
STATUTORY INSTRUMENTS

2009 No. 1365 (C. 74)

LEGAL SERVICES, ENGLAND AND WALES

The Legal Services Act 2007 (Commencement No. 5, Transitory and Transitional Provisions) Order 2009

| | | |
|-------------------------------|---------|----------------------|
| <i>Made</i> | - - - - | <i>3rd June 2009</i> |
| <i>Laid before Parliament</i> | | <i>9th June 2009</i> |
| <i>Coming into force</i> | - - | <i>1st July 2009</i> |

The Lord Chancellor makes the following Order in exercise of the powers conferred by sections 204, 208(2) and (4) and 211(2) of the Legal Services Act 2007⁽¹⁾:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Legal Services Act 2007 (Commencement No. 5, Transitory and Transitional Provisions) Order 2009.

(2) This Order comes into force on 1st July 2009.

(3) In this Order—

- (a) “the 1974 Act” means the Solicitors Act 1974⁽²⁾;
- (b) “the 1990 Act” means the Courts and Legal Services Act 1990⁽³⁾;
- (c) “the 2007 Act” means the Legal Services Act 2007; and
- (d) a reference to a section, Schedule or paragraph of a Schedule by number alone is a reference to that section, Schedule or paragraph in the 2007 Act.

Commencement of provisions

2. The following provisions of the 2007 Act come into force on 1st July 2009—

(a) in Part 1 of Schedule 16 (The Law Society, solicitors, recognised bodies and foreign lawyers)—

- (i) paragraphs 3, 5, 6, 7(a), 9, 10, 12, 13, 18, 19, 22, 23, 40, 49(a), (c) and (e), 50(a)(i), 52 and 54(2)(b) and 75(b) and (c) in so far as it omits the definitions of “indemnity conditions”, “replacement date” and “training conditions”,

(1) 2007 c. 29.
(2) 1974 c. 47.
(3) 1990 c. 41.

- (ii) paragraphs 11 and 15 subject to article 3 below,
- (iii) paragraphs 8(3) to (5), 14, 16, 17, 20, 41(3) to (6) and 51 subject to article 4 below, and
- (iv) paragraph 30 subject to articles 3 and 4 below;
- (b) in Part 3 of Schedule 16 (The Law Society, solicitors, recognised bodies and foreign lawyers)—
 - (i) paragraphs 128(d), (e)(ii), (f) and (g), 129, and
 - (ii) paragraphs 135 and 138 subject to article 4 below; and
- (c) in Schedule 23 (Repeals), the entries relating to—
 - (i) sections 6(2) to (4), 8(5), 12, 12A, 14, 28, 40, 41(5), 49(4) and (7) and the definitions of “indemnity conditions”, “replacement date” and “training conditions” in section 87(1) of the 1974 Act, and
 - (ii) paragraphs 2(3) and (5), 14(2) and (3) and 17(2) and (4) of Schedule 14 to the 1990 Act.

Transitory provisions

- 3.—(1) Until paragraph 19 of Schedule 4 comes into force—
 - (a) the Law Society may make rules under section 13ZA(7) of the 1974 Act (as inserted by paragraph 15 of Schedule 16) only with the concurrence of the Secretary of State and the Master of the Rolls; and
 - (b) the power of the Law Society in section 28(1) of the 1974 Act (as amended by paragraph 30(2) of Schedule 16) to make regulations must be exercised by the Master of the Rolls with the concurrence of the Secretary of State and the Lord Chief Justice.
- (2) Until section 51 comes into force in its entirety—
 - (a) section 13ZB of the 1974 Act (as inserted by paragraph 15 of Schedule 16) has effect as if subsections (3) and (4) were omitted;
 - (b) all fees payable under sections 11 and 13ZB of the 1974 Act (as inserted by paragraphs 11 and 15 respectively of Schedule 16) must be applied by the Law Society for one or more of the following purposes—
 - (i) the regulation, accreditation, education and training of solicitors and those wishing to become solicitors, including the maintaining and raising of their professional standards and giving advice on practice management and practical support for solicitors’ practices,
 - (ii) the participation by the Law Society in law reform and the legislative process,
 - (iii) the provision by solicitors and those wishing to become solicitors of free legal services to the public,
 - (iv) the promotion of the protection by law of human rights and fundamental freedoms, and
 - (v) the promotion by the Law Society of the professional interests of solicitors through discussion with, and participation in the activities of, relevant national and international bodies, governments and the legal professions of other jurisdictions; and
 - (c) the power of the Law Society to determine the level of fees payable under sections 11 and 13ZB of the 1974 Act (as inserted by paragraphs 11 and 15 respectively of Schedule 16)

must be exercised by the Master of the Rolls with the concurrence of the Secretary of State and the Lord Chief Justice.

Transitional provision

4. For the purpose of any appeals made to the Master of the Rolls under the following provisions before 1st July 2009, those provisions and any provision necessary to give full effect to the appeals process continue to have effect after 1st July 2009 as they had effect immediately before that date—

- (a) sections 8, 13, 13A, 13B, 16, 28, 41 or 49 of the 1974 Act; and
- (b) paragraphs 14 and 17 of Schedule 14 to the 1990 Act.

Signed by authority of the Lord Chancellor

3rd June 2009

Bridget Prentice
Parliamentary Under Secretary of State
Ministry of Justice

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is the fifth commencement order made under the Legal Services Act 2007 (c. 29) (“the 2007 Act”). This Order comes into force on 1st July 2009.

Article 2 brings into force various provisions of the 2007 Act. The following table shows the effect of those provisions:

| <i>Article of Order</i> | <i>Provisions Commenced</i> | <i>Effect</i> |
|-------------------------|---|---|
| 2(a) (part) | Schedule 16, paragraphs 3, 15 and 22 | Insert new sections 1B, 13ZA, 13ZB, 17A and 17B into the Solicitors Act 1974 (c. 47) (“the 1974 Act”) to enhance the Law Society’s powers over sole solicitors. |
| 2(a) (part) | Schedule 16, paragraphs 5, 8(3) to (5), 16, 17, 20 and 41(3) to (6) | Amend the 1974 Act to remove the functions of the Master of the Rolls (a) in respect of the approval of Law Society rules and regulations and (b) as an appellate authority in relation to Law Society decisions. |
| 2(a) (part) | Schedule 16, paragraph 6 | Amends section 6 of the 1974 Act to simplify the statutory requirements about the keeping of the roll. |
| 2(a) (part) | Schedule 16, paragraph 7(a) | Amends section 7 of the 1974 Act to allow for admission of solicitors by the Law Society rather than the Master of the Rolls. |
| 2(a) (part) | Schedule 16, paragraphs 9, 10, 11, 12, 13, 14, 18 and 19 | Amend the 1974 Act to change the practising certificate regime (including fees payable and appeals). Paragraphs 9, 10, 11 and 14 substitute new provisions for the existing sections 9, 10, 11 and 13. Paragraphs 12, 13 and 18 omit sections 12, 12A and 14. Paragraph 19 makes consequential amendments to section 15. |
| 2(a) (part) | Schedule 16, paragraph 23 | Amends the 1974 Act to substitute a new section 18 which provides for extracts from the roll or register to be used as evidence of qualification as a solicitor. |
| 2(a) (part) | Schedule 16, paragraph 30 | Amends section 28 of the 1974 Act to give the Law Society new powers to make regulations about admission as a solicitor; the keeping of the roll; practising certificates; sole solicitor endorsements; and the keeping of the register of holders of practising certificates. |
| 2(a) | Schedule 16, paragraph 40 | Omits section 40 which prohibited solicitors from commencing or defending actions while in prison. |

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| <i>Article of Order</i> | <i>Provisions Commenced</i> | <i>Effect</i> |
|-------------------------|--|--|
| (part) | | |
| 2(a) (part) | Schedule 16, paragraphs 49(a), (c) and (e), 50(a)(i), 51 and 52 | Amend sections 47, 48 and 49 of, and insert a new section 49A into, the 1974 Act to alter the jurisdiction and powers of the Solicitors Disciplinary Tribunal and the path of appeals from and to that Tribunal. |
| 2(a) (part) | Schedule 16, paragraph 54(2)(b) | Amends section 56 of the 1974 Act to provide for the committee determining the remuneration for non-contentious business to include a member of the Legal Services Board. |
| 2(a) (part) | Schedule 16, paragraph 75(b) and (c)(in part) | Amends section 87 of the 1974 Act to omit certain definitions. |
| 2(b) | Schedule 16, paragraphs 128(d), (e)(ii), (f) and (g), 129, 135 and 138 | Amend provisions in Schedule 14 to the Courts and Legal Services Act 1990 (c. 41) about registered foreign lawyers in order to achieve consistency with changes introduced by the Legal Services Act 2007 (c. 29). |
| 2(c) | Schedule 23 (generally) | Makes repeals which are consequential upon the changes described above. |

Article 3(1) prescribes the concurrence requirements for Law Society rules and regulations (made under sections 13ZA and 28 of the Solicitors Act 1974) until such time as the Law Society's regulatory arrangements are approved by the Legal Services Board.

Article 3(2) prescribes the purposes for which Law Society practising fees may be applied and the concurrence requirements for the level of those fees until such time as practising fees are controlled by the Legal Services Board in accordance with section 51 of the Legal Services Act 2007.

Article 4 makes transitional provision for appeals made to the Master of the Rolls before 1st July 2009 to continue to be heard by him.

An impact assessment has not been prepared for this Order, but a full Regulatory Impact Assessment was prepared for the Legal Services Bill in November 2006, supplemented in June 2007. Copies of those documents are annexed to the Explanatory Memorandum which is available alongside this instrument on the OPSI website.

NOTE AS TO EARLIER COMMENCEMENT ORDERS

(This note is not part of the Order)

The following provisions of the 2007 Act have been brought into force by commencement orders made before the date of this Order:

| <i>Provision</i> | <i>Date of Commencement</i> | <i>S.I. No.</i> |
|--|-----------------------------|--------------------------|
| Sections 1 subject to transitory provision, 2, 3, 5, 6 and 7 | 07.03.2008 | 2008/222 |

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| <i>Provision</i> | <i>Date of Commencement</i> | <i>S.I. No.</i> |
|--|---------------------------------------|---|
| Sections 8 subject to modification, 9, 10, 11, 20(5), 24(3), 26(2), 27, 29, 30, 33, 37(4) and (5), 41(4) and (5), 42 (6) to (10), 44(2), 45(3)(b) and (c), (4) and (7), 48(6) to (9), 49, 50, 51(1), (3), (4) and (6) to (8) | 01.01.2009 | 2008/3149 |
| Sections 69 subject to modifications and 70 subject to modifications | 07.03.2008 | 2008/222 |
| Sections 74, 76(3)(b) and (c), (4) and (7), 79(6) to(10), 84(2) partially, 87(4) and (5), 89, 95(3) and (4), 96(1), 112(2) and (4), | 01.01.2009 | 2008/3149 |
| Section 114 | 07.03.2008 | 2008/222 |
| Sections 115 to 124, 126(3), 127, 128(3)(b), (4)(d) and (5)(c), 130, 132, 133, 136, 137(4), 140(6)(c), 141(5), (6) and (7), 144(1) and (3) to (7) subject to modifications, 145(2) and (3), 155, 156, 160, 162, | 01.01.2009 | 2008/3149 |
| Section 172 | 07.03.2008 | 2008/222 |
| Sections 173(1) and (3) to (11), 174(1), (3), (4), (6) and (7) subject to modification, 175(1)(c), (k), (m) and (n) | 01.01.2009 | 2008/3149 |
| Sections 177, 180 subject to modification, 182 and 187 | 07.03.2008 | 2008/222 |
| Section 194(8) and (9) and (10) partially | 30.06.2008 | 2008/1436 |
| Section 194 (fully), 195 and 196 | 01.10.2008 | 2008/1436 |
| Section 199(1) and (2) | 07.03.2008 | 2008/222 |
| Section 199(3) | 31.03.2009 | 2009/503 |
| Section 199(4), (5) partially and (6)(b) partially | 30.06.2008 | 2008/1436 |
| Section 199(5) wholly, (6)(a) partially, (6)(b) wholly | 31.03.2009 | 2009/503 |
| Section 200(1) | 07.03.2008 | 2008/222 |
| Sections 200(2) to (4), 201, 202 and 203 | 01.01.2009 | 2008/3149 |
| Section 204(1), (3) and (4)(a) | 07.03.2008 | 2008/222 |
| Section 204 wholly and 205 | 01.01.2009 | 2008/3149 |
| Sections 206, 209 and 210 | 07.03.2008 | 2008/222 |
| Certain definitions in section 207 | 07.03.2008, 30.06.2008 and 31.03.2009 | 2008/222 , 2008/1436 and 2009/503 |
| Section 208(1) | 31.03.2009 | 2009/503 |
| Schedule 1 | 07.03.2008 | 2008/222 |

| <i>Provision</i> | <i>Date of Commencement</i> | <i>S.I. No.</i> |
|--|-----------------------------|---------------------------|
| Paragraphs 3(1), (3) and (4), 4(2), 11(3), 13, 20 and 23(3) of Schedule 4 | 01.01.2009 | 2008/3149 |
| Paragraphs 12(1) to (3), 13 and 14 of Schedule 6 | 01.01.2009 | 2008/3149 |
| Paragraphs 1, 2(5) and 10(3) of Schedule 7 | 01.01.2009 | 2008/3149 |
| Paragraphs 1, 2(5), 10(5), 13(2)(a) and 21(5) of Schedule 8 | 01.01.2009 | 2008/3149 |
| Paragraphs 1, 2(5) and 9(5) of Schedule 9 | 01.01.2009 | 2008/3149 |
| Paragraphs 1(1), (4) and (5), 2(2), 9(3), 11, 17, 18(5) and 25(5) of Schedule 10 | 01.01.2009 | 2008/3149 |
| Paragraphs 2(4) and (5) and 4 of Schedule 12 | 01.01.2009 | 2008/3149 |
| Paragraph 8 and other paragraphs (for limited purposes only) of Schedule 13 | 01.01.2009 | 2008/3149 |
| Paragraphs 1 to 12 of Schedule 15 | 07.03.2008 | 2008/222 |
| Paragraphs 13 to 34 of Schedule 15 | 01.01.2009 | 2008/3149 |
| Paragraphs 1, 2(b), 4(b), 7(b), 8(1) and (2), 21, 31(1) and (2)(a) and (d), 34(1), (2)(a) and (3), 38(a) in part, 38(b)(i) and (ii), 50(a)(ii), 53, 54(1) and (4)(b), 64(1), (3) and (4), 71 subject to transitory provision, 72(a) and 75(c) in part, 80, 115, 124, 126, 128(a) and (c)(i) and 130 of Schedule 16 | 07.03.2008 | 2008/222 |
| Paragraphs 38(b)(iii), 47, 48 subject to transitory provision, 54(2)(a) and (c), (3), (4)(a), (5), (6)(a) and (9)(b), 56(c), 81(1) and (9), 86(g) (partially), 111, 112(a), (c) and (d) and 113(b) (iii), 125(c), (d), (e), (f) and (g) and 128(c)(ii) of Schedule 16 | 30.06.2008 | 2008/1436 |
| Paragraphs 31(2)(c) and (e), 32(1), (2)(a) and (c) to (e) and (3) to (7), 33, 35, 36, 37, 41(1) and (2), 42, 43, 44, 45, 46, 49(b), (d), (f) and (h), 50(b) and (c), 54(6)(b) and (7), 59(b)(iii), 62(d) and (e), 70, 72(b), 74, 75(a) and (c) partially, 77, 79, 81 wholly, 82, 83, 84(1), (2) and (4), 85, 86 wholly, 87 to 93, 94, 95 to 99, 101, 102, 103, 104, 105(a), (b)(i) and (iii) and (c), 106(a), (b), (d) and (e) partially, 107, 108 to 110, 113(b)(iv) and (c), 114, 116 to 123, 125 wholly, 127, 131, 132, 133, 134 and 136 of Schedule 16 | 31.03.2009 | 2009/503 |
| Paragraphs 1 and 11 of Schedule 17 | 07.03.2008 | 2008/222 |
| Paragraphs 2(a), 4, 5(1), (2)(a) and (b) partially and (3)(a) and (b) partially, 6, 7(1) and (2)(a) | 31.03.2009 | 2009/503 |

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|--|---|--|
| and (b) partially, 8, 9, 12 to 19, 20, 21, 22, 24 to 26, 28, 29, 30(1), (2)(b) and (3), 31 and 32(1) to (6)(f), (6)(g) partially and (7) to (18), 33, 34(1), (5) and (6) and 35(1), (5) and (7) to (11) of Schedule 17 | | |
| Paragraphs 1, 5, 8 and 9 of Schedule 19 | 07.03.2008 | 2008/222 |
| Paragraphs 6(1) and (2) and 11(1) and (6) of Schedule 19 | 30.06.2008 | 2008/1436 |
| Schedule 20 | 01.10.2008 | 2008/1436 |
| Paragraphs 65, 67, 83, 87, 99, 100(b) to (d) and 101 of Schedule 21 | 31.03.2009 | 2009/503 |
| Paragraphs 1 to 5 and paragraph 9 (for certain purposes) of Schedule 22 | 07.03.2008 | 2008/222 |
| Paragraph 18 of Schedule 22 | 30.06.2008 | 2008/1436 |
| Paragraphs 6 to 8, 11(1), 13, 14, 15, 16 and 17 of Schedule 22 | 31.03.2009 | 2009/503 |
| Schedule 23 partially | 07.03.2008, 30.06.2008, 01.10.2008 and 31.03.2009 | 2008/222 , 2008/1436 and 2009/503 |