reference to the body with respect to which the powers are exercisable by virtue of sub-paragraph (1) of this paragraph;
  - (c) any reference to a person appointed, or to a requirement, under paragraph 9(1) shall be construed as including a reference to a person appointed, or to a requirement, under sub-paragraph (1) of this paragraph; and
  - (d) any reference to any such documents as are mentioned in paragraph 9(1) shall be construed as including a reference to any such documents as are mentioned in sub-paragraph (1) of this paragraph.

*Application of rules relating to accounts and interest on client's money*

- 15 (1) Where rules made under section 22(3)(a) are applied to recognised bodies in accordance with section 32(3), an accountant shall, subject to sub-paragraph (2), be qualified to give any report required to be delivered under the rules if he is a member of a relevant body of accountants or is for the time being authorised by the Secretary of State under section 389(1)(b) of the <sup>M44</sup>Companies Act 1985.



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- (2) An accountant shall not be qualified to give any such report in relation to a recognised body if he is not qualified to act as auditor of that body.

**Marginal Citations**

M44 1985 c. 6.

- 16 (1) Where rules made under section 22(2) and containing any such provision as is referred to in section 23(1) are applied to recognised bodies in accordance with section 32(3), then, except as provided by the rules and subject to sub-paragraph (2), a recognised body which in pursuance of the rules maintains an account in which it keeps money received or held for or on account of its clients generally shall not be liable to account to any person for interest received by it on money in that account.
- (2) Nothing in any such rules or in sub-paragraph (1) shall affect any arrangement in writing between a recognised body and any of its clients as to the application of the client’s money or the payment of interest on it.

SCHEDULE 7

Section 67(1).

CONSEQUENTIAL AMENDMENTS

*Legal Aid Act 1974 (c.4)*

1—3. . . . . F122

**Textual Amendments**

F122 Sch. 7 paras. 1–3 repealed by Legal Aid Act 1988 (c. 34, SIF 77:1), s. 45(2), Sch. 6

*Solicitors Act 1974 (c.47)*

PROSPECTIVE

4 . . . . . F123

**Textual Amendments**

F123 Sch. 7 para. 4 repealed by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), s. 125(7), Sch. 20

- 5 In section 48(2) (orders of Tribunal), for “section 47(2)” substitute “subsection (2) of section 47, or was made under subsection (2B) of that section . . .”.

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## PROSPECTIVE

- 6 In section 49(3) (appeals from Tribunal), at the end add “, and an appeal against an order under section 47 excluding any person or persons from legal aid work (within the meaning of that section) shall lie only at the instance of any person so excluded.”

*County Courts Act 1984 (c.28)*

- 7 In section 33 (effect of order of judge in probate proceedings)—  
 (a) omit “a judge of”; and  
 (b) for “him” substitute “the court”.
- 8 In section 58(1) (persons who may take affidavits for use in county courts)—  
 (a) for “any person” substitute “a commissioner for oaths or any other person”; and  
 (b) omit the words from “or a solicitor” onwards.

## SCHEDULE 8

Section 67(2).

## REPEALS

## PART I

## REPEAL COMING INTO FORCE ON ROYAL ASSENT

Chapter	Short title	Extent of repeal
12 & 13 Vict. c. 16.	Justices Protection (Ireland) Act 1849.	The whole Act so far as unrepealed.

## PART II

## REPEALS COMING INTO FORCE TWO MONTHS AFTER ROYAL ASSENT

Chapter	Short title	Extent of repeal
1978 c. 23.	Judicature (Northern Ireland) Act 1978.	In section 70(2)(a), the words “and is in practice as such”.
1981 c. 54.	Supreme Court Act 1981.	In section 40A(4), the word “and”.
1982 c. 53.	Administration of Justice Act 1982.	Section 71.
1984 c. 28.	County Courts Act 1984.	In section 58(1), the words from “or a solicitor” onwards.

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In section 109(4), the word  
“and”.

Section 113(a)(i).

### PART III

#### REPEALS COMING INTO FORCE ON AN APPOINTED DAY

Chapter	Short title	Extent of repeal
1974 c. 4.	Legal Aid Act 1974.	Section 12(3) to (5). Section 38(2) to (6).
1974 c. 47.	Solicitors Act 1974.	In sections 7 and 8(2), the words “not exceeding £15”. Section 43(6). In Schedule 2, in paragraph 2(1)(b) the words “not exceeding £50”.
1981 c. 54.	Supreme Court Act 1981.	Section 106(2) to (4).
1984 c. 28.	county Courts Act 1984.	In section 33, the words “a judge of”. In section 138(5), the words “Subject to subsection (6),”.

#### SCHEDULE 9

Section 69(5).

#### TRANSITIONAL PROVISIONS AND SAVINGS

##### *Imposition of disciplinary sanctions by Council of Law Society*

- 1 Section 1 applies in relation to services provided by a solicitor whether they were provided before or after the commencement of that section.

##### *Examination of solicitors' files in connection with complaints*

- 2 Section 2 applies in relation to a complaint whether it was made before or after the commencement of that section.

##### *Powers of lay observers and Tribunal in relation to inadequate professional services*

- 3 In section 3—  
(a) subsection (1) applies in relation to a complaint whether it was made before or after the commencement of that section; and

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- (b) subsection (2) applies in relation to services provided by a solicitor whether they were provided before or after that commencement.

*Practising certificates*

- 4 In section 4—
  - (a) subsections (2) and (4) apply to applications for practising certificates made after the commencement of that section; and
  - (b) subsection (3) applies in relation to practising certificates issued after that commencement.

*Restriction on preparation of contracts of sale etc.*

- 5 In section 6—
  - (a) subsection (3) applies to acts done before or after the commencement of that section; but
  - (b) subsection (4) does not apply to acts done before that commencement.

*Restriction on preparation of papers for probate etc.*

- 6 Where a person has committed an offence under section 23 of the Solicitors Act 1974 before the commencement of section 7 of this Act, he shall not be liable after that commencement to be proceeded against in respect of that offence unless the act constituting that offence would have constituted an offence under section 23, as substituted by section 7 of this Act, if it had been in force at the time when the act was done.

*Orders modifying provisions so as to apply to incorporated practices*

- 7 Any provision made by an order under subsection (7) of section 9 after the commencement of that section may be made with retrospective effect as from that commencement or any later date.

*Legal aid complaints*

- 8 The repeal by this Act of the provisions referred to in subsection (3) of section 40 shall not affect—
  - (a) the hearing and determination by any tribunal established pursuant to any of those provisions of any complaint or other matter where a reference or application was made to the tribunal in respect of the complaint or matter before the commencement of that subsection; or
  - (b) any appeal against the decision of such a tribunal with respect to any such complaint or matter.
- 9 Each of sections 41 to 44 applies in relation to conduct of a barrister or solicitor (as the case may be) whether it occurred before or after the commencement of that section.

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#### *Substitution or removal of personal representatives*

- 10 Subsection (6) of section 50 applies to an application under section 1 of the <sup>M45</sup>Judicial Trustees Act 1896 whether it was made before or after the commencement of section 50.

#### **Marginal Citations**

**M45** 1896 c. 35.

#### *Administrative and clerical expenses of garnishees*

- 11 (1) Any order of the Lord Chancellor made, or having effect as if made, under section 40A of the Supreme Court Act 1981 or section 109 of the <sup>M46</sup>County Courts Act 1984 which is in force immediately before the commencement of section 52 of this Act shall have effect as if made under and for the purposes of that section as amended by section 52, and any reference in any such order to the sum which may be deducted by any deposit-taking institution shall be construed as a reference to the maximum sum which may be so deducted.
- (2) The provisions of section 52 shall not apply in relation to any order of the kind mentioned in subsection (1) of either of the said sections 40A and 109 which was made before the commencement of section 52.

#### **Marginal Citations**

**M46** 1984 c. 28.

#### *Register of county court judgments*

- 12 (1) Where immediately before the commencement of section 54 there is in force any entry in the register relating to—
- (a) any judgment of a county court, not being a judgment falling within section 73(1) of the County Courts Act 1984 as substituted by subsection (2) of section 54; or
  - (b) any order of a county court,
- nothing in subsection (2) of section 54 shall affect the continuation in force of that entry; but regulations under the said section 73 may make provision as to the cancellation of any such entry.
- (2) In sub-paragraph (1) “the register” means the register kept under the said section 73.

#### *Relief from forfeiture in county court*

- 13 The provisions inserted by subsections (4) and (5) of section 55 shall not have effect in connection with any recovery of possession of land by a lessor which occurred before the commencement of that section.

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**Status:** Point in time view as at 07/03/2008. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** There are outstanding changes not yet made by the legislation.gov.uk editorial team to Administration of Justice Act 1985. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

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*Time limits for actions for libel or slander*

- 14        Nothing in section 57 shall apply in relation to an action if the cause of action accrued before the commencement of that section.

*Appointment of arbitrator by court*

- 15        ..... **F124**

**Textual Amendments**

**F124** Sch. 9 para. 15 repealed (31.1.1997) by 1996 c. 23, s. 107(2), Sch.4; S.I. 1996/3146, art. 3 (with art. 4 Sch. 2)

*Limitation of damages against resident magistrates etc. in Northern Ireland*

- 16        Nothing in section 63 shall apply in relation to an action if the sentence or order in respect of which the action is brought was passed or made before the passing of this Act.

*Increase of penalties under Solicitors Act 1974*

- 17        Nothing in paragraph 6 or 7 of Schedule 1 shall affect the punishment for an offence committed before the commencement of that paragraph.

**Status:**

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