



# Courts and Legal Services Act 1990

## 1990 CHAPTER 41

### PART II

#### LEGAL SERVICES

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

- C1** Pt. 2: transfer of functions (19.8.2003) by [The Secretary of State for Constitutional Affairs Order 2003](#) (S.I. 2003/1887), arts. 4, 5, [Sch. 1](#) (with arts. 6, 8)

#### *Introductory*

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

- (1) The general objective of this Part is the development of legal services in England and Wales (and in particular the development of advocacy, litigation, conveyancing and probate services) by making provision for new or better ways of providing such services and a wider choice of persons providing them, while maintaining the proper and efficient administration of justice.
- (2) In this Act that objective is referred to as “the statutory objective”.
- (3) As a general principle the question whether a person should be granted a right of audience, or be granted a right to conduct litigation in relation to any court or proceedings, should be determined only by reference to—
  - (a) whether he is qualified in accordance with the educational and training requirements appropriate to the court or proceedings;
  - (b) whether he is a member of a professional or other body which—
    - (i) has rules of conduct (however described) governing the conduct of its members;
    - (ii) has an effective mechanism for enforcing the rules of conduct; and
    - (iii) is likely to enforce them;

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- (c) whether, in the case of a body whose members are or will be providing advocacy services, the rules of conduct make satisfactory provision in relation to the court or proceedings in question requiring any such member not to withhold those services—
- (i) on the ground that the nature of the case is objectionable to him or to any section of the public;
  - (ii) on the ground that the conduct, opinions or beliefs of the prospective client are unacceptable to him or to any section of the public;
  - (iii) on any ground relating to the source of any financial support which may properly be given to the prospective client for the proceedings in question (for example, on the ground that such support will be available [<sup>F1</sup>as part of the Community Legal Service or Criminal Defence Service]); and
- (d) whether the rules of conduct are, in relation to the court or proceedings, appropriate in the interests of the proper and efficient administration of justice.
- (4) In this Act that principle is referred to as “the general principle”.
- (5) Rules of conduct which allow a member of the body in question to withhold his services if there are reasonable grounds for him to consider that, having regard to—
- (a) the circumstances of the case;
  - (b) the nature of his practice; or
  - (c) his experience and standing,
- he is not being offered a proper fee, are not on that account to be taken as being incompatible with the general principle.

#### Textual Amendments

**F1** Words in s. 17(3)(c)(iii) substituted (1.4.2000) by 1999 c. 22, s. 24, **Sch. 4 para. 46** (with **Sch. 14 para. 7(2)**); S.I. 2000/774, **art. 2(a)(ii)(iii)** (with arts. 3-5)

#### Commencement Information

**I1** S. 17 wholly in force at 1.4.1991 see s. 124(3) and S.I. 1991/608, **art. 2**

## 18 The statutory duty.

- (1) Where any person is called upon to exercise any functions which are conferred by this Part with respect to—
- (a) the granting of rights of audience;
  - (b) the granting of rights to conduct litigation;
  - (c) the approval [<sup>F2</sup>or alteration] of qualification regulations or rules of conduct; or
  - (d) the giving of advice with respect to any matter mentioned in paragraphs (a) to (c),

it shall be the duty of that person to exercise those functions as soon as is reasonably practicable and consistent with the provisions of this Part.

[<sup>F3</sup>(1A) Where any person other than the [<sup>F4</sup>Secretary of State] is called upon to exercise any such functions, the [<sup>F4</sup>Secretary of State] may require him to do so within such time as the [<sup>F4</sup>Secretary of State] may reasonably specify.]

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- (2) A person exercising any such functions shall act in accordance with the general principle and, subject to that, shall—
- (a) so far as it is possible to do so in the circumstances of the case, act to further the statutory objective; and
  - (b) not act in any way which would be incompatible with the statutory objective.

#### Textual Amendments

- F2** Words in s. 18(1) inserted (1.1.2000) by 1999 c. 22, s. 43, Sch. 6 paras. 4, **5(1)(2)** (with Sch. 14 para. 7(2)); S.I. 1999/3344, **art. 2(a)**
- F3** S. 18(1A) inserted (1.1.2000) by 1999 c. 22, s. 43, Sch. 6 paras. 4, **5(1)(3)** (with Sch. 14 para. 7(2)); S.I. 1999/3344, **art. 2(a)**
- F4** Words in s. 18 substituted (19.8.2003) by The Secretary of State for Constitutional Affairs Order 2003 (S.I. 2003/1887), **art. 9, Sch. 2 para. 8(1)(a)** (with arts. 6, 8)

#### Commencement Information

- I2** S. 18 wholly in force at 1. 4. 1991 see s. 124(3) and S.I. 1991/608, **art. 2**

*[<sup>F5</sup> The Legal Services Consultative Panel]*

#### Textual Amendments

- F5** S. 18A and crossheading preceding it inserted (1.1.2000) by 1999 c. 22, s. **35(2)** (with Sch. 14 para. 7(2)); S.I. 1999/3344, **art. 2(a)**

### <sup>F6</sup>18A The Consultative Panel.

- (1) The [<sup>F7</sup>Secretary of State] shall appoint persons to form a panel to be known as the Legal Services Consultative Panel.
- (2) In appointing persons to the Consultative Panel the [<sup>F7</sup>Secretary of State] shall have regard to the desirability of securing that the Consultative Panel includes persons who (between them) have experience in or knowledge of—
  - (a) the provision of legal services;
  - (b) the lay advice sector;
  - (c) civil or criminal proceedings and the working of the courts;
  - (d) legal education and training;
  - (e) the maintenance of the professional standards of persons who provide legal services;
  - (f) the maintenance of standards in professions other than the legal profession;
  - (g) consumer affairs;
  - (h) commercial affairs; and
  - (i) social conditions.
- (3) The Consultative Panel shall have—
  - (a) the duty of assisting in the maintenance and development of standards in the education, training and conduct of persons offering legal services by considering relevant issues in accordance with a programme of work approved

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- by the [F7Secretary of State] and, where the Consultative Panel considers it appropriate to do so, making recommendations to him;
  - (b) the duty of providing to the [F7Secretary of State] , at his request, advice about particular matters relating to any aspect of the provision of legal services (including the education, training and conduct of persons offering legal services); and
  - (c) the functions conferred or imposed on it by other provisions of this Act or any other enactment.
- (4) The Consultative Panel may, in performance of the duty in subsection (3)(a), seek information from or give advice to any body or person.
- (5) The [F7Secretary of State] shall publish—
- (a) any recommendations made to him by the Consultative Panel in performance of the duty in paragraph (a) of subsection (3); and
  - (b) any advice provided to him by the Consultative Panel in performance of the duty in paragraph (b) of that subsection.
- (6) The [F7Secretary of State] shall consider any recommendations made to him by the Consultative Panel in performance of the duty in subsection (3)(a).
- (7) The [F7Secretary of State]—
- (a) shall make available to the Consultative Panel appropriate administrative support; and
  - (b) may pay to any of the persons forming it any such allowances, and make any such reimbursement of expenses, as he considers appropriate.
- (8) For the purposes of the law of defamation the publication of any advice by the Consultative Panel in the exercise of any of its functions shall be absolutely privileged.

**Textual Amendments**

**F6** S. 18A inserted (1.1.2000) by 1999 c. 22, s. 35(2) (with Sch. 14 para. 7(2)); S.I. 1999/3344, art. 2(a)

**F7** Words in s. 18A substituted (19.8.2003) by The Secretary of State for Constitutional Affairs Order 2003 (S.I. 2003/1887), art. 9, Sch. 2 para. 8(1)(a) (with arts. 6, 8)

F8 . . .

**Textual Amendments**

**F8** S. 19 and crossheading preceding it repealed (1.1.2000) by 1999 c. 22, s. 106, Sch. 15 Pt. II (with Sch. 14 paras. 7(2), 36(9)); S.I. 1999/3344, art. 2(d), Sch. 1 para. 4

F9 19 .....

**Textual Amendments**

**F9** S. 19 repealed (1.1.2000) by 1999 c. 22, s. 106, Sch. 15 Pt. II (with Sch. 14 paras. 7(2), 36(9)); S.I. 1999/3344, art. 2(d), Sch. 1 para. 4

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F10 20 .....

**Textual Amendments**

**F10** S. 20 repealed (1.1.2000) by 1999 c. 22, s. 106, **Sch. 15 Pt. II** (with Sch. 14 paras. 7(2), 36(9)); S.I. 1999/3344, art. 2(d), **Sch. 1 para. 4**

*The Legal Services Ombudsman*

**21 The Legal Services Ombudsman.**

- (1) The [F11 Secretary of State] shall appoint a person for the purpose of conducting investigations under this Act.
- (2) The person appointed shall be known as “the Legal Services Ombudsman”.
- (3) The Legal Services Ombudsman—
  - (a) shall be appointed for a period of not more than three years; and
  - (b) shall hold and vacate office in accordance with the terms of his appointment.
- (4) At the end of his term of appointment the Legal Services Ombudsman shall be eligible for re-appointment.
- (5) The Legal Services Ombudsman shall not be an authorised advocate, authorised litigator, licensed conveyancer, authorised practitioner or notary.
- (6) Schedule 3 shall have effect with respect to the Legal Services Ombudsman.

**Textual Amendments**

**F11** Words in s. 21 substituted (19.8.2003) by [The Secretary of State for Constitutional Affairs Order 2003 \(S.I. 2003/1887\)](#), art. 9, **Sch. 2 para. 8(1)(a)** (with arts. 6, 8)

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

- C2** Ss. 21-25 applied (with modifications) (25.10.2004) by [The Legal Services Ombudsman \(Extension of Remit\) Regulations 2004 \(S.I. 2004/2757\)](#), **regs. 3, 4**
- C3** S. 21 modified (temp.) (1.1.2010) by [The Legal Services Act 2007 \(Commencement No. 6, Transitory, Transitional and Saving Provisions\) Order 2009 \(S.I. 2009/3250\)](#), arts. 1(2), **7(2)** (with art. 9)

**22 Ombudsman’s functions.**

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

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- (2) If the Ombudsman investigates an allegation he may investigate the matter to which the complaint relates.
- (3) If the Ombudsman begins to investigate an allegation he may at any time discontinue his investigation.
- (4) If the Ombudsman decides not to investigate an allegation which he would be entitled to investigate, or discontinues an investigation which he has begun, he shall notify the following of the reason for his decision—
  - (a) the person making the allegation;
  - (b) any person with respect to whom the complaint was made; and
  - (c) the professional body concerned.
- (5) The Ombudsman shall not investigate an allegation while—
  - (a) the complaint is being investigated by the professional body concerned;
  - (b) an appeal is pending against the determination of the complaint by that body; or
  - (c) the time within which such an appeal may be brought by any person has not expired.
- (6) Subsection (5) does not apply if—
  - (a) the allegation is that the professional body—
    - (i) has acted unreasonably in failing to start an investigation into the complaint; or
    - (ii) having started such an investigation, has failed to complete it within a reasonable time; or
  - (b) the Ombudsman is satisfied that, even though the complaint is being investigated by the professional body concerned, an investigation by him is justified.
- (7) The Ombudsman shall not investigate—
  - (a) any issue which is being or has been determined by—
    - (i) a court;
    - (ii) the Solicitors Disciplinary Tribunal;
    - (iii) the Disciplinary Tribunal of the Council of the Inns of Court; or
    - (iv) any tribunal specified in an order made by the [<sup>F12</sup>Secretary of State] for the purposes of this subsection; or
  - (b) any allegation relating to a complaint against any person which concerns an aspect of his conduct in relation to which he has immunity from any action in negligence or contract.
- (8) The Ombudsman may—
  - (a) if so requested by the Scottish ombudsman, investigate an allegation relating to a complaint made to a professional body in Scotland; and
  - (b) arrange for the Scottish ombudsman to investigate an allegation relating to a complaint made to a professional body in England and Wales.
- (9) For the purposes of this section, an allegation is properly made if it is made—
  - (a) in writing; and

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- (b) by any person affected by what is alleged in relation to the complaint concerned or, where that person has died or is unable to act for himself, by his personal representative or by any relative or other representative of his.
- (10) The Ombudsman may investigate an allegation even though—
- (a) the complaint relates to a matter which arose before the passing of this Act; or
- (b) the person making the complaint may be entitled to bring proceedings in any court with respect to the matter complained of.
- (11) In this section—
- “professional body” means any body which, or the holder of any office who—
- (a) has disciplinary powers in relation to any person mentioned in subsection (1) (a); and
- (b) is specified in an order made by the [<sup>F12</sup>Secretary of State] for the purposes of this subsection;
- “recognised body” means any body recognised under section 9 of the <sup>M1</sup>Administration of Justice Act 1985 (incorporated practices) or under section 32 of that Act (incorporated bodies carrying on business of provision of conveyancing services); and
- “the Scottish ombudsman” means any person appointed to carry out functions in relation to the provision of legal services in Scotland which are similar to those of the Ombudsman.

#### Textual Amendments

- F12** Words in s. 22 substituted (19.8.2003) by [The Secretary of State for Constitutional Affairs Order 2003 \(S.I. 2003/1887\)](#), art. 9, **Sch. 2 para. 8(1)(a)** (with arts. 6, 8)

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

- C4** Ss. 21-25 applied (with modifications) (25.10.2004) by [The Legal Services Ombudsman \(Extension of Remit\) Regulations 2004 \(S.I. 2004/2757\)](#), **regs. 3, 4**
- C5** S. 22 modified (temp.) (1.1.2010) by [The Legal Services Act 2007 \(Commencement No. 6, Transitory, Transitional and Saving Provisions\) Order 2009 \(S.I. 2009/3250\)](#), arts. 1(2), **7(3)-(7)** (with art. 9)

#### Marginal Citations

- M1** 1985 c. 61.

## 23 [<sup>F13</sup>Recommendations and orders.]

- (1) Where the Legal Services Ombudsman has completed an investigation under this Act he shall send a written report of his conclusions to—
- (a) the person making the allegation;
- (b) the person with respect to whom the complaint was made;
- (c) any other person with respect to whom the Ombudsman makes a recommendation under subsection (2) [<sup>F14</sup>or an order under subsection (2A)]; and
- (d) the professional body concerned.
- (2) In reporting his conclusions, the Ombudsman may recommend—
- (a) that the complaint be reconsidered by the professional body concerned;

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- (b) that the professional body concerned or any other relevant disciplinary body consider exercising its powers in relation to—
    - (i) the person with respect to whom the complaint was made; or
    - (ii) any person who, at the material time, was connected with him;
  - (c) that—
    - (i) the person with respect to whom the complaint was made; or
    - (ii) any person who, at the material time, was connected with him,
 pay compensation of an amount specified by the Ombudsman to the complainant for loss suffered by him, or inconvenience or distress caused to him, as a result of the matter complained of;
  - (d) that the professional body concerned pay compensation of an amount specified by the Ombudsman to the person making the complaint for loss suffered by him, or inconvenience or distress caused to him, as a result of the way in which the complaint was handled by that body;
  - (e) that the person or professional body to <sup>[F15]</sup>pay compensation under paragraph (c) or (d)] make a separate payment to the person making the allegation of an amount specified by the Ombudsman by way of reimbursement of the cost, or part of the cost, of making the allegation.
- <sup>[F16]</sup>(2A) If after completing any investigation under this Act the Ombudsman considers that, rather than recommending the taking of any action by any person or professional body under paragraph (c), (d) or (e) of subsection (2), he should make an order requiring the taking of that action by the person or body—
- (a) he shall afford the person or body, and the person who made the allegation, a reasonable opportunity of appearing before him to make representations; and
  - (b) having considered any representations from them, he may, in reporting his conclusions, make the order.]
- (3) More than one such recommendation <sup>[F17]</sup>or order] may be included in a report under this section.
- (4) Where the Ombudsman includes any recommendation <sup>[F17]</sup>or order] in a report under this section, the report shall give his reasons for making the recommendation.
- (5) For the purposes of the law of defamation the publication of any report of the Ombudsman under this section and any publicity given under subsection (9) shall be absolutely privileged.
- (6) It shall be the duty of any person to whom a report is sent by the Ombudsman under <sup>[F18]</sup>subsection (1)(b), (c) or (d)] to have regard to the conclusions and recommendations set out in the report, so far as they concern that person.
- (7) Where—
- (a) a report is sent to any person under this section; and
  - (b) the report includes a recommendation directed at him,
- he shall, before the end of the period of three months beginning with the date on which the report was sent, notify the Ombudsman of the action which he has taken, or proposes to take, to comply with the recommendation.
- (8) Any person who fails to comply (whether wholly or in part) with a recommendation under subsection (2) shall publicise that failure, and the reasons for it, in such manner as the Ombudsman may specify.



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- (9) Where a person is required by subsection (8) to publicise any failure, the Ombudsman may take such steps as he considers reasonable to publicise that failure if—
- (a) the period mentioned in subsection (7) has expired and that person has not complied with subsection (8); or
  - (b) the Ombudsman has reasonable cause for believing that that person will not comply with subsection (8) before the end of that period.
- (10) Any reasonable expenses incurred by the Ombudsman under subsection (9) may be recovered by him (as a civil debt) from the person whose failure he has publicised.
- (11) For the purposes of this section, the person with respect to whom a complaint is made (“the first person”) and another person (“the second person”) are connected if—
- (a) the second person—
    - (i) employs the first person; and
    - (ii) is an authorised advocate, authorised litigator, duly certificated notary public, licensed conveyancer or partnership;
  - (b) they are both partners in the same partnership; or
  - (c) the second person is a recognised body which employs the first person or of which the first person is an officer.

#### Textual Amendments

- F13** Sidenote in s. 23 substituted (27.9.1999) by 1999 c. 22, s. 49(1)(7) (with Sch. 14 para. 7(2)); S.I. 1999/2657, art. 2(a)
- F14** Words in s. 23(1)(c) inserted (27.9.1999) by 1999 c. 22, s. 49(1)(2) (with Sch. 14 para. 7(2)); S.I. 1999/2657, art. 2(a)
- F15** Words in s. 23(2)(e) substituted (27.9.1999) by 1999 c. 22, s. 49(1)(3) (with Sch. 14 para. 7(2)); S.I. 1999/2657, art. 2(a)
- F16** S. 23(2A) inserted (27.9.1999) by 1999 c. 22, s. 49(1)(4) (with Sch. 14 para. 7(2)); S.I. 1999/2657, art. 2(a)
- F17** Words in s. 23(3)(4) inserted (27.9.1999) by 1999 c. 22, s. 49(1)(5) (with Sch. 14 para. 7(2)); S.I. 1999/2657, art. 2(a)
- F18** Words in s. 23(6) substituted (27.9.1999) by 1999 c. 22, s. 49(1)(6) (with Sch. 14 para. 7(2)); S.I. 1999/2657, art. 2(a)

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

- C6** Ss. 21-25 applied (with modifications) (25.10.2004) by The Legal Services Ombudsman (Extension of Remit) Regulations 2004 (S.I. 2004/2757), regs. 3, 4
- C7** S. 23 modified (temp.) (1.1.2010) by The Legal Services Act 2007 (Commencement No. 6, Transitory, Transitional and Saving Provisions) Order 2009 (S.I. 2009/3250), arts. 1(2), 7(8)-(9) (with art. 9)

## 24 Advisory functions.

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

<sup>F19</sup>(3) . . . . .

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### Textual Amendments

**F19** S. 24(3) repealed (1.1.2000) by 1999 c. 22, s. 106, **Sch. 15 Pt. II** (with Sch. 14 paras. 7(2), 36(9)); S.I. 1999/3344, art. 2(d), **Sch. 1 para. 4**

### Modifications etc. (not altering text)

**C8** Ss. 21-25 applied (with modifications) (25.10.2004) by [The Legal Services Ombudsman \(Extension of Remit\) Regulations 2004 \(S.I. 2004/2757\)](#), **regs. 3, 4**

**C9** S. 24 modified (temp.) (1.1.2010) by [The Legal Services Act 2007 \(Commencement No. 6, Transitory, Transitional and Saving Provisions\) Order 2009 \(S.I. 2009/3250\)](#), arts. 1(2), **7(10)-(11)** (with art. 9)

**C10** S. 24(1) restricted (1.11.2003) by 1999 c. 22, s. 52(8) (with Sch. 14 para. 7(2)); S.I. 2003/2571, **art. 2**

### Commencement Information

**I3** S. 24 wholly in force; s. 24(1)(2) in force at 1. 1. 1991 by [S.I. 1990/2484](#); s. 24(3) in force at 1. 4. 1991 see s. 124(3) and [S.I. 1991/608](#), **art. 2**

## 25 Procedure and offences.

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

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**C11** Ss. 21-25 applied (with modifications) (25.10.2004) by [The Legal Services Ombudsman \(Extension of Remit\) Regulations 2004 \(S.I. 2004/2757\)](#), regs. 3, 4

## 26 Extension of Ombudsman's remit.

- (1) The [<sup>F20</sup>Secretary of State] may by regulation extend the jurisdiction of the Legal Services Ombudsman by providing for the provisions of sections 21 to 25 to have effect, with such modifications (if any) as he thinks fit, in relation to the investigation by the Ombudsman of allegations—
  - (a) which relate to complaints of a prescribed kind concerned with the provision of probate services; and
  - (b) which he would not otherwise be entitled to investigate.
- (2) Without prejudice to the generality of the power given to the [<sup>F20</sup>Secretary of State] by subsection (1), the regulations may make provision for the investigation only of allegations relating to complaints—
  - (a) made to prescribed bodies; or
  - (b) with respect to prescribed categories of person.

#### Textual Amendments

**F20** Words in s. 26 substituted (19.8.2003) by [The Secretary of State for Constitutional Affairs Order 2003 \(S.I. 2003/1887\)](#), art. 9, [Sch. 2 para. 8\(1\)\(a\)](#) (with arts. 6, 8)

### *Rights of audience and rights to conduct litigation*

## 27 Rights of audience.

- (1) The question whether a person has a right of audience before a court, or in relation to any proceedings, shall be determined solely in accordance with the provisions of this Part.
- (2) A person shall have a right of audience before a court in relation to any proceedings only in the following cases—
  - (a) where—
    - (i) he has a right of audience before that court in relation to those proceedings granted by the appropriate authorised body; and
    - (ii) that body's qualification regulations and rules of conduct have been approved for the purposes of this section, in relation to <sup>F21</sup>... that right;
  - (b) where paragraph (a) does not apply but he has a right of audience before that court in relation to those proceedings granted by or under any enactment;
  - (c) where paragraph (a) does not apply but he has a right of audience granted by that court in relation to those proceedings;
  - (d) where he is a party to those proceedings and would have had a right of audience, in his capacity as such a party, if this Act had not been passed; or
  - (e) where—

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- (i) he is employed (whether wholly or in part), or is otherwise engaged, to assist in the conduct of litigation and is doing so under instructions given (either generally or in relation to the proceedings) by a qualified litigator; and
- (ii) the proceedings are being heard in chambers in the High Court or a county court and are not reserved family proceedings.

[<sup>F22</sup>(2A) Every person who exercises before any court a right of audience granted by an authorised body has—

- (a) a duty to the court to act with independence in the interests of justice; and
- (b) a duty to comply with rules of conduct of the body relating to the right and approved for the purposes of this section;

and those duties shall override any obligation which the person may have (otherwise than under the criminal law) if it is inconsistent with them.]

(3) .....

(4) Nothing in this section affects the power of any court in any proceedings to refuse to hear a person (for reasons which apply to him as an individual) who would otherwise have a right of audience before the court in relation to those proceedings.

(5) Where a court refuses to hear a person as mentioned in subsection (4) it shall give its reasons for refusing.

[<sup>F23</sup>(6) .....

(7) Where, immediately before the commencement of this section, no restriction was placed on the persons entitled to exercise any right of audience in relation to any particular court or in relation to particular proceedings, nothing in this section shall be taken to place any such restriction on any person.

(8) Where—

- (a) immediately before the commencement of this section; or
- (b) by virtue of any provision made by or under an enactment passed subsequently,

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

[<sup>F24</sup>(8A) But a court may not limit the right to appear before the court in any proceedings to only some of those who have the right by virtue of the provisions of this section.]

(9) In this section—

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

“authorised body” means—

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

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

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

“family proceedings” has the same meaning as in the <sup>M2</sup>Matrimonial and Family Proceedings Act 1984 and also includes any other proceedings which are family proceedings for the purposes of the Children Act 1989;

“qualification regulations”, in relation to an authorised body, means regulations (however they may be described) as to the education and training which members of that body must receive in order to be entitled to [<sup>F25</sup>, or to exercise,] any right of audience granted by it;

“qualified litigator” means—

- (i) any practising solicitor [<sup>F26</sup>(that is, one who has a practising certificate in force or is employed wholly or mainly for the purpose of providing legal services to his employer)];
- (ii) any recognised body; and
- (iii) any person who is exempt from the requirement to hold a practising certificate by virtue of section 88 of the Solicitors Act 1974 (saving for solicitors to public departments and the City of London);

“recognised body” means any body recognised under section 9 of the <sup>M3</sup>Administration of Justice Act 1985 (incorporated practices);

“reserved family proceedings” means such category of family proceedings as the [<sup>F27</sup>Secretary of State] may, after consulting the President of the Law Society and with the concurrence of the President of the Family Division, by order prescribe; and

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

- (10) Section 20 of the <sup>M4</sup>Solicitors Act 1974 (unqualified person not to act as a solicitor) section 22 of that Act (unqualified person not to prepare certain documents etc) and section 25 of that Act (costs where an unqualified person acts as a solicitor), shall not apply in relation to any act done in the exercise of a right of audience.

#### Textual Amendments

- F21** Words in s. 27(2)(a)(ii) repealed (27.9.1999) by 1999 c. 22, s. 43, Sch. 6 para. 6(1)(2), **Sch. 15 Pt. II** (with Sch. 14 paras. 7(2), 36(9)); S.I. 1999/2657, art. 2(a)(d)(ii)(a), **Sch. 2 Pt. I para. 2(a)**
- F22** S. 27(2A) inserted (27.9.1999) by 1999 c.22, s. 42(1) (with Sch. 14 para. 7(2)); S.I. 1999/2657, **art. 2(a)**
- F23** S. 27(3)(6) repealed (27.9.1999) by 1999 c. 22, s. 106, **Sch. 15 Pt. II**; S.I. 1999/2657, art. 2(d)(ii)(a), **Sch. 2 Pt. I para. 2(a)**
- F24** S. 27(8A) inserted (27.9.1999) by 1999 c. 22, s. 43, **Sch. 6 para. 6(1)(3)** (with Sch. 14 para. 7(2)); S.I. 1999/2657, **art. 2(a)**
- F25** Words in definition of "qualification regulations" in s. 27(9) inserted (27.9.1999) by 1999 c. 22, s. 43, **Sch. 6 para. 6(1)(4)(a)** (with Sch. 14 para. 7(2)); S.I. 1999/2657, **art. 2(a)**
- F26** Words in definition of "qualification litigator" in s. 27(9) substituted (27.9.1999) by 1999 c. 22, s. 43, **Sch. 6 para. 6(1)(4)(b)** (with Sch. 14 para. 7(2)); S.I. 1999/2657, **art. 2(a)**
- F27** Words in s. 27 substituted (19.8.2003) by The Secretary of State for Constitutional Affairs Order 2003 (S.I. 2003/1887), art. 9, **Sch. 2 para. 8(1)(a)** (with arts. 6, 8)

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

**C12** S. 27 modified (27.9.1999) by 1999 c. 22, ss. 105, 108(3)(e), **Sch. 14 Pt. III para. 14(1)** (with Sch. 14 para. 7(2))

S. 27 modified (22.5.2000) by S.I. 2000/1119, regs. 1(1), 37, Sch. 3 Pt. 2 (as amended (1.1.2010) by S.I. 2009/1587, **art. 2(6)(a)**; S.I. 2009/3250, **art. 2(b)(i)** (with art. 9))

**C13** S. 27(2)(a) excluded (1.4.2001) by 2000 c. 43, s. 15(3); S.I. 2001/919, **art. 2(a)**

**Marginal Citations**

**M2** 1984 c. 42.

**M3** 1985 c. 61.

**M4** 1974 c. 47.

**28 Rights to conduct litigation.**

(1) The question whether a person has a right to conduct litigation, or any category of litigation, shall be determined solely in accordance with the provisions of this Part.

(2) A person shall have a right to conduct litigation in relation to any proceedings only in the following cases—

(a) where—

(i) he has a right to conduct litigation in relation to those proceedings granted by the appropriate authorised body; and

(ii) that body’s qualification regulations and rules of conduct have been approved for the purposes of this section, in relation to <sup>F28</sup> . . . that right;

(b) where paragraph (a) does not apply but he has a right to conduct litigation in relation to those proceedings granted by or under any enactment;

(c) where paragraph (a) does not apply but he has a right to conduct litigation granted by that court in relation to those proceedings;

(d) where he is a party to those proceedings and would have had a right to conduct the litigation, in his capacity as such a party, if this Act had not been passed.

[<sup>F29</sup>(2A) Every person who exercises in relation to proceedings in any court a right to conduct litigation granted by an authorised body has—

(a) a duty to the court to act with independence in the interests of justice; and

(b) a duty to comply with rules of conduct of the body relating to the right and approved for the purposes of this section;

and those duties shall override any obligation which the person may have (otherwise than under the criminal law) if it is inconsistent with them.]

(3) . . . . .

(4) Where, immediately before the commencement of this section, no restriction was placed on the persons entitled to exercise any right to conduct litigation in relation to a particular court, or in relation to particular proceedings, nothing in this section shall be taken to place any such restriction on any person.

[<sup>F30</sup>(4A) A court may not limit the right to conduct litigation in relation to proceedings before the court to only some of those who have the right by virtue of the provisions of this section.]

(5) In this section—

“authorised body” means—

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- (a) the Law Society; <sup>F31</sup> . . .
- [<sup>F32</sup>(aa) the General Council of the Bar;
- (ab) the Institute of Legal Executives; and]
- (b) any professional or other body which has been designated by Order in Council as an authorised body for the purposes of this section;  
“appropriate authorised body”, in relation to any person claiming to be entitled to any right to conduct litigation by virtue of subsection (2)(a), means the authorised body—
  - (a) granting that right; and
  - (b) of which that person is a member;  
“qualification regulations”, in relation to an authorised body, means regulations (however they may be described) as to the education and training which members of that body must receive in order to be entitled to [<sup>F33</sup>, or to exercise,] any right to conduct litigation granted by it; and  
“rules of conduct”, in relation to any authorised body, means rules (however they may be described) as to the conduct required of members of that body in exercising any right to conduct litigation granted by it.

[<sup>F34</sup>(5A) Nothing in this section shall be taken to require the General Council of the Bar or the Institute of Legal Executives to grant a right to conduct litigation.]

- (6) Section 20 of the <sup>M5</sup>Solicitors Act 1974 (unqualified person not to act as a solicitor), section 22 of that Act (unqualified person not to prepare certain documents etc.) and section 25 of that Act (costs where unqualified person acts as a solicitor) shall not apply in relation to any act done in the exercise of a right to conduct litigation.

#### Textual Amendments

- F28** Words in s. 28(2)(a)(ii) repealed (27.9.1999) by 1999 c. 22, ss. 43, 106, Sch. 6 para. 7(1)(2), **Sch. 15 Pt. II** (with Sch. 14 paras. 7(2), 36(9)); S.I. 1999/2657, art. 2(a)(d)(ii)(a), **Sch. 2 Pt. I para. 2(b)**
- F29** S. 28(2A) inserted (27.9.1999) by 1999 c. 22, s. 42(2) (with Sch. 14 para. 7(2)); S.I. 1999/2657, **art. 2(a)**
- F30** S. 28(4A) inserted (27.9.1999) by s. 43, Sch. 6 para. 7(1)(3) (with Sch. 14 para. 7(2)); S.I. 1999/2657, **art. 2(a)**
- F31** Word in definition of “authorised body” repealed in s. 28(5) (27.9.1999) by 1999 c.22, s. 106, **Sch. 15 Pt. II** (with Sch. 14 paras. 7(2), 36(9)); S.I. 1999/2657, art. 2(d)(ii)(a), **Sch. 2 Pt. I para. 2(b)**
- F32** S. 28(5)(aa)(ab) inserted (27.9.1999) by 1999 c. 22, s. 40 (with Sch. 14 para. (2)); S.I. 1999/2657, **art. 2(a)**
- F33** Words in definition of “qualification regulations” in s. 28(5) inserted (27.9.1999) by 1999 c.22, s. 43, **Sch. 6 para. 7(1)(4)** (with Sch. 14 para. 7(2)); S.I. 1999/2657, **art. 2(a)**
- F34** S. 28(5A) inserted (27.9.1999) by 1999 c. 22, s. 40 (with Sch. 14 para. 7(2)); S.I. 1999/2657, **art. 2(a)**

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

- C14** S. 28 modified (27.9.1999) by 1999 c. 22, ss. 105, 108(3)(e), **Sch. 14 Pt. III para. 14(2)** (with Sch. 14 para. 7(2))  
S. 28 modified (22.5.2000) by S.I. 2000/1119, regs. 1(1), 37, Sch. 3 Pt. 2 (as amended (1.1.2010) by S.I. 2009/1587, **art. 2(6)(a)**; S.I. 2009/3250, **art. 2(b)(i)** (with art. 9))
- C15** S. 28(2)(a) excluded (1.4.2001) by 2000 c. 43, s. 15(2); S.I. 2001/919, **art. 2(a)**

#### Marginal Citations

- M5** 1974 c. 47.

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### [<sup>F35</sup>29 **Authorised bodies.**

The provisions of Schedule 4 shall have effect with respect to the authorisation of bodies for the purposes of sections 27 and 28 and the approval and alteration of qualification regulations and rules of conduct.]

#### Textual Amendments

**F35** S. 29 substituted (1.1.2000) for ss. 29, 30 by 1999 c. 22, s. 41, **Sch. 5 para. 1** (with Sch. 14 para. 7(2)); S.I. 1999/3344, **art. 2(a)** (with art. 4)

### [<sup>F37</sup>31 **Barristers and solicitors.**

- (1) Every barrister shall be deemed to have been granted by the General Council of the Bar a right of audience before every court in relation to all proceedings (exercisable in accordance with the qualification regulations and rules of conduct of the General Council of the Bar approved for the purposes of section 27 in relation to the right).
- (2) Every solicitor shall be deemed to have been granted by the Law Society—
  - (a) a right of audience before every court in relation to all proceedings (exercisable in accordance with the qualification regulations and rules of conduct of the Law Society approved for the purposes of section 27 in relation to the right); and
  - (b) a right to conduct litigation in relation to every court and all proceedings (exercisable in accordance with the qualification regulations and rules of conduct of the Law Society approved for the purposes of section 28 in relation to the right).
- (3) A person shall not have a right of audience by virtue of subsection (1) if—
  - (a) he has not been called to the Bar by an Inn of Court; or
  - (b) he has been disbarred, or is temporarily suspended from practice, by order of an Inn of Court.]

#### Textual Amendments

**F37** S. 31 substituted for ss. 31-33 (27.9.1999) by 1999 c.22, s. 36 (with Sch. 14 para. 7(2)); S.I. 1999/2657, **art. 2(a)**

### [<sup>F38</sup>31A **Employed advocates.**

- (1) Where a person who has a right of audience granted by an authorised body is employed as a Crown Prosecutor or in any other description of employment, any qualification regulations or rules of conduct of the body relating to that right which fall within subsection (2) shall not have effect in relation to him.
- (2) Qualification regulations or rules of conduct relating to a right granted by a body fall within this subsection if—
  - (a) they limit the courts before which, or proceedings in which, that right may be exercised by members of the body who are employed or limit the



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- circumstances in which that right may be exercised by them by requiring them to be accompanied by some other person when exercising it; and
- (b) they do not impose the same limitation on members of the body who have the right but are not employed.]

#### Textual Amendments

**F38** S. 31A inserted (31.7.2000) by 1999 c. 22, s. 37 (with Sch. 14 para. 7(2)); S.I. 2000/1920, art. 2(a)

### [<sup>F39</sup>31B Advocates and litigators employed by Legal Services Commission.

- (1) Where a person who has a right of audience or right to conduct litigation granted by an authorised body is employed by the Legal Services Commission, or by any body established and maintained by the Legal Services Commission, any rules of the authorised body which fall within subsection (2) shall not have effect in relation to him.
- (2) Rules of a body fall within this subsection if they are—
- (a) rules of conduct prohibiting or limiting the exercise of the right on behalf of members of the public by members of the body who are employees; or
- (b) rules of any other description prohibiting or limiting the provision of legal services to members of the public by such members of the body,
- and either of the conditions specified in subsection (3) is satisfied.
- (3) Those conditions are—
- (a) that the prohibition or limitation is on the exercise of the right, or the provision of the services, otherwise than on the instructions of solicitors (or other persons acting for the members of the public); and
- (b) that the rules do not impose the same prohibition or limitation on members of the body who have the right but are not employees.]

#### Textual Amendments

**F39** S. 31B inserted (31.7.2000) by 1999 c.22, s. 38 (with Sch. 14 para. 7(2)); S.I. 2000/1920, art. 2(a)

### [<sup>F40</sup>31C Change of authorised body.

- (1) Where a person—
- (a) has at any time had, and been entitled to exercise, a right of audience before a court in relation to proceedings of any description granted by one authorised body; and
- (b) becomes a member of another authorised body and has a right of audience before that court in relation to that description of proceedings granted by that body,
- any qualification regulations of that body relating to that right shall not have effect in relation to him.
- (2) Subsection (1) does not apply in relation to any qualification regulations to the extent that they impose requirements relating to continuing education or training which have

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effect in relation to the exercise of the right by all members of the body who have the right.

- (3) Subsection (1) does not apply to a person if he has been banned from exercising the right of audience by the body mentioned in paragraph (a) of that subsection as a result of disciplinary proceedings and that body has not lifted the ban.]

#### Textual Amendments

**F40** S. 31C inserted (31.7.2000) by 1999 c.22, s. 39 (with Sch. 7(2)); S.I. 2000/1920, art. 2(a)

### *Extension of conveyancing services*

#### **34 The Authorised Conveyancing Practitioners Board.**

F43 .....

#### Textual Amendments

**F43** Ss. 34-52 repealed (31.3.2009) by Legal Services Act 2007 (c. 29), ss. 208, 210, 211, Sch. 21 para. 87, Sch. 23 (with ss. 29, 192, 193); S.I. 2009/503, {art. 2(d)(f)((vi)(aa))}

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

F44 .....

#### Textual Amendments

**F44** Ss. 34-52 repealed (31.3.2009) by Legal Services Act 2007 (c. 29), ss. 208, 210, 211, Sch. 21 para. 87, Sch. 23 (with ss. 29, 192, 193); S.I. 2009/503, {art. 2(d)(f)((vi)(aa))}

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

F45 .....

#### Textual Amendments

**F45** Ss. 34-52 repealed (31.3.2009) by Legal Services Act 2007 (c. 29), ss. 208, 210, 211, Sch. 21 para. 87, Sch. 23 (with ss. 29, 192, 193); S.I. 2009/503, {art. 2(d)(f)((vi)(aa))}

#### **37 Authorisation of practitioners.**

F46 .....

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**Textual Amendments**

**F46** Ss. 34-52 repealed (31.3.2009) by [Legal Services Act 2007 \(c. 29\)](#), ss. 208, 210, 211, Sch. 21 para. 87, [Sch. 23](#) (with ss. 29, 192, 193); S.I. 2009/503, {art. 2(d)(f)((vi)(aa))}

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

F47 .....

**Textual Amendments**

**F47** Ss. 34-52 repealed (31.3.2009) by [Legal Services Act 2007 \(c. 29\)](#), ss. 208, 210, 211, Sch. 21 para. 87, [Sch. 23](#) (with ss. 29, 192, 193); S.I. 2009/503, {art. 2(d)(f)((vi)(aa))}

**39 Revocation and suspension of authorisation.**

F48 .....

**Textual Amendments**

**F48** Ss. 34-52 repealed (31.3.2009) by [Legal Services Act 2007 \(c. 29\)](#), ss. 208, 210, 211, Sch. 21 para. 87, [Sch. 23](#) (with ss. 29, 192, 193); S.I. 2009/503, {art. 2(d)(f)((vi)(aa))}

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

F49 .....

**Textual Amendments**

**F49** Ss. 34-52 repealed (31.3.2009) by [Legal Services Act 2007 \(c. 29\)](#), ss. 208, 210, 211, Sch. 21 para. 87, [Sch. 23](#) (with ss. 29, 192, 193); S.I. 2009/503, {art. 2(d)(f)((vi)(aa))}

**41 The Conveyancing Appeal Tribunals.**

F50 .....

**Textual Amendments**

**F50** Ss. 34-52 repealed (31.3.2009) by [Legal Services Act 2007 \(c. 29\)](#), ss. 208, 210, 211, Sch. 21 para. 87, [Sch. 23](#) (with ss. 29, 192, 193); S.I. 2009/503, {art. 2(d)(f)((vi)(aa))}

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

F51 .....

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#### Textual Amendments

- F51** Ss. 34-52 repealed (31.3.2009) by Legal Services Act 2007 (c. 29), ss. 208, 210, 211, Sch. 21 para. 87, Sch. 23 (with ss. 29, 192, 193); S.I. 2009/503, {art. 2(d)(f)((vi)(aa))}

### 43 The Conveyancing Ombudsman Scheme.

F52 .....

#### Textual Amendments

- F52** Ss. 34-52 repealed (31.3.2009) by Legal Services Act 2007 (c. 29), ss. 208, 210, 211, Sch. 21 para. 87, Sch. 23 (with ss. 29, 192, 193); S.I. 2009/503, {art. 2(d)(f)((vi)(aa))}

### 44 Compensation scheme.

F53 .....

#### Textual Amendments

- F53** Ss. 34-52 repealed (31.3.2009) by Legal Services Act 2007 (c. 29), ss. 208, 210, 211, Sch. 21 para. 87, Sch. 23 (with ss. 29, 192, 193); S.I. 2009/503, {art. 2(d)(f)((vi)(aa))}

### 45 Advisory and supervisory functions of [<sup>F54</sup>Office of Fair Trading] .

F55 .....

#### Textual Amendments

- F54** Words in s. 45 sidenote substituted (1.4.2003) by 2002 c. 40, ss. 278, 279, Sch. 25, para. 23(2)(g); S.I. 2003/766, art. 2, Sch. (with art. 3)
- F55** Ss. 34-52 repealed (31.3.2009) by Legal Services Act 2007 (c. 29), ss. 208, 210, 211, Sch. 21 para. 87, Sch. 23 (with ss. 29, 192, 193); S.I. 2009/503, {art. 2(d)(f)((vi)(aa))}

### 46 Investigatory powers of [<sup>F56</sup>OFT].

F57 .....

#### Textual Amendments

- F56** Words in s. 46 sidenote substituted (1.4.2003) by 2002 c. 40, ss. 278, 279, Sch. 25, para. 23(3)(b); S.I. 2003/766, art. 2, Sch. (with art. 3)
- F57** Ss. 34-52 repealed (31.3.2009) by Legal Services Act 2007 (c. 29), ss. 208, 210, 211, Sch. 21 para. 87, Sch. 23 (with ss. 29, 192, 193); S.I. 2009/503, {art. 2(d)(f)((vi)(aa))}

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#### 46A Enforcement of notices under section 46

F58 .....

##### Textual Amendments

**F58** Ss. 34-52 repealed (31.3.2009) by [Legal Services Act 2007 \(c. 29\)](#), ss. 208, 210, 211, Sch. 21 para. 87, [Sch. 23](#) (with ss. 29, 192, 193); S.I. 2009/503, {art. 2(d)(f)((vi)(aa))}

#### 46B Altering, etc. documents required to be produced under section 46

F59 .....

##### Textual Amendments

**F59** Ss. 34-52 repealed (31.3.2009) by [Legal Services Act 2007 \(c. 29\)](#), ss. 208, 210, 211, Sch. 21 para. 87, [Sch. 23](#) (with ss. 29, 192, 193); S.I. 2009/503, {art. 2(d)(f)((vi)(aa))}

#### 47 Power to obtain information and require production of documents.

F60 .....

##### Textual Amendments

**F60** Ss. 34-52 repealed (31.3.2009) by [Legal Services Act 2007 \(c. 29\)](#), ss. 208, 210, 211, Sch. 21 para. 87, [Sch. 23](#) (with ss. 29, 192, 193); S.I. 2009/503, {art. 2(d)(f)((vi)(aa))}

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

F61 .....

##### Textual Amendments

**F61** Ss. 34-52 repealed (31.3.2009) by [Legal Services Act 2007 \(c. 29\)](#), ss. 208, 210, 211, Sch. 21 para. 87, [Sch. 23](#) (with ss. 29, 192, 193); S.I. 2009/503, {art. 2(d)(f)((vi)(aa))}

#### 49 Restrictions on disclosure of information.

F62 .....

##### Textual Amendments

**F62** Ss. 34-52 repealed (31.3.2009) by [Legal Services Act 2007 \(c. 29\)](#), ss. 208, 210, 211, Sch. 21 para. 87, [Sch. 23](#) (with ss. 29, 192, 193); S.I. 2009/503, {art. 2(d)(f)((vi)(aa))}

#### 50 Exceptions from restrictions on disclosure.

F63 .....

**Status:** Point in time view as at 12/11/2009. This version of this part contains provisions that are not valid for this point in time.

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#### Textual Amendments

**F63** Ss. 34-52 repealed (31.3.2009) by Legal Services Act 2007 (c. 29), ss. 208, 210, 211, Sch. 21 para. 87, Sch. 23 (with ss. 29, 192, 193); S.I. 2009/503, {art. 2(d)(f)((vi)(aa)}

### 51 Board’s intervention powers.

**F64** .....

#### Textual Amendments

**F64** Ss. 34-52 repealed (31.3.2009) by Legal Services Act 2007 (c. 29), ss. 208, 210, 211, Sch. 21 para. 87, Sch. 23 (with ss. 29, 192, 193); S.I. 2009/503, {art. 2(d)(f)((vi)(aa)}

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

**F65** .....

#### Textual Amendments

**F65** Ss. 34-52 repealed (31.3.2009) by Legal Services Act 2007 (c. 29), ss. 208, 210, 211, Sch. 21 para. 87, Sch. 23 (with ss. 29, 192, 193); S.I. 2009/503, {art. 2(d)(f)((vi)(aa)}

## *Licensed conveyancers*

### 53 The Council for Licensed Conveyancers.

- (1) Subject to subsection (2), the Council for Licensed Conveyancers shall have the powers necessary to enable it to become—
  - (a) an authorised body for the purposes of granting rights of audience under section 27(2)(a);
  - (b) an authorised body for the purposes of granting rights to conduct litigation under section 28(2)(a); and
  - (c) an approved body for the purposes of granting, in accordance with section 55, exemption from the provisions of section 23(1) of the Solicitors Act 1974 (preparation of probate papers).
- (2) The Council may exercise the powers given to it by this section only with respect to persons who are licensed conveyancers.
- (3) Where the Council—
  - (a) becomes an authorised body for the purposes of section 27 and grants any right of audience;
  - (b) becomes an authorised body for the purposes of section 28 and grants any right to conduct litigation; or
  - (c) becomes an approved body for the purposes of section 55 and grants an exemption under that section,

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it shall do so by issuing a licence to the licensed conveyancer to whom the right or exemption is being granted.

(4) Any such licence may be granted as a separate licence or as part of a composite licence comprising the licensed conveyancer's licence issued under Part II of the Administration of Justice Act 1985 and any other licence which the Council may grant to the licensed conveyancer concerned.

(5) The Council's general duty shall include the duty to ensure that the standards of competence and professional conduct among licensed conveyancers who are granted rights of audience, rights to conduct litigation or an exemption under section 55 are sufficient to secure adequate protection for consumers, and that the advocacy, litigation or (as the case may be) probate services provided by such persons are provided both economically and efficiently.

(6) Where the Council exercises any of its powers in connection with—

- (a) an application under [F66Schedule 4] for authorisation or an application under Schedule 9 for approval; or
- (b) the granting of any right of audience or right to conduct litigation or of an exemption under section 55,

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

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

(8) The [F67Lord Chancellor] may by order make such—

- (a) amendments of, or modifications to, the provisions of Part II of the Act of 1985; or
- (b) transitional or consequential provision,

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

(9) Subject to any provision made by this section, Schedule 8 or any order made by the [F68Lord Chancellor] under subsection (8), the provisions of Part II of the Act of 1985 shall, with the necessary modifications, apply with respect to—

- (a) any application for an advocacy, litigation or probate licence;
- (b) any such licence;
- (c) the practice of any licensed conveyancer which is carried on by virtue of any such licence;
- (d) rules made by the Council under Schedule 8;
- (e) F69 . . . . .
- (f) any other matter dealt with by this section or Schedule 8,

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

**Textual Amendments**

**F66** Words in s. 53(6)(a) substituted (1.1.2000) by 1999 c.22, s. 43, **Sch. 6 para. 8** (with Sch. 14 para. 7(2)); S.I. 1999/3344, **art. 2(a)**

**F67** Words in s. 53(8) substituted (31.3.2009) by Legal Services Act 2007 (c. 29), ss. 182, 211, **Sch. 17 para. 34(5)** (with ss. 29, 192, 193); S.I. 2009/503, **art. 2(c)(ii)**

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**F68** Words in s. 53(9) substituted (31.3.2009) by [Legal Services Act 2007 \(c. 29\)](#), ss. 182, 211, [Sch. 17 para. 34\(6\)\(a\)](#) (with ss. 29, 192, 193); S.I. 2009/503, [art. 2\(c\)\(ii\)](#)

**F69** S. 53(9)(e) repealed (31.3.2009) by [Legal Services Act 2007 \(c. 29\)](#), ss. 182, 210, 211, [Sch. 17 para. 34\(6\)\(b\)](#), [Sch. 23](#) (with ss. 29, 192, 193); S.I. 2009/503, [art. 2\(c\)\(ii\)\(i\)\(vi\)\(aa\)](#)

#### Commencement Information

**I7** [S. 53](#) wholly in force at 7.12.2004; [s. 53](#) in force at 1.4.1991 (except in so far as it relates to certain exemptions under section 55) see [s. 124\(3\)](#) and S.I. 1991/608, [art. 2](#), [Sch.](#); [s. 53](#) otherwise in force at 7.12.2004 by S.I. 2004/2950, [art. 2](#)

### Probate services

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

(1) In section 23 of the <sup>M6</sup>Solicitors Act 1974 (preparation of papers for probate etc. by unqualified persons), the following subsections shall be substituted for subsections (2) and (3)—

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

- (a) a barrister;
- (b) a duly certificated notary public;
- (c) the Public Trustee;
- (d) the Official Solicitor;
- [<sup>F70</sup>(e) a person who—
  - (i) has permission under Part 4 of the Financial Services and Markets Act 2000 to accept deposits or to effect or carry out contracts of insurance, and
  - (ii) satisfies the conditions mentioned in subsection (2A);
- (f) an EEA firm of the kind mentioned in paragraph 5(b) or (d) of Schedule 3 to that Act—
  - (i) which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12(1) of that Schedule) either to accept deposits or to effect or carry out contracts of insurance, and
  - (ii) which satisfies those conditions;]
- (h) any subsidiary (as defined by section 736(1) of the Companies Act 1985) of a body falling within paragraph (e), [<sup>F71</sup>or (f)]—
  - (i) whose business, or any part of whose business, consists of acting as trustee or executor; and
  - (ii) which satisfies those conditions.

(2A) The conditions are that the body is a member of, or otherwise subject to, a scheme which—

- (a) has been established (whether or not exclusively) for the purpose of dealing with complaints about the provision of probate services; and
- (b) complies with such requirements as may be prescribed by regulations made by the [<sup>F72</sup>Secretary of State] with respect to matters relating to such complaints.

[<sup>F73</sup>(2AB) Paragraphs (e) and (f) of subsection (2) must be read with—



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- (a) section 22 of the Financial Services and Markets Act 2000;
  - (b) any relevant order under that section; and
  - (c) Schedule 2 to that Act.]
- (3) Subsection (1) also does not apply to—
- (a) any act done by an officer or employee of a body corporate at a time when it is exempt from subsection (1) by virtue of any of paragraphs (e) to (h) of subsection (2) or by virtue of section 55 of the Courts and Legal Services Act 1990 (preparation of probate papers etc.); or
  - (b) any act done by any person at the direction and under the supervision of another person if—
    - (i) that other person was at the time his employer, a partner of his employer or a fellow employee; and
    - (ii) the act could have been done by that other person for or in expectation of any fee, gain or reward without committing an offence under this section.
- (4) For the avoidance of doubt, where a person does any act which would constitute an offence under subsection (1) but for an exemption given to him by this section or by or under any other enactment, he shall not be guilty of an offence under section 22 by virtue of having done that act.”
- (2) In section 115 of the <sup>M7</sup>[<sup>F74</sup>Senior Courts Act 1981] (grants to trust corporations) the following subsection shall be added at the end—
- “(4) Subsections (1) to (3) shall also apply in relation to any body which is exempt from the provisions of section 23(1) of the Solicitors Act 1974 (unqualified persons not to prepare papers for probate etc.) by virtue of any of paragraphs (e) to (h) of subsection (2) of that section.”
- (3) If a person who applies for any grant of probate or letters of administration—
- (a) makes a statement in his application, or supports his application with a document, which he knows to be false or misleading in a material particular; or
  - (b) recklessly makes a statement in his application, or supports his application with a document, which is false or misleading in a material particular,
- he shall be guilty of an offence.
- (4) Any person guilty of an offence under subsection (3) shall be liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both;
  - (b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both.
- (5) In subsection (3) “letters of administration” includes all letters of administration of the effects of deceased persons, whether with or without a will annexed, and whether granted for general, special or limited purposes.

#### Textual Amendments

**F70** S. 54(1): in the inserted subsection (2), paras. (e)(f) substituted for paras. (e)-(g) (1.12.2001) by S.I. 2001/3649, arts. 1, 325(2)

**F71** S. 54(1): in the inserted subsection (2), words in para. (h) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 325(3)

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- F72** Words in s. 54 in the substituted s. 23(2A) of the Solicitors Act 1974 substituted (19.8.2003) by The Secretary of State for Constitutional Affairs Order 2003 (S.I. 2003/1887), art. 9, **Sch. 2 para. 8(1)(b)** (with arts. 6, 8)
- F73** S. 54(1): after the inserted para. (2A), para. (2AB) inserted (1.12.2001) by S.I. 2001/3649, **arts. 1, 325(4)**
- F74** Act: for the words "Supreme Court Act 1981" wherever they occur there is substituted (1.10.2009) the words "Senior Courts Act 1981" by virtue of Constitutional Reform Act 2005 (c. 4), ss. 59, 148(1), **Sch. 11 para. 1(2); S.I. 2009/1604, art. 2(d)**

#### Marginal Citations

- M6** 1974 c. 47.  
**M7** 1981 c. 54.

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

- (1) The provisions of section 23(1) of the <sup>M8</sup>Solicitors Act 1974 (preparation of papers for probate etc. by unqualified persons) shall not apply to any person to whom exemption from those provisions is granted by an approved body.
- (2) An approved body may only grant such an exemption to a person who is one of its members and who satisfies it—
- (a) that his business is, and is likely to continue to be, carried on by fit and proper persons or, in the case of an individual, that he is a fit and proper person;
  - (b) that he, and any person employed by him in the provision of probate services, is suitably trained;
  - (c) that satisfactory arrangements will at all times be in force for covering adequately the risk of any claim made against him in connection with the provision of probate services by him, however arising;
  - (d) that he is a member of, or otherwise subject to, a scheme which—
    - (i) has been established (whether or not exclusively) for the purpose of dealing with complaints about the provision of probate services; and
    - (ii) complies with such requirements as may be prescribed by regulations made by the [<sup>F75</sup>Secretary of State] with respect to matters relating to such complaints; and
  - (e) that he has in force satisfactory arrangements to protect his clients in the event of his ceasing to provide probate services.
- (3) In this section “approved body” means a professional or other body which is approved by the [<sup>F75</sup>Secretary of State] under Schedule 9.
- (4) The approval of any body under Schedule 9 may be revoked under that Schedule.

#### Textual Amendments

- F75** Words in s. 55 substituted (19.8.2003) by The Secretary of State for Constitutional Affairs Order 2003 (S.I. 2003/1887), art. 9, **Sch. 2 para. 8(1)(c)** (with arts. 6, 8)

#### Marginal Citations

- M8** 1974 c. 47.

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

- (1) Every justice shall have power to administer any oath or take any affidavit which is required for the purposes of an application for a grant of probate or letters of administration made in any non-contentious or common form probate business.
- (2) A justice before whom any oath or affidavit is taken or made under this section shall state in the jurat or attestation at what place and on what date the oath or affidavit is taken or made.
- (3) No justice shall exercise the powers conferred by this section in any proceedings in which he is interested.
- (4) A document purporting to be signed by a justice administering an oath or taking an affidavit shall be admitted in evidence without proof of the signature and without proof that he is a justice.
- (5) In this section—
  - “affidavit” has the same meaning as in the <sup>M9</sup>Commissioners for Oaths Act 1889;
  - “justice” means a justice of the peace;
  - “letters of administration” includes all letters of administration of the effects of deceased persons, whether with or without a will annexed, and whether granted for general, special or limited purposes; and
  - “non-contentious or common form probate business” has the same meaning as in section 128 of the <sup>M10</sup><sup>F76</sup>Senior Courts Act 1981].

### Textual Amendments

- F76** S. 56: for the words "Supreme Court Act 1981" wherever they occur there is substituted (1.10.2009) the words "Senior Courts Act 1981" by virtue of [Constitutional Reform Act 2005 \(c. 4\), ss. 59, 148\(1\), Sch. 11 para. 1\(2\); S.I. 2009/1604, art. 2\(d\)](#)

### Commencement Information

- I8** S. 56 wholly in force at 1.7.1991 see [s. 124\(3\)](#) and [S.I. 1991/1364, art. 2, sch.](#)

### Marginal Citations

- M9** 1889 c. 10.  
**M10** 1981 c. 54.

## 57 Notaries

- (1) Public notaries shall no longer be appointed to practise only within particular districts in England, or particular districts in Wales.
- (2) It shall no longer be necessary to serve a period of apprenticeship before being admitted as a public notary.
- (3) Accordingly, the following enactments relating to public notaries shall cease to have effect—
  - (a) section 2 of the <sup>M11</sup>Public Notaries Act 1801 (which provides that no person shall be admitted as a public notary unless he has served as an apprentice for seven years);

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- (b) section 1 of the <sup>M12</sup>Public Notaries Act 1833 (which restricts the requirement to serve an apprenticeship to London and an area of ten miles from the Royal Exchange);
  - (c) section 2 of the Public Notaries Act 1833 (appointment of public notaries to practise within particular districts in England);
  - (d) section 3 of the <sup>M13</sup>Public Notaries Act 1843 (which reduced the period of apprenticeship to five years);
  - (e) section 37 of the <sup>M14</sup>Welsh Church Act 1914 (appointment of public notaries to practise within particular districts in Wales); and
  - (f) section 29 of the <sup>M15</sup>Administration of Justice Act 1969 (which reduced the period of apprenticeship for public notaries in London).
- (4) The Master may by rules make provision—
- (a) as to the educational and training qualifications which must be satisfied before a person may be granted a faculty to practise as a public notary;
  - (b) as to further training which public notaries are to be required to undergo;
  - (c) for regulating the practice, conduct and discipline of public notaries;
  - (d) supplementing the provision made by subsections (8) and (9);
  - (e) as to the keeping by public notaries of records and accounts;
  - (f) as to the handling by public notaries of clients' money;
  - (g) as to the indemnification of public notaries against losses arising from claims in respect of civil liability incurred by them;
  - (h) as to compensation payable for losses suffered by persons in respect of dishonesty on the part of public notaries or their employees; and
  - (i) requiring the payment, in such circumstances as may be prescribed, of such reasonable fees as may be prescribed, including in particular fees for—
    - (i) the grant of a faculty;
    - (ii) the issue of a practising certificate by the Court of Faculties of the Archbishop of Canterbury; or
    - (iii) the entering in that court of a practising certificate issued under the <sup>M16</sup>Solicitors Act 1974.
- (5) The repeal of section 2 of the Act of 1833 and section 37 of the Act of 1914 by this Act shall not affect any appointment made under either of those sections; but the Master may by rules make such provision as he considers necessary or expedient in consequence of either, or both, of those repeals.
- (6) Rules made under subsection (5) may, in particular, provide for the grant by the Master of a new faculty for any person to whom the Notary Public (Welsh Districts) Rules 1924 applied immediately before the commencement of this section, in place of the faculty granted to him by the Clerk of the Crown in Chancery.
- (7) Subsections (4) to (6) shall not be taken to prejudice—
- (a) any other power of the Master to make rules; or
  - (b) any rules made by him under any such power.
- (8) With effect from the operative date, any restriction placed on a qualifying district notary, in terms of the district within which he may practise as a public notary, shall cease to apply.
- (9) In this section—

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“Master” means the Master of the Faculties;

“the operative date” means the date on which subsection (1) comes into force or, if on that date the notary concerned is not a qualifying district notary (having held his faculty for less than five years)—

- (a) the date on which he becomes a qualifying district notary; or
- (b) such earlier date, after the commencement of subsection (1), as the Master may by rules prescribe for the purpose of this subsection;

“prescribed” means prescribed by rules made under this section; and

“qualifying district notary” means a person who—

- (a) holds a faculty as a notary appointed under section 2 of the Act of 1833 or section 37 of the Act of 1914; and
- (b) has held it for a continuous period of at least five years.

(10) Section 5 of the<sup>M17</sup>Ecclesiastical Licences Act 1533 (which amongst other things now has the effect of requiring faculties to be registered by the Clerk of the Crown in Chancery) shall not apply in relation to any faculty granted to a public notary.

<sup>F77</sup>(11) .....

#### Textual Amendments

**F77** S. 57(11) repealed (1.11.1999) by 1999 c.22, s. 106, **Sch. 15 Pt. II** (with **Sch. 14 paras. 7(2), 36(9)**); S.I. 1999/2657, art. 3(b), **Sch. 2 Pt. II para. 3(a)**

#### Commencement Information

**I9** S. 57 wholly in force at 1.7.1991 see s. 124(3) and S.I. 1991/1364, art. 2, **Sch.**

#### Marginal Citations

- M11** 1801 c. 79.
- M12** 1833 c. 70.
- M13** 1843 c. 90.
- M14** 1914 c. 91.
- M15** 1969 c. 58.
- M16** 1974 c. 47.
- M17** 1533 c. 21.

### Miscellaneous

#### <sup>F78</sup>58 Conditional fee agreements.

- (1) A conditional fee agreement which satisfies all of the conditions applicable to it by virtue of this section shall not be unenforceable by reason only of its being a conditional fee agreement; but (subject to subsection (5)) any other conditional fee agreement shall be unenforceable.
- (2) For the purposes of this section and section 58A—
  - (a) a conditional fee agreement is an agreement with a person providing advocacy or litigation services which provides for his fees and expenses, or any part of them, to be payable only in specified circumstances; and
  - (b) a conditional fee agreement provides for a success fee if it provides for the amount of any fees to which it applies to be increased, in specified

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circumstances, above the amount which would be payable if it were not payable only in specified circumstances.

- (3) The following conditions are applicable to every conditional fee agreement—
- (a) it must be in writing;
  - (b) it must not relate to proceedings which cannot be the subject of an enforceable conditional fee agreement; and
  - (c) it must comply with such requirements (if any) as may be prescribed by the [<sup>F79</sup>Lord Chancellor].
- (4) The following further conditions are applicable to a conditional fee agreement which provides for a success fee—
- (a) it must relate to proceedings of a description specified by order made by the [<sup>F79</sup>Lord Chancellor];
  - (b) it must state the percentage by which the amount of the fees which would be payable if it were not a conditional fee agreement is to be increased; and
  - (c) that percentage must not exceed the percentage specified in relation to the description of proceedings to which the agreement relates by order made by the [<sup>F79</sup>Lord Chancellor].
- (5) If a conditional fee agreement is an agreement to which section 57 of the <sup>M18</sup>Solicitors Act 1974 (non-contentious business agreements between solicitor and client) applies, subsection (1) shall not make it unenforceable.]

#### Textual Amendments

**F78** Ss. 58, 58A substituted (1.4.2000) for s. 58 by 1999 c. 22, s. 27(1) (with Sch. 14 para. 7(2)); S.I. 2000/774, art. 2(b) (with arts. 3-5)

**F79** Words in s. 58 substituted (12.1.2006) by The Transfer of Functions (Lord Chancellor and Secretary of State) Order 2005 (S.I. 2005/3429), art. 8, Sch. para. 2

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

**C16** S. 58: transfer of functions (12.1.2006) by The Transfer of Functions (Lord Chancellor and Secretary of State) Order 2005 (S.I. 2005/3429), art. 3 (with arts. 4, 5)

**C17** S. 58(3)(c) extended (27.9.1999) by 1999 c. 22, ss. 105, 108(3), Sch. 14 Pt. III para. 11 (with Sch. 14 para. 7(2))

**C18** S. 58(4) extended (27.9.1999) by 1999 c.22, ss. 105, 108(3), Sch. 14 Pt. III para. 10 (with Sch. 14 para. 7(2))

#### Marginal Citations

**M18** 1974 c.47.

#### <sup>F80</sup>58A Conditional fee agreements: supplementary.

- (1) The proceedings which cannot be the subject of an enforceable conditional fee agreement are—
- (a) criminal proceedings, a part from proceedings under section 82 of the <sup>M19</sup>Environmental Protection Act 1990; and
  - (b) family proceedings.
- (2) In subsection (1) “family proceedings” means proceedings under any one or more of the following—

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- (a) the <sup>M20</sup>Matrimonial Causes Act 1973;
  - [<sup>F81</sup>(b) the Adoption and Children Act 2002;]
  - (c) the <sup>M21</sup>Domestic Proceedings and Magistrates' Courts Act 1978;
  - (d) Part III of the <sup>M22</sup>Matrimonial and Family Proceedings Act 1984;
  - (e) Parts I, II and IV of the <sup>M23</sup>Children Act 1989;
  - (f) [<sup>F82</sup>Parts 4 and 4A]of the <sup>M24</sup>Family Law Act 1996; <sup>F83</sup> . . .
  - [<sup>F84</sup>(fa) Chapter 2 of Part 2 of the Civil Partnership Act 2004 (proceedings for dissolution etc. of civil partnership);
  - (fb) Schedule 5 to the 2004 Act (financial relief in the High Court or a county court etc.);
  - (fc) Schedule 6 to the 2004 Act (financial relief in magistrates' courts etc.);
  - (fd) Schedule 7 to the 2004 Act (financial relief in England and Wales after overseas dissolution etc. of a civil partnership); and]
  - (g) the inherent jurisdiction of the High Court in relation to children.
- (3) The requirements which the [<sup>F85</sup>Lord Chancellor] may prescribe under section 58(3)(c)—
- (a) include requirements for the person providing advocacy or litigation services to have provided prescribed information before the agreement is made; and
  - (b) may be different for different descriptions of conditional fee agreements (and, in particular, may be different for those which provide for a success fee and those which do not).
- (4) In section 58 and this section (and in the definitions of “advocacy services” and “litigation services” as they apply for their purposes) “proceedings” includes any sort of proceedings for resolving disputes (and not just proceedings in a court), whether commenced or contemplated.
- (5) Before making an order under section 58(4), the [<sup>F85</sup>Lord Chancellor] shall consult—
- (a) the designated judges;
  - (b) the General Council of the Bar;
  - (c) the Law Society; and
  - (d) such other bodies as he considers appropriate.
- (6) A costs order made in any proceedings may, subject in the case of court proceedings to rules of court, include provision requiring the payment of any fees payable under a conditional fee agreement which provides for a success fee.
- (7) Rules of court may make provision with respect to the assessment of any costs which include fees payable under a conditional fee agreement (including one which provides for a success fee).

#### Textual Amendments

- F80** Ss. 58, 58A substituted (1.4.2000) for s. 58 by 1999 c.22, s. 27(1) (with Sch. 14 para. 7(2)); S.I. 2000/774, art. 2(b) (with arts. 3-5)
- F81** S. 58A(2)(b) substituted (30.12.2005) by 2002 c. 38, ss. 139, 148(1), Sch. 3 para. 80 (with savings in Sch. 4 paras. 6-8, 22); S.I. 2005/2213, art. 2
- F82** Words in s. 58A(2)(f) substituted (25.11.2008) by Forced Marriage (Civil Protection) Act 2007 (c. 20), ss. 3(1), 4(2), Sch. 2 para. 2; S.I. 2008/2779, art. 2(b)(c)

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- F83** Word in s. 58A(2)(f) repealed (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 261(1)(4), 263, Sch. 27 para. 138, **Sch. 30**; S.I. 2005/3175, **art. 2**, Sch. 1
- F84** S. 58A(2)(fa)-(fd) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 261(1), 263, Sch. 27 para. 138; S.I. 2005/3175, **art. 2**, Sch. 1
- F85** Words in s. 58A substituted (12.1.2006) by The Transfer of Functions (Lord Chancellor and Secretary of State) Order 2005 (S.I. 2005/3429), art. 8, **Sch. para. 2**

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

- C19** S. 58A: transfer of functions (12.1.2006) by The Transfer of Functions (Lord Chancellor and Secretary of State) Order 2005 (S.I. 2005/3429), **art. 3** (with arts. 4, 5)
- C20** S. 58A(6)(7) excluded (1.4.2000) by S.I. 2000/900, **art. 2(1)(a)(b)**

#### Marginal Citations

- M19** 1990 c.43.
- M20** 1973 c.18.
- M21** 1978 c.22.
- M22** 1984 c.42.
- M23** 1989 c.41.
- M24** 1996 c.27.

### [<sup>F86</sup>58A] Damages-based agreements relating to employment matters

- (1) A damages-based agreement which relates to an employment matter and satisfies the conditions in subsection (4) is not unenforceable by reason only of its being a damages-based agreement.
- (2) But a damages-based agreement which relates to an employment matter and does not satisfy those conditions is unenforceable.
- (3) For the purposes of this section—
  - (a) a damages-based agreement is an agreement between a person providing advocacy services, litigation services or claims management services and the recipient of those services which provides that—
    - (i) the recipient is to make a payment to the person providing the services if the recipient obtains a specified financial benefit in connection with the matter in relation to which the services are provided, and
    - (ii) the amount of that payment is to be determined by reference to the amount of the financial benefit obtained;
  - (b) a damages-based agreement relates to an employment matter if the matter in relation to which the services are provided is a matter that is, or could become, the subject of proceedings before an employment tribunal.
- (4) The agreement—
  - (a) must be in writing;
  - (b) must not provide for a payment above a prescribed amount or for a payment above an amount calculated in a prescribed manner;
  - (c) must comply with such other requirements as to its terms and conditions as are prescribed; and
  - (d) must be made only after the person providing services under the agreement has provided prescribed information.



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- (5) Regulations under subsection (4) are to be made by the Lord Chancellor and may make different provision in relation to different descriptions of agreements.
- (6) Before making regulations under subsection (4) the Lord Chancellor must consult—
- (a) the designated judges,
  - (b) the General Council of the Bar,
  - (c) the Law Society, and
  - (d) such other bodies as the Lord Chancellor considers appropriate.
- (7) In this section—
- “payment” includes a transfer of assets and any other transfer of money's worth (and the reference in subsection (4)(b) to a payment above a prescribed amount, or above an amount calculated in a prescribed manner, is to be construed accordingly);
- “claims management services” has the same meaning as in Part 2 of the Compensation Act 2006 (see section 4(2) of that Act).
- (8) Nothing in this section applies to an agreement entered into before the coming into force of the first regulations made under subsection (4).]

#### Textual Amendments

**F86** S. 58AA inserted (12.11.2009) by [Coroners and Justice Act 2009 \(c. 25\)](#), [ss. 154\(2\)](#), [182\(1\)\(e\)](#) (with [s. 180](#), [Sch. 22](#))

PROSPECTIVE

#### [<sup>F87</sup> 58B Litigation funding agreements.

- (1) A litigation funding agreement which satisfies all of the conditions applicable to it by virtue of this section shall not be unenforceable by reason only of its being a litigation funding agreement.
- (2) For the purposes of this section a litigation funding agreement is an agreement under which—
- (a) a person (“the funder”) agrees to fund (in whole or in part) the provision of advocacy or litigation services (by someone other than the funder) to another person (“the litigant”); and
  - (b) the litigant agrees to pay a sum to the funder in specified circumstances.
- (3) The following conditions are applicable to a litigation funding agreement—
- (a) the funder must be a person, or person of a description, prescribed by the Secretary of State;
  - (b) the agreement must be in writing;
  - (c) the agreement must not relate to proceedings which by virtue of section 58A(1) and (2) cannot be the subject of an enforceable conditional fee agreement or to proceedings of any such description as may be prescribed by the Secretary of State;
  - (d) the agreement must comply with such requirements (if any) as may be so prescribed;

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- (e) the sum to be paid by the litigant must consist of any costs payable to him in respect of the proceedings to which the agreement relates together with an amount calculated by reference to the funder’s anticipated expenditure in funding the provision of the services; and
  - (f) that amount must not exceed such percentage of that anticipated expenditure as may be prescribed by the Secretary of State in relation to proceedings of the description to which the agreement relates.
- (4) Regulations under subsection (3)(a) may require a person to be approved by the Secretary of State or by a prescribed person.
- (5) The requirements which the Secretary of State may prescribe under subsection (3)(d)
- (a) include requirements for the funder to have provided prescribed information to the litigant before the agreement is made; and
  - (b) may be different for different descriptions of litigation funding agreements.
- (6) In this section (and in the definitions of “advocacy services” and “litigation services” as they apply for its purposes) “proceedings” includes any sort of proceedings for resolving disputes (and not just proceedings in a court), whether commenced or contemplated.
- (7) Before making regulations under this section, the Secretary of State shall consult—
- (a) the designated judges;
  - (b) the General Council of the Bar;
  - (c) the Law Society; and
  - (d) such other bodies as he considers appropriate.
- (8) A costs order made in any proceedings may, subject in the case of court proceedings to rules of court, include provision requiring the payment of any amount payable under a litigation funding agreement.
- (9) Rules of court may make provision with respect to the assessment of any costs which include fees payable under a litigation funding agreement.]

#### Textual Amendments

**F87** S. 58B inserted (prosp.) by 1999 c. 22, ss. 28, 108(1) (with Sch. 14 para. 7(2))

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

**C21** S. 58B: transfer of functions (12.1.2006) by The Transfer of Functions (Lord Chancellor and Secretary of State) Order 2005 (S.I. 2005/3429), art. 3 (with arts. 4, 5)

**F88**<sup>59</sup> .....

#### Textual Amendments

**F88** S. 59 repealed (2.4.2001) by 1999 c.22, s. 106, Sch. 15 Pt. I (with Sch. 14 paras. 7(2), 36(9)); S.I. 2001/916, art. 3(b)

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

- (1) The [<sup>F89</sup>Secretary of State] may by regulations prescribe circumstances in which, and conditions subject to which, a practitioner who is qualified to practise in Scotland or Northern Ireland may, in such capacity as may be prescribed, exercise in England and Wales—
  - (a) prescribed rights of audience; or
  - (b) prescribed rights to conduct litigation,without being entitled to do so apart from the regulations.
- (2) The [<sup>F89</sup>Secretary of State] may by regulations make provision for the purpose of enabling practitioners who are qualified to practise in Scotland or Northern Ireland to become qualified to practise in England and Wales on terms, and subject to conditions, corresponding or similar to those on which practitioners who are qualified to practise in member States may become qualified to practise in that jurisdiction.
- (3) Regulations made under subsection (1) may, in particular—
  - (a) prescribe any right of audience which may not be exercised by a person in England and Wales unless he is instructed to act together with a person who has that right of audience there;
  - (b) prescribe legal services which may not be provided by any person practising by virtue of the regulations;
  - (c) prescribe the title or description which must be used by any person practising by virtue of the regulations;
  - (d) provide for the means by which the qualification of any person claiming to be entitled to practise by virtue of the regulations is to be verified;
  - (e) provide for such professional or other body as may be prescribed to have power to investigate and deal with any complaint made against a person practising by virtue of the regulations.
- (4) Regulations made under subsection (1) or (2) may modify any rule of law or practice which the [<sup>F89</sup>Secretary of State] considers should be modified in order to give effect to the regulations.
- (5) In this section “practitioner” means—
  - (a) a member of the Bar of Northern Ireland or a [<sup>F90</sup>solicitor of the Court of Judicature of Northern Ireland] or an advocate or solicitor in Scotland; and
  - (b) any person falling within such category as may be prescribed.

### Textual Amendments

**F89** Words in s. 60 substituted (19.8.2003) by [The Secretary of State for Constitutional Affairs Order 2003 \(S.I. 2003/1887\)](#), art. 9, [Sch. 2 para. 8\(1\)\(c\)](#) (with arts. 6, 8)

**F90** S. 60: for the words "solicitor of the Supreme Court of Northern Ireland" wherever they occur there is substituted (1.10.2009) the words "solicitor of the Court of Judicature of Northern Ireland" by virtue of [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 59, 148(1), [Sch. 11 para. 5](#); [S.I. 2009/1604](#), art. 2(d)

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VALID FROM 01/01/2010

**[<sup>F91</sup>60A Procedural requirements relating to recommendations for the purposes of section 60**

- (1) Before making a recommendation under this section, the Legal Services Board must publish a draft of—
  - (a) the proposed recommendation, and
  - (b) the proposed draft regulations.
- (2) The draft must be accompanied by a notice which states that representations about the proposals may be made to the Board within a specified period.
- (3) Before making the recommendation, the Board must have regard to any representations duly made.
- (4) If the draft regulations to be annexed to the recommendation differ from the draft regulations published under subsection (1)(b) in a way which is, in the opinion of the Board, material, the Board must, before making the recommendation, publish the draft recommendations along with a statement detailing the changes made and the reasons for the changes.]

**Textual Amendments**

**F91** S. 60A inserted (1.1.2010) by [Legal Services Act 2007 \(c. 29\)](#), ss. 208, 211, [Sch. 21 para. 90](#) (with ss. 29, 192, 193); [S.I. 2009/3250](#), [art. 2\(h\)](#) (with art. 9)

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

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

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

<sup>F92</sup> .....

**Textual Amendments**

**F92** S. 62 repealed (22.7.2004) by [Statute Law \(Repeals\) Act 2004 \(c. 14\)](#), [s. 1\(1\)](#), {Sch. 1 Pt. 1 Group. 4}

**63 Legal professional privilege.**

- (1) This section applies to any communication made to or by a person who is not a barrister or solicitor at any time when that person is—
  - (a) providing advocacy or litigation services as an authorised advocate or authorised litigator;

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- (b) providing conveyancing services as an authorised practitioner; or
  - (c) providing probate services as a probate practitioner.
- (2) Any such communication shall in any legal proceedings be privileged from disclosure in like manner as if the person in question had at all material times been acting as his client’s solicitor.
- (3) In subsection (1), “probate practitioner” means a person to whom section 23(1) of the <sup>M25</sup>Solicitors Act 1974 (unqualified person not to prepare probate papers etc.) does not apply.

#### Commencement Information

**I10** S. 63 partly in force; s. 63 not in force at Royal Assent see s. 124; s. 63(1)(a)(2) in force 1. 4. 1991 see s. 124(3) and S.I. 1991/608, art. 2

#### Marginal Citations

**M25** 1974 c. 47.

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

- (1) The following shall be inserted in the <sup>M26</sup>Sex Discrimination Act 1975 after section 35—

*“Barristers*

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

- (1) It is unlawful for a barrister or barrister’s clerk, in relation to any offer of a pupillage or tenancy, to discriminate against a woman—
- (a) in the arrangements which are made for the purpose of determining to whom it should be offered;
  - (b) in respect of any terms on which it is offered; or
  - (c) by refusing, or deliberately omitting, to offer it to her.
- (2) It is unlawful for a barrister or barrister’s clerk, in relation to a woman who is a pupil or tenant in the chambers in question, to discriminate against her—
- (a) in respect of any terms applicable to her as a pupil or tenant;
  - (b) in the opportunities for training, or gaining experience, which are afforded or denied to her;
  - (c) in the benefits, facilities or services which are afforded or denied to her; or
  - (d) by terminating her pupillage or by subjecting her to any pressure to leave the chambers or other detriment.
- (3) It is unlawful for any person, in relation to the giving, withholding or acceptance of instructions to a barrister, to discriminate against a woman.
- (4) In this section—
- “barrister’s clerk” includes any person carrying out any of the functions of a barrister’s clerk; and

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“pupil”, “pupillage”, “tenancy” and “tenant” have the meanings commonly associated with their use in the context of a set of barristers’ chambers.

- (5) Section 3 applies for the purposes of this section as it applies for the purposes of any provision of Part II.
- (6) This section does not apply to Scotland.”
- (2) The following shall be inserted in the <sup>M27</sup>Race Relations Act 1976 after section 26—

*“ Barristers*

**26A Discrimination by, or in relation to, barristers.**

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

**Marginal Citations**

**M26** 1975 c. 65.

**M27** 1976 c. 74.

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

- (1) The following shall be inserted in the <sup>M28</sup>Sex Discrimination Act 1975 after section 35A (as inserted by this Act)—

*“ Advocates*

### **35B Discrimination by, or in relation to, advocates.**

- (1) It is unlawful for an advocate, in relation to taking any person as his pupil, to discriminate against a woman—
- (a) in the arrangements which he makes for the purpose of determining whom he will take as his pupil;
  - (b) in respect of any terms on which he offers to take her as his pupil; or
  - (c) by refusing, or deliberately omitting, to take her as his pupil.
- (2) It is unlawful for an advocate, in relation to a woman who is a pupil, to discriminate against her—
- (a) in respect of any terms applicable to her as a pupil;
  - (b) in the opportunities for training, or gaining experience, which are afforded or denied to her;
  - (c) in the benefits, facilities or services which are afforded or denied to her; or
  - (d) by terminating the relationship or by subjecting her to any pressure to terminate the relationship or other detriment.
- (3) It is unlawful for any person, in relation to the giving, withholding or acceptance of instructions to an advocate, to discriminate against a woman.
- (4) In this section—
- “advocate” means a member of the Faculty of Advocates practising as such; and
  - “pupil” has the meaning commonly associated with its use in the context of a person training to be an advocate.
- (5) Section 3 applies for the purposes of this section as it applies for the purposes of any provision of Part II.
- (6) This section does not apply to England and Wales.”
- (2) The following shall be inserted in the <sup>M29</sup>Race Relations Act 1976 after section 26A (as inserted by this Act)—

*“ Advocates*

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

- (1) It is unlawful for an advocate, in relation to taking any person as his pupil, to discriminate against a person—
- (a) in the arrangements which he makes for the purpose of determining whom he will take as his pupil;

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- (b) in respect of any terms on which he offers to take any person as his pupil; or
  - (c) by refusing, or deliberately omitting, to take a person as his pupil.
- (2) It is unlawful for an advocate, in relation to a person who is a pupil, to discriminate against him—
- (a) in respect of any terms applicable to him as a pupil;
  - (b) in the opportunities for training, or gaining experience, which are afforded or denied to him;
  - (c) in the benefits, facilities or services which are afforded or denied to him; or
  - (d) by terminating the relationship or by subjecting him to any pressure to terminate the relationship or other detriment.
- (3) It is unlawful for any person, in relation to the giving, withholding or acceptance of instructions to an advocate, to discriminate against any person.
- (4) In this section—
- “advocate” means a member of the Faculty of Advocates practising as such; and
  - “pupil” has the meaning commonly associated with its use in the context of a person training to be an advocate.
- (5) This section does not apply to England and Wales.”.

#### Marginal Citations

M28 1975 c. 65.

M29 1976 c. 74.

## 66 Multi-disciplinary and multi-national practices.

- (1) Section 39 of the <sup>M30</sup>Solicitors Act 1974 (which, in effect, prevents solicitors entering into partnership with persons who are not solicitors) shall cease to have effect.
- (2) Nothing in subsection (1) prevents the Law Society making rules which prohibit solicitors from entering into any unincorporated association with persons who are not solicitors, or restrict the circumstances in which they may do so.
- (3) Section 10 of the <sup>M31</sup>Public Notaries Act 1801 (which, in effect, prevents notaries entering into partnership with persons who are not notaries) shall cease to have effect.
- (4) Nothing in subsection (3) prevents the Master of the Faculties making rules which prohibit notaries from entering into any unincorporated association with persons who are not notaries, or restrict the circumstances in which they may do so.
- (5) It is hereby declared that no rule of common law prevents barristers from entering into any unincorporated association with persons who are not barristers.
- (6) Nothing in subsection (5) prevents the General Council of the Bar from making rules which prohibit barristers from entering into any such unincorporated association, or restrict the circumstances in which they may do so.



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#### Marginal Citations

**M30** 1974 c. 47.

**M31** 1801 c. 79.

<sup>F93</sup> **67** .....

#### Textual Amendments

**F93** S. 67 repealed (31.7.2000) by 1999 c.22, s. 106, **Sch. 15 Pt. II** (with Sch. 14 paras. 7(2), 36(9)); S.I. 2000/1920, **art. 2(c)**

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

(1) Section 22 of the <sup>M32</sup>Solicitors Act 1974 (unqualified person not to prepare certain instruments) shall be amended as follows.

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

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

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

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

“(3A) In subsection (2)—

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

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

#### Marginal Citations

**M32** 1974 c. 47

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

(1) Neither the [<sup>F94</sup>Secretary of State] nor any of the designated judges shall be liable in damages for anything done or omitted in the discharge or purported discharge of any of their functions under this Part.

(2) For the purposes of the law of defamation, the publication by the [<sup>F94</sup>Secretary of State], a designated judge or the [<sup>F95</sup>OFT] of any advice or reasons given by or to him [<sup>F96</sup>or it] in the exercise of functions under this Part shall be absolutely privileged.

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### Textual Amendments

- F94** Words in s. 69 substituted (19.8.2003) by [The Secretary of State for Constitutional Affairs Order 2003 \(S.I. 2003/1887\)](#), [art. 9](#), [Sch. 2 para. 8\(1\)\(c\)](#) (with arts. 6, 8)
- F95** Word in s. 69(2) substituted (1.4.2003) by [2002 c. 40, ss. 278, 279, Sch. 25 para. 23\(6\)\(a\)](#); [S.I. 2003/766](#), [art. 2](#), [Sch.](#) (with [art. 3](#))
- F96** Word in s. 69(2) inserted (1.4.2003) by [2002 c. 40, ss. 278, 279, Sch. 25 para. 23\(6\)\(b\)](#); [S.I. 2003/766](#), [art. 2](#), [Sch.](#) (with [art. 3](#))

### Commencement Information

- I11** [S. 69](#) wholly in force at 1.4.1991 see [s. 124\(3\)](#) and [S.I. 1991/608](#), [art. 2](#), [Sch.](#)

## Offences

### 70 Offences.

- (1) If any person does any act in the purported exercise of a right of audience, or right to conduct litigation, in relation to any proceedings or contemplated proceedings when he is not entitled to exercise that right he shall be guilty of an offence.
- (2) If any person does any act in the purported exercise of any right granted to authorised practitioners by virtue of this Act when he is not an authorised practitioner he shall be guilty of an offence.
- (3) If any person—
  - (a) wilfully pretends—
    - (i) to be entitled to exercise any right of audience in relation to any proceedings, or contemplated proceedings; or
    - (ii) to be entitled to exercise any right to conduct litigation in relation to any proceedings, or contemplated proceedings,
 when he is not so entitled;
  - (b) wilfully pretends to be an authorised practitioner when he is not; or
  - (c) with the intention of implying falsely that he is so entitled, or is such a practitioner, takes or uses any name, title or description,
 he shall be guilty of an offence.
- (4) A person guilty of an offence under subsection (1) or (2) shall be liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both; or
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.
- (5) A person guilty of an offence under subsection (3) shall be liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.
- (6) A person guilty of an offence under this section, by virtue of subsection (1), shall also be guilty of contempt of the court concerned and may be punished accordingly.
- (7) Subsection (8) applies where an offence under this section is committed by a body corporate.

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**Status:** Point in time view as at 12/11/2009. This version of this part contains provisions that are not valid for this point in time.

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- (8) If the offence is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of—
- (a) any director, secretary or other similar officer of the body corporate; or
  - (b) any person who was purporting to act in any such capacity,
- he (as well as the body corporate) shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

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

**C22** S. 70 modified (22.5.2000) by S.I. 2000/1119, regs. 1(1), 37, Sch. 3 Pt. 2 (as amended (1.1.2010) by S.I. 2009/1587, art. 2(6)(a); S.I. 2009/3250, art. 2(b)(i) (with art. 9))

**Status:**

Point in time view as at 12/11/2009. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:**

Courts and Legal Services Act 1990, Part II is up to date with all changes known to be in force on or before 02 May 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.