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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 ..... **F1**

#### Textual Amendments

**F1** Sch. 1 paras. 4, 11 repealed by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), s. 125(7), Sch. 20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 ..... F2

**Textual Amendments**  
**F2** 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>M1</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;”;
  - (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

M1 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

#### *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.
- (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,

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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>M2</sup>Solicitors Act 1974.

**Marginal Citations**

**M2** 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.

*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 to the Director of Public Prosecutions for use in investigating the possible commission of an offence by that body and, if the Director thinks fit, for use in connection with any prosecution of that body consequent on the investigation.

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### *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>[F3]</sup>or
  - (b) apply to money received by a recognised body being money subject to a trust of which the body is a trustee.]

#### Textual Amendments

- F3** Sch. 2 para. 4(2)(b) and the word “or” immediately preceding it repealed (*prosp.*) by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), ss. 124(3), 125(7), **Sch. 20**

VALID FROM 31/03/2009

- <sup>[F4]</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

- F4** 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)**

VALID FROM 27/09/1999

### <sup>[F5]</sup> *Inspection of bank accounts*

#### Textual Amendments

- F5** 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)**

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[<sup>F6</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**

**F6** 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.
- (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 subparagraph (1)(b).

VALID FROM 31/03/2009

[<sup>F7</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**

**F7** 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>F8</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.

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- (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—
- (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

**F8** Sch. 2 para. 6(1)(1A)(1B)(1C)(1D) substituted by [Courts and Legal Services Act 1990 \(c. 41, SIF 76:1\)](#), s. 90

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*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.

PROSPECTIVE

8 ..... F9

**Textual Amendments**

**F9** 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.

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

- 10 [<sup>F10</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**

**F10** Words substituted by Courts and Legal Services Act 1990 (c. 41, SIF 37), s. 125(3), **Sch. 18 para. 55**

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

- 11 (1) Where a person who is or was employed 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 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, 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 by a recognised body in connection with its business,

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an application may be made to the Tribunal with respect to that person by or on behalf of the Society.

- (2) Subsection (2) of section 43 of the 1974 Act shall apply in relation to an application under sub-paragraph (1) as it applies in relation to an application under subsection (1) of that section, but, in relation to an application under either of those provisions, 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.

*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.

*Powers of Council in respect of inadequate professional services*

- 13 (1) In [F11]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.
- (2) The powers conferred on the Council by [F12]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**

- F11** 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.
- F12** 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.

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- 13 (1) In [<sup>F31</sup>section 44A of the 1974 Act (except subsections (6) and (8))][<sup>F31</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.
- (2) The powers conferred on the Council by [<sup>F32</sup>section 44A(1)(a)][<sup>F32</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

- F31** Words commencing “Schedule 1A” substituted (*prosp.*) for words commencing “section” by [Courts and Legal Services Act 1990 \(c. 41, SIF 37\), ss. 124\(3\), 125\(3\), Sch. 18 para. 56\(a\)](#)
- F32** Words commencing “paragraph 2(1)(a)” substituted (*prosp.*) for words “section 44A(1)(a)” by [Courts and Legal Services Act 1990 \(c. 41, SIF 37\), ss. 124\(3\), 125\(3\), Sch. 18 para. 56\(b\)](#)

#### Examination of files

- 14 (1) Where the Council are satisfied that it is necessary to do so for the purpose of investigating—
- (a) any such complaint as is mentioned in paragraph (b), (c) or (d) of paragraph 16(1) of this Schedule; or
  - (b) any complaint made to the Society and relating to the quality of any professional services provided by a recognised body,
- 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 all documents in the body’s possession 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 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;

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- (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
- (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.

VALID FROM 27/09/1999

*[<sup>F13</sup> Payment of costs of investigations]*

**Textual Amendments**

**F13** 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>F14</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**

**F14** 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>F15</sup> Disciplinary powers of the Society]*

**Textual Amendments**

**F15** 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 imposed by or by virtue of this Act or any rules applicable to that person by virtue of section 9 of this Act.

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- (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.
- (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.

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- (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.]

*Lay observers*

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### Textual Amendments

**F16** 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.

### *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.

### *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,

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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>F17</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

**F17** 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

VALID FROM 31/03/2009

[<sup>F18</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;

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- (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).
- (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

**F18** 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](#))

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

- C1** 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))
- C2** 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*

- [<sup>F19</sup>19 (1) The powers conferred on the Tribunal by section 47A of the 1974 Act shall be exercisable on the hearing of—
- (a) any complaint made to the Tribunal under this Schedule by or on behalf of the Society with respect to a recognised body; or
  - (b) any application made to the Tribunal under paragraph 15(2) of this Schedule by a lay observer with respect to a recognised body,
- in like manner as they are exercisable on the hearing of any complaint or application made as mentioned in section 47A(1) with respect to a solicitor.
- (2) Accordingly, in section 47A as it applies in relation to any such complaint or application as is mentioned in sub-paragraph (1)(a) or (b)—
- (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.]

**Textual Amendments**

- F19** Sch. 2 para. 19 repealed ( prosp. ) by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), ss. 124(3), 125(6)(7), Sch. 19 para. 14(c), Sch. 20

*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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*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.

*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.
- (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.

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### *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,”.

### *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.

### *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

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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.

*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
  - (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.

*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.

*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.

*Actions to recover costs*

- 29 Subsection (2) of section 69 of the 1974 Act shall have effect in relation to a bill of costs delivered by a recognised body as if—
- (a) for the words from “by the solicitor” to “the firm” there were substituted “on behalf of the recognised body by any officer or employee of the body authorised by it to do so”; and
  - (b) for “the solicitor” (where last occurring) there were substituted “the recognised body”.

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### *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 making of an administration order under Part II of the <sup>M3</sup>Insolvency Act 1985,
- as it applies in relation to proceedings in bankruptcy which have been taken against a solicitor.

#### **Marginal Citations**

**M3** 1985 c. 65.

### *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.

VALID FROM 31/03/2009

[<sup>F20</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 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**

**F20** 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

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- (c) a winding-up order, or an administration order under Part II of the <sup>M4</sup>Insolvency Act 1985, 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); 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).

#### Marginal Citations

M4 1985 c. 65.

- 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—
- (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.
- 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.

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- 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.

*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>F21</sup>(3) In sections 745(3) and 778(3) of, and paragraph 14(5) of Schedule 15 to, the Income and Corporation Taxes Act 1988] 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**

**F21** Words substituted by [Income and Corporation Taxes Act 1988 \(c. 1, SIF 63:1\)](#), s. 844, [Sch. 29 para. 30](#)

*Modification of enactments relating to conveyancing etc.*

- 37 In the following provisions, namely—
- (a) sections 10(2), 48 and 182 of the <sup>M5</sup>Law of Property Act 1925;
  - (b) sections 113 and 144(1)(vi) and (xxiv) of the <sup>M6</sup>Land Registration Act 1925;
  - (c) section 12 of the <sup>M7</sup>Land Charges Act 1972;
  - (d) section 13 of the <sup>M8</sup>Local Land Charges Act 1975; and
  - (e) sections 4(3) and 6(2) of the <sup>M9</sup>Matrimonial Homes Act 1983,
- 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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#### **Marginal Citations**

- M5** 1925 c. 20.
- M6** 1925 c. 21.
- M7** 1972 c. 61.
- M8** 1975 c. 76.
- M9** 1983 c. 19.

## 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 Lord Chancellor.
- (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.
- 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

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- (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 Lord Chancellor; and the first scheme under this paragraph shall be submitted to the Lord Chancellor for approval before the end of the period of two years beginning with the establishment of the Council.
- (4) The Lord Chancellor may approve a scheme under this paragraph either as submitted to him or subject to such modifications as he thinks fit; but where the Lord Chancellor 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.

#### *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.

#### *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*

- <sup>F228</sup> (1) The Council may establish a committee for any purpose (other than a purpose for which it is required to establish a committee by virtue of any provision of this Part)

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and may delegate to any committee established under this paragraph, with or without restrictions or conditions, as it thinks fit, the exercise of any function exercisable by the Council under this Part, not being—

- (a) a power to make rules, schemes or standing orders under this Part;
  - (b) a function expressly conferred by this Part on any committee required to be established as aforesaid; or
  - (c) subject to any express provision for delegation in the rules, a function expressly conferred on the Council by any rules under this Part.
- (2) The number of members of a committee established under this paragraph, and the terms on which they are to hold and vacate office, shall be fixed by the Council.
  - (3) A committee established under this paragraph may include persons who are not members of the Council (whether licensed conveyancers or not), but a majority of the members of any such committee (including the chairman) shall be members of the Council.]

#### **Textual Amendments**

**F22** Sch. 3 para. 8 repealed (*prosp.*) by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), ss. 125(7), 124(3)(4), **Sch. 20**

#### *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 Lord Chancellor 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 Lord Chancellor for making grants under sub-paragraph (2) shall be paid out of money provided by Parliament.

#### *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.

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- (2) The Council shall appoint auditors to the Council, each of whom shall be a member of one or more relevant bodies of accountants.
- (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 Lord Chancellor together with a copy of any report of the auditors thereon.

## 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 Lord Chancellor; 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 Lord Chancellor may approve rules made under this paragraph either as submitted to him or subject to such modifications as he thinks fit; but where the Lord Chancellor 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.

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*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>M10</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**

**M10** 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>F23</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 Lord Chancellor 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 Lord Chancellor 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 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 Lord Chancellor 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.

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### Textual Amendments

**F23** Words substituted by [Courts and Legal Services Act 1990 \(c. 41, SIF 37\)](#), s. 71(2), [Sch. 10 para. 64](#)

### *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.

## 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;

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- (g) the powers conferred by section 98 of the <sup>M11</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.

**Marginal Citations**

**M11** 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.

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- (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)

- C3** Sch. 5 Pt. II (paras. 5–12) extended (*prosp.*) by [Courts and Legal Services Act 1990 \(c. 41, SIF 76:1\), s. 53, Sch. 8 para. 13\(1\)\(2\)](#)
- C4** Powers conferred by Sch. 5, Pt. II (paras. 5-12 ) restricted (*prosp.*) by [Courts and Legal Services Act 1990 \(c. 41, SIF 76:1\), ss. 53, 59\(1\), Sch. 8 para. 13\(2\)](#)

#### *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 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,

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- (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.

VALID FROM 31/03/2009

- <sup>F24</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

**F24** 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\(c\)\(i\)](#)

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- 6B (1) The Council may make rules governing its treatment of sums vested in it under paragraph 6 or 6A(3).

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- (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

- F24** 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.
- 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.

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- (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 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)**

**C5** Sch. 5 Pt. II paras. 9(2)–(12), 11, 12 applied (*prosp.*) by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), ss. 53, 124(3), **Sch. 8 para. 21(2)**

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### *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 section 87(1) of the <sup>M12</sup>Post Office Act 1953) 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 Post Office the like charges (if any) as would have been payable for the re-direction of the packets by virtue of any scheme made under section 28 of the <sup>M13</sup>Post Office Act 1969 if the addressee had permanently ceased to occupy the premises to which they were addressed and had applied to the Post Office 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.

#### **Marginal Citations**

**M12** 1953 c. 36.

**M13** 1969 c. 48.

VALID FROM 31/03/2009

### *[<sup>F25</sup>Trusts*

#### **Textual Amendments**

**F25** 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.

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

- C6** Sch. 5 Pt. II paras. 9(2)–(12), 11, 12 applied (*prosp.*) by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), ss. 53, 124(3), **Sch. 8 para. 21(2)**

- 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)**

- C7** Sch. 5 Pt. II paras. 9(2)–(12), 11, 12 applied (*prosp.*) by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), ss. 53, 124(3), **Sch. 8 para. 21(2)**

VALID FROM 31/03/2009

- [<sup>F26</sup>12A(1) 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**

- F26** 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.

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- (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
    - (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>F27</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;

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- (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.
- (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**

**F27** 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

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(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>F28X1</sup>(3) Where, on the hearing of any allegation or complaint, it appears to the Committee that the conveyancing services provided by a recognised body in connection with any matter in which it had been instructed by a client were in any respect not of the quality that could reasonably have been expected of it as a recognised body the Committee may, if they think fit—

- (a) determine that the fees to which the body shall be entitled in respect of those services shall be limited to such amount as may be specified in their determination; and
- (b) by order direct it to comply with such one or more of the following requirements as appear to them to be necessary in order to give effect to their determination, namely—
  - (i) a requirement to refund the whole or part of any amount already paid by or on behalf of the client in respect of the body's fees in respect of those services;
  - (ii) a requirement to remit the whole or part of those fees;
  - (iii) a requirement to waive, whether wholly or to any specified extent, the right to recover those fees.]

[<sup>F28X1</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.

<sup>X1</sup>(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.

#### Editorial Information

**X1** Sch. 6 para. 4(3)(3A) substituted (*prosp.*) (with saving) for para. 4(3) by Courts and Legal Services Act 1990 (c. 41, SIF 37), s. 125(3)(6), Sch. 18, para. 58, **Sch. 19 para. 15(c)**

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### Textual Amendments

**F28** Sch. 6 para. 4(3)(3A) substituted (*prosp.*) (with saving) for para. 4(3) by Courts and Legal Services Act 1990 (c. 41, SIF 37), s. 125(3)(6), Sch. 18, para. 58, **Sch. 19 para. 15(c)**

- 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 subparagraph (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 subparagraph (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.
- (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.

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*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, or an administration order under Part II of the Insolvency Act 1985, 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); 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,

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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).

- 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.

- 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

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- (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>M14</sup>Companies Act 1985.
- (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**

**M14** 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

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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. . . . . F29

**Textual Amendments**  
F29 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 . . . . . F30

**Textual Amendments**  
F30 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 or under section 47A,”.

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)—

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- (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. 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
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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),”.

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## 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
  - (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.

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*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.

*Substitution or removal of personal representatives*

- 10 Subsection (6) of section 50 applies to an application under section 1 of the <sup>M15</sup>Judicial Trustees Act 1896 whether it was made before or after the commencement of section 50.

**Marginal Citations**

**M15** 1896 c. 35.

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*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>M16</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**

**M16** 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.

*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 Section 58 applies to an arbitration agreement whether it was entered into before or after the commencement of that section.

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*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:**

Point in time view as at 01/02/1991.

**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.