



Courts and Legal Services Act 1990

1990 CHAPTER 41

PART IV

SOLICITORS

85 Practising certificates for employed solicitors

After section 1 of the Solicitors Act 1974 (qualifications for practising as solicitor) there shall be inserted the following section—

“1A Practising certificates: employed solicitors

A person who has been admitted as a solicitor and whose name is on the roll shall, if he would not otherwise be taken to be acting as a solicitor, be taken for the purposes of this Act to be so acting if he is employed in connection with the provision of any legal services—

- (a) by any person who is qualified to act as a solicitor;
- (b) by any partnership at least one member of which is so qualified; or
- (c) by a body recognised by the Council of the Law Society under section 9 of the Administration of Justice Act 1985 (incorporated practices).”

86 Commencement, expiry and replacement of practising certificates

The following section shall be substituted for section 14 of the Solicitors Act 1974 (date and expiry of practising certificates)—

“14 Commence-ment, expiry and replacement of practising certificates

- (1) Every practising certificate shall have effect from the beginning of the day (“the commencement date”) on which it is issued.
- (2) The Master of the Rolls may, with the concurrence of the Lord Chancellor and the Lord Chief Justice, make regulations—

- (a) prescribing the date (“the replacement date”) by which each solicitor who has a practising certificate which is for the time being in force must apply for a new practising certificate if he wishes to continue to have one; and
 - (b) requiring every practising certificate to specify its replacement date.
- (3) The Society shall enter the commencement date and replacement date of each practising certificate in the register kept under section 9.
- (4) Without prejudice to section 28(1), any regulations under subsection (2) may—
- (a) provide for different replacement dates for different categories of solicitor or in different circumstances;
 - (b) provide for the Society to specify different replacement dates to those prescribed by the regulations in respect of individual solicitors;
 - (c) make such transitional, incidental and supplemental provision, in connection with any provision for different replacement dates (including different dates specified by the Society), as the Master of the Rolls considers expedient.
- (5) Where a practising certificate is in force with respect to a solicitor, the Society may withdraw the certificate if—
- (a) the replacement date for that certificate has passed; but
 - (b) he has not applied for a new practising certificate.
- (6) A practising certificate shall expire —
- (a) where the solicitor’s name is removed from or struck off the roll, immediately upon the occurrence of that event;
 - (b) where it is withdrawn under subsection (5), immediately upon the occurrence of that event;
 - (c) where a new practising certificate is issued to the solicitor, on the commencement of the new certificate;
 - (d) where the Society refuses to issue the solicitor with a new practising certificate—
 - (i) immediately after the replacement date for the existing certificate has passed; or,
 - (ii) if that date has already passed, immediately upon the Society taking its decision not to issue him with a new certificate.
- (7) Where any practising certificate expires in the circumstances mentioned in subsection (6)(a), (b) or (d) the date of its expiry shall be entered in the register kept under section 9.”

87 Fees payable on issue of practising certificates

In section 11 of the Solicitors Act 1974 (fees payable on issue of practising certificates), the following subsections shall be substituted for subsections (2) and (2A)—

- “(2) An order under subsection (1) may specify reduced fees for practising certificates in such circumstances as may be so specified.

(2A) Subsection (2B) applies where an order under subsection (1) specifies a reduced fee in the case of a solicitor whose income, from his practice as a solicitor, is, during such period as may be so specified, less than an amount so specified.

(2B) The question whether, for the purposes of any such order, the income of a solicitor during the specified period falls below the specified amount shall be determined in accordance with regulations made by the Master of the Rolls with the concurrence of the Lord Chancellor and the Lord Chief Justice.”

88 Additional fee payable by certain solicitors on applying for practising certificates

The following section shall be inserted in the Solicitors Act 1974 after section 12—

“12A Additional fee payable by certain solicitors on applying for practising certificates

(1) Where a solicitor applies for a practising certificate at a time when section 12 has effect in relation to him by reason of the circumstances mentioned in section 12(1)(ee), he shall pay an additional fee to the Society when making his application.

(2) The amount of that additional fee—

- (a) shall be fixed by order of the Master of the Rolls made with the concurrence of the Lord Chancellor and the Lord Chief Justice; and
- (b) shall be designed to provide reasonable compensation to the Society for the additional cost of dealing with such applications.”

89 Foreign lawyers: recognised bodies and partnerships with solicitors

(1) The Law Society shall maintain a register of foreign lawyers for the purposes of this section.

(2) A foreign lawyer who wishes to be registered under this section must apply to the Society in accordance with the requirements of Part I of Schedule 14.

(3) The power to make rules under—

(a) the following provisions of the Solicitors Act 1974—

- (i) section 31 (professional practice, conduct and discipline);
- (ii) section 32 (accounts and trust accounts);
- (iii) section 34 (accountants' reports);
- (iv) section 36 (Compensation Fund); and
- (v) section 37 (professional indemnity); and

(b) section 9 of the Administration of Justice Act 1985 (incorporated practices), shall also be exercisable in relation to registered foreign lawyers.

(4) Subject to the provisions of Schedule 14, any such power may be exercised so as—

- (a) to make different provision with respect to solicitors who enter into multi-national partnerships to the provision made with respect to other solicitors;
- (b) to make different provision with respect to the management and control of recognised bodies by solicitors and registered foreign lawyers to the provision

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made with respect to the management and control of recognised bodies by solicitors;

- (c) to make different provision with respect to registered foreign lawyers who are members of multi-national partnerships to the provision made with respect to solicitors; or
- (d) to make different provision with respect to officers of recognised bodies who are registered foreign lawyers to the provision made with respect to officers of recognised bodies who are solicitors.

(5) Subject to the provisions of Schedule 14, the Lord Chancellor may by order provide that any enactment or instrument—

- (a) passed or made before the commencement of this section;
- (b) having effect in relation to solicitors; and
- (c) specified in the order,

shall have effect with respect to registered foreign lawyers as it has effect with respect to solicitors.

(6) An order under subsection (5) may provide for an enactment or instrument to have effect with respect to registered foreign lawyers subject to such additions, omissions or other modifications as the Lord Chancellor sees fit to specify in the order.

(7) Subject to the provisions of Schedule 14, the Lord Chancellor may by order provide that any enactment or instrument—

- (a) passed or made before the commencement of this section;
- (b) having effect in relation to recognised bodies; and
- (c) specified in the order,

shall, in its application in relation to recognised bodies whose officers include one or more registered foreign lawyers, have effect with such additions, omissions or other modifications as the Lord Chancellor sees fit to specify in the order.

(8) Schedule 14 shall have effect for the purposes of supplementing this section.

(9) In this section and in Schedule 14—

“foreign lawyer” means a person who is not a solicitor or barrister but who is a member, and entitled to practise as such, of a legal profession regulated within a jurisdiction outside England and Wales;

“multi-national partnership” means a partnership whose members consist of one or more registered foreign lawyers and one or more solicitors;

“recognised body” has the same meaning as in section 9 of the Administration of Justice Act 1985 (management and control by solicitors of incorporated practices); and

“registered foreign lawyer” means a foreign lawyer who is registered under this section.

90 The Compensation Fund: incorporated practices

In paragraph 6 of Schedule 2 to the Administration of Justice Act 1985 (payments into the Compensation Fund by bodies recognised under section 9 of that Act), the following sub-paragraphs shall be substituted for sub-paragraph (1)—

- “(1) On an application under section 9 of this Act a body corporate shall pay to the Society, with any fee required to be paid by virtue of subsection (2)(a)

of that section, a contribution to the Compensation Fund of such amount as the Council may from time to time determine.

(1A) On being required to do so by the Society, every recognised body shall pay a further contribution to the Compensation Fund of such amount as the Council may from time to time determine.

(1B) The Society may only require a contribution under sub-paragraph (1A) if—

- (a) the recognised body has held or received clients' money at any time within the twelve-month period; and
- (b) no such contribution has been required from that body within that period.

(1C) In sub-paragraph (1B) “the twelve-month period”, in relation to any requirement for payment of a further contribution, means the period of twelve months ending immediately before the day on which the requirement is imposed.

(1D) Schedule 2 to the 1974 Act shall apply to amounts paid to the Society in pursuance of sub-paragraph (1) or (1A) of this paragraph as if they were annual contributions or special levies paid in pursuance of paragraph (a) or (b) of paragraph 2(1) of that Schedule.”

91 Power of Law Society to intervene in solicitors' practices

(1) In paragraph 1 of Schedule 1 to the Solicitors Act 1974 (circumstances in which Society may intervene in solicitors' practices) the following paragraphs shall be added at the end—

- “(h) the Council are satisfied that a sole solicitor has abandoned his practice;
- (i) the Council are satisfied that a sole solicitor is incapacitated by age to such an extent as to be unable to attend to his practice;
 - (j) any power conferred by this Schedule has been exercised in relation to a sole solicitor by virtue of sub-paragraph (1)(a) and he has acted as a sole solicitor within the period of eighteen months beginning with the date on which it was so exercised;
 - (k) the Council are satisfied that a person has acted as a solicitor at a time when he did not have a practising certificate which was in force;
 - (l) the Council are satisfied that a solicitor has failed to comply with any condition, subject to which his practising certificate was granted or otherwise has effect, to the effect that he may act as a solicitor only—
 - (i) in employment which is approved by the Society in connection with the imposition of that condition;
 - (ii) as a member of a partnership which is so approved;
 - (iii) as an officer of a body recognised by the Council of the Law Society under section 9 of the Administration of Justice Act 1985 and so approved; or
 - (iv) in any specified combination of those ways.”

(2) In section 15 of the Act of 1974 (suspension of practising certificates) the following subsections shall be inserted after subsection (1)—

- “(1A) Where the power conferred by paragraph 6(1) or 9(1) of Schedule 1 has been exercised in relation to a solicitor by virtue of paragraph 1(1)(a)(i), (c) (so far as it applies to rules made by virtue of section 32) or (e) of that Schedule, the exercise of that power shall operate immediately to suspend any practising certificate of that solicitor for the time being in force.
- (1B) Subsection (1A) does not apply if, at the time when the power referred to there is exercised, the Society directs that subsection (1A) is not to apply in relation to the solicitor concerned.
- (1C) If, at the time when the power referred to in subsection (1A) is exercised, the Society gives a direction to that effect, the solicitor concerned may continue to act in relation to any matter specified in the direction as if his practising certificate had not been suspended by virtue of subsection (1A), but subject to such conditions (if any) as the Society sees fit to impose.”
- (3) In section 16 of the Act of 1974 (duration of suspension of practising certificates) in subsection (3) the following paragraph shall be inserted after paragraph (c)—
- “(d) by virtue of section 15(1A)”.

92 Functions of the Solicitors Disciplinary Tribunal

- (1) Section 47 of the Solicitors Act 1974 (jurisdiction and powers of the Tribunal) shall be amended as follows.
- (2) The following subsections shall be substituted for subsections (1) and (2)—
- “(1) Any application—
- (a) to strike the name of a solicitor off the roll;
 - (b) to require a solicitor to answer allegations contained in an affidavit;
 - (c) to require a former solicitor whose name has been removed from or struck off the roll to answer allegations contained in an affidavit relating to a time when he was a solicitor;
 - (d) by a solicitor who has been suspended from practice for an unspecified period, by order of the Tribunal, for the termination of that suspension;
 - (e) by a former solicitor whose name has been struck off the roll to have his name restored to the roll;
 - (f) by a former solicitor in respect of whom a direction has been given under subsection (2)(g) to have his name restored to the roll,
- shall be made to the Tribunal; but nothing in this subsection shall affect any jurisdiction over solicitors exercisable by the Master of the Rolls, or by any judge of the High Court, by virtue of section 50.
- (2) Subject to subsection (3) and to section 54, on the hearing of any application or complaint made to the Tribunal under this Act, other than an application under section 43, the Tribunal shall have power to make such order as it may think fit, and any such order may in particular include provision for any of the following matters—
- (a) the striking off the roll of the name of the solicitor to whom the application or complaint relates;

- (b) the suspension of that solicitor from practice indefinitely or for a specified period;
 - (c) the payment by that solicitor or former solicitor of a penalty not exceeding £5,000, which shall be forfeit to Her Majesty;
 - (d) in the circumstances referred to in subsection (2A), the exclusion of that solicitor from legal aid work (either permanently or for a specified period);
 - (e) the termination of that solicitor’s unspecified period of suspension from practice;
 - (f) the restoration to the roll of the name of a former solicitor whose name has been struck off the roll and to whom the application relates;
 - (g) in the case of a former solicitor whose name has been removed from the roll, a direction prohibiting the restoration of his name to the roll except by order of the Tribunal;
 - (h) in the case of an application under subsection (1)(f), the restoration of the applicant’s name to the roll;
 - (i) the payment by any party of costs or a contribution towards costs of such amount as the Tribunal may consider reasonable.”
- (3) In subsection (2A) for the words “(2)(bb)” there shall be substituted “(2)(d)”.
- (4) After subsection (3) there shall be inserted—
- “(3A) Where, on the hearing of any application or complaint under this Act, the Tribunal is satisfied that more than one allegation is proved against the person to whom the application or complaint relates it may impose a separate penalty (by virtue of subsection (2)(c)) with respect to each such allegation.”
- (5) In section 48(2) of that Act (recording and publishing of orders of the Tribunal)—
- (a) for the words “(a) to (e)” there shall be substituted “(a) to (i)”;
 - (b) in paragraph (a) after the word “solicitor” there shall be inserted “or former solicitor”;
 - (c) in paragraph (b) for the words “paragraph (d) or (e) of that subsection” there shall be substituted “paragraph (e), (f), (h) or (i) of section 47(2)”.
- (6) In section 49(1)(a) of that Act (appeal from Tribunal to the Master of the Rolls) for the words “47(1)(b)” there shall be substituted “47(1)(d), (e) or (f)”.

93 Redress for inadequate professional services

- (1) Section 44A of the Solicitors Act 1974 (powers of Council to impose sanctions for inadequate professional services) shall cease to have effect.
- (2) In its place, the following shall be inserted in that Act after section 37—

“Inadequate professional services

37A Redress for inadequate professional services

Schedule 1A shall have effect with respect to the provision by solicitors of services which are not of the quality which it is reasonable to expect of them.”

- (3) The provisions set out in Schedule 15 shall be inserted in that Act as Schedule 1A.
- (4) Section 47A of that Act (power of Tribunal to impose sanctions for inadequate professional services) shall cease to have effect.

94 Solicitors charged with or convicted of fraud or serious crime

- (1) In section 13A of the Solicitors Act 1974 (imposition of conditions while practising certificates are in force), the following shall be added at the end of subsection (2)—

“; or

- (d) he has been charged with, or convicted of—
 - (i) an offence involving dishonesty or deception; or
 - (ii) a serious arrestable offence (as defined by section 116 of the Police and Criminal Evidence Act 1984).”

- (2) In subsection (5) of section 13A of that Act the following paragraph shall be added at the end—

“This subsection does not apply to the exercise of the Society’s powers under this section by virtue of subsection (2)(d).”

- (3) After section 13A of that Act there shall be inserted the following section—

“13B Suspension of practising certificates where solicitors convicted of fraud or serious crime

- (1) Where—
 - (a) a solicitor has been convicted of—
 - (i) an offence involving dishonesty or deception; or
 - (ii) a serious arrestable offence (as defined by section 116 of the Police and Criminal Evidence Act 1984); and
 - (b) the Society has made an application to the Tribunal under section 47 with respect to him,

the Society may direct that any practising certificate of his which is for the time being in force be suspended.
- (2) Any such suspension shall be for such period, not exceeding six months, as the Society shall specify in the direction.
- (3) If, before the specified period expires—
 - (a) the Tribunal determines the Society’s application;
 - (b) the conviction is quashed or set aside; or
 - (c) the Society withdraws its application to the Tribunal,

the suspension shall cease to have effect.
- (4) Where the specified period comes to an end without any of the events mentioned in subsection (3) having occurred, the Society may direct that the suspension be continued for such period, not exceeding six months, as it shall specify in the direction.

- (5) A suspension under this section may only be extended once under subsection (4).
- (6) Nothing in this section is to be taken as in any way affecting the Tribunal's power to suspend a solicitor from practice.
- (7) A solicitor in whose case a direction is given under subsection (1) or (4) may appeal to the Master of the Rolls against the direction within one month of being notified of it.
- (8) In an appeal under subsection (7), the Master of the Rolls may—
 - (a) affirm the suspension;
 - (b) direct that the appellant's certificate shall not be suspended but shall have effect subject to such conditions as the Master of the Rolls thinks fit;
 - (c) by order revoke the direction; or
 - (d) make such other order as he thinks fit."

95 Appeals against refusal to restore solicitor's name to roll under section 8 of the 1974 Act

In section 8 of the Solicitors Act 1974 (removal or restoration of name at solicitor's request) the following subsections shall be added at the end—

- "(4) An appeal from any decision of the Society under subsection (2) shall lie to the Master of the Rolls.
- (5) The Master of the Rolls may make regulations about appeals to him under this section."

96 Powers of entry etc. of local weights and measures authorities

The following section shall be inserted in the Solicitors Act 1974 after section 22 (unqualified person not to prepare certain instruments)—

"22A Powers of entry etc. of local weights and measures authorities

- (1) Any authorised officer who has reasonable cause to suspect that an offence may have been committed under section 22 may, at any reasonable time—
 - (a) enter any premises which are not used solely as a dwelling;
 - (b) require any officer, agent or other competent person on the premises who is, or may be, in possession of information relevant to an investigation under section 22, to provide such information;
 - (c) require the production of any document which may be relevant to such an investigation;
 - (d) take copies, or extracts, of any such documents;
 - (e) seize and retain any document which he has reason to believe may be required as evidence in proceedings for an offence under section 22.
- (2) Any person exercising any power given by subsection (1) shall, if asked to do so, produce evidence that he is an authorised officer.

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

- (3) A justice of the peace may issue a warrant under this section if satisfied, on information on oath given by an authorised officer, that there is reasonable cause to believe that an offence may have been committed under section 22 and that—
- (a) entry to the premises concerned, or production of any documents which may be relevant to an investigation under section 22, has been or is likely to be refused to an authorised officer; or
 - (b) there is reasonable cause to believe that, if production of any such document were to be required by the authorised officer without a warrant having been issued under this section, the document would not be produced but would be removed from the premises or hidden, tampered with or destroyed.
- (4) A warrant issued under this section shall authorise the authorised officer accompanied, where he considers it appropriate, by a constable or any other person—
- (a) to enter the premises specified in the information, using such force as is reasonably necessary; and
 - (b) to exercise any of the powers given to the authorised officer by subsection (1).
- (5) If a person—
- (a) intentionally obstructs an authorised officer in the exercise of any power under this section;
 - (b) intentionally fails to comply with any requirement properly imposed on him by an authorised officer in the exercise of any such power;
 - (c) fails, without reasonable excuse, to give to an authorised officer any assistance or information which he may reasonably require of him for the purpose of exercising any such power; or
 - (d) in giving to an authorised officer any information which he has been required to give to an authorised officer exercising any such power, makes any statement which he knows to be false or misleading in a material particular,
- he shall be guilty of an offence.
- (6) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (7) Nothing in this section shall be taken to require any person to answer any question put to him by an authorised officer, or to give any information to an authorised officer, if to do so might incriminate him.
- (8) In this section—
- “authorised officer” means any officer of a local weights and measures authority who is authorised by the authority to exercise the powers given by subsection (1); and
 - “document” includes information recorded in any form.
- (9) In relation to information recorded otherwise than in legible form, references in this section to its production include references to producing a copy of the information in legible form.”

97 Committees and sub-committees of the Council

The following section shall be substituted for section 79 of the Solicitors Act 1974 (committees of the Council)—

“79 Committees and sub-committees of the Council

- (1) Subject to any provision to the contrary made by or under any enactment, the Council may arrange for any of its functions (other than reserved functions) to be discharged by—
 - (a) a committee of the Council;
 - (b) a sub-committee of such a committee; or
 - (c) an individual (whether or not a member of the Society’s staff).
- (2) Where, by virtue of subsection (1)(a), any of the Council’s functions may be discharged by a committee, the committee may arrange for the discharge of any of those functions by—
 - (a) a sub-committee of that committee; or
 - (b) an individual (whether or not a member of the Society’s staff).
- (3) Where, by virtue of subsection (1) or (2), any of the Council’s functions may be discharged by a sub-committee, the sub-committee may arrange for the discharge of any of those functions by a member of the Society’s staff.
- (4) Subsections (2) and (3) shall have effect subject to any contrary direction given by the Council.
- (5) Subject to any direction given by the Council under subsection (4), subsection (3) shall have effect subject to any contrary direction given by the committee concerned.
- (6) Any power given by subsection (1), (2) or (3) may be exercised so as to impose restrictions or conditions on the body or individual by whom the functions concerned are to be discharged.
- (7) A committee of the Council, and any sub-committee of such a committee, discharging functions delegated under this section may include persons other than—
 - (a) members of the Council;
 - (b) members of the Society;
 - (c) solicitors.
- (8) The majority of the members of any such committee or sub-committee may be persons who may be included by virtue of subsection (7).
- (9) The number and term of office of the members of such a committee and the number of those members necessary to form a quorum, shall be fixed by the Council.
- (10) Subject to any restriction or condition imposed by the Council, the number and term of office of the members of such a sub-committee and the number of those members necessary to form a quorum, shall be fixed by the committee concerned.

- (11) The validity of any proceedings of such a committee or sub-committee shall not be affected by any casual vacancy among its members.
- (12) In this section “reserved functions” means—
- (a) the function of making rules or regulations under section 2, 31, 32, 34, 36, or 37 or under section 9 of the Administration of Justice Act 1985 (incorporated practices);
 - (b) the function of setting fees or financial contributions under paragraph 2(1) of Schedule 2 or section 8(2) or under paragraph 6 of Schedule 2 to the Administration of Justice Act 1985.”

98 Agreements with solicitors for payment by hourly rates

- (1) Section 57 of the Solicitors Act 1974 (non-contentious business agreements) shall be amended in accordance with subsections (2) to (4).
- (2) In subsection (2) (method of payment which may be agreed), after the words “gross sum” there shall be inserted “or by reference to an hourly rate”.
- (3) In subsection (4), for the words “Subject to subsection (5)” there shall be substituted “Subject to subsections (5) and (7)”.
- (4) After subsection (5) there shall be inserted the following subsections—
- “(6) Subsection (7) applies where the agreement provides for the remuneration of the solicitor to be by reference to an hourly rate.
 - (7) If, on the taxation of any costs, the agreement is relied on by the solicitor and the client objects to the amount of the costs (but is not alleging that the agreement is unfair or unreasonable), the taxing officer may enquire into—
 - (a) the number of hours worked by the solicitor; and
 - (b) whether the number of hours worked by him was excessive.”
- (5) In section 59(1) of the Act of 1974 (method of payment which may be agreed in contentious business agreement) after the words “gross sum” there shall be inserted “or by reference to an hourly rate”.
- (6) In section 60(1) of the Act of 1974 (which among other things provides for section 69 of that Act not to apply to contentious business agreements), after the word “or” there shall be inserted “(except in the case of an agreement which provides for the solicitor to be remunerated by reference to an hourly rate)”.
- (7) In section 61 of the Act of 1974 (enforcement of contentious business agreements), the following subsections shall be inserted after subsection (4)—
- “(4A) Subsection (4B) applies where a contentious business agreement provides for the remuneration of the solicitor to be by reference to an hourly rate.
 - (4B) If on the taxation of any costs the agreement is relied on by the solicitor and the client objects to the amount of the costs (but is not alleging that the agreement is unfair or unreasonable), the taxing officer may enquire into—
 - (a) the number of hours worked by the solicitor; and
 - (b) whether the number of hours worked by him was excessive.”