

## SCHEDULES

### SCHEDULE 22

Section 209

#### TRANSITIONAL AND TRANSITORY PROVISION

##### *Transitory power to modify the functions of bodies*

- 1 (1) Paragraphs 2 to 4 have effect until such time as the Board is first constituted in accordance with paragraph 1 of Schedule 1.
- (2) Where an order under paragraph 2 has effect immediately before that time, it is to be treated from that time as if it were an order made by the Lord Chancellor under section 69 (and in accordance with that section and section 70).
- (3) Where that order is made by virtue of paragraph 4, the reference in sub-paragraph (2) to section 69 is a reference to that section as modified by section 180.
- 2 (1) The Lord Chancellor may by order modify, or make any other provision relating to, the functions of a designated regulator or any other body.
- (2) For this purpose “designated regulator” means—
  - (a) The Law Society;
  - (b) The General Council of the Bar;
  - (c) The Master of the Faculties;
  - (d) The Institute of Legal Executives;
  - (e) The Council for Licensed Conveyancers;
  - (f) The Chartered Institute of Patent Attorneys;
  - (g) The Institute of Trade Mark Attorneys;
  - (h) The Association of Law Costs Draftsmen;
  - (i) any other body which is a body to which sub-paragraph (3) applies.
- (3) This sub-paragraph applies to—
  - (a) a body designated as an authorised body for the purposes of section 27 or 28 of the Courts and Legal Services Act 1990 (c. 41) (rights of audience and rights to conduct litigation);
  - (b) a body approved under Schedule 9 to that Act (approval of body to grant exemption from prohibition on preparation of probate papers etc);
  - (c) a body prescribed by regulations under section 113 of that Act (administration of oaths and taking of affidavits).
- (4) The Lord Chancellor may make an order under sub-paragraph (1) only if—
  - (a) the body to which the order relates has made a recommendation under this paragraph to which was annexed a draft order, and
  - (b) the body to which the order relates consents to the order which is made.
- (5) The Lord Chancellor may make an order under this paragraph only for the purpose of enabling the body to which it relates to do one or more of the following—

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- (a) to become a body within sub-paragraph (3);
  - (b) to grant its members rights for the purposes of section 27 or 28 of the Courts and Legal Services Act 1990, to exempt its members for the purposes of section 55 of that Act or to authorise its members for the purposes of section 113 of that Act;
  - (c) if it is or becomes a designated regulator, to regulate its members more effectively or efficiently;
  - (d) if it is or becomes a designated regulator, to expand the categories of persons who are eligible to be members of the body;
  - (e) to do any of the things mentioned in paragraphs (a) to (e) of section 69(3) at a time after paragraph 1 of Schedule 4 comes into force.
- (6) An order under this paragraph may make provision in relation to the body to which the order relates, and members of that body, corresponding to the provision which by virtue of subsection (4) or (5) of section 69 may be made by an order under that section in relation to an approved regulator and persons authorised by that regulator to carry on reserved legal activities or to provide immigration advice or immigration services.
- (7) Any provision made by an order under this paragraph may be expressed to be conditional upon—
- (a) the coming into force of paragraph 1 of Schedule 4;
  - (b) the body to which the order relates being designated by an order under Part 2 of that Schedule as an approved regulator, or by an order under Part 1 of Schedule 10 as a licensing authority, in relation to one or more reserved legal activities specified in the order;
  - (c) the body to which the order relates becoming a designated qualifying regulator under section 86A of the Immigration and Asylum Act 1999 (c. 33).
- (8) An order under this paragraph may modify provisions made by or under any enactment (including this Act or any Act passed after this Act), prerogative instrument or other instrument or document.
- (9) The powers to make an order conferred by this paragraph are without prejudice to any powers (statutory or non-statutory) which a designated regulator or other body may have apart from this section.
- (10) In this paragraph “member” in relation to a body includes any person who is not a member of the body but who may be subject to disciplinary sanctions for failure to comply with any of its rules.
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- (1) This paragraph applies where a body makes a recommendation under paragraph 2.
- (2) The Lord Chancellor must publish a document containing—
- (a) the recommendation, and
  - (b) the draft order annexed to it.
- (3) The document must be accompanied by a notice which states that representations about it may be made to the Lord Chancellor within a specified period.
- (4) The Lord Chancellor must give a copy of the document to the Office of Fair Trading and the Lord Chief Justice, and invite each of them to provide advice on it within that period.

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- (5) The Lord Chancellor may give a copy of the document to the Legal Services Consultative Panel or any other person, and invite them to provide advice on it within that period.
  - (6) The Lord Chancellor must have regard to any representations and advice duly given.
  - (7) If the order which the Lord Chancellor proposes to make differs from the draft order published under sub-paragraph (2), the Lord Chancellor must, before making the order, publish the revised draft order along with a statement detailing the changes made and the reasons for those changes.
- 4 Paragraphs 2 and 3 apply in relation to the Solicitors Disciplinary Tribunal as they apply in relation to a designated regulator, but as if in paragraph 2—
- (a) in sub-paragraph (4)(a) the reference to the body to which the order relates were a reference to the Solicitors Disciplinary Tribunal or the Law Society, and
  - (b) for sub-paragraph (5) of that paragraph there were substituted—
    - “(5) The Lord Chancellor may make an order under this paragraph only for the purpose of enabling the Solicitors Disciplinary Tribunal to carry out its role more effectively or efficiently.”, and
  - (c) sub-paragraphs (6) and (7) of that paragraph were omitted.

#### *Approved regulators*

- 5 (1) Sub-paragraph (2) applies where during the pre-commencement period—
- (a) an Order in Council is made designating a body as an authorised body for the purposes of section 27 of the Courts and Legal Services Act 1990 (c. 41) (rights of audience) and that body’s qualification regulations and rules of conduct (within the meaning of that section) have been approved for the purposes of that section,
  - (b) an Order in Council is made designating a body as an authorised body for the purposes of section 28 of that Act (right to conduct litigation) and that body’s qualification regulations and rules of conduct (within the meaning of that section) have been approved for the purposes of that section,
  - (c) an order is made under paragraph 4 of Schedule 9 to that Act (approval of body to grant exemption from prohibition on preparation of probate papers etc), or
  - (d) regulations are made prescribing a body for the purposes of section 113 of that Act (administration of oaths and taking of affidavits).
- (2) The Lord Chancellor may by order modify the Table in paragraph 1 of Schedule 4 (existing regulators) so as—
- (a) to insert, in the first column, a reference to the body and, in the second column, a reference to the relevant activities, or
  - (b) if the body is already listed in the first column, to add a reference to the relevant activities to the corresponding entry in the second column.
- (3) Sub-paragraph (4) applies where during the pre-commencement period—
- (a) an Order in Council is made revoking the designation of a body as an authorised body for the purposes of section 27 of the Courts and Legal Services Act 1990,

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- (b) an Order in Council is made revoking the designation of a body as an authorised body for the purposes of section 28 of that Act,
  - (c) an order is made under paragraph 6 of Schedule 9 to that Act revoking a body's approval, or
  - (d) regulations prescribing a body for the purposes of section 113 of that Act are revoked.
- (4) The Lord Chancellor may by order modify the Table in paragraph 1 of Schedule 4 so as to—
- (a) remove any reference to the relevant activities from the entry in the second column of that Table corresponding to the entry for the body in the first column, and
  - (b) if there are no other activities in that entry in the second column, remove the reference to the body from the first column of that Table.
- (5) An order under sub-paragraph (2) in relation to a body may—
- (a) in a case within sub-paragraph (1)(a) or (b), modify Part 1 of Schedule 5 (authorised persons: continuity of rights) so as to ensure the continuity of any authority given by the body to a person to exercise rights of audience or, as the case may be, to conduct litigation;
  - (b) in a case within sub-paragraph (1)(c), modify Part 1 of that Schedule (authorised persons: continuity of rights) to provide for exemptions granted by a body by virtue of section 55 of the Courts and Legal Services Act 1990 (c. 41) (persons exempt from prohibition on preparation of probate papers etc) which have effect immediately before paragraph 1 of Schedule 4 comes into force to be deemed to be authorisations to carry on probate activities granted by that body at the time that paragraph comes into force;
  - (c) in a case within sub-paragraph (1)(d), modify Part 2 of Schedule 5, to provide during the transitional period for members of the body to be deemed to be authorised by the body to carry on the administration of oaths.
- (6) An order under sub-paragraph (4) in relation to a body may—
- (a) in a case within sub-paragraph (3)(a) or (b), modify Part 1 of Schedule 5 (authorised persons: continuity of rights) so as to remove provision made to ensure the continuity of any authority given by the body to a person to exercise rights of audience or, as the case may be, to conduct litigation;
  - (b) in a case within sub-paragraph (3)(c), modify Part 1 of that Schedule so as to remove any provision deeming persons to have been authorised by the body to carry on probate activities;
  - (c) in a case within sub-paragraph (3)(d), modify Part 2 of that Schedule so as to remove any provision deeming persons to have been authorised by the body to carry on the administration of oaths.
- (7) No order under this paragraph may be made after the end of the pre-commencement period.
- (8) In this paragraph—
- “pre-commencement period” means the period before the coming into force of paragraph 1 of Schedule 4 (including any period before the passing of this Act);
  - “relevant activities” means—

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- (a) in a case within sub-paragraph (1)(a) or (3)(a), the exercise of a right of audience;
- (b) in a case within sub-paragraph (1)(b) or (3)(b), the conduct of litigation;
- (c) in a case within sub-paragraph (1)(c) or (3)(c), probate activities;
- (d) in a case within sub-paragraph (1)(d) or (3)(d), the administration of oaths;

“the transitional period” has the meaning given by paragraph 3 of Schedule 5.

### *Licensed Conveyancers*

- 6 (1) In this paragraph the transitional period means the period which—
- (a) begins with the day on which paragraph 29 of Schedule 17 (which amends Schedule 3 to the Administration of Justice Act 1985 (c. 61)) comes into force, and
  - (b) ends with the day on which members of the new Council are first appointed in accordance with a scheme approved by the Legal Services Board under Schedule 3 to that Act (as amended by that paragraph).
- (2) During the transitional period, the Council for Licensed Conveyancers is to be constituted in accordance with Schedule 3 to that Act as it had effect immediately before paragraph 29 of Schedule 17 came into force.
- (3) The term of office of persons who are members of the Council for Licensed Conveyancers by virtue of sub-paragraph (2) immediately before the end of the transitional period ends at the same time as the transitional period.
- 7 (1) This paragraph applies to any licence issued by the Council for Licensed Conveyancers under section 15 of the Administration of Justice Act 1985 (c. 61) which—
- (a) is endorsed under section 15(7) of that Act, and
  - (b) is in force when paragraph 4(4) of Schedule 17 (which repeals subsections (7) and (8) of section 15 of that Act (endorsement of licences)) comes into force.
- (2) Notwithstanding the repeal of those subsections, until the licence expires—
- (a) the licence continues to have effect in accordance with the endorsement, and
  - (b) rules made under section 15(8) of that Act continue to have effect in relation to the licence.
- 8 Until the repeal of paragraphs 17 and 19 of Schedule 8 to the Courts and Legal Services Act 1990 (c. 41) by Schedule 23 to this Act comes into force, those paragraphs have effect as if—
- (a) in paragraph 17 (inadequate professional services: failure to comply with direction), after sub-paragraph (2) there were inserted—
    - “(3) In relation to proceedings before the Discipline and Appeals Committee in respect of such a complaint, the Committee may make such order as they consider fit as to the payment of costs by—
    - (a) the Council;
    - (b) the licensed conveyancer against whom the complaint was made;

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- (c) if the person on whose complaint the proceedings were brought was heard (in person, or through a representative) by the Committee in the course of the proceedings, that person.”, and
- (b) paragraph 19(b) (inadequate professional services: costs) were omitted.

*Exercise of Board’s functions pending appointment of Chief Executive*

- 9 (1) Until the first Chief Executive of the Board is appointed under paragraph 13 of Schedule 1, the Board’s functions under—
- (a) Schedule 1,
  - (b) Schedule 15, and
  - (c) paragraph 10(8) of this Schedule,
- may be exercised by the ordinary members of the Board.
- (2) For that purpose “ordinary member” has the same meaning as in Schedule 1.

*Interim Chief Executive of the OLC*

- 10 (1) The Lord Chancellor may appoint a person as the Interim Chief Executive of the OLC.
- (2) The Interim Chief Executive is to be—
- (a) appointed on terms and conditions determined by the Lord Chancellor, and
  - (b) paid by the Lord Chancellor in accordance with provision made by or under the terms of appointment.
- (3) Appointment as the Interim Chief Executive does not confer the status of Crown servant.
- (4) In this paragraph—
- “the first interim period” means the period which—
    - (a) begins when sub-paragraph (5) comes into force, and
    - (b) ends when the chairman of the Board, and at least 7 other ordinary members of the Board (within the meaning of Schedule 1), have been appointed in accordance with paragraph 1 of Schedule 1;
  - “the second interim period” means the period which—
    - (a) begins when the chairman of the Board, and at least 7 other ordinary members of the Board (within the meaning of Schedule 1), have been appointed in accordance with paragraph 1 of Schedule 1, and
    - (b) ends when the membership of the OLC is first constituted in accordance with paragraph 1 of Schedule 15.
- (5) The Interim Chief Executive may incur expenditure and do other things in the name of and on behalf of the OLC—
- (a) from the beginning of the first interim period, and
  - (b) after that time until the OLC determines otherwise.
- (6) The things which may be done under sub-paragraph (5)—
- (a) include the appointment of staff under paragraph 13 of Schedule 15 and making arrangements for assistance under paragraph 18 of that Schedule, but

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- (b) do not include the appointment of an ombudsman under section 122 or the making of scheme rules.
- (7) During the first interim period, the Interim Chief Executive must comply with any supervisory directions given by the Lord Chancellor.
- (8) During the second interim period, the Interim Chief Executive must comply with any supervisory directions given by the Board.
- (9) The supervisory directions are—
  - (a) a direction requiring the Interim Chief Executive to provide the person giving the direction with a report on, or information relating to, such matters as are specified in the direction;
  - (b) a direction requiring the Interim Chief Executive to obtain the approval of the person giving the direction before incurring expenditure in such circumstances as are specified in the direction;
  - (c) any other direction relating to the exercise of the Interim Chief Executive’s functions which the person giving the direction considers appropriate.
- (10) Paragraph 34 of Schedule 15 (exemption from liability in damages) applies to the Interim Chief Executive as it applies to a member of the OLC.

#### *Solicitors*

- 11 (1) Until such time as section 59(1) of the Constitutional Reform Act 2005 (c. 4) comes into force, the reference in section 207(1), in the definition of “solicitor”, to the Senior Courts is to be read as a reference to the Supreme Court.
- (2) Until such time as section 59(2) of that Act (renaming of Supreme Court of Judicature of Northern Ireland as Court of Judicature of Northern Ireland) comes into force, the references in sections 8(5) and 190(5)(e), paragraph 2(4)(f) of Schedule 1, paragraphs 1(9) and 2(5) of Schedule 3 and paragraph 2(3)(e) of Schedule 15 to the Court of Judicature of Northern Ireland are to be read as references to the Supreme Court of Judicature of Northern Ireland.

#### *Solicitors Act 1974 (c. 47)*

- 12 (1) During the transitional period, the reference to an authorised person in section 1A(d) of the Solicitors Act 1974 (practising certificates: employed solicitors) is to be read as a reference to a person listed in paragraph 15(1), other than a person listed in paragraph (b) or (c) of that paragraph.
- (2) For this purpose “the transitional period” means the period which—
  - (a) begins with the day on which section 1A(d) of the Solicitors Act 1974 (as inserted by Schedule 16) comes into force, and
  - (b) ends with the day appointed for the coming into force of section 13 (entitlement to carry on a reserved legal activity).
- 13 (1) During the transitional period, section 44B of the Solicitors Act 1974 (provision of information and documents by solicitors etc) has effect as if the list of persons in subsection (2) of that section included a legal partnership (within the meaning of paragraph 7 of Schedule 5).
- (2) For this purpose “the transitional period” means the period which—



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- (a) begins with the day on which section 44B of the Solicitors Act 1974 (as substituted by Schedule 16) comes into force, and
  - (b) ends with the day appointed for the coming into force of section 13 (entitlement to carry on a reserved legal activity).
- 14 (1) During the transitional period, section 69 of the Solicitors Act 1974 (action to recover solicitor’s costs) has effect as if—
- (a) after subsection (2A)(a) of that section there were inserted—
    - “(aa) in a case where the costs are due to a firm, signed by a partner of the firm, either in his own name or in the name of the firm, or on his behalf by any employee of the firm authorised by him to sign, or”, and
  - (b) in subsection (2A)(b), after “paragraph (a)” there were inserted “or (aa)”.
- (2) For this purpose “the transitional period” means the period which—
- (a) begins with the day on which subsections (2) to (2F) of that section (as substituted by Schedule 16) come into force, and
  - (b) ends with the day appointed for the coming into force of section 13 (entitlement to carry on a reserved legal activity).
- (3) This paragraph does not apply in relation to section 69 of the Solicitors Act 1974 as it has effect by virtue of paragraph 29 of Schedule 2 to the Administration of Justice Act 1985.

#### *Recognised bodies*

- 15 (1) During the transitional period, any reference in sections 9, 9A or 32A of, or Schedule 2 or 6 to, the Administration of Justice Act 1985 (c. 61) (recognition of legal services bodies and conveyancing services bodies) to an authorised person is to be read as a reference to—
- (a) a person who has in force a certificate issued by the General Council of the Bar authorising the person to practise as a barrister,
  - (b) a person who is qualified under section 1 of the Solicitors Act 1974 (c. 47) to act as a solicitor,
  - (c) a recognised body under section 9 of the Administration of Justice Act 1985,
  - (d) a registered European lawyer (within the meaning of the European Communities (Lawyer’s Practice) Regulations 2000 (S.I. 2000/1119)),
  - (e) a person who has in force a certificate issued by the Institute of Legal Executives authorising the person to practise as a legal executive,
  - (f) licensed conveyancers (within the meaning of section 11(2) of the Administration of Justice Act 1985),
  - (g) a recognised body under section 32 of that Act,
  - (h) a duly certificated notary (within the meaning of paragraph 12(4) of Schedule 5),
  - (i) a person who (having regard to section 15) carries on notarial activities through an employee or manager of the person who is within paragraph (h),
  - (j) a registered patent attorney within the meaning given by section 275(1) of the Copyright, Designs and Patents Act 1988 (c. 48),
  - (k) a patent attorney body (within the meaning of paragraph 14(7) of Schedule 5),



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- (l) a registered trade mark attorney within the meaning of the Trade Marks Act 1994 (c. 26),
  - (m) a trade mark attorney body (within the meaning of paragraph 16(7) of Schedule 5),
  - (n) an authorised member of the Association of Law Costs Draftsmen (within the meaning of paragraph 17(2) of Schedule 5), or
  - (o) a person who (having regard to section 15) carries on an activity which is a reserved legal activity within paragraph 18(2) of Schedule 5 through an employee or manager of the person who is within paragraph (n).
- (2) After the end of the transitional period, any reference in section 9, 9A or 32A of, or Schedule 2 or 6 to, the Administration of Justice Act 1985 (c. 61) to an authorised person includes a person who is an exempt person—
- (a) by virtue of paragraph 13 of Schedule 5, in relation to the carrying on of an activity which is a notarial activity, or
  - (b) by virtue of paragraph 18 of that Schedule, in relation to the carrying on of an activity which is a reserved legal activity within sub-paragraph (2) of that paragraph.
- (3) For this purpose “the transitional period” means the period which—
- (a) begins with the day on which sections 9, 9A, 32 and 32A of the Administration of Justice Act 1985 (as amended and substituted by Schedules 16 and 17) come into force, and
  - (b) ends with the day appointed for the coming into force of section 13 (entitlement to carry on a reserved legal activity).
- 16 (1) During the transitional period (within the meaning of paragraph 15), the Law Society may make rules to which this sub-paragraph applies only with the concurrence of the Lord Chancellor (as well as the Master of the Rolls).
- (2) Sub-paragraph (1) applies to —
- (a) rules made under section 9 of the Administration of Justice Act 1985 by virtue of subsections (1A), (1C), (2F), (2G) or (2I) of that section or section 9A of that Act, and
  - (b) any other rules made under section 9 of that Act, in so far as they apply in relation to bodies which have one or more managers who are not legally qualified (within the meaning of section 9A of that Act), or managers or employees of such bodies.
- 17 (1) During the relevant period, the legal professional privilege provisions apply to a body which—
- (a) is recognised under section 9 of the 1985 Act, and
  - (b) has one or more managers who are not legally qualified (within the meaning of section 9A of that Act),
- as if the body were a licensed body.
- (2) Sub-paragraph (1) applies whether or not the legal professional privilege provisions have been brought into force for other purposes.
- (3) The relevant period is the period which—
- (a) begins when section 9A of the 1985 Act comes into force, and
  - (b) ends when paragraph 7 of Schedule 5 ceases to apply in relation to the body.

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- (4) The legal professional privilege provisions are—
  - (a) paragraph 36(4) of Schedule 2 to the 1985 Act (as inserted by Schedule 16 to this Act), and
  - (b) section 190(3) to (7) of this Act.
- (5) During the transitional period (within the meaning of paragraph 15), section 190(5)(h) (as it applies by virtue of this paragraph) applies as if for “an authorised person in relation to an activity which is a reserved legal activity” there were substituted “within paragraph 15(1) of Schedule 22”.
- (6) “The 1985 Act” means the Administration of Justice Act 1985.

*Functions transferred to the Lord Chancellor*

- 18 (1) This paragraph applies where, by virtue of an amendment made to an enactment by this Act, a function of the Secretary of State is transferred to the Lord Chancellor.
- (2) In this paragraph such a function is referred to as a “transferred function”.
- (3) Any subordinate legislation made by the Secretary of State in exercise of a transferred function is to have effect as if made or done by the Lord Chancellor.
- (4) So far as is appropriate in consequence of the transfer, anything else done by the Secretary of State in exercise of a transferred function is to be treated as if done by the Lord Chancellor.