

SCHEDULES

SCHEDULE 21

Section 124.

PROVISION OF CONVEYANCING SERVICES BY RECOGNISED INSTITUTIONS AND PRACTITIONERS

Power of Lord Chancellor to make recognition rules

- 1 (1) The Lord Chancellor may, in accordance with the provisions of this Schedule, make rules with respect to the recognition by him of institutions as being suitable to undertake the provision of conveyancing services.
- (2) In this Schedule—
- "institution" means any building society or other body corporate or any unincorporated association;
 - "officer", in relation to a recognised institution which is a body corporate, includes a director, manager or secretary ;
 - " recognised institution " means an institution for the time being recognised under this Schedule ;
 - " recognised practitioner" means a sole practitioner for the time being recognised under this Schedule ;
 - " recognition rules " means rules made by the Lord Chancellor under this Schedule ;
 - " sole practitioner " means an individual carrying on a business or profession otherwise than as a member of an unincorporated association ;
 - " unincorporated association " means a partnership or any other association of two or more persons which is not a body corporate.
- (3) References in this Schedule to conveyancing services are references to the preparation of transfers, conveyances, contracts and other documents in connection with, and other services ancillary to, the disposition or acquisition of estates or interests in land ; and for the purposes of this sub-paragraph—
- (a) "disposition"—
 - (i) does not include a testamentary disposition or any disposition in the case of such a lease as is referred to in section 54(2) of the Law of Property Act 1925 (short leases); but
 - (ii) subject to that, includes in the case of leases both their grant and their assignment; and
 - (b) " acquisition " has a corresponding meaning.

Recognition of institutions

- 2 (1) Recognition rules may prescribe—

- (a) the circumstances in which institutions, or institutions of any specified description, may be recognised by the Lord Chancellor under this Schedule as being suitable to undertake the provision of conveyancing services ; and
 - (b) the conditions which (subject to any exceptions provided by the rules) must at all times be complied with by institutions so recognised if they are to remain so recognised.
- (2) Without prejudice to the generality of sub-paragraph (1)(b) above, rules made by virtue of that provision may prescribe such conditions as appear to the Lord Chancellor to be appropriate for the purpose of—
- (a) protecting persons for whom conveyancing services are provided by recognised institutions from conflicts of interest that might otherwise arise in connection with the provision of such services ; and
 - (b) securing that compensation is available to such persons in respect of negligence, fraud or other dishonesty on the part of officers or employees of recognised institutions or (in the case of recognised institutions which are unincorporated associations) on the part of members of such institutions.
- (3) Recognition rules may make provision for enabling the Lord Chancellor to require a recognised institution to furnish him with such information or documents as he considers necessary or expedient for the purpose of ascertaining whether or not the institution is complying with any conditions prescribed in pursuance of sub-paragraph (1)(b) above.

Grant and revocation of recognition

- 3 (1) Recognition rules may make provision—
- (a) for the manner and form in which applications for recognition under this Schedule are to be made, and for the payment of fees in connection with such applications ;
 - (b) as to the period (whether determinate or otherwise) for which any recognition granted under this Schedule shall (subject to the provisions of any recognition rules) remain in force; and
 - (c) for the revocation by the Lord Chancellor of any such recognition on any of the grounds referred to in sub-paragraph (2) below.
- (2) Those grounds are—
- (a) that an institution's recognition was granted as a result of any error or fraud ;
 - (b) that while an institution was a recognised institution—
 - (i) the institution, or
 - (ii) where it is a body corporate, any director, manager, secretary or other similar officer of the institution, or
 - (iii) where it is an unincorporated association, any member of the institution,
 has been convicted by any court in the United Kingdom of a criminal offence which, in the opinion of the Lord Chancellor, renders the institution unsuitable to be recognised under this Schedule ; or
 - (c) the institution has, while a recognised institution, failed to comply with any conditions prescribed in pursuance of paragraph 2(1)(b) above or with any requirement imposed in pursuance of paragraph 2(3) above.
- (3) Recognition rules may—

- (a) prescribe the manner and form in which any revocation of an institution's recognition under this Schedule is to be notified to the institution ; and
- (b) provide for any such revocation to be effective as from the time when the institution is notified of it in accordance with the rules.

Recording of recognised status

- 4 (1) Recognition rules may make provision—
- (a) for the keeping by the Lord Chancellor of a list containing the names and principal places of business of all institutions which are for the time being recognised under this Schedule ;
 - (b) for requiring such institutions to notify the Lord Chancellor of changes in their principal places of business ; and
 - (c) for the information contained in any list kept in pursuance of paragraph (a) above to be available for inspection.
- (2) Recognition rules may make provision with respect to the giving of evidence of an institution's status as a recognised institution (or lack of such status) at any particular time by means of a certificate of a description specified in the rules.

Delegation of functions

- 5 (1) Recognition rules may make provision—
- (a) for enabling the Lord Chancellor to delegate the exercise of any functions exercisable by him by virtue of any of the other paragraphs of this Schedule (apart from the power to make recognition rules) to any officer or officers of his nominated in accordance with the rules ; and
 - (b) for a decision made by any such officer in pursuance of paragraph (a) above to be treated, for the purposes of any provision of recognition rules or this Schedule, as a decision of the Lord Chancellor.
- (2) Any such rules may provide for a person who is aggrieved by any such decision to be entitled, in such cases as may be prescribed by the rules, to have the matter in question determined by the Lord Chancellor.

Supplementary provisions as to recognition rules

- 6 (1) Recognition rules shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (2) Any such rules may make different provision for different circumstances.
- (3) Without prejudice to the generality of sub-paragraph (2) above—
- (a) recognition rules may provide for the Lord Chancellor to refuse an application by an institution for recognition under this Schedule where it appears to him that it would be more appropriate for the institution to apply for recognition under section 32 of the Administration of Justice Act 1985 (recognition of bodies managed and controlled by licensed conveyancers); and
 - (b) any rules prescribing a fee may provide for that fee to be reduced, or not to be payable, in such circumstances as may be specified in the rules.

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

*Restrictions on conveyancing by unqualified persons
not to apply in case of recognized institutions*

- 7 (1) Section 22(1) of the Solicitors Act 1974 (restriction on person preparing certain instruments when not qualified to act as a solicitor)—
- (a) shall, notwithstanding section 24(2) of that Act (application of penal provisions to bodies corporate), not apply to a body corporate by reason of any act done by an officer or employee of the body if, at the time it was done, the body was a recognised institution; and
 - (b) shall not apply to a member of an unincorporated association by reason of any act done by an officer or employee, or by another member, of the association if, at the time it was done, the association was a recognised institution.
- (2) Section 22(1) of that Act shall also not apply to any officer or employee of an institution by reason of any act done by him if—
- (a) at the time it was done the institution was a recognised institution ; and
 - (b) it was done by him at the direction and under the supervision of another person who was at the time an officer or employee of the institution or (in the case of an unincorporated association) a member of the institution; and
 - (c) it could have been done by that other person for or in expectation of any fee, gain or reward without committing an offence under section 22 of that Act.

Legal professional privilege

- 8 Any communication made to or by a recognised institution in the course of its acting as such for a client in connection with providing conveyancing services for him shall in any legal proceedings be privileged from disclosure in like manner as if the institution had at all material times been acting as the client's solicitor.

Modification of enactments relating to conveyancing

- 9 In the following provisions, namely—
- (a) sections 10(2), 48 and 182 of the Law of Property Act 1925 ;
 - (b) sections 113 and 144(1)(xxiv) of the Land Registration Act 1925;
 - (c) section 12 of the Land Charges Act 1972 ;
 - (d) section 13 of the Local Land Charges Act 1975 ;
 - (e) section 11(8) of the Estate Agents Act 1979 ; and
 - (f) sections 4(3) and 6(2) of the Matrimonial Homes Act 1983,
- any reference to a solicitor shall be construed as including a reference to a recognised institution, and any reference to a person's solicitor shall be construed as including a reference to a recognised institution acting for that person in connection with providing conveyancing services for him.

Penalty for pretending to be a recognised institution

- 10 (1) An institution shall not describe itself or hold itself out as an institution for the time being recognised under this Schedule unless it is so recognised.
- (2) Any institution which contravenes sub-paragraph (1) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Offences committed by bodies corporate and unincorporated associations

- 11 (1) Where an offence under paragraph 10 above which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person purporting to act in any such capacity, he as well as the body corporate shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.
- (2) Proceedings for an offence alleged to have been committed under paragraph 10 by an unincorporated association shall be brought in the name of that association (and not in that of any of its members) and, for the purposes of any such proceedings, any rules of court relating to service of documents shall have effect as if the association were a corporation.
- (3) A fine imposed on an unincorporated association on its conviction of an offence under paragraph 10 shall be paid out of the funds of the association.
- (4) Schedule 3 to the Magistrates' Courts Act 1980 (procedure on charge of offence against a corporation) shall have effect in a case in which an unincorporated association is charged in England or Wales with an offence under paragraph 10 in like manner as it has effect in the case of a corporation so charged.
- (5) Where any unincorporated association is guilty of an offence under paragraph 10, then—
- (a) in the case of a partnership, every partner, or
 - (b) in the case of any other unincorporated association, every member of the committee or other similar governing body,
- other than a partner or member who is proved to have been ignorant of or to have attempted to prevent the commission of the offence, shall be guilty of that offence and be liable to be proceeded against and punished accordingly.

Power of Lord Chancellor to make recognition rules in the case of sole practitioners

- 12 (1) The Lord Chancellor may, in accordance with the provisions of this paragraph, make rules with respect to the recognition by him of sole practitioners as being suitable to undertake the provision of conveyancing services.
- (2) Subject to sub-paragraph (3) below, paragraphs 2 to 6 and 8 and 9 above shall apply in relation to the recognition of sole practitioners as they apply in relation to the recognition of institutions, and accordingly, in the application of those paragraphs in accordance with this sub-paragraph, any reference to an institution shall have effect as if it were a reference to a sole practitioner and any reference to a recognised institution shall have effect as if it were a reference to a recognised practitioner.
- (3) In the application of those paragraphs in accordance with sub-paragraph (2) above—
- (a) the reference in paragraph 2(2)(b) to negligence, fraud or other dishonesty on the part of officers or employees of recognised institutions shall have effect as if it were a reference to negligence, fraud or other dishonesty on the part of recognised practitioners or their employees; and
 - (b) paragraph 6(3)(a) shall be omitted.

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

*Restrictions on conveyancing by unqualified persons not to apply to
recognised practitioners in relation to acts done by their employees*

- 13 Section 22(1) of the Solicitors Act 1974 shall not apply to an individual by reason of any act done by any employee of his, if at the time it was done, the individual was a recognised practitioner.

Penalty for pretending to be a recognised practitioner

- 14 (1) A person shall not describe himself or hold himself out as a sole practitioner for the time being recognised under this Schedule unless he is so recognised.
- (2) Any person who contravenes sub-paragraph (1) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.